

RESOLUTION NO. 56-95

EXTENDING THE TERM OF THE CLICK PROPERTY LEASE WITH
CLIFFORD V. DAVIS AND JUDY L. DAVIS

WHEREAS, Clifford V. Davis and Judy L. Davis lease the City property commonly known as the Click Property located on Purdy Mesa; and

WHEREAS, the term of the present lease expires on the last day of February, 1996; and

WHEREAS, the City and the Davises desire to amend the present lease to extend the term thereof to April 30, 2000.

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 directed and authorized to execute the attached Lease Extension Agreement with Clifford V. Davis and Judy L. Davis, extending the term of said Lease from the last day of February, 1996, to April 30, 2000. Rental for the property during the extended term shall be \$2,484.84 per year, payable by monthly installments of \$207.07.

PASSED and ADOPTED this 17th day of May, 1995.

Attest:

/s/ Stephanie Nye
City Clerk

/s/ Ron Maupin
President of the Council

LEASE EXTENSION AGREEMENT

THIS LEASE EXTENSION AGREEMENT is made and entered into as of the 17th day of May, 1994, between the City of Grand Junction, a Colorado home rule municipality, hereinafter referred to as "the City", Clifford V. Davis and Judy L. Davis, hereinafter referred to as "the Lessees".

RECITALS

- A. The City is the owner of the real property described in Exhibit "A" which is attached hereto and incorporated herein by reference, commonly known as the Click Property and hereinafter referred to as "the Property".
- B. The Lessees have a leasehold interest in the Property by virtue of that certain Lease Agreement dated the 1st day of March, 1991, a copy of which is attached hereto as Exhibit "B" and incorporated herein by reference, which Exhibit is hereinafter referred to as "the Lease".
- C. The parties desire to amend the Lease to extend the term thereof and provide for rentals for the extended term.

NOW, THEREFORE, in consideration of the terms, covenants, promises and conditions herein stated, the parties to this Lease Extension Agreement agree as follows:

1. The term of the Lease is extended from the last day of February, 1996, to April 30, 2000, upon the same terms and conditions as provided in the Lease.
2. Lessees agree to pay to the City as rental for the Property during the extended term the sum of \$2,484.84 per year by monthly installments of \$207.07, which installments shall be due and payable, without demand by the City, on or before the 1st day of each month during the extended term.
3. All other the terms, covenants and conditions of the Lease Agreement attached as Exhibit "B" shall be in full force and effect under this Lease Extension; the Lessees agree to abide by the terms, covenants and conditions of said agreement and agree to not violate any of the terms, covenants and conditions thereof.

IN WITNESS WHEREOF, each party to this Lease Extension Agreement has caused it to be executed as of the day and year first above written.

Attest:

The City of Grand Junction, a Colorado home rule municipality

City Clerk

City Manager

Lessees:

Clifford V. Davis

Judy L. Davis

EXHIBIT "A"

PARCEL NO. 1:

Lots 6, 9 and 15 in Section 32, Township 12 South, Range 97 West of the 6th Principal Meridian, County of Mesa, State of Colorado, and Lot 2 of Section 5, Township 13 South, Range 97 West of the 6th Principal Meridian, County of Mesa, State of Colorado.

PARCEL NO. 2:

Beginning at a point on the West line of Tract 46 in Section 32, Township 12 South, Range 97 West of the 6th Principal Meridian, which is South 1052.40 feet from the Northwest Corner (Corner No. 2) of said Tract 46; thence along the centerline of the County Road (Purdy Mesa Road) S 81°16'30" E a distance of 132.74 feet; thence continuing along the centerline of said County Road, S 58°09'47" E a distance of 22.12 feet; thence South a distance of 1454.20 feet; thence S 89°51'55" W a distance of 150.00 feet; thence North a distance of 1486.36 feet along the West line of said Tract 46 to the Point of Beginning,

EXCEPT a parcel of land situated in Lots 9 and 15 of said Section 32 described as follows:

