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TYPE OF RECORD: ACTIVE PERMANENT

CATEGORY OF RECORD: **CONTRACT**

NAME OF CONTRACTOR: GERALD D. DUCRAY AND TED J. DUCRAY

SUBJECT/PROJECT: SALE OF REAL PROPERTY FOR INGRESS AND EGRESS TO AND FROM CITY PROPERTY

LOCATION: NO ADDRESS - VACANT LAND - PURDY MESA ROAD

PARCEL NO.: 2943-054-00-066
2969-351-00-944

CITY DEPARTMENT: PUBLIC WORKS

YEAR: 2001

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

MARCH 2, 2001

**CONTRACT TO BUY AND SELL REAL ESTATE
(Seller's Remedies Limited to Liquidated Damages)**

THIS CONTRACT TO BUY AND SELL ESTATE is entered into by and between Robert C. Miller, hereinafter "Miller", and the City of Grand Junction, a Colorado home rule municipality, hereinafter "City".

1. DuCray agrees to convey to the City, by general warranty deed, the following described real property in the County of Mesa, State of Colorado, to wit, hereinafter "DuCray Property":

(a) Legal Description: Beginning at the Southwest Corner of the Southeast $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 5, Township 1 South, Range 1 East of the Ute Meridian; thence North 180.0 feet; thence East 291.2 feet; thence South 180.0 feet; thence West 291.2 feet to the Point of Beginning, Except the South 50.0 feet for road right-of-way as described by instrument recorded in Book 1370 at Page 194 in the office of the Mesa County Clerk and Recorder;

(b) Address: 2980 F Road;

(c) Tax Schedule Number: 2943-054-00-066.

2. The City agrees to convey to DuCray, by general warranty deed, the following described real property in the County of Mesa, State of Colorado, to wit, hereinafter "City Property":

(a) Legal Description: The Southeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 35, Township 2 South, Range 2 East of the Ute Meridian, except the North 100 feet thereof; subject to, however, a perpetual easement in the southeastern-most corner of the City Property for an underground water storage tank or container to be used in conjunction with the City's Kannah Creek water system, and necessary valves, pipes and appurtenances, specifically in a square fifty feet by fifty feet (or as near thereto as possible), the southeast corner of which square is the southeast corner of the City Property;

(b) Address: No Address – Vacant Land;

(c) Tax Schedule Number: 2969-351-00-944.

3. Conveyance of the DuCray Property and the City Property each shall include all improvements thereon and appurtenant thereto, and any and all other rights appurtenant to each said property, free and clear of all taxes, special assessments, liens, mortgages and encumbrances; provided, however, that there shall be no conveyance or transfer of any water or water rights, ditches or ditch rights, which may have been used on or attributed to the respective properties.

4. A county road commonly known as Purdy Mesa Road has historically been used by the City and preceding owners of the City Property for ingress and egress to and from the City Property. The City and its predecessors have gained access to the City Property in two locations on the southern boundary of the City Property, as shown generally on the copy of an aerial photograph, **Exhibit 1**, which is a part of this agreement. The general warranty deed to be delivered at closing by the City will warrant and defend the historic access consistent with the historical use. Defense of title by the City shall not include claims made or asserted under powers of eminent domain.

5. On or before ~~February 7~~ ^{MARCH 9}, 2001, each party shall furnish to the other party, at each party's respective expense, a current commitment for title insurance policy covering the property to be conveyed by such party, together with legible copies of all instruments listed in the schedule of exceptions in the title insurance commitment (hereafter "the Title Documents"). Each party agrees to deliver the title

insurance policy to the other party as soon as reasonable after closing and pay the premium thereon, assuming a fair market value of \$100,000.00 for each property.

6. Title to the DuCray Property and the City Property each shall be merchantable. Written notice by either party to the other party of unmerchantability of title or of any other unsatisfactory title condition shown by the Title Documents shall be signed by or on behalf of the party providing such written notice and delivered to the other party on or before five (5) days after such party's receipt of the Title Documents or endorsements adding new exceptions to the title commitment. If either party fails to mail such notice to the other party within said five (5) day period, then the party failing to mail such notice shall be deemed to have accepted the condition of title as disclosed by the Title Documents.

