

**RESOLUTION NO. 34-98**

**AUTHORIZING THE PURCHASE OF REAL PROPERTY**

WHEREAS, a majority of the real estate along and within the vicinity of 25 Road between Highway 6&50 and Patterson Road was outside the corporate limits of the City of Grand Junction when a majority of the growth and development within that neighborhood occurred. While outside the Grand Junction city limits, the subject neighborhood was allowed to develop without the development and implementation of a storm water management plan. In 1997, portions of the 25 Road corridor and certain lands adjacent to and within proximity of the 25 Road corridor were flooded by a 100-year storm event; and

WHEREAS, the owners and occupants of property within the subject neighborhood have requested the City develop and implement a storm water management plan to serve the drainage needs of the subject neighborhood. The City Council of the City of Grand Junction has determined that the development and implementation of a storm water management plan for the subject neighborhood is necessary for the health, safety and welfare of the inhabitants of the City of Grand Junction; and

WHEREAS, the City Council of the City of Grand Junction has determined that the proper development and implementation of a storm water management plan for the subject neighborhood requires the installation of a storm water detention basin together with related underground storm drainage pipelines and other appurtenances; and

WHEREAS, the City Council of the City of Grand Junction has determined that certain real property owned by the Rumsey Trust, consisting of approximately 2.64 acres, is required by the City for the installation, operation, maintenance and repair of a storm water detention basin; and

WHEREAS, the City has obtained an independent MAI Appraisal which estimates the fair market value of the real property to be purchased from the Rumsey Trust to be \$211,825.00.

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 real property from the Rumsey Trust for the sum of \$211,825.00 and in accordance with the terms and conditions of the attached Commercial Contract to Buy and Sell Real Estate.
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 execution and delivery of such certificates and documents as may be necessary or desirable to accomplish the purchase of said real property.

PASSED and ADOPTED this 20th day of May, 1998.

Attest:

/s/ Christine English  
Acting City Clerk

/s/ Janet Terry  
President of the City Council

**COMMERCIAL  
CONTRACT TO BUY AND SELL REAL ESTATE**

**THIS IS A LEGAL INSTRUMENT. IF NOT UNDERSTOOD, LEGAL, TAX OR OTHER COUNSEL SHOULD BE CONSULTED BEFORE SIGNING.**

May 12, 1998

**1. PARTIES AND PROPERTY.** The City of Grand Junction, a Colorado home rule municipality, Purchaser, agrees to buy, and Myrl Rumsey and Georgia Rumsey, trustees of the Rumsey Trust, Sellers, agrees to sell, on the terms and conditions set forth in this contract, the following described real property in the County of Mesa, State of Colorado, to wit:

See Exhibit "A" attached hereto and incorporated herein by reference.

together with all interest(s) of Seller, including all easements and other appurtenances thereto, all improvements thereon and all attached fixtures thereon, hereinafter called the Property.

**2. INCLUSIONS.** The purchase price includes all items and fixtures attached to and affixed upon the Property (the Inclusions) on the date of this contract. The Inclusions are to be conveyed to Purchaser by Sellers at closing, free and clear of all taxes, liens and encumbrances.

**3. PURCHASE PRICE AND TERMS.** The purchase price for the Property shall be \$ 211,825.00, payable in U.S. dollars by Purchaser as follows:

**(a) Earnest Money.**

\$ 10,000.00 in the form of City of Grand Junction Warrant No. \_\_\_\_\_, as earnest money deposit and part payment of the purchase price, payable to and held by Meridian Land Title, Inc., closing agent for the Sellers and Purchaser, in said closing agent's trust account.

**(b) Cash at Closing.**

\$ 201,825.00 to be paid by Purchaser at closing in "good funds".

**4. GOOD FUNDS.** All payments required at closing shall be made in funds which comply with all applicable Colorado laws.

**5. NOT ASSIGNABLE.** This contract shall not be assignable by Purchaser without Seller's prior written consent. Except as so restricted, this contract shall inure to the benefit of and be binding upon the successors and assigns of the parties.

**6. EVIDENCE OF TITLE.** Purchaser shall be responsible for purchasing its own title insurance policy.

**7. DATE OF CLOSING.** The date of closing shall be May 29, 1998, or by mutual agreement at an earlier date. The hour and place of closing shall be mutually agreed upon between the Sellers, the Purchaser and the Closing Agent.

