

RESOLUTION NO. 17-07

**A RESOLUTION AUTHORIZING A LEASE OF A PORTION OF THE
"LAS COLONIAS PROPERTY" TO DOUGLAS L. JONES,
D/B/A DOUG JONES SAWMILL**

Recitals

The City of Grand Junction is the owner of real property legally described as a parcel of land situated in the S $\frac{1}{2}$ S $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ and in Lot 3 of Section 23, and in the SW $\frac{1}{4}$ NW $\frac{1}{4}$, the SE $\frac{1}{4}$ NW $\frac{1}{4}$, Lot 3 and Lot 4 of Section 24, all in Township 1 South, Range 1 West of the Ute Meridian, County of Mesa, State of Colorado, commonly known as the Las Colonias Park Property ("Park Property").

The Park Property was once the location of a uranium milling site and subsequent to remediation of the site by the Department of Energy, was deeded to the City in 1997 by the State of Colorado for use as a park, recreational or public use purpose. The City plans to develop the property in the future as a community park but would like to accommodate Mr. Jones' request to lease a portion of the Park Property in exchange for property he conveyed to the City for the Riverside Project. Mr. Jones needs the space to continue operation of his sawmill business and replace the parcel he sold to the City.

The City Council deems it appropriate to lease a portion of the Las Colonias Property to Douglas L. Jones, d/b/a Doug Jones Sawmill, for a period of four years, commencing on May 1, 2007, and expiring on May 1, 2011, with an option to extend lease as contained within the attached lease agreement.

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

The City Manager, on behalf of the City and as the act of the City, is hereby authorized to execute and enter into the attached Lease Agreement with Douglas L. Jones, d/b/a Doug Jones Sawmill.

PASSED and ADOPTED this 7th day of February, 2007.

/s/ James J. Doody
President of the Council

ATTEST:

/s/ Stephanie Tuin
City Clerk

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Agreement") is entered into as of the 1st day of May, 2007, by and between the City of Grand Junction, a Colorado home rule municipality, hereinafter referred to as "the City", and Douglas L. Jones, doing business as Doug Jones Sawmill, hereinafter referred to as "Lessee", whose address for the purpose of this Agreement is 1441 Winters Avenue, Grand Junction, Colorado 81501-3862.

RECITALS

A. The City is the owner of that certain real property in the City of Grand Junction, County of Mesa, state of Colorado, described as:

a parcel of land situated in the S $\frac{1}{2}$ S $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ and in Lot 3 of Section 23, and in the SW $\frac{1}{4}$ NW $\frac{1}{4}$, the SE $\frac{1}{4}$ NW $\frac{1}{4}$, Lot 3 and Lot 4 of Section 24, all in Township 1 South, Range 1 West of the Ute Meridian, County of Mesa, State of Colorado, commonly known as the Las Colonias Park Property ("Park Property" or "Property").

The City acquired the Property, which was formerly a uranium mill tailing processing site, from the State of Colorado Department of Health and the Environment ("State") by quit claim deed ("Deed"), following remediation of the site, as recorded in Book 2320, Pages 884 and 885, Public Records, Mesa County, Colorado. Pursuant to 42 U.S.C §7914 (e)(1)(B), the State may donate such lands to another governmental entity for permanent use by the governmental entity solely for park, recreational or other public purposes. The City intends to use a majority of the Park Property for park purposes and intends to develop the Property as a community park; however, timing for development and use of the Property as a community park is uncertain.

B. Lessee desires to lease a portion of the Park Property and use the surface of the property for storage and other purposes associated with his sawmill business. Lessee is aware of the conditional uses of the Park Property and by signing this Agreement agrees and warrants that he shall use the property only as specified in this Agreement.

C. Lessee fully cooperated with City staff for the acquisition of a portion of his property for the Riverside Parkway project.

NOW, THEREFORE, In consideration of the payment of rent and the performance of the promises, covenants, conditions, restrictions, duties and obligations set forth herein, the parties agree as follows:

1. Grant and Acceptance of Lease. The City hereby leases a portion of the Park Property to Lessee, more particularly described in Exhibit A, which is attached

and incorporated by reference. Lessee hereby accepts and leases the Park Property from the City, for the term stated in paragraph 2 below.

