

**RESOLUTION NO. 4-93**

**AUTHORIZING A LEASE OF CITY PROPERTY AT 557 NOLAND AVENUE  
TO RONALD FRANK BELLAVIA, DOING BUSINESS AS SUPERIOR SADDLE TREE**

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:

Lot 11 of Block 2, South Fifth Street Subdivision situated in Section 23, Township 1 South, Range 1 West of the Ute Meridian,

also known as 557 Noland Avenue; and

WHEREAS, Helen Felkins, doing business as Superior Saddle Tree, has a leasehold interest in the aforescribed property pursuant to Resolution No. 76-92; and

WHEREAS, the said Helen Felkins has sold the Superior Saddle Tree business to Ronald Frank Bellavia; and

WHEREAS, the said Ronald Frank Bellavia has requested a lease for the aforescribed property for the purpose of continuing the operation of Superior Saddle Tree at 557 Noland Avenue.

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

That the City Manager be authorized, on behalf of the City and as the act of the City, to execute the attached Lease Agreement with Ronald Frank Bellavia, doing business as Superior Saddle Tree, for the lease of the aforescribed property for a term of five (5) years, commencing on January 1, 1993, nunc pro tunc, and terminating on December 31, 1997, subject to each and every term and condition of the attached Lease Agreement.

PASSED and ADOPTED this 20th day of January, 1993.

Attest:

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President of the City Council

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City Clerk

## **LEASE AGREEMENT**

**THIS LEASE AGREEMENT** is entered into as of the 1st day of January, 1993, nunc pro tunc, between the City of Grand Junction, a Colorado home rule municipality, hereinafter referred to as "the City", and Ronald Frank Bellavia, doing business as Superior Saddle Tree, hereinafter referred to as "the Lessee".

### **RECITALS**

A. The City is the owner of the following described real property and improvements in the City of Grand Junction, County of Mesa, State of Colorado, to wit:

Lot 11 of Block 2 of South Fifth Street Subdivision situated in Section 23, Township 1 South, Range 1 West of the Ute Meridian,  
also known as 557 Noland Avenue and hereinafter referred to as "the Property".

B. The Property is presently leased to Helen Felkins, doing business as Superior Saddle Tree, (hereinafter referred to as "Felkins") pursuant to City of Grand Junction Resolution No. 76-92.

C. Felkins has sold Superior Saddle Tree to the Lessee and has agreed to terminate the present lease so that Lessee may enter into this Lease Agreement for the purpose of continuing the operation of Superior Saddle Tree on the Property.

E. The City has agreed to the early termination of the present lease with Helen Felkins and has agreed to lease the Property to Lessee under the terms and conditions of this Lease Agreement.

NOW, THEREFORE, In consideration of the payment of rent and the performance of the promises set forth below, the City does hereby lease to the Lessee the above described Property.

1. The term of this Lease shall commence on January 1, 1993, nunc pro tunc, and terminate on December 31, 1997.

2. Lessee agrees to pay to the City as rental for the Property the amount of \$500.00 per month, in advance, due and payable without demand by the City on or before the 1st day of each month during the term of this Lease, beginning with the month of February, 1993. In the event payment of the rent is not received on or before the 10th day of each month, Lessee agrees to pay a late charge of \$50.00, which amount shall be added to the amount of rent(s) due.

3. Lessee agrees to timely pay any and all taxes which may be levied against the Property and attributable to the occupancy of the Property by Lessee during the term of this Lease; and to promptly pay for all utilities charges including, but not limited to, natural gas electricity, water, sewer and trash removal. If Lessee fails to timely pay any and all amounts required pursuant to this Lease, the City may pay such amounts and in such event, the amount(s) paid by the City plus interest thereon at a rate of 15% per annum shall be added to the amount(s) of the rent due and payable by Lessee.

Lessee agrees to pay all taxes levied against the Property for the 1992 tax year; provided, however, that Lessee may seek contribution from Felkins or require Felkins to escrow the estimated 1992 tax payment with Lessee as may be agreed upon between the Lessee and Felkins.