**8. TRANSFER OF TITLE.** Subject to tender or payment on closing as required herein and compliance by Purchaser with the other terms and provisions hereof, Sellers shall execute and deliver a good and sufficient General Warranty Deed to Purchaser, at closing, conveying the Property free and clear of all taxes and free and clear of all liens.

**9. PAYMENT OF ENCUMBRANCES.** Any encumbrance required to be paid shall be paid at or before the time of settlement from the proceeds of this transaction or from any other source.

**10. CLOSING COSTS, DOCUMENTS AND SERVICES.** Purchaser and Sellers shall pay their respective closing costs at closing, except as otherwise provided herein. Purchaser and Sellers shall sign and complete all customary or required documents at or before closing. Fees for real estate closing and settlement services shall be paid equally by Purchaser and Sellers.

**11. PRORATIONS.** Fees for utilities including, but not limited to, water, sewer, telephone, natural gas and electricity, shall be prorated to the date of closing.

**12. POSSESSION.** Possession of the Property shall be delivered to Purchaser at closing, free and clear of all leases or tenancies. If Sellers, after closing, fail to deliver possession on the date herein specified, Sellers shall be subject to eviction and shall be additionally liable to Purchaser for payment of \$ 50.00 per day from the date of agreed possession until possession is delivered.

**13. CONDITION OF AND DAMAGE TO PROPERTY.** The Property and Inclusions shall be conveyed in their present condition, ordinary wear and tear excepted.

**14. TIME OF ESSENCE/REMEDIES.** 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 or waived as herein provided, there shall be the following remedies:

**(a) IF PURCHASER IS IN DEFAULT:**

Subject to Section 16(d), if Purchaser is in default, Sellers may elect to treat this contract as canceled, in which case all payments and things of value received hereunder shall be forfeited and retained on behalf of Sellers, and Sellers may recover such damages as may be proper, or Sellers may elect to treat this contract as being in full force and effect and Sellers shall have the right to specific performance or damages, or both.

**(b) IF SELLERS ARE IN DEFAULT:**

Purchaser may elect to treat this contract as canceled, in which case all payments and things of value received hereunder shall be returned and Purchaser may recover such damages as may be proper, or Purchaser may elect to treat this contract as being in full force and effect and Purchaser shall have the right to specific performance or damages, or both.

**(c) COSTS AND EXPENSES.**

Anything to the contrary herein notwithstanding, in the event of any litigation or arbitration arising out of this contract, the court shall award to the prevailing party all reasonable costs and expense, including attorney fees.

**15. EARNEST MONEY DISPUTE.** Notwithstanding any termination of this contract, Purchaser and Sellers agree that, in the event of any controversy regarding the earnest money and things of value held by Closing Agent, unless mutual written instructions are received by said Closing Agent, Closing Agent shall not be required to take any action but may await any proceeding, or at Closing Agent's option and sole 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.

**16. ADDITIONAL PROVISIONS:**

**(a) Physical Fitness of the Property.** Sellers makes no representations or warranties regarding the physical fitness of the Property for any use or purpose. In the event the transaction hereby contemplated is completed pursuant to the terms and conditions of this Contract, the City shall be deemed to have accepted the physical condition of the Property as is, where is, in its present condition and location.

**(b) Broker's Commission.** The parties hereto represent to each other that this contract and the sale and purchase of the Property hereby contemplated was brought about without the efforts of any real estate broker(s). 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 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.

**(c) Purchaser to Fence Property.** Purchaser is purchasing the Property for use as a storm water detention basin. So long as Purchaser owns and uses the Property for such purpose, Purchaser agrees to erect and maintain security fences around the perimeter of all boundaries of the Property.

**(d) Approval by City Council.** This entire Contract and Purchaser'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. If such consent and approval is not obtained on or before May 20, 1998, this Contract shall automatically become void and of no effect; provided, however, that in the event the City Council fails to so consent and approve, Sellers shall be entitled to retain the earnest money deposit to compensate Sellers for lost rental income caused by Sellers good faith termination of tenancies upon the Property.

