

PEOPLE'S ORDINANCE NO. 7

SERIES 1988

AN EMERGENCY ORDINANCE AUTHORIZING THE SALE OF REAL  
PROPERTY [A PORTION OF THE HILL RANCH (Hillyard)]

WHEREAS, the Town of Breckenridge desires to sell certain real property to Gerald and Julie Hillyard pursuant to the terms of the newly revised contract and Counterproposal attached hereto as Exhibits A and B;

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE, COLORADO, that:

Section I. The Town Manager of the Town of Breckenridge is hereby authorized, empowered and directed in the name of the Town of Breckenridge and on behalf of its Town Council to sell real property to Gerald and Julie Hillyard pursuant to the terms of the contract and Counterproposal attached hereto as Exhibits A and B.

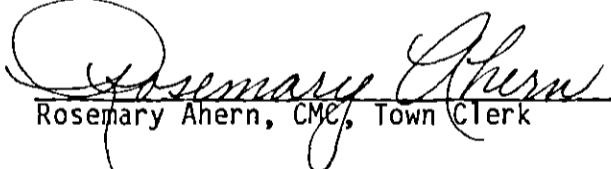
The Town Manager is further authorized to execute the special Warranty Deed and other instruments necessary, required or desirable in the opinion of the Town of Breckenridge Attorney to complete the sale of the real property.

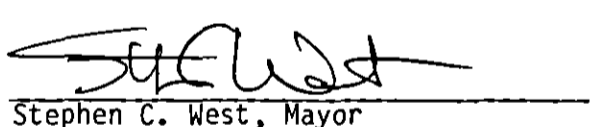
Section II. The Council finds it is desirable to accept the contract immediately in order to avoid the potential of withdrawal of this offer prior to the Council's next meeting on or about May 10, 1988. Accordingly, this ordinance is adopted as an Emergency Ordinance.

ADOPTED AND APPROVED as an Emergency Ordinance this 3rd day of  
May, 1988.

ATTEST:

TOWN OF BRECKENRIDGE

  
Rosemary Ahern, CMC, Town Clerk

  
Stephen C. West, Mayor

APPROVED IN FORM

  
Town Attorney

5/3/88  
Date

EXHIBIT "A"  
PEOPLE'S ORDINANCE NO. 7  
SERIES 1988

The printed portions of this form approved by the  
Colorado Real Estate Commission (SC 27-2-81)

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

VACANT LAND  
CONTRACT TO BUY AND SELL REAL ESTATE  
(Remedies Include Specific Performance)

April 27, 1988

1. The undersigned agent hereby acknowledges having received from Julie Hillyard the sum of \$ 12,000.00, in the form of a personal check, to be held by Mountain Marketing Associates, Ltd. broker, in broker's escrow or trustee account, as earnest money and part payment for the following described real estate in the \_\_\_\_\_ County of Summit, Colorado, to wit:

Those portions of Parcels 2 and 3 of the property known as the Hill Ranch which are defined on the attached Exhibit "A" to this contract including all that property South of the dividing line between Parcels marked 4B and 3 on said Exhibit "A" and West of Highway 9, East of the centerline of the Blue River and North of a line to be determined by survey, which totals not less than 65 acres, all known as the "Purchase Parcel."

together with all easements and rights of way appurtenant thereto, and all improvements thereon and all fixtures of a permanent nature currently on the premises except as hereinafter provided, in their present condition, ordinary wear and tear excepted, and hereinafter called the Property.

2. The undersigned person(s) Gerald and Julie Hillyard (as joint tenants ~~with right of survivorship~~), hereinafter called Purchaser, hereby agrees to buy the Property, and the undersigned owner(s), hereinafter called Seller, hereby agrees to sell the Property upon the terms and conditions stated herein.

3. The purchase price shall be U.S. \$ 276,250.00, payable as follows: \$ 12,000.00 hereby received for; \$ 29,437.50 payable by cashier's check upon delivery of deed. At closing, Purchaser shall execute a Note secured by a First Deed of Trust on Purchase Parcel (in the forms attached as Exhibits "B" and "C"), payable to Seller in the amount of \$ 234,812.50, with interest at 10% per annum amortized based upon a 20 year schedule with quarterly payments including principal and interest beginning January 15, 1989. The Note shall call for a principal payment in the amount of \$ 27,625.00, plus accrued interest, on or before January 15, 1990. Purchaser shall pledge as additional security for this principal payment in favor of Seller real property that is acceptable to Seller which is currently owned free and clear by Purchaser until such time as Purchaser shall make this principal payment. The then remaining principal balance of approximately \$ 207,187.50 shall be amortized based upon a new 20 year schedule with the quarterly payments including principal and interest adjusted accordingly, with a balloon payment for the entire balance due January 15, 1998. Seller shall immediately release to Purchaser the additional security upon receipt of the \$ 27,625.00 principal payment. Purchaser shall have the privilege of prepayment of any amount at any time without penalty. Each party agrees to pay its own customary closing costs.

4. Price to include: Real property

and the following water rights: None

5. If a new loan is to be obtained by Purchaser from a third party, Purchaser agrees to promptly and diligently (a) apply for such loan, (b) execute all documents and furnish all information and documents required by the lender, and (c) pay the customary costs of obtaining such loan. Then if such loan is not approved on or before N/A, 19\_\_\_\_, or if so approved but is not available at time of closing, this contract shall be null and void and all payments and things of value received hereunder shall be returned to Purchaser.

