

RESOLUTION NO. 39-02

**AUTHORIZING THE EXCHANGE OF REAL ESTATE
WITH DYER, LLC., A COLORADO LIMITED LIABILITY COMPANY**

WHEREAS, the City of Grand Junction is the owner of certain real property described as the Southwest 1/4 of the Northeast 1/4 of Section 12, Township 2 South, Range 1 East of the Ute Meridian, County of Mesa, State of Colorado, consisting of approximately 40 acres of vacant land; and

WHEREAS, Dyer, LLC, a Colorado limited liability company, is the owner of certain real property situate in the East 1/2 of Section 12, Township 2 South, Range 1 East of the Ute Meridian, and in the West 1/2 of Section 7, Township 2 South, Range 2 East of the Ute Meridian, all in the County of Mesa, State of Colorado; and

WHEREAS, Dyer, LLC, has received preliminary approvals from the County of Mesa to subdivide the Dyer property into single family residential home sites; and

WHEREAS, the northerly portion of the Dyer property is encumbered by the City's Kannah Creek raw water flowline, which flowline is the main source of domestic water for the City of Grand Junction; and

WHEREAS, the City is desirous of protecting the Kannah Creek Flowline from uses associated with the subdividing of the Dyer property by obtaining fee simple ownership of approximately 23.94 acres of the Dyer property; and

WHEREAS, Dyer is desirous of obtaining fee simple ownership of the aforescribed City property; and

WHEREAS, the fair market value of the City property is deemed to be the sum of \$25,636.00 greater than the fair market value of the 23.94 acre Dyer property.

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

1. That the City Council hereby authorizes an exchange of the City's 40 acre property for the 23.94 acre Dyer property in accordance with the terms and conditions of the attached Contract to Exchange 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 Contract to Exchange 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 exchange of real estate with Dyer, LLC.

PASSED and ADOPTED this 1ST day of May, 2002.

Attest:

/s/ Cindy Enos-Martinez
President of the City Council

/s/ Stephanie Tuin
City Clerk

**CONTRACT TO EXCHANGE REAL ESTATE
(With Valuations)**

THIS CONTRACT TO EXCHANGE 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 Dyer, LLC, a Colorado Limited Liability Company, hereinafter referred to as "Dyer".

1. Subject to the provisions herein, Dyer agrees to convey to the City, by Special Warranty Deed, that certain real property consisting of approximately 23.94 acres situate in and being a part of the Northeast 1/4 of the Northeast 1/4 of Section 12, Township 2 South, Range 1 East of the Ute Meridian and part of the Northwest 1/4 of the Northwest 1/4 of Section 7, Township 2 South, Range 2 East of the Ute Meridian, all in the County of Mesa, State of Colorado, hereinafter referred to as "the Dyer Property". The boundaries of the Dyer Property are described on **Exhibit "A"** attached hereto and incorporated herein by reference. For the purposes of this Contract, the parties agree that the fair market value of the Dyer Property is \$14,364.00.

2. Subject to the provisions herein, the City agrees to convey to Dyer, by Special Warranty Deed, that certain real property consisting of approximately 40 acres and described as the Southwest 1/4 of the Northeast 1/4 of Section 12, Township 2 South, Range 1 East of the Ute Meridian, County of Mesa, State of Colorado, hereinafter referred to as "the City Property". For the purposes of this Contract, the parties agree that the fair market value of the City Property is \$40,000.00

3. For the purposes of this Contract, the fair market value of the City Property shall be deemed to be \$25,636.00 greater than the fair market value of the Dyer Property. Dyer agrees to pay to the City the sum of \$25,636.00 ("the Valuation Difference") in good funds at closing.

4. Conveyance of the Dyer Property and the City Property each shall include all improvements thereon and appurtenant thereto, and any and all other rights appurtenant to each said property, free and clear of all taxes, special assessments, liens, mortgages and encumbrances; provided, however, that such conveyances shall not included any water or water rights, ditches or ditch rights, which may have been used on or attributed to the respective properties.

5. (a) Because the Dyer Property is part of and attached to a larger tract of land, this Contract and the exchange of real property hereby contemplated is contingent upon the County of Mesa approving the conveyance of the Dyer Property to the City in accordance with the Mesa County Zoning and Development Code. Dyer shall take all actions and pay all expenses necessary and appropriate to obtain such approval(s).

