

DYR03EXC

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: DEED

PURPOSE: SPECIAL WARRANTY DEED WITH NON-EXCLUSIVE EASEMENT FOR MOTORIZED AND NON-MOTORIZED INGRESS AND EGRESS PURPOSES - PROPERTY RECEIVED IN EXCHANGE OF REAL ESTATE WITH DYER LLC - REFER TO RESOLUTIONS 39 02 & 126 - 02

NAME OF AGENCY OR CONTRACTOR: DYER, LLC

STREET ADDRESS/PARCEL NAME/SUBDIVISION (LOT AND BLOCK):

PARCEL #: (VICINITY OF 2969-072-13) DESERT VISTA - FILING NO. 3 & NO. 4, DESERT VISTA ESTATES - OUTLOT "B"

CITY DEPARTMENT: PUBLIC WORKS

YEAR: 2003

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

908054

WHEN RECORDED RETURN TO:  
CITY OF GRAND JUNCTION  
REAL ESTATE DIVISION  
250 NORTH 5<sup>TH</sup> STREET  
GRAND JUNCTION, CO 81501

2 PAGE DOCUMENT

Book 3271 PAGE 572  
2102938 02/11/03 0024PM  
JANICE WARD CLERK REC MESA COUNTY CO  
REC FEE \$10.00 SURCHG \$1.00  
DOCUMENTARY FEE \$NO FEE

**SPECIAL WARRANTY DEED**

DYER, LLC, a Colorado limited liability company, Grantor, for and in consideration of the sum of Ten and 00/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, has sold, granted and conveyed, and by these presents does hereby sell, grant and convey to the City of Grand Junction, a Colorado home rule municipality, whose address is 250 North 5th Street, Grand Junction, Colorado 81501, Grantee, its successors and assigns forever, the following real property in the County of Mesa, State of Colorado, to wit:

Outlot "B" of Desert Vista Filing No. 3 & 4,  
situate in and being a part of Section 7, Township 2 South, Range 2 East of the Ute  
Meridian and also situate in and being a part of Section 12, Township 2 South, Range 1  
East of the Ute Meridian,  
as recorded in Plat Book 19 at Pages 235 and 236 in the office of the Mesa  
County Clerk and Recorder,

All in the County of Mesa, State of Colorado

also known by Street and Address as: Vacant Land near Whitewater, Colorado

TOGETHER WITH a non-exclusive easement for motorized and non-motorized ingress  
and egress purposes to provide Grantee and Grantees' successors and assigns legal public access to  
and from the above described real property, said easement being located on, along, over, through  
and across the premises described in **Exhibit "A"** attached hereto and incorporated herein by  
reference.

TO HAVE AND TO HOLD the premises aforesaid, with all and singular the rights, privileges,  
appurtenances and immunities thereunto belonging or in anywise appertaining, unto the said Grantee and  
unto its successors and assigns forever, the said Grantor hereby covenanting that it will warrant and  
defend the title to said premises unto the said Grantee and unto its successors and assigns forever, against  
the lawful claims and demands of all persons claiming by, through or under Grantor.

Executed and delivered this 22<sup>nd</sup> day of January, 2003.

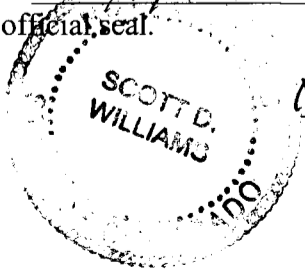
DYER, LLC,  
a Colorado limited liability company

By James K. Dyer  
James K. Dyer, Managing Partner

State of Colorado )  
                                          )ss.  
County of Mesa        )

The foregoing instrument was acknowledged before me this 22<sup>nd</sup> day of January, 2003,  
by James K. Dyer, Managing Partner of DYER, LLC, a Colorado limited liability company.

My commission expires 1/31/07  
Witness my hand and official seal.



Scott D. Williams  
Notary Public

**EXHIBIT "A"**  
**Legal Description of Access Easement**

A non-exclusive easement for motorized and non-motorized ingress and egress purposes to provide Grantee and Grantees' successors and assigns legal public access to and from the above described real property, said easement being located on, along, over, through and across the following described premises, to wit:

Commencing at the Southwest Corner of Lot 10, Desert Vista Filing No. 3 & 4, situate in and being a part of Section 7, Township 2 South, Range 2 East of the Ute Meridian and also situate in and being a part of Section 12, Township 2 South, Range 1 East of the Ute Meridian, as recorded in Plat Book \_\_\_\_\_ at Pages \_\_\_\_\_ and \_\_\_\_\_ in the office of the Mesa County Clerk and Recorder;

thence N 89°45'01" E along the south boundary line of said Lot 10 a distance of 366.16 feet to the True Point of Beginning;

thence leaving the south boundary line of said Lot 10, N 01°21'00" E a distance of 943.73 feet to a point on the southerly boundary line of Outlot "B" of said Desert Vista Filing No. 3 & 4;

thence S 87°14'45" E along the southerly boundary line of said Outlot "B" a distance of 100.04 feet;