6. If a note and trust deed or mortgage is to be assumed, Purchaser agrees to apply for a loan assumption if required and agrees to pay (1) a loan transfer fee not to exceed \$ N/A and (2) an interest rate not to exceed N/A % per annum. If the loan to be assumed has provisions for a shared equity or variable interest rates or variable payments, this contract is conditioned upon Purchaser reviewing and consenting to such provisions. If the lender's consent to a loan assumption is required, this contract is conditioned upon obtaining such consent without change in the terms and conditions of such loan except as herein provided.

7. If a note is to be made payable to Seller as partial or full payment of the purchase price, this contract shall not be assignable by Purchaser without written consent of Seller.

8. Cost of any appraisal for loan purposes to be obtained after this date shall be paid by Purchaser.

9. ~~A current commitment for title insurance policy in an amount equal to the purchase price, at Seller's expense, shall be furnished to Purchaser on or before May 15, 1988. Seller will deliver the title insurance policy to Purchaser after closing and pay the premium thereon.~~

10. The date of closing shall be the date for delivery of deed as provided in paragraph 11. The hour and place of closing shall be as designated by ~~Mountain-Marketing-Associates and Keystone-Resort-Real-Estate Co.~~

11. Title shall be merchantable in Seller, except as stated in this paragraph and in paragraphs 12 and 13. Subject to payment or tender as above provided and compliance by Purchaser with the other terms and provisions hereof, Seller shall execute and deliver a good and sufficient ~~Special~~ warranty deed to Purchaser on ~~June 10, 1983~~, or, by mutual agreement, at an earlier date, conveying the Property free and clear of all taxes, except the general taxes for the year of closing, and ~~free and clear of all liens for special improvements installed as of the date of Purchaser's signature hereon, whether assessed or not; free and clear of all liens and encumbrances~~

except the following restrictive covenants which do not contain a right of reverter: Those of record that do not interfere with the use of the property and specifically excepting the Declaration of Covenants and Restrictions recorded in Summit County on March 12, 1986 under Reception No. 313730 and except the following specific recorded and/or apparent easements: Those of record

and subject to building and zoning regulations.

12. Except as stated in paragraphs 11 and 13, if title is not merchantable and written notice of defect(s) is given by Purchaser or Purchaser's agent to Seller or Seller's agent on or before date of closing, Seller shall use reasonable effort to correct said defect(s) prior to date of closing. If Seller is unable to correct said defect(s) on or before date of closing, at Seller's option and upon written notice to Purchaser or Purchaser's agent on or before date of closing, the date of closing shall be extended thirty days for the purpose of correcting said defect(s). Except as stated in paragraph 13, if title is not rendered merchantable as provided in this paragraph 12, at Purchaser's option, this contract shall be void and of no effect and each party hereto shall be released from all obligations hereunder and all payments and things of value received hereunder shall be returned to Purchaser.

13. Any encumbrance required to be paid may be paid at the time of settlement from the proceeds of this transaction or from any other source. Provided, however, at the option of either party, if the total indebtedness secured by liens on the Property exceeds the purchase price, this contract shall be void and of no effect and each party hereto shall be released from all obligations hereunder and all payments and things of value received hereunder shall be returned to Purchaser.

14. General taxes for the year of closing, based on the most recent levy and the most recent assessment, prepaid rents, water rents, sewer rents, FHA mortgage insurance premiums and interest on encumbrances, if any, and ~~any other ongoing related expenses and revenues~~ shall be apportioned to date of delivery of deed.

15. Possession of the Property shall be delivered to Purchaser on date of delivery of deed

subject to the following leases or tenancies: None

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16. In the event the Property is substantially damaged by fire, flood or other casualty between the date of this contract and the date of delivery of deed, Purchaser may elect to terminate this contract; in which case all payments and things of value received hereunder shall be returned to Purchaser.

17. 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 as herein provided, there shall be the following remedies:

(a) IF SELLER IS IN DEFAULT, (1) Purchaser may elect to treat this contract as terminated, in which case all payments and things of value received hereunder shall be returned to Purchaser and Purchaser may recover such damages as may be proper, or (2) Purchaser may elect to treat this contract as being in full force and effect and Purchaser shall have the right to an action for specific performance or damages, or both.

(b) IF PURCHASER IS IN DEFAULT, (1) Seller may elect to treat this contract as terminated, in which case all payments and things of value received hereunder shall be forfeited and retained on behalf of Seller and Seller may recover such damages as may be proper, or (2) Seller may elect to treat this contract as being in full force and effect and Seller shall have the right to an action for specific performance or damages, or both.

(c) Anything to the contrary herein notwithstanding, in the event of any litigation arising out of this contract, the court may award to the prevailing party all reasonable costs and expense, including attorneys' fees.

18. Purchaser and Seller agree that, in the event of any controversy regarding the earnest money held by broker, unless mutual written instruction is received by broker, broker shall not be required to take any action but may await any proceeding, or at broker's option and discretion, may interplead any moneys or things of value into court and may recover court costs and reasonable attorneys' fees.