(b) In the event the County of Mesa fails or refuses, for whatever reason, to approve the conveyance of the Dyer Property to the City prior to closing, then this Contract shall terminate and both parties shall be released from all obligations hereunder.

6. (a) On or before May 17, 2002, each party shall, at each party's own expense, furnish to the other party a current commitment for title insurance policy covering the property to be conveyed by such party, together with legible copies of instruments listed in the schedule of exceptions in the title insurance commitment (hereafter "the Title Documents"). Each party agrees to deliver the title insurance policy, in the amount of the fair market set forth above in paragraphs 1 and 2 above, to the other party at closing and pay the premium thereon.

(b) Title to the Dyer Property and the City Property each shall be merchantable. Written notice by either party to the other party 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 party providing such written notice and delivered to the other party on or before ten (10) days after such party's receipt of the Title Documents or endorsements adding new exceptions to the title commitment. If either party fails to mail such notice to the other party within said ten (10) day period, then the party failing to mail such notice shall be deemed to have accepted the condition of title as disclosed by the Title Documents.

(c) If title is not merchantable and written notice of defects is delivered by either party within the ten (10) day period specified in paragraph 6(b), the party receiving such notice of defects shall use reasonable efforts to correct said defects prior to closing. If the party receiving notice of defects is unable to correct said defects on or before the date of closing, the party giving such notice shall have the option of extending the date of closing for a period not to exceed thirty (30) days for the purpose of correcting said defects. If title is not rendered merchantable, this Contract shall be void and of no effect and each party hereto shall be released from all obligations hereunder.

7. The date of closing shall be the date for delivery of deed as provided in paragraph 8. The hour and place of closing shall be designated by mutual agreement between the parties hereto. Changes in time, place and date may be made with the consent of both parties. Each party shall pay its respective closing costs at closing, except as otherwise provided herein. Each party shall sign and complete all customary or required documents at or before closing. Fees for real estate closing and settlement services shall be paid at closing by the parties equally. The parties designate Abstract & Title Company of Mesa County, Inc., as Closing Agent for the purposes of providing Title Insurance and Closing this transaction.

8. Subject to payment or tender of the Valuation Difference by Dyer to the City, and compliance by both parties with the other terms and provisions hereof, Closing and possession shall occur on August 30, 2002 or, by mutual agreement, at an earlier date. At Closing each party shall execute and deliver a Special Warranty Deed to the other party and each party shall deliver possession of such party's property to the other party, free and clear of: all taxes; all liens for special improvements installed as of the date first above written, whether assessed or not; all liens, mortgages and encumbrances; all fees and charges for utilities, association dues, water rents and water assessments; any covenants, restrictions or reversionary provisions not accepted by the receiving party listed as exceptions in the Title Documents; and all tenancies and/or leasehold estates.

9. (a) Each party shall have the right to access the other party's property and to make inspections of the other party's property. Such inspections shall include, but not be limited to, boundary surveys, geological surveys and studies, and environmental surveys and studies. Said permitted access shall be for a period commencing on the May 6, 2002, and ending on May 31, 2002. The party making a physical inspection of the other party's property is responsible and shall pay for any damage which occurs to the other party's property as a result of such inspections.

(b) If written notice by either party of any unsatisfactory physical condition is given to the other party during the term of the Inspection Period, and if the parties have not reached a written agreement in settlement thereof on or before the expiration of the Inspection Period, this contract shall then terminate. If either party fails to give notice of any unsatisfactory physical condition during the term of the Inspection Period, then the party failing to give such notice shall be deemed to have accepted the physical condition of the other party's property, as is, in its present condition.

(c) Each party acknowledges that the other party makes no representation or warranty that its property (including land, surface water, ground water and improvements) is now or will in the future be free of contamination which is unknown to it, including (i) any "hazardous waste", "medical waste", "solid waste", "underground storage tanks", "petroleum", "regulated substances", or "used oil" as defined by the Solid Waste Disposal Act (42 U.S.C. § 6901, *et seq.*), as amended, and the Resource Conservation and Recovery Act (42 U.S.C. § 6991, *et seq.*), as amended, or by any regulations promulgated thereunder; (ii) any "hazardous substance" or "pollutant or contaminant" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601, *et seq.*), as amended, or by any regulations promulgated thereunder; (iii) any "regulated substance", as defined by the Underground Storage Tank Act, C.R.S., § 25-18-101, *et seq.*, as amended, or by any regulations promulgated thereunder; (iv) any "hazardous waste" as defined by C.R.S., § 25-15-101, *et seq.*, as amended, or by any regulations promulgated thereunder; (v) any substance the presence of which on, in, under or about the property, is prohibited by any law similar to those set forth above, and; (vi) any other substance which by law, regulation or ordinance requires special handling in its collection, storage, treatment or disposal. Each party accepts the property of the other subject to such disclaimer, it being understood and agreed that each will disclose to the other, within the period allowed for inspection, any such condition of which a party has knowledge as of the date it executed this Agreement.