2. Term.

2.1 The term of this Lease shall commence on May 1, 2007 and continue through May 1, 2011, at which time this Lease shall expire; however, the City may, in its sole discretion, grant to Lessee an option to extend this Lease, as described in paragraph 10 of this Agreement, upon faithful performance by Lessee of each and every covenant, duty, and responsibility and obligation of this Agreement.

3. Rental. Rent for the portion of Park Property specified in Exhibit A, for the term hereinabove specified, shall be one hundred dollars (\$100.00), which amount shall be due and payable, without demand by the City, on or before the first of each month, beginning May 1, 2007. In the event payment of rent is not received by the City on or before the first of each month, Lessee agrees to pay to the City a late charge of \$ 100.00, which amount shall be added to the amount of rent(s) due. In the event payment of rent and any late charge is not received by the City on or before the 15th of the following month, this Lease shall automatically terminate and neither party shall have any further rights, duties or obligations under this Agreement.

4. Reservations from Lease. Pursuant to the Deed, the State reserved unto itself any non-tributary ground water underlying this parcel, the right to develop tributary ground water and the right to surface access for ground water development.

This Lease is also subject to the reservation of: (a) any and all oil, gas, coal and other minerals and mineral rights of any person underlying and/or appurtenant to the Property; (b) all water and water rights, ditches and ditch rights appurtenant to and/or connected with the Property, including, but not limited to, any water and/or water rights which may have been previously used on or in connection with the Property, for whatever purpose; (c) existing rights-of-way for roads, railroads, telephone lines, transmission lines, utilities, ditches, conduits or pipelines on, over, or across said parcel; and the following terms and conditions specified in Section 5 below, so long as such actions will not interfere with Lessee's use and quiet enjoyment of the Property for the purposes set forth in this Agreement.

5. Use and Condition of the Property.

5.1 Lessee covenants and agrees that Lessee's use of the Property is strictly limited to the use of the surface of the property and that he will not use the ground water from the site for any purpose, construct wells or any means of exposing ground water to the surface. Lessee also agrees to make application and follow City development requirements, including but not limited to, prior written approval of construction plans, designs and specifications. Any habitable

structures constructed on the property shall employ a radon ventilation system or other radon mitigation measures, as required by the State of Colorado. Any use of the property shall not adversely impact ground water quality nor interfere with ground water remediation under State and federal regulations.

5.2 Lessee agrees that Lessee's use and occupancy of the Property shall be subject to all applicable laws, rules, rulings, codes, regulations and ordinances of any governmental authority, either now in effect or hereafter enacted, having jurisdiction over the Property and Lessee's use, occupancy and operations thereon. Lessee agrees that Lessee shall not use nor permit the Property to be used for any other purpose or in any other fashion or manner contrary to the provisions of this Lease or the laws, ordinances, codes or regulations of any governmental unit or agency exercising jurisdiction over the Property or any use thereon.

5.3 Lessee agrees to maintain, clean and repair all aspects of the Property at Lessee's sole cost and expense, including, but not limited to driveways, fences, and gates located upon the Property, and to not cause damage to the Property or to the real or personal property of any other party. Lessee agrees that the City shall not be obligated nor required to repair damages to any portion or aspect of the Property.

5.4 Lessee agrees to make a reasonable effort to keep the Property free from noxious weeds. Lessee further agrees that Lessee shall not commit nor permit waste, damage or injury to the Property.

5.5 Lessee has inspected the Property, the rights and privileges appurtenant thereto, and the rules, regulations, codes and ordinances governing Lessee's use, occupancy and operations thereon. Lessee agrees that the condition of the Property and such rights, privileges, rules, regulations, codes and ordinances are sufficient for the purposes of Lessee. The City makes no warranties, promises or representations, express or implied, that the Property is sufficient for the purposes of Lessee. If the Property is damaged due to fire, flood or other casualty, or if the Property or any aspect thereto is damaged or deteriorates to the extent where it is no longer functional for the purposes of Lessee, the City shall have no obligation to repair the Property nor to otherwise make the Property usable or occupiable; damages shall be at Lessee's own risk.

