

**RESOLUTION NO. 6-98**

**AUTHORIZING THE PURCHASE OF REAL PROPERTY**

WHEREAS, the City of Grand Junction has an option to purchase certain real property described as Lots 24 through 32, inclusive, Block 126 of the City of Grand Junction, County of Mesa, State of Colorado; and

WHEREAS, the City Council deems it necessary and proper that the City exercise its right to purchase said Property in accordance with the terms and conditions of the attached Commercial Contract to Buy and Sell Real Estate.

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 above described property in accordance with the terms and conditions of the attached Contract.
2. That the City Manager, on behalf of the City and as the act of the City, is hereby authorized and directed to execute the attached Commercial Contract to Buy and Sell Real Estate.
3. That the officers, employees and agents of the City are hereby authorized and directed to take all actions necessary and appropriate to effectuate the provisions of this Resolution and the attached Contract, 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 to accomplish the purchase of the above described property.

PASSED and ADOPTED this 4th day of February, 1998.

Attest:

/s/ Stephanie Nye  
City Clerk

/s/ Earl Payne  
President of the City Council Pro Tem

**COMMERCIAL 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 Smith Associates, a Colorado general partnership, hereinafter referred to as "the Sellers".

Recitals

A. The Sellers represent that the Sellers own that certain real property described as Lots 24 through 32, inclusive, Block 126 of the Original Plat of the City of Grand Junction, situate in Section 14, Township 1 South, Range 1 West of the Ute Meridian, County of Mesa, State of Colorado. Said real property, together with any and all improvements, fixtures, water rights, mineral rights, development rights, and any and all other rights appurtenant thereto shall be referred to in this Contract as "the Property."

B. The Sellers represent that Lots 24, 25 and 26 of the Property, hereinafter individually referred to as "Parcel A", consist of vacant land which is unencumbered by leases or tenancies that would preclude the City's immediate use and occupancy of said Lots after closing. The Sellers represent that Lots 27 through 32 of the Property, hereinafter individually referred to as "Parcel B", consist of a bus depot and related facilities which are encumbered by a lease so that the City's use and occupancy of said Lots is subject to the Lease.

C. Pursuant to that certain Option to Purchase Real Property attached hereto as **Exhibit "A"** and incorporated herein by reference ("the Option"), the Sellers have granted to the Museum of Western Colorado, its successors and assigns, the exclusive option to purchase the Property.

D. Pursuant to that certain Assignment of Option to Purchase Real Property attached hereto as **Exhibit "B"** and incorporated herein by reference, the City has the exclusive option to purchase the Property.

E. The City desires to exercise its option to purchase the Property pursuant to the Option and in accordance with the terms, covenants and conditions of this Contract.

F. The Sellers believe that the purchase price for the Property as provided in this Contract is below the fair market value of the Property. The Sellers intend that the difference between the purchase price and fair market value shall be a charitable contribution to the City. The City makes no representation as to the tax consequences of this transaction. The Sellers shall obtain independent tax counsel and be solely responsible for compliance with any gift value substantiation requirements of the Internal Revenue Code. To the extent that the purchase price for the Property is below fair market value, the parties agree that the purchase price does not reflect the existence of defects in and to the Property, including, but not limited to, defects in title or environmental conditions requiring remediation.

NOW, THEREFORE, in consideration of the recitals above and of the mutual covenants and promises contained in this Contract, and for other good and valuable consideration, the receipt and

sufficiency of which are hereby acknowledged, the Sellers and the City hereby covenant and agree as follows:

1. **Notice to Exercise.** This Contract shall be deemed the City's notice to the Sellers of the City's intent to exercise the Option.

2. **Purchase Price and Terms.**

(a) Pursuant to the Option the Sellers shall, within ten (10) days of the "Effective Date" of this Contract (hereinafter defined), commission an appraisal by a Member of the Appraisal Institute ("MAI appraisal") to determine the fair market value of the Property. The Sellers agree to provide the City with a copy of the full MAI appraisal report within five (5) days of the Seller's receipt of the MAI appraisal report. Pursuant to the Option and subject to paragraph 2(b) below, the purchase price for the Property shall be the value of the Property as determined by the MAI appraisal less ten percent (10%) of said appraised value and less the amount of \$2,500.00, which amount has previously been paid to the Sellers as consideration for the Option.