10. Possession of the respective properties shall be delivered without exceptions, leases or tenancies, on the date of closing. If either party fails to deliver possession on the date herein specified, then said party shall be subject to eviction and shall be liable for a daily rental of \$50.00 until possession is delivered.

11. Time is of the essence hereof. If any obligation hereunder is not performed as herein provided, there shall be the following remedies:

(a) If either party is in default, the other party is limited to the following remedies: (1) to treat this contract as terminated, but no damages may be recoverable, or (2) to treat this contract as being in full force and effect together with the right to an action for specific performance; provided, however, that no damages nor fees, costs, or attorney's fees shall be recoverable;

(b) In the event of any litigation arising out of this contract, the parties agree that each shall pay its own costs and expenses, including attorney's fees.

12. The parties hereto represent to each other that the exchange of Properties 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 exchange of the Properties. 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 parties.

13. All notices and communications required herein shall be in writing delivered to the parties 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 81501-2668

To Dyer: Mr. James K. Dyer
 134 North 6th Street
 Grand Junction, CO 81501

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

14. This entire Contract and the obligation of the parties to proceed under its terms and conditions is expressly contingent upon:

(a) The consent and approval by the City Council of the City of Grand Junction. In the event such approval is not obtained on or before May 1, 2002, this Contract shall be automatically void and of no effect; and

(b) The consent and approval by the County of Mesa County as set forth in paragraph 5.

15. Dyer and the City each represent and warrant the following:

(a) The parties each have the full power and authority to enter into this Contract and the persons signing this Contract have the full power and authority to sign and to bind such party to this Contract and to exchange, sell, transfer and convey all right, title and interest in and to such party's property in accordance with this Contract; and

(b) The exchange, sale, transfer and conveyance of the properties in accordance with this Contract will not violate any provision of federal, state or local law; and

(c) As of Closing and the delivery of possession, the respective properties each have or will have legal, insurable access to a public road; and

(d) As of Closing and the delivery of possession, there will be no tenants or occupants in possession of any portion of the respective properties at the time of closing; and

(e) As of Closing and the delivery of possession, there will be no encumbrances or liens against the respective properties including, but not limited to, mortgages or deeds of trust.

16. 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 assigns of both parties.

17. 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.

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

19. Each party has obtained the advise of its own legal and tax counsel.

IN WITNESS of the foregoing, the parties hereto have executed this Contract as of the day and year first above written.

Attest:

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

City Clerk

City Manager

Dyer, LLC, a Colorado Limited Liability Company:

James K. Dyer, Managing Partner

Exhibit "A"
("Dyer Property")

Beginning at the Northeast Corner of Section 12, Township 2 South, Range 1 East of the Ute Meridian, County of Mesa, State of Colorado;
thence S 89°44'52" W along the North boundary line of the NE1/4 NE1/4 of said Section 12 a distance of 1328.76 feet to the Northwest Corner of the NE1/4 NE1/4 of said Section 12;
thence S 00°20'31" E along the West boundary line of the NE1/4 NE1/4 of said Section 12 a distance of 164.68 feet;
thence S 87°14'45" E a distance of 3913.86 feet to a point on the East boundary line of the NE1/4 NW1/4 of Section 7, Township 2 South, Range 2 East of the Ute Meridian;
thence N 00°11'45" W along the East boundary line of the NE1/4 NW1/4 of said Section 7 a distance of 368.46 feet to the Northeast Corner of the NE1/4 NW1/4 of said Section 7;
thence S 89°46'51" W along the North boundary line of the NE1/4 NW1/4 of said Section 7 a distance of 2580.33 feet to the Point of Beginning.

