

## RESOLUTION NO. 22-10

### A RESOLUTION AUTHORIZING A FIVE-YEAR LEASE OF THE CITY'S CLICK RANCH PROPERTY IN THE KANNAH CREEK AREA TO DENNIS AND LORA WYNN

WHEREAS, the City of Grand Junction is the owner of the following described real property in the County of Mesa, State of Colorado, to wit:

#### 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.

The City Council deems it appropriate to lease the Click Ranch Property to Dennis and Lora Wynn for a period of one (5) year period, commencing on May 1, 2010, and expiring on April 30, 2015.

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

That the City Manager be authorized, on behalf of the City and as the act of the City, to execute the attached Click Ranch Property lease with Mr. and Mrs. Wynn for a term of five years, commencing on May 1, 2010 and expiring on April 30, 2015; provided, however, that in the event Mr. and Mrs. Wynn performs all of the required duties and obligations pursuant to the attached Agreement to the satisfaction of the City and if the City chooses, at its sole option and discretion, to again lease the dry grazing rights associated with the Property at the expiration of said five year term, the City may extend the term of the lease with Mr. and Mrs. Wynn for one (1) additional five year period, subject to each and every term contained in the attached Click Ranch Property lease.

PASSED and ADOPTED this 19<sup>th</sup> day of April, 2010.

Attest:

/s/ Bruce Hill  
President of the Council

/s/ Stephanie Tuin  
City Clerk

## LEASE AGREEMENT

THIS LEASE AGREEMENT ("Agreement") is made and entered into to be effective as of the 1<sup>st</sup> day of May, 2010, by and between The City of Grand Junction, a Colorado home rule municipality, hereinafter referred to as "the City", and Dennis and Lora Wynn, hereinafter referred to as "Lessee".

### Recitals

A. The City is the owner of certain real property commonly known as the Click Ranch, located on Purdy Mesa in the County of Mesa, State of Colorado, as more particularly described in **Exhibit "A"** attached hereto and incorporated herein by reference, hereinafter referred to as "the Property". The City acquired the Property for its water and water rights and ditches and ditch rights ("water rights"). The City owns the Property for the primary purposes of protecting the City's water rights, the decrees for which allow multiple purposes to include municipal, agricultural and livestock watering. During most irrigating seasons, portions of the City's water rights are not necessary for municipal use. The City therefore retains ownership of the Property so that water not necessary for municipal purposes may be beneficially used and applied upon the Property for agricultural and livestock watering purposes. It is the express intent and desire of the City that the Property remain as productive as is practicable for farming and ranching purposes so that the City's water rights may be used to their full and maximum extent, that all aspects of the Property may be maintained to the highest practicable standard, and that expenses be kept to a minimum without waste.

B. Lessee has submitted to the City a proposal wherein Lessee has expressed Lessee's intent and desire to lease, use, occupy, maintain and improve the Property and to judiciously use and apply the City's water rights thereon in accordance with the desires and express intent of the City, all at no cost or expense to the City.

C. The City has agreed to lease the Property to Lessee based on Lessee's verbal and written representations that Lessee possesses the knowledge, experience, equipment, personnel and financial resources to maintain the Property to the highest practicable standard and to use and apply the City's water rights upon the Property to their full and maximum extent, all in accordance with the desires and express intent of City.

NOW, THEREFORE, for and in consideration of the recitals above and the mutual promises, terms, covenants, conditions, duties and obligations to be kept by the City and Lessee as more fully hereafter set forth, the parties hereto agree as follows:

1. Grant and Acceptance of Lease. The City hereby leases the Property to Lessee, and Lessee hereby accepts and leases the Property from the City, for the term set forth in paragraph 2 below and for the specific purposes and duties of maintaining all aspects of the Property and the water and water rights, ditches and ditch rights appurtenant thereto, all in accordance with the provisions of this Agreement.

2. Term. The basic term of this Lease shall commence on May 1, 2010, and, subject to the review of the Lessee's annual property management report, shall continue through May 1, 2015, at which time this Lease shall expire.

For the purposes of this Ranch Lease, a "lease year" shall mean the period commencing on May 1 of each year during the term of this Lease and terminating on April 30 of the succeeding year.