7. If title is not merchantable and written notice of defects is delivered by either party within the five (5) day period specified in paragraph 6, the party receiving such notice of defects shall use reasonable efforts to correct said defects prior to closing. If the party receiving notice of defects is unable to correct said defects on or before the date of closing, the party giving such notice shall have the option of extending the date of closing for a period not to exceed thirty (30) days for the purpose of correcting said defects. If title is not rendered merchantable at the conclusion of said thirty (30) day period, this Contract shall be void and of no effect and each party hereto shall be released from all obligations hereunder.

8. The date of closing shall be the date for delivery of deed as provided below. The hour and place of closing shall be designated by mutual agreement between the parties hereto, in Grand Junction. Changes in time, place and date may be made with the consent of both parties. Each party shall pay its respective closing costs at closing, except as otherwise provided herein. Each party shall sign and complete all customary or required documents at or before closing. Fees for real estate closing and settlement services shall be paid at closing by the parties equally. The parties designate Western Colorado Title as Closing Agent for the purposes of providing Title Insurance and closing this transaction.

9. Subject to full and complete compliance by both parties with the terms and provisions hereof, closing and possession shall occur on ~~February 9~~, 2001, or, by mutual agreement, at an earlier date.

APRIL 17, 2001

10. At closing each party shall execute and deliver a general warranty deed to the other party and each party shall deliver possession of such party's property to the other party, free and clear of: all taxes; all liens for special improvements installed as of the date of closing, whether assessed or not; all liens, mortgages and encumbrances; all fees and charges for utilities, association dues, water rents and water assessments; any covenants, restrictions or reversionary provisions not accepted by the receiving party listed as exceptions in the Title Documents; and all tenancies and/or leasehold estates.

11. Within thirty (30) days after closing, DuCray shall remove, or cause to be removed, from the DuCray Property, all personal property, all personal property, including any sheds and accessory buildings, salvage or junk, and including all personal effects and all other objects and materials which are not fixtures within the residential structure and any other structure. For each day, or part of a day, after the thirtieth (30th) day after closing for which any such personal effects, objects or other materials are on any portion of the DuCray Property, DuCray shall pay to the City \$50.00, up to the total cost which the City incurs thereafter to remove all such personal property and to clear the DuCray Property.

12. (a) Each party shall have the right to access the other party's property to be conveyed pursuant to this Agreement, and to make inspections thereof. Such inspections shall include, but not be limited to,

April 1, 2001

boundary surveys, geological surveys and studies, and environmental surveys and studies. Said permitted access shall be for a period commencing the day after this Agreement is signed by both parties, and ends on ~~February 8~~, 2001. The party making a physical inspection of the other party's property is responsible and shall pay for any damage that occurs to the other party's property as a result of such inspections.

(b) If written notice by either party of any unsatisfactory physical condition is given to the other party during the term of the Inspection Period, and if the parties have not reached a written agreement in settlement thereof within a week after the expiration of the Inspection Period, this Agreement shall then terminate.

(c) If asbestos or lead paint, or any other material regulated by state or federal law as a hazardous, regulated, dangerous or contaminated substance, material or residue, is discovered on either Property, the owner thereof shall be obligated to fully and completely remove the same before closing, or provide for adequate security for the other party to do so after closing.

(d) Except as provided in the preceding sub-paragraph (c), if either party fails to give notice of any unsatisfactory physical condition during the term of the Inspection Period, then the party failing to give such notice shall be deemed to have accepted the physical condition of the other party's property, as is, in its present condition.

