

MNR97ACH

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: CONTRACT

NAME OF AGENCY OR CONTRACTOR: MOONRIDGE FALLS, LLC, WALID BOU-MATAR, MANAGER

STREET ADDRESS/PARCEL NAME/SUBDIVISION/PROJECT: MOONRIDGE FALLS SUBDIVISION PROPOSED RIGHT OF WAY EXTENSION TO ATCHEE LANE 2945-032-00-108 ORDER FILE #97-05-065L

CITY DEPARTMENT: PUBLIC WORKS

YEAR: 1997

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

AGREEMENT

This agreement is made this 12th day of May, 1997 between the City of Grand Junction ("City") and Moonridge Falls, LLC ("MF")

Statement of the Problem

MF has made application with the City for final plat approval of Filing 3 of the Moonridge Falls Subdivision ("Moonridge"), and for preliminary plan approval of Filing 4. In order to provide sewer service to a portion of MF's development, the City has required that MF obtain an easement within the proposed right-of-way location of the extension (northward) of Atchee Lane.

Atchee Lane was dedicated and constructed by the developer of the property to the south, Valley Meadows Subdivision. Between the northernmost extension of Atchee Lane, as built, and the southernmost extension of MF's proposed extension of Atchee Lane in Moonridge lies a narrow strip of land which is a portion of a larger parcel owned presently by Columbia Housing LLC. To complete Atchee Lane, and to extend a sewer line to the south connecting with the existing line in Valley Meadows Subdivision, the owner of such narrow strip must grant an easement or convey some greater interest in the land.

Columbia Housing owns property generally west of MF's property ("Country Crossing") for which a preliminary plan approval was previously granted by the City. Columbia Housing has agreed, by contract, to convey Country Crossing to Western Credit Resources, Inc. (the "new buyer") on or about May 7, 1997. The new buyer has indicated its intention to subdivide Country Crossing.

A portion of the Country Crossing parcel lies east of the Grand Valley Irrigation Canal ("canal") and includes the narrow strip of land which separates MF's property from Valley Meadows Subdivision (the "Outlot"). MF desires at least an easement across the narrow strip portion of the Outlot ("narrow strip"), within which he could construct the required sewer line (the "sewer easement"). MF has entered into a contract with the new buyer to acquire a triangular portion of the Outlot (the "triangle parcel") containing the sewer easement.

The City's interests, on behalf of the public, would be served if: (a) the southern portion of Moonridge were "gravity" sewered to the south, connecting to the existing sewer lines in Atchee Lane, thus minimizing the amount of future sewage which must be pumped; (b) Atchee Lane is constructed to/from Valley Meadows Subdivision to/from Moonridge; (c) a future subdivision of Country Crossing which results in the Outlot being physically separated (by the canal) from the balance of the Country Crossing development, thereby rendering the Outlot difficult to economically use, can be avoided; (d) the triangle parcel can be developed as a part of Moonridge, so as to maximize the use of the triangle

parcel portion of the Outlot, as a part of the Moonridge development; (e) pedestrian/trail linkages along the canal on the western portion of the Outlot can be obtained.

MF's interests would be served if: (a) MF could obtain the right to install sewer through the narrow strip, (b) MF could, by incorporating the triangle parcel into MF's development plans, create an additional residential lot, in order to recoup MF's payment for the triangle parcel; (c) an agreement granting MF possession of the triangle parcel, were obtained very quickly so that MF's development may proceed through the approval process.

