

AGREEMENT

original attached
to Res 53-94

This Agreement is made and entered into this ~~24th~~ ^{25th} day of June, 1994, by and between The City of Grand Junction, Colorado, a Colorado home rule city, hereinafter referred to as "Lessor" or "City", and The Western Colorado Botanical Society, a Colorado Nonprofit Corporation, hereinafter called "Lessee" or "Society".

Recitals.

A. The City purchased various properties along the Colorado River as a part of a community-wide effort to redevelop and beautify the River corridor. The City has obtained various grants and other funding sources, some of which have on-going restrictions and limitations and obligations attached to the use of portions of the various properties. The Society has proposed to use portions of this area which the Council finds is in the public interest because the Society's uses and efforts can, among other things, educate the public in botanical, conservation, environmental and related matters, improve the appearance of the area and promote the cultural and aesthetic values of the City. The City further finds that because tax dollars were used, in part, to acquire the property, and certain restrictions, obligations and promises have been made with regard to all or a part of some of the properties, on-going City involvement, or at least the ability to be involved, must be retained by the City, throughout the term of this agreement. The City has invested substantial sums in acquiring the several properties; this Agreement provides a reasonable mechanism to protect this investment while promoting a positive and benefitting use.

B. In determining the intent of the parties and interpreting this lease, and in construing any ambiguities which may exist, the parties agree that the following principles shall apply: (a) the City shall retain the power to decide ownership and control of and the uses on the Property; (b) Society shall use the Property and shall direct its efforts and operations in a way that is consistent and coordinated with the City's other uses and properties in the area and subject to the ongoing approval of the City, as owner of the Property; (c) in the event of a dispute or when judgment or discretion must be exercised in interpreting this agreement, the Society shall refer such question to the City Manager or City Council whose decision shall be final; (d) the City intends to participate less in matters of control and approval (other than its customary regulatory role) as the Society demonstrates its ability to operate the premises in a business-like manner which is not harmful to the interests of the City.

C. In consideration of the foregoing, and the mutual promises, covenants and agreements contained herein, the City is willing to lease to Society the following

described real property owned by the City, hereinafter referred to as the "Property", which Property is generally located west of 8th Street and south of Struthers Avenue, Grand Junction, Colorado, and is more-particularly described as set forth on Exhibit A attached hereto.

D. Notwithstanding any provision to the contrary, the City shall retain its rights and privileges to cause to be constructed a levee, and other public or other improvements as the City deems proper from time to time, on portions of the Property. Society shall cooperate, without charge, in each such construction or maintenance effort. The City shall retain the right of access over and throughout the Property for levee, trails, parking and such purposes as the City deems appropriate. The City Council may, at the request of Society and upon review of such plans as the Council deems necessary, limit such rights of the City for a period or periods established by the Council. The City may amend the legal description of the Property, from time to time, in order that the legal description, as amended, of the Property consists of only those portions of the Property which the City deems necessary for the purposes of Society and so that, as determined by the City Council, only that amount of Property which is actively being used, or proposed for use, is subject to this Agreement.

E. Society represents that it is, and shall continuously maintain its status as, a tax exempt corporation under 501 (c)(3) of the IRC of 1986, and it desires to develop botanic gardens on the demised premises. A Master Plan (the "plan") has been prepared by the Society which contemplates the development of the property in phases, an initial phase commencing now (subject to receipt of adequate funds therefor), with ground breaking activities on certain buildings expected to occur in a progressive manner commencing about 1996. A copy of such plan is attached. The failure of the Society to commence such construction by June 16, 1999, shall be deemed a default of this Agreement. City may require that such plan be modified in whole or in part to meet the needs of City and Society, as determined by City. Society shall modify its articles of incorporation to require that, during the term hereof, one-third of the board of directors of the Society be residents of the City of Grand Junction. Any grant funds received by the Society shall be subject to the terms of this lease.

F. No development of botanic gardens can be carried out without first securing a suitable location where the gardens can be established and cultivated over a long time period. The necessary volunteers and additional financial support from the community are expected to follow the identification of the whereabouts for the gardens.

G. The purpose and mission of the Society is to provide cultural and educational enhancement and environmental preservation to the City and Western Colorado through its gardens by serving all who come to learn, observe and participate. The City wholeheartedly supports such purpose and mission.

H. Such botanic gardens will be a cultural amenity for this community and will enhance the construction and development of the Colorado River Trail ("Trail") in the City of Grand Junction. The property is proximate to the Trail. It will attract visitors from the Trail and will bring other visitors to the Trail and to the community.

I. City desires to see the areas in the City along the Colorado River developed to enhance the quality of life on the Western Slope, educationally, culturally and commercially. This development provides a means to meet such goals.

J. The City desires to give Society the opportunity to clear the land and construct suitable gardens, landscaping, trails and an education/visitor center as generally outlined in the plan, subject to the on-going approval of City during the term of this Agreement.

K. The recitals, and the foregoing provisions and policy statements, are substantive portions of this Agreement; in the event of inconsistency with any particular provision set forth below, the guiding principles set forth herein shall control.

L. Society shall, on or before October 31st of each year, submit to the City Manager: a financial statement and a detailed report of the Society's activities involving the Property, including usage (paid and unpaid), revenues, expenditures, detailed financial projections for the successive three years which shall demonstrate the Society's ability to complete its plans. An independent audit shall be provided at least every 5 years.

M. As to all matters of management and business judgment herein requiring City approval or consent, if Society has provided sufficient information, then City agrees to provide timely review and approval/nonapproval where appropriate and to advise the Society of what additional requirements, if any, it must meet to secure such approval.

Now, therefore, in consideration of the recitals, premises and in accordance with the mutual promises, policies, covenants and agreements herein set forth, Society accepts said lease in accordance with said recitals, principles, agreements and covenants as follows:

1. TERM

The term of this Lease shall be for twenty (20) years, and shall commence at 12:01 AM on June 16, 1994, and shall end at 12:01 AM on July 1, 2014; Society may renew for four (4) additional periods of twenty (20) years each so long as the approval of the City Council is obtained by Resolution.

2. RENTAL

Society shall pay to City at the office of City or at such other place as City, in writing, from time to time designates, as follows:

(a) Base Rent. Until such time as the gross annual receipts of Society exceed Two Hundred Fifty Thousand dollars (\$250,000.00), a yearly guaranteed rental in the amount of one dollar (\$1.00), in advance, beginning on the first day of July, 1994, and thereafter on the first day of each calendar year during the term of this lease. For any partial calendar year, a full dollar shall be paid.

(b) At such time as the gross annual receipts of Society exceed Two Hundred Fifty Thousand dollars (\$250,000.00), rent shall be paid, in arrears on the first day of February following the measuring year, equal to two percent (2%) of that amount of gross annual receipts which exceed Two Hundred Fifty Thousand Dollars (\$250,000.00).

(c) At such time as the gross annual receipts of Society exceed Five Hundred Thousand dollars (\$500,000.00), rent shall be paid, in arrears on the first day of February following the measuring year, equal to five percent (5%) of that amount of gross annual receipts which exceed Five Hundred Thousand Dollars (\$500,000.00).

(d) Gross annual receipts includes all transactions on the Property, excluding donations, gifts, memorials and grants, for which sales or use taxes are payable to the City under its ordinances and shall include income from all rentals, admissions, fees, charges and rents.

3. RELATIONSHIP

The City shall in no event be held to be a partner or an associate of the Society in the conduct of the Society's business; the City and Society shall remain as landlord and tenant, subject to the other, overriding provisions and principles hereof.

4. USE

(a). Society agrees that the Property shall be used only for the purposes of a garden, insect conservatory and related educational, recreational and fund-raising activities; that access and use shall be for the general public and for the City's primary and the region's benefit; and that such uses be consistent with any applicable zoning, health, building and related laws. In order to avoid conflicts with existing businesses which compete for gross annual receipts, Society shall solicit, and deliver to the Council, letters or other evidence of support for the society activities from businesses who

provide competing services or goods such as weddings, flowers and bulb sales. The Council may waive all or a portion of the requirements of the preceding sentence upon request of Society.

(b). Society shall restrict its use for such purposes and shall not use or permit the use of the Property for any other purpose without the written consent of the City.

(c). Society agrees that the Property shall be used only for those events approved by the City. Society shall apply for, and comply with, the applicable regulations and permits of the City; Society shall pay such fees and charges as such regulations and laws require. Society shall meet the regulatory requirements which apply to the types of uses Society shall propose, such as but not limited to parking, street and traffic improvements, and infrastructure.

(d). Upon the execution hereof and subject to the requirements of the US Corps of Engineers which is to construct a levee on the Property, Society shall construct a composting complex on the Property for stockpiling soil amendments and giving public demonstrations. No offensive odors may be emitted beyond the property line, and the composting and other activities shall be conducted in accordance with existing laws and ordinances.

(e) Society shall provide twelve days each calendar year (at least one day monthly), as determined by the Society for free admissions to the uses and activities of the Society.

(f) No development nor improvement nor construction of any structure shall occur without the prior written approval of the City, in its capacity as owner of the Property, having been obtained. In such regard, the City may require that Society perform such studies and analyses as the City reasonably deems appropriate to the uses of the property. Society shall deliver to the City for its review a proposed site plan and a land use plan, both of which comply with the requirements of the City Zoning and Development Code, and applicable regulations, on or before March 31, 1995.

(g) Society shall propose plans for and shall, upon receipt of City approval of such plans, thereafter construct a public parking lot(s) sufficient to meet the needs of the Society. Upon the completion of the construction to the specifications and standards of the City, the City shall thereafter operate and maintain such parking lot(s) and facilities.

(h) City agrees to pay one-half the construction cost of public restrooms built on the Property, provided that there is outdoor public access to such restrooms.

5. MAINTENANCE, UTILITIES, INSURANCE AND TAXES

Society accepts the Property in its "as is" condition. Society waives its rights, and the rights of any person claiming under or through Society, to make any claims against the City, its officers and employees, with regard to the condition of the Property including claims which relate to or are in any way based upon radioactive or other contamination contained on or under the soils of the Property. Society has inspected the Property but has conducted no testing of any kind thereon, although the City has afforded it the opportunity to do so. The City has disclosed that there are residual radioactive tailings buried at least two feet below the existing surface of the ground, based upon information supplied to the City by the U.S. Department of Energy. The Society is not expecting any particular quality of soil and may in its discretion supplement the soils with nutrients, loam, compost, topsoil and other materials to enhance its viability. Society represents and acknowledges that it has had ample opportunity to investigate the Property and to perform such analyses as it deems necessary and reasonable to assure itself that the Property meets its needs. Society acknowledges that City makes no representations, express or implied, concerning the usability or condition of the soils or of the Property.

