

Resolution No. 75-97

A Resolution Authorizing the Mayor to Grant an Easement

WHEREAS, the City of Grand Junction owns certain lands east of Whitewater, Colorado which it acquired as part of the Somerville Ranch acquisition; and

WHEREAS, Oscar and Myrna Terry, 2945 Kathy Jo Lane, own adjacent land and have requested access from the City to a portion of their lands; and

WHEREAS, the City may benefit from the granting of such an easement if final terms can be negotiated, which will preserve the value of City lands in the area; and

WHEREAS, these lands are described on **Exhibit A**.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The City of Grand Junction City Council hereby authorizes the Mayor of the City of Grand Junction to grant an easement from the City to the Terrys for access, in accordance with the terms of an agreement approved by the City Manager, consistent with the action and discussion of the City Council had on November 19, 1997.

Approved this 19th day of November, 1997.

/s/ Janet Terry  
President of the Council

ATTEST:

Theresa F. Martinez  
Deputy City Clerk

**Exhibit "A"**

Legal Description of the Terry Property:

The North 1/2 of the Northeast 1/4 of Section 18, Township 2 South, Range 2 East of the Ute Meridian, County of Mesa, State of Colorado, except a strip of land for road purposes as conveyed to Mesa County by instrument recorded February 25, 1981, in Book 1299 at Page 931 in the office of the Mesa County Clerk and Recorder.

Legal Description of the City Property:

The North 1/2 of the Northwest 1/4 and the West 1/2 of the Northeast 1/4 of Section 18, Township 2 South, Range 2 East of the Ute Meridian, County of Mesa, State of Colorado.

NON-EXCLUSIVE INGRESS AND EGRESS EASEMENT AGREEMENT

This Non-Exclusive Ingress and Egress Easement Agreement is made this 14<sup>th</sup> day of July, 2001, by and between the City of Grand Junction, a Colorado home rule municipality, hereinafter referred to as "the City," and Oscar H. Terry and Myrna J. Terry, whose address is 2945 Kathy Jo Lane, Grand Junction, Colorado 81503, hereinafter referred to as "Grantees."

Recitals

A. Grantees represent they are the owners of the following described real property consisting of vacant land in the County of Mesa, State of Colorado, to wit:

The North 1/2 of the Northeast 1/4 of Section 18, Township 2 South, Range 2 East of the Ute Meridian, except a strip of land for road purposes as conveyed to Mesa County by instrument recorded February 25, 1981, in Book 1299 at Page 931 in the office of the Mesa County Clerk and Recorder, hereinafter referred to as "Grantees' Property."

B. The City represents it is the owner of the following described real property consisting of vacant land in the County of Mesa, State of Colorado, to wit:

The North 1/2 of the Northwest 1/4 and the West 1/2 of the Northeast 1/4 of Section 18, Township 2 South, Range 2 East of the Ute Meridian, hereinafter referred to as "the City Property."

C. Grantees' Property and the City Property are located within the geographical boundaries of an area known as the Grand Mesa Slopes Special Management Area ("GMS"). The owners of private lands, including Grantees, and managers of public lands located within the boundaries of GMS agree that scenic, open space, municipal watershed, natural resource, recreation, wildlife and aesthetic values are worthy of preservation, and that land uses within GMS should not adversely impact such values.

D. Grantees' Property is bisected by a perennial water course known as Whitewater Creek. That portion of Grantees' Property located westerly of Whitewater Creek is contiguous with and accessible by a public roadway known as Reeder Mesa Road. That portion of Grantees' property located easterly of Whitewater Creek is not contiguous with nor accessible by any public road.

E. Grantees desire to build and construct one residence on the Grantee's property located westerly of Whitewater Creek. Grantees further desire to create two separate parcels and construct two separate residences on Grantees' Property located easterly of Whitewater Creek. Grantees' ability to create two separate parcels and construct two separate residences on Grantee's Property located easterly of Whitewater Creek is dependent upon, among other things, the City Council of

the City granting an easement to allow Grantees to utilize a portion of the City's property for ingress and egress purposes.