6. Nonliability of the City for Damage.

6.1 The City shall not be liable for liability or damage claims for injury to persons or property, including property of Lessee, from any cause relating to the occupancy and use of the Property by Lessee, including those arising out of damages or losses occurring on areas adjacent to the Property or easements used for the benefit of the Property during the term of this Lease or any extension thereof, nor for any injury or damage to any property of Lessee or any other party, from any cause. Lessee shall indemnify the City, its officers, employees and

agents, and hold the City, its officers, employees and agents, harmless from all liability, loss or other damage claims or obligations resulting from any injuries, including death, or losses of any nature.

6.2 The City shall not be liable to Lessee for any damages or any loss of profits or loss of opportunities claimed by Lessee or for interruption of Lessee's business or operations resulting from fire, the elements, casualty of any kind or the closure of any public highway providing access to and from the Property.

7. Hazardous Substances.

7.1 The term "Hazardous Substances", as used in this Agreement, shall mean any substance which is: defined as a hazardous substance, hazardous material, hazardous waste, pollutant or contaminant under any Environmental Law enacted by any federal, state and local governmental agency or other governmental authority; a petroleum hydrocarbon, including, but not limited to, crude oil or any fraction thereof; hazardous, toxic or reproductive toxicant; regulated pursuant to any law; any pesticide or herbicide regulated under state or federal law. The term "Environmental Law", as used in this Lease Agreement, shall mean 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, either now in force or hereafter enacted.

7.2 Lessee shall not cause or permit to occur by Lessee and/or Lessee's agents, guests, invitees, contractors, licensees or employees:

- a. any violation of any Environmental Law on, under or about the Property or arising from Lessee's use and occupancy of the Property, including, but not limited to, air, soil and groundwater conditions; or
- b. the use, generation, accidental or uncontrolled release, manufacture, refining, production, processing, storage or disposal of any Hazardous Substance on, under or about the Property, or the transportation to or from the Property of any Hazardous Substance in violation of any federal state or local law, ordinance or regulation either now in force or hereafter enacted.

8. Environmental Clean-Up.

8.1 The following provisions shall be applicable to Lessee and to Lessee's agents, guests, invitees, contractors, licensees and employees:

- a. 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;
- b. Lessee shall, at Lessee's sole cost and expense, make all submissions to provide all information required by and/or to comply with all requirements of all governmental authorities ("the Authorities") under Environmental Laws and other applicable laws.
- c. Should any Authority or the City demand that a clean-up plan be prepared and that a clean-up plan be undertaken because of any deposit, spill, discharge or other release of Hazardous Substances on, under or about the Property, Lessee shall, at Lessee's sole cost and expense, prepare and submit the required plan(s) and all related bonds and other financial assurances, and Lessee shall carry out all such clean-up plan(s) in compliance with the Authorities and all Environmental Laws and other applicable laws.
- d. Lessee shall promptly provide all information regarding the use, generation, storage, transportation or disposal of Hazardous Substances requested by any Authority. If Lessee fails to fulfill any duty imposed hereunder within a reasonable time, the City may do so on Lessee's behalf and, in such case, Lessee shall cooperate with the City in the preparation of all documents the City or any Authority deems necessary or appropriate to determine the applicability of Environmental Laws to the Property and Lessee's use thereof, and for compliance therewith, and Lessee shall execute all documents promptly upon the City's request. No such action by the City and no attempt made by the City to mitigate damages under any Environmental Law or other applicable law shall constitute a waiver of any of Lessee's obligations hereunder.
- e. Lessee's obligations and liabilities hereunder shall survive the expiration or termination of this Lease Agreement.

8.2 Lessee shall indemnify, defend and hold the City, its officers, employees and agents harmless from all fines, suits, procedures, claims and actions of every kind, and all costs associated therewith (including the costs and fees of attorneys, consultants and experts) arising out of or in any way connected with any deposit, spill, discharge or other release of Hazardous Substances and the violation of any Environmental Law and other applicable law by Lessee and/or Lessee's agents, guests, invitees, contractors, licensees and employees that occur during the term of this Lease or any extension thereof, or from Lessee's failure to provide all information, make all submissions, and take all actions required by all Authorities under the Environmental Laws and other applicable laws. Lessee's obligations and liabilities hereunder shall survive the expiration or termination of this Lease Agreement.

