

RESOLUTION NO. 17-96

RESOLUTION AUTHORIZING THE PURCHASE BY THE CITY OF GRAND JUNCTION, COLORADO ("THE CITY") OF CERTAIN REAL PROPERTY KNOWN AS THE MATCHETT PROPERTY, INCLUDING WATER RIGHTS AND ALL IMPROVEMENTS SITUATED THEREON AND RIGHTS AND PRIVILEGES APPURTENANT THERETO; RATIFYING ACTIONS HERETOFORE TAKEN IN CONNECTION THEREWITH; AUTHORIZING THE EXECUTION AND DELIVERY BY AUTHORIZED OFFICERS AND EMPLOYEES OF THE CITY OF DOCUMENTS AND PROVIDING FOR THE PERFORMANCE OF THE CITY'S OBLIGATIONS THEREUNDER; AND PROVIDING OTHER DETAILS IN CONNECTION WITH SAID PURCHASE.

WHEREAS, the City of Grand Junction ("the City") presently owns and operates several parks and recreation facilities for the use and enjoyment of the inhabitants of the City and the overall regional area; and

WHEREAS, the Parks, Recreation and Open Space Master Plan adopted by the City Council on December 16, 1992, recommends the City acquire property in a north-central location of the community for the purpose of developing a regional park; and

WHEREAS, the Parks and Recreation Advisory Board of the City unanimously recommended to the City Council that the City acquire the Matchett property as a regional park site and as a site for a recreation center; and

WHEREAS, in accordance with Ordinance No. 1054, passed and adopted on November 5, 1958, the City Council shall have the sole power to lease, purchase, acquire, hold and dispose of real or personal property for recreational purposes; and it shall have the sole power to contract any indebtedness for such purpose; and

WHEREAS, at the request of the City Council, the Trust for Public Land, a nonprofit California public benefit corporation, has negotiated a purchase of the Matchett property to secure said property as a regional park site in accordance with the recommendation of the Parks, Recreation and Open Space Master Plan and in accordance with the recommendation of the Parks and Recreation Advisory Board; and

WHEREAS, the City Council believes that parks and recreation areas are a good indication of a community's dedication to maintaining a high quality of life for its citizens by: providing recreational opportunities for the vast majority of valley residents; giving teens and seniors a place to congregate; providing fields for sports clubs and green space for family or business picnics. In many respects, parks make up much of the glue that binds communities together; and

WHEREAS, the City Council deems it necessary and proper to enter into the attached Contract to Buy and Sell Real Estate with the Trust for Public Land to purchase the real property therein described for the purpose of providing additional parks and recreational amenities to the inhabitants of the City and the overall region.

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

1. That the officers, employees and agents of the City are hereby authorized and directed to take all action necessary or appropriate to effectuate the provisions of the attached Contract to Buy and Sell Real Estate with the Trust for Public Land, including without limitation the performance of a boundary survey, a Phase I environmental assessment, and the execution and delivery of such documents as may be required to accomplish the City's obligations as set forth in said Contract.

2. That the officers, employees and agents of the City are hereby authorized and directed to take all action necessary or appropriate to determine available alternatives for financing the purchase price of \$2,007,000.00 for the property, including without limitation the solicitation of public and private grants, contributions and donations.

3. That the City Council shall make its final determination whether to purchase all or any portion of the Matchett property from the Trust for Public Land at its regularly scheduled meeting to be held at 7:30 p.m. on Wednesday, May 15, 1996.

PASSED and ADOPTED this 21st day of February, 1996.

Attest:

/s/ Stephanie Nye
City Clerk

/s/ Ron Maupin
President of the City Council

February 20, 1996

CONTRACT TO BUY AND SELL REAL ESTATE

THIS CONTRACT TO BUY AND SELL REAL ESTATE is entered into by and between the City of Grand Junction, a Colorado home rule municipality, hereinafter referred to as "the City", and The Trust For Public Land, a nonprofit California public benefit corporation, hereinafter referred to as "TPL".

WITNESSETH:

A. TPL has entered into a Contract to Buy and Sell Real Estate with Kenneth M. Matchett Jr., Sarah M. Matchett and Thelma H. Matchett ("the Matchetts"), to purchase from the Matchetts that certain real property described in **Exhibit "City/TPL-1"** which is attached hereto and incorporated herein by reference, the land area of which is estimated to be 215 acres, more or less. TPL negotiated and entered into its contract with the Matchetts to further the City's corporate goal to accomplish and facilitate a purchase of the said property by the City or an appropriate assignee (hereinafter "the City").

B. The City Council of the City believes it is proper and in the public interest for the City to purchase from TPL the property described in **Exhibit "City/TPL-1"** and has authorized and directed the officers and agents of the City to bring about this Contract to Buy and Sell Real Estate and to deliver this Contract to the said City Council for its approval.

NOW, THEREFORE, in consideration of the mutual covenants, benefits and burdens, the City hereby agrees to purchase from TPL, and TPL hereby agrees to sell to the City, the real property, improvements and appurtenances herein described upon the terms and conditions herein stated.

1. The purchase price for the Property shall be Two Million Seven Thousand and 00/100 Dollars (\$2,007,000), payable in the form of "good funds" at closing. The City agrees to, in anticipation of closing and within one business day before closing, deliver said good funds in the amount of the purchase price by Federal Reserve System "wire transfer" to Western Colorado Title Company, closing agent for both the City and TPL (the "Closing Agent"). The City and TPL each agree to pay their own closing costs according to local custom.

2. The purchase price shall include the real property described in **Exhibit "City/TPL-1"** and any and all other rights appurtenant thereto, including, but not limited to, all easements and other appurtenances thereto, all buildings and improvements thereon and all fixtures attached thereto, all water and water rights, ditches and ditch rights, wells, well permits and well rights, water and ditch company stock of any kind on, underlying, appurtenant to or used in connection with or connected thereon, whether or not adjudicated or appropriated. The real property and inclusions aforesaid are herein referred to as "the Property". The City and TPL agree that, upon

mutual consent between the City and TPL, **Exhibit "City/TPL-1"** may be amended to provide a more detailed and/or accurate description of the Property based on review of the description of the Property as contained in the commitment for title insurance policy as provided in paragraph 7 and/or with the boundary survey as provided in paragraph 3.

