

<b>CITY OF GRAND JUNCTION</b>
<b>POSSESSION AND USE AGREEMENT</b>

Project: Thunder Mountain Sidewalk
Location 3061 F ½ Rd.
Parcel No. 2943-044-00-153

This agreement is made this 21<sup>st</sup> day of May, 2014 between the City of Grand Junction, (herein referred to as the City), and Darien Marx and Yvonne Herrera, (herein referred to as the landowner(s)) for the purpose of granting the irrevocable right to possession and use to the City, its contractors, agents and all others deemed necessary by the City of a portion of parcel number 2943-044-00-153 (Mesa County Assessor's parcel number), located at 3061 F ½ Road, Grand Junction, Colorado, for the Project known as the Thunder Mountain Sidewalk Project for the purpose of constructing a portion of road improvements and a sidewalk along F ½ Road abutting landowner's property at 3061 F ½ Road. The property involved is depicted more fully in Exhibit A attached hereto and made a part hereof by reference; the part of the property to be used only temporarily during construction is depicted more fully in Exhibit B.

1. In consideration for this irrevocable grant of possession the City will tender to the Landowner(s) the sum of \$1700.00. The City shall be entitled to take possession upon tender of payment. It is understood the sum tendered represents one-hundred percent (100%) of the City's value of the just compensation owed to the landowner(s). It is agreed this sum shall be deducted from any final settlement amount, award, or verdict. It is also agreed in the event the ultimate settlement amount, award, or verdict is less than this sum the undersigned landowner(s) shall refund the difference to the City.
2. The Landowner(s) represent(s) that the title to the property is free and clear of all liens and encumbrances or that proper releases will be executed for the property herein described prior to funds being disbursed under this agreement. The Landowner(s) further agrees to hold the City harmless from all liability for unreleased or undisclosed liens or encumbrances affecting the property herein described.
3. This agreement is made with the understanding that the City will continue to negotiate in good faith with the undersigned landowner(s) to acquire the interest in the property described by direct purchase. It is further understood in the event a settlement is not reached within fifteen (15) days of the signing of this agreement such failure will be a confession that the negotiations to acquire the property described herein have proved futile. At this point the City may begin proceedings in eminent domain to acquire title to the property herein described. The City shall not unreasonably delay the commencement of proceedings under the eminent domain law once the time provided for in this paragraph has expired. If the City begins proceedings in eminent domain, it is understood and agreed this agreement shall continue in effect until either a settlement is reached or a rule and order as provided for in C.R.S. 38-1-105(3) is entered by the court.
4. If the City begins proceedings in eminent domain it agrees to deposit the remaining amount of its appraised value of the just compensation owed to the Landowner(s) into the registry of the court if it has not previously tendered 100 percent of this amount. Any sums deposited in the registry may be withdrawn by the undersigned landowner(s) if all parties interested in the property sought to be acquired consent and agree to such withdrawal. Any such withdrawal of said deposit shall be deducted by the clerk from any award or verdict entered thereafter or by the City from any settlement reached. It is agreed in the event the ultimate settlement amount, award, or verdict is less than the total of the sums paid to and withdrawn by the undersigned landowner(s), the undersigned landowner(s) shall refund the difference to the City.
5. It is agreed by the undersigned in the event proceedings in eminent domain are begun the valuation date for determining the amount of just compensation shall be the date on which payment was tendered to the Landowner(s) pursuant to paragraph one above.