4. During the term of this Lease, Lessee agrees to:

a. Maintain the Property and keep the Property and all improvements and fixtures thereon, including, but not limited to, sewer connections, roofing, plumbing, heating and ventilation systems, wiring and glass, in good repair, all at Lessee's sole expense, and at the expiration of this Lease, surrender the Property and all improvements and fixtures thereon to the City in as good a condition as when Lessee entered the Property, reasonable use and wear excepted.

b. Keep the Property free from all litter, dirt, debris and obstructions, and not commit or permit waste, damage or injury to the Property.

c. Waive and forego any claim, cause of action or demand Lessee may have against the City, its officers, employees and agents for injury to or destruction of any property of Lessee 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 the City, its officers, employees and agents and to hold the City, 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 Property.

d. Use the Property for no purpose prohibited by the applicable laws of the United States or the State of Colorado, County of Mesa or the City of Grand Junction; and comply with all police, fire and sanitary regulations imposed by any municipal, state or federal authority either now in force or hereinafter enacted, and to use the premises for no improper or questionable purposes whatsoever.

e. At Lessee's sole expense and during the term of this Lease, purchase and maintain in effect suitable comprehensive general liability insurance which will protect the City, its officers, employees and agents from liability in the event of loss of life, personal injury, or property damage suffered by any person or persons on, about or using the Property. Such insurance shall not be cancelable without thirty (30) days prior written notice to the City and shall be written for at least Five Hundred Thousand Dollars (\$500,000.00), combined single limit. A certificate of insurance evidencing such coverage must be filed with the Risk Manager of the City and must designate the City of Grand Junction, its officers, employees and agents as additional insureds.

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f. Comply with all applicable Worker's Compensation laws for any employee engaged in the performance of work on the Property.

5. Lessee has inspected the Property and improvements and accepts the Property and improvements thereon in their present condition. Lessee agrees that the condition of the Property and improvements are sufficient for the purposes of Lessee. The City makes no warranties nor promises, express or implied, that the improvements nor the Property are sufficient for the purposes of the Lessee.

6. In the event the Property and/or improvements become damaged due to fire or any other casualty, or if the improvements or fixtures deteriorate to the extent where they are no longer functional for the purposes of Lessee, the City shall have no obligation to repair the improvements nor to otherwise make the premises usable or occupiable; damages shall be at Lessee's sole and absolute risk. In the event the City determines not to perform repairs or to otherwise make the premises usable or occupiable, Lessee may terminate this Lease by giving appropriate notice to the City that this Lease is to be terminated.

7. During the term of this Lease, Lessee shall have the exclusive right-of-way for ingress and egress to and from the Property; provided, however, that the City, its officers, employees and agents shall have the right to be on the Property during emergencies and may inspect the Property upon giving reasonable advanced notice to Lessee.

8. If Lessee is in default in the performance of any term or condition of this Lease, the City may, at its sole option, terminate this Lease upon thirty (30) days written notice. If Lessee fails within any such 30 day period to remedy each and every default specified in the City's notice, this Lease shall terminate. If Lessee remedies its default, Lessee shall not thereafter have the right of 30 days (to remedy) with respect to the same default, but rather, the Lessee's rights shall, with respect to a subsequent similar default, terminate upon the giving of notice by the City. All notices sent pursuant to this Lease Agreement shall be delivered by United States Certified Mail, Return Receipt Requested, and shall be considered served upon Lessee as of the date of mailing indicated on the postal receipt. All notices to the Lessee shall be mailed to 557 Noland Avenue, Grand Junction, Colorado 81501. All notices to the City shall be mailed to the attention of the City Property Agent, 250 North 5th Street, Grand Junction, Colorado 81501.

9. This Lease shall automatically terminate in the event Lessee or Lessee's Superior Saddle Tree business: becomes insolvent; is subject to a bankruptcy filing whether or not voluntary or involuntary; is subject to an assignment for the benefit of creditors or if a receiver is appointed; if Lessee should suffer death; or should Lessee, by any act of negligence or carelessness, or through any act of commission or omission permit, or suffer to be permitted, damage to the Property or the demised premises in any substantial or unreasonable manner. In such event, the City may immediately retake possession.

