

RESOLUTION NO. 47-03

**A RESOLUTION AUTHORIZING THE PURCHASE
BY THE CITY OF REAL PROPERTY
LOCATED AT 159 COLORADO AVENUE FROM ROBERT C. MILLER
AND RATIFYING ACTIONS HERETOFORE TAKEN IN CONNECTION THEREWITH**

WHEREAS, the City of Grand Junction has entered into a contract with Robert C. Miller for the sale by Robert C. Miller and the purchase by the City of that certain real property described as Lots 11 and 12 in Block 122 of the City of Grand Junction, also known as 159 Colorado Avenue; and

WHEREAS, the City Council deems it necessary and proper that the City purchase said property together with all improvements thereon and all rights and privileges appurtenant thereto.

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 \$190,000.00. All actions heretofore taken by the officers, employees and agents of the City relating to the purchase of said property which are consistent with the provisions of the attached Contract to Buy and Sell Real Estate and this Resolution are hereby ratified, approved and confirmed.
2. That the City Council hereby authorizes the expenditure of \$190,000.00 for the purchase of said property to be paid at closing on June 10, 2003, or by mutual agreement at an earlier date.
3. That the officers, employees and agents of the City are hereby authorized and directed to take all actions necessary or appropriate to effectuate the provisions of this Resolution and the attached Contract to Buy and Sell Real Estate, including, without limitation, the execution and delivery of such certificates and documents as may be necessary or desirable.

PASSED and ADOPTED this 21st day of May, 2003.

Attest:

/s/: Jim Spehar
President of the Council

/s/: Stephanie Tuin
City Clerk

CONTRACT TO BUY AND SELL REAL ESTATE
(Commercial)
Date: March 24, 2003

1. AGREEMENT. Buyer agrees to buy and Seller agrees to sell the Property defined below on the terms and conditions set forth in this Contract.

2. DEFINED TERMS.

a. Buyer. Buyer will take title to the Property as The City of Grand Junction, a Colorado home rule municipality.

b. Seller. Seller is Robert C. Miller.

c. Property. The Property has the following address, Assessor Parcel # and legal description:

Street Address: 159 Colorado Avenue, Grand Junction, Colorado 81501

Mesa County Tax Schedule Number: 2945-143-25-003

Legal Description: Lots 11 and 12, inclusive, in Block 122 of the CITY OF GRAND JUNCTION, County of Mesa, State of Colorado

d. Dates and Deadlines.

| Item No. | Reference | Event | Date or Deadline |
|----------|-----------|---------------------------------------|------------------------|
| 1 | § 5 | Title Deadline | 14 days after item 12 |
| 2 | §6a | Title Objection Deadline | 14 days after item 1 |
| 3 | §6b | Off-Record Matters Deadline | 14 days after item 12 |
| 4 | §6b | Off-Record Matters Objection Deadline | 14 days after item 1 |
| 5 | §7a | Seller's Property Disclosure Deadline | 14 days after item 12 |
| 6 | §7c | Inspection Objection Deadline | 28 days after item 1 |
| 7 | §7c(2) | Resolution Deadline | 1 day prior to item 11 |
| 8 | §8 | Closing Date | 20 days after item 11 |
| 9 | § 13 | Possession Date | At Closing |
| 10 | § 13 | Possession Time | 5:00 p.m. |
| 11 | §21a | City Council Ratification Deadline | May 21, 2003 |
| 12 | §25 | Acceptance Deadline Date | March 24, 2003 |
| 13 | §25 | Acceptance Deadline Time | 5:00 p.m. |

e. Attachments. The following exhibits, attachments and addenda are part of this contract: N/A .

f. Applicability of Terms. A check or similar mark in a box means that such provision is applicable. The abbreviation "N/A" means not applicable.

3. INCLUSIONS / EXCLUSIONS. The Purchase Price shall include all real property interests, easements, rights and benefits appurtenant to the Property, and the following fixtures: furnace and attachments, boiler and attachments, kitchen exhaust system, grease interceptor, plumbing and electrical system and devices. The Purchase Price excludes all furniture, fixtures, and appliances which are not described in the prior sentence, equipment and other personal property situate therein, which Seller shall remove from the Property prior to the Possession Date.