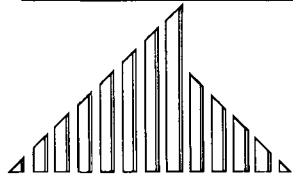
thence leaving said southerly boundary line, S 01°21'00" W a distance of 938.48 feet to a point on the south boundary line of Lot 10 of said Desert Vista Filing No. 3 & 4;

thence S 89°45'01" W along the south boundary line of said Lot 10 a distance of 100.04 feet to the Point of Beginning.

All in the County of Mesa, State of Colorado

**End of Exhibit "A"**

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**ABSTRACT & TITLE CO.  
OF MESA COUNTY, INC.**

Issuing Agent For:  
TRANSNATION  
TITLE INSURANCE COMPANY

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**The City of Grand Junction  
250 N. 5th Street  
Grand Junction, CO 81501**

RE: JOB NO. 00908054

Please find attached the Owners Policy on the property you purchased in **February, 2003**.  
This is vacant land near Whitewater, Colorado.

This should be kept with your permanent records.

We have a history of your property now on file in our office and if, sometime in the future, you want to obtain a loan or possibly sell your property, we would be able to give you quick and accurate service.

Thank you for the opportunity to serve you.

Sincerely,

**Jan Pobirk**  
Policy Dept.

*Property received in Exchange of  
Real Estate w/ Dyer LLC.*

*Refer to Resolutions 39-02 &*

*126-02*

*Jim D.*

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1114 N. 1st Street, Suite 201  
P.O. Box 3738  
Grand Junction, CO 81501  
970/242-8234  
FAX 970/241-4925



ISSUED BY  
TRANSNATION TITLE INSURANCE COMPANY

**Transnation**  
A LANDAMERICA COMPANY

OWNER'S POLICY OF TITLE INSURANCE

POLICY NUMBER

A38-0095240

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS AND STIPULATIONS, TRANSNATION TITLE INSURANCE COMPANY, an Arizona corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the insured by reason of:

1. Title to the estate or interest described in Schedule A being vested other than as stated therein;
2. Any defect in or lien or encumbrance on the title;
3. Unmarketability of the title;
4. Lack of a right of access to and from the land.

The Company will also pay the costs, attorneys' fees and expenses incurred in defense of the title, as insured, but only to the extent provided in the Conditions and Stipulations.

IN WITNESS WHEREOF, TRANSNATION TITLE INSURANCE COMPANY has caused its corporate name and seal to be hereunto affixed by its duly authorized officers, the Policy to become valid when countersigned by an authorized officer or agent of the Company.

TRANSNATION TITLE INSURANCE COMPANY

Attest:

*Wm. Chadwick Perrine*

Secretary



By:

*Janet A. Alpert*

President

**EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the affect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.  
(b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
  - (a) created, suffered, assumed or agreed to by the insured claimant;
  - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
  - (c) resulting in no loss or damage to the insured claimant;
  - (d) attaching or created subsequent to Date of Policy; or
  - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.
4. Any claim, which arises out of the transaction vesting in the Insured the estate or interest insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
  - (a) the transaction creating the estate or interest insured by this policy being deemed a fraudulent conveyance or fraudulent transfer; or
  - (b) the transaction creating the estate or interest insured by this policy being deemed a preferential transfer except where the preferential transfer results from the failure:
    - (i) to timely record the instrument of transfer; or
    - (ii) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

(Continued)

**7. DETERMINATION, EXTENT OF LIABILITY AND COINSURANCE.**

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the insured claimant who has suffered loss or damage by reason of matters insured against by this policy and only to the extent herein described.

(a) The liability of the Company under this policy shall not exceed the least of:

(i) the Amount of Insurance stated in Schedule A; or,

(ii) the difference between the value of the insured estate or interest as insured and the value of the insured estate or interest subject to the defect, lien or encumbrance insured against by this policy.