Society makes additional covenants, as follows:

(a) Maintenance. Society shall, at its own cost and expense, put, keep and maintain the entire demised Property in good order and repair. The property is to be cleared and all debris removed and the gardens constructed. Once constructed, the Society will be responsible for maintaining the same in good order and repair. All equipment storage shall be screened from public view, all rights-of-way and public trails. Junk, rubbish and weeds (as defined by Municipal Code 14-24) shall not be accumulated on the Property. In carrying out its maintenance obligations, Society agrees to conform to all requirements of law, the regulations of applicable public authorities, including those of the City, and any requirement of its insurance carriers.

(b) Utilities. Society further covenants and agrees to pay for all water, gas, power, electric current, and all other utilities served to the demised Property during the term of this Lease or any extension thereof, and City shall, at Society's request, grant to any utility company so requiring it such easements and rights-of-way as may be required but only if City determines that to do so would not injure other property of City, at City's sole discretion. Each party agrees to pay one-half of the cost of extending the public sewer line in the right-of-way from 7th Street to the appropriate sites on the Property boundary. Society will pay the customary plant investment fee, estimated at \$750.00. In the event other parties access the sewer service line installed in accordance with this lease within five years of the date of this lease, Society may apply to City for reimbursement of a prorata share of costs incurred in construction of the line. Society will pay the whole cost of installing the sewer service line from the public sewer line to improvements on the property.

(c) Taxes. Because of the public nature of this project, City/Society agrees to pay real estate taxes and special assessments imposed upon the Property when said taxes are due and payable.

(d) Sales Tax. Society shall collect and remit to the City the City sales tax and use tax from snack bar and gift shop any taxable transaction or activity under the control of Society, including but not limited to snack bar(s) and gift shop(s).

(e) Insurance. (i) The Society agrees to take out and continuously maintain such forms, amounts, and coverage of insurance as City shall, from time to time, require. Initially Society shall take out public liability insurance covering the demised Property. Said policy or policies shall be for an amount of at least One Million Dollars (\$1,000,000) for each occurrence, plus at least One Hundred Thousand Dollars (\$100,000) for property damage, which said policy or policies of insurance shall name the City as additional insured thereunder, and Society agrees to maintain the same at Society's sole cost and expense in full force and effect during the entire term of this Lease including any extension thereof. Society shall furnish the City with a copy of such insurance coverage or with a certificate of the company issuing insurance, certifying that the same is in full force and effect.

(ii) Society further agrees that it will, at Society's own cost and expense, carry and maintain fire insurance with extended coverage endorsement for the benefit of City and Society on the improvements located thereon in an amount equal to the full insurable value thereof, excluding foundation and excavating cost. As often as any such policy or policies shall expire or terminate, renewal or additional policies shall be procured by Society in like manner and to like extent. Proceeds of any such policies, in the event of fire or other casualty, shall be payable to Society and City, as their respective interest may appear, and in all cases shall be applied to the repair of the buildings and the Property. Any proceeds in excess of those used to repair damages shall be paid to Society. Society may, at its option, bring its obligations to insure under this article within the coverage of any so-called blanket policy or policies of insurance which it may now or hereafter carry, by appropriate amendment, rider, endorsement or otherwise; provided, however, that the interest of City shall thereby be as fully protected as they would be otherwise if this option to Society to use blanket policies were not permitted.

(f) Hold Harmless. Society further agrees to defend, indemnify and save City, in its capacity as a landowner and as a government, and its officers and employees harmless (except for the sole and exclusive negligence of the City, its employees and agents) against and from any and all claims made by or on behalf of any persons, firms or corporations for loss, damage or injury to property or person resulting or arising by reason of the use and occupancy of the Property by Society, and in case any action or proceeding may be brought against City, its officers and/or employees by reason of any such claim for which Society is claimed to be liable, Society, upon

notice from City, covenants to resist and defend such action or proceeding through legal counsel reasonably satisfactory to City. Indemnification by Society hereunder shall not extend to any matter against which, and to the extent which City has been indemnified and/or insured by any insurance carried by Society.

6. WASTE AND PERMANENT ALTERATIONS

Society will not commit waste, nor suffer waste to be committed, upon the said Property. Society intends to erect on said Property a few buildings or structures of the type outlined in the plan. Subject to applicable law and having first obtained the approval of the City, Society shall be entitled to make any alterations or additions in or to such buildings and structures, to clear from the area certain plants, such as chinese elm, among others, so as to give space for other plants.

7. COVENANTS AGAINST LIENS

Society expressly covenants and agrees that it will, during the term hereof, promptly remove or release, by posting of a bond or otherwise, as required or permitted by law, any lien attached to or upon said Property or any portion thereof by reason of any act or omission on the part of Society or any third party resulting from the uses or activities of Society (but excluding therefrom the exclusive acts or omissions of City), and hereby expressly agrees to save and hold harmless the City from or against any such lien or claim of lien. In the event any such lien does attach, or any claim of lien is made against said demised Property, which may be occasioned by any act or omission upon the part of Society or any third party resulting from the uses or activities of Society, and shall not be thus released within sixty (60) days after notice thereof, City, in its sole discretion (but nothing herein contained shall be construed as requiring it so to do) may pay and discharge the said lien and relieve the said demised Property from any such lien, and Society agrees to pay and reimburse City upon demand for or on account of any expense which may be incurred by City in discharging such lien or claim, which sum shall include interest at the rate of ten percent (10%) per annum from the date such lien is paid by City until the date City is reimbursed by Society; provided, however, that if Society has reasonable cause to contest the validity of correctness of any such lien, and City concurs that such reasonable cause exists, it may do so and in such event no breach of this Lease shall result.

8. BANKRUPTCY OR INSOLVENCY

If at any time during the term hereof proceedings in bankruptcy shall be instituted by or against the Society, or if the Society shall file, or any creditor of the Society shall

file, or any other person or persons shall file any petition under the Bankruptcy Act of the United States of America, as the same is now in force or may hereafter be amended, or if a receiver of the business or assets of Society be appointed, or the Society makes an assignment for the benefit of creditors, or any sheriff, marshal, constable, or keeper take possession thereof by virtue of any attachment or execution proceedings, then City may, at its option, in either of any such events, immediately take possession of the demised Property and terminate this Lease. Upon such termination, all installments of rent earned to the date of termination and unpaid shall at once become due and payable, and in addition thereto City shall have all rights provided by the bankruptcy laws relative to the proof of claims of an anticipatory breach of an executory contract. Any such termination shall not operate to terminate or limit Society's obligation(s) to defend, hold harmless or indemnify.

9. REMEDIES ON DEFAULT

Except as otherwise provided for herein, in the event of any breach of this Lease by Society which shall not have been cured within ten (10) days after Society shall have received written notice from City of such breach (or if such breach is not for payment of money), if within such period Society shall not have commenced to cure said breach and continue its efforts with due diligence to cure said breach, the City, besides other rights or remedies it may have at law or in equity, shall have the immediate right of re-entry. Should City elect to re-enter, as herein provided, or should it take possession pursuant to legal proceedings or pursuant to any notice provided for by law, it shall terminate this Lease, provided however, that Society's duties to pay rents pursuant hereto and to defend, indemnify and hold harmless shall survive such termination.

10. ASSIGNMENT AND SUBLETTING

Except as herein provided, Society shall not assign this Lease, nor any interest therein, nor shall Society grant any rights to the use of any portion of the Property to any person without first obtaining the written consent of City.

11. ACCESS TO PROPERTY BY CITY

City, as Landlord, shall have the right at all reasonable times, during normal business hours, to go upon and inspect the Property and every part thereof, provided, however, that any such inspection shall be made in a manner to minimize any interference with the use by the Society. City shall have its customary rights under its police power and general welfare purposes to go upon the property as necessary.

12. ESTOPPEL CERTIFICATES

At any time and from time to time, each party, upon request of the other, agrees to execute, acknowledge and deliver to such party, any mortgagee, financial institution or other party having or acquiring an interest in the Property a statement in writing certifying to all or any part of the following information:

(a) That this Agreement constitutes the entire agreement between City and Society and is unmodified and in full force and effect (or setting forth any such modifications);

(b) The date to which rents have been paid;

(c) That no default has occurred (or specifying any such default);

(d) That the lease term has commenced, that the Society is occupying the Property, and setting forth the effective date of the Lease. Such estoppel certificate will be executed and delivered within fifteen (15) days after request for the same.

13. DESTRUCTION OF BUILDING

In the event of any damage to any building or any part thereof, which damage is caused by fire, wind, water, earthquake or similar casualty, and which damage is covered and insured against by the extended fire insurance coverage maintained by Society during the term, this Lease shall remain in full force and effect, and Society shall pay its annual rental for all of the demised Property as provided in Paragraph 2(a), above. City shall have no obligation or liability whatsoever to Society (unless the destruction was caused by the sole negligence or other wrongful act exclusively the City's, or deliberate failure to act, of City) and Society shall not be entitled to nor recover any damages whatsoever against City for any loss occasioned by the said injury or damage. Society, after the occurrence of the event causing said damage, may with reasonable diligence cause any such building or structure to be repaired and restored to the same general condition to which it existed at the time of the occurrence of said event no later than one hundred twenty (120) days thereafter, or in its sole discretion, determine not to reconstruct such property.

14. CONDEMNATION

If at any time during the term or renewal term of this Lease, the Property or any part thereof shall be taken by eminent domain or condemnation by any public or quasi public authority (or in the event a voluntary conveyance is made by City to such public or quasi public authority by reason of or by threat or imminence of the exercise of said power of eminent domain or condemnation by said authority), the following terms and condition shall apply:

(a) In the event of a total taking, Society's right of possession shall terminate as of the date of taking and rent and other charges provided for in this Lease shall be adjusted as of said date. The entire damage award of the condemnation proceedings shall be paid to City but City shall, and hereby does, assign to Society out of any award paid to City the following amounts: (i) if Society shall have made improvements or alterations in or to the Property after the effective date of this Lease, a sum equal to the then fair market value of any such improvements; and (ii) a sum equal to any cost of loss to which Society may be put in removing from the Property Society's furniture and equipment, provided, and upon express condition that the condemning authority makes an award for such cost or loss, otherwise no sum shall be due Society therefor.

(b) In the event of a partial taking of the Property which renders the Property substantially unusable by Society for the operation of the gardens, then Society may, by written notice to City within thirty (30) days after the taking by the condemning authority, terminate this Lease; provided, however, there shall be no abatement or adjustment to the rent due under this Lease if the Lease is not so terminated. It is hereby expressly acknowledged and agreed by Society that any condemnation award shall not be deemed to entitle Society to any part of the award therefor (which shall belong solely to City), except that Society may apply to the condemning authority to recover its damages.

(c) Notwithstanding any provision to the contrary stated or implied herein, in the event the City Council determines that the City requires any portion of the Property, no compensation nor condemnation award shall be payable to the Society nor to any person claiming on behalf of or through the Society. Instead, the City shall modify the legal description of the Property to exclude herefrom the tract or portion of the Property required by the City.