6. It is agreed by entering into this agreement the undersigned do not waive any right to raise any issue pertaining to just compensation at the time of trial.
7. The purpose of this agreement is to allow the City to proceed with its construction project without delay and to allow the Landowner(s) to avoid litigation at this time.
8. The undersigned Landowner(s) agree(s) to pay all taxes, including prorated taxes for the current year, and special assessments due at the time the City takes possession of (their) property.
9. This agreement shall be deemed a contract and it shall bind the parties only when signed by all landowners or their designated representative and the City.
10. It is agreed the City shall record this document.
11. Landowner agrees to indemnify and hold harmless the City of Grand Junction from all claims and liability related to the presence, disposal, release or clean-up of any contaminants located on or attributable to activities occurring on the property prior to the execution of this Agreement.
12. Other conditions:
  - a. Project will involve driveway improvements but not removal of any driveway, access or curb cut.
  - b. Project will involve installation of 110 linear feet of 18" high segmental retaining wall parallel to F ½ Road and resetting the split rail fence that is parallel to F ½ Road 36" south of the retaining wall face.
  - c. Tree saplings marked by landowner will be protected in place or, if necessary, restored or relocated.

**LANDOWNERS:**

\_\_\_\_\_  
Darien Marx

\_\_\_\_\_  
Yvonne Herrera

Date: \_\_\_\_\_

Date: \_\_\_\_\_

SSN / FEIN: \_\_\_\_\_

SSN / FEIN: \_\_\_\_\_

**CITY OF GRAND JUNCTION**

  
\_\_\_\_\_  
Rich Englehart, City Manager

Date: 5/27/14

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11. Landowner agrees to indemnify and hold harmless the City of Grand Junction from all claims and liability related to the presence, disposal, release or clean-up of any contaminants located on or attributable to activities occurring on the property prior to the execution of this Agreement.
12. Other conditions:
  - a. Project will involve driveway improvements but not removal of any driveway, access or curb cut.
  - b. Project will involve installation of 110 linear feet of 18" high segmental retaining wall parallel to F 1/2 Road and resetting the split rail fence that is parallel to F 1/2 Road 36" south of the retaining wall face.
  - c. Tree saplings marked by landowner will be protected in place or, if necessary, restored or relocated.

LANDOWNERS:

