

RESOLUTION NO. 30-94

LEASING THE BIG GAME HUNTING RIGHTS  
ON THE SOMERVILLE RANCH PROPERTY

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 and directed to execute the attached Lease Agreement with Clifford V. Davis and Judy L. Davis, doing business as Broken Spoke Ranch, for the lease of big game hunting rights on the City property commonly known as the Somerville Ranch.

PASSED and ADOPTED this 6th day of April, 1994.

Attest:

/s/ Stephanie Nye  
City Clerk

/s/ Reford C. Theobald  
President of the Council

## **HUNTING LEASE AGREEMENT**

THIS HUNTING LEASE AGREEMENT is made by and between the City of Grand Junction, a Colorado home rule municipality, hereinafter referred to as "the City", and Clifford V. Davis and Judy L. Davis, doing business as Broken Spoke Ranch, hereinafter referred to as "the Lessees".

### **RECITALS:**

A. The City is the owner of that certain real property situated in the County of Mesa, State of Colorado, which is commonly known as the Somerville Ranch and hereinafter referred to as "the Property".

B. The Lessees desire to lease the exclusive big game hunting rights on the Property under the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the terms, promises, covenants and conditions herein specified, the parties hereto mutually agree as follows:

1. The City hereby leases to the Lessees the exclusive right to conduct private big game hunting activities on the Property. The term of this Lease shall commence with the 1994 big game hunting season as defined by the Colorado Division of Wildlife ("the CDOW"), and terminate upon expiration of the 1999 big game hunting season as defined by the CDOW.

2. The Lessees agree to pay to the City as rental for rights granted under this Lease as follows: 1) For the 1994, 1995 and 1996 big game hunting seasons, the Lessees shall pay to the City a sum of money which represents twenty percent (20%) of the total fees charged and collected by the Lessees from hunters using and occupying the Property. Said sums of money shall be due and payable to the City in annual installments on or before ten (10) days following the conclusion of each big game hunting season as defined by the CDOW; 2) On or before January 15, 1997, the City and the Lessees shall meet to negotiate the amount of rent to be paid by the Lessees to the City for the 1997, 1998 and 1999 big game hunting seasons. In the event the City and the Lessees are unable to agree upon a rental rate on or before January 30, 1997, then either party shall have the option of terminating this Lease Agreement without any requirement for payment of rental fees by the Lessees for big game seasons following the 1997 big game season.

3. The Lessees shall at all times during this Lease secure and maintain in effect all licensing and registration requirements of the Colorado Office of Outfitters Registration. In the event the Lessees fail to be or become licensed and registered with the Colorado Office of Outfitters Registration, or if the Lessees license to provide outfitting services is revoked, for whatever reason, then this Lease shall automatically terminate.

4. The Lessee agrees to:

a. Use reasonable care in the use of the Property and to keep the Property free from all litter, debris, human waste and animal waste, and to provide sanitary human waste facilities at locations agreed upon by the City and maintain said facilities in a manner that will not allow human waste

to remain upon the surface of the ground or to enter into any water course or water way, including, but not limited to, streams, creeks, ponds, springs, ditches and reservoirs.

b. Waive and forego any claim, cause of action or demand the Lessee may have against the City, its officers, employees and agents, for injury to or destruction of any property of the Lessee or any third party which may be lost, injured, damaged, destroyed or devalued as a result of the act, or failure to act, of the Lessee or any third party; 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, personal injury (including death), costs and expenses of every kind in any manner arising out of or resulting from the Lessee's use of the Property.

c. Not use the Property for any purpose which is prohibited by the laws of the United States of America, the State of Colorado, the County of Mesa or any other governmental agency having control, jurisdiction or authority over the Property and the Lessee's use thereof. The Lessees agree to comply with all police, fire and sanitary regulations imposed by any governmental agency either now in force or hereinafter enacted, and to not use the Property for any improper or questionable purposes whatsoever.

d. At the Lessee's expense and during the term of this Lease, purchase and maintain in effect suitable Comprehensive General Liability Insurance which will protect the Lessee and 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 Risk Manager of the City and shall be written for at least a minimum of \$500,000.00, combined single limit. The certificate of insurance must be deposited with the Risk Manager of the City and must designate the City of Grand Junction, its officers, employees and agents as additional insureds.

e. Comply with all Workers Compensation laws and, if required by such Workers Compensation laws, provide proof of Workers Compensation insurance to the City's Risk Manager. Said Workers Compensation insurance shall cover obligations imposed by applicable laws for any employee engaged by Lessee in the performance of work on the Property.

f. Coordinate the Lessee's activities with the Colorado Division of Wildlife to ensure that the harvest of animals will not exceed the harvest objectives of the DOW.

g. Restrict open campfires to locations which are acceptable to the City.

h. Within ten (10) days of each season, provide the City with an accurate accounting of the amount(s) and type(s) of animal(s) harvested during each season.

i. Prior to any third party using or occupying the Property for hunting purposes (hereinafter "hunting client"), the Lessees shall deliver to the City a waiver, hold harmless and indemnity agreement prepared by the City and executed by each of the Lessee's hunting clients which provides that each such hunting client agrees to waive and forego any claim, cause of action or demand that each such hunting client may have against the City, its officers, employees and agents, for injury to or destruction of any property of the Lessee's hunting clients which may be lost, damaged, destroyed or devalued as a result

of the act, or failure to act, of the Lessees, the Lessee's hunting clients or any third party; 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, personal injury (including death), costs and expenses of every kind in any manner arising out of or resulting from the use of or presence on the Property by the Lessee's hunting clients.