(b) In the event the Amount of Insurance stated in Schedule A at the Date of Policy is less than 80 percent of the value of the insured estate or interest or the full consideration paid for the land, whichever is less, or if subsequent to the Date of Policy an improvement is erected on the land which increases the value of the insured estate or interest by at least 20 percent over the Amount of Insurance stated in Schedule A, then this Policy is subject to the following:

(i) where no subsequent improvement has been made, as to any partial loss, the Company shall only pay the loss pro rata in the proportion that the amount of insurance at Date of Policy bears to the total value of the insured estate or interest at Date of Policy; or

(ii) where a subsequent improvement has been made, as to any partial loss, the Company shall only pay the loss pro rata in the proportion that 120 percent of the Amount of Insurance stated in Schedule A bears to the sum of the Amount of Insurance stated in Schedule A and the amount expended for the improvement.

The provisions of this paragraph shall not apply to costs, attorneys' fees and expenses for which the Company is liable under this policy, and shall only apply to that portion of any loss which exceeds, in the aggregate, 10 percent of the Amount of Insurance stated in Schedule A.

(c) The Company will pay only those costs, attorneys' fees and expenses incurred in accordance with Section 4 of these Conditions and Stipulations.

**8. APPORTIONMENT.**

If the land described in Schedule A consists of two or more parcels which are not used as a single site, and a loss is established affecting one or more of the parcels but not all, the loss shall be computed and settled on a pro rata basis as if the amount of insurance under this policy was divided pro rata as to the value on Date of Policy of each separate parcel to the whole, exclusive of any improvements made subsequent to Date of Policy, unless a liability or value has otherwise been agreed upon as to each parcel by the Company and the insured at the time of the issuance of this policy and shown by an express statement or by an endorsement attached to this policy.

**9. LIMITATION OF LIABILITY.**

(a) If the Company establishes the title, or removes the alleged defect, lien or encumbrance, or cures the lack of a right of access to or from the land, or cures the claim of unmarketability of title, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title as insured.

(c) The Company shall not be liable for loss or damage to any insured for liability voluntarily assumed by the insured in settling any claim or suit without the prior written consent of the Company.

**10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY.**

All payments under this policy, except payments made for costs, attorneys' fees and expenses, shall reduce the amount of the insurance pro tanto.

**11. LIABILITY NONCUMULATIVE**

It is expressly understood that the amount of insurance under this policy shall be reduced by any amount the Company may pay under any policy insuring a mortgage to which exception is taken in Schedule B or to which the insured has agreed, assumed, or taken subject, or which is hereafter executed by an insured and which is a charge or lien on the estate or interest described or referred to in Schedule A, and the amount so paid shall be deemed a payment under this policy to the insured owner.

**12. PAYMENT OF LOSS.**

(a) No payment shall be made without producing this policy for endorsement of the payment unless the policy has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.

NM 1 PA 10  
ALTA Owner's Policy (10-17-92)  
Cover Page  
Form 1190-58

(b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within 30 days thereafter.

**13. SUBROGATION UPON PAYMENT OR SETTLEMENT.**

(a) The Company's Right of Subrogation.

Whenever the Company shall have settled and paid a claim under this policy, all right of subrogation shall vest in the Company unaffected by any act of the insured claimant.

The Company shall be subrogated to and be entitled to all rights and remedies which the insured claimant would have had against any person or property in respect to the claim had this policy not been issued. If requested by the Company, the insured claimant shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The insured claimant shall permit the Company to sue, compromise or settle in the name of the insured claimant and to use the name of the insured claimant in any transaction or litigation involving these rights or remedies.

If a payment on account of a claim does not fully cover the loss of the insured claimant, the Company shall be subrogated to these rights and remedies in the proportion which the Company's payment bears to the whole amount of the loss.

If loss should result from any act of the insured claimant, as stated above, that act shall not void this policy, but the Company, in that event, shall be required to pay only that part of any losses insured against by this policy which shall exceed the amount, if any, lost to the Company by reason of the impairment by the insured claimant of the Company's right of subrogation.

(b) The Company's Rights Against Non-insured Obligors.

The Company's right of subrogation against non-insured obligors shall exist and shall include, without limitation, the rights of the insured to indemnities, guaranties, other policies of insurance or bonds, notwithstanding any terms or conditions contained in those instruments which provide for subrogation rights by reason of this policy.

**14. ARBITRATION**

Unless prohibited by applicable law, either the Company or the insured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, any service of the Company in connection with its issuance or the breach of a policy provision or other obligation. All arbitrable matters when the Amount of Insurance is \$1,000,000 or less shall be arbitrated at the option of either the Company or the insured. All arbitrable matters when the Amount of Insurance is in excess of \$1,000,000 shall be arbitrated only when agreed to by both the Company and the insured. Arbitration pursuant to this policy and under the Rules in effect on the date the demand for arbitration is made or, at the option of the insured, the Rules in effect at Date of Policy shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the land is located permit a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules.