If Lessee performs as required pursuant to this agreement, and if the City chooses, at its sole option and discretion, to again lease the Property at the expiration of the basic term, the City hereby gives and grants to Lessee an option to extend this Lease for one (1) additional five (5) year period ("second term"). If this Lease is so extended for additional terms, the lease terms shall be 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 an additional term, Lessee shall give written notice to the City of Lessee's desire and intention to exercise Lessee's option to extend not less than 365 days prior to the expiration of the basic term.

3. Reservations from Lease. The City retains and reserves from this Lease and unto itself:

a. all oil, gas coal and other minerals and mineral rights underlying and/or appurtenant to the Property;

b. all hunting rights concerning the Property, which includes antiquities, artifacts and game;

c. all rights to grant, sell, bargain, convey and dedicate any ownership interest(s) in and to the Property, or any division thereof, to any other party, including the conveyance of easements, so long as such action will not interfere with Lessee's use and quiet enjoyment of the Property for the purposes set forth in this Agreement;

d. the proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, in whole or in part, even if such taking is made by and/or for the purposes of the City, or for the conveyance in lieu of condemnation. Lessee hereby assigns and transfers to the City any claim Lessee may have to compensation, including claims for damages, as a result of any condemnation; and

e. all water and water rights, ditches and ditch rights which are appurtenant to and/or connected with the Property, except those which the City makes available and authorizes Lessee to use and apply to the Property pursuant to this Lease.

4. Rent.

4.1 Lessees agree to pay City, as rental for the Property, improvements and appurtenances, the sum of \$33,129. Payable as follows:

Lease Year	Total Due	May 1st Payment	December 1st Payment
2010	\$ 6,240	\$ 3,120	\$ 3,120
2011	\$ 6,427	\$ 3,214	\$ 3,213
2012	\$ 6,620	\$ 3,310	\$ 3,310
2013	\$ 6,819	\$ 3,410	\$ 3,409
2014	\$ 7,023	\$ 3,512	\$ 3,511

4.2 In the event Lessee fails to pay the specified rental payments on or before specified due dates, this Agreement and the lease of the Property to Lessee shall automatically terminate and neither party shall have any further rights, duties or obligations under this Agreement.

4.3 Lessees agree to timely pay any and all real estate taxes and improvement assessments which may be levied against Property, and any taxes or assessments levied against the crops, livestock and other personal property of the Lessees or any other leasehold interest acquired by Lessees under this Lease.

4.3 All rental payments paid by Lessee to the City shall be delivered either by mail or by personal delivery to:

City of Grand Junction Finance Department  
Accounts Receivable  
250 North 5<sup>th</sup> Street  
Grand Junction, CO 81501-2668

All rental payments deposited by Lessee shall be clearly marked "Click Ranch Lease Payment".

5. Specific Duties and Obligations of Lessee. As consideration for the lease of the Property, Lessee shall, at no cost or expense to the City:

5.1 Thoroughly plow, irrigate, cultivate, fertilize and farm all farmable lands upon the Property in a responsible and prudent husband-like manner; to plant, grow and harvest upon and from the Property crops of hay, grass and/or alfalfa and no other plants or crops without the prior written consent of the City.

5.2 Use the Property for farming, ranching and livestock grazing purposes only and for no other purpose whatsoever; Lessee agrees that Lessee will not use the Property nor allow any other person to use the Property for any purpose prohibited by this Agreement or by the applicable laws of the United States of America, the State of Colorado, the County of Mesa or any other governmental authority or any jurisdiction having authority over uses and activities conducted upon the Property.

5.3 Maintain, clean out and keep in good order and repair, free from litter and debris and, as is practicable, free from weeds, all aspects of the Property, including, but

not limited to, roads, perimeter boundaries, ditches, diversion structures, flumes, head-gates and other structures necessary to fully irrigate the Property and to not allow any water running through, used and applied upon the Property to overrun any furrows or otherwise cause damage to the Property or the property of any other person or entity.

5.4 Waive and forego any claim, cause of action or demand Lessee may have against the City, its officers, employees and agents, for injury to or destruction of any property of Lessee or any other party that may be lost, injured, destroyed or devalued as a result of the act, or failure to act, of Lessee or any third person; and to indemnify and hold the City and the City's 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, occupancy, maintenance and improvement of the Property.