5. The Lessees represent that they are familiar with the Property and its boundaries and accept the same in its present condition; The Lessees agree that the condition of the Property is sufficient for the purposes of the Lessees. The City makes no warranties, representations or promises that the Property is sufficient for the purposes of the Lessees. The Lessee agrees that their use of the Property shall be at the Lessee's own risk; the City shall not be responsible or liable for the success of the Lessee's operation or the loss of profits or opportunities.

6. The Lessees shall endeavor to cause all of their employees and hunting clients to at all times conduct themselves in a proper and responsible manner.

7. The Lessees shall, during the term of this Lease, have the exclusive right to remove trespassers from the Property; provided, however, that the Lessees acknowledge that its exercise of said right shall be at the Lessee's own risk; provided, further, that the Lessees acknowledge that the City, its officers, employees and agents, shall have the right to be on the Property during the term of this Lease and may inspect the Property and the Lessee's occupancy thereof at anytime.

8. Notwithstanding anything herein to the contrary, if the Lessees are in default in the performance of any term or condition of this Lease, the City may, at its option, terminate this Lease upon giving three (3) days advanced written notice. If the Lessees fail within any such three (3) day period to remedy each and every default specified in the City's notice, this Lease shall automatically terminate. If the Lessees remedy such default(s), the Lessees shall not thereafter have the right to cure or remedy within three (3) days with respect to the same default(s), but rather, the Lessee's rights under this Agreement shall, with respect to subsequent similar default(s), automatically terminate upon the giving of written notice by the City.

This Lease shall automatically terminate in the event the Lessees: become insolvent; are subject to a bankruptcy filing whether voluntary or involuntary; are subject to an assignment for the benefit of creditors or if a receiver is appointed; should suffer death or become disabled to the extent that would preclude the Lessees from fulfilling each and every term and condition under this Agreement; fail in any manner to comply with any of the terms, covenants or conditions of this Lease (to be kept and performed by the Lessees); or should the Lessees, their employees or agents, by any act of negligence or carelessness, or through any act of commission or omission permit, or suffer to be permitted, damage(s) to the Property in any substantial manner. In such event, the City may immediately retake possession of the Property and the Lessees agree that prior monies received by the City shall be retained by the City. The Lessees further agree that the City shall have the right to sue for the balance of payments not received, to lease the hunting rights on the Property to a third party, and any other lawful remedy.

If this Lease is terminated by the City, except termination due to the expiration of the Lease term, the Lessees shall have reasonable access to and from the Property for a reasonable time, but not to exceed thirty (30) days, to remove the Lessee's personal property. If the Lessees fail to remove the Lessee's personal property within said thirty (30) day period, the City shall not be responsible for the care and safekeeping thereof and may, at its option, remove and store the same in a safe and reasonable manner, the cost, expense and risk of which shall be borne by the Lessees. The Lessees agree that items not timely recovered by the Lessees may be sold by the City to cover expenses, with net proceeds after expenses paid to the Lessees. The City may, at its option, set off amounts owed under this Lease against the proceeds of said sale.

9. The Lessees shall not sublet, assign or transfer any of their interests in this Lease, or enter into any contract or agreement affecting the Lessee's interests in this Lease without obtaining the prior written approval of the City.

10. The Lessees acknowledge that the Property is bordered in part by private and federally owned lands. Any liabilities arising from the Lessees, their employees and hunting clients entering, trespassing, or in any way damaging properties of any other party shall be the responsibility of the Lessees.

11. It is expressly agreed that this Agreement is one of lease and not of partnership. The City shall not be or become responsible for the success or failure, profit or loss of profits, loss of opportunities, or any debts contracted by the Lessee. The 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 the Lessee or sustained in connection with the Lessee's performance under this Lease, the violation of any statute, ordinance, code or regulation, and the defense of any such claims or actions, including any and all attorney's fees and litigation costs. The Lessee shall save and indemnify the City, its officers, employees and agents, and hold the City, its officers, employees and agents harmless from the payment of all federal, state and local taxes or contributions imposed or required, including, but not limited to, unemployment insurance, social security and income taxes, and any and all taxes, fees, excises with respect to employees or other persons engaged in the performance of this Lease.

12. In the event the City uses its City Attorney or engages an attorney to enforce the City's rights hereunder, including, but not limited to suit or collection efforts in furtherance thereof, the Lessees agree to pay for the value or costs of such attorney, plus all costs, including 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.

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

IN WITNESS WHEREOF, each party to this Agreement has caused it to be executed on the

date(s) indicated below.

For the City of Grand Junction,  
Colorado

Attest:

/s/ Mark K. Achen                      /s/ Stephanie Nye  
City Manager                      Date                      City Clerk

Date

Lessees:

\_\_\_\_\_  
Clifford V. Davis                      Date

\_\_\_\_\_  
Judy L. Davis                      Date