19. Additional provisions:

- (A) Purchaser is interested in obtaining water rights to irrigate Purchase Parcel. Purchaser shall have thirty (30) days after full execution of this contract to make inquiries regarding the availability of such water. If dissatisfied with the results of the inquiries, Purchaser must notify Seller in writing of his dissatisfaction, in which case, at Purchaser's option, this contract may be declared null and void and all funds hereby received for returned to Purchaser. Should Seller not receive written notice from Purchaser on or before the thirtieth day after execution of this contract, the contingency specified in this paragraph shall be deemed expressly waived by the Purchaser and this contract shall be in full force and effect.
- (B) Upon acceptance of this contract, Purchaser shall have the right to go upon the property to conduct soil tests, including percolation tests, to ascertain whether the property is suitable for the improvements which Purchaser proposes to make. All expenses of such test shall be borne by Purchaser. Purchaser shall have until May 25, 1988 to complete such soils tests. This contract is contingent upon Purchaser's satisfaction with the results of said tests. If Purchaser has not notified Seller in writing of his dissatisfaction within the specified time, then Purchaser will be deemed satisfied and this condition will no longer be a contingency of this contract. If Purchaser does so notify Seller, then, at Purchaser's option, this contract may be declared null and void and all funds hereby received for returned to Purchaser.
- (C) Purchaser understands that access to Purchase Parcel requires a permit from the Colorado State Highway Department and that said permit will require access at the Elk Run Road intersection which intersection corresponds

(Continued on attached Addendum "A.")

20. If this proposal is accepted by Seller in writing and Purchaser receives notice of such acceptance on or before May 3, 1988, this instrument shall become a contract between Seller and Purchaser and shall inure to the benefit of the heirs, successors and assigns of such parties, except as stated in paragraph 7.

Gerald Hillyard 4-27-88 Broker Keystone Resort Real Estate Company  
Purchaser Date

Julie M. Hillyard April 27, 1988 By: Arlys Ward  
Purchaser Date Broker Associate

Purchaser's Address 3840 South Dahlia, Denver, Colorado 80237

(The following section to be completed by Seller and Listing Agent)

21. Seller accepts the above proposal this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_ and agrees to pay a commission of ten (10) % of the purchase price for services in this transaction, and agrees that, in the event of forfeiture of payments and things of value received hereunder, such payments and things of value shall be divided between listing broker and Seller, one-half thereof to said broker, but not to exceed the commission, and the balance to Seller.

The Town of Breckenridge,  
a Colorado Municipal Corporation By: Gary Martinez, Town Manager  
Seller Seller

Seller's Address P. O. Box 168, 150 Ski Hill Road, Breckenridge, Colorado 80424

Listing Broker's Name and Address Mountain Marketing Associates, Ltd.  
P. O. Box 2340, 100 South Ridge Street, Suite 105  
Breckenridge, Colorado 80424  
303/453-2571

ADDENDUM "A"

To Vacant Land Contract to Buy and Sell Real Estate to Gerald Hillyard and Julie Hillyard, for the purchase of 65 acres of the Hill Ranch from the Town of Breckenridge, dated April 27, 1988:

(Continued from Paragraph 19C):

approximately to the current northern boundary of Parcel 2.

- (D) Seller, at its expense, shall have the Purchase Parcel surveyed by May 10, 1988. This contract is contingent upon Purchaser's approval of the survey. If Purchaser has not notified Seller in writing of his disapproval of the survey by May 25, 1988, then the survey will be deemed approved by Purchaser and this condition will no longer be a contingency of this contract. If Purchaser does ~~not~~ notify Seller of disapproval, then, at Purchaser's option, this contract may be declared null and void and all funds hereby received for returned to Purchaser.
- (E) Seller is currently attempting to acquire a 1.9 acre parcel near the west boundary of Purchase Parcel from the U. S. Forest Service. If, within five (5) years after closing, Seller is successful in obtaining merchantable title to the 1.9 acre parcel, Seller shall transfer the 1.9 acre parcel to Purchaser at no additional cost to Purchaser within thirty (30) days after Seller has acquired the 1.9 acres and conveyance shall be by Special Warranty Deed with Purchaser paying the cost of title insurance if so desired.
- (F) Purchaser understands that Seller is a Colorado municipality and that the sale of the Purchase Parcel is subject to certain laws with regard to public notice and hearing.
- (G) Purchaser hereby acknowledges that they have been advised by Broker to obtain legal and tax counsel to represent them in this transaction.
- (H) Seller is hereby advised that Purchaser was informed of the below-signed licensee's agency relationship with the Seller.
- (I) This contract shall survive the closing and be binding on Purchaser's and Seller's heirs, successors or assigns.
- (J) If additional highway access permits are not available to Seller prior to closing to access the remainder of Parcel 1 directly from the Highway, then, prior to closing Seller shall reserve an access easement for the benefit of the remainder of Parcel 1, running parallel to the east boundary of Purchase Parcel, ~~30~~ <sup>30</sup> feet wide, extending from the Elk Run Road intersection south to the boundary of the remainder of Parcel 1.
- (K) Purchaser agrees that now or hereinafter at any time in the future, he will not object to or in any way challenge the sale, change, or transfer of any water rights appurtenant to the property being sold and including without limitation the water rights more particularly in Water Division #5, Case Nos. 80CW444, 81CW107, 81CW488 and the Pass Creek Water Rights described in attached Exhibit "D." This provision shall survive the closing and be binding on Purchaser's heirs, successors or assigns.

