

RESOLUTION NO. 42-94

AUTHORIZING THE PURCHASE BY THE CITY OF GRAND JUNCTION,
COLORADO, OF CERTAIN REAL PROPERTY;
RATIFYING ACTIONS HERETOFORE TAKEN IN CONNECTION THEREWITH

WHEREAS, the City of Grand Junction has entered into a contract with Edwin M. Yeager for the sale by Edwin M. Yeager and the purchase by the City of that certain real property described as Lots 17, 18, 19, 20, 21, 22 and 23 in Block 126 of the Original Plat of the City of Grand Junction, also known as 538 Ute Avenue, 546 Ute Avenue, 550 Ute Avenue and 562 Ute Avenue; and

WHEREAS, the City Council deems it necessary and proper that the City purchase said Property together with all improvements thereon and appurtenant thereto.

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

1. That the City Council hereby authorizes the purchase of the Property by the City for a purchase price of \$103,000.00. All actions heretofore taken by the officers, employees and agents of the City relating to the purchase of the Property which are consistent with the provisions of the attached Contract to Buy and Sell Real Estate and this Resolution are hereby ratified, approved and confirmed.
2. That the City Council hereby authorizes the expenditure of \$103,000.00 for the purchase of the Property, to be paid at closing on August 31, 1994, or by mutual agreement at an earlier date.
3. That the officers, employees and agents of the City are hereby authorized and directed to take all actions necessary or appropriate to effectuate the provisions of this Resolution and the attached Contract to Buy and Sell Real Estate, including, without limitation, the performance of environmental audits, boundary surveys, and the execution and delivery of such certificates and documents as may be necessary or desirable.

PASSED and ADOPTED this 1st day of June 1994.

Grand Junction City Council

/s/ R.T. Mantlo
President of the Council

ATTEST:

/s/ Stephanie Nye
City Clerk

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

THIS CONTRACT TO BUY AND SELL REAL ESTATE is entered into by and between the City of Grand Junction, a Colorado home rule municipality, hereinafter referred to as "the City", and Edwin M. Yeager, hereinafter referred to as "the Seller".

1. The Seller hereby acknowledges having received from the City the sum of \$1,000.00, in the form of a check, to be held by Abstract & Title Company of Mesa County, Inc., Closing Agent for the Seller and the City, in said Closing Agent's escrow or trustee account, as earnest money and part payment for the following described real property:

Lot 17, 18, 19, 20, 21, 22, and 23 in Block 126 of the Original Plat of the City of Grand Junction, County of Mesa, State of Colorado, also known as 538 Ute Avenue, 546 Ute Avenue, 550 Ute Avenue, and 562 Ute Avenue, hereinafter collectively referred to as "the Property".

Said \$1,000.00 is non-refundable, except as otherwise provided herein, unless the Seller is unable to deliver merchantable title as set forth herein.

2. Subject to the provisions set forth herein, the City hereby agrees to purchase the Property, and the Seller agrees to sell the Property upon the terms and conditions stated herein.

3. The purchase price for the Property shall be \$103,000.00, payable as follows: \$1,000.00 in earnest money as set forth above; The balance of \$102,000.00 in the form of "good funds" shall be paid at closing. The City and the Seller each agree to pay their own closing costs according to local custom.

4. The purchase price shall include the Property, all improvements thereon or appurtenant thereto, and any and all other rights appurtenant to the Property, free and clear of all taxes, special assessments, liens and encumbrances.

5. A current commitment for title insurance policy in an amount equal to the purchase price, at the Seller's expense, shall be furnished to the City on or before June 10, 1994. The Seller shall cause the title insurance policy to be delivered to the City after closing and pay the premium thereon.

6. The date of closing shall be the date for delivery of deed as provided in paragraph 7. The hour and place of closing shall be as designated by the Closing Agent. Changes in time, place and date may be made with the consent of both the Seller and the City.