The Solution

NOW THEREFORE, the City and MF hereby acknowledge the mutual benefits and burdens which this agreement imposes, and agree that adequate consideration exists to constitute a binding contract. The City and MF therefore agree to the following provisions:

1. MF shall use its best efforts to purchase the triangle parcel as soon as possible. MF agrees to pay up to and including \$20,000.00 as the purchase price for said triangle parcel. If, despite the best efforts of MF, MF is unable to acquire said triangle parcel on those terms, this agreement shall terminate and the parties shall be released from all terms hereof.
2. The City agrees that any such contract, including offers already made to acquire said triangle parcel, and any purchase or transfer of all or a portion of the Outlot in accordance with the terms hereof, shall not subject MF or the new buyer to prosecution for violation of the subdivision requirements of the City. Because the decision to prosecute any such violation of the City Code rests with the City's prosecuting attorney, the City Attorney shall sign this agreement, evidencing his agreement to be bound by this provision.
3. If MF acquires the triangle parcel, it shall dedicate or convey to the City, at no cost to the City: (a) as a condition of the approval of the next filing or recording of the next plat relating to Moonridge, such right-of-way as the City Engineer reasonably deems necessary for construction of Atchee Lane, as described on Exhibit A. Minor changes to Exhibit A, as required by the City during the review process of Moonridge Falls Subdivision, relating to the location and width of said right-of-way shall be approved by the parties; (b) if acquired by Moonridge as part of the triangle parcel, as a condition of the approval of the plat of the filing of Moonridge which includes the triangle parcel, a perpetual non-exclusive easement or dedication of the fee, at the election of MF, of a portion of the triangle parcel (immediately adjacent to the existing GVIC canal) being forty feet wide and parallel to the canal (the western boundary of such easement shall be the centerline of such canal), for pedestrian, equine, bicycling and similar non-motorized purposes, except that motorized vehicles used for maintenance and operations are allowed. Such easement or dedication shall be generally described as a tract the west line of which shall be the

canal¹; the easterly boundary of said tract shall be a line parallel with the westerly boundary and located 40 feet east of said westerly boundary; the northern and southern boundaries of said tract shall terminate at the northern and southern boundaries respectively, of the triangle parcel.

The obligations of the parties under this agreement will not be merged into any dedication or other conveyance made pursuant to this agreement and will remain enforceable until fully performed. That dedication or other conveyance to the City will be, at the option of Moonridge, by: (a) bargain and sale deed or its equivalent, if accompanied by a title commitment (with premium paid by Moonridge for coverage in the amount of \$5,000.00) insuring the City's title subject to the same or comparable exceptions as contained in the title insurance received by Moonridge upon purchase of the property dedicated; or (b) by warranty deed subject to the same or comparable exceptions as contained in the deed of the same property to Moonridge.

4. If MF acquires the triangle parcel, and makes the dedications as provided, MF shall be entitled to create an additional residential lot in Block One of Moonridge Falls, with street access onto Moonridge Circle, as a part of the platting process of said Block One. MF shall comply with applicable City standards and requirements in creating such additional lot.

5. As a part of the required improvements relating to Block One, if MF acquires the triangle parcel, MF shall construct Atchee Lane across that portion of the triangle parcel necessary to complete Atchee Lane between Valley Meadows and Moonridge Falls Subdivisions.

6. MF agrees that the City may, without additional consideration, enforce the terms of paragraph 7 (b) of the Amendment dated April 24, 1997 to the Purchase & Sale Agreement dated April 23, 1997 (between MF and new buyer) to the same extent which MF may enforce that provision. If, in order to effectuate this term, MF needs to assign MF's rights in this regard, MF shall do so.

WHEREFORE, the parties have executed this Agreement as of the date set forth above.

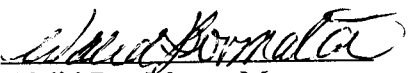
CITY OF GRAND JUNCTION:

By: David A. Varley
David A. Varley, Asst. City Manager
250 N. 5th St.
Grand Junction, CO 81501

By: Dan E. Wilson
Dan E. Wilson, City Attorney
250 N. 5th St.
Grand Junction, CO 81501

¹ MF agrees to, if additional consideration is not required, acquire the remainder of the Outlot east of the canal not included in the triangle parcel.