15. PERSONAL PROPERTY

It is contemplated that certain furniture, fixtures and equipment to be installed by Society in the demised Property are or may be either leased by Society or purchased by Society from some other party or a conditional seller, or otherwise hypothecated to a "Third Party." In this connection, it is agreed that all of such furniture, fixtures and equipment installed by Society in the demised Property shall at all times be and remain personal property, regardless of the method in which the property of Society and/or such "Third Party" is attached or affixed to the demised Property. City agrees that its rights in such furniture, fixtures and equipment shall at all times be subject to and subordinate to the rights of any such "Third Party" but only if City has consented thereto in writing. City agrees to execute upon request any documents City deems reasonably required by any such "Third Party" in order to effectuate the purposes of this paragraph, it being specifically agreed by City herein that any such "Third Party" shall have the right to remove the furniture, fixtures equipment from the demised

Property in the event of the default of Society in complying with its agreement relating to such furniture, fixtures and equipment, provided Society has fully performed all of the terms and conditions of this Lease. Society agrees to repair, at its expense, any damage caused by any such removal. City shall execute any waivers, consents, or other documents City deems are reasonably required by Society or any such "Third Party" to effectuate the terms of this Article.

16. HOLDOVER

If Society remains in possession of the Property leased herein after expiration of this Lease, without the execution of a new Lease, except for duly approved extensions of the lease, Society shall be deemed to be occupying said Property as tenant from month to month.

17. RENEWAL

Subject to any rights of referendum or initiative and subject to the Charter of City and periodic adjustments in the Base Rent and additional rent as approved by City, the Society shall have the option to extend all the provisions of this lease agreement for four successive periods of twenty (20) years each. Society shall have the option to extend the term of the lease by delivering written notice to the City at least twelve months prior to the end of the original term of the lease, and if Society elects to exercise subsequent options, at least twelve months prior to the end of the term prior to the renewal term being exercised.

18. TERMINATION

The Society may terminate this Agreement upon sixty (60) days written notice to the City, and shall thereafter have a reasonable time, not to exceed ninety (90) days, to remove its improvements, provided such removal shall not damage the Property. The Society will restore the Property to useable condition.

19. NOTICE AND DEMANDS

Any notices or demands required or permitted by law, or any provisions of this Lease, shall be in writing, and if the same is to be served upon City, may be personally delivered to the City Manager of City, or may be deposited in the United States mail, registered or certified, with return receipt required, postage prepaid, and addressed to the City Manager of City at the City Hall, Grand Junction, Colorado 81501, or at such other place as City may from time to time designate in writing.

Any such notice or demand to be served upon Society shall be in writing and shall be served personally or by deposit in the United States mail, registered or certified, return receipt requested, postage prepaid, addressed to the Society at its business address as set forth at the end of this Lease, or at such other place as Society may from time to time designate in writing.

20. ATTORNEYS FEES

If the City is required to incur any costs, including reasonable attorney fees, in order to enforce the provisions of this Lease, even though upon receipt of notice Society corrects said deficiencies within the time as herein provided, Society shall bear the cost thereof and, upon receipt of a copy showing such costs, Society will immediately pay same.

21. MISCELLANEOUS

No waiver of any breach of this Lease by City shall be considered to be a waiver of any other or subsequent breach.

All of the covenants, agreements, provision, and conditions of this Lease shall inure to the benefit of and be binding upon the parties hereto, their successors and duly authorized assigns.

Each party agrees to execute upon request a short form of Lease for purpose of recordation.

Each party agrees to re-execute this Lease at any time upon the request of the other.

This Lease contains the entire agreement, express or implied or the parties hereto, and the parties agree that no promises or representations have been made by either of them to the other as to any matter, term, or condition of any kind whatsoever not set forth in this Lease.

22. INVALIDITY OF PROVISIONS

If any term or provision of this Lease or the application thereof to any person or circumstances is found, to any extent, to be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons whose circumstances are other than those as to which it is held invalid or unenforceable, shall not be affected thereby.

23. AUTHORITY

All individuals executing this document hereby represent and certify that they are the duly authorized representatives of the City and Society, and are authorized to execute this lease by the authority of their respective counsel and boards of directors, as applicable.

IN WITNESS WHEREOF, the parties have executed this Lease this 24th day of June, 1994.

City

THE CITY OF GRAND JUNCTION, COLORADO,
a Colorado Municipal Corporation

By: RT Mantle
Its Mayor

Society

THE WESTERN COLORADO BOTANICAL SOCIETY,
a Colorado Nonprofit Corporation

By: Elizabeth B. Harris
Its Agent duly authorized

ATTEST:

Dennis J. Masley
Its Secretary

Business Address of Society:
c/o Ms Elizabeth B Harris
407 Dressel Drive
Grand Junction, CO 81503

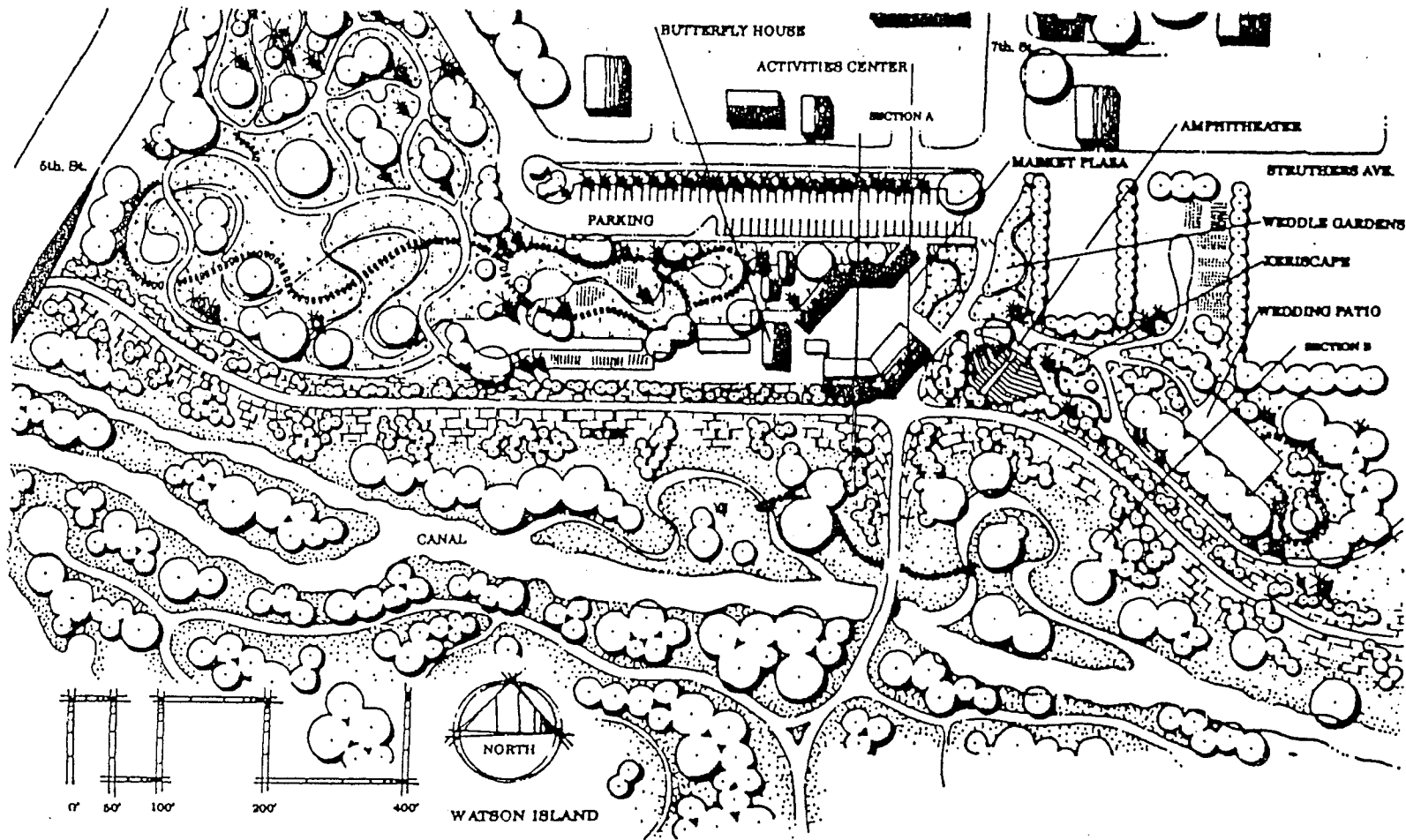
EXHIBIT A TO LEASE

That property south of Struthers Avenue, north and south of the Colorado River Trail as hereafter constructed, between approximately 8th Street on the east and 5th Street on the west, in the City of Grand Junction, County of Mesa, State of Colorado, consisting of 12.6 acres, more or less, described with particularity as follows:

Commencing at the S 1/4 corner of Section 23, Township 1 South, Range 1 West, Ute Meridian, thence South 89° 37' 00" East 270.00 feet; thence South 00° 23' 00" West 170.00 feet; thence North 89° 37' 00" East 68.00 feet; thence North 00° 23' 00" East 170.00; thence South 89° 37' 00" East 87.00 feet; thence South 02° 11' 00" East 317.00 feet; thence South 02° 32' 00" East 186.60 feet; thence South 15° 17' 21" East 102.12 feet; thence North 88° 51' 04" West 85.13 feet; thence North 79° 32' 00" West 213.74 feet; thence North 67° 47' 04" West 194.68 feet; thence South 89° 40' 42" West 150.01 feet; thence North 79° 44' 01" West 176.23 feet; thence North 77° 12' 33" West 102.39 feet; thence North 71° 52' 17" West 105.00 feet; thence North 73° 00' 00" West 290.24 feet; thence South 89° 37' 00" East 88.12 feet; thence North 00° 23' 00" East 325.00 feet; thence South 89° 37' 00" East 563.62 feet; thence South 89° 37' 00" East 78.00 feet; thence South 00° 23' 00" West 190.00 feet; thence South 89° 37' 00" East 72.00 feet; thence North 00° 23' 00" East 190.00 feet to the point of beginning, Mesa County, Colorado;

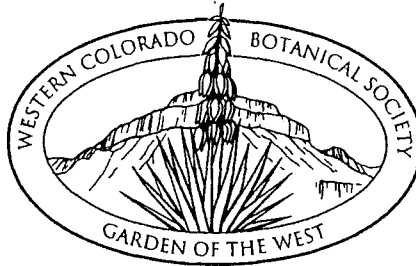
together with such additional property as the City might acquire from the west boundary of the described Property to the east right-of-way of 5th Street and the 5th Street bridge.

The Property is subject to the construction of a levee and Riverfront Trail thereon by the US Corps of Engineers and the Riverfront Commission, the use of the Property being limited during the construction thereon, and the sides of the levee being limited to such uses as permitted by the Corps of Engineers;



DRAFT

The Western Colorado Botanic Gardens
Master Plan.



THE WESTERN COLORADO BOTANICAL SOCIETY appreciates the opportunity to present its plans to create a botanic garden in conjunction with the Colorado Riverfront Parks and Trail System, which will serve the entire Western Colorado and Eastern Utah region.