3. The purchase price stated in this Contract has been determined on the basis of an average value of \$9,800.00 per acre and an estimated acreage of two hundred fifteen (215) acres, minus a \$100,000.00 discount TPL has offered to the City for paying cash at closing. The City intends to, at its expense and during the Inspection Period as herein provided, complete a boundary survey of the Property to include a stated acreage rounded to the nearest 1/100th acre. If such boundary survey is completed the City shall, within the Inspection Period, deliver a copy of the boundary survey to TPL. The final purchase price at closing shall be the determined net acreage multiplied by the previously stated per acre price of \$9,800.00 per acre minus the previously stated \$100,000.00 discount; provided, however, that if the net acreage determined by the boundary survey exceeds two hundred fifteen (215) acres, the purchase price stated in this contract shall not be increased.

4. Subject to acquisition by TPL of the Property and payment of the purchase price by the City on closing as required herein and compliance by the City with the other terms and provisions hereof, TPL shall execute and deliver a good and sufficient Special Warranty Deed conveying the Property to the City or its nominee free and clear of: all liens and encumbrances and all taxes, except the general property taxes for the year of closing; all liens for special improvements whether assessed or not; all fees and charges for utilities, association dues and water assessments; any covenants, restrictions, or reversionary provisions not accepted by the City listed as exceptions in the Title Documents as set forth herein, except for the reservation by the Matchetts of a twelve (12) foot wide nonexclusive easement located along the northern boundary of Parcel 6 for the purpose of providing equestrian, pedestrian and livestock access to the culvert installed by the United States Bureau of Reclamation; and all tenancies and/or leasehold estates, except those which are specifically identified and set forth in **Exhibit "City/TPL-2"** attached hereto and incorporated herein by reference. It is the intent of TPL to close this sale simultaneously with its acquisition of the Property. The City shall cooperate in coordinating a simultaneous closing. The delivery of any and all water shares and water certificates shall be tendered to the City at closing, free and clear of any liens, assessments and encumbrances.

5. Any monetary lien or monetary encumbrance against the Property shall be paid or released by TPL at or before closing and may be paid by TPL from the proceeds of this transaction or from any other source. TPL shall secure a release of the Property from the holder of any Deed of Trust, mortgage or any other lien securing indebtedness at or prior to closing, however, if the obtaining of such release(s) requires TPL to pay an aggregate amount which exceeds the total purchase price of the Property, TPL may elect to terminate this Contract.

6. Real and personal property taxes for the year of closing, based on the most recent levy and the most recent assessment, shall be apportioned to the date of closing and shall be considered final settlement.

7. (a) TPL shall furnish to the City, at TPL's expense, a current commitment for title insurance policy in an amount equal to the purchase price on or before **March 4, 1996**. The title commitment shall include legible copies of all instruments listed in the schedule of exceptions. The title insurance commitment and legible copies of all listed exceptions are hereinafter referred

to as the "Title Documents". TPL shall deliver the title insurance policy to the City at closing and pay the premium thereon.

(b) On or before **March 15, 1996**, TPL shall furnish to the City, at TPL's expense, legible copies of all information and documents in possession of TPL regarding lease agreements and/or rental agreements, boundary surveys, geological surveys and studies, engineering studies and environmental surveys and studies. TPL agrees to, as authorized or contracted for in TPL's agreement with the Matchetts, deliver to the City each document in the possession of or under the control of TPL and the Matchett's relating to leases, rental agreements, boundary surveys, geological surveys and studies, engineering studies and environmental surveys and studies.

8. (a) The parties hereby acknowledge the possibility of claims of title by: (i) the United States Bureau of Reclamation ("Bureau") and/or the Grand Valley Water Users to the Highline Canal and the canal road/trail adjacent thereto affecting Parcel No. 1 and Parcel No. 6 as said Parcels are described in **Exhibit "City/TPL-1"**; and (ii) the Grand Valley Water Users to a dwelling and curtilage adjacent to the Highline Canal affecting Parcel No. 1 as described in **Exhibit "City/TPL-1"**. The City acknowledges the lack of warranties by TPL to these portions of the Property as it may be affected by such claims of title by the Bureau or the Grand Valley Water Users. During the Inspection Period set forth in paragraph 9, the City and TPL shall attempt to quantify the land area occupied by the dwelling and curtilage. Nothing in this Agreement regarding any claim(s) by the Bureau or the Grand Valley Water Users shall operate to constitute a waiver of the City's right(s) to assert ownership of such land(s), but shall only mean the City acknowledges the lack of warranties in this regard from TPL to the City. Except for the claims of others as aforesaid, title shall be merchantable in TPL. Written notice by the City of unmerchantability of title other than as provided in this Section 8(a) or of any other unsatisfactory title condition shown by the Title Documents shall be signed by or on behalf of the City and delivered to TPL on or before **April 1, 1996**, or within fifteen (15) days after receipt by the City of any Title Document(s) or endorsement(s) adding new exception(s) to the title commitment. If TPL does not receive notice from the City by the dates specified herein, the City shall be deemed to have accepted the condition of title as disclosed by the Title Documents. Notice may be by facsimile, with hard copy to follow in the U.S. mail.

(b) Other than as provided in Section 8(a) above, if title is not merchantable and written notice of defect(s) is delivered by the City to TPL on or before the dates specified in paragraph 8(a), TPL shall use reasonable efforts to correct said defect(s) prior to closing. If TPL is unable to correct said defect(s) on or before the date of closing, at TPL's option and upon written notice to the City on or before the date of closing, the date of closing shall be extended for a period not to exceed fifteen (15) days for the purposes of correcting said defect(s). Except for any claim by the Grand Valley Water Users as provided in Section 8(a) above, if title is not rendered merchantable as provided in this paragraph 8, at the City's option, this contract shall be void and of no effect and each party hereto shall be released from all obligations hereunder; provided, however, the City may, at its option, waive objections to unsatisfactory title condition(s).