9. Default, Sublet, Termination, Assignment.

9.1 Should Lessee: (a) default in the performance of its agreements or obligations herein and any such default continue for a period of thirty (30) days after written notice thereof is given by the City to Lessee; or (b) abandon or vacate the Property; or (c) be declared bankrupt, insolvent, make an assignment for the benefit of creditors, or if a receiver is appointed; the City, at the City's option, may cancel and annul this Lease at once and enter and take possession of the Property immediately without any previous notice of intention to reenter, and such reentry shall not operate as a waiver or satisfaction in whole or in part of any claim or demand arising out of or connected with any breach or violation by Lessee of any covenant or agreement to be performed by Lessee. Upon reentry, the City may remove the property and personnel of Lessee and store Lessee's property in a warehouse or at a place selected by the City, at the expense of Lessee and without liability to the City. Any such reentry shall not work a forfeiture of nor shall it terminate the rent(s) to be paid or the covenants and agreements to be performed by Lessee for the full term of this Lease; and, upon such reentry, the City may thereafter lease or sublease the Property for such rent as the City may reasonably obtain, crediting Lessee with the rent so obtained after deducting the cost reasonably incurred in such reentry, leasing or subleasing, including the costs of necessary repairs, alterations and modifications to the Property. Nothing herein shall prejudice or be to the exclusion of any other rights or remedies which the City may have against Lessee, including, but not limited to, the right of the City to obtain injunctive relief based on the irreparable harm caused to the City's reversionary rights.

9.2 Except as otherwise provided for (automatic and immediate termination), if Lessee is in default in the performance of any term or condition of this Lease Agreement, the City may, at its option, terminate this Lease upon giving thirty (30) days written notice. If Lessee fails within any such thirty (30) day period to remedy each and every default specified in the City's notice, this Lease shall terminate. If Lessee remedies such default, Lessee shall not thereafter have the right of thirty (30) days (to remedy) with respect to a similar subsequent default, but rather, Lessee's rights shall, with respect to a subsequent similar default, terminate upon the giving of notice by the City.

9.3 Lessee shall not assign or sublease the Property, or any right or privilege connected therewith, or allow any other person, except officers, employees, agents and clientele of Lessee, to occupy the Property or any part thereof without first obtaining the written consent of the City, which consent must be approved and ratified by the City Council of the City. Any attempt to sublet, assign or transfer without the prior written consent of the City shall be void *ab initio*. In the event an assignment of this Lease or a sublease is authorized by the City, Lessee shall not be released from Lessee's obligations and duties under this Lease and this Lease shall remain in full force and effect. Any consent by the City shall not be

a consent to a subsequent assignment, sublease or occupation by any other party. Any unauthorized assignment, sublease or permission to occupy by Lessee shall be void and shall, at the option of the City, provide reasonable cause for the City to terminate this Lease. The interest of Lessee in this Lease is not to be assignable by operation of law without the formal approval and ratification by the City Council of the City.

9.4 Lessee shall not engage or allow any contractor, materialman or supplier to perform any work or supply any materials or other goods or services on any portion of the Property which could be the subject of a mechanic's lien.

10. Option to Extend Lease. If Lessee performs Lessee's duties and obligations pursuant to this Agreement to the satisfaction of the City and if the City chooses, at its sole option and discretion, to again lease the surface rights associated with the Property, at the expiration of the term as set forth in paragraph 2, the City hereby grants to Lessee an option to extend this Lease for four (4) additional five (5) year periods, commencing on January 1, 2012, and expiring on December , 2032 ("second term"), upon the same terms and conditions of this Agreement or upon other terms and conditions which may hereafter be negotiated between the parties. In order to exercise Lessee's option for a second term, Lessee shall, on or before December 31, 2011, give 30 days' written notice to the City of Lessee's desire and intention to lease the Property for a second term.