Beginning at the Southwest Corner of said Lot 15 (said point also being the North 1/4 Corner of Section 5, Township 13 South, Range 97 West), being S 89°45'26" E a distance of 66.00 feet from a 1908 witness corner brass cap in place; thence S 00°00'00" E a distance of 666.00 feet along the West line of Lot 2 in Section 5; thence S 89°45'26" E a distance of 659.26 feet; thence N 00°00'00" E a distance of 866.00 feet; thence N 73°20'46" E a distance of 688.13 feet to the East line of said Lot 15; thence S 64°51'00" W along a fence line a distance of 1101.69 feet; thence S 62°21'00" W along a fence line a distance of 362.43 feet to the West line of said Lot 15; thence S 00°01'00" W along the West line of said Lot 15 a distance of 766.30 feet to the Point of Beginning of said Exception,

AND INCLUDING a parcel of land situated in Lot 15 of said Section 32 described as follows:

Beginning at the Southeast Corner of said Lot 15; thence S 00°00'00" E a distance of 666.00 feet; thence N 89°45'26" W a distance of 659.26 feet; thence N 00°00'00" E a distance of 866.00 feet; thence N 73°20'46" E a distance of 688.13 feet to the East line of said Lot 15; thence S 00°00'00" E a distance of 400.00 feet along the East line of said Lot 15 to the Point of Beginning of said Inclusion.

EXHIBIT "B"
LEASE AGREEMENT

THIS LEASE AGREEMENT is entered into as of the 1st day of March, 1991 between the City of Grand Junction, a municipal corporation, hereinafter referred to as "City", and Clifford V. Davis and Judy L. Davis, hereinafter referred to as "Lessees", whose address for the purpose of this Lease is 8700 Reeder Mesa Road, Whitewater, Colorado 81527.

- A. City is the owner of the real property described in the attached Exhibit A, which is incorporated herein by reference and hereinafter referred to as the "Property".
- B. Lessees desire to lease the Property under the terms and conditions of this Lease Agreement.

NOW, THEREFORE, in consideration of the terms, covenants and conditions herein to be kept by the parties hereto, the City leases to Lessees the Property and the improvements situated thereon.

1. The term of this Lease shall be for five years, commencing on the 1st day of March, 1991, and terminating on the last day of February, 1996.

For the purposes of this Lease, a "lease year" shall mean the period commencing on March 1 of each year during the term of this Lease and terminating on the last day of February of the succeeding year.

2. Lessees agree to pay City, as rental for the Property, improvements and appurtenances, the sum of \$12,424.20, payable in five equal annual installments of \$2,484.84, the first of which is due and payable on or before March 1, 1991. Subsequent installments shall be due and payable on or before March 1 of each lease year. In the event rental payments are not received on or before the 10th day of March of each lease year, Lessees agree to pay a late charge of \$50.00 for each and every day following the specified due date, which shall be added to the amount of rent due. This Lease, at the option of the City, shall automatically terminate, and the City may immediately retake possession of the Property, if rental payments are not received on or before March 31 of each lease year.

3. **(a)** Lessees agree to timely pay any and all real estate taxes and improvement assessments which may be levied against the Property, and any taxes or assessments levied against the crops, livestock and other personal property of Lessees or any other leasehold interest acquired by Lessees under this Lease. Lessees further agree to pay any and all utilities charges and other expenses incurred in connection with Lessee's use and operation of the Property, including, but not limited to, all charges for natural gas, electricity, telephone and other utilities used on or in connection with the Property. Lessees shall pay any such charges on or before the date the same become due. **(b)** If Lessees fail 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 the rate of 15% per annum, shall be added to the amount(s) of the rent due and payable by Lessees.

4. The City specifically retains and reserves from this Lease any and all water and water

rights owned by the City, including, but not limited to, any water rights which may have been previously used on or in connection with the Property, for whatever purpose. Subject to the provisions of this Section 4, and Sections 5 and 8, Lessees may have the right to use water as the City shall make available to Lessees for use on the Property as follows:

4.1 Lessees shall have the right to use up to 1.37 cubic feet per second ("c.f.s.") of Stream Priority No. 2 water, to be appropriated through the Juniata Ditch, for no fees in addition to the basic rental for the Property; Provided, however, that the City shall have the right at any time to take possession and control of said water and water right for any purpose including, but not limited to, sale, exchange or conversion to municipal use.