607/42288  
JH 4/27/88

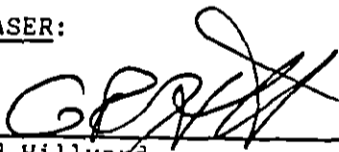
(L) Attached Exhibit "A" also depicts an area of property which includes that portion of Parcel 2 which is not in the Purchase Parcel and enough of the northern portion of Parcel 1 to comprise 15 acres. This shall be known as the "Additional Parcel." The total combined acreage of the Purchase Parcel and the Additional Parcel shall contain not less than 80 acres. Purchaser desires to own the Additional Parcel; however, Seller cannot sell it until Seller has received County Subdivision approval, because the balance of Parcel 1 that Seller would still own after the sale of the Purchase Parcel and the Additional Parcel to Purchaser would be less than 35 acres. Seller shall use its best efforts over the eight (8) months following closing on the Purchase Parcel to obtain approval from the Summit County Board of Commissioners to subdivide a portion of the Hill Ranch such that the remainder of Parcel 1 after the sale of the Purchase Parcel and the Additional Parcel would be 20+ acres. If said approval is not obtained within the eight month period, then neither party shall have any further obligation to the other with respect to the purchase and sale of the Additional Parcel. If said approval is obtained within the specified period, then Seller shall give Purchaser written notice of approval and plat recordation and Purchaser must then close on the purchase of the Additional Parcel within ninety (90) days after the date of notice. The purchase price of the Additional Parcel shall be \$63,750.00. At closing, Purchaser shall make a down payment of \$6,375.00 and pay customary closing costs. A new Note and Deed of Trust, to replace those executed at closing on the Purchase Parcel, shall be executed, calling for the same interest rate and conditions on the original Note and Deed of Trust. The Note amount shall be the remaining principal balance on the original Note plus \$57,375.00. The term shall be the remaining term of the original Note. Payments shall be computed by amortizing the new Note amount over the remaining term of the original Note. A balloon payment for the entire remaining balance shall still be due on January 15, 1998. Purchaser shall have the use of the Additional Purchase Parcel before closing except that no structures of a permanent nature may be erected thereon until after closing.


SELLER:

The Town of Breckenridge,  
a Colorado Municipal Corporation

By: \_\_\_\_\_  
Gary Martinez, Town Manager Date

PURCHASER:

 4-27-88  
\_\_\_\_\_  
Gerald Hillyard Date

 April 27, 1988  
\_\_\_\_\_  
Julie Hillyard Date

# EXHIBIT A

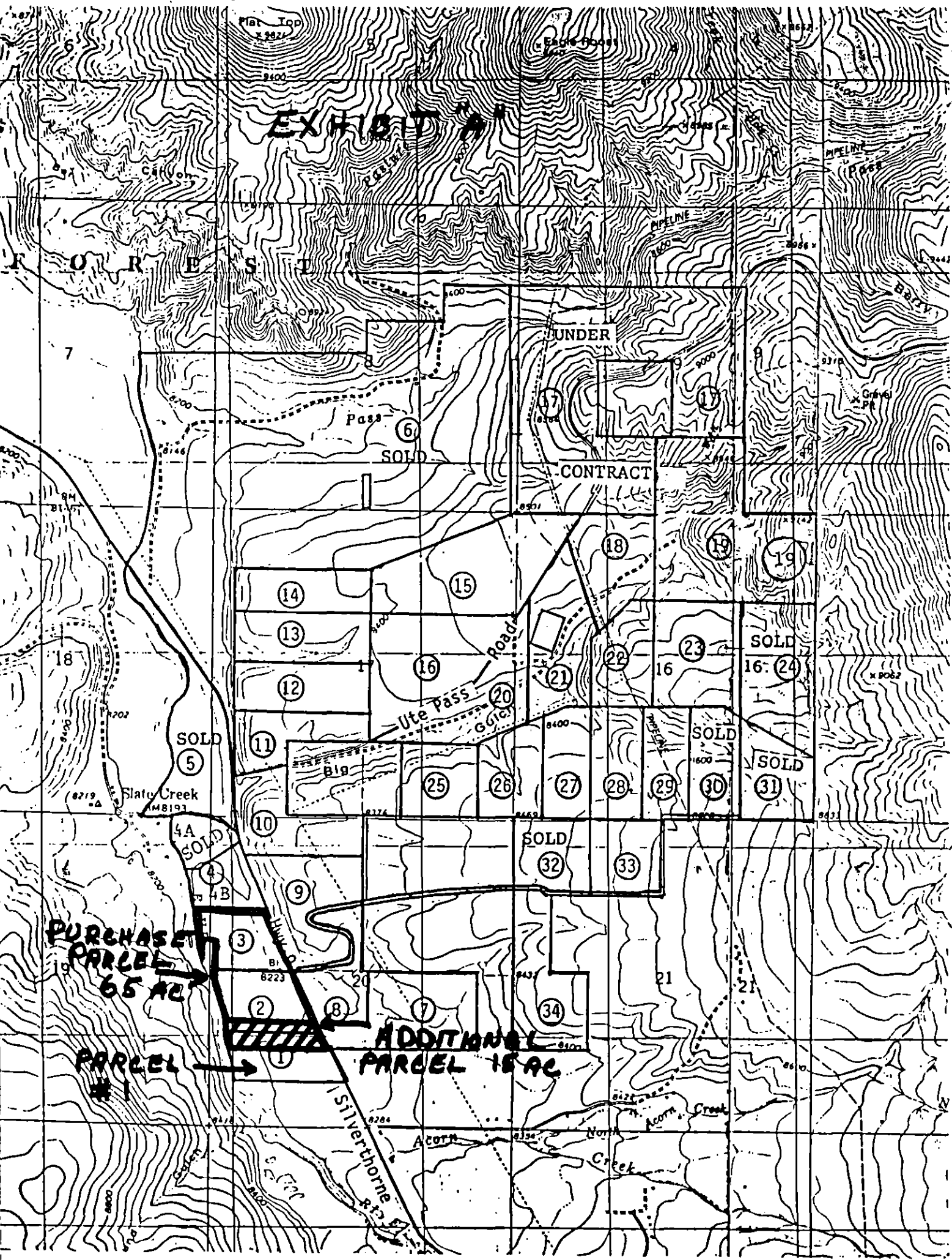


EXHIBIT "B"