The Society was established in 1986 and received its tax-exempt status under the Internal Revenue Code 501(c)(3) the same year. A 10-acre site and a 17-acre site have been investigated by the Society as potential sites for a garden, but were abandoned as unfeasible due to location and the economic stress of the 1980's. In late 1989 the Society observed the success of the Riverfront project and revitalized its interest in pursuing a garden for the region.

During the past three years we have researched the elements necessary to construct a garden. studying the structure of many gardens in the United States and abroad. We feel our plans for a greenhouse, butterfly house and conservatory, wedding arbor, library, meeting rooms (indoor-outdoor classrooms), gift shop and snack bar, together with the gardens and arboretum, will be a city showcase and a source of pride to all Western Slope citizens. It will unify and enhance a spectrum of natural and human resources in the region - education, culture, preservation of the environment, heritage, as well as being an economic boom to the area.

At the request of the City Council we have secured the attached professional 10-year Operational Plan, which includes the first two or three years in which the flood control dike will be under construction. This plan addresses the Society's goals, project phasing, audit, sources of income, proposed income and expense budget, unique aspects of the program and benefits to the community. Also, attached is a summary of unsolicited in-kind contributions and donations we have received to date.

The Grand Junction City Council has committed City-owned land for a botanic garden and is now in the process of defining the location of same together with leasehold procedure. The Society has been encouraged to proceed with the project, and demonstrate its viability.

LEGAL NAME: WESTERN COLORADO BOTANICAL SOCIETY
2894 Darla Drive
Grand Junction, Colorado 81506

CONTACT: Elizabeth B. Harris
407 Dressel Drive
Grand Junction, Colorado 81503
303 242-3963 303 245-3288

OFFICERS AND BOARD MEMBERS:

Elizabeth B. Harris, President
Broker-Owner, E. B. Harris Realty
407 Dressel Drive, Grand Junction, Colorado 81503

George Dobervich, Vice President
Retired Petroleum Geologist
326 33 3/4 Road, Palisade, Colorado 81526

Virginia Edwards, Secretary
Retired Teacher; Rancher Glade Park
185 South 16 1/2 Road, Glade Park, Colorado 81523

Agnes Blackburn
Registered Nurse, Palisade Nursing Home
2894 Darla Drive, Grand Junction, Colorado 81506

BOARD OF DIRECTORS:

Dr. Robert Young
Retired Geologist, Professor, and Author
612 Rico Way, Grand Junction, Colorado 81506

Elizabeth Lynch
Small Business Counselor, Chamber of Commerce
641 Hillview, Grand Junction, Colorado 81504

Florence Kofford
Partner, Kofford Oil
3621 G.4 Road, Palisade, Colorado 81526

Janice Jones
Partner, Dale Jones, DDS, PC
821 27 Road, Grand Junction, Colorado 81506

Tilman Bishop
Senator, State of Colorado
2697 G Road, Grand Junction, Colorado 81506

IN KIND

- * The Western Slope Chapter of the American Landscape Contractors will individually and collectively contribute time, material, and expertise to create a xeriscape garden and demonstration within the garden.
- * Tactical Technology, Inc. has offered to coordinate the operating Plan free of charge until management can be hired.
- * Attorney's assistance with lease negotiations and other consultation.
- * Fruita Research Center (CSU) donation of expertise and equipment in planting native grasses on dike.
- * Professional grant writers donation of time.
- * Local Realtors donation of time in clearing site.
- * Foresters donation of time in clearing/cleaning site.
- * Commitment from Telephone Pioneers for donation of time.
- * Master Plan developed by Jason Kent, CSU student, under the direction of John Schler, Colorado State Office of Local Affairs.
- * Assistance from Visitors and Convention Bureau in membership drive.
- * Encouragement from Lions Club and other service clubs to apply for community betterment funds.
- * Verbal commitment to construct wedding arbor.

DONATIONS

- * \$500 memorial for a Yucca Garden within the Charles Weddle Memorial Garden.
- * \$200 toward sculpture-fountain at garden entrance.
- * Verbal commitment of \$100 plus from Redlands Women's Club.

Western Colorado Botanical Society

10 YEAR OPERATIONS PLAN

Prepared by TACTICAL TECHNOLOGY, Inc.

1992

Overview

The Western Colorado Botanical Society proposes to build a Botanic Garden as part of the riverfront park and recreation complex. This Botanic Garden will consist of a greenhouse, butterfly house and conservatory, wedding arbor, meeting and classrooms (indoor and outdoor), gift shop and snack-bar. The Botanic Garden will be built on land provided by the City of Grand Junction, and will be funded through membership dues, contributions, and grants. Once constructed, normal operating costs will be obtained from fees, rentals, and admissions to the facility.

The Western Colorado Botanical Society has developed a ten year operating plan and has scheduled the first on-site activities to commence in 1993. Construction of the primary structure is scheduled to commence in April of 1996 and the grand opening is planned for the 15th of June 1997. The second phase of construction is scheduled to commence in 1999 and be completed in 2000.

Community support for this project has been very solid and the Western Colorado Botanical Society already has over \$33,000 in assets. We have every expectation of having sufficient funding in hand prior to the 1996 ground breaking.

BACKGROUND

The rejuvenation of a majestic, but neglected, river and riverfront is rekindling the spirit of progress in the city's image, and could be enhanced with a botanic "jewel" in the River Trail system. The ills created by a former generation would be replaced by a garden's beauty and benefits:

ECONOMICS Botanic gardens reflect a community lifestyle which encourages economic vitality. It is a project of growth and life and should within a short time be self-sustaining, plus attracting fringe expenditures in the community. It attracts visitors on a year-round basis - regional and foreign. It is a valuable amenity in attracting new and clean businesses, retirees, and young families into the area. A Garden soon becomes "loved" and used by its surrounding communities.

EDUCATION Serving the vast area west of the Rockies from Canada to Arizona, a garden's presence here would be far-reaching in educational terms. Western states students, elementary, secondary, college, would enjoy the advantages of lectures, experiments, field-trips, displays, demonstration gardens, classes, travelling exhibits, and library. The proximity of a garden would increase interest in the local college curriculum and graduate work in horticulture, landscape architecture and entomology. A general education in plant life and flower design is an on-going feature offered to the layman.

HUMAN SERVICES One of society's primary goals is to become an arm - a new dimension for social service on the western slope. Horticulture therapy, and vocational training for the handicapped, ill, troubled youth, elderly, through working with and studying plant life will open doors to happiness for these people as they gain pride and self-esteem. They will reach new levels of independence and productivity as they become more integrated into the mainstream.

CULTURE A garden is a continuous performance. It is a 365-day, ever-changing gallery of color and form bringing joy to the young, elderly, teachers, students, professionals, tourists, photographers, researchers. It sets a beautiful backdrop and mood for weddings, musical events, art classes, receptions, teas.

ENVIRONMENT, HEALTH, RECREATION A garden is indicative of clean air, serenity, beauty. It lends quality and harmony to the individual and community lifestyle. It is a respite for the tired, ill, disturbed, thinker. Working with plants or just walking the pathways and appreciating the plants is a wholesome entertainment and exercise.

HERITAGE The subject property is rich in horticultural history. We would like to preserve it and enlarge upon it. "Posy" Watson, Grand Junction's first florist, built his greenhouse on Watson Island. Italian emigrants, James and Rose Arcieri, arrived at this location in 1913 and built a progression of greenhouses from Struthers Avenue to the Colorado River. In 1936 Stephen B. Johnson purchased the Arcieri greenhouses which were later moved to North Avenue and are now operated by Steven B. Johnson, Jr., and family.

BUTTERFLY HOUSE AND CONSERVATORY Can you imagine watching the life cycle of a live South American Heliconia butterfly behind glass? This would be possible in a centrally located garden dedicated to bringing it to the communities west of the Rockies and east of Utah's Wasatch Plateau. This part of the garden would be a museum about insects and features a collection of over 10,000 species from around the world and from every jungle. Beautifully mounted and ready for immediate display, the Butterfly House would provide an astonishing educational experience for children, the average visitor, and research for the specialist. It is one of a kind.

10 YEAR OPERATIONAL PLAN

1992

Develop preliminary plans, maps, projected costs, budget and professional fund raising campaign, together with plans for phasing the progress of the project.

Develop a ten year operations plan.

Obtain land from the City of Grand Junction.

Obtain "seed" money.

1993

Schematic for first 5 acres.

Fund raising brochure.

Membership drive (100 new member goal).

Initiate compost pile and demonstrations.

Establish memorials with Funeral Homes.

Begin plan for Weddle Native Colorado garden.

Establish implementation committee.

Study local fund raising campaigns.

1993
(cont)

Submit grant applications to:
Local foundations.
Colorado foundations.
Local service clubs.
Mesa County Lottery.
U.S West

Annual Garden Tour

1994

Maintain compost pile and demonstration.

Membership drive (50 new member goal).

Let bids for architectural plans.

Restructure membership classification.

Revise constitution/by-laws

Organize campaign:
Personnel.
Administration.

Grant applications.

Garden tours (2).

1995

Implementation of Waddle Garden.

Build utility and storage sheds.

Start contest for entry sculpture/fountain plans.

Plans and installation of rest-rooms.

Maintain compost pile.

Institute search for director.

Membership drive (50 new member goal).

Launch local fund raising campaign.

Garden tours (2)

1996

Installation of xeriscape.

Hire director (Part time?).

Began Phase one construction.

Green House.

Butterfly house and conservatory.

Gift Shop.

Rest-room.

Snack Bar.

Storage.

1996
(cont)

Continue Weddle garden.

Initiate first memorial garden.

Wind up local campaign.

Garden Tours (2)

1997

Implement horticultural therapy.

Initiate classes with Western Slope Schools.

Hire assistant director.

Grand opening of phase one facilities.

Print new brochure in coop with Watson Island.

Initiate fund raising for phase two facilities.

Indoor/outdoor classrooms.

Wedding plaza with amphitheater.

Garden tours (2)

1998

Continue operations.

Continue with fund-raising.

Continue to apply for grants.

Garden tours (2)

1999

Start construction of phase two facilities.

Continue operations.

Continue with fund-raising.

Continue to apply for grants.

Garden tours (2)

2000

Open phase two facilities.

Continue operations.

Continue with fund-raising.

Continue to apply for grants.

Garden tours (2)

2001

Continue operations.

Continue with fund-raising.

Continue to apply for grants.

Garden tours (2)

2002

Continue operations.

Continue with fund-raising.

Continue to apply for grants.

Garden tours (2)

OPERATING FUNDS

Fees from greenhouse
Fees from Butterfly House
Gift Shop - high quality with year round christmas shop
Snack bar
Lectures and demonstrations
Excess plant sales
Supervision and training
Government externships
Volunteers
Rentals:
 Wedding Arbor
 Indoor Weddings
 Classrooms
 Receptions
 Patio
 Musicals, teas, tea dances
 Art Shows

Because of the open concept of the Park, promenade, trail system, the outdoor gardens will be by "donation only" leaving the bikers, hikers, tourists, etc., free to drop in at the snackbar and gift shop. Other gardens state the donation method grosses more overall.