9. (a) TPL and the City agree that the City, its officers, employees, agents, contractors and licensees will be permitted, for a period commencing on February 26, 1996, and

ending on April 30, 1996, ("Inspection Period"), to have access to and make inspections of the Property for purposes including, but not limited to, conducting boundary surveys, environmental surveys, engineering studies, appraisals, water studies and soils surveys. The City shall engage an environmental consultant to update an existing environmental assessment ("Phase I") of the Property and conduct any investigation related thereto. TPL and the City shall each pay one-half of the cost associated with the Phase I.

(b) If the City, during the Inspection Period, determines that the physical condition of the Property is unsuitable for use by the City for reasons including, but not limited to, underground storage tanks, unstable soils or geology, or the existence of any toxic, hazardous and/or regulated substances and materials which are located on, under or about the Property, the City shall notify TPL of such defect(s) in writing no later than **April 30, 1996**. TPL shall then have fifteen (15) days after receipt of said notice to either reasonably correct said defect(s) or to terminate this Contract. If TPL is unable to correct said defects within said 15 day period but uses reasonable efforts to correct said defects to completion, the City may, at its option, extend the date of closing for a period not to exceed seven (7) days for the purposes of correcting said defect(s). If TPL is unable or unwilling to correct said defect(s) as provided in this paragraph 9(b), at the City's option, this contract shall be void and of no effect and neither party shall have any further rights under this Contract; provided, however, the City may, at its option, waive objection to unsatisfactory physical conditions and, upon mutual consent of the parties, the parties may adjust the purchase price and the terms of this Contract.

(c) If written notice of any unsatisfactory physical condition(s) is not delivered by the City to TPL as set forth above, the physical condition of the Property shall be deemed to be satisfactory; provided, however, that nothing in this Contract shall prejudice or be to the exclusion of any other rights or remedies of the City which the City determines is necessary or appropriate to enforce its rights under any law, code or regulation, either now in effect or hereinafter enacted, in the event any toxic, hazardous and/or regulated substances or materials are discovered, whether or not prior to the closing, on, under or about the Property. The provisions of this paragraph 9(c) shall survive the closing and transfer of title.

10. The date of closing shall be **May 30, 1996**, or by mutual agreement at an earlier date. The hour and place of closing shall be as designated by the Closing Agent. Changes in time, place and date may be made with the written consent of both the City and TPL.

11. Possession of the Property shall be delivered to the City at closing, subject to the tenancies and leasehold estates specifically identified and set forth in Exhibit "City/TPL-2".

12. All risk of loss shall remain with TPL until closing. If the Property is destroyed or damaged prior to closing, the City may terminate this Agreement or, upon mutual agreement between the parties, the parties may adjust the purchase price and terms of this Contract.

13. Time is of the essence hereof. If any date specified in this Agreement falls on a Saturday, Sunday or legal holiday, that date shall be considered to be the succeeding day on which public agencies and major banks are open for business.

(a) If the City elects to terminate this Agreement pursuant the terms hereof prior to 12:00 p.m. MDT on May 16, 1996, which termination shall be evidenced by facsimile transmitted to TPL no later than 12:00 p.m. MDT on May 16, 1996, then TPL shall have no further obligation to sell all or any portion of the Property to the City and the City shall have no further obligation to pay TPL all or any portion of the purchase price, and the parties shall have no further rights, duties or obligations under this Agreement. If the City does not elect to terminate this Agreement prior to 12:00 p.m. MDT on May 16, 1996, then thereafter, if the City is in default, TPL shall, in addition to any and all other remedies provided in this Agreement or by law or equity, have the right of specific performance against the City;

(b) If TPL defaults in the performance of its obligations under this Agreement, the City's sole remedy at law or in equity shall be to retain any payments or things of value received hereunder and to terminate this Agreement. Upon such termination, TPL shall have no further obligation to sell all or any remaining portion of the Property to the City and the City shall have no further obligation to pay to TPL all or any portion of the purchase price, and the parties shall have no further rights, duties or obligations under this Agreement, except TPL shall reimburse the City for one-half cost of the Phase I environmental assessment and for reasonable costs paid by the City for boundary surveys and appraisals;

(c) Anything to the contrary herein notwithstanding, in the event of any litigation arising out of this contract, the court may award to the prevailing party all reasonable costs and expenses, including attorneys' fees.

14. The parties acknowledge that the City intends to use a majority of the Property for public purposes, including, but not limited to, a public park to include a mix of passive open space, active recreational areas, a recreation center, trails for hiking and bicycling, public roadways and schools. This Agreement is expressly conditioned upon the Matchett's written satisfaction with TPL's assurances regarding the City's intent as provided in this paragraph 14.

15. The City agrees that, upon the development of the Property by the City as a public park, the City will name, designate and refer to said park as Matchett Park.

16. The City and TPL represent to each other that the sale and purchase of the Property hereby contemplated was brought about without the efforts of any brokers or agents and that neither party has dealt with any brokers or agents in connection with the sale and purchase of the Property. Each party agrees to defend, indemnify and hold the other harmless from any claim for real estate brokerage commissions or finder's fees asserted by any other party as a result of dealings claimed to have been conducted by the respective party.

17. This entire contract and the City's obligation to proceed under its terms is expressly conditioned upon:

(a) the consent and approval of the City Council of the City of Grand Junction as evidenced by the adoption of a resolution by the City Council on May 15, 1996;

(b) the City or the City's nominee obtaining funds sufficient to purchase the Property.

If the City or the City's nominee cannot identify funding for the purchase of the Property by 12:00 p.m. MDT on May 16, 1996, the City shall promptly notify TPL by facsimile transmitted by 12:00 p.m. MDT on May 16, 1996, and this Agreement shall be terminated and be of no further force and effect.

18. The effective date of this Agreement shall be the date upon which both parties hereto have fully executed the same.

19. This contract contains the entire agreement between the parties and cannot be changed or modified except by a written instrument subsequently executed by the parties hereto.

20. The TPL and the City have each obtained the advice of their own tax and legal counsel regarding this contract.

21. The parties shall execute such additional documents as may be reasonable and necessary to carry out the provisions of this Agreement.