(e) Each party represents that it, he or they have no knowledge that his, their or its property before conveyance (including land, surface water, ground water and improvements) is contaminated by or contains, whether or not visible: (i) any "hazardous waste", "medical waste", "solid waste", "underground storage tanks", "petroleum", "regulated substances", or "used oil" as defined by the Solid Waste Disposal Act (42 U.S.C. § 6901, *et seq.*), as amended, and the Resource Conservation and Recovery Act (42 U.S.C. § 6991, *et seq.*), as amended, or by any regulations promulgated thereunder; (ii) any "hazardous substance" or "pollutant or contaminant" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601, *et seq.*), as amended, or by any regulations promulgated thereunder; (iii) any "regulated substance", as defined by the Underground Storage Tank Act, C.R.S., § 25-18-101, *et seq.*, as amended, or by any regulations promulgated thereunder; (iv) any "hazardous waste" as defined by C.R.S., § 25-15-101, *et seq.*, as amended, or by any regulations promulgated thereunder; (v) any substance the presence of which on, in, under or about the property, is prohibited by any law similar to those set forth above, and; (vi) any other substance which by law, regulation or ordinance requires special handling in its collection, storage, treatment or disposal.

13. Possession of the respective properties shall be delivered without exceptions, leases or tenancies, on the date of closing. If either party fails to deliver possession on the date herein specified, then said party shall be subject to eviction and shall be liable for a daily rental of \$50.00 until possession is delivered.

14. DuCray shall have the right and option to sell, remove and/or dispose of the residential structure and any and all other buildings or structures situate upon the DuCray Property prior to closing. If DuCray chooses to sell or remove a structure or structures, DuCray shall leave the ground adjacent to and under the structure(s) in a clean, neat, safe and level condition. All debris including but not limited to any portion of the structure(s) removed shall be cleaned, disposed of and rendered safe in a workmanlike manner as would have been done by a professional demolition company. This requirement shall include but not be limited to capping, covering and rendering safe utility service lines.

15. Time is of the essence hereof. If any obligation hereunder is not performed as herein provided, the non-defaulting party shall only have the following specified remedies, except as otherwise provided in this Agreement: (a) to treat this Contract as terminated, but no damages may be recoverable, or (b) to treat this Contract as being in full force and effect together with the right to an action for specific performance, but no damages shall be recoverable.

16. If a party engages or pays for an attorney to pursue any remedy hereunder, such party shall pay for its own attorney's fees and charges.

17. The parties represent to each other that the exchange of these Properties 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 exchange of the Properties. 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 third party as a result of the sale or exchange pursuant to this Agreement.

18. All notices and communications required or regarding this Agreement shall be in writing delivered to the parties by first class United States mail, certified with return receipt requested, and shall be deemed served upon the receiving party as of the date of receipt shown on the return receipt, addressed as follows:

To the City: City of Grand Junction
 Attn: City Real Estate Manager
 250 North 5th Street
 Grand Junction, CO 81501-2668

With Copy to: City of Grand Junction
 Attn: City Attorney
 250 North 5th Street
 Grand Junction, CO 81501-2668

To DuCray: Gerald D. or Ted J. DuCray
 3759 North 15th Court
 Grand Junction, CO 81506-5233

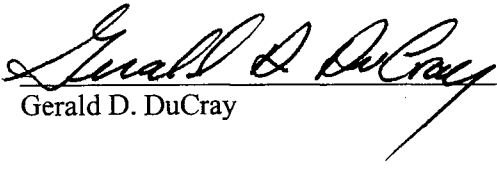
The parties may, by notice as provided above, designate a different address to which notice shall be given.

19. This Contract embodies the complete agreement between the parties hereto and cannot be changed or modified except by a written instrument subsequently executed by the parties hereto. No spoken or oral promises or changes to this Agreement will apply or be enforced. This Contract and the terms and conditions hereof apply to and are binding upon the heirs, successors and assigns of both parties.

20. This Agreement shall be governed and construed by the laws of the State of Colorado. Venue for any action shall be in Mesa County, Colorado.

21. Each party has obtained the advise of its own legal and tax counsel and, therefore, the rule of construing ambiguities against the drafter shall have no application to this Agreement.

22. The promises, agreements to pay money, liabilities and other agreements herein that must be performed after the closing shall remain enforceable despite the transfer of title. The doctrine of merger shall not apply.


Gerald D. DuCray


Ted J. DuCray

City of Grand Junction

Attest:




Kelly Arnold, City Manager


Stephanie Nye
City Clerk

Exhibit 1

NORTH



City Property

*Approximate Locations of
Historic Access*

Purdy Mesa Road