Agreement to Amend/Extend Agreement

August 29, 2002

Re: Contract to Exchange Real Estate (With Valuations) dated the 1st day of May, 2002, between the City of Grand Junction, a Colorado home rule municipality ("City"), and Dyer, LLC, a Colorado Limited Liability Company ("Dyer").

Now, Therefore, the City and Dyer agree to Amend and Extend the aforesaid Agreement as follows:

1. The date for closing and delivery of deed, as set forth in paragraph 8 of said Contract, is hereby extended to December 30, 2002, or, by mutual agreement, at an earlier date.

All other terms and conditions of said Contract shall remain the same.

Dated the day and year first above written.

City of Grand Junction:

Dyer, LLC,

By: _____

City Manager

By: _____

James K. Dyer, Managing Partner

Agreement to Amend/Extend Agreement

August 29, 2002

Re: Contract to Exchange Real Estate (With Valuations) dated the 1st day of May, 2002, between the City of Grand Junction, a Colorado home rule municipality ("City"), and Dyer, LLC, a Colorado Limited Liability Company ("Dyer").

Now, Therefore, the City and Dyer agree to Amend and Extend the aforesaid Agreement as follows:


1. The date for closing and delivery of deed, as set forth in paragraph 8 of said Contract, is hereby extended to December 30, 2002, or, by mutual agreement, at an earlier date.

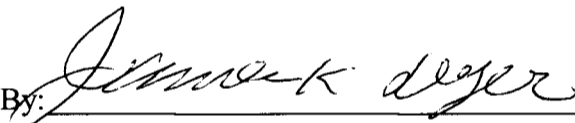
All other terms and conditions of said Contract shall remain the same.

Dated the day and year first above written.

City of Grand Junction:

Dyer, LLC,

By: 
City Manager

By: 
James K. Dyer, Managing Partner

908054

WHEN RECORDED RETURN TO:
CITY OF GRAND JUNCTION
REAL ESTATE DIVISION
250 NORTH 5TH STREET
GRAND JUNCTION, CO 81501

2 PAGE DOCUMENT

BOOK 3271 PAGE 572

2102938 02/11/03 0224PM
JANICE WARD CLK&REC MESA COUNTY CO
REC FEE \$10.00 SURCHG \$1.00
DOCUMENTARY FEE #NO FEE

SPECIAL WARRANTY DEED

DYER, LLC, a Colorado limited liability company, Grantor, for and in consideration of the sum of Ten and 00/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, has sold, granted and conveyed, and by these presents does hereby sell, grant and convey to the City of Grand Junction, a Colorado home rule municipality, whose address is 250 North 5th Street, Grand Junction, Colorado 81501, Grantee, its successors and assigns forever, the following real property in the County of Mesa, State of Colorado, to wit:

Outlot "B" of Desert Vista Filing No. 3 & 4,
situate in and being a part of Section 7, Township 2 South, Range 2 East of the Ute Meridian and also situate in and being a part of Section 12, Township 2 South, Range 1 East of the Ute Meridian,
as recorded in Plat Book 19 at Pages 235 and 236 in the office of the Mesa County Clerk and Recorder,

All in the County of Mesa, State of Colorado

also known by Street and Address as: Vacant Land near Whitewater, Colorado

TOGETHER WITH a non-exclusive easement for motorized and non-motorized ingress and egress purposes to provide Grantee and Grantees' successors and assigns legal public access to and from the above described real property, said easement being located on, along, over, through and across the premises described in **Exhibit "A"** attached hereto and incorporated herein by reference.

TO HAVE AND TO HOLD the premises aforesaid, with all and singular the rights, privileges, appurtenances and immunities thereunto belonging or in anywise appertaining, unto the said Grantee and unto its successors and assigns forever, the said Grantor hereby covenanting that it will warrant and defend the title to said premises unto the said Grantee and unto its successors and assigns forever, against the lawful claims and demands of all persons claiming by, through or under Grantor.

Executed and delivered this 22nd day of January, 2003.

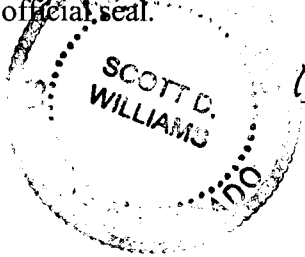
DYER, LLC,
a Colorado limited liability company

By [Signature]
James K. Dyer, Managing Partner

State of Colorado)
)ss.
County of Mesa)

The foregoing instrument was acknowledged before me this 22nd day of January, 2003, by James K. Dyer, Managing Partner of DYER, LLC, a Colorado limited liability company.