MOONRIDGE FALLS, LLC

By: 
Walid BouMatar, Manager

agreement/boumatar.doc
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EXHIBIT A
TO AGREEMENT BETWEEN
CITY OF GRAND JUNCTION AND MOONRIDGE FALLS, LLC
DATED MAY 12, 1997

A tract of land for road right-of-way purposes in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 3, T1S, R1W of the Ute Meridian, Mesa County, Colorado, said tract being forty-four feet in width, twenty-two feet right and twenty-two feet left of the following described centerline (the Sidelines of which extend or terminate at the intersections with adjacent property lines):

Commencing at the Mesa County Survey market for the S.E. Corner of the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 3 from whence a Mesa County Survey market for the N.E. Corner of the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 3 bears N00°16'55"W 1321.09 feet according to the record plat of Moonridge Falls, Filing No. Two; thence S89°13'48" on the south line of said Moonridge Falls 754.36 feet to the point of beginning; thence N00°00'00"E 20.00' to the terminus of the centerline from whence the S.E. Corner of the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 3 bears S89°15'03"E 754.36 feet.

BARGAIN AND SALE DEED

MOONRIDGE FALLS, LLC, a Colorado Limited Liability Company ("Grantor"), whose address is 677 25 1/2 Road, Grand Junction, CO 81505 in consideration of Ten Dollars (\$10.00) sells and conveys to **CITY OF GRAND JUNCTION, COLORADO**, a Colorado Municipal Corporation whose legal address is 250 North 5th Street, Grand Junction, CO 81501 the property ("Property") described as follows:

A tract of land for road right-of-way purposes in the NE 1/4 NW 1/4 of Section 3, T1S, R1W of the Ute Meridian, Mesa County, Colorado, said tract being forty-four feet in width, twenty-two feet right and twenty-two feet left of the following described centerline (the sidelines of which extend or terminate at the intersections with adjacent property lines):

Commencing at the Mesa County Survey Marker for the S.E. Corner of the NE1/4NW1/4 of said Section 3 from whence a Mesa County Survey Marker for the N.E. Corner of the NE 1/4 NW 1/4 of said Section 3 bears N00°16'55"W 1321.09 feet according to the record plat of Moonridge Falls, Filing No. Two; thence S89°13'48"W on the south line of said Moonridge Falls 754.36 feet to the point of beginning; thence N00°00'00"E 20.00' to the terminus of the centerline from whence the S.E. Corner of the NE 1/4 NW 1/4 of said Section 3 bears S89°15'03"E 754.36 feet.

EXECUTED the 9th day of May, 1997.

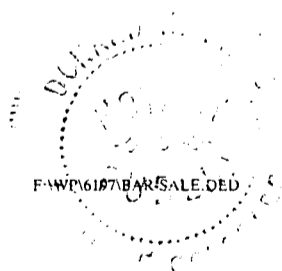
MOONRIDGE FALLS, LLC

By: *Walid Bou-Matar*
Walid Bou-Matar, Manager

STATE OF COLORADO)
) ss.
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this 9th day of May, 1997, by Walid Bou-Matar as Manager of Moonridge Falls, LLC.

WITNESS my hand and official seal. My commission expires: Aug 24, 1997.



Donald K Quinn
Notary Public

CHICAGO TITLE INSURANCE COMPANY

COMMITMENT FOR TITLE INSURANCE

CHICAGO TITLE INSURANCE COMPANY, a corporation of Missouri, herein called the Company, for a valuable consideration, hereby commits to issue its policy or policies of title insurance, as identified in Schedule A, in favor of the proposed Insured named in Schedule A, as owner or mortgagee of the estate or interest covered hereby in the land described or referred to in Schedule A, upon payment of the premiums and charges therefor; all subject to the provisions of Schedule A and B and to the Conditions and Stipulations hereof.

This Commitment shall be effective only when the identity of the proposed Insured and the amount of the policy or policies committed for have been inserted in Schedule A hereof by the Company, either at the time of the issuance of this Commitment or by subsequent endorsement.

This Commitment is preliminary to the issuance of such policy or policies of title insurance and all liability and obligations hereunder shall cease and terminate six months after the effective date hereof or when the policy or policies committed for shall issue, whichever first occurs, provided that the failure to issue such policy or policies is not the fault of the Company. This Commitment shall not be valid or binding until countersigned by an authorized officer or agent.