(b) Within thirty (30) days of the City's receipt of the MAI appraisal, the City shall notify the Sellers if the City either:

(i) agrees with the purchase price as determined by the MAI appraisal and has the funding necessary to purchase the Property in accordance with the terms and conditions of this Contract; or

(ii) disagrees with the purchase price as determined by the MAI appraisal or determines not to purchase the Property.

In the event the City provides notice that it disagrees with the purchase price or decides not to purchase the Property, this Contract shall automatically terminate and both parties shall be released from all obligations hereunder; provided, however, that in such event the City shall, within fifteen (15) days of its notice to so terminate, reimburse the Sellers for the actual cost and expense of obtaining the MAI appraisal. The parties agree that said reimbursement shall constitute the Seller's sole and only remedy for the City's failure to perform its obligations under this Contract for the purposes specified in this paragraph 2(b). In the event the City fails to provide such notice (to terminate) within said thirty (30) day period, the City shall be deemed to have agreed to purchase the Property in accordance with the terms and conditions of this Contract.

(c) The purchase price for Parcel A and Parcel B shall be payable by the City in the form of "good funds" at Closing.

3. **Title.**

(a) Within seven (7) days following the City's notice under paragraph 2(b)(i) above, the Sellers shall furnish to the City, at the Seller's expense, a current commitment for title insurance policy pertaining to Parcel A in an amount equal to the purchase price for said Parcel A.

(b) On or before May 15, 2003, but no sooner than May 1, 2003, the Sellers shall furnish to the City, at the Seller's expense, a current title commitment for title insurance policy pertaining to Parcel B in an amount equal to the purchase price, based on the MAI Appraisal report described in paragraph 2(a) above, for said Parcel B.

(c) Each commitment for title insurance policy referred to in this paragraph 3 shall include legible copies of all instruments listed in the schedule of exceptions. Each commitment for title insurance policy together with legible copies of all listed exceptions are hereinafter referred to as the "Title Documents." The Sellers shall deliver each title insurance policy to the City after closing and pay the premium thereon.

(d) Title for both Parcel A and Parcel B shall be merchantable in the Sellers. Written notice by the City 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 City and delivered to the Sellers on or before fifteen (15) days after receipt by the City of the Title Documents or endorsements adding new exceptions to each title commitment. If the City does not mail its notice within said fifteen (15) day period, the City shall be deemed to have accepted the condition of title as disclosed by the title documents.

(e) If title is not merchantable and written notice of defects is delivered by the City to the Sellers within the fifteen (15) day period specified in paragraph 3(d), the Sellers shall use reasonable efforts, at the Seller's expense, to correct said defects prior to Closing. If the Sellers are unable to correct said defects on or before the date of Closing, at the Seller's option and upon written notice to the City on or before the date of Closing, the date of Closing shall be extended for a period not to exceed thirty (30) days for the purposes of correcting said defects. If title is not rendered merchantable as provided in this paragraph 3, 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; provided, however, that the City may, at its option, waive objections to unsatisfactory title conditions.

(f) Pertaining to Parcel A, within fifteen (15) days following the City's notice under paragraph 2(b)(i) above, the Sellers shall furnish to the City, for review by the City, at the Seller's expense, legible copies of all information and documents in possession of the Sellers regarding lease agreements and/or rental agreements, boundary surveys, geological surveys and studies, engineering studies and environmental studies and surveys.

(g) Pertaining to Parcel B, on or before May 15, 2003, but no sooner than May 1, 2003, the Sellers shall furnish to the City, for review by the City, at the Seller's expense, legible copies of all information and documents in possession of the Sellers regarding lease agreements and/or rental agreements, boundary surveys and studies, geological surveys and studies, engineering studies and environmental studies and surveys.

#### 4. **Inspection.**

(a) The Sellers and the City agree that the City, its officers, employees, agents, contractors and licensees shall be permitted to enter upon the Property to conduct inspections and investigations on the Property as the City shall in its sole discretion deem necessary and appropriate. With respect to Parcel A, said permitted access shall be for a period commencing on the first day

following the expiration of the period set forth in paragraph 2(b)(i) above, and ending on the date which is sixty (60) days thereafter (the "Inspection Period" for Parcel A). With respect to Parcel B, said permitted access shall be for a period commencing on March 1, 2003 and ending on June 1, 2003 (the "Inspection Period" for Parcel B).