22. This Agreement may be executed in counterparts, each of which shall be deemed an original and which together shall constitute one and the same agreement.

23. Each provision of this Agreement is severable from any and all other provisions of this Agreement. Should any provision(s) of this Agreement be for any reason unenforceable, the balance shall nonetheless be of full force and effect.

24. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.

25. This Agreement shall be conditioned upon the execution by the City and TPL of an assignment and assumption of the Agricultural Lease Agreement ("Lease") between TPL and the Matchetts, attached hereto as **Exhibit "City/TPL-2"** and incorporated herein by reference, upon the sale of the Property by TPL to the City. Under the assignment and assumption, TPL shall assign all of its rights under the Lease to the City and the City shall assume all the obligations of TPL and shall release TPL from any future obligations and liabilities arising under the Lease.

The City of Grand Junction, a Colorado
home rule municipality

Mark K. Achen, City Manager

Dated: _____

Purchaser's Address:

City of Grand Junction
Attn: City Property Agent
250 North 5th Street
Grand Junction, CO 81501
Tel: (970) 244-1565
Fax: (970) 244-1456

With a Copy to:

City of Grand Junction
Attn: City Attorney
250 North 5th Street
Grand Junction, CO 81501
Tel: (970) 244-1505
Fax: (970) 244-1456

The Trust for Public Land, a nonprofit
California public benefit corporation

JoAnne Dunec, Regional Counsel

Dated: _____

Seller's Address:

The Trust for Public Land
Attn: JoAnne Dunec
418 Montezuma Avenue
Santa Fe, NM 87501
Tel: (505) 988-5922
Fax: (505) 988-5967

With a Copy to:

The Trust for Public Land
Attn: Sandra Tassel
1410 Grant, Suite C306
Denver, CO 80203
Tel: (303) 837-1414
Fax: (303) 837-1414

EXHIBIT "CITY/TPL-1"

The following described real property situate in Section 6, Township 1 South, Range 1 East of the Ute Meridian, County of Mesa, State of Colorado, to wit:

Parcel No. 1: (Part of Current Mesa County Tax Schedule No. 2943-062-00-085)

The East 1/2 of the Northwest 1/4 (E1/2 NW1/4) of said Section 6 lying South of the Government Highline Canal.

Parcel No. 2: (Part of Current Mesa County Tax Schedule No. 2943-062-00-085)

The Northeast 1/4 of the Southwest 1/4 (NE1/4 SW1/4) of said Section 6, excepting therefrom a tract or parcel of land consisting of approximately 13.7 acres, said tract or parcel of land being more particularly described by metes & bounds as follows:

Commencing at the South 1/4 Corner of said Section 6 from whence the East 1/16 Corner on the South line of said Section 6 bears N 89°49'12" E; thence N 00°48'00" W a distance of 50.00 feet, more or less, to the northerly right-of-way line of Patterson Road (aka "F" Road); thence N 00°48'00" W a distance of 1271.58 feet; thence S 89°50'51" W a distance of 668.37 feet to the Point of Beginning of the exception parcel herein described;

thence S 89°50'51" W a distance of 641.08 feet;
thence N 00°25'35" W a distance of 930.90 feet;
thence N 89°50'51" E a distance of 641.08 feet;
thence S 00°25'35" E a distance of 930.90 feet to the Point of Beginning.

Parcel No. 3: (All of Current Mesa County Tax Schedule No. 2943-063-00-082)

The Northeast 1/4 of the Southeast 1/4 of the Southwest 1/4 (NE1/4 SE1/4 SW1/4) of said Section 6.

Parcel No. 4: (All of Current Mesa County Tax Schedule No. 2943-063-00-083)

Beginning at a point on the South line of said Section 6, said point being N 89°50'00" E a distance of 675.75 feet from the Southeast Corner of Lot 7 in said Section 6, and considering the South line of the SW1/4 of said Section 6 to bear N 89°50'00" E with all bearings contained herein being relative thereto;

thence N 00°49'01" W a distance of 1321.82 feet to the Northwest Corner of the E1/2 SE1/4 SW1/4 of said Section 6;

thence N 89°51'10" E a distance of 670.95 feet to the Northeast Corner of the E1/2 SE1/4 SW1/4 of said Section 6;

thence S 01°01'30" E a distance of 1321.66 feet to the Southeast Corner of the E1/2 SE1/4 SW1/4 of said Section 6;

thence S 89°50'00" W a distance of 675.75 feet to the Point of Beginning, also known as 2844 F Road,

excepting therefrom the South 50.00 feet for Road right-of-way for "F" Road, and also excepting therefrom the NE1/4 SE1/4 SW1/4 of said Section 6.

Parcel No. 5: (All of Current Mesa County Tax Schedule No. 2943-064-00-078)

The West 1/2 of the Northwest 1/4 Southeast 1/4 (W1/2 NW1/4 SE1/4) and the West 1/2 of the Southwest 1/4 Southeast 1/4 (W1/2 SW1/4 SE1/4) of said Section 6, excepting therefrom the following described tract or parcel of land:

Beginning at a point which is 78.10 feet East of the South 1/4 Corner of said Section 6;

thence N 78°30'00" E a distance of 100.00 feet;

thence N 31°03'00" E a distance of 138.10 feet;

thence S 27°41'00" E a distance of 120.00 feet;

thence South a distance of 200.00 feet to a point on the South line of said Section 6;

thence West along the South line of said Section 6 a distance of 225.0 feet to the Point of Beginning.

Parcel No. 6: (Part of Current Mesa County Tax Schedule No. 2943-061-00-084)

The East 1/2 of the Northwest 1/4 Southeast 1/4 (E1/2 NW1/4 SE1/4) and the West 1/2 of the Northeast 1/4 (W1/2 NE1/4) of said Section 6 lying South of the Government Highline Canal.

Exhibit "City/TPL-1"

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Exhibit "City/TPL-2"

AGRICULTURAL LEASE AGREEMENT

THIS AGRICULTURAL LEASE AGREEMENT ("Lease Agreement") is made and executed on this _____ day of _____, by and between THE TRUST FOR PUBLIC LAND, a nonprofit California public benefit corporation ("LESSOR"), and KENNETH M. MATCHETT, JR. and SARAH M. MATCHETT (jointly, "LESSEE").