The printed portions of this form approved by the Colorado Real Estate Commission (NID 81-11-83)

IF THIS FORM IS USED IN A CONSUMER CREDIT TRANSACTION, CONSULT LEGAL COUNSEL.

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

PROMISSORY NOTE

U.S. \$ \_\_\_\_\_, Colorado \_\_\_\_\_, 19 \_\_\_\_\_

1. FOR VALUE RECEIVED, the undersigned (Borrower) promise(s) to pay

or order, (Note Holder) the principal sum of

U.S. Dollars, with interest on the unpaid principal balance from \_\_\_\_\_, 19 \_\_\_\_\_, until paid, at the rate of \_\_\_\_\_ percent per annum. Principal and interest shall be payable at \_\_\_\_\_, or such other place as the Note Holder may designate, in \_\_\_\_\_ payments of \_\_\_\_\_ Dollars (U.S. \$ \_\_\_\_\_), due on the \_\_\_\_\_ day of each \_\_\_\_\_, beginning \_\_\_\_\_, 19 \_\_\_\_\_. Such payments shall continue until the entire indebtedness evidenced by this Note is fully paid, provided, however, if not sooner paid, the entire principal amount outstanding and accrued interest thereon, shall be due and payable on \_\_\_\_\_, 19 \_\_\_\_\_.

2. Borrower shall pay to the Note Holder a late charge of three (3) % of any payment not received by the Note Holder within \_\_\_\_\_ days after the payment is due.

3. Payments received for application to this Note shall be applied first to the payment of late charges, if any, second to the payment of accrued interest at the rate specified below, if any, third, to accrued interest first specified above, and the balance applied in reduction of the principal amount hereof.

4. If any payment required by this Note is not paid when due, or if any default under any Deed of Trust securing this Note occurs, the entire principal amount outstanding and accrued interest thereon shall at once become due and payable at the option of the Note Holder (Acceleration); and the indebtedness shall bear interest at the rate of 15 percent per annum from the date of default. The Note Holder shall be entitled to collect all reasonable costs and expense of collection and/or suit, including, but not limited to reasonable attorneys' fees.

5. Borrower may prepay the principal amount outstanding under this Note, in whole or in part, at any time without penalty except

Any partial prepayment shall be applied against the principal amount outstanding and shall not postpone the due date of any subsequent payments or change the amount of such payments.



6. Borrower and all other makers, sureties, guarantors, and endorsers hereby waive presentment, notice of dishonor and protest, and they hereby agree to any extensions of time of payment and partial payments before, at, or after maturity. This Note shall be the joint and several obligation of Borrower and all other makers, sureties, guarantors and endorsers, and their successors and assigns.

7. Any notice to Borrower provided for in this Note shall be in writing and shall be given and be effective upon (1) delivery to Borrower or (2) mailing such notice by first-class U.S. mail, addressed to Borrower at the Borrower's address stated below, or to such other address as Borrower may designate by notice to the Note Holder. Any notice to the Note Holder shall be in writing and shall be given and be effective upon (1) delivery to Note Holder or (2) by mailing such notice by first-class U.S. mail, to the Note Holder at the address stated in the first paragraph of this Note, or to such other address as Note Holder may designate by notice to Borrower.

8. The indebtedness evidenced by this Note is secured by a Deed of Trust dated \_\_\_\_\_, 19\_\_\_\_, and until released said Deed of Trust contains additional rights of the Note Holder. Such rights may cause Acceleration of the indebtedness evidenced by this Note. Reference is made to said Deed of Trust for such additional terms. Such Deed of Trust grants rights in the property identified as follows:

Property address: \_\_\_\_\_  
\_\_\_\_\_, Colorado \_\_\_\_\_

(CAUTION: SIGN ORIGINAL NOTE ONLY/RETAIN COPY)

IF BORROWER IS NATURAL PERSON(S):

\_\_\_\_\_  
\_\_\_\_\_ doing business as \_\_\_\_\_

IF BORROWER IS CORPORATION:

ATTEST: \_\_\_\_\_  
Secretary by \_\_\_\_\_  
President

(SEAL)

IF BORROWER IS PARTNERSHIP:

\_\_\_\_\_  
Name of Partnership  
by \_\_\_\_\_  
General Partner

Borrower's address: \_\_\_\_\_  
\_\_\_\_\_

KEEP THIS NOTE IN A SAFE PLACE. THE ORIGINAL OF THIS NOTE MUST BE EXHIBITED TO THE PUBLIC TRUSTEE IN ORDER TO RELEASE A DEED OF TRUST SECURING THIS NOTE.

IF THIS FORM IS USED IN A CONSUMER CREDIT TRANSACTION, CONSULT LEGAL COUNSEL.  
THIS IS A LEGAL INSTRUMENT. IF NOT UNDERSTOOD, LEGAL, TAX OR OTHER COUNSEL SHOULD BE CONSULTED BEFORE SIGNING.

