

**RESOLUTION NO. 68-99**

**AUTHORIZING THE EXERCISE OF THE CITY'S FIRST RIGHT OF REFUSAL  
TO PURCHASE LOTS 20, 21 AND 22 IN BLOCK 101 OF THE  
ORIGINAL PLAT OF THE CITY OF GRAND JUNCTION**

WHEREAS, by City Resolution No. 62-93, passed and adopted the 6<sup>th</sup> day of October, 1993, the City leases from Ralph N. Schmidt that certain real property described as Lots 20, 21 and 22 in Block 101 of the City of Grand Junction, County of Mesa, State of Colorado; and

WHEREAS, pursuant to Section 10 of the above stated Lease Agreement, the City has a first right of refusal to purchase the property under the same terms and conditions contained in any bona fide offer which is acceptable to Ralph N. Schmidt; and

WHEREAS, Ralph N. Schmidt has accepted an offer to sell the subject property for the sum of \$102,500.00 in accordance with the terms and conditions of a Contract to Buy and Sell Real Estate dated April 9, 1999; and

WHEREAS, the City Council deems it necessary and proper that the City exercise its first right of refusal to purchase the subject property for non-governmental use and for the anticipated future redevelopment of the Main Street Downtown area.

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 by the City for a purchase price of \$102,500.00 in accordance with the terms and conditions of the attached Contract to Buy Real Estate dated April 9, 1999.
2. 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 to Buy and Sell Real Estate, including, but not limited to, the execution and delivery of such certificates, documents and payments as may be necessary or desirable.
3. That the purchase by the City of the above described property shall be for non-governmental use and for the anticipated future redevelopment of the Main Street Downtown area.

PASSED and ADOPTED this 5<sup>th</sup> day of May, 1999.

Attest:

/s/ Stephanie Nye  
City Clerk

/s/ Gene Kinsey  
President of the City Council

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

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

May 5, 1999

**1. PARTIES AND PROPERTY.** The City of Grand Junction, a Colorado home rule municipality, Purchaser, agrees to buy, and Ralph N. Schmidt, Seller, 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:

Lots 20, 21 and 22, in Block 101 of the Original Plat of the City of Grand Junction in Section 14, Township 1 South, Range 1 West of the Ute Meridian, County of Mesa, State of Colorado

also known as Mesa County Tax Schedule No. 2945-143-14-948,

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 attached to the Property on the date of this contract, all to be conveyed to Purchaser by Seller at closing, free and clear of all taxes, liens and encumbrances.

**3. PURCHASE PRICE AND TERMS.** The purchase price shall be \$ 102,500.00, payable in U.S. dollars by Purchaser as follows:

**(a) Earnest Money.**

\$ 5,000.00 in the form of City of Grand Check, as earnest money deposit and part payment of the purchase price, payable to and held by Western Colorado Title Company, closing agent for the Seller and Purchaser, in said closing agent's trust account.

**(b) Cash at Closing.**

\$ 97,500.00 to be paid by Purchaser in good funds at closing.

**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.** Seller shall furnish to Purchaser, at Seller's expense, a current commitment for owner's title insurance policy in an amount equal to the purchase price on or before May 14, 1999, together with true copies of instruments listed in the schedule of exceptions (Exceptions) therein listed. The title insurance commitment, together with any copies of instruments furnished pursuant to this section 6, constitute the title documents (Title Documents). Seller shall arrange for the

title insurance policy to be delivered to Purchaser as soon as practicable after closing and pay the premium at closing.

**7. TITLE. (a) Title Review.** Purchaser shall have the right to inspect the Title Documents. Written notice by Purchaser of unmerchantability of title or of any other unsatisfactory title condition shown by the Title documents shall be signed by or on behalf of Purchaser and given to Seller on or before 5 calendar days after Purchaser's receipt of the Title Documents, or within five (5) calendar days after receipt by Purchaser of any Title Document(s) or endorsement(s) adding new Exception(s) to the title commitment together with a copy of the Title Document adding new Exception(s) to title. If Seller does not receive Purchaser's notice by the date(s) specified above, Purchaser shall be deemed to have accepted the condition of title as disclosed by the Title Documents as satisfactory.

**(b) Matters Not Shown by the Public Records.** Seller shall deliver to Purchaser, on or before the date set forth in section 6, true copies of all lease(s) and survey(s) in Seller's possession pertaining to the Property and shall disclose to Purchaser all easements, liens or other title matters not shown by the public records of which Seller has actual knowledge. Purchaser shall have the right to inspect the Property to determine if any third Party(s) has any right in the Property not shown by the public records (such as an unrecorded easement, unrecorded lease, or boundary line discrepancy). Written notice of any unsatisfactory condition(s) disclosed by Seller or revealed by such inspection shall be signed by or on behalf of Purchaser and given to Seller on or before May 19, 1999. If Seller does not receive Purchaser's notice by said date, Purchaser shall be deemed to have accepted title subject to such rights, if any, of third parties of which Purchaser has actual knowledge.