CONSTRUCTION COSTS

Description	Square Footage
Greenhouse	4,000 sq. ft.
Gift Shop	1,000 sq. ft.
2 Class Rooms	1,000 sq. ft.
Rest-room	300 sq. ft.
Lobby/Lounge	300 sq. ft.
Snack Bar	100 sq. ft.
Storage	<u>400</u> sq. ft.
	Sub-Total 7,100 sq. ft.
	Mechanical/circulation 15% of (rest) = <u>465</u> sq. ft.
	Total 7,565 sq. ft.

Greenhouse	Low - 4,000 sq. ft. x \$36/sq. ft. = \$144,000
	Average - 4,000 sq. ft. x \$63/sq. ft. = \$252,000

Rest of Building	Low - 3,565 sq. ft. x \$60/sq. ft. = \$213,900
	Average - 3,565 sq. ft. x \$75/sq. ft. = \$267,375

Sub Total	Low = \$357,900	Average = \$519,375
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Plus Architect/Engineer/Contingency 15% =	\$ <u>53,685</u>	\$ <u>77,900</u>
	411,585	597,275

Parking 80 spaces at 350 sq. ft. each = 28,000 sq. ft.

ESTIMATED OPERATING INCOME

Admission Greenhouse and Butterfly Museum	\$120,000.00
40,000 @average of \$3.00	
Donations from garden visits and tours*	10,000.00
Schools (class tours)**	15,000.00
Tours and Classes from Neighboring towns	2,000.00
Weddings*** (50 @ \$300.00)	15,000.00
Gift Shop and Christmas Shop****	20,000.00
Snack Bar	10,000.00
Miscellaneous	
Lectures and demonstrations	
Excess plant sales	
Supervision and training	
Meeting room rentals & Patio rentals	
Receptions	
High Tea	
Musicals, Teas, Tea Dances	
Art Shows	
Photography classes and tours	
	<hr/>
	<u>\$192,000.00</u>

* No gate charge for visits and tour of gardens

** School population based on:

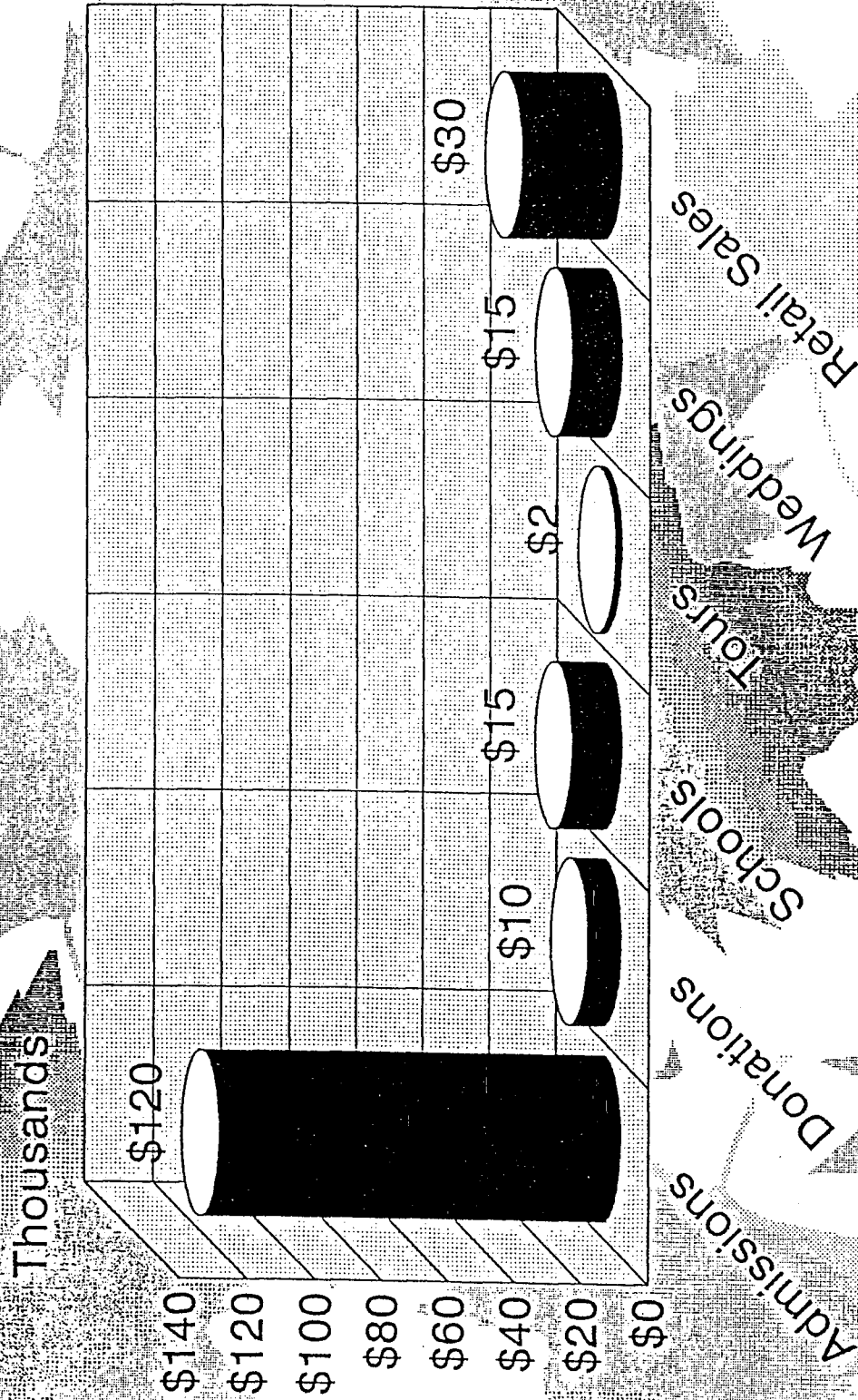
- Elementary 8,647
- Middle 3,955
- Parochial 450
- High 4,243
- College 4,500

*** This is based on Hilton and Redlands Club prices and could increase greatly

**** First year projection and should increase greatly

Western Colorado Botanical Society

Estimated Operating Income



ESTIMATED OPERATING EXPENSE

Utilities

Electricity (Public Service Estimate)	\$ 2,500.00
Natural Gas*	7,000.00
Trash and Sewer	1600.00
Water (Free City?)	
Office Expense (telephone)	2,000.00
Accounting and Legal	2,000.00
Equipment Repair and Replacement	5,000.00
Replacement Plants and Beautification**	3,000.00
Insecticides, Herbicides, Fertilizer	4,000.00
Advertising, Brochures, etc.	3,500.00
Initial Inventory	5,000.00
Full-Time Manager (Landscape Architect) (grounds and bookings)	(Starting) 35,000.00
Full-Time Assistant (Butterfly house, Snack Bar, Gift Shop, Music)	30,000.00
Part-Time Help***	10,000.00
Support Services	7,500.00
Insurance	10,000.00

* Gas is calculated on hot air system. We are studying use of solar which will cut this item considerably.

** We will use our own plants for replacements and beautification after the first year.

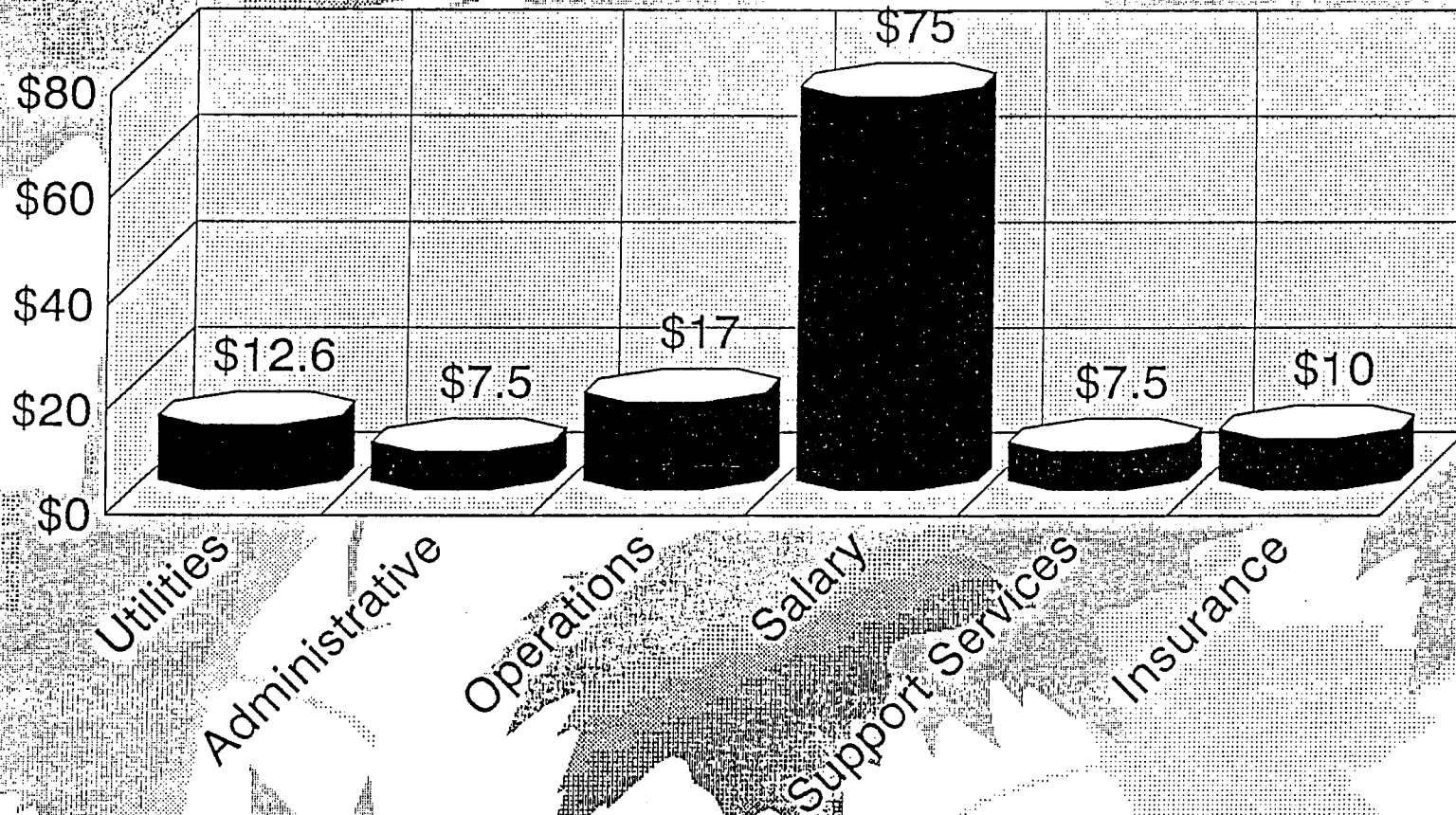
*** Volunteers, work-study employees, human services program will be implemented whenever and wherever possible.