A copy of the Rules may be obtained from the Company upon request.

**15. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT.**

(a) This policy together with all endorsements, if any, attached hereto by the Company is the entire policy and contract between the insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the title to the estate or interest covered hereby or by any action asserting such claim, shall be restricted to this policy.

(c) No amendment of or endorsement to this policy can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

**16. SEVERABILITY.**

In the event any provision of the policy is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision and all other provisions shall remain in full force and effect.

**17. NOTICES, WHERE SENT.**

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to: Consumer Affairs Department, P.O. Box 27567, Richmond, Virginia 23261-7567.

ORIGINAL

Valid Only If Face Page, Schedules A and B Are Attached

**SCHEDULE A**

Amount of Insurance: **\$14,364.00**

Policy No.: **A38-0095240**

Premium **\$288.00**

File No. **00908054**

Date of Policy: **February 11, 2003 at 2:25 P.M.**

1. Name of Insured:

**The City of Grand Junction, a Colorado home rule municipality**

2. The estate or interest in the land which is covered by this policy is:

**Fee Simple**

3. Title to the estate or interest in the land is vested in:

**The City of Grand Junction, a Colorado home rule municipality**

4. The land referred to in this policy is described in said instrument, is situated in the County of **Mesa**, State of Colorado, and is described as follows:

Beginning at the Northeast corner of Section 12, Township 2 South, Range 1 East of the Ute Meridian, County of Mesa, State of Colorado;

thence S 89°44'55" W along the North boundary line of the NE1/4 NE1/4 of said Section 12 a distance of 1329.20 feet to the Northwest corner of the NE1/4 NE1/4 of said Section 12;

thence S 00°20'31" E along the West boundary line of the NE1/4 NE1/4 of said Section 12 a distance of 164.67 feet;

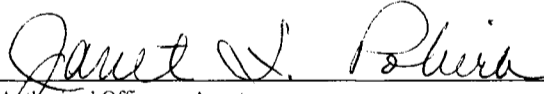
thence S 87°14'45" E a distance of 3913.88 feet to a point on the East boundary line of the NE1/4 NW1/4 of Section 7, Township 2 South, Range 2 East of the Ute Meridian;

thence N 00°11'45" W along the East boundary line of the NE1/4 NW1/4 of said Section 7 a distance of 368.45 feet to the Northeast corner of the NE1/4 NW1/4 of said Section 7;

thence S 89°46'49" W along the North boundary line of the NE1/4 NW1/4 of said Section 7 a distance of 2579.89 feet to the Point of Beginning.

TOGETHER WITH an easement for ingress and egress over and across that portion of the transmission line easement in the NE1/4 NW1/4 of Section 7, Township 2 South, Range 2 East of the Ute Meridian, as described in document recorded March 14, 1961 in Book 798 at Page 186, and Amendment of Easement recorded May 22, 2000 in Book 2710 at Page 837, and as recorded November 23, 1984 in Book 1518 at Page 54.

Countersigned: \_\_\_\_\_

  
Authorized Officer or Agent

**SCHEDULE B  
EXCEPTIONS FROM COVERAGE**

Policy No.: **A38-0095240**

File No. **00908054**

This Policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Rights or claims of parties in possession not shown by the public records.
2. Easements, or claims of easements, not shown by the public records.
3. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, and any facts which a correct survey and inspection of the premises would disclose and which are not shown by the public records.
4. Any lien, or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the public records.
5. Unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof.
6. Any and all unpaid taxes, assessments and unredeemed tax sales.
7. Reservation of right of way for any ditches or canals constructed by authority of United States, in U.S. Patent recorded December 12, 1896 in Book 11 at Page 477. (Affecting the SW 1/4 NW 1/4 of Sec. 31)
8. Reservation of right of way for any ditches or canals constructed by authority of United States, in U.S. Patent recorded April 11, 1907 in Book 70 at Page 258. (Affecting the SW 1/4 of Sec. 31)
9. Reservation of right of way for any ditches or canals constructed by authority of United States, in U.S. Patent recorded October 8, 1907 in Book 70 at Page 374. (Affecting the NW 1/4 SE 1/4 of Sec. 36)
10. Right of way, whether in fee or easement only, as granted to Colorado Ute Electric Association, Inc. by instrument recorded September 13, 1961 in Book 810 at Page 412, as set forth on the sheet attached hereto.
11. Right of way, whether in fee or easement only, as granted to Public Service Company of Colorado by instrument recorded July 24, 1975 in Book 1041 at Page 940, as set forth on the sheet attached hereto.
12. Utility and drainage easements as shown on the recorded Plat of said subdivision.
13. Any and all leases and tenancies.