4. PURCHASE PRICE AND TERMS. The Purchase Price set forth below shall be payable in U.S. Dollars by Buyer as follows:

| Item No. | Reference | Item | Amount | Amount |
|----------|-----------|-----------------|--------------|--------------|
| 1 | §4 | Purchase Price | \$190,000.00 | |
| 2 | §4a | Earnest Money | | \$10,000.00 |
| 3 | §4b | Cash at Closing | | \$180,000.00 |
| 4 | | Total | \$190,000.00 | \$190,000.00 |

a. Earnest Money. The Earnest Money set forth in this Section, in the form of Buyer's check, is part payment of the Purchase Price and shall be payable to and held by Abstract & Title Company of Mesa County, Inc., Closing Agent, in said Closing Agent's trust account, on behalf of both Seller and Buyer. Buyer shall deliver the Earnest Money to the Closing Agent no later than the second business day after Seller's acceptance of this Contract.

b. Cash at Closing. All amounts to be paid by Buyer at Closing including Cash at Closing and Buyer's closing costs, shall be in good funds. "Good Funds" means cash, electronic transfer funds, certified check, savings and loan teller's check or cashier's check.

5. EVIDENCE OF TITLE.

a. Evidence of Title. On or before Title Deadline (§2d, Item No. 1), Seller shall cause to be furnished to the City Attorney, at Seller's expense, a current commitment for owner's title insurance policy ("Title Commitment"), in an amount equal to the Purchase Price, together with true and legible copies of all instruments referred to therein. The Title Commitment shall commit to delete or insure over the standard exceptions which relate to:

- (1) parties in possession,
- (2) any unrecorded mechanics' liens, and
- (3) gap period (effective date of the Title Commitment to the date the deed is recorded)

is recorded)

Any additional premium expense to obtain this additional coverage shall be paid by Seller. Seller shall cause the title insurance policy to be delivered to Buyer as soon as practicable, at or after Closing.

b. Copies of Exceptions. On or before Title Deadline (§2d, Item No.1), Seller, at Seller's expense, shall furnish to the City Attorney (1) legible copies of any plats,

declarations, covenants, conditions and restrictions burdening the Property, and (2) copies of any other documents listed in the schedule of exceptions ("Exceptions"). Seller shall have the obligation to furnish the documents pursuant to this subsection without any request or demand by Buyer. This requirement shall pertain only to documents as shown of record in the office of the Mesa County Clerk and Recorder. The Title Commitment together with copies of such documents furnished pursuant to this Section shall constitute the title documents ("Title Documents").

6. TITLE.

a. Title Review. Buyer shall have the right to inspect the Title Documents. Written notice by Buyer of unmerchantability of title or of any other unsatisfactory title condition shown by the Title Documents shall be signed by or on behalf of Buyer and given to Seller on or before the Title Objection Deadline (§2d, Item No. 2), or within five (5) business days after receipt by Buyer of any Title Document(s) or endorsement(s) adding new Exception(s) to the Title Commitment together with a copy of the Title Document(s) adding new Exception(s) to title, whichever is later. If Seller does not receive Buyer's notice by the date(s) specified above, Buyer shall be deemed to have accepted as satisfactory the condition of title as disclosed by the Title Documents.

b. Matters Not Shown by the Public Records. Seller shall deliver to the City Attorney, on or before the Off-Record Matters Deadline (§2d, Item No.3), true copies of all lease(s), agreement(s), contract(s), notice(s) and survey(s) in Seller's possession pertaining to or affecting the Property and shall disclose to the City Attorney, all easements, liens or other title matters not shown by the public records of which Seller has actual knowledge. The documents and information referred to in the preceding sentence shall constitute "Off Record Matters." Buyer 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 unrecorded easements, unrecorded leases or boundary line discrepancies). Written notice of any unsatisfactory condition(s) disclosed by Seller or revealed by such inspection(s) shall be signed by or on behalf of Buyer and given to Seller on or before the Off-Record Matters Objection Deadline (§2d, Item No.4). If Seller does not receive Buyer's notice by said date, Buyer shall be deemed to have accepted the condition of title subject to such rights, if any, of third parties of which Buyer has actual notice.