4.2 **(a)** In addition to water identified in paragraph 4.1, each lease year the City may, in its sole discretion, on or before the first day of May of each year, make additional water available for rent to Lessees by notification to Lessees in writing of the amount of irrigation water (expressed in terms of c.f.s. or acre feet) which may be available to Lessees to utilize on the Property during that lease year. **(b)** Within fifteen (15) days of written notification by the City, Lessees shall inform the City of the amount of water Lessees request to use for that year. The City shall determine, in its sole discretion, the water fee Lessee shall pay for this water, which amount shall be no less than \$2.00 per acre foot and no more than \$5.00 per acre foot. Lessees shall not be entitled to any water which is not paid for in full within the aforementioned fifteen (15) day period, and Lessees shall not be entitled to a refund for water paid for by them which they have not diverted or utilized.

4.3 All water to be made available to Lessees shall be released to Lessees upon three (3) days notice, but no more than twice a month, provided the capacity to release such amount can be provided through the outlet of the appropriate City reservoir. The City shall release the water to Lessees and measure that water at the reservoir outlet, and it shall be the responsibility of Lessees to divert and transport such water from its point of release to its point of use.

4.4 Lessees shall exercise proper diligence to ensure that the amount water so made available is utilized to its full extent on and solely for the benefit of the Property and Lessee's operations thereon. Lessees shall utilize all water released to Lessees for the first and all subsequent lease years on the Property only and shall do so in a prudent and careful manner in order to obtain the most efficient use of the water for irrigation of the Property and as stock water for livestock kept and maintained on the Property. Lessees shall comply with all rules, regulations and valid administrative orders applicable to the water provided under this Lease.

4.5 By utilizing the water released to them by the City, Lessees agree to waive and forego any claim, cause of action or demand Lessees may have against the City, its officers, employees and agents for injury to, or destruction of, any property, real and personal, including any livestock of Lessees or any third person that may be lost, injured, destroyed or devalued as a result of the act, or failure to act, of Lessees or any third person; and to indemnify the City, its

officers, employees 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 or non-use of the water.

5. Lessee shall cooperate with and assist the City in developing and implementing long range programs to ensure that the water and water rights associated with the Property are put to beneficial use on the Property. Lessees shall, at Lessee's sole cost, provide the labor and capital necessary to improve crop production on the Property through the rehabilitation of existing fields and the cultivation of additional fields as specified in said programs.

5.1 Lessees shall furnish, at Lessee's sole expense, all labor and machinery during the term of this Lease, and shall plant, raise, cultivate, irrigate and thresh all crops grown on the demised premises at Lessee's own expense. Lessees shall be entitled to and responsible for all proceeds and debts and debt losses incurred and associated with all crops grown on the premises.

5.2 Lessees shall cultivate and irrigate the Property in a good and husbandlike manner in accordance with the best methods of cultivation and irrigation practiced in the County of Mesa, State of Colorado.

5.3 Lessees agree to cooperate and comply with all farm crop programs promulgated by the United States or the State of Colorado and approved by the City.

5.4 The type and quantity of fertilizer, herbicides and other chemicals shall be selected after the advice and consent of the City.

5.5 Lessees shall be responsible for ensuring that the water is transported through clean irrigation ditches of adequate size from the point of release to the point of use.

5.6 Lessee's right to use the water as described above shall be subject to the express conditions of this paragraph 5.6. If the City, in its sole discretion, requires the use of some or all of the water described in this Lease, notwithstanding prior notice to the contrary, the City has the right, upon 15 days written notice to Lessees, to use, transfer and possess all of the water described in this Lease at locations and for the purposes deems necessary by City, even though such purposes and locations are adverse to the needs and uses of Lessees.

5.7 Lessees shall be responsible for adjusting all headgates in a manner that provides for releasing to the Property the proper amount of water that is adjudicated to, or may be beneficially applied for the benefit of, the Property. Lessees shall record the dates of irrigation and the number of acres on which water is applied to adequately provide for the development of historic consumptive use records.

6. Lessees agree to:

6.1 At Lessee's sole cost and expense, install, maintain and repair all fences and gates and shall ensure that all gates and fences upon the Property are properly installed and functioning. All fences shall be "lawful fences" as defined by Colorado law.