(b) If the City, during the Inspection Periods set forth in paragraph 4(a), determines that the condition of either Parcel A or Parcel B is unsuitable for use by the City for any reason, the City shall notify the Sellers of such determination in writing. The Sellers shall then have fifteen (15) days after receipt of said notice to either reasonably correct said unsuitable conditions or to terminate this Contract. If this Contract 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.

5. **Closing and Possession.** Subject to payment or tender of the purchase price by the City to the Sellers and compliance by both parties with the other terms and provisions hereof, Closing and possession shall occur as follows:

(a) With respect to Parcel A, the Sellers shall execute and deliver to the City a good and sufficient General Warranty Deed for Parcel A on June 1, 1998, or, by mutual agreement, at an earlier date. The Sellers shall deliver possession of Parcel A to the City at Closing, free and clear of the possession of any other party and free and clear of: all liens and encumbrances and all taxes, except the general property taxes for the year of Closing; all liens for special improvements committed to as of June 1, 1998, whether assessed or not; all fees and charges for utilities, association dues and water assessments; any covenants, restrictions or reversionary provisions not accepted by the City listed as exceptions in the Title Documents as set forth herein; and all tenancies and/or leasehold estates.

(b) With respect to Parcel B, the Sellers shall execute and deliver to the City a good and sufficient General Warranty Deed for Parcel B on July 31, 2003, or, by mutual agreement, at an earlier date. The Sellers shall deliver possession of Parcel B to the City at Closing, free and clear of the possession of any other party and free and clear of: all liens and encumbrances and all taxes, except the general property taxes for the year of Closing; all liens for special improvements committed to as of July 31, 2003, whether assessed or not; all fees and charges for utilities, association dues and water assessments; any covenants, restrictions or reversionary provisions not accepted by the City listed as exceptions in the Title Documents as set forth herein; and all tenancies and/or leasehold estates.

(c) If the Sellers, after Closing, fail to deliver possession on the respective dates specified above, the Sellers shall be subject to eviction and shall be additionally liable to the City for the payment of \$500.00 per day from the date of agreed possession until possession is delivered.

(d) The parties designate Abstract & Title Company of Mesa County, Inc., as Closing agent ("Closing Agent") for the purposes of Closing this transaction. The City and the Sellers each agree to pay their respective Closing costs according to local custom.

6. **Inclusions.** The purchase price shall include the Property, all improvements thereon and any and all other rights appurtenant thereto, including, but not limited to, appurtenant easements, if any, all buildings and improvements thereon and all fixtures attached thereto, including, but not limited

to, lighting, heating systems, plumbing, ventilating systems, air conditioning systems and fixtures, telephone wiring with connecting blocks and jacks, floor and wall coverings, furnishings, furniture, minerals and mineral rights, if any, and water and water rights, if any.

7. **Seller's Promise Not To Further Encumber.** From the Effective Date hereof, the Sellers shall not do any of the following without the prior written consent of the City:

(a) make or permit to be made, extend or permit to be extended, any lease, contract, option or agreement affecting the Property which may extend beyond any contemplated closing date or which may adversely affect merchantability of title; or

(b) cause or permit any lien, encumbrance, mortgage, deed of trust, right, restriction or easement to be placed upon or created with respect to the Property that exceeds eighty-percent (80%) of the purchase price; or

(c) cause or permit any mortgage, deed of trust or other lien to be foreclosed upon due to the Seller's actions or omissions, including failure to make required payments or failure to obtain any required consents.

8. **Seller's Representations and Warranties.** The Sellers represent and warrant the following:

(a) The Sellers have the full power and authority to enter into this Contract and the persons signing this Contract for the Sellers have the full power and authority to sign for the Sellers and to bind the Sellers to this Contract and to sell, transfer and convey all right, title and interest in and to the Property in accordance with this Contract; and

(b) The Sellers have received no notice that the conveyance of the Property in accordance with this Contract will not violate any provision of federal, state or local law; and

(c) There will be no tenants or occupants in possession of any portion of Parcel A at the time of Closing for said Parcel A; and

(d) There will be no tenants or occupants in possession of any portion of Parcel B at the time of Closing for said parcel B; and