7. Title shall be merchantable in the Seller, except as stated in this paragraph and in paragraphs 8 and 9. Subject to payment or tender as above provided and compliance by the City with the other terms and provisions hereof, the Seller shall execute and deliver a good and sufficient

general warranty deed to the City on August 31, 1994, or, by mutual agreement, at an earlier date, conveying the Property free and clear of: all taxes, except the general property taxes for the year of closing; all liens for special improvements installed as of the date of the City's signature hereon, whether assessed or not; all liens and encumbrances.

8. Except as stated in paragraphs 7 and 9, if title is not merchantable and written notice of defect(s) is given by the City to the Seller on or before date of closing, the Seller shall use reasonable effort to correct said defect(s) prior to date of closing. If the Seller is unable to correct said defect(s) on or before date of closing, at the Seller's option and upon written notice to the City on or before date of closing, the date of closing shall be extended for a period not to exceed thirty (30) days for the purpose of correcting said defect(s). Except as stated in paragraph 9, if title is not rendered merchantable as provided in this paragraph 8, at the City's option, this contract shall be void and of no effect and each party hereto shall be released from all obligations hereunder and all payments and things of value received hereunder shall be returned to the City.

9. Any encumbrance required to be paid shall be paid at or before the time of settlement from the proceeds of this transaction or any other source. Provided, however, at the option of either party, if the total indebtedness secured by liens on the Property exceeds the purchase price, this contract shall be void and of no effect and each party hereto shall be released from all obligations hereunder and all payments and things of value received hereunder shall be returned to the City.

10. (a) The Seller shall, without additional cost the City and within ten (10) days of acceptance of this contract by the Seller, furnish to the City true copies of all information and documents in possession of the Seller regarding lease agreements and/or rental agreements, boundary surveys, geological surveys and studies, engineering studies and environmental surveys and studies.

(b) The Seller and the City agree that the City, its officers, employees, agents, contractors and licensees, will be permitted for a period commencing on the date of acceptance of this contract by the Seller and ending on the date which is ninety (90) days after said date of acceptance ("Inspection Period"), to have access to and make inspections of the Property for the purposes of conducting boundary surveys, asbestos surveys and sampling, engineering studies, geological surveys and studies, and environmental surveys and studies.

(c) If the City, during the Inspection Period, determines that the condition of the Property is unsuitable for use by the City for reasons including, but not limited to, leaking underground storage tanks, unstable soils or geology, or the existence of any toxic, hazardous and/or regulated substances and materials which are located on or under the Property, the City shall notify the Seller of such defect(s) in writing. The Seller shall then have fifteen (15) days after receipt of said notice to either reasonably correct said defect(s) or to terminate this Agreement. If this Agreement is so terminated, neither party shall have any further rights under this Contract and all payments and things of value received hereunder shall be returned to the City. If written notice of any unsatisfactory condition(s) is not mailed to the Seller as set forth above, the physical condition of the Property shall be deemed to be satisfactory.

11. Real and personal property taxes for the year of closing, based on the most recent levy and assessment, pre-paid rents, water rents and water assessments, sewer rents, FHA mortgage insurance premiums and interest on encumbrances, if any, shall be apportioned to date of

delivery of deed; such apportionment shall be considered final settlement. The Seller shall be responsible for any sales, use or other taxes that may accrue because of this transaction.

12. Possession of the Property shall be delivered to the City without exceptions, leases or tenancies, on date of deed delivery. If the Seller fails to deliver possession on the date herein specified, the Seller shall be subject to eviction and shall be liable for a daily rental of \$50.00 until possession is delivered.

13. In the event the Property shall be damaged by fire, flood or other casualty prior to time of closing, in an amount of not more than ten percent (10%) of the total purchase price, the Seller shall be obligated to repair the same before the date herein provided for delivery of deed. In the event such damage is not or cannot be repaired within said time or if the damages exceed such sum, this contract may be terminated at the option of the City and all payments and things of value received hereunder shall be returned to the City. Should the City elect to carry out this contract despite such damage, the City shall be entitled to all the credit for the insurance proceeds resulting from such damage, not exceeding, however, the total purchase price. Should any fixtures or services fail between the date of this Contract and the date of possession or the date of delivery of deed, whichever shall be earlier, then the Seller shall be liable for the repair or replacement of such fixtures or services with a unit of similar size, age and quality, or an equivalent credit.