6.2 At Lessee's sole cost and expense, maintain and keep the Property and all improvements and buildings upon the Property, including, but not limited to, fixtures, roofing, plumbing, heating and ventilation systems, wiring, glass, fences, gates, wells and well systems, pumps and pump systems, cattle guards and all other improvements on the Property, in the same or better condition as they were at the commencement of this Lease or, if improvements have been made, to the condition after improvement, all at Lessee's expense, and at the expiration of this Lease, surrender the Property and improvements thereon to City in as good a condition as when Lessees entered the Property, reasonable use and wear excepted.

6.3 Keep the Property free from all litter, dirt, debris and obstructions, and shall not commit or permit to be committed any waste on the Property or demised premises. Lessees agree that all uses shall be lawful uses only. No hazardous wastes shall be kept or discharged on the Property.

6.4 Install no structural improvements without the prior written consent of the City, which consent will not be unreasonably withheld.

6.5 Waive and forego any claim, cause of action or demand Lessees may have against the City, its officers, agents and employees for injury to or destruction of any property of Lessees or any third person that may be lost, injured, destroyed or devalued as a result of the act, or failure to act, of Lessees 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.

6.6 At Lessee's sole expense and during the term of this Lease, purchase and maintain in effect suitable "Farmowner's Comprehensive" liability insurance which will protect the City, its officers, employees and agents and assets of the City, 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, and a policy which insures the Property and all improvements thereon. All required policies shall have terms and amounts approved by the City's Risk Manager. Such insurance shall not be cancelable without thirty (30) days prior written notice to 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 City and must designate the City of Grand Junction, its officers, employees and agents as additional insureds. If a policy approved by the Risk Manager is not at all times in full force and effect, this Lease shall automatically terminate.

6.7 At Lessee's sole expense and during the term of this Lease, purchase and maintain in effect suitable extended coverage insurance on all insurable improvements on the Property, to the full extent of their value, but no less than \$20,000.00. Such insurance shall not be cancelable without thirty (30) days prior written notice to the City and must designate the City of Grand Junction, its officers, employees and agents as additional insureds. The certificate of insurance must be deposited with the City and must designate the City of Grand Junction, its officers, employees and agents as additional insureds. If a policy approved by the Risk Manager is not at all times in full force and effect, this Lease shall automatically terminate.

6.8 Comply with all Workmen's Compensation laws and provide proof of Workmen's Compensation insurance to the City's Risk Manager. Said Workmen's Compensation insurance shall cover obligations imposed by applicable laws for any employee engaged in the performance of work on the Property.

6.9 Use the Property for ranching and farming operations only and conduct said operations in a proper and workmanlike manner and in a manner that will not over-graze, cause deterioration of or destruction to the Property. Use of the Property for outfitting or guide purposes by the Lessees is prohibited.

6.10 Keep the Property and the demised premises free and clear from any and all liens for labor performed and for materials furnished to the Property or demised premises.

6.11 Limit the livestock grazed on the Property to four mother cows with calves at side per acre of irrigated land and one mother cow with calf at side per three acres of non-irrigated land.

7. Lessees warrant that they have thoroughly and carefully inspected the Property and demised premises and accept the same in its present condition. Lessees agree that the condition of the Property is sufficient for the purposes of Lessees. The City makes no warranties nor promises that the Property is sufficient for the purposes of Lessees.

8. During the term of this Lease, Lessees shall have the exclusive right-of-way for ingress and egress, to and from the Property; provided, however, that the City, its officers, agents, and employees retain the right to be on the Property during emergencies and may inspect the Property at anytime. The City, at its option, shall have the right to enter the Property to construct such facilities as it deems necessary for the City to utilize the water and water rights associated with and appurtenant to the Property for municipal or other use. Following such construction the City shall have the right to use said water rights or make them available to the Lessees as the City deems appropriate.

9. The City retains and reserves for its sole use, lease, sale, or other disposition all oil, gas, coal and other minerals and mineral rights underlying or appurtenant to the Property, together with

the rights of ingress and egress to and from the Property for the purpose of exploring, developing, mining, producing and removing any such minerals, oil, gas and coal.