NOW, THEREFORE, in consideration of the recitals above, the stated goals of the Grand Mesa Slopes Special Management Plan, and the terms, covenants, conditions and restrictions herein stated, the City and the Grantees agree as follows:

1. The City hereby grants and conveys, and by these presents does hereby grant and convey unto Grantees, their heirs, successors and assigns, a non-exclusive easement for ingress and egress purposes on, along, over and across the limits of the City Property described in **Exhibit "A"** and depicted on **Exhibit "B"**, which Exhibits are attached hereto and incorporated herein by reference, TO HAVE AND TO HOLD said easement with the appurtenances and privileges thereunto belonging unto the said Grantees, their heirs, successors and assigns, subject to the terms, covenants, conditions and restrictions herein stated.
2. The City hereby reserves and retains the perpetual right to use and occupy the City Property for any purpose whatsoever, and to use and occupy the non-exclusive easement herein granted for any purpose which is not inconsistent with the rights and privileges herein granted and which will not unreasonably interfere with the Grantees' use thereof.
3. Grantees' use and enjoyment of the easement herein granted shall be specifically limited to providing ingress and egress to and from Grantees' Property located easterly of Whitewater Creek, including the division thereof into two (2) separate parcels. The parties acknowledge and agree that, in the event Grantees or Grantees' heirs, successors and assigns endeavor to divide Grantee's Property located easterly of Whitewater Creek into more than two (2) separate parcels in a manner that would result in expanded utilization of the easement herein granted, such expanded utilization shall not be authorized without the prior written consent of the City, at which time additional terms, covenants, conditions and restrictions to this Agreement may be added.
4. Grantees agree that Grantees shall grade and install surface improvements, including, but not limited to, road base material, gravel, washed rock, water bars, culverts and fences and gates, on, along, over and across the easement area as directed in writing by the City. Grantees shall at all times, at Grantees' sole cost and expense, maintain the physical condition of the easement area to the complete satisfaction of the City.
5. Grantees, for themselves and for their heirs, successors and assigns, agree that they shall not hold, nor attempt to hold, the City of Grand Junction, its officers, employees and agents liable for damages caused to the improvements situated within the easement area or any other property of the Grantees or any other party, either as a result of Grantees' occupancy, possession and use of said easement area or as a result of any City activity or use thereof.

6. Grantees hereby covenant and agree as follows:

(a) Uses of and improvements upon Grantees' Property shall at all times conform and harmonize with the natural surroundings as to external design, materials, color and heights, and shall be of quality materials, construction and appearance;

(b) No junk, salvage items, rubber tires, inoperable motor vehicles, rubbish or trash shall be allowed to accumulate on Grantees' Property;

(c) No towers, radio or television antennae higher than six (6) feet above the highest roof line of any structure shall be erected on Grantees' Property;

(d) No tanks for the storage of gasoline, oil or other fuel shall be buried under the ground of Grantees' Property;

(e) Above ground tanks for the storage of fuel (i.e. gasoline fuel and diesel fuel) installed upon Grantees' Property shall be a minimum distance of 600 feet from any public roadway;

(f) Above ground tanks for the storage of oil, water, natural gas or any other liquid or fuel (except gasoline fuel and diesel fuel) upon Grantees' Property shall be screened from view from any public rights-of-ways and adjoining properties;

(g) No Non-HUD approved trailers or non-permanent outbuildings shall be placed or allowed on Grantees' Property, except as may be reasonably required during periods of construction. The intent of the foregoing provision is to prohibit the presence of what a reasonable person would consider as junk, shacks or shanties.

(h) Grantees shall save and hold the City of Grand Junction, its officers, employees and agents harmless from, and indemnify the City, its officers, employees and agents, with respect to any claim or cause of action however stated arising out of or in any way related to the use permitted under this Agreement.

(i) In the event Grantees or Grantee's heirs, successors or assigns violate or breach the terms, covenants and conditions herein stated, then such party shall pay the reasonable attorneys' fees and costs incurred by the City, including the reasonable value of the City's Attorneys, in successfully enforcing any breach or violation hereof.

(j) Each and every provision contained in this Section 6 shall be a covenant running with Grantees' Property, or any division thereof, and shall be binding upon Grantees' heirs, successors and assigns.

7. In the event the condition of the easement area is damaged due to flood or other casualty, or if the condition of the easement area deteriorates to the extent where it is no longer functional for the purposes of Grantees, the City shall have no obligation to repair the easement; use of the easement by Grantees shall be at Grantees' own risk.

8. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and upon their respective heirs, successors and assigns.

9. 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.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year first above written.



Stephanie King  
City Clerk

The City of Grand Junction, a  
Colorado home rule municipality

[Signature]  
City Utilities Manager

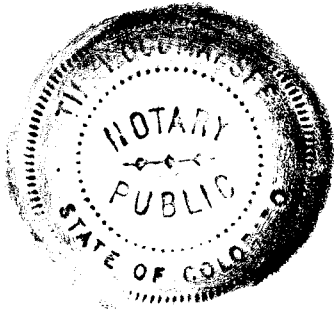
Oscar H. Terry  
Oscar H. Terry

[Signature]  
Myrna J. Terry

State of Colorado )  
 )ss.  
County of Mesa )

The foregoing instrument was acknowledged before me this 17<sup>th</sup> day of JULY, 2001, by Gregory O. Trainor as Utilities Manager and attested to by STEPHANIE NYE as \_\_\_\_\_ City Clerk of the City of Grand Junction, a Colorado home rule municipality.

My commission expires: 5/11/2002  
Witness my hand and official seal.



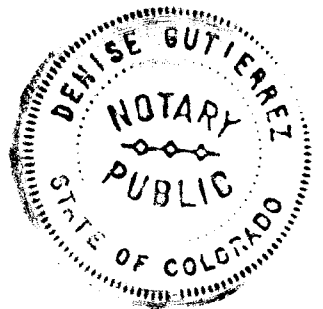
Jim Woodmense  
Notary Public

State of Colorado )  
 )ss.  
County of Mesa )

The foregoing Agreement was acknowledged before me this 20<sup>th</sup> day of JULY, 2001, by Oscar H. Terry and Myrna J. Terry.

My commission expires: 3/8/03  
Witness my hand and official seal.

Denise Gutierrez  
Notary Public



## EXHIBIT "A"

A 20.0 foot wide non-exclusive easement for ingress and egress purposes, being more particularly described as follows, to wit:

Beginning at the Southwest Corner of the Northwest  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  (NW  $\frac{1}{4}$  NW  $\frac{1}{4}$ ), of Section 17, Township 2 South, Range 2 East of the Ute Meridian, County of Mesa, State of Colorado;

thence N  $00^{\circ}36'13''$  W along the west line of the NW  $\frac{1}{4}$  NW  $\frac{1}{4}$  of said Section 17 a distance of 20.00 feet;

thence leaving the west line of said NW  $\frac{1}{4}$  NW  $\frac{1}{4}$ , N  $89^{\circ}40'19''$  E a distance of 258.41 feet to a point on the westerly edge of a gravel road commonly known as Whitewater Creek Road;

thence S  $39^{\circ}33'58''$  W along the westerly edge of said road a distance of 26.07 feet to a point on the south line of the NW  $\frac{1}{4}$  NW  $\frac{1}{4}$  of said Section 17;

thence S  $89^{\circ}40'19''$  W along the south line of the NW  $\frac{1}{4}$  NW  $\frac{1}{4}$  of said Section 17 a distance of 241.60 feet to the Point of Beginning.



# EXHIBIT "A"

MCSM NO. 1188  
NORTHWEST CORNER  
T2S, R2E, U.M.



2969-172-00-060  
CITY OF GRAND JUNCTION

2969-181-00-064  
OSCAR H. & MYRNA TERRY

EXISTING FENCE

N89°40'19"E

258.41'

20' INGRESS-EGRESS EASEMENT  
( 5000.09 SQ.FT. )

S89°40'19"W

241.60'

SOUTH LINE OF THE NW 1/4 NW 1/4 OF SECTION 17

N89°40'19"E

MCSM NO. 1337  
NORTH 1/16 CORNER, S 18 - S 17  
T2S, R2E, U.M.

500'36'02"E

WHITEWATER  
CREEK

24.00'

EXISTING GRAVEL ROAD

DRAWN BY: SRP  
DATE: 01-06-98  
SCALE: 1" = 60'  
APPR. BY: TW  
FILE NO: WHITEASE3.DWG

## EASEMENT DESCRIPTION MAP

20' INGRESS - EGRESS EASEMENT

**DEPARTMENT OF PUBLIC WORKS**  
ENGINEERING DIVISION  
**CITY OF GRAND JUNCTION**