Capital improvements and additional gardens will be funded by donations, grants and memorials.

Western Colorado Botanical Society

Estimated Operating Expense

Thousands



WESTERN COLORADO BOTANICAL SOCIETY 10 YEAR OPERATIONS PLAN - PAGE 17

Annual Projections

TACTICAL TECHNOLOGY, Inc.

Western Colorado Botanical Garden

Income Statement

printed: 8/30/1992 9:39:26

	12/31/93	12/31/94	12/31/95	12/31/96	12/31/97	12/31/98	12/31/99	12/31/2000
Net Revenues.....	\$2,526	\$8,708	\$3,291	\$32,084	\$10,083	\$16,000	\$16,000	\$16,000
Cost of Sales.....	0	0	0	0	1,008	1,600	1,600	1,600
Gross Profit.....	2,526	8,708	3,291	32,084	9,075	14,400	14,400	14,400
Operating Expenses:								
Salary and wages								
Salaries.....	0	0	0	2,188	6,250	6,250	6,250	6,250
Payroll taxes and benefits.....	0	0	0	366	1,047	1,047	1,047	1,047
Occupancy expenses								
Insurance, casualty.....	833	833	833	833	833	833	833	833
Utilities.....	0	0	0	325	325	325	325	325
Repairs and maintenance.....	0	0	0	417	417	417	417	417
Operational expenses								
Advertising and promotion.....	0	0	291	291	291	291	291	291
Depreciation.....	0	0	0	0	0	0	0	0
Office expense.....	0	0	0	167	167	167	167	167
Professional fees.....	0	0	167	167	167	167	167	167
Gardening Supplies.....	0	0	333	333	333	333	333	333
Replacement Plants.....	0	0	250	250	250	250	250	250
Inventory.....	0	0	0	417	100	100	100	100
Total operating expenses.....	833	833	1,874	5,754	10,180	10,180	10,180	10,180
Operating Profit (Loss).....	1,693	7,875	1,417	26,330	(1,105)	4,220	4,220	4,220
Less: Interest Expense.....	0	0	0	0	0	0	0	0
Net Income (Loss) Before Taxes.....	1,693	7,875	1,417	26,330	(1,105)	4,220	4,220	4,220
Provision For Income Taxes								
Federal income tax.....	254	1,181	213	3,949	0	633	633	633
State income tax.....	0	0	0	0	0	0	0	0
Net Income (Loss).....	\$1,439	\$6,694	\$1,204	\$22,380	\$(1,105)	\$3,587	\$3,587	\$3,587

Western Colorado Botanical Garden

Income Statement

printed: 8/30/1992 9:39:28

	12/31/2001	12/31/2002
Net Revenues.....	\$16,000	\$16,000
Cost of Sales.....	1,600	1,600
Gross Profit.....	14,400	14,400
Operating Expenses:		
Salary and wages		
Salaries.....	6,250	6,250
Payroll taxes and benefits.....	1,047	1,047
Occupancy expenses		
Insurance, casualty.....	833	833
Utilities.....	325	325
Repairs and maintenance.....	417	417
Operational expenses		
Advertising and promotion.....	291	291
Depreciation.....	0	0
Office expense.....	167	167
Professional fees.....	167	167
Gardening Supplies.....	333	333
Replacement Plants.....	250	250
Inventory.....	100	100
Total operating expenses.....	10,180	10,180
Operating Profit (Loss).....	4,220	4,220
Less: Interest Expense.....	0	0
Net Income (Loss) Before Taxes.....	4,220	4,220
Provision For Income Taxes		
Federal income tax.....	633	633
State income tax.....	0	0
Net Income (Loss).....	\$3,587	\$3,587



RIVERFRONT COMMISSION
319 Colorado Avenue • P.O. Box 2477
Grand Junction, Colorado 81502
(303) 245-0045

Co-Chairmen:
William M. Ela
Brian Mahoney

Members:
Rebecca Frank
Pat Gormley
Bill Graham
Bradley K. Loucks
R.T. Mantlo
Ken W. Nesbitt
Jane Quimby
James M. Robb
Ward Scott

September 30, 1992

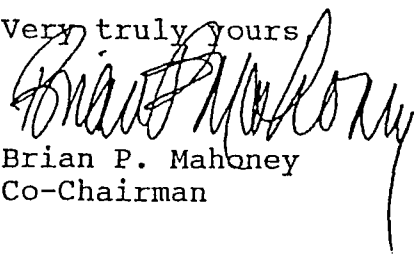
To Whom It May Concern:

The Grand Junction/Mesa County Riverfront Commission unanimously voted their support of the Western Colorado Botanical Society's concept of developing a botanical and butterfly garden on property along the Colorado River in Grand Junction on October 14, 1991.

A botanical garden would be an ideal complement to the extensive efforts now underway to enhance the river's aesthetic and recreational potential. As proposed by the Society, the garden could provide an educational and horticultural resource not otherwise available to communities between Salt Lake City and Denver. Outreach goals would involve schools and other community organizations in life-enhancing projects. A wedding arboretum and living memorials would further accentuate the area's natural beauty.

The Botanical Society is supported in its effort to attract financial backing for an initial phase of landscaping or building construction. This would be an opportunity to gain local interest and enthusiasm for a worthy project.

Very truly yours


Brian P. Mahoney
Co-Chairman

BPM:ss

The
ART CENTER
WESTERN COLORADO CENTER FOR THE ARTS

1803 North Seventh Street

Grand Junction, Colorado 81501

(303) 243-7337

October 5, 1992

To whom it may concern,

I feel the proposed Botanical Garden on the River Front Project would be a valuable addition to the cultural amenities and education of our area, as well as bring a beauty to the region.

The Western Colorado Botanical Society has been most active in the planning process of its' gardens and should be granted the chance to exhibit their work. This would not only benefit the Botanical Society, but benefit the Valley as well. The Society could and should get as much help as possible.

I am in full support of this project.

Thank you.

Sincerely,



David M. Davis

*Resources, Education, and Advocacy
for Disabled Individuals*
743 Horizon Court, Suite 374
Grand Junction, Colorado 81506-8717
(303) 241-4511

September 30, 1992

Western Colorado Botanic Society
407 Dressel Dr.
Grand Junction, Co. 81503

To Whom it May Concern:

Our organization heartily supports the efforts of the Western Colorado Botanic Society. A botanic garden is a natural addition to be adjacent to the Riverfront Project. It is our hope that you will find this much needed addition to our community worthy of your support.

The value of such a facility to our community is obvious. However, we are excited because this project is exploring additional innovative activities, such as the horticulture therapy project. Numerous studies and articles have attested to the therapeutic value of such programs.

Western Colorado is touted for its recreational opportunities. Such activities are essential to the physiological and physical well being of our citizens. To many of the existing recreational and/or social outlets are not available to the disabled and frail elderly citizens in our community. Therefore, we are pleased to support this effort and commend the Western Colorado Botanic Society for their initiative.

Sincerely,



Ron Halsey, Director



Grand Junction Area
Chamber of Commerce

360 Grand Avenue
Grand Junction, CO 81501
(303) 242-3214
FAX: (303) 242-3694

September 30, 1992

To Whom It May Concern:

The Profit Center of the Grand Junction Area Chamber of Commerce has been working with the Botanical Society over the last two years. Involvement has been directed towards refining their business and marketing plan for incorporating a Botanical Garden with the area riverfront project.

This long held dream is presently unfolding like a choice flower plot along a garden walk. For the first time their coveted dream sits ready to be cultivated into reality. Individual and business interest has increased with rapid growth as awareness of such a garden possibility filters to enthusiasts near and far.

I have no doubts but that needed grant dollars could help in creating a place of beauty for this rural western community to enjoy, relax, commune, learn and heal. Time is needed and desired for financial assistance to bring this dream to fruition - we are at a wonderful readiness point.

Sincere thanks for your time and serious consideration in sharing finances for this western slope project.

Sincerely,

Liz Lynch
Profit Center Coordinator
Grand Junction Area Chamber of Commerce



Associated Landscape Contractors of Colorado
Professionals Grounded In Excellence

December 5, 1991

Mrs. Elizabeth B. Harris
407 Dressel Drive
Grand Junction, CO 81503

Dear Mrs. Harris:

I, along with all our members, want to thank you for your excellent presentation at our November membership meeting. We are interested in knowing how the Botanical Gardens will fit into the Riverfront project.

We all look forward to the completion of the Riverfront project, such an undertaking. We are pleased with the cooperation of so many agencies in making this dream come true.

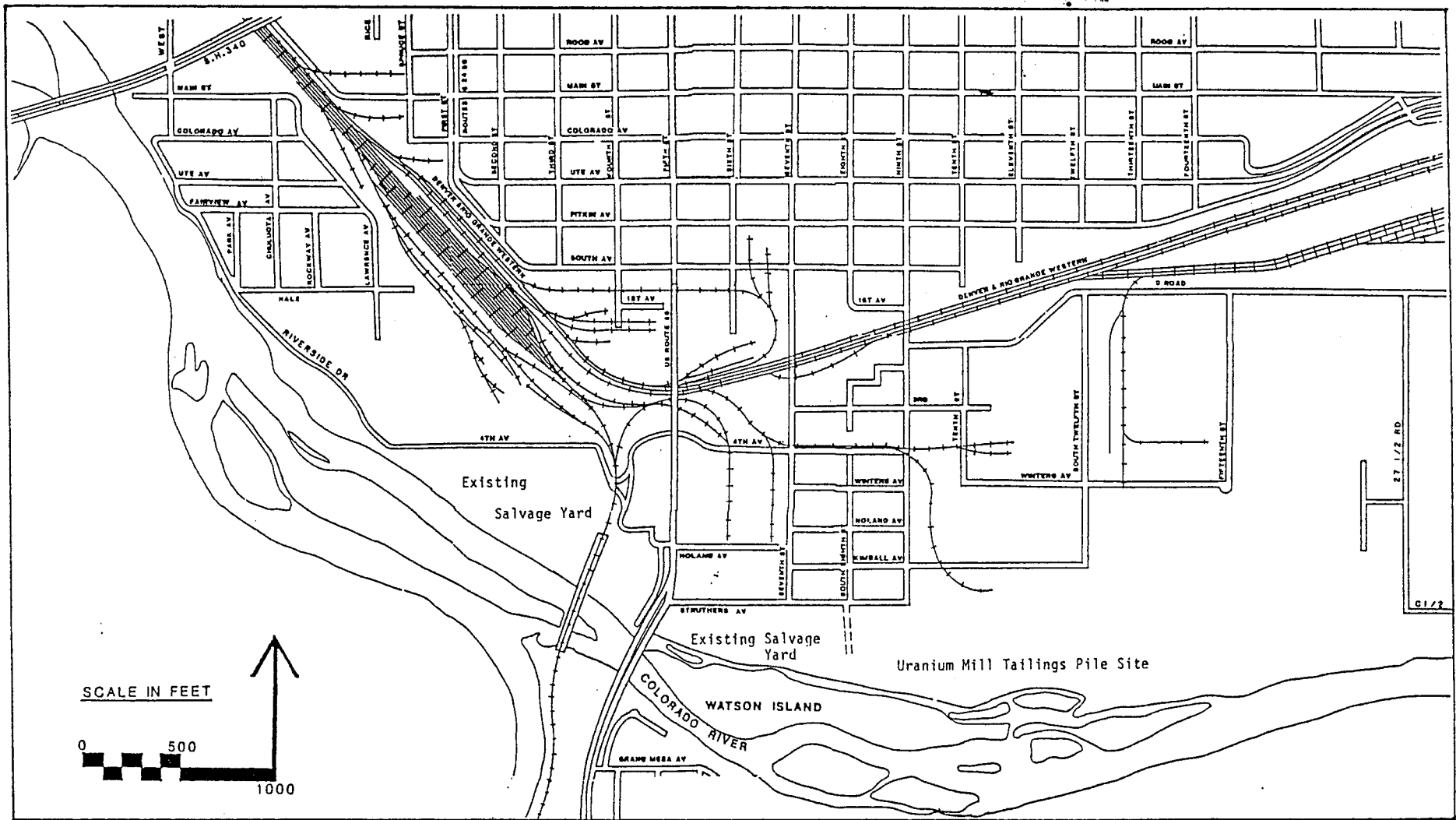
Again, thank you for taking time to explain to us your concept.