**(c) Right to Cure.** If Seller receives notice of unmerchantability of title or any other unsatisfactory title condition(s) as provided in subsection (a) or (b) above, Seller shall use reasonable effort to correct said unsatisfactory title condition(s) prior to the date of closing. If Seller fails to correct said unsatisfactory title condition(s) on or before the date of closing, this contract shall then terminate, subject to Section 16 (Earnest Money Dispute); provided, however, Purchaser may, by written notice received by Seller on or before closing, waive objection to said unsatisfactory title condition(s).

**8. DATE OF CLOSING.** The date of closing shall be June 1, 1999, or by mutual agreement at an earlier date. The hour and place of closing shall be mutually agreed upon between the Seller and Purchaser.

**9. TRANSFER OF TITLE.** Subject to tender or payment on closing as required herein and compliance by Purchaser with the other terms and provisions hereof, Seller 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.

**10. 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.

**11. CLOSING COSTS, DOCUMENTS AND SERVICES.** Purchaser and Seller shall pay their respective closing costs at closing, except as otherwise provided herein. Purchaser and Seller 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 Seller.

**12. PRORATIONS.** General taxes for the year of closing, based on the taxes for the calendar year immediately preceding closing, fees for utilities including, but not limited to, water, sewer, telephone, natural gas and electricity, shall be prorated to date of closing.

**13. POSSESSION.** Possession of the Property shall be delivered to Purchaser at closing, free and clear of all leases or tenancies. If Seller, after closing, fails to deliver possession on the date herein specified, Seller shall be subject to eviction and shall be additionally liable to Purchaser for payment of \$ 10.00 per day from the date of agreed possession until possession is delivered.

**14. CONDITION OF AND DAMAGE TO 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 or other casualty prior to time of closing, in an amount of not more than ten percent of the total purchase price, Seller 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 Purchaser. Should Purchaser elect to carry out this contract despite such damage, Purchaser 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 Inclusion(s) or service(s) fail or be damaged between the date of this contract and the date of closing, then Seller shall be liable for the repair or replacement of such Inclusion(s) or service(s) with a unit of similar size, age and quality, or an equivalent credit, less any insurance proceeds received by Purchaser covering such repair or replacement.

**15. 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:**

All payments and things of value received hereunder shall be forfeited by Purchaser and retained on behalf of 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 subsection (c)) are SELLER'S SOLE AND ONLY REMEDY for Purchaser's failure to perform the obligations of this contract. Seller expressly waives the remedies of specific performance and additional damages.

**(b) IF SELLER IS 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 reasonable attorney fees.

**16. EARNEST MONEY DISPUTE.** Notwithstanding any termination of this contract, Purchaser and Seller 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.

**17. INSPECTION.** Purchaser or any designee, shall have the right to have inspection(s) of the physical condition of the Property and Inclusions, at Purchaser's expense. If written notice of any unsatisfactory condition, signed by Purchaser, is not received by Seller on or before May 28, 1999, the physical condition of the Property and Inclusions shall be deemed to be satisfactory to Purchaser. If written notice of any unsatisfactory condition, signed by Purchaser, is given to Seller as set forth above in this section, and if Purchaser and Seller have not reached a written agreement in settlement thereof on or before May 31, 1999, this contract shall then terminate, subject to section 16. Purchaser is responsible and shall pay for any damage which occurs to the Property and Inclusions as a result of such inspection.

**18. ADDITIONAL PROVISIONS:**

**(a) No Post-Contract Encumbrances.**

From and after the date of execution of this Contract by Seller, Seller will not permit any liens or encumbrances to be placed on the Property or Inclusions or grant any interest in the Property or Inclusions to any third party (including, but not limited to, easements, licenses, profits or leases of any kind) or create or establish any restrictive covenants or other matters affecting title to the Property or Inclusions.

**(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) 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 Real Estate Manager 250 North 5th Street Grand Junction, CO 81501 81501	With copy to:	Mr. Dan Wilson City Attorney 250 North 5th Street Grand Junction, CO
--------------	---	---------------	---

To the Seller: Mr. Ralph N. Schmidt  
536 North 7<sup>th</sup> Street  
Grand Junction, CO 81501

**19. RECOMMENDATION OF LEGAL COUNSEL.** By signing this document, Purchaser and Seller acknowledge that each party shall obtain the advice of their own legal and tax counsel regarding examination of title and this Contract.

**20. 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 16.

**21. NOTICE OF ACCEPTANCE/COUNTERPARTS.** If this proposal is accepted by Seller in writing and Purchaser receives notice of such acceptance on or before May 10, 1999, this document shall become a Contract between Seller and Purchaser.

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

\_\_\_\_\_

Mark K. Achen, City Manager

**22. ACCEPTANCE.** Seller accepts the above proposal this \_\_\_\_\_ day of \_\_\_\_\_, 1999.

Seller:

\_\_\_\_\_

Ralph N. Schmidt