14. Time is of the essence hereof. If any note or check received as earnest money hereunder or any other payment due hereunder is not paid, honored or tendered when due, or if any other obligation hereunder is not performed as herein provided, there shall be the following remedies:

(a) IF THE CITY IS IN DEFAULT, then all payments and things of value received hereunder shall be forfeited by the City and retained on behalf of the Seller and both parties shall thereafter be released from all obligations hereunder. It is agreed that such payments and things of value are LIQUIDATED DAMAGES, and (except as provided in subparagraph (c)) are the Seller's SOLE AND ONLY REMEDY for the City's failure to perform the obligations of this contract. The Seller expressly waives the remedies of specific performance and additional damages;

(b) IF THE SELLER IS IN DEFAULT, the City may elect to treat this contract as (1) terminated, in which case all payments and things of value received hereunder shall be returned to the City and the City may recover such damages as may be proper, or (2) being in full force and effect and the City shall have the right to an action for specific performance or damages, or both.

(c) Anything to the contrary herein notwithstanding, in the event of any litigation arising out of this contract, the court may award to the prevailing party all reasonable costs and expense, including attorneys' fees.

15. Notwithstanding any termination of this Contract, the City and the Seller agree that, in the event of any controversy regarding the earnest money and things of value held by the Closing Agent, unless mutual written instructions are received by said Closing Agent, said Closing Agent shall not be required to take any action but may await any proceeding, or at said Closing Agent's option and discretion, may interplead all parties and deposit any moneys or things of value into a

court of competent jurisdiction and shall recover court costs and reasonable attorney fees, not to exceed \$500.00.

16. This entire contract and the City's obligation to proceed under its terms is expressly conditioned upon the consent and approval of the City Council of the City of Grand Junction. If such consent and approval is not obtained on or before June 1, 1994, then this contract shall automatically become void and of no effect, in which case all payments and things of value received hereunder shall be returned to the City.

17. The parties hereto represent to each other that the sale and purchase of the Property hereby contemplated 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 sale and purchase of the Property. 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 other party as a result of dealings claimed to have been conducted with the respective party.

18. This Agreement shall be governed and construed by the laws of the State of Colorado. Venue shall be in Mesa County, Colorado.

19. The rights of the City under this Agreement may not be assigned in whole or in part without the prior written consent of the Seller, which consent will not be unreasonably withheld.

20. All notices or other communications between the parties hereto shall be delivered by United States Certified Mail, return receipt requested, and shall be deemed served upon the receiving party as of the date of mailing indicated on the postal receipt, addressed as follows:

To the City: c/o City Property Agent
250 North 5th Street
Grand Junction, CO 81501-2668

To the Seller: Edwin M. Yeager
10606 West Emerald Point
Sun City, AZ 85351-2742

20. 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. This contract and the terms and conditions hereof apply to and are binding upon the heirs, successors and authorized assigns of both parties.

21. Subject to paragraph 16, if this proposal is accepted by the Seller in writing and the City receives notice of such acceptance on or before May 23, 1994, this instrument shall become a contract between the Seller and the City and shall inure to the benefit of the heirs, successors and assigns of such parties.

22. The Seller and the City have each obtained the advice of their own legal and tax counsel.

The City of Grand Junction, Colorado
Purchaser

Mark K. Achen, City Manager

Dated: _____

Purchaser's Address & Telephone: c/o City Property Agent, 250 North 5th Street,
Grand Junction, Colorado 81501.
(303) 244-1565

Acceptance By Seller:

Edwin M. Yeager

Dated: _____

Seller's Address & Telephone: 10606 West Emerald Point
Sun City, Arizona 85351-2742.
(602) 972-4077

The undersigned Closing Agent acknowledges receipt of the earnest money deposit specified in Section 1.

Abstract & Title Company of Mesa County,
Inc.

By: _____

Dated: _____

Closing Agent's Address & Telephone: 205 North 4th Street, P.O. Box 3738
Grand Junction, Colorado 81502
(303) 242-8234