5.5 Not violate nor permit to be violated any code, rule, regulation or order pertaining to the use, application, transportation and storage of any hazardous, toxic or regulated substance or material, including, but not limited to, herbicides, pesticides and petroleum products. Lessee agrees that any spill, excessive accumulation or violation of any code, rule, regulation or order pertaining to the use, application, transportation and storage of any such material or substance shall be reported immediately to the City. Lessee further agrees that all costs and responsibilities for cleaning, removing and abating any violation pursuant to this paragraph shall be borne solely by Lessee.

5.6 At all times maintain all fences and gates presently located upon the Property in good working order and repair in a manner sufficient to securely confine all livestock. Lessee may install locks on all gates, provided, however, that Lessee shall provide the City with lock combinations and/or copies of keys to all locks installed by Lessee.

5.7 Purchase and at all times during the term of this lease maintain in effect suitable comprehensive general liability and hazard insurance which will protect the City and the City's officer, employees, agents and assets 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, including Lessee. Such insurance policy(ies) 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, agents and assets" as additional insureds. If a policy approved by the City's Risk Manager is not at all times in full force and effect during the term of this Lease, this Lease shall automatically terminate.

## 6. Irrigation of the Property.

6.1 The irrigation of the Property is an essential duty and obligation to be undertaken by Lessee on behalf of the City. The City intends to permit Lessee to use water and water rights owned by the City, without additional remuneration by Lessee, for purposes specifically limited to irrigating the Property and as stock water for livestock kept and maintained on the Property. Water and water rights the City may make

available to Lessee, if the City in its sole and absolute discretion determines that such water is to be made available to Lessee, may include up to:

- a. approximately 300 acre feet of water from the Highline Ditch. This water is usually available from May 1 through June 28 of each year. Available flow rate ranges between 0.1 cubic feet per second (“cfs”) and 5.0 cfs, and/or
- b. approximately 100 acre feet of reservoir water from the City’s Reservoirs. This water is usually available from July 1 through October 15 of each year.

6.2 The City may provide written or verbal notice to Lessee at any time during term of this Lease stating the amount(s) of water, if any, expressed in terms of cfs or acre feet, which may be available for Lessee’s use and application upon the Property. Notwithstanding the foregoing, the City retains the right, without any liability to Lessee, to possess, control, sell, exchange, divert and convert water and water rights owned by the City for any purpose which the City deems, in its sole and absolute discretion, to be appropriate, even if such action by the City is adverse to the needs and uses of Lessee. In the event the City exercises its rights as hereinbefore described, the parties may renegotiate the rental paid or to be paid by Lessee; no other terms or conditions of this Lease may be renegotiated.

6.3 Lessee shall utilize all water made available pursuant to this Agreement in a prudent and careful manner to obtain the most efficient use of said water for purposes strictly limited to irrigating the Property and as stock water for livestock kept and maintained on the Property. Lessee shall comply with all rules, regulations and valid administrative orders applicable to any and all water and water rights which may be provided to Lessee under this Agreement.

6.4 Lessee shall represent the City’s water and water rights interests by actively participating in meetings with all appropriate ditch and reservoir companies. All statements and representations of Lessee under the capacity of representing the City shall serve to promote the interests of the City with the utmost good faith, loyalty and fidelity.

6.5 Lessee shall be solely responsible for diverting and transporting any water made available to Lessee from its point of release to its point of use. Lessee shall exercise proper diligence to ensure that any and all water made available to Lessee is properly diverted and utilized to its fullest extent on and solely for the benefit of the Property and Lessee’s operations thereon. Lessee shall be responsible for ensuring that any and all water made available to Lessee is transported through clean irrigation ditches of adequate size and capacity from the point of release to the point of use.

6.6 Lessee shall document the dates of irrigation, the amount(s) of water diverted and applied to the Property and the number of acres on which the water is applied with the understanding that such documentation will be used by the City to provide for the development of historic consumptive use records. Lessee shall be

responsible for measuring and recording water flow information at all weirs, flumes and other measuring devices, either now in place or installed in the future, and the amount of water being delivered to and applied upon the Property. Lessee shall further be responsible for measuring, estimating and documenting the return flow from irrigated fields.

