

RESOLUTION NO. 34-04

**AUTHORIZING THE EXCHANGE OF REAL ESTATE
WITH ICE SKATING, INC., A COLORADO NONPROFIT CORPORATION**

WHEREAS, the City of Grand Junction has contracted to purchase certain real property described as Lots 1, 2, and 4 of REDCO Subdivision in the County of Mesa, State of Colorado, and an additional parcel adjacent to Lot 1 of the REDCO Subdivision; and

WHEREAS, the City is acquiring this property for a portion to be used as right-of-way for the Riverside Parkway, but not all of the land will be needed for said purpose; and

WHEREAS, Ice Skating, Inc., a Colorado nonprofit corporation, is the owner of certain real property described as Lot 3 of the REDCO Subdivision in the County of Mesa, State of Colorado; and

WHEREAS, the City is desirous of acquiring a portion of the property owned by Ice Skating, Inc., for right-of-way purposes for the Riverside Parkway; and

WHEREAS, the City owns another parcel adjacent to Lots 1, 2, and 3 of the REDCO Subdivision; and

WHEREAS, Ice Skating, Inc., is desirous of building an ice skating rink within the area of the property described herein; and

WHEREAS, both the City and Ice Skating, Inc., may each accomplish these goals with an exchange of property in accordance with the terms of the attached contract.

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

1. 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.
2. That James L. Shanks, Riverside Parkway Project Manager is authorized and directed to amend the consideration to be paid to Ice Skating, Inc. in accordance with the terms of the contract.
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 Ice Skating, Inc.

PASSED and ADOPTED this 21st day of April 2004.

Attest:

/s/: Stephanie Tuin
City Clerk

/s/: Harry Butler
Harry Butler, Council President Pro Tem

CONTRACT TO EXCHANGE REAL ESTATE

THIS CONTRACT TO EXCHANGE REAL ESTATE is entered into by and between Ice Skating Inc. hereinafter referred to as "ISI" and the City of Grand Junction, a Colorado home rule municipality, hereinafter referred to as "the City". The property interests of ISI and the City are stated as follows: ISI owns Lot 3 of the REDCO Subdivision, hereinafter referred to as the ISI property. The City has contracted to purchase Lots 1, 2 & 4 of the REDCO subdivision and Parcel A as shown on the attached Exhibit 1. The City owns parcel B as shown on attached Exhibit 1, all hereinafter referred to as the City property. Collective references shall be to the Property or Property; individual references shall be to ISI Property or City Property as the context requires.

1. Subject to and upon full satisfaction of the provisions hereof, ISI agrees to convey to the City and the City agrees to convey to ISI by warranty deed, real property in the County of Mesa, State of Colorado that accomplishes the mutual objectives of the City and ISI.

1a. For the purposes of this Contract, the fair market value of the ISI Property as of the date of closing is considered to be \$155,000.00.

1b. The City will also reimburse ISI, without markup, for the cost of architectural and engineering services reasonably required to redesign its proposed skating rink and site and for the cost of preparation and submittal to the Grand Junction Community Development Department ("Community Development") of a re-plat (re-subdivision) of the Property and site planning/site review and approval. The total reimbursement shall be \$62,000.00.

1c. The City, by and through James L. Shanks, Riverside Parkway Project Manager, may amend the consideration to be paid to ISI under paragraphs 1a and/or 1b by an amount up to \$10,000.00 upon written request from ISI and a suitable amendment of this agreement signed by the City and ISI detailing the cost/amendment of consideration. Amendment of this agreement shall be first made and approved prior to any work taking place/expenditure of money by ISI. Amendment(s) shall occur only for unforeseen costs associated of re-platting of the Property, re-design of the building and/or site over and above that provided in 1b) above and any geotechnical and/or environmental assessment work required for the re-subdivision or as otherwise required by any governmental authority having jurisdiction.

1d. Community Development has approved the improvements to be constructed to Riverside Parkway as satisfying ISI's obligations for street improvements and accordingly no TCP payment is due.

2. Subject to and upon full satisfaction of the provisions hereof, the City agrees to convey to ISI, by General Warranty Deed, the following described real property in the County of Mesa, State of Colorado, to wit:

hereinafter referred to as the "City Property".