Sincerely yours,

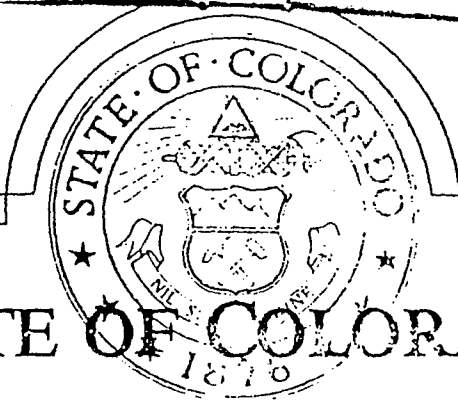
ASSOCIATED LANDSCAPE CONTRACTORS OF
COLORADO - WESTERN CHAPTER

BY Michael Higgins
MICHAEL HIGGINS - PRESIDENT

MG:lmw



The Grand Junction Urbanized Riverfront



STATE OF COLORADO

DEPARTMENT OF
STATE

CERTIFICATE

I, *NATALIE MEYER*, Secretary of State of the State of Colorado hereby certify that

According to the records of this office

THE WESTERN COLORADO BOTANICAL SOCIETY
(COLORADO NONPROFIT CORPORATION)

has complied with the applicable provisions of the laws of the State of Colorado and on this date is in good standing and authorized and competent to transact business or to conduct its affairs within this state.

Dated: JUNE 14, 1991

Natalie Meyer
SECRETARY OF STATE

Internal Revenue Service
District Director

Department of the Treasury

FFN: 750115861
Employer Identification Number:
74-2395098
Case Number:
757090051EO
Person to Contact:
EO Technical Assistor
Contact Telephone Number:
(214) 767-3526 EO:7213:4913:GM
Our Letter Dated:
March 31, 1986
Caveat Applies:
N/A

MAY 05 1987

Western Colorado Botanical Society
P.O. Box 4248
Grand Junction, CO 81501

Dear Sir or Madam:

This modifies our letter of the above date in which we stated that you would be treated as an organization that is not a private foundation until the expiration of your advance ruling period.

Based on the information you submitted, we have determined that you are not a private foundation within the meaning of section 509(a) of the Internal Revenue Code because you are an organization of the type described in section 509(a)(1) & . Your exempt status under Code section 501(c)(3) is still in effect. 170(b)(1)(A)(vi)


Grantors and contributors may rely on this determination until the Internal Revenue Service publishes notice to the contrary. However, if you lose your section 509(a)(1) & 170(b)(1)(A)(vi) status, a grantor or contributor may not rely on this determination if he or she was in part responsible for, or was aware of, the act or failure to act that resulted in your loss of such status, or acquired knowledge that the Internal Revenue Service had given notice that you would be removed from classification as a section 509(a)(1) & organization.
170(b)(1)(A)(vi)

If the heading of this letter indicates that a caveat applies, the caveat below or on the enclosure is an integral part of this letter.

Because this letter could help resolve any questions about your private foundation status, please keep it in your permanent records.

If you have any questions, please contact the person whose name and telephone number are shown above.

Sincerely yours,


Glenn Cagle
District Director

pay

10 YEAR OPERATIONAL PLAN

1992

Develop preliminary plans, maps, projected costs, budget and professional fund raising campaign, together with plans for phasing the progress of the project.

Develop a ten year operations plan.

Obtain land from the City of Grand Junction.

Obtain "seed" money.

1993

Schematic for ^{first} 5 acres.

Fund raising brochure.

Membership drive (100 new member goal).

Initiate compost pile and demonstrations.

Establish memorials with Funeral Homes.

Begin plan for Weddle Native Colorado garden.

Establish implementation committee.

Study local fund raising campaigns.

1993
(cont)

Submit grant applications to:
Local foundations.
Colorado foundations.
Local service clubs.
Mesa County Lottery.
U.S West

Annual Garden Tour

1994

Maintain compost pile and demonstration.

Membership drive (50 new member goal).

Let bids for architectural plans.

Restructure membership classification.

Revise constitution/by-laws

Organize campaign:

Personnel.

Administration.

Grant applications.

Garden tours (2).

1995

Implementation of Weddle Garden.
Build utility and storage sheds.
Start contest for entry sculpture/fountain plans.
Plans and installation of restrooms.
Maintain compost pile.
Institute search for director.
Membership drive (50 new member goal).
Launch local fund raising campaign.
Garden tours (2)

1996

Installation of xeriscape.
Hire director (Part time?).
Began Phase one construction.
Greenhouse.
Butterfly House and Conservatory.
Gift Shop.
Restroom.
Snack Bar.
Storage.

1996
(cont)

Continue Weddle garden.

Initiate first memorial garden.

Wind up local campaign.

Garden Tours (2)

1997

Implement horticultural therapy.

Initiate classes with district 51.

Hire assistant director.

Grand opening of phase one facilities.

Print new brochure in co-operation with Watson Island.

Initiate fund raising for phase two facilities.

Indoor/outdoor classrooms.

Wedding plaza with amphitheater.

Garden tours (2)

1998

Continue operations.

Continue with fund-raising.

Continue to apply for grants.

Garden tours (2)

1999

Start construction of phase two facilities.

Continue operations.

Continue with fund-raising.

Continue to apply for grants.

Garden tours (2)

2000

Open phase two facilities.

Continue operations.

Continue with fund-raising.

Continue to apply for grants.

Garden tours (2)

2001

Continue operations.

Continue with fund-raising.

Continue to apply for grants.

Garden tours (2)

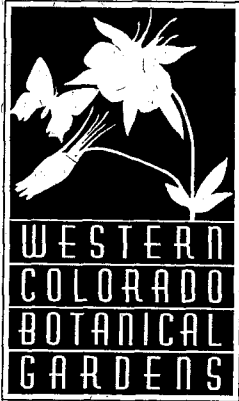
2002

Continue operations.

Continue with fund-raising.

Continue to apply for grants.

Garden tours (2)



November 23, 1999

Mr. Kent Marsh
City Development Engineer
City of Grand Junction
250 North 5th Street
Grand Junction, CO 81501

RE: Western Colorado Botanical Society Addition
File #SPR-1999-240

Dear Mr. Marsh:

Subsequent to telephone conversations with Carl Vostatek regarding planning clearance for our Children's Library Addition, we acknowledge the following: The Society has proposed construction of a six-foot, stucco wall surrounding the proposed garden adjacent to the Addition. The Society understands and agrees that certain conditions apply to the project and that authorization by the City was conditioned on the Society meeting those conditions, requirements and regulations.

The Western Colorado Botanical Society realizes the wall will be constructed in the right-of-way, as well as utility easement. The Society understands and acknowledges that if Struthers Avenue is widened or otherwise improved at some point in the future, this construction will have to be removed.

As we are assured, the wall will have to be removed, we assume full responsibility and liability. We do not and will not hold the City of Grand Junction, or its officers, agents or employees accountable for any cost(s) involved or work required for this removal, for damages to landscaping and/or other improvements.

I am authorized by the Board to sign and otherwise bind the Society to this covenant which shall be deemed to run with the land.

If there are any further questions concerning this issue, please contact me at 245-3288.

Sincerely yours,

Jeanette Main-Goecke
Executive Director

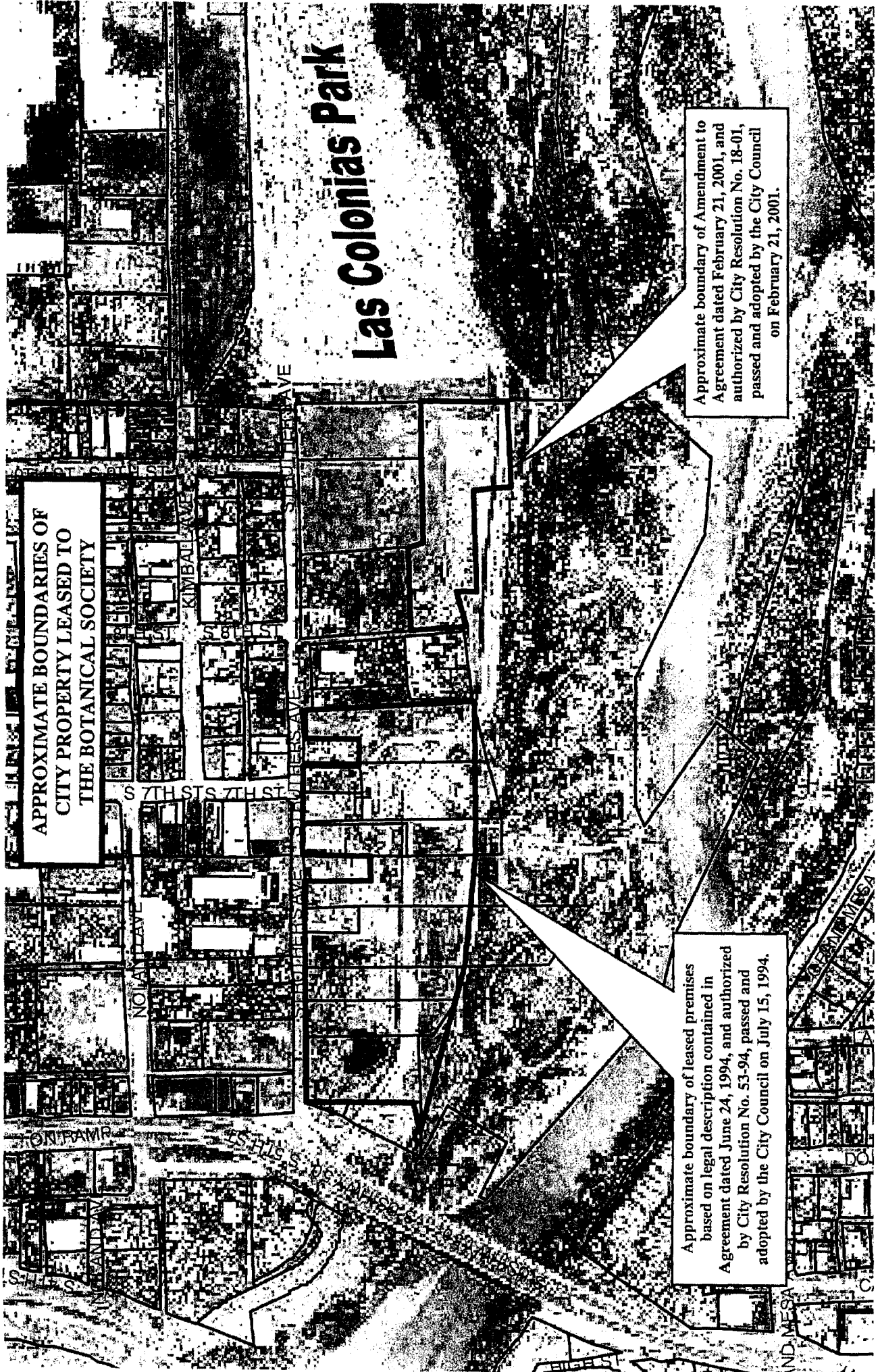
Cc: Western Colorado Botanical Society Board of Directors