My commission expires 4/3/07
Witness my hand and official seal.



[Signature]
Notary Public

EXHIBIT "A"
Legal Description of Access Easement

A non-exclusive easement for motorized and non-motorized ingress and egress purposes to provide Grantee and Grantees' successors and assigns legal public access to and from the above described real property, said easement being located on, along, over, through and across the following described premises, to wit:

Commencing at the Southwest Corner of Lot 10, Desert Vista Filing No. 3 & 4, situate in and being a part of Section 7, Township 2 South, Range 2 East of the Ute Meridian and also situate in and being a part of Section 12, Township 2 South, Range 1 East of the Ute Meridian, as recorded in Plat Book _____ at Pages _____ and _____ in the office of the Mesa County Clerk and Recorder;

thence N 89°45'01" E along the south boundary line of said Lot 10 a distance of 366.16 feet to the True Point of Beginning;

thence leaving the south boundary line of said Lot 10, N 01°21'00" E a distance of 943.73 feet to a point on the southerly boundary line of Outlot "B" of said Desert Vista Filing No. 3 & 4;

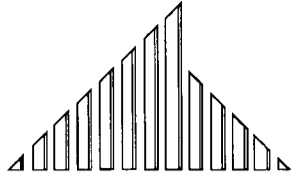
thence S 87°14'45" E along the southerly boundary line of said Outlot "B" a distance of 100.04 feet;

thence leaving said southerly boundary line, S 01°21'00" W a distance of 938.48 feet to a point on the south boundary line of Lot 10 of said Desert Vista Filing No. 3 & 4;

thence S 89°45'01" W along the south boundary line of said Lot 10 a distance of 100.04 feet to the Point of Beginning.

All in the County of Mesa, State of Colorado

End of Exhibit "A"



**ABSTRACT & TITLE CO.
OF MESA COUNTY, INC.**

Issuing Agent For:
TRANSNATION
TITLE INSURANCE COMPANY

**The City of Grand Junction
250 N. 5th Street
Grand Junction, CO 81501**

RE: JOB NO. 00908054

Please find attached the Owners Policy on the property you purchased in **February, 2003**.
This is vacant land near Whitewater, Colorado.

This should be kept with your permanent records.

We have a history of your property now on file in our office and if, sometime in the future, you want to obtain a loan or possibly sell your property, we would be able to give you quick and accurate service.

Thank you for the opportunity to serve you.

Sincerely,

Jan Pobirk
Policy Dept.

*Property received in Exchange of
Real Estate w/ Dyer LLC.*

Refer to Resolutions 39-02 &

126-02

Jim D.

1114 N. 1st Street, Suite 201
P.O. Box 3738
Grand Junction, CO 81501
970/242-8234
FAX 970/241-4925



ISSUED BY
TRANSNATION TITLE INSURANCE COMPANY

Transnation
A LANDAMERICA COMPANY

OWNER'S POLICY OF TITLE INSURANCE

POLICY NUMBER

A38-0095240

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS AND STIPULATIONS, TRANSNATION TITLE INSURANCE COMPANY, an Arizona corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the insured by reason of:

1. Title to the estate or interest described in Schedule A being vested other than as stated therein;
2. Any defect in or lien or encumbrance on the title;
3. Unmarketability of the title;
4. Lack of a right of access to and from the land.

The Company will also pay the costs, attorneys' fees and expenses incurred in defense of the title, as insured, but only to the extent provided in the Conditions and Stipulations.

IN WITNESS WHEREOF, TRANSNATION TITLE INSURANCE COMPANY has caused its corporate name and seal to be hereunto affixed by its duly authorized officers, the Policy to become valid when countersigned by an authorized officer or agent of the Company.

TRANSNATION TITLE INSURANCE COMPANY

Attest:

Wm. Chadwick Perrine

Secretary



By:

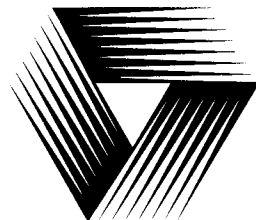
Janet A. Albert

President

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the affect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
(b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
 - (a) created, suffered, assumed or agreed to by the insured claimant;
 - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
 - (c) resulting in no loss or damage to the insured claimant;
 - (d) attaching or created subsequent to Date of Policy; or
 - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.
4. Any claim, which arises out of the transaction vesting in the Insured the estate or interest insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
 - (a) the transaction creating the estate or interest insured by this policy being deemed a fraudulent conveyance or fraudulent transfer; or
 - (b) the transaction creating the estate or interest insured by this policy being deemed a preferential transfer except where the preferential transfer results from the failure:
 - (i) to timely record the instrument of transfer; or
 - (ii) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.