  
 Darion Marx

Date: 5/23/2014

SSN / FEIN: \_\_\_\_\_

**CITY OF GRAND JUNCTION**

\_\_\_\_\_  
 Rich Englehart, City Manager

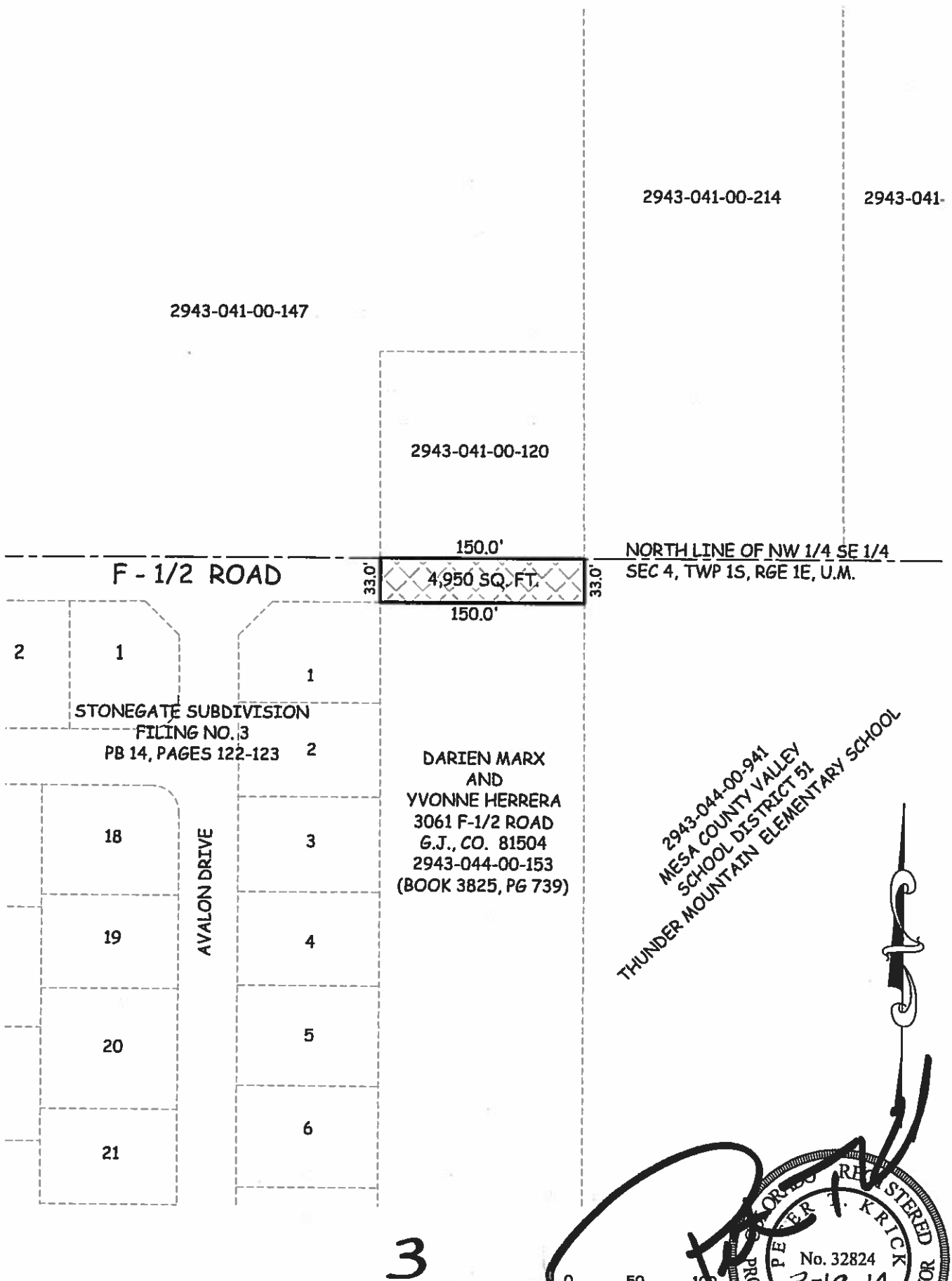
  
 Youssef Herrera

Date: 5/23/2014

SSN / FEIN: \_\_\_\_\_

Date: \_\_\_\_\_

# EXHIBIT "A"

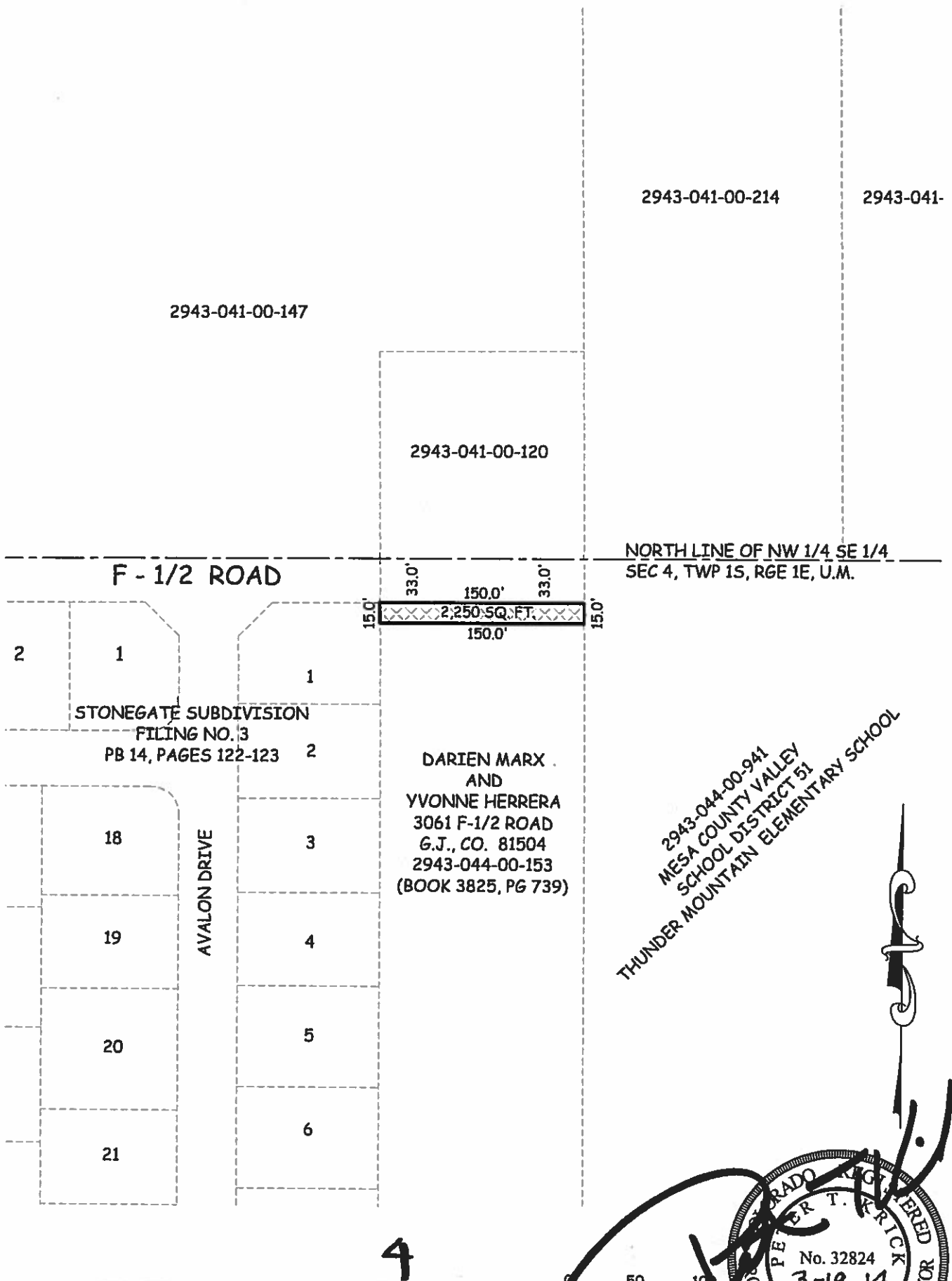


This sketch does not constitute a legal boundary survey and is not intended to be used as a means for establishing or verifying property boundary lines.

0 50 100  
1 inch = 100 ft.  
Lineal Units = U.S. Survey Foot

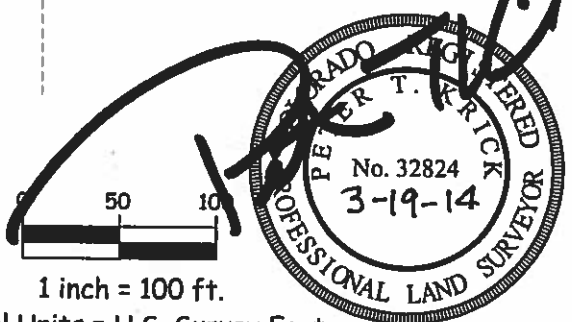


# EXHIBIT "B"



This sketch does not constitute a legal boundary survey and is not intended to be used as a means for establishing or verifying property boundary lines.

1 inch = 100 ft.  
Lineal Units = U.S. Survey Foot



DRAWN BY: P.T.K.  
DATE: 03-19-2014  
SCALE: 1" = 100'  
APPR. BY: PTK


*DARIEN MARX & YVONNE HERRERA*  
*TEMPORARY CONSTRUCTION EASEMENT*

2943-044-00-153

CITY OF  
**Grand Junction**  
COLORADO

ACKNOWLEDGEMENT OF RECEIPT

I, Darien Marx, acknowledge receipt of check number 222220 in the amount of \$1,700.00 made payable to Darien Marx and Yvonne Herrera on the day below written.

  
Darien Marx

5/23/2014  
Date

WITNESS:

  
Shelly S. Dackonish