Las Colonias Park

APPROXIMATE BOUNDARIES OF
CITY PROPERTY LEASED TO
THE BOTANICAL SOCIETY

Approximate boundary of leased premises
based on legal description contained in
Agreement dated June 24, 1994, and authorized
by City Resolution No. 53-94, passed and
adopted by the City Council on July 15, 1994.

Approximate boundary of Amendment to
Agreement dated February 21, 2001, and
authorized by City Resolution No. 18-01,
passed and adopted by the City Council
on February 21, 2001.



RESOLUTION NO. 53-94

**AUTHORIZING A LEASE OF CITY PROPERTY
TO THE WESTERN COLORADO BOTANICAL SOCIETY**

WHEREAS, the City of Grand Junction is the owner of the following described real property in the City of Grand Junction, County of Mesa, State of Colorado, to wit:

(Exhibit "A" attached)

and

WHEREAS, the Western Colorado Botanical Society, hereinafter "Society", has requested to lease the aforescribed property for the purpose of providing cultural and educational enhancement and environmental preservation to the City and Western Colorado through its gardens by serving all who come to learn, observe and participate.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION, COLORADO:

That the Mayor be authorized, on behalf of the City and as the act of the City, to execute the attached Lease Agreement with the Western Colorado Botanical Society, for the lease of the aforescribed property for a term of twenty (20) years, commencing on June 16, 1994, and expiring on July 1, 2014, subject to each and every term and condition contained in the attached Lease Agreement. The "Society" may renew for four (4) additional periods of twenty (20) years each so long as the approval of the City Council is obtained by Resolution.

PASSED and ADOPTED this 15th day of June, 1994.

Attest:

R T Mantlo

President of the City Council

Stephanie Nye

City Clerk

AMENDMENT TO AGREEMENT

Original attached
to Res 18-01

This Amendment to Agreement is made as of the 21st day of February, 2001, by and between the City of Grand Junction, a Colorado home rule municipality, hereinafter referred to as "the City", and The Western Colorado Botanical Society, a Colorado nonprofit corporation, hereinafter referred to as "the Society".

Recitals

- A. By that certain Agreement dated the 24th day of June, 1994, between the City and the Society (the "Original Agreement"), the City leases to the Society, and the Society leases from the City, certain real property in the City of Grand Junction, County of Mesa State of Colorado, for the purposes more specifically set forth in the Original Agreement.
- B. In accordance with Recital D of the Original Agreement, the City and the Society may, from time to time, amend the legal description of the real property leased by the City to the Society.
- C. The Society is desirous of leasing that certain additional real property owned by the City as described in **Exhibit "A"** attached hereto and incorporated herein by reference, hereinafter referred to as "the Additional Property", for the same purposes and under the same terms, covenants, conditions, restrictions, duties and obligations as set forth in the Original Agreement and as additionally set forth in this Amendment to Agreement.

NOW, THEREFORE, in consideration of the recitals above and the terms, covenants, conditions, restrictions contained herein, the parties agree as follows:

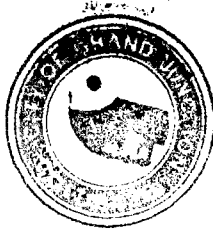
1. Grant of Lease. The City hereby leases the Additional Property to the Society, and the Society hereby accepts and leases the Additional Property from the City, for the same purposes and under the same terms, covenants, conditions, restrictions, duties and obligations as set forth in the Original Agreement, and under the additional terms, covenants, conditions, restrictions and requirements as hereinafter set forth.
2. Term. The term of the lease of the Additional Property shall commence on February 21, 2001, and continue pursuant to the Term set forth in Section 1 of the Original Agreement.
3. Rental. For the purpose of computing rent, the Additional Property shall consolidate with the Property described in the Original Agreement and merge into Section 2 (Rental) of the Original Agreement.
4. Additional Duties, Obligations and Responsibilities. In addition to the duties, obligations and responsibilities of the Society as set forth in the Original Agreement, the Society agrees that Society shall be obligated to and responsible for, at the Society's sole cost and expense, pursuing and completing either the restoration or demolition and removal of two (2) unoccupied residential structures located upon the Additional Property. Society agrees that the restoration and/or demolition and removal of said structures shall be completed on or before December 21, 2001. The Society further agrees that, pending complete restoration and/or demolition and removal of said structures, it shall be solely responsible for securing said structures and at all times maintaining said structures in a manner that will prevent access and/or trespass into the structures by unauthorized persons, and in a manner that will at all times protect the health, safety and welfare of the general public.

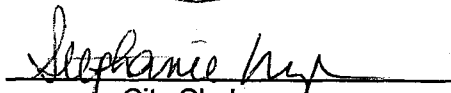
5. Agreements Merge. This Amendment to Agreement shall be merged into and become a part of that certain Agreement between the parties hereto dated the 24th day of June, 1994. All other terms and conditions of the Original Agreement shall remain unmodified and in full force and effect.

6. Inurement/Binding Upon Parties. Each and every covenant, agreement, provision and condition of this Agreement shall inure to the benefit of and be binding upon the parties hereto and upon their respective successors and assigns.


Dated the day and year first above written.

Attest:

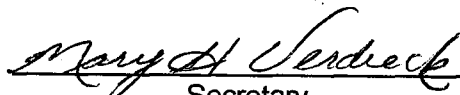



City Clerk

For the City of Grand Junction,
a Colorado home rule municipality


City Manager

Attest:


Secretary

For the Western Colorado Botanical Society,
a Colorado nonprofit corporation



President

Exhibit "A"
Description of the Additional Property

Commencing at the Northeast Corner of Lot 2 of Section 23, Township 1 South, Range 1 West of the Ute Meridian, City of Grand Junction, County of Mesa, State of Colorado, said point also known as the Northeast Corner of the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of said Section 23; thence S 00°00'33" E along the East line of said NW $\frac{1}{4}$ SE $\frac{1}{4}$ a distance of 364.11 feet to the True Point of Beginning; thence leaving the East line of said NW $\frac{1}{4}$ SE $\frac{1}{4}$, N 89°43'02" W a distance of 257.06 feet; thence S 00°23'00" W a distance of 2.60 feet; thence N 89°37'00" W a distance of 165.30 feet; thence N 03°37'00" W a distance of 45.00 feet; thence N 89°37'00" W a distance of 243.70 feet; thence S 03°44'12" E a distance of 160.69 feet; thence N 77°09'02" E a distance of 102.58 feet; thence S 00°00'00" E a distance of 57.0 feet; thence S 89°37'00" E a distance of 558.99 feet; thence N 00°12'33" W a distance of 151.96 feet to the Point of Beginning, containing 2.43 acres, more or less.

RESOLUTION NO. 18-01

AMENDING THE LEASE OF CITY PROPERTY
TO THE WESTERN COLORADO BOTANICAL SOCIETY

WHEREAS, by that certain Agreement dated the 24th day of June, 1994, the City of Grand Junction has leased certain real property to The Western Colorado Botanical Society for the purposes more specifically set forth in the above stated Agreement; and

WHEREAS, in accordance with Recital D of the above stated Agreement, the City and the Botanical Society may, from time to time, amend the legal description of the real property leased by the City to the Botanical Society; and

WHEREAS, the following described real property owned by the City is not presently leased to the Botanical Society:

Commencing at the Northeast Corner of Lot 2 of Section 23, Township 1 South, Range 1 West of the Ute Meridian, City of Grand Junction, County of Mesa, State of Colorado, said point also known as the Northeast Corner of the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of said Section 23; thence S 00°00'33" E along the East line of said NW $\frac{1}{4}$ SE $\frac{1}{4}$ a distance of 364.11 feet to the True Point of Beginning; thence leaving the East line of said NW $\frac{1}{4}$ SE $\frac{1}{4}$, N 89°43'02" W a distance of 257.06 feet; thence S 00°23'00" W a distance of 2.60 feet; thence N 89°37'00" W a distance of 165.30 feet; thence N 03°37'00" W a distance of 45.00 feet; thence N 89°37'00" W a distance of 243.70 feet; thence S 03°44'12" E a distance of 160.69 feet; thence N 77°09'02" E a distance of 102.58 feet; thence S 00°00'00" E a distance of 57.0 feet; thence S 89°37'00" E a distance of 558.99 feet; thence N 00°12'33" W a distance of 151.96 feet to the Point of Beginning, containing 2.43 acres, more or less; and

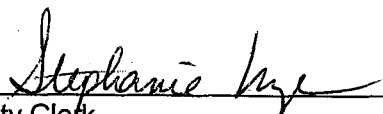
WHEREAS, the said Botanical Society is desirous of leasing the above described property for the same purposes and under the same terms, covenants, conditions, restrictions, duties and obligations as set forth in the above stated Agreement dated the 24th day of June, 1994.

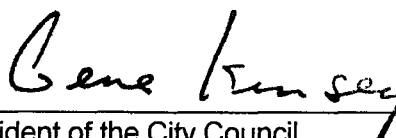
NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION, COLORADO:

That the City Manager, on behalf of the City and as the act of the City, is hereby authorized to execute the attached Amendment to Agreement with The Western Colorado Botanical Society, adding the above described real property to "the Property" as that term is used in said Agreement, subject to each and every term, covenant, condition, restriction, duty and obligation as set forth in said Agreement, and also subject to the additional terms, covenants, conditions, restrictions and requirements set forth in the attached Amendment to Agreement.

PASSED and ADOPTED this 21st day of February, 2001.

Attest:


City Clerk


President of the City Council