3. Subject to and upon full satisfaction of the provisions hereof, the ISI agrees to convey to the City, by General Warranty Deed, the following described real property in the County of Mesa, State of Colorado, to wit:

hereinafter referred to as the "ISI Property".

4. Conveyance of the ISI Property and the City Property each shall include all rights appurtenant to each property, free and clear of all taxes, special assessments, liens, mortgages and encumbrances; provided, however, that such conveyances shall not include any water or sewer taps.

5. The location and alignment of River Road will be changing after Closing and as such ISI has no claim or right to access to or from the Property in its current configuration. The City will be constructing the Riverside Parkway along River Road and will be utilizing a portion of Lots 1 through 4 and Parcel A for road right-of-way. The proposed right-of-way line is shown and legally described on attached Exhibit 1. ISI shall design access to its property assuming that configuration or a configuration required by Community Development.

6. This Contract and the exchange of real property hereby contemplated is contingent upon Community Development approving a re-plat (re-subdivision) of the City and ISI Property effectively creating a new boundary line, running northwest and southeast, that will divide the Property into two separate parcels; the New ISI Property and the New City Property. In the event that Community Development fails or refuses to approve the re-subdivision of the Property prior to closing, then this Contract shall terminate and both parties shall be released from all obligations hereunder.

7. ISI shall have a plat prepared by a Colorado licensed professional land surveyor to re-plat the property Lots 1 through 4 and Parcels A and B into one single lot and the adjacent dedicated right-of-way for Riverside Parkway. ISI has indicated that they plan to include a portion of a parcel owned by Dale Reece into the proposed new single-lot subdivision. The Reece property is not within the City limits of the City of Grand Junction. All costs associated with the acquisition of the Reece property, the annexation and the inclusion of it into the plat including any lot line adjustments or any other actions that may be required by City (Mesa County?) shall be paid by ISI. ISI will apply to rezone the Property to CSR and to have the plat approved by the City of Grand Junction.

8. (a) On or before May 17, 2004 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 all 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 ISI 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, within 5 days from the date of closing, to extend 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 at the conclusion of said thirty (30) day period, this Contract shall be void and of no effect and each party hereto shall be released from all obligations hereunder.

9. 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.

10. (a) Subject to full and complete compliance by both parties with the terms and provisions hereof, closing and possession shall occur on June 1, 2004 or by mutual agreement, at an earlier date.

(b) At closing each party shall execute and deliver a General 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 of closing, 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.

11. (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 May

1, 2004 and ending on May 27, 2004. 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 provided in 11a, this contract shall then terminate. If either party fails to give notice of any unsatisfactory physical condition during 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 there under; (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 there under; (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 there under; (iv) any "hazardous waste" as defined by C.R.S., § 25-15-101, *et seq.*, as amended, or by any regulations promulgated there under; (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 during the term of this Agreement.

12. Possession of the respective properties shall be delivered without exceptions, leases or tenancies, on the date of closing.

13. Time is of the essence hereof. If any obligation hereunder is not performed as herein provided, an action for specific performance shall be the remedy:

(a) 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.

14. 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.

15. 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. Jim Shanks
 Riverside Parkway Manager
 2529 High Country Ct.
 Grand Junction, CO 81503

To ISI: Kurt Maki

 Grand Junction, CO 8150*

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

16. This entire Contract and the obligation of the parties to proceed under its terms and conditions are 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 April 21, 2004 this Contract shall be automatically void and of no effect; and

(b) The ability of ISI, under terms and conditions provided herein, re-plat the property as required by the parties.

(c) The ability of the ISI to obtain approval by the City of its site plan.

(d) The City's purchase of Lots 1, 2 and 4 of the REDCO subdivision.

17. ISI 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 the terms and conditions of 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, there will be no encumbrances or liens against the respective properties including, but not limited to, mortgages or deeds of trust.

18. 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.

19. This Agreement shall be governed and construed by the laws of the State of Colorado. Venue for any action shall be in Mesa County, Colorado.

20. Each party has obtained the advice of its own legal and tax counsel.

IN WITNESS of the foregoing, the parties hereto have executed this Contract as of this _____ day of _____, 2004.

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

Attest:

Kelly Arnold, City Manager

Stephanie Tuin, City Clerk

ISI

ISI

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