**DEED OF TRUST**  
(Due on Transfer — Strict)

THIS DEED OF TRUST is made this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, between \_\_\_\_\_  
\_\_\_\_\_ (Borrower),  
whose address is \_\_\_\_\_;  
and the Public Trustee of the County in which the Property (see paragraph 1) is situated (Trustee); for the benefit of  
\_\_\_\_\_ (Lender), whose address is \_\_\_\_\_

Borrower and Lender covenant and agree as follows:

1. **Property in Trust.** Borrower, in consideration of the indebtedness herein recited and the trust herein created, hereby grants and conveys to Trustee in trust, with power of sale, the following described property located in the \_\_\_\_\_ County of \_\_\_\_\_, State of Colorado:

\_\_\_\_\_ which has the address of \_\_\_\_\_  
(Street)  
\_\_\_\_\_, Colorado \_\_\_\_\_  
(City) (Zip Code)

(Property Address), together with all its appurtenances (Property).

2. **Note; Other Obligations Secured.** This Deed of Trust is given to secure to Lender:

A. the repayment of the indebtedness evidenced by Borrower's note (Note) dated \_\_\_\_\_, 19\_\_\_\_, in the principal sum of \_\_\_\_\_ U.S. Dollars, with interest on the unpaid principal balance from \_\_\_\_\_, 19\_\_\_\_, until paid, at the rate of \_\_\_\_\_ percent per annum, with principal and interest payable at \_\_\_\_\_ or such other place as the Lender may designate, in \_\_\_\_\_ payments of

Dollars (U.S. \$ \_\_\_\_\_) due on the \_\_\_\_\_ day of each \_\_\_\_\_ beginning \_\_\_\_\_, 19\_\_\_\_; such payments to continue until the entire indebtedness evidenced by said Note is fully paid; however, if not sooner paid, the entire principal amount outstanding and accrued interest thereon, shall be due and payable on \_\_\_\_\_, 19\_\_\_\_;

and Borrower is to pay to Lender a late charge of three (3) % of any payment not received by the Lender within 10 days after payment is due; and Borrower has the right to prepay the principal amount outstanding under said Note, in whole or in part, at any time without penalty except

B. the payment of all other sums, with interest thereon at fifteen (15) % per annum, disbursed by Lender in accordance with this Deed of Trust to protect the security of this Deed of Trust; and  
C. the performance of the covenants and agreements of Borrower herein contained.

3. **Title.** Borrower covenants that Borrower owns and has the right to grant and convey the Property, and warrants title to the same, subject to general real estate taxes for the current year, easements of record or in existence, and recorded declarations, restrictions, reservations and covenants, if any, as of this date and except

4. **Payment of Principal and Interest.** Borrower shall promptly pay when due the principal of and interest on the indebtedness evidenced by the Note, and late charges as provided in the Note and shall perform all of Borrower's other covenants contained in the Note.

5. **Application of Payments.** All payments received by Lender under the terms hereof shall be applied by Lender first in payment of amounts due pursuant to paragraph 23 (Escrow Funds for Taxes and Insurance), then to amounts disbursed by Lender pursuant to paragraph 9 (Protection of Lender's Security), and the balance in accordance with the terms and conditions of the Note.

6. **Prior Mortgages and Deeds of Trust; Charges; Liens.** Borrower shall perform all of Borrower's obligations under any prior deed of trust and any other prior liens. Borrower shall pay all taxes, assessments and other charges, fines and impositions attributable to the Property which may have or attain a priority over this Deed of Trust, and leasehold payments or ground rents, if any, in the manner set out in paragraph 23 (Escrow Funds for Taxes and Insurance) or, if not required to be paid in such manner, by Borrower making payment when due, directly to the payee thereof. Despite the foregoing, Borrower shall not be required to make payments otherwise required by this paragraph if Borrower, after notice to Lender, shall in good faith contest such obligation by, or defend enforcement of such obligation in, legal proceedings which operate to prevent the enforcement of the obligation or forfeiture of the Property or any part thereof, only upon Borrower making all such contested payments and other payments as ordered by the court to the registry of the court in which such proceedings are filed.

7. **Property Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire or hazards included within the term "extended coverage" in an amount at least equal to the lesser of (1) the insurable value of the Property or (2) an amount sufficient to pay the sums secured by this Deed of Trust as well as any prior encumbrances on the Property. All of the foregoing shall be known as "Property Insurance".

The insurance carrier providing the insurance shall be qualified to write Property Insurance in Colorado and shall be chosen by Borrower subject to Lender's right to reject the chosen carrier for reasonable cause. All insurance policies and renewals thereof shall include a standard mortgage clause in favor of Lender, and shall provide that the insurance carrier shall notify Lender at least ten (10) days before cancellation, termination or any material change of coverage. Insurance policies shall be furnished to Lender at or before closing. Lender shall have the right to hold the policies and renewals thereof.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower.

Insurance proceeds shall be applied to restoration or repair of the Property damaged, provided such restoration or repair is economically feasible and the security of this Deed of Trust is not thereby impaired. If such restoration or repair is not economically feasible or if the security of this Deed of Trust would be impaired, the insurance proceeds shall be applied to the sums secured by this Deed of Trust, with the excess, if any, paid to Borrower. If the Property is abandoned by Borrower, or if Borrower fails to respond to Lender within 30 days from the date notice is given in accordance with paragraph 16 (Notice) by Lender to Borrower that the insurance carrier offers to settle a claim for insurance benefits, Lender is authorized to collect and apply the insurance proceeds, at Lender's option, either to restoration or repair of the Property or to the sums secured by this Deed of Trust.