NOW, THEREFORE, the parties agree as follows:

1. DEMISE, DESCRIPTION, AND USE OF PREMISES. LESSOR demises and lets unto LESSEE, solely for the purpose of agricultural, passive recreation, equestrian use and certain residential uses, and for no other purposes, certain real property located in the County of Mesa, State of Colorado, more particularly described in EXHIBIT "A" attached hereto (the "Premises") and incorporated herein by reference, together with all buildings and improvements in and on the Premises.

2. TERM. The term of this Lease Agreement shall be for a period of three (3) years from the date of execution hereof to _____, 199_ (the "Term") and thereafter, shall automatically renew from year to year so long as the Lease Agreement is not terminated by any party to the Lease Agreement pursuant to Section 3 of the Lease Agreement.

3. TERMINATION. Upon expiration of the Term, any party to the Lease Agreement shall have the right to terminate the Lease Agreement by delivering notice (the "Termination Notice") to the other party, provided LESSOR may terminate the Lease Agreement solely to develop or use the Premises (or portions thereof) for public purposes including, but not limited to, parks, open space, wildlife habitat, passive or active recreation, schools or other public facilities.

a. Twelve (12) months from receipt or delivery of the Termination Notice, as applicable, LESSEE and their subtenants shall vacate the Premises.

b. LESSOR may terminate the Lease Agreement in states, that is, terminate the Lease Agreement on portions of the Premises, provided LESSOR allows LESSEE to continue to use the remaining portion of the Premises.

4. CONSIDERATION. As consideration for this Lease Agreement, LESSEE shall:

a. maintain the Premises in good condition and repair;

b. irrigate the Premises in accordance with the historical irrigation practices of the Premises and pay any and all cost of water fees associated with the Premises;

c. maintain, and cooperate in the maintenance of, the agricultural status of the Premises for purposes of tax assessment; and

d. timely and adequately perform all of the covenants and agreements undertaken by LESSEE for the benefit of the LESSOR, as hereinafter described.

The failure or inability of LESSEE to perform the covenants and obligations undertaken by LESSEE as provided herein shall entitle LESSOR to terminate this Lease Agreement as hereinafter set forth.

5. LAND USE.

a. LESSEE shall use the Premises solely for the purpose of raising and selling crops; passive recreation; the care, feeding, exercise and husbandry of LESSEE's horses; and certain residential purposes described herein. All activities associated with these uses are expressly allowed subject to restrictions provided in this Lease Agreement and provided LESSEE conducts such activities in compliance with all applicable laws.

b. Provided the City of Grand Junction has taken an assignment of LESSOR's rights in, and an assumption of LESSOR's obligations under, the Lease Agreement, the public shall have daytime access to the Premises solely for the purpose of passive recreation, including, but not limited to, walking, bicycling and horseback riding.

c. Motorized use(s) (except as required for agricultural operations) and hunting shall be prohibited on the Premises.

d. No other use of the Premises shall be permitted without the express prior written consent of the parties hereto.

6. IRRIGATION OF THE PROPERTY. The irrigation of the Premises is an essential element of the consideration to be undertaken by LESSEE on behalf of LESSOR. Irrigation of the Premises shall be undertaken in accordance with the following provisions:

a. Water Rights. The water rights appurtenant to the Premises shall be applied to the Premises in accordance with their historical use. LESSOR makes no express or implied warranties regarding the quantity or quality of water delivered under such rights.

b. Irrigation Practices. LESSOR and LESSEE agree that it is an essential element of the consideration to be paid by LESSEE to LESSOR that the Premises be irrigated in accordance with the historical irrigation practices undertaken by LESSEE prior to the Term. LESSEE shall apply to the Premises such water as is necessary to irrigate crops during the historical irrigation season. LESSEE shall pay all costs associated with irrigation including, but not limited to, assessments, fees or taxes to water distribution entity.

c. Ditch maintenance. LESSEE shall be solely responsible for maintenance of all

diversion structures, headgates, ditches, flumes, and other structures necessary to fully irrigate the Premises in accordance with historical irrigation practices, and in a manner adequate to allow or permit the full application of the necessary water to the Premises to maximize crop production.

d. Forfeiture for Jeopardizing Water Rights. Any failure of the LESSEE to irrigate the lands as set forth above, or any of the following acts or omissions on the part of LESSEE with respect to the water rights appurtenant to the Premises, shall be grounds for forfeiture of the Lease Agreement by LESSOR;

i. failure or refusal to cultivate the Premises and/or make use of available water to other lands without the express permission of the LESSOR; or

ii. failure to maintain the irrigation structures in such a manner as to allow the full application of water rights to the Premises.

e. Water Rights Appurtenant to the Land. The claim, assertion, or establishment of any water right in connection with the use of the Premises by LESSEE shall attach to and become appurtenant to the Premises, and no claim thereto shall be made by the LESSEE, individually, except for the right of use thereof during the Term and extensions thereof of this Lease Agreement.

7. CONSTRUCTION, MAINTENANCE, AND REMOVAL OF FENCES. LESSEE shall not remove or relocate any fences that are on the Premises at the commencement of the Term without the prior express written consent of LESSOR. LESSEE shall, at LESSEE's sole cost and expense, build neat, stock-proof, and lawful fences and gates upon the Premises as LESSEE shall deem necessary for LESSEE's operation of the Premises. All fences, whether currently on the Premises or constructed thereon in the future, shall be kept in good repair to the satisfaction of LESSOR.

8. IMPROVEMENTS.

a. LESSEE shall not build structures or other improvements, except for fences, ditches, headgates, and other agricultural-type improvements on the Premises without the prior express written consent of LESSOR.

b. Upon such consent being given, LESSEE shall fully pay for all materials joined or affixed to the Premises pursuant to this Lease Agreement, and pay, in full, all persons or entities who perform labor on the Premises or provided services to LESSEE in connection with the Premises.

c. LESSEE shall not permit or suffer any mechanic's lien or material supplier's lien of any kind or nature to be enforced against the Premises for any work done or materials furnished on the Premises, at LESSEE's instance or request.

d. At the time of termination of the Lease Agreement, all such improvements or

structures shall be deemed a part of the real property, and therefore, property of the LESSOR, except with LESSOR's prior written consent, LESSEE may remove trade fixtures at LESSEE's sole cost and expense, provided LESSEE shall immediately repair any and all damage caused by such removal.