(e) The Sellers have received no notice of any suit, action, arbitration, legal, administrative or other proceeding or inquiry pending or threatened against the Property, or any portion thereof, or pending or threatened against the Sellers, which could affect the Seller's title to the Property, authority to convey the Property, affect the value of the Property, or subject an owner of the Property to liability; and

(f) The Sellers are not insolvent and have no intention of filing for protection under the bankruptcy laws of the United States; and

(g) At the time of Closing for Parcel A, there will be no encumbrances or liens against Parcel A, including, but not limited to, mortgages or deeds of trust, except as shown in the title documents; and

(h) At the time of Closing for Parcel B, there will be no encumbrances or liens against Parcel B, including, but not limited to, mortgages or deeds of trust, except as shown in the title documents; and

(i) At the time of Closing for Parcel A, there will be no lease, license, permit, option, right of first refusal or other agreement, written or oral, which prevents the Sellers from fulfilling the Seller's obligations and completing the Seller's performance pursuant to this Contract; and

(j) At the time of Closing for Parcel B, there will be no lease, license, permit, option, right of first refusal or other agreement, written or oral, which prevents the Sellers from fulfilling the Seller's obligations and completing the Seller's performance pursuant to this Contract; and

(k) To the best of Seller's knowledge, there are no and have been no:

(i) actual or impending public improvements or private rights or actions which will result in the creation of any liens upon the Property, or any portion thereof, including delinquent taxes, special assessments or mechanic's liens;

(ii) uncured notices from any governmental agency notifying the Sellers of any violations of law, ordinance, rule or regulation which would affect the Property or any portion thereof; or

(iii) notices or other information giving the Sellers reason to believe that any conditions existing on the Property or in the vicinity of the Property or in ground or surface waters associated with the Property may have a material affect on the value of the Property or subject the owner of the Property to potential liability under environmental laws; and

(l) As of the Effective Date, the Sellers have received no notice of:

(i) any condition at, on, under or related to the Property presently or potentially posing a significant hazard to human health or the environment, whether or not in compliance with law;

(ii) any production, use, treatment, storage, transportation, or disposal of any Hazardous Substance on the Property;

(iii) any release or threatened release of any Hazardous Substance, pollutant or contaminant into, upon or over the Property or into or upon ground or surface water at the Property or within the immediate vicinity of the Property;

(iv) any Hazardous Substance, now or ever, stored on the Property in underground storage tanks, pits or ponds;

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- (v) any asbestos containing material incorporated into any buildings or interior improvements or equipment that may be part of the Property or other assets to be transferred under this Contract; or
  - (vi) any electrical transformer or other item containing PCBs on the Property or among the assets to be transferred under this Contract.

The term "Hazardous Substance(s)" means any substance which is (1) defined as a hazardous substance, hazardous material, hazardous waste, pollutant or contaminant under any Environmental Law, (2) a petroleum hydrocarbon, including crude oil or any fraction thereof, (3) hazardous, toxic, reproductive toxicant, (4) regulated pursuant to any Environmental Law(s), or (5) any pesticide regulated under state or federal law.

The term "Environmental Law(s)" means each and every federal, state, and local law, statute, ordinance, regulation, rule, judicial or administrative order or decree, permit, license, approval, authorization or similar requirement of each and every federal, state and local governmental agency or other governmental authority, pertaining to the protection of human health and safety and the environment.

9. **Reliance.**

(a) All of the Seller's representations and warranties made in this Contract are material and are relied upon by the City. All representations and warranties of the Sellers shall be considered to have been made or affirmed as of the Closing and shall survive the Closing for both Parcel A and Parcel B for a period of one (1) year.

(b) If, before Closing for either Parcel A and/or Parcel B, the Sellers discover any information or facts that would materially change any of the foregoing representations or warranties, the Sellers shall immediately give written notice to the City of those facts and information. If any of the foregoing representations or warranties cease to be true before Closing, the Sellers shall remedy the problem, at the Seller's sole cost and expense, upon receipt of notice by the City. If the problem is not remedied by Closing, the City may elect to either:

- (i) terminate this Contract, in which case any deposit(s) paid by the City shall be promptly refunded; or
- (ii) defer the Closing until the problem has been remedied.

The City's choice in this regard shall not constitute a waiver of the City's rights with respect to any loss or liability suffered as a result of a representation not being true or a warranty having been breached, nor will it constitute a waiver of any other remedies provided in this Contract or by law or equity.