10. Lessees shall, after the last day of the term of this Lease or any extension or upon earlier termination of this Lease, surrender to the City the Property in good order, condition and state of repair, reasonable wear and use excepted. Should Lessees fail, for whatever reason, to vacate the premises at the end or when this lease is terminated, Lessees agree to pay to the City the sum of \$50.00 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 \$50.00 is an appropriate liquidated damages amount.

11. Lessees agree that all fences, gates and other improvements of a permanent nature constructed or installed on the Property during the term of this Lease, whether by City or Lessees, shall be and remain the sole property of the City upon termination or expiration of this Lease.

12. After December 1 and before January 1 of each calendar year, the terms and conditions of this Lease shall be reviewed by the Lessees and the City. Unless changed by an amendment of mutual agreement, the terms and conditions of this Lease will remain the same.

13. Except as otherwise provided for (automatic and immediate termination), if 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 30 days written notice. If Lessees fail within any such 30 day period to remedy any default specified in the City's notice, this Lease shall automatically terminate. If Lessees remedy such default, Lessees 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. Any notices sent pursuant to this agreement shall be delivered by United States certified mail, return receipt requested, and shall be considered served upon Lessees as of the date of mailing indicated on the postal receipt. All notices shall be sent to Lessees at 8700 Reeder Mesa Road, Whitewater, Colorado 81527. All notices sent to the City by Lessees shall be addressed to the City of Grand Junction, Attention Property Agent, 250 North 5th Street, Grand Junction, Colorado, 81501.

This Lease shall automatically terminate in the event Lessees: become insolvent; are subject to a bankruptcy filing whether or not voluntary or involuntary; are subject to an assignment for the benefit of creditors or if a receiver is appointed; if Lessees should become disabled or suffer death; if Lessees fail in any manner to comply with any of the terms, covenants, or conditions of this Lease to be kept and performed by Lessees; or should Lessees, 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 manner.

If this Lease is terminated by the City, except termination due to expiration of the lease term, Lessees shall have reasonable access to the Property for a reasonable time, not to exceed 30

days, to remove Lessee's personal property.

Upon termination of this Lease, Lessees shall remove all personal property and livestock from the property and demised premises within 30 days from the date of termination. If Lessees fail to remove Lessee's personal property and livestock 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 Lessee's. Lessees hereby agree that items not timely removed may be sold by the City to cover expenses with net proceeds after expenses paid to Lessees. The City may also set off amounts owed under this Lease against proceeds of said sale.

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

15. If the premises are damaged due to fire or other casualty, 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 risk. If the City determines not to perform repairs or to otherwise make the premises usable or occupiable, Lessees may terminate this Lease by giving Lessee's notice to the City that the lease is terminated. The City may, however, at its election, apply the proceeds of any insurance obtained by Lessees for this purpose, to repair the damaged improvements.

16. 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. Lessees 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 out of any claim, lien, damage or injury, (including death), to persons or property caused by Lessees or sustained in connection with the performance of this Lease or by conditions created thereby, or based upon any violation of any statute, ordinance, code or regulation, and the defense of any such claims or actions, including attorney's fees.

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

17. Lessees acknowledge the rights of Ica M. Click to buried in the grave site referred to in the attached Exhibit "B". Lessees further agree that they will not allow said grave site to be or become disturbed by Lessees, their guests and invitees.

18. In the event the City uses its City Attorney or engages an attorney to enforce the City's

rights hereunder, Lessees agree to pay for the value or cost of such attorney fees, plus 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.

19. The provisions of this Lease shall not inure to the benefit of the heirs, successors and assigns of the parties hereto. The obligation of the City to proceed with the terms and conditions of this Lease is expressly subject to the Council of the City approving and ratifying this Lease within thirty (30) days of execution of this Lease by the City Manager. If such approval is not obtained within said 30 day period, then this Lease shall be of no force and effect.

IN WITNESS WHEREOF, each party to this Lease has caused it to be executed on the date indicated below

ATTEST:

THE CITY OF GRAND JUNCTION
a municipal corporation

City Clerk

City Manager

LESSEES:

Clifford V. Davis

Judy L. Davis