Any such application of proceeds to principal shall not extend or postpone the due date of the installments referred to in paragraphs 4 (Payment of Principal and Interest) and 23 (Escrow Funds for Taxes and Insurance) or change the amount of such installments. Notwithstanding anything herein to the contrary, if under paragraph 18 (Acceleration; Foreclosure; Other Remedies) the Property is acquired by Lender, all right, title and interest of Borrower in and to any insurance policies and in and to the proceeds thereof resulting from damage to the Property prior to the sale or acquisition shall pass to Lender to the extent of the sums secured by this Deed of Trust immediately prior to such sale or acquisition.

All of the rights of Borrower and Lender hereunder with respect to insurance carriers, insurance policies and insurance proceeds are subject to the rights of any holder of a prior deed of trust with respect to said insurance carriers, policies and proceeds.

8. **Preservation and Maintenance of Property.** Borrower shall keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property and shall comply with the provisions of any lease if this Deed of Trust is on a leasehold. Borrower shall perform all of Borrower's obligations under any declarations, covenants, by-laws, rules, or other documents governing the use, ownership or occupancy of the Property.

9. **Protection of Lender's Security.** Except when Borrower has exercised Borrower's rights under paragraph 6 above, if the Borrower fails to perform the covenants and agreements contained in this Deed of Trust, or if a default occurs in a prior lien, or if any action or proceeding is commenced which materially affects Lender's interest in the Property, then Lender, at Lender's option, with notice to Borrower if required by law, may make such appearances, disburse such sums and take such action as is necessary to protect Lender's interest, including, but not limited to, disbursement of reasonable attorney's fees and entry upon the Property to make repairs. Borrower hereby assigns to Lender any right Borrower may have by reason of any prior encumbrance on the Property or by law or otherwise to cure any default under said prior encumbrance.

Any amounts disbursed by Lender pursuant to this paragraph 9, with interest thereon, shall become additional indebtedness of Borrower secured by this Deed of Trust. Such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof, and Lender may bring suit to collect any amounts so disbursed plus interest specified in paragraph 23 (Note: Other Obligations Secured). Nothing contained in this paragraph 9 shall require Lender to incur any expense or take any action hereunder.

10. **Inspection.** Lender may make or cause to be made reasonable entries upon and inspection of the Property, provided that Lender shall give Borrower notice prior to any such inspection specifying reasonable cause therefor related to Lender's interest in the Property.

11. **Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender as herein provided. However, all of the rights of Borrower and Lender hereunder with respect to such proceeds are subject to the rights of any holder of a prior deed of trust.

In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Deed of Trust, with the excess, if any, paid to Borrower. In the event of a partial taking of the Property, the proceeds remaining after taking out any part of the award due any prior lien holder (net award) shall be divided between Lender and Borrower, in the same ratio as the amount of the sums secured by this Deed of Trust immediately prior to the date of taking bears to Borrower's equity in the Property immediately prior to the date of taking. Borrower's equity in the Property means the fair market value of the Property less the amount of sums secured by both this Deed of Trust and all prior liens (except taxes) that are to receive any of the award, all at the value immediately prior to the date of taking.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the condemnor offers to make an award or settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date such notice is given, Lender is authorized to collect and apply the proceeds, at Lender's option, either to restoration or repair of the Property or to the sums secured by this Deed of Trust.

Any such application of proceeds to principal shall not extend or postpone the due date of the installments referred to in paragraphs 4 (Payment of Principal and Interest) and 23 (Escrow Funds for Taxes and Insurance) nor change the amount of such installments.

12. **Borrower Not Released.** Extension of the time for payment or modification of amortization of the sums secured by this Deed of Trust granted by Lender to any successor in interest of Borrower shall not operate to release, in any manner, the liability of the original Borrower, nor Borrower's successors in interest, from the original terms of this Deed of Trust. Lender shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Deed of Trust by reason of any demand made by the original Borrower nor Borrower's successors in interest.

13. **Forbearance by Lender Not a Waiver.** Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by law, shall not be a waiver or preclude the exercise of any such right or remedy.

14. **Remedies Cumulative.** Each remedy provided in the Note and this Deed of Trust is distinct from and cumulative to all other rights or remedies under the Note and this Deed of Trust or afforded by law or equity, and may be exercised concurrently, independently or successively.

15. **Successors and Assigns Bound; Joint and Several Liability; Captions.** The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower, subject to the provisions of paragraph 24 (Transfer of the Property; Assumption). All covenants and agreements of Borrower shall be joint and several. The captions and headings of the paragraphs in this Deed of Trust are for convenience only and are not to be used to interpret or define the provisions hereof.

16. **Notice.** Except for any notice required by law to be given in another manner, (a) any notice to Borrower provided for in this Deed of Trust shall be in writing and shall be given and be effective upon (1) delivery to Borrower or (2) mailing such notice by first-class U.S. mail, addressed to Borrower at Borrower's address stated herein or at such other address as Borrower may designate by notice to Lender as provided herein, and (b) any notice to Lender shall be in writing and shall be given and be effective upon (1) delivery to Lender or (2) mailing such notice by first-class U.S. mail, to Lender's address stated herein or to such other address as Lender may designate by notice to Borrower as provided herein. Any notice provided for in this Deed of Trust shall be deemed to have been given to Borrower or Lender when given in any manner designated herein.