(c) Upon Closing for either Parcel A and/or Parcel B, if the City so requests, the Sellers shall deliver to the City a certificate in a form satisfactory to the City stating that each of the representations and warranties in this Contract is true and correct as of the Closing, provided,



however, that any of the Seller's representations or warranties made upon execution hereof which are found to be untrue prior to Closing shall not be deemed made at Closing.

10. **Remedies Upon Default.** If the Sellers default in the performance of any of the Seller's obligations under this Contract, the City shall, in addition to any and all other remedies provided in the Contract or by law or equity, have the right of specific performance against the Sellers. If the City defaults in the performance of any of its obligations under this contract, the Seller's sole remedy at law or in equity shall be to retain any Deposit(s) and to terminate this Contract. Upon such termination, the Sellers shall have no further obligation to sell all or any remaining portion of the Property to the City, and the City shall have no further obligation to pay to the Sellers all or any portion of the purchase price, and the parties shall have no further rights, duties or obligations under this Contract.

11. **Indemnification.** The Sellers shall indemnify, defend with counsel of the City's choice, and hold the City, its officers, employees and agents harmless from and against all expense, loss, liability, damages and claims, including the City's attorneys' fees, if necessary, arising out of any misrepresentations of the Sellers and or the Seller's breach of any warranty or covenant in this Contract. The provisions of this paragraph 11 shall survive the Closing and transfer of title for a period of one (1) year following Closing.

12. **Condition of the Property.** The Property and inclusions shall be conveyed in their present condition, ordinary wear and tear excepted. In the event the Property shall be damaged by fire, flood or other casualty prior to the time of Closing, in an amount of not more than ten percent (10%) of the total purchase price, the Sellers shall be obligated to repair the same before the date of Closing. In the event such damage is not repaired within said time or if the damages exceed such sum, this Contract may be terminated at the option of the City. Should the City elect to carry out this Contract despite such damage, the City shall be entitled to credit for all the insurance proceeds resulting from such damage to the Property and inclusions, not exceeding, however, the total purchase price. Should any inclusions or services fail or be damaged between the date of this Contract and the date of Closing or the date of possession, whichever shall be earlier, then the Sellers shall be liable for the repair or replacement of such inclusions or services with a unit of similar size, age and quality, or an equivalent credit, less any insurance proceeds received by the City covering such repair or replacement.

13. **Condemnation.** In the event of the taking of all or any part of the Property by eminent domain proceedings, or the commencement of such proceedings prior to Closing, the City shall have the right, at its election, to terminate this Contract by written notice to the Sellers and any Deposit(s) paid by the City shall be promptly refunded. If the City does not terminate this Contract, then the City may, at its election, either:

(a) proceed to Closing with the purchase price reduced by the total of any awards or proceeds received or to be received by the Sellers as a result of such proceedings; or

(b) proceed to Closing with an assignment by the Sellers of all of Seller's right, title and interest in and to any and all such awards and proceeds.

The Sellers shall notify the City in writing of any eminent domain proceedings affecting the Property within five (5) days after the Sellers learn of such proceedings.

14. **Prorations and Fees.**

(a) Real and personal property taxes for the year of Closing, based on the most recent levy and the most recent assessment, rents, water, sewer and trash charges, shall be prorated as of the Closing and shall be considered final settlement. Any documentary tax fees or real property transfer tax fees arising out of the conveyance of the Property shall be paid by the Sellers. The Sellers shall pay for the title insurance policies as specified herein. Other fees and charges shall be allocated in accordance with local custom.

(b) Any lien or encumbrance against the Property shall be paid or released by the Sellers at or before Closing and may be paid by the Sellers from the proceeds of this transaction or from any other source. The Sellers shall secure a full and complete release of the Property from the holder of any deed of trust, mortgage or any other lien securing indebtedness at or prior to Closing.

15. **Notices.** All notices or other communications between the parties pertaining to the Contract shall be in writing 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:                    Mr. Tim Woodmansee  
    City Property Agent  
    250 North 5th Street  
    Grand Junction, Colorado 81501-2668

With copy to:                Mr. Dan Wilson  
    City Attorney  
    250 North 5th Street  
    Grand Junction, Colorado 81501-2668

To the Sellers:                Mr. Richard Scariano  
    Omega Realty & Associates, Inc.  
    1048 Independent Avenue, Suite A-201  
    Grand Junction, Colorado 81505

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

16. **Legal Costs.** Except as provided by law or paragraphs 11 and 18 hereof, in the event of any litigation arising out of this Contract, each party shall pay such own party's own costs and attorneys' fees.