c. Right to Cure. If Seller receives notice of unmerchantability of title or any other unsatisfactory title condition(s) as provided in §6a or §6b above, Seller shall use reasonable effort to correct said items and bear any expense, not to exceed \$1000.00, to correct the same prior to the Resolution Deadline. If such unsatisfactory title condition(s) are not corrected on or before the Resolution Deadline, this Contract shall then terminate; provided, however, Buyer may, by written notice to Seller, on or before the Resolution Deadline, waive objection to such items.

7. PROPERTY DISCLOSURE AND INSPECTION.

- a. On or before Seller's Property Disclosure Deadline (§2d, Item No.5), Seller shall provide the City Attorney with a written disclosure of any and all adverse matters regarding the Property of which Seller has current and actual knowledge.
- b. Inspection. After Seller has accepted this Contract, Buyer shall have the right, at Buyer's expense, to conduct inspections of the physical condition of the Property and Inclusions ("Inspections"). The Inspections may include, but not be limited to, boundary surveys, engineering surveys, soils samples and surveys and environmental surveys which include sampling and testing of building materials.
- c. Inspection Objection Deadline. If the physical condition of the Property or Inclusions is unsatisfactory as determined by Buyer's sole and subjective discretion, Buyer shall, on or before the Inspection Objection Deadline (§2d, Item No.6), either:
- (1) notify Seller in writing that this Contract is terminated, in which case all payments and things of value received hereunder shall be returned to Buyer, or
 - (2) provide Seller with a written description of any unsatisfactory physical condition(s) which Buyer requires Seller to correct, at no cost or expense to Buyer, before the Resolution Deadline ("Notice to Correct"). If a Notice to Correct is received by Seller and if Buyer and Seller have not agreed in writing to a settlement thereof on or before the Resolution Deadline (§2d, Item No.7), this Contract shall terminate and all payments and things of value received hereunder shall be returned to Buyer, unless before such termination Seller receives Buyer's written withdrawal of the Notice to Correct.
- d. Representations and Warranties Regarding Environmental Matters.
- (1) Seller represents and warrants that (i) Seller has no current and actual knowledge of any Hazardous Material at, upon, under or within the Property or, to the best of Seller's knowledge, within any contiguous real estate, and (ii) Seller shall not cause or permit to be introduced any Hazardous Material at, upon, under or within the Property from now until Closing.
 - (2) The term "Hazardous Material" for the purposes of this Agreement means (A) any hazardous or toxic substance, material or waste, including, but not limited to, those substances, materials, and wastes listed in the United States Department of Transportation Hazardous Material Table (49 CFR 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302) and amendments thereto and replacements therefor; or (B) such substances, materials or wastes as are regulated by the Resource Conservation and Recovery Act of 1976 (RCRA) or the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) or any amendments thereto or orders, and regulations, directions, or requirements thereunder; (C) "Underground storage tanks," "petroleum," "petroleum by products," "regulated substance," "oil" or "used oil" as defined by Colorado law, including §25-7-101 et seq.; (D) "Hazardous waste" as defined by the Colorado Waste Act, C.R.S. §25-15-101 et seq., or by any regulations promulgated thereunder; (E) Any substance the presence of whether on, in or under the

Property is prohibited by any law similar to those set forth above; (F) Any other substance which by law, regulation or ordinance requires special handling in its collection, storage, treatment or disposal.

(3) Notwithstanding the definition set forth above, for purposes of this Agreement, the term "Hazardous Material" does not include asbestos or asbestos containing materials in the building or fixtures on the Property, or lead paint, if any, on the building or on the Property as of the date of this Agreement.

(4) To the best of Seller's knowledge, as of the date of this Contract and as of the date of Closing, the Property (including land, surface water, ground water and improvements) is now and will then be free of all Hazardous Materials as defined herein.