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

AMERICAN LAND TITLE ASSOCIATION

ISSUED BY
TRANSNATION TITLE INSURANCE COMPANY



HOME OFFICE:
101 Gateway Centre Parkway, Gateway One
Richmond, Virginia 23235-5153

B 1190-58

A WORD OF THANKS

As we make your policy a part of our permanent records, we want to express our appreciation of this evidence of your faith in Transnation Title Insurance Company.

There is no recurring premium.

This policy provides valuable title protection and we suggest you keep it in a safe place where it will be readily available for future reference.

If you have any questions about the protection provided by this policy, contact the office that issued your policy or you may write to:

Consumer Affairs Department

**Transnation
Title Insurance Company**

P.O. Box 27567
Richmond, Virginia 23261-7567
TOLL FREE NUMBER: 1-800-446-7086

SCHEDULE A

Amount of Insurance: **\$14,364.00**

Policy No.: **A38-0095240**

Premium **\$288.00**

File No. **00908054**

Date of Policy: **February 11, 2003 at 2:25 P.M.**

1. Name of Insured:

The City of Grand Junction, a Colorado home rule municipality

2. The estate or interest in the land which is covered by this policy is:

Fee Simple

3. Title to the estate or interest in the land is vested in:

The City of Grand Junction, a Colorado home rule municipality

4. The land referred to in this policy is described in said instrument, is situated in the County of **Mesa**, State of Colorado, and is described as follows:

Beginning at the Northeast corner of Section 12, Township 2 South, Range 1 East of the Ute Meridian, County of Mesa, State of Colorado;

thence S 89°44'55" W along the North boundary line of the NE1/4 NE1/4 of said Section 12

a distance of 1329.20 feet to the Northwest corner of the NE1/4 NE1/4 of said Section 12;

thence S 00°20'31" E along the West boundary line of the NE1/4 NE1/4 of said Section 12

a distance of 164.67 feet;

thence S 87°14'45" E a distance of 3913.88 feet to a point on the East boundary line of the

NE1/4 NW1/4 of Section 7, Township 2 South, Range 2 East of the Ute Meridian;

thence N 00°11'45" W along the East boundary line of the NE1/4 NW1/4 of said Section 7

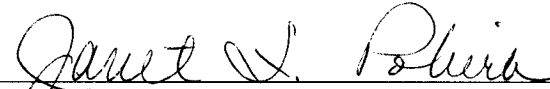
a distance of 368.45 feet to the Northeast corner of the NE1/4 NW1/4 of said Section 7;

thence S 89°46'49" W along the North boundary line of the NE1/4 NW1/4 of said Section 7

a distance of 2579.89 feet to the Point of Beginning.

TOGETHER WITH an easement for ingress and egress over and across that portion of the transmission line easement in the NE1/4 NW1/4 of Section 7, Township 2 South, Range 2 East of the Ute Meridian, as described in document recorded March 14, 1961 in Book 798 at Page 186, and Amendment of Easement recorded May 22, 2000 in Book 2710 at Page 837, and as recorded November 23, 1984 in Book 1518 at Page 54.

Countersigned: _____


Authorized Officer or Agent

CONDITIONS AND STIPULATIONS

1. DEFINITION OF TERMS.

The following terms when used in this policy mean:

(a) "insured": the insured named in Schedule A, and, subject to any rights or defenses the Company would have had against the named insured, those who succeed to the interest of the named insured by operation of law as distinguished from purchase including, but not limited to, heirs, distributees, devisees, survivors, personal representatives, next of kin, or corporate or fiduciary successors.

(b) "insured claimant": an insured claiming loss or damage.

(c) "knowledge" or "known": actual knowledge, not constructive knowledge or notice which may be imputed to an insured by reason of the public records as defined in this policy or any other records which impart constructive notice of matters affecting the land.

(d) "land": the land described or referred to in Schedule A, and improvements affixed thereto which by law constitute real property. The term "land" does not include any property beyond the lines of the area described or referred to in Schedule A, nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but nothing herein shall modify or limit the extent to which a right of access to and from the land is insured by this policy.