**(e) Seller's Utilization of Detention Basin.** Purchaser agrees Sellers and Seller's heirs, successors and assigns, shall be authorized to utilize the storm water detention basin (Purchaser's contemplated use of the Property) to serve Seller's adjoining properties in lieu of the installation of individual retention and/or detention facilities on Seller's adjoining properties; provided, however that Sellers and Seller's heirs, successors and assigns, shall be solely responsible for all costs and expenses required to connect to and utilize said storm water detention basin; provided, further, that the utilization of said storm water detention basin by Sellers Seller's heirs, successors and assigns, shall be in strict conformance with applicable City standards and procedures in effect at the time said utilization by Sellers and Seller's heirs, successors or assigns, is executed. Nothing herein is intended to waive or reduce applicable regulatory fees and costs, including, but not limited to, impact fees and costs established by the Zoning and Development Code of the City.

**(f) Notices.**

All notices or other communications between the parties pertaining to this 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, CO 81501

To the Sellers: Myrl & Georgia Rumsey  
1935 Broadway  
Grand Junction, Colorado 81503-9510

With Copy to: Mr. Jerry D. Dye  
7508 E. Long Circle  
Englewood, CO 80112

**17. RECOMMENDATION OF LEGAL COUNSEL.** By signing this document, Purchaser and Sellers acknowledge that each party has had the opportunity to obtain the advice of their own legal counsel regarding examination of title and this contract.

**18. TERMINATION.** In the event this contract is terminated, all payments and things of value received hereunder shall be returned and the parties shall be relieved of all obligations hereunder, subject to Section 15.

**19. NOTICE OF ACCEPTANCE/COUNTERPARTS.** Subject to Section 16(d), if this proposal is accepted by Sellers in writing and Purchaser receives notice of such acceptance on or before 2:00 p.m., Grand Junction Time on May 14, 1998, this document shall become a contract between Sellers and Purchaser. A copy of this document may be executed by each party, separately, and when each party has executed a copy thereof, such copies taken together shall be deemed to be a full and complete contract between the parties.

For the City of Grand Junction, a Colorado  
home rule municipality, Purchaser

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

**20. ACCEPTANCE.** Sellers accept the above proposal this \_\_\_\_\_ day of \_\_\_\_\_, 1998.

\_\_\_\_\_  
Myrl Rumsey, Co-Trustee of the Rumsey Trust

\_\_\_\_\_  
Georgia Rumsey, Co-Trustee of the Rumsey Trust

**Exhibit "A"**

Parcel 1:

A tract or parcel of land situate in the Southwest 1/4 of the Northwest 1/4 (SW1/4 NW1/4) of Section 10, Township 1 South, Range 1 West of the Ute Meridian, City of Grand Junction, County of Mesa, State of Colorado, being more particularly described as follows: Commencing at a found Mesa County Survey Monument in place for the North 1/16th corner on the west line of said Section 10, whence a found Mesa County Survey Monument in place for the West 1/4 corner of said Section 10 bears S 00°05'45" E a distance of 1318.98 feet, with all bearings contained herein being relative thereto; thence N 89°59'10" E along the north line of the SW1/4 NW1/4 of said Section 10 a distance of 430.00 feet to the True Point of Beginning;

thence continuing along the north line of said SW1/4 NW1/4, N 89°59'10" E a distance of 230.00 feet to a point on the west line of Block 4 of Westgate Subdivision as recorded in Plat Book 23 at Page 12 in the office of the Mesa County Clerk and Recorder;

thence S 00°05'45" E along the west line of Block 4 of said Westgate Subdivision a distance of 200.00 feet to the northeast corner of Lot 3 of Sen-Bar Subdivision as recorded in Plat Book 9 at Page 195 in the office of the Mesa County Clerk and Recorder;

thence S 89°59'10" W along the north line of Lot 3 of said Sen-Bar Subdivision a distance of 230.00 feet to the northwest corner of said Lot 3;

thence leaving the north line of said Sen-Bar Subdivision, N 00°05'45" W a distance of 200.00 feet to the Point of Beginning, containing 1.056 acres.

Parcel 2:

All of Lot 3 of Sen-Bar Subdivision, situate in the Southwest 1/4 of the Northwest 1/4 of Section 10, Township 1 South, Range 1 West of the Ute Meridian, City of Grand Junction, County of Mesa, State of Colorado, as recorded in Plat Book 9 at page 195 in the office of the Mesa County Clerk and Recorder.