11. Fees or Commissions. The parties to this Lease Agreement warrant that no person or selling agency has been employed or retained to solicit or secure this Lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee. The City and Lessee agree 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 claiming to be entitled to brokerage commissions or finder's fees arising out of this Lease.

12. Notices. All notices to be given with respect to this Lease shall be in writing delivered either by United States mail or Express mail, postage prepaid, or by facsimile transmission, personally by hand or courier service, as follows:

To the City:
City of Grand Junction
Parks & Recreation Director
1340 Gunnison Avenue
Grand Junction, CO 81501

With Copy to:
City of Grand Junction
City Attorney
250 North 5th Street
Grand Junction, CO 81501

To Lessee:
Douglas L. Jones
1441 Winters Avenue
Grand Junction, CO 81501

All notices shall be deemed given: (a) if sent by mail, when deposited in the mail; (b) if delivered by hand or courier service, 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.

13. Not a Partnership.

13.1 The City, by entering into this Lease Agreement, does not part with its entire possession of the Property, but only so far as it is necessary to enable Lessee to use the Property and carry out the terms and provisions of this Lease. It is expressly agreed between the parties that this Agreement is one of lease and not of partnership and that the City shall not be or become responsible for any debts contracted or incurred by Lessee. Lessee shall save, indemnify and hold the City, its officers, employees and agents harmless against all liability and 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 Lessee or sustained in connection with Lessee's performance of the terms and conditions of this Agreement or the conditions created thereby, or based upon any violation of any statute, ordinance, code or regulation, either now in force or hereinafter enacted, and the defense of any such claims or actions, including the costs and fees of attorneys, consultants and experts. Lessee shall also save, indemnify and hold the City, its officers, employees and agents harmless from and against all liability and loss in connection with, and shall assume full responsibility for the payment of, all federal, state and local taxes, fees or contributions imposed or required under unemployment insurance, social security and income tax laws with respect to employees engaged by Lessee.

13.2 The City hereby reserves the right to at all times have its officers, employees and agents enter into and upon the demised premises and every part thereof and to do such acts and things as may be deemed necessary for protection of the City's interests therein.

14. Enforcement, Partial Invalidity, Governing Law.

14.1 If the City uses the services of a city attorney, or engages another attorney or attorneys to enforce its rights hereunder, or to terminate this Agreement, or to defend a claim by Lessee or any person claiming through Lessee, and/or to remove Lessee or Lessee's personal property from the Property, Lessee agrees to pay the reasonable attorney's fees of the City in such regard, plus the costs or fees of any experts, incurred in such action.

14.2 The invalidity of any portion of this Lease Agreement shall not affect the validity of any other provision contained herein. In the event any provision of this 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 provisions.

14.3 This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. Venue for any action to enforce any covenant or agreement contained in this Agreement shall be in Mesa County, Colorado.

15. Surrender, Holding Over. Lessee shall, upon the expiration or termination of this Lease, surrender the Property to the City in good order, condition and state of repair, reasonable wear and use excepted. In the event Lessee fails, for whatever reason, to vacate and surrender the Property upon the expiration or termination of this Lease and the parties have not reached an agreement which would allow Lessee to continue to occupy any portion of the Property, Lessee agrees that Lessee shall pay to the City the sum of \$25.00 per day for each and every day thereafter until Lessee has effectively vacated and surrendered the Property. The parties agree that it would be difficult to establish the actual damages to the City in the event Lessee fails to vacate and surrender the Property upon the expiration or termination of this Lease, and that said \$25.00 daily fee is an appropriate liquidated damages amount.

16. Total Agreement; Applicable to Successors. This Lease contains the entire agreement between the parties and, except for automatic expiration or termination, cannot be changed or modified except by a written instrument subsequently executed by the parties hereto. This Lease and the terms and conditions hereof apply to and are binding upon the successors and authorized assigns of both parties.

The parties hereto have each executed and entered into this Lease Agreement as of the day and year first above written.

Attest:

The City of Grand Junction,
a Colorado home rule municipality

/s/: Stephanie Tuin
City Clerk

/s/: David Varley
David Varley, City Manager

Lessee:

/s/: Douglas L. Jones
Douglas L. Jones