IN WITNESS WHEREOF, the Company has caused this Commitment to be signed and sealed, to become valid when countersigned by an authorized officer or agent of the Company, all in accordance with its By-Laws. This Commitment is effective as of the date shown in Schedule A as "Effective Date."

ISSUED BY:

WESTERN COLORADO TITLE COMPANY
521 Rood Avenue
Grand Junction, Colorado 81501
(970) 243-3070
FAX (970) 243-9556

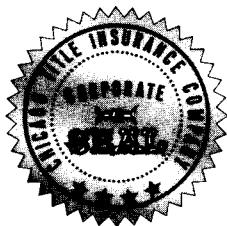
CHICAGO TITLE INSURANCE COMPANY

By:

Richard L. Polla
President.

ATTEST:

Thomas J. Adams
Secretary.



Anna K. Jones
Authorized Officer or Agent

WESTERN COLORADO TITLE CO.
P.O. BOX 178
521 ROOD AVENUE
GRAND JUNCTION, CO 81502-0178

CHICAGO TITLE INSURANCE COMPANY
COMMITMENT FOR TITLE INSURANCE

Purported Street Address: ATCHEE LANE EXTENSION, GRAND JUNCTION, CO 81505

Order File Number: 97-05-065L

TAX SCHEDULE NO.: 2945-032-00-108

Customer Service: LORIE

SCHEDULE A

1. Effective date of this Commitment is May 7, 1997 at 8:00 a.m.
2. The estate or interest in the land described or referred to in this Commitment and covered herein is fee simple and title thereto is at the effective date hereof vested in:

MOONRIDGE FALLS, LLC., A COLORADO LIMITED LIABILITY COMPANY

3. Policy or policies to be issued:	AMOUNT	PREMIUM
(a) ALTA Owner's Policy Proposed Insured	\$ 5,000.00	\$ 100.00

CITY OF GRAND JUNCTION, A COLORADO MUNICIPAL CORPORATION

- (b) ALTA Loan Policy
Proposed Insured

TAX CERTIFICATE AMOUNT \$20.00
ENDORSEMENT FORMS

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SCHEDULE A (CONT.)

Order File Number: 97-05-065L

4. The land referred to in this Commitment is described as follows:

A tract of land for road right-of-way purposes in the NE 1/4 NW 1/4 of Section 3, Township 1 South, Range 1 West of the Ute Meridian, Mesa County, Colorado, said tract being forty-four feet in width, twenty-two feet right and twenty-two feet left of the following described centerline (the sidelines of which extend or terminate at the intersections with adjacent property lines):

Commencing at the Mesa County Survey Marker for the S.E. Corner of the NE 1/4 NW 1/4 of said Section 3 from whence a Mesa County Survey Marker for the N.E. Corner of the NE 1/4 NW 1/4 of said Section 3 bears North 00°16'55" West 1321.09 feet according to the record plat of Moonridge Falls, Filing No. Two; thence South 89°13'48" West on the south line of said Moonridge Falls 754.36 feet to the point of beginning; thence North 00°00'00" East 20.00 feet to the terminus of the centerline from whence the S.E. Corner of the NE 1/4 NW 1/4 of said Section 3 bears South 89°15'03" East 754.36 feet,

MESA COUNTY, COLORADO.

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SCHEDULE B - SECTION 1

REQUIREMENTS

Order File Number: 97-05-065L

The following are requirements to be complied with:

Payment to or for the account of the grantors or mortgagors of the full consideration for the estate or interest to be insured.

Proper instrument(s) creating the estate or interest to be insured must be executed and duly filed for record, to wit:

1. Deed from MOONRIDGE FALLS, LLC., A COLORADO LIMITED LIABILITY COMPANY to CITY OF GRAND JUNCTION, A COLORADO MUNICIPAL CORPORATION conveying the land described in Schedule A, herein.

NOTE: Colorado Law requires that a Real Property Transfer Declaration accompany documents conveying title to real property when such documents are presented for recording. Failure to provide such Declaration may result in monetary penalties being added to property taxes.