6.7 Any failure by Lessee to irrigate the Property 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 Property, shall be grounds for immediate termination of this Lease:

- a. failure or refusal to make appropriate use of available water to the Property without the prior written consent of the City; or
- b. failure to maintain and preserve the irrigation structures, ditches, pipes and other irrigation facilities and appurtenances on the Property in such a manner as to allow the full application of available water to the Property.

7. Cultivation. Lessee agrees that Lessee shall, at no cost or expense to the City, provide the labor, capital, machinery, seed and fertilizer necessary to improve crop production on the Property through the rehabilitation of existing fields and the cultivation of additional fields to bring the Property up to its historic level of cultivation, or better. Lessee's cultivation practices shall be carried out in a good and husband like manner in accordance with the best methods of cultivation practiced in Mesa County, Colorado. Lessee further agrees to cooperate, comply with and participate in all farm crop programs promulgated by the United States Department of Agriculture, the National Resource Conservation Service and the State of Colorado Farm Bureau. Lessee shall be entitled to and responsible for all proceeds, debts and losses incurred and associated with crops grown on the Property.

#### 8. Livestock Management.

8.1 Lessee has represented to the City that Lessee intends to raise and care for Lessee's cattle ("Livestock") on the Property. Prior to letting livestock upon the Property, Lessee shall, at Lessee's sole cost and expense, implement whatever measures are necessary to ensure that all fences around the perimeter of the fields to be grazed are sufficient to confine Lessee's Livestock to the Property. The use of electric fences is permitted, provided that (a) electric power shall be provided from batteries and/or photovoltaic systems and not public electric services, and (b) Lessee installs conspicuous signs sufficient to warn the general public against touching such electric fences.

8.2 Lessee agrees that Lessee's operations and conduct relating to raising and caring for Lessee's Livestock shall be carried out in the highest standard of care and in a manner that will not over graze the Property or otherwise cause deterioration or destruction to the Property. Lessee further agrees to comply with the regulations of the United States Department of Agriculture, Livestock laws and regulations of the State of Colorado, and any and all federal, state and county laws, ordinances and regulations which are applicable to the area in which the Property is located.



8.3 Lessee represents that Lessee's Livestock carry the \_\_\_\_\_ brand ("Lessee's Brand"). Lessee agrees that livestock not carrying Lessee's Brand shall not be permitted on the Property without the prior written approval of the City.

8.4 Lessee agrees that Lessee shall indemnify the City, its officers, employees, agents and assets and hold the City, its officers, employees, agents and assets harmless from liability in the event of loss of life, personal injury or property damage suffered by any person or persons which may be caused by Lessee's Livestock escaping the Property.

9. Use of Chemicals on the Property. Lessee shall not apply any chemicals on the Property, including, but not limited to, fertilizers, herbicides and pesticides, without the prior written consent of the City. Lessee shall at all times keep the City advised of chemicals used and/or stored on the Property, and shall further comply with all applicable rules, laws, regulations and orders, either now in force or hereinafter enacted, regulating the storage, use, application, transportation and disposal of any such chemicals.

10. Hazardous Substances.

10.1 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.

10.2 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.

11. Environmental Clean-Up.

11.1 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.

11.2 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.

12. Condition of the Property.

12.1 Lessee affirms that Lessee has inspected the Property and has received the Property Premises in reasonably good order and condition. Lessee further affirms that the condition of the Property is sufficient for the purposes of Lessee. The City makes no warranties nor promises, either express or implied, that the Property is sufficient for the purposes of Lessee.

12.2 In the event the Property is damaged due fire, flood or any other act of nature or casualty, or if the canals, ditches or ditch laterals which provide irrigation water to the Property are damaged to the extent where they are 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 sole and absolute risk.

13. Default, Sublet, Termination.

13.1 Should Lessee: (a) default in the performance of Lessee's agreements, duties or obligations set forth under this Agreement 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) suffer death, or (d) be declared bankrupt, insolvent, make an assignment for the benefit of creditors, or if a receiver is appointed, the City may, at the City's option, 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), fees, assessments 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 of the City to obtain injunctive relief based on the irreparable harm caused to the City's reversionary rights.

13.2 Except as otherwise provided for (automatic and immediate termination), if Lessee is in default in the performance of any term, condition, duty or obligation of this 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 subsequent similar default, but rather, Lessee's rights shall, with respect to a subsequent similar default terminate upon the giving of notice by the City.