17. **Controversy; Earnest Money.** Notwithstanding any termination of this Contract, the parties agree that, in the event of any controversy regarding any Deposit(s) 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.

18. **Broker's Commission.** The Sellers agree to defend indemnify and hold the City harmless from any claim for real estate brokerage commissions or finder's fees asserted by any party as a result of dealings claimed to have been conducted in connection with this Contract and the sale and purchase of the Property hereby contemplated.

19. **Inurement/Binding on Successors.** This Contract shall inure to the benefit of and be binding upon the parties hereto and upon their respective heirs, successors and assigns.

20. **Express Condition.** This entire Contract and the City's obligation to proceed under its terms and conditions is expressly conditioned upon the consent and approval of the City Council of the City of Grand Junction. With respect to the sale and purchase of Parcel A, if such consent is not obtained on or before thirty (30) days following the Effective Date of this Contract, 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. With respect to the sale and purchase of Parcel B, if such consent is not obtained on or before July 26, 2003, then the City shall have no further obligation to pay to the Sellers all or any portion of the purchase price for said Parcel B, the Sellers shall have no further obligation to sell all or any remaining portion of Parcel B to the City, and the parties shall have no further rights, duties or obligations under this contract as the same would pertain to said Parcel B.

21. **Entire Agreement; Modification; Waiver.** This Contract constitutes the entire agreement between the Sellers and the City pertaining to the Property and supersedes all prior and contemporaneous agreements, representations, and understandings. No supplement, modification or amendment of this Contract shall be binding unless executed in writing by all the parties. No waiver of any of the provisions of this Contract shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

22. **Governing Law.** This Contract shall be governed by and construed in accordance with the laws of the State of Colorado.

23. **Effective Date.** Subject to the provisions of paragraph 20, the Effective Date of this Contract shall be the date upon which both parties have fully executed this Contract ("Effective Date").

IN WITNESS of the foregoing provisions, the parties hereto have below signed this Contract:

Attest:

The City of Grand Junction,  
a Colorado home rule municipality

\_\_\_\_\_  
Stephanie Nye, City Clerk

\_\_\_\_\_  
Mark K. Achen, City Manager

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Sellers:

Smith Associates,  
a Colorado general partnership

\_\_\_\_\_  
Sterling Smith, Managing Partner

Date: \_\_\_\_\_

OPTION TO PURCHASE REAL PROPERTY

In consideration of Two Thousand Five Hundred and No/100 Dollars (\$2,500.00) and other good and valuable consideration paid to Smith Associates, a general partnership, P.O. Box 756, Grand Junction, CO 81502, hereinafter called "Seller", receipt of which is hereby acknowledged, Seller hereby gives and grants to Museum of Western Colorado, 246 S. 4th Street, Grand Junction, CO 81501, hereinafter called "Purchaser", its successors and assigns, the exclusive option to purchase the real property of Seller situated in the County of Mesa, State of Colorado, and particularly described as:

Lots 17 through 32, inclusive, Block 126, City of Grand Junction

together with the buildings and all other improvements thereon, all easements, rights of way, and appurtenances thereto, and all of Seller's right, title, and interest in all water, water rights and minerals appurtenant thereto and public ways adjoining the property.

This option is given on the following terms and conditions:

SECTION ONE  
PRICE AND TERMS OF PAYMENT

The purchase price for the property shall be the appraised value less ten percent (10%) as of the date of exercise of the option. Seller at Seller's expense, shall commission an MAI appraisal within ten (10) days of Purchaser's exercise of this option.

Purchaser shall be entitled to a credit against the purchase price of the \$2,500.00 tendered herein.

SECTION TWO  
PERIOD OF OPTION

This option may be exercised by giving notice thereof to Seller at P.O. Box 756, Grand Junction, CO 81502 or such other address as Seller may provide to Purchaser, at any time during the period from January 1, 1997, until 12:00 o'clock P.M., November 1, 2003. Such notice shall include a contract of purchase in the form of the "receipt and option contract" approved by the Colorado Real Estate Commission, and shall be subject to the reasonable approval of Seller.