9. UTILITIES.

a. LESSEE shall pay all charges and statements for water, sewer, heat, electricity, refuse, fuel, telephone service, and power used by LESSEE or supplied to the Premises. All utilities shall be maintained in LESSEE's name.

10. REPAIR AND MAINTENANCE.

a. LESSEE shall keep the Premises or cause the Premises to be kept in good repair and safe condition and in compliance with all Environmental Laws and other applicable law, all without cost to the LESSOR; and shall obtain and maintain all governmental licenses and permits required for ownership and use of the Premises, or cause the same to be obtained and maintained.

b. LESSEE shall not permit uses of the Premises which shall cause waste or destruction of the Premises or which shall create a significant hazard to human health or the environment.

c. LESSEE shall at all times properly maintain the Premises and fixtures thereon and at LESSEE's sole cost and expense, shall make all repairs as and when needed to preserve the Premises and fixtures in good working order and condition. All damage or injury to the Premises caused by LESSEE, their agents, employees, family, guests or customers or from any other cause or action of any other nature and description due to the carelessness, omission, negligence or improper conduct of LESSEE, their agents, employees, family, guests or customers, shall be repaired, restored or replaced promptly by LESSEE at LESSEE's sole cost and expense. All such repairs, restoration and replacements shall be in quality and class equal to the original installation and shall be done in a good and workmanlike manner.

d. LESSOR may elect to do any emergency maintenance, repairs, restoration or replacement, at LESSEE's cost and expense, if LESSEE is unavailable and cannot be notified of such needed maintenance, repairs, restoration or replacement.

e. If the LESSEE fails to maintain the Premises or cause the Premises to be maintained in accordance with this section, LESSOR shall have the right, but not the obligation, to maintain the Premises, as applicable. If LESSOR incurs any expense in maintaining the Premises for which LESSEE is responsible or liable under this Lease Agreement, the LESSEE shall pay an amount to LESSOR sufficient to reimburse LESSOR.

f. LESSOR's failure to comply with the obligations of LESSEE contained in this

section shall constitute an event of default.

11. USE OF CHEMICALS ON THE PROPERTY. LESSEE shall apply no chemicals, including, but not limited to, fertilizers, herbicides, or pesticides, at any place upon the Premises without the prior express written consent of the LESSOR. While LESSOR's consent shall not be unreasonably withheld, LESSOR may deny consent for application of any persistent chemicals. Notwithstanding anything to the contrary in the foregoing, LESSEE shall be permitted to continue to apply such chemicals for agricultural use on the Property as LESSEE has used prior to the execution of this Lease Agreement without the prior consent of the LESSOR, provided any storage, use, application, transportation and disposal of such chemicals is conducted in compliance with all applicable laws, including but not limited to Environmental Laws (as hereinafter defined).

12. HAZARDOUS SUBSTANCES.

a. The term "Hazardous Substances", as used in this Lease Agreement, means any substance which is (i) defined as a hazardous substance, hazardous material, hazardous waste, pollutant or contaminant under any Environmental Law (as hereinafter defined); (ii) a petroleum hydrocarbon, including without limitation crude oil or any fraction thereof; (iii) hazardous, toxic, reproductive toxicant; (iv) regulated pursuant to any Environmental Law(s); or (v) any pesticide regulated under state or federal law.

b. The term "Environmental Law(s)" means each and every federal, state, and local law, statute, ordinance, regulation, rule, judicial or administrative order or decree, permit, license, approval, authorization or similar requirement of each and every federal, state and local governmental agency or other governmental authority, pertaining to the protection of human health and safety of the environment.

c. LESSEE'S Restrictions. LESSEE shall not cause or permit to occur by the LESSEE and/or its agents, invitees, licensees or employees:

i. any violation of Environmental Law of any federal, state, or local law, ordinance, or regulation now or hereafter enacted, related to environmental conditions on, under, or about the Premises or arising from LESSEE's use or occupancy of the Premises, including, but not limited to, air, soil and groundwater conditions; or

ii. the use, generation, release, manufacture, refining, production, processing, storage, or disposal of any Hazardous Substance on, under or about the Premises, or the transportation to or from the Premises of any Hazardous Substance.

d. Environmental Clean-Up. The following provisions shall be applicable to the LESSEE and/or its agents, invitees, licensees or employees:

i. LESSEE shall, at LESSEE's sole cost and expense, comply with all Environmental Laws and laws regulating the use, generation, storage, transportation, or disposal of Hazardous Substances.

ii. LESSEE shall, at LESSEE's sole cost and expense, make all submissions to, provide all information required by, and comply with all requirements of all governmental authorities (the "Authorities") under the Environmental Laws and other applicable laws.

iii. Should any Authority or any other third party demand that a clean-up plan be prepared and that a clean-up be undertaken because of any deposit, spill, discharge, or other release of Hazardous Substances that occurs during the Term and any extensions thereof of this Lease Agreement, at or from the Premises, or which arises at any time from LESSEE'S use or occupancy of the Premises, then LESSEE shall, at LESSEE's sole cost and expense, prepare and submit the required plans and all related bonds and other financial assurances, and LESSEE shall carry out all such clean-up plans in compliance with the Authorities and all Environmental Laws and other applicable laws.

iv. LESSEE shall promptly provide all information regarding the use, generation, storage, transportation, or disposal of Hazardous Substances requested by LESSOR. If LESSEE fails to fulfill any duty imposed under this section within a reasonable time, LESSOR may do so; and in such case, LESSEE shall cooperate with LESSOR in order to prepare all documents LESSOR deems necessary or appropriate to determine the applicability of the Environmental Laws to the Premises and LESSEE's use thereof, and for compliance therewith, and LESSEE shall execute all documents promptly upon LESSOR'S request. No such action by LESSOR and no attempt made by LESSOR to mitigate damages under any Environmental Law or other applicable law shall constitute a waiver of any of LESSEE's obligations under this section.