13.3 Lessee shall not assign or sublease this Lease or any right or privilege connected therewith, or allow any other person, except as provided herein and except the employees of Lessee, to occupy the Property or any part thereof. Any attempted assignment, sublease or permission to occupy the Property conveyed 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 of the City.

#### 14. Miscellaneous Provisions.

14.1 The City, by entering into this Lease Agreement, does not part with its entire possession of the Property, but only so far as is necessary to enable Lessee to use, occupy and irrigate the Property and to carry out the duties, obligations, terms and provisions of this Agreement. The City reserves the right to at reasonable times have its officers, employees and agents enter into and upon the Property and every part thereof and to do such acts and things as may be deemed necessary for the protection of the City's interests therein.

14.2 It is expressly agreed that this Lease is one of lease and not of partnership. The City shall not be or become responsible for lost profits, lost opportunities or any debts contracted by Lessee. Lessee shall keep the Property free from any and all liens whatsoever, including, but not limited to, liens arising out of any work performed, materials furnished or obligations incurred by Lessee. Lessee shall save, indemnify and hold the City and the City's officers, employees, agents and assets 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 duties, obligations, terms and conditions of this Agreement or the conditions created thereby, or based upon any violation of any statute, ordinance, code, rule 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 and the City's officers, employees, agents and assets 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.

14.3 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. Lessee agrees to defend, indemnify and hold the City 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 or in connection with this Lease.

14.4 Lessee shall not pledge or attempt to pledge or grant or attempt to grant as collateral or security any of Lessee's interest in any portion of the Property.

14.5 Unless otherwise agreed to by the parties in writing, all improvements placed upon, under or about the Property or attached to the Property by Lessee shall be and become part of the Property and shall be the sole and separate property of the City upon the expiration or termination of this Lease.

15. Surrender, Holding Over. Lessee shall, upon the expiration or termination of this Lease, peaceably surrender the Property to City in good order, condition and state of repair. In the event Lessee fails, for whatever reason, to vacate and peaceably surrender the Property upon the expiration or termination of this Lease, Lessee agrees that Lessee shall pay to the City the sum of \$100.00 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 \$100.00 daily fee is an appropriate liquidated damages amount.

16. Enforcement, Partial Invalidity, Governing Law.

16.1 In the event the City uses its Attorney or engages an attorney to enforce the City's rights hereunder, Lessee agrees to pay any and all attorney fees, plus costs, including the costs of any experts.

16.2 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 provision(s).

16.3 This Lease 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 herein shall be in Mesa County, Colorado.

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

To the City:

City of Grand Junction  
Attn: Water Services Manager  
250 North 5<sup>th</sup> Street  
Grand Junction, CO 81501-2668  
Fax: (970) 256-4022

With Copy to:

City of Grand Junction  
Attn: City Attorney  
250 North 5<sup>th</sup> Street  
Grand Junction, CO 81501-2668  
Fax: (970) 244-1456

To Lessee:

Mr. Dennis and Lora Wynn  
5881 Purdy Mesa Road  
Whitewater, CO 81527  
Fax: (970) 254-2994

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; (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.

19. Legal Counsel / Ambiguities. The City and Lessee have each obtained the advice of its/their own legal and tax counsel regarding this Agreement or has knowingly declined to do so. Therefore, the parties agree that the rule of construing ambiguities against the drafter shall have no application to this Agreement.

20. Total Agreement; Applicable to Successors. This Lease Agreement contains the entire agreement between the parties. All representations made by any officer, agent or employee of either party, unless included herein, are null and void and of no effect. Except for automatic expiration or termination, this Agreement may not be changed, altered or modified except by a written instrument subsequently executed by both parties. This Lease Agreement and the duties, obligations, terms and conditions hereof apply to and shall be binding upon the respective heirs, 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

Stephanie Tun  
City Clerk

Jim Madrid  
City Manager

Lessee:

Lora Wynn  
Lora Wynn

Dennis Wynn  
Dennis Wynn

## EXHIBIT "A"

### LEGAL DESCRIPTION OF THE CLICK RANCH LEASE

#### 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.

Click Ranch Lease