### SECTION THREE

#### TITLE

Seller shall, within fifteen (15) days after the date of mutual execution hereof, obtain and deliver to Purchaser for its examination a current title commitment (the "Commitment") from a qualified title insurance company doing business in the State of Colorado, committing to issue a standard ALTA owner's title insurance policy in an amount "to be determined," insuring good and marketable title in fee simple to the property in Purchaser, subject only to current, non-delinquent general real property taxes and such easements, rights-of-way, covenants, restrictions and other title matters as Purchaser shall deem, in its sole discretion, not to affect adversely the value of or Purchaser's intended use of the property (collectively, the "Permitted Exceptions"). On or before thirty (30) days after the date of mutual execution hereof, Purchaser shall give notice in writing to Seller of any objections to any exceptions to title as so evidenced. Seller shall have fifteen (15) days thereafter in which to remove such exceptions or to notify Purchaser that it is unable or unwilling to remove such exceptions. If Seller so notifies Purchaser, Purchaser may, at its option, terminate this Agreement by giving written notice to Seller on or before five (5) days after receipt of Seller's notice, provided that if Purchaser does not so terminate the Agreement, Purchaser shall be deemed to have accepted such exceptions to title as Permitted Exceptions.

If Purchaser exercises the option, then upon closing of the purchase and sale of the property, Seller shall convey title to Purchaser by General Warranty Deed, free and clear of all liens, and subject only to taxes and assessments for the year of closing, building and zoning regulations and the Permitted Exceptions. Promptly after closing, Seller shall furnish to Purchaser at Seller's cost an ALTA owner's title insurance policy in the amount of the purchase price, issued pursuant to the Commitment (or to a similar commitment).

### SECTION FOUR ESCROW; CLOSING

An escrow shall be opened with Abstract and Title Company of Mesa County, Inc., Grand Junction, Colorado, within ten (10) days' after exercise of this option by Purchaser. All necessary documents including the MAI appraisal of the subject property and a contract of purchase, shall be delivered to the Escrow Agent and all payments required hereunder, including payment of the purchase price, plus closing costs as customarily allocated in this community, shall be made to Escrow Agent. Seller and Purchaser

shall execute such escrow instructions, not inconsistent with the terms of this option, as may be requested by the Escrow Agent from time to time.

Taxes and assessments for the current year shall be prorated as of the date of closing.

The sale transaction shall close when the Escrow Agent is able to comply with the provisions hereof. If closing is not accomplished within ninety (90) days from the date of exercise of this option or such extended period thereafter, not to exceed thirty (30) days, at the election of either party the escrow shall be terminated, all deposits made on the account of the purchase price and instruments deposited in escrow shall be returned to the respective parties entitled thereto, and Purchaser's option rights shall terminate. Upon termination by Seller, all payments made to Seller hereunder shall be refunded to Purchaser. Upon termination by Purchaser, all payments made to Seller hereunder shall be nonrefundable.

#### SECTION FIVE POSSESSION AND RISK OF LOSS

Seller shall maintain the property in its present condition, reasonable wear from ordinary use excepted. Possession shall be transferred to Purchaser on closing.

Risk of loss from fire or other casualty to the property shall be Seller's until transfer of possession as herein provided. Seller shall maintain adequate insurance against loss, including extended coverage, during such period. All policies of insurance on the property shall be transferred to Purchaser at closing of escrow, at its option.

Purchaser shall have the right to match (first right of refusal) any bona fide offer to purchase received by Seller prior to expiration of the option period or within one hundred eighty (180) days of the termination of this option. Seller shall provide Purchaser with a copy of any such offer(s) by registered mail at the address given above and Purchaser shall have ten (10) days to accept same as submitted or its rights herein as to that offer shall terminate.

#### SECTION SIX NOTICE

Any notice hereunder shall be given in writing to the party for whom it is intended in person or by registered mail at the

following address, or such future address as may be designated in writing: to the Seller, at the address set forth above; to the Purchaser, at the address set forth above; to any successor or assignee of either party, at the address stated in the notice of succession or assignment.