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SCHEDULE B - SECTION 2

EXCEPTIONS

Order File Number: 97-05-065L

The policy or policies to be issued will contain exceptions for defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires of record for value the estate or interest or mortgage thereon covered by this Commitment; and exceptions to the following unless the same are disposed of to the satisfaction of the Company:

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. Taxes and assessments which are a lien or due and payable; and any tax, special assessments, charges or lien imposed for water or sewer service, or for any other special taxing district, any unredeemed tax sales.
6. Reservation, as set forth in United States Patent recorded August 14, 1890 in Book 11 at Page 141 as follows: "Herein described property subject to the right of the proprietor of a vein or lode to extract and remove his ore therefrom should the same be found to intersect said premises."
7. Reservation, as set forth in United States Patent recorded August 14, 1890 in Book 11 at Page 141 as follows: "Herein described property subject to the right-of-way for ditches and canals constructed by authority of the United States."
8. Right-of-way for Grand Valley Canal across the West side of herein described property.
9. Easement to the Grand Junction and Grand River Valley Railway Company across the NW 1/4 NW 1/4 and NE 1/4 NW 1/4 recorded December 21, 1909 in Book 125 at Page 286 and in Book 125 at Page 288.
10. Reservation of all oil, gas and other minerals and mineral rights by William L. Rice, David G. Rice Jr. and Robert J. Rice in Deed recorded January 6, 1982 in Book 1351 at Page 506 and in instrument recorded September 29, 1994 in Book 2101 at Page 828 and 829 and any and all assignments thereof or interests therein.

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11. Deed of Trust from PWS INVESTMENTS, A COLORADO PARTINERSHIP to the Public Trustee of the County of Mesa, for the use of P-H MANAGEMENT, INC., A COLORADO CORPORATION to secure \$2,154,531.00, dated January 19, 1982 and recorded January 27, 1982 in Book 1354 at Page 472.

NOTE: The company hereby agrees to insure against any loss or damage as a result of any execution, foreclosure or other enforceable action by the beneficiaries of said Deed of Trust.

12. Deed of Trust from PWS INVESTMENTS, A COLORADO JOINT VENTURE; (AKA A COLORADO PARTINERSHIP) to the Public Trustee of the County of Mesa, for the use of FIRST SECURITY SAVINGS & LOAN ASSOCIATION to secure \$750,000.00, dated December 30, 1982 and recorded January 6, 1983 in Book 1409 at Page 25.

NOTE: The company hereby agrees to insure against any loss or damage as a result of any execution, foreclosure or other enforceable action by the beneficiaries of said Deed of Trust.

13. Deed of Trust from PWS INVESTMENTS, A COLORADO PARTINERSHIP to the Public Trustee of the County of Mesa, for the use of COLUMBIA SAVINGS, A FEDERAL SAVINGS AND LOAN ASSOCIATION to secure \$680,000.00, dated August 15, 1984 and recorded August 21, 1984 in Book 1506 at Page 810.

NOTE: The company hereby agrees to insure against any loss or damage as a result of any execution, foreclosure or other enforceable action by the beneficiaries of said Deed of Trust.

14. All taxes and assessments now a lien or payable.

15. IF THE LAND DESCRIBED IN SCHEDULE A OF THIS COMMITMENT FOR TITLE INSURANCE IS A SINGLE FAMILY RESIDENCE (INCLUDING A CONDOMINIUM OR TOWNHOUSE UNIT), THE PROPOSED OWNER'S POLICY INSURED IS NOTIFIED:

1. Colorado Insurance Regulations require that every title entity shall be responsible for all matters which appear of record prior to the time of recording whenever the title entity conducts the closing and is responsible for recording or filing of legal documents resulting from the transaction which was closed;
2. Exception No. 4 of Schedule B, Section 2 may be deleted from the owner's policy, when issued, upon satisfaction of underwriting requirements. These requirements may include indemnity agreements, approval of financial status of an indemnitor, examination of lien waivers, a physical inspection of the property and/or such additional requirements or information as the Company may deem necessary.