v. LESSEE'S obligations and liabilities under this section shall survive the termination of this Lease Agreement.

e. LESSEE's Indemnity.

i. LESSEE shall indemnify, defend, and hold harmless LESSOR and its respective officers, council members, board members, agents and employees, from all fines, suits, procedures, claims, and actions of every kind, and all costs associated therewith (including attorneys' and consultants' fees) arising out of or in any way connected with any deposit, spill, discharge, or other release of Hazardous Substances and violation of any Environmental Laws and other applicable laws by the LESSEE and/or its agents, invitees, licensees and employees that occurs during the Term and any extensions thereof of this Lease Agreement at or from the Premises, or from LESSEE's failure to provide all information, make all submissions, and take all steps required by all Authorities under the Environmental Laws and all other applicable laws.

ii. LESSEE'S obligations and liabilities under this section shall survive the

termination of this Lease Agreement.

13. GOVERNMENTAL REQUIREMENTS.

a. LESSEE shall comply with all Environmental Laws and all municipal and county ordinances and codes and state and federal statutes now in force or which may hereafter be in force governing the use of the Premises.

b. LESSEE shall maintain the Premises in compliance with all government standards set by any authority, including, but limited to, Environmental Laws.

c. In the event LESSEE fails to maintain or cause to be maintained the Premises in compliance with Environmental Laws and all other applicable laws, LESSOR may, but shall not be obligated to, after giving reasonable notice of the failure to LESSEE, take whatever action is necessary to bring the Premises into compliance. LESSEE shall reimburse LESSOR for all costs (including, but not limited to, consulting, engineering and attorneys fees and other legal costs), incurred by LESSOR in bringing the Premises into compliance with the Environmental Laws and all other applicable laws, provided such noncompliance was caused by the LESSEE and/or its agents, invitees, licensees or employees. LESSEE shall assume liability for and shall indemnify, save and hold harmless the LESSOR from any claim of a violation of any Environmental Law or other applicable law by LESSEE and/or its agents, invitees, licensees or employees. LESSEE's obligations and liabilities under this section shall survive the termination of this Lease Agreement.

14. GRAZING OF THE PROPERTY. All grazing of livestock upon the Premises shall be conducted in accordance with sound agricultural practices, so as not to overgraze the Premises.

15. ASSIGNMENT OR SUBLEASE.

a. This Lease Agreement is personal to the LESSEE, and LESSEE shall neither assign nor sublease any portion of the Premises during the Term and any extensions hereof, except as follows:

i. Thelma H. Matchett shall be permitted to reside on the Premises in the dwelling located at 2844 F Road as a subtenant of LESSEE for a period coincident with the Term and any extensions thereof.

ii. LESSEE shall be permitted to sublease a mobile home existing on the Premises as of December 19, 1995 and a rental house adjacent to the residence located at 2844 F Road for a period coincident with the Term and any extensions thereof.

iii. LESSEE may, by agreement with others, graze livestock of others upon the Premises for consideration, and may sell any crops raised on the Premises and keep the proceeds

thereof.

b. If the LESSOR is The Trust for Public Land, LESSOR may assign its interest in this Lease Agreement to the City of Grand Junction or to an organization or entity that is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code, as amended, and the applicable regulations promulgated thereunder.

16. LABOR AND MATERIALS. LESSEE shall be solely responsible for the acquisition and payment for all labor and materials necessary to operate the Premises for the purposes provided in this Lease Agreement.

17. TAXES. LESSEE shall be solely responsible for the payment of all ad valorem taxes assessed against any personal property belonging to LESSEE and used in the operation of the Premises for the purposes provided in the Lease Agreement. In addition, in the event any ad valorem taxes are assessed against the leasehold interest of the LESSEE, LESSEE shall be solely responsible for the payment of all ad valorem taxes assessed against LESSEE's leasehold interest, and shall not permit the same to be deemed in default.

18. INSURANCE.

a. LESSEE shall be solely responsible for acquisition and payment of casualty loss and extended coverage insurance on all LESSEE's personal property located upon the Premises, as well as such casualty insurance as LESSEE shall deem necessary to protect LESSEE's interest in the improvements, if any, located upon the Premises. LESSOR undertakes no responsibility for casualty or extended coverage insurance or loss to any improvements located upon the Premises.

b. In addition, LESSEE shall keep the Premises fully insured for fire and extended coverage and shall maintain public liability and property damage insurance. LESSEE shall name LESSOR as an additional insured, under LESSEE'S insurance policy(ies) in the event a claim is made resulting from any action taken by LESSEE pursuant to this Lease Agreement. Such insurance shall be in the amount of at least that required by the "Colorado Governmental Immunity Act", C.R.S. 24-10-101, et.Seq., or any successor legislation, as the same may be amended from time to time. Such insurance shall provide that LESSOR shall be given prior notice of at least ten (10) days prior to cancellation or termination of such insurance coverage. The policy(ies) shall contain a clause permitting LESSOR to pay any premiums not paid by the due date by LESSEE. Any sums paid by LESSOR under this section shall be reimbursed by LESSEE as an additional obligation under this Lease Agreement. LESSEE shall provide certificate(s) of insurance to LESSOR annually, or upon such other periodic term as is required by such insurance policy(ies). Additionally, LESSEE shall provide to LESSOR at the time this Lease Agreement is executed and at the commencement of each subsequent year of the Term and extensions thereof, a copy of the insurance policy(ies) referred to herein, together with a paid receipt(s).

c. In addition, as required by Colorado law, LESSEE shall maintain such workman's compensation insurance as may be necessary or required to cover LESSEE's employees hired for the purpose of operating the Premises pursuant to this Lease Agreement, and upon request, shall furnish or cause to be furnished to LESSOR certificates and policies evidencing such coverage throughout the Term and extensions thereof of this Lease Agreement.

d. Notwithstanding anything to the contrary in the foregoing, LESSEE shall not be required to maintain insurance solely for coverage of the acts of the public on the Property, provided however, that such exception from coverage shall not apply to the acts of the LESSEE's agents, invitees, licensees or employees.