SECTION SEVEN  
ASSIGNMENT AND SUCCESSION

This option and the contract resulting from the exercise thereof shall bind and inure to the benefit of the heirs, administrators, executors, successors, and assigns of the respective parties. All rights of Purchaser hereunder may be assigned without restriction, but notice of such assignment shall be given in writing to Seller.

SECTION EIGHT  
TIME OF THE ESSENCE

Time is of the essence hereof.

SECTION NINE  
TERMINATION OF OPTION

If Purchaser does not exercise the option hereunder on or before 12:00 o'clock P.M., November 1, 2003, then this option shall terminate, and neither party shall have any further rights hereunder.

Executed in duplicate on 12-15, 1993.

PURCHASER:

MUSEUM OF WESTERN COLORADO

By:

Terence N. Wakefield  
Title: CHAIRMAN, BOARD OF DIRECTORS

SELLER:

SMITH ASSOCIATES

By:

Stephen J. Smith  
General Partner



STATE OF COLORADO )  
 ) ss.  
COUNTY OF MESA )

The foregoing instrument was acknowledged before me this day of December, 1993, by Terrance N. Wykefield as Chairman, Board of Directors of the Museum of Western Colorado.

WITNESS my hand and official seal.

My commission expires: 11/21/96

Danna K Roberts  
Notary Public  
105 Country Club Park  
Grand Junction, Co 81503

STATE OF COLORADO )  
 ) ss.  
COUNTY OF MESA )

The foregoing instrument was acknowledged before me this day of December, 1993, by Sterling T. Smith as General Partner of Smith Associates.

WITNESS my hand and official seal.

My commission expires:

Rand Kathryn Surphise  
Notary Public

01/15-135

ASSIGNMENT OF OPTION TO PURCHASE REAL PROPERTY

EXHIBIT "B"

For value received, the Museum of Western Colorado, Inc., a Colorado nonprofit corporation, hereby assigns to the City of Grand Junction, Colorado, a Colorado home rule city, all of its right, title and interest in and to: the Option to Purchase Real Property concerning the real property described as Lots 17 through 32, inclusive, Block 126, City of Grand Junction, also known as 230 South 5th Street, Grand Junction, CO 81501, situated in the County of Mesa; together with the buildings and all other improvements thereon; all easements, rights of way and appurtenances thereto; all of assignor's right, title, and interest in all water, water rights and minerals appurtenant thereto; and public ways adjoining the property.

The Option to Purchase Real Property assigned hereby was made between the Sterling Company and the Mesa County Rural Enterprise Zone Administrator, effective as of October 30, 1993, and was subsequently assigned by the Mesa County Rural Enterprise Zone Administrator on November 30, 1993 to the Museum of Western Colorado. The property was previously (and erroneously) described as having a street address of either 246 or 248 South 4th Street.

Museum of Western Colorado

By: [Signature]  
Jim Widdows, Chairman of the Board

Attest: [Signature]  
Cherie L. Shank, Secretary  
Board of Directors

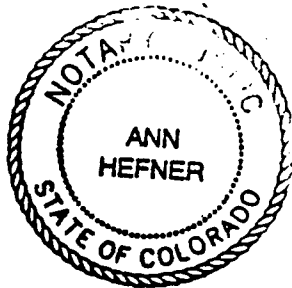
STATE OF COLORADO }

COUNTY OF MESA

The foregoing instrument was acknowledged before me this 30<sup>th</sup> day of June,

1997 by Jim Widdows, Chairman of the Board, and Cherie L. Shank, Secretary, Board of Directors.

Witness my hand and official seal.



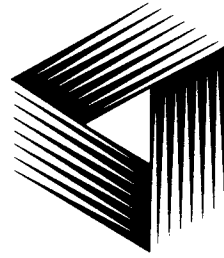
[Signature]  
Notary Public

My Commission expires:

10-9-97

3 Vacant lots adjacent to the Bus Depot in the 500 Block  
of Ute Avenue.

Refer to Resolution No. 6-98.




OWNER'S POLICY  
OF TITLE INSURANCE  
(10-17-92)

AMERICAN LAND TITLE ASSOCIATION

ISSUED BY  
TRANSMATION TITLE INSURANCE COMPANY

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 **Transnation**

The Transnation logo features a stylized 'T' made of parallel lines, similar in style to the American Land Title Association logo.

HOME OFFICE:  
1700 Market Street | Philadelphia, PA 19103-3990

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