If this Lease is terminated by the City, except termination due to expiration of the lease term, Lessee shall have reasonable access to the Property for a reasonable time, not to exceed thirty (30) days, to remove Lessee's personal property. If Lessee fails to remove his personal property within the time prescribed, the City shall not be responsible for the care and safekeeping thereof and may remove the same and store the same in a reasonable manner, the cost, expense and risk of which shall be borne solely by Lessee. Lessee hereby agrees that items not timely removed may be sold by the City to cover expenses with net proceeds after expenses, if any, paid to Lessee. The City may also set off amounts owed under this Lease against the proceeds of said sale.

10. Upon termination of this Lease, whether as above provided or whether terminated any other way, Lessee agrees to peaceably surrender and deliver up the Property together with all keys thereto to the City immediately upon termination.

11. If the City, at its sole option, chooses to again lease the Property at the conclusion or termination of this Lease, Lessee shall be entitled to a first right of refusal to lease the Property under the same terms and conditions contained in any bona fide offer to lease which is acceptable to the City. The City shall notify Lessee in writing of the terms and conditions of any such bona fide offer, and Lessee shall have 15 days from the City's mailing of such notice to exercise his first right of refusal by his unconditional acceptance of all terms and conditions of the offer.

12. Lessee shall not sublet, assign or transfer any of Lessee's interests in this Lease, or enter into any contract or agreement affecting Lessee's interests in this Lease, without obtaining the prior written approval of the City. Further, Lessee shall make no structural changes to the improvements without the prior written consent of the City, which consent shall not be unreasonably withheld.

13. Should Lessee fail, for whatever reason, to vacate the premises at the end or when this lease is terminated, Lessee agrees to pay to the City, in addition to all other sums due hereunder, daily rental in the amount of \$25.00 per day for each and every day thereafter. The parties agree that it would be difficult to establish the actual damages to the City in such event and that said \$25.00 per day is an appropriate liquidated damages amount.

14. It is expressly agreed that this Lease is one of lease and not of partnership and the City shall not be or become responsible for any debts contracted by Lessee. Lessee shall save, indemnify and hold the City, its officers, employees and agents harmless against all liability or loss, and against all claims or actions based upon or arising from any claim, lien, damage or injury, including death, to persons or property caused by Lessee or sustained in connection with the performance of this Lease or by conditions created thereby, or based upon any violation of statute, ordinance code or regulation, and the defense of any such claims or actions, including attorneys' fees.

Lessee shall also pay and indemnify the City, its officers, employees and agents against all liability and loss in connection with, and shall assume full responsibility for payment of all federal, state and local taxes or contributions imposed or required under employment insurance, social security and income tax laws, with respect to employees engaged in performance of this Lease.

15. In the event the City uses its City Attorney or engages an attorney to enforce the City's rights hereunder, Lessee agrees to pay any and all attorney fees, plus costs, including, but not necessarily limited to, the costs of any experts. This Lease shall be governed by, construed, and enforced in accordance with the laws of the State of Colorado. Venue shall be in Mesa County, Colorado.

16. The provisions of this Lease shall not inure to the benefit of the heirs, successors and assigns of the parties hereto.

17. The parties acknowledge and agree that the provisions contained herein constitute the entire agreement between the parties, and that all representations made by any officer, employee or agent of the respective parties, unless included herein, are null and void and of no effect. No alterations, amendments, changes or modifications to this Lease Agreement shall be valid unless they are contained in an instrument which is executed by all parties with the same formality as this Lease Agreement.

IN WITNESS WHEREOF, each party to this Lease Agreement has caused it to be executed on the date(s) indicated below.

Attest:

The City of Grand Junction, Colorado

\_\_\_\_\_  
City Clerk                      Date

\_\_\_\_\_  
Mark K. Achen, City Manager      Date

Lessee:

\_\_\_\_\_  
Ronald Frank Bellavia              Date