19. ASSUMPTION OF RISK AND INDEMNITY. LESSEE shall assume the risk of all injuries, including death, resulting directly or indirectly, wholly or in part from the performance or omission of any work or obligations undertaken or required by this Lease Agreement, or the occupation and possession of the Premises, and to indemnify and hold harmless the LESSOR from and against any and all liability arising therefrom, including liability arising in whole or in part from negligence or breach of duty, statutory or otherwise, on the part of LESSOR, its agents, servants, and employees, and including all expense, legal or otherwise, incurred by LESSOR in the investigation and defense of any claim or suit. LESSEE'S obligations and liabilities under this section shall survive the termination of this Lease Agreement.

20. RIGHT OF ENTRY.

a. LESSOR shall have free access to the Premises, including any building or structure that may, at any time, be on the Premises at all reasonable times for the purpose of examining or inspecting the condition of such property in order to exercise any right or power reserved to LESSOR under this Lease Agreement.

b. Upon receipt of a Termination Notice from LESSOR, LESSEE shall permit the City of Grand Junction, its agents and employees, access to the Premises for:

i. inspections, soil investigations and other matters related to development of the Premises for public purposes; or

ii. if the LESSOR is The Trust for Public Land, for sale of the Premises.

21. QUIET ENJOYMENT. LESSOR covenants quiet enjoyment to LESSEE hereunder, provided LESSEE complies with the terms and conditions of this Lease Agreement.

22. NOTICE. All notices and communications required herein shall be in writing delivered to the parties hereto by facsimile transmission, personally by hand, courier service or Express Mail, or by first class mail, postage prepaid, at the following addresses:

LESSOR:

Sandra Tassel, Project Manager
The Trust for Public Land
1410 Grant, C306
Denver, CO 80203

Tel: (303) 837-1414
FAX: (303) 837-1131

Copies to:

JoAnne Dunec, Regional Counsel
The Trust for Public Land
418 Montezuma
Santa Fe, NM 87501

Tel: (505) 988-5922
FAX: (505) 988-5967

LESSEE:

Kenneth M. Matchett, Jr.
Sarah M. Matchett
651 29 Road
Grand Junction, CO 81506

Tel: (970) 243-4177
FAX: (970) 243-7262

Copies to:

Gregg K. Kamph, Esq.
Hoskin, Farina, Aldrich & Kampf
200 Grand Avenue, Suite 400
P.O. Box 40
Grand Junction, CO 81502

Tel: (970) 242-4903
FAX: (970) 241-3760

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

23. DEFAULT. If LESSEE fails to substantially carry out the provisions of this Lease Agreement within thirty (30) days after service by LESSOR of written notice to LESSEE of LESSEE'S failure to fulfill the obligations, or in the event the default identified in LESSOR's notice is one that cannot be rectified within such thirty-day period, within a reasonable time thereafter. LESSOR, at its sole option, may elect to terminate this Lease Agreement, and to enter upon the Premises and retake possession thereof.

24. SURRENDER OF PREMISES UPON TERMINATION. Upon termination of this Lease Agreement, whether by non-renewal by LESSEE, as a result of default hereunder by LESSEE, or termination by LESSOR in part or in entirety, LESSEE shall vacate the Premises, leaving them in the same condition they were in at the time of execution hereof, except for reasonable use and wear, acts of God, or damage by causes beyond the control of LESSEE, and return possession thereof to LESSOR. Unless otherwise agreed by the parties, upon termination of this Lease Agreement, LESSEE shall have the right to own and possess, at LESSEE'S election, all crops remaining unharvested at the time of termination. It shall be LESSEE's responsibility to remove all personal property, including harvested

crops, from the Premises within a reasonable time after termination of this Lease Agreement.

25. RESERVATION OF RIGHT TO GRANT EASEMENTS. LESSOR reserves the right to grant easements and rights-of-way across or upon the Premises for public highways, railroads, tramways, telephone and telegraph transmission lines, utility lines, irrigation canals, and similar purposes, provided, however, that such shall not unreasonably interfere with the use of the Premises for agricultural purposes. In the event of the grant of such easement, whether voluntarily by LESSOR or by acquisition pursuant to eminent domain, LESSEE shall have no right whatsoever to participate in any consideration paid for such easement or eminent domain award, all of which will be the property of LESSOR.

26. NO WAIVER. Failure of either party to this Lease Agreement to insist upon performance of any of the terms and conditions of this Lease Agreement, or the waiver of any breach of any of the terms and conditions of this Lease Agreement, shall not be construed as thereafter waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no such waiver or forbearance had occurred.

27. ATTORNEY'S FEES. In the event either LESSOR or LESSEE shall bring suit to compel performance of or recover for breach of any covenant, agreement, or condition contained in this Lease Agreement, the prevailing party shall be entitled to recover from the other party costs and reasonable attorney's fees.

28. GOVERNING LAW. This Lease Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Colorado.

29. EFFECT OF PARTIAL INVALIDITY. The invalidity of any portion of this Lease Agreement shall not and shall not be deemed to affect the validity of any other provision. In the event any provision of this Lease Agreement is held to be invalid, the remaining provisions shall be deemed to be in full force and effect, as if they had been executed by both parties subsequent to the expungement of the invalid provision.

30. ENTIRE AGREEMENT. This Lease Agreement shall constitute the entire agreement between the parties, and any prior understanding or representation of any kind preceding the date of this Lease Agreement shall not be binding upon either party, except to the extent incorporated in this Lease Agreement.

31. MODIFICATION OF AGREEMENT. Any modification of this Lease Agreement or additional obligation assumed by either party in connection with this Lease Agreement shall be binding only if placed in writing and signed by each party, or an authorized representative of each party.

32. COUNTERPARTS. This Lease Agreement may be executed in counterparts, each of which shall be deemed an original and which together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties have executed this Lease Agreement the day and year first above written.

LESSOR:

THE TRUST FOR PUBLIC LAND,
a nonprofit California public
benefit corporation

By: _____

Name: _____

Title: _____

Date: _____

LESSEE:

Kenneth M. Matchett, Jr.

Sarah M. Matchett