(5) To the best of Seller's knowledge, the Property has been used as a restaurant since the mid-1960s.

(6) Buyer represents and warrants that the completion of the Closing by Buyer shall evidence Buyer's acceptance of (a) the physical condition, including the environmental condition, of the Property and Inclusions, WHERE IS, AS IS, without warranty or representation from Seller except as expressly stated in this Section 7(d), and (b) all liabilities related to the physical condition, including the environmental condition, of the Property and Inclusions, subject only to Seller's warranties and representations as expressly stated in this Section 7(d).

e. **Damage; Liens; Indemnity.** Buyer is responsible for payment for all inspections, surveys, engineering reports or any other work performed at Buyer's request. Buyer shall pay for any damage which occurs to the Property and Inclusions as a result of such activities if Closing does not occur. Buyer shall not permit claims or liens of any kind against the Property for inspection, surveys, engineering reports and for any other work performed on the Property at Buyer's request if Closing does not occur. Buyer agrees to hold Seller harmless from and against any liability, damage, cost or expense incurred by Seller in connection with the Inspections. If Buyer has not acted in good faith or reasonably, Seller may recover reasonable costs and expenses incurred by Seller to enforce this subsection, including Seller's reasonable attorney fees. The provisions of this subsection shall survive the termination of this Contract.

8. **CLOSING.** Delivery of deed from Seller to Buyer shall be at Closing ("Closing"). Closing shall be on the date specified as the Closing Date (§2d, Item No.8), or by mutual agreement at an earlier date. The hour and place of Closing shall be as designated by mutual agreement between Buyer and Seller.

9. **TRANSFER OF TITLE.**

a. Subject to tender or payment at Closing as required herein and compliance by Buyer with the other terms and provisions hereof, Seller shall execute and deliver a good and sufficient Special Warranty Deed to Buyer, at Closing, conveying the Property free and clear of all taxes except the general taxes for the year of Closing. Except as provided herein, title shall be conveyed free and clear of all liens and

encumbrances, including any assessed governmental liens for special improvements installed as of the date of Buyer's signature hereon.

b. Title shall be conveyed subject to:

- (i) those specific Exceptions described by reference to recorded documents as reflected in the Title Documents accepted by Buyer in accordance with §6a [Title Review], and
- (ii) the Off-Record Matters and those specifically described rights of third parties not shown by the public records of which Buyer has actual knowledge and which were accepted by Buyer in accordance with §6b [Matters not shown by the Public Records].

10. PAYMENT OF ENCUMBRANCES. Any encumbrance required to be paid shall be paid at or before Closing from the proceeds of this transaction or from any other source.

11. CLOSING COSTS, DOCUMENTS AND SERVICES. Buyer and Seller shall pay, in Good Funds, their respective Closing costs and all other items required to be paid at Closing, except as otherwise provided herein. Buyer and Seller shall sign and complete all customary or reasonably required documents at or before Closing. Fees for real estate Closing services shall be paid at Closing one-half by Buyer and one-half by Seller. Any sales, use or other tax that may accrue because of this transaction shall be paid when due by the party so responsible under applicable law.

12. PRORATIONS. The following shall be prorated to the Closing Date, except as otherwise provided:

- a. Personal Property Taxes. Personal property taxes, if any, shall be paid by Seller;
- b. General Real Estate Taxes. General real estate taxes shall be prorated to the Closing Date based on the most recent mill levy and the most recent assessment;
- c. Utilities and Other Services. Seller shall pay for all fees and charges for all utilities and services which have accrued as of the Closing Date. Buyer shall be responsible for all utilities fees and services which accrue thereafter.
- d. Final Settlement. Unless otherwise agreed in writing, these prorations shall be final.

13. POSSESSION. Possession of the Property shall be delivered to Buyer on Possession Date (§2d, Item No. 9) and Possession Time (§2d, Item No. 10), free and clear of any and all leases and tenancies. If Seller, after Closing, fails to deliver possession as specified Seller shall be subject to eviction and shall be additionally liable to Buyer for payment of \$100.00 per day from the Possession Date until possession is delivered.