(e) "mortgage": mortgage, deed of trust, trust deed, or other security instrument.

(f) "public records": records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge. With respect to Section 1(a) (iv) of the Exclusions From Coverage, "public records" shall also include environmental protection liens filed in the records of the clerk of the United States district court for the district in which the land is located.

(g) "unmarketability of the title": an alleged or apparent matter affecting the title to the land, not excluded or excepted from coverage, which would entitle a purchaser of the estate or interest described in Schedule A to be released from the obligation to purchase by virtue of a contractual condition requiring the delivery of marketable title.

2. CONTINUATION OF INSURANCE AFTER CONVEYANCE OF TITLE.

The coverage of this policy shall continue in force as of Date of Policy in favor of an insured only so long as the insured retains an estate or interest in the land, or holds an indebtedness secured by a purchase money mortgage given by a purchaser from the insured, or only so long as the insured shall have liability by reason of covenants of warranty made by the insured in any transfer or conveyance of the estate or interest. This policy shall not continue in force in favor of any purchaser from the insured of either (i) an estate or interest in the land, or (ii) an indebtedness secured by a purchase money mortgage given to the insured.

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT.

The insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 4(a) below, (ii) in case knowledge shall come to an insured hereunder of any claim of title or interest which is adverse to the title to the estate or interest, as insured, and which might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if title to the estate or interest, as insured, is rejected as unmarketable. If prompt notice shall not be given to the Company, then as to the insured all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of any insured under this policy unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

4. DEFENSE AND PROSECUTION OF ACTIONS; DUTY OF INSURED CLAIMANT TO COOPERATE.

(a) Upon written request by the insured and subject to the options contained in Section 6 of these Conditions and Stipulations, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an insured in litigation in which any third party asserts a claim adverse to the title or interest as insured, but only as to those stated causes of action alleging a defect, lien or encumbrance or other matter insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the insured to object for reasonable cause) to represent the insured as to those stated causes of action and shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs or expenses incurred by the insured in the defense of those causes of action which allege matters not insured against by this policy.

(b) The Company shall have the right, at its own cost, to institute and prosecute any action or proceeding or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest, as insured, or to prevent or reduce loss or damage to the insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this policy. If the Company shall exercise its rights under this paragraph, it shall do so diligently.

(c) Whenever the Company shall have brought an action or interposed a defense as required or permitted by the provisions of this policy, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order.

(d) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, the insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of the insured for this purpose. Whenever requested by the Company, the insured, at the Company's expense, shall give the Company all reasonable aid (i) in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest as insured. If the Company is prejudiced by the failure of the insured to furnish the required cooperation, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

5. PROOF OF LOSS OR DAMAGE.

In addition to and after the notices required under Section 3 of these Conditions and Stipulations have been provided the Company, a proof of loss or damage signed and sworn to by the insured claimant shall be furnished to the Company within 90 days after the insured claimant shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the defect in, or lien or encumbrance on the title, or other matter insured against by this policy which constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of the insured claimant to provide the required proof of loss or damage, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such proof of loss or damage.

In addition, the insured claimant may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Policy, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the insured claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the insured claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgement of the Company, it is necessary in the administration of the claim. Failure of the insured claimant to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in this paragraph shall terminate any liability of the Company under this policy as to that claim.

6. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY.

In case of a claim under this policy, the Company shall have the following options:

(a) To Pay or Tender Payment of the Amount of Insurance.

To pay or tender payment of the amount of insurance under this policy together with any costs, attorneys' fees and expenses incurred by the insured claimant, which were authorized by the Company, up to the time of payment or tender of payment and which the Company is obligated to pay.

Upon the exercise by the Company of this option, all liability and obligations to the insured under this policy, other than to make the payment required, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, and the policy shall be surrendered to the Company for cancellation.

(b) To Pay or Otherwise Settle With Parties Other than the Insured or With the Insured Claimant.

(i) to pay or otherwise settle with other parties for or in the name of an insured claimant any claim insured against under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to time of payment and which the Company is obligated to pay; or

(ii) to pay or otherwise settle with the insured claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in paragraphs (b)(i) or (ii), the Company's obligations to the insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute or continue any litigation.

Conditions and Stipulations Continued Inside Cover