14. NOT ASSIGNABLE. This Contract shall not be assignable by Buyer without Seller's prior written consent. Except as so restricted, this Contract shall inure to the benefit of and be binding upon the heirs, personal representatives, successors and assigns of both parties.

15. CONDITION OF AND DAMAGE TO THE PROPERTY AND INCLUSIONS. Except as otherwise provided in this Contract, both the Property and the Inclusions shall be delivered in the condition existing as of the date of this Contract, ordinary wear and tear and reasonable damages resulting from the removal of fixtures excluded from this sale shall be excepted.

a. Casualty; Insurance. In the event the Property or the Inclusions shall be damaged by fire or other casualty prior to Closing, Seller shall not be obligated to repair any damage prior to Closing.

b. Damage; Inclusions; Services. Should any Inclusion(s) or service(s) (including systems and components of the Property, e.g., heating, plumbing, etc.) fail or be damaged before Closing, Seller shall deliver to Buyer any insurance proceeds paid to Seller covering such repair or replacement.

c. Walkthrough; Verification of Condition. Buyer, upon reasonable notice, shall have the right to walk(s) through the Property prior to Closing to verify that the physical condition of the Property and Inclusions complies with this Contract.

d. On or before seven days after the Acceptance Deadline Date, Seller shall inform the City Attorney in writing as to his current and actual knowledge regarding the following:

- (1) Name of current and all former owner(s):
- (2) Description of current use(s) of the Property (if other than office use exclusively, provide name(s) of current occupant(s) and date(s) of occupancy:
- (3) Date of completion of original construction and any substantial renovations (including tenant improvements):
- (4) Name(s) of previous occupant(s):
- (5) Description of previous use(s) of the Property:
- (6) Is there or has there been asbestos in any of the construction material contained in the building(s)? If so, has it been removed? When and by whom?
- (7) Was a survey conducted to assess the type, amount, location and condition of asbestos? If so, attach a copy of any survey report.
- (8) Have asbestos air samples been taken? If so, what are the results?

Polychlorinated Biphenyls (PCB's)

- (9) Have polychlorinated biphenyls (PCB's) been used in electrical transformers, capacitors or other equipment at the Property?
- (10) If so, describe the use and quantity of PCB's unused on the Property.

Fuel/Waste/Chemical Storage Tanks, Drums and Pipelines

- (11) Are there any above-ground gasoline, diesel, fuel oil, waste or other chemical storage tanks on the property?
- (12) If so, describe substance stored and capacity of tank(s).
- (13) Have the tanks been inspected or tested for leakage? When was the most recent test? What were the results?
- (14) Are any other wastes or chemicals stored on the Property in drums or other containers? If so, describe the substances, quantities stored and types of containers.

(15) Have there been any spills, leaks or other releases of wastes or chemicals on the Property? If so, describe the substances and quantities released, any cleanup measures taken and the results of any soil or groundwater samples performed to detect the presence of the chemicals spilled, leaked or released on the Property.

(16) Attach copies of any permits or licenses pertaining to the use, storage, handling or disposal of wastes and chemicals on the Property.

Air Emissions

(17) Describe air emissions from each source of air pollutants, including fuel burning and kitchen equipment (describe type of fuel burned and rated capacity of equipment) on the Property.

(18) Describe air pollution control equipment used to reduce emissions for each source of air emissions.

(19) Are air emissions monitored? If so, indicate frequency of monitoring.

(20) Attach copies of any air permits or licenses pertaining to operations on the Property.

Water Discharges

(21) List all sources of waste water discharged to public sewer systems.

(22) List all sources of other waste water discharge(s), surface discharge(s), oil/water/grease trap(s) and separators and any other septic systems or waste disposal tank(s).

(23) For each discharge, list the average daily flow.

(24) Attach copies of any water discharge permits or licenses pertaining to operations of the Property.

Water Supply

(25) Describe the types of liquid wastes (other than waste water described above) and solid wastes which are or have been generated at the Property.

(26) Describe how the liquid and solid wastes generated at the Property are and have been disposed.

(27) Attach copies of any waste disposal permits or licenses pertaining to operations on the Property.

(28) Has the Property been used for disposal of any liquid or solid waste? If so, describe the location of all disposal sites, the type of wastes disposed of, the results of any soil or groundwater samples taken in the vicinity of each site and the manner in which each site not presently used was closed.

(29) Have storage or disposal pits been located on the Property? If so, describe the location of all, type of material placed in each, the result of any soil or groundwater samples taken in the vicinity of each and the manner in which each not presently in use was closed.

- (30) Have wastewater treatment (pretreatment) facilities been located on the Property? If so, describe the location of all facilities, the type of wastes treated in each facility, the results of any soil or groundwater samples taken in the vicinity of each facility and the manner in which each facility not presently in use was closed.
- (31) Have there been raw chemical or waste chemical storage areas on the Property? If so, describe the location of all such areas, the type of products or wastes stored in each area, the amount of products or wastes stored in each area, the results of any soil or groundwater samples taken in the vicinity of each area and the manner in which each area not presently in use was closed.

Pesticides, Herbicides and Other Agricultural Chemicals

- (32) Have pesticides, herbicides or other agricultural chemicals been applied to the Property? If so, describe the locations where such pesticides, herbicides or chemicals were applied, the type of pesticides, herbicides or chemicals applied in each area and the results of any soil or groundwater analyses performed to detect pesticides, herbicides or chemicals used at the site.
- (33) Have pesticides, herbicides or other agricultural chemicals been mixed, formulated, rinsed or disposed of on the Property? If so, describe the locations where such pesticides, herbicides or chemicals were mixed, formulated, rinsed or disposed of; the type of pesticides, herbicides or chemicals mixed, formulated, rinsed or disposed of at each location; and the results of any soil or groundwater analyses performed to detect pesticides, herbicides or chemicals mixed, formulated, rinsed or disposed of at the site.

Fill

- (34) Has any fill been placed on the site? If so, describe the fill (source, characteristics and chemical composition, if known) and state the amount of fill and the locations of the fill.

16. LEGAL COUNSEL; AMBIGUITIES. (a) Buyer and Seller have each obtained the advice of its/their own legal and tax counsel regarding this Contract or has knowingly declined to do so. (b) The parties agree that the rule of construing ambiguities against the drafter shall have no application to this Contract.

17. 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 Buyer is in Default, the Earnest Money shall be paid to Seller and both parties shall thereafter be released from all obligations hereunder, except for the duties created by Section 7e. It is agreed that the Earnest Money is LIQUIDATED DAMAGES and is SELLER'S SOLE AND ONLY REMEDY for Buyer'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, Buyer may elect to treat this Contract as canceled in which case all payments and things of value received hereunder shall be returned to Buyer and Buyer may: either recover LIQUIDATED DAMAGES in the amount of \$2000.00; or elect to treat this Contract as being in full force and effect and Buyer shall have the right to specific performance plus its reasonable attorneys fees. In the event that Buyer elects to take the liquidated damages, Buyer expressly waives the remedies of specific performance and additional damages.

18. MEDIATION. If a dispute arises relating to this Contract, prior to or after Closing, and is not resolved, the parties shall first proceed in good faith to submit the matter to mediation. Mediation is a process in which the parties meet with an impartial person who helps to resolve the dispute informally and confidentially. Mediators cannot impose binding decisions. The parties to the dispute must agree before any settlement is binding. The parties will jointly appoint an acceptable mediator and will share equally in the cost of such mediation. The mediation, unless otherwise agreed, shall terminate in the event the entire dispute is not resolved thirty (30) calendar days from the date written notice requesting mediation is sent by one party to the other(s). This section shall not alter any date in this Contract, unless otherwise agreed in writing.

19. EARNEST MONEY DISPUTE. Notwithstanding any termination of this Contract, Buyer 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 the holder of the Earnest Money and things of value), 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 the district court of Mesa County.

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 §7e (Damage; Liens; Indemnity), §17b (If Seller is in Default), §18 (Mediation), and §19 (Earnest Money Dispute).

21. ADDITIONAL PROVISIONS.

a. City Council Consent. The execution of this Contract by the City Manager of the City of Grand Junction and Buyer's obligation to proceed under its terms and conditions is expressly conditioned upon and subject to the formal ratification, confirmation and consent of the Grand Junction City Council with regards to: (1) the terms, covenants, conditions, duties and obligations to be performed by Buyer in accordance with this Contract, and (2) the allocation of funds to pay the Purchase Price and all other costs and expenses necessary to perform Buyer's due diligence inspections of the Property. In the event such ratification, confirmation and consent is not obtained on or before the City Council Ratification Deadline (§2d, Item No. 11), this Contract shall automatically terminate, both parties shall thereafter be released from all obligations hereunder and the Earnest Money received hereunder

shall be returned to Buyer. If the City Council approves this Contract, then within two business days after said approval, Buyer shall deliver to Seller the City Council's written approval.

b. **No Fees or Commissions.** Buyer and Seller each warrant that no person or selling agency has been employed or retained to solicit or secure this Contract upon any agreement or understanding for a commission, percentage, brokerage or contingent fee. Each party agrees to defend, indemnify and hold the other party harmless from any claim for real estate brokerage commissions or finder's fees arising out of this Contract.

c. **Inspections.** All inspections and visits to the Property by Buyer shall be performed during Seller's non-business hours upon prior arrangement with Seller.

22. **ENTIRE AGREEMENT; SUBSEQUENT MODIFICATION; SURVIVAL.** This Contract constitutes the entire contract between the parties relating to the subject hereof and any prior agreements pertaining thereto, whether oral or written, have been merged and integrated into this Contract. No subsequent modification of any of the terms of this Contract shall be valid or binding upon the parties or enforceable unless made in writing and signed by the parties. Any obligation in this Contract which by its terms is intended to be performed after termination or Closing shall survive the same.

23. **FACSIMILE.** Signatures may be evidenced by facsimile. Documents with original signatures shall be provided to the other party at Closing or earlier upon request of any party.

24. **NOTICE.** Except for the notice requesting mediation described in §18, any notice to Buyer shall be effective when received by Buyer and any notice to Seller shall be effective when received by Seller.

25. **NOTICE OF ACCEPTANCE; COUNTERPART.** This proposal shall expire unless accepted in writing, by Buyer and Seller, as evidenced by their signatures below, and the offering party receives notice of such acceptance pursuant to §24 on or before Acceptance Deadline Date (§2d, Item No. 12) and Acceptance Deadline Time (§2d, Item No. 13).

26. **ESCROW ACCOUNT.** Notwithstanding any other provision of this Agreement, if the City Council approves this Agreement in the manner set forth in §21a, then the following terms shall apply:

a. No later than May 23, 2003, Buyer shall provide the full amount of the "Cash at Closing," as that term is defined in §4, in good funds to the Closing Agent, to be held by the Closing Agent in an escrow account, in trust on behalf of both Seller and Buyer.

b. The terms of §19 shall apply to any dispute concerning the escrowed funds.

c. Buyer's compliance with their terms of §26a shall evidence Buyer's agreement that the only remaining condition to the release of the funds held by the Closing Agent to Seller shall be Seller's compliance with his obligations under this Agreement from May 23, 2003 to the Closing Date, and shall evidence Buyer's

waiver of any contract defenses and claims that are inconsistent with the first clause of this sentence.

THE CITY OF GRAND JUNCTION, a Colorado home rule municipality, Buyer

By: /s/ David Varley Date of Buyer's signature: March 24,2003
David Varley, Acting City Manager
Buyer's Address: Attn: City Attorney, 250 North 5th Street, Grand Junction, CO 81501
Buyer's Telephone No. (970) 244-1505
Buyer's Fax No. (970) 244-1456

Robert C. Miller, Seller

By: Robert C. Miller Date of Seller's signature: March 24,2003
Robert C. Miller
Seller's Address: 159 Colorado Avenue, Grand Junction, CO 81501
Seller's Work Telephone No. (970) 241-3099
Seller's Home Telephone No. (970) 464-5763

END OF CONTRACT