17. **Governing Law; Severability.** The Note and this Deed of Trust shall be governed by the law of Colorado. In the event that any provision or clause of this Deed of Trust or the Note conflicts with the law, such conflict shall not affect other provisions of this Deed of Trust or the Note which can be given effect without the conflicting provision, and to this end the provisions of the Deed of Trust and Note are declared to be severable.

18. Acceleration; Foreclosure; Other Remedies. Except as provided in paragraph 24 (Transfer of the Property; Assumption), upon Borrower's breach of any covenant or agreement of Borrower in this Deed of Trust, or upon any default in a prior lien upon the Property, (unless Borrower has exercised Borrower's rights under paragraph 6 above), at Lender's option, all of the sums secured by this Deed of Trust shall be immediately due and payable (Acceleration). To exercise this option, Lender may invoke the power of sale and any other remedies permitted by law. Lender shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided in this Deed of Trust, including, but not limited to, reasonable attorney's fees.

If Lender invokes the power of sale, Lender shall give written notice to Trustee of such election. Trustee shall give such notice to Borrower of Borrower's rights as is provided by law. Trustee shall record a copy of such notice as required by law. Trustee shall advertise the time and place of the sale of the Property, for not less than four weeks in a newspaper of general circulation in each county in which the Property is situated, and shall mail copies of such notice of sale to Borrower and other persons as prescribed by law. After the lapse of such time as may be required by law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder for cash at the time and place (which may be on the Property or any part thereof as permitted by law) in one or more parcels as Trustee may think best and in such order as Trustee may determine. Lender or Lender's designee may purchase the Property at any sale. It shall not be obligatory upon the purchaser at any such sale to see to the application of the purchase money.

Trustee shall apply the proceeds of the sale in the following order: (a) to all reasonable costs and expenses of the sale, including, but not limited to, reasonable Trustee's and attorney's fees and costs of title evidence; (b) to all sums secured by this Deed of Trust; and (c) the excess, if any, to the person or persons legally entitled thereto.

19. Borrower's Right to Cure Default. Whenever foreclosure is commenced for nonpayment of any sums due hereunder, the owners of the Property or parties liable hereon shall be entitled to cure said defaults by paying all delinquent principal and interest payments due as of the date of cure, costs, expenses, late charges, attorney's fees and other fees all in the manner provided by law. Upon such payment, this Deed of Trust and the obligations secured hereby shall remain in full force and effect as though no Acceleration had occurred, and the foreclosure proceedings shall be discontinued.

20. Assignment of Rents; Appointment of Receiver; Lender in Possession. As additional security hereunder, Borrower hereby assigns to Lender the rents of the Property; however, Borrower shall, prior to Acceleration under paragraph 18 (Acceleration; Foreclosure; Other Remedies) or abandonment of the Property, have the right to collect and retain such rents as they become due and payable.

Lender or the holder of the Trustee's certificate of purchase shall be entitled to a receiver for the Property after Acceleration under paragraph 18 (Acceleration; Foreclosure; Other Remedies), and shall also be so entitled during the time covered by foreclosure proceedings and the period of redemption, if any; and shall be entitled thereto as a matter of right without regard to the solvency or insolvency of Borrower or of the then owner of the Property, and without regard to the value thereof. Such receiver may be appointed by any Court of competent jurisdiction upon ex parte application and without notice — notice being hereby expressly waived.

Upon Acceleration under paragraph 18 (Acceleration; Foreclosure; Other Remedies) or abandonment of the Property, Lender, in person, by agent or by judicially-appointed receiver, shall be entitled to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. All rents collected by Lender or the receiver shall be applied, first, to payment of the costs of preservation and management of the Property, second, to payments due upon prior liens, and then to the sums secured by this Deed of Trust. Lender and the receiver shall be liable to account only for those rents actually received.

21. Release. Upon payment of all sums secured by this Deed of Trust, Lender shall cause Trustee to release this Deed of Trust and shall produce for Trustee the Note. Borrower shall pay all costs of recordation and shall pay the statutory Trustee's fees. If Lender shall not produce the Note as aforesaid, then Lender, upon notice in accordance with paragraph 16 (Notice) from Borrower to Lender, shall obtain, at Lender's expense, and file any lost instrument bond required by Trustee or pay the cost thereof to effect the release of this Deed of Trust.

22. Waiver of Exemptions. Borrower hereby waives all right of homestead and any other exemption in the Property under state or federal law presently existing or hereafter enacted.

23. Escrow Funds for Taxes and Insurance. This paragraph 23 is not applicable if Funds as defined below are being paid pursuant to a prior encumbrance. Subject to applicable law, Borrower shall pay to Lender, on each day installments of principal and interest are payable under the Note, until the Note is paid in full, a sum (herein referred to as "Funds") equal to \_\_\_\_\_ of the yearly taxes and assessments which may attain priority over this Deed of Trust, plus \_\_\_\_\_ of yearly premium installments for Property Insurance, all as reasonably estimated initially and from time to time by Lender on the basis of assessments and bills and reasonable estimates thereof, taking into account any excess Funds not used or shortages.

The principal of the Funds shall be held in a separate account by the Lender in trust for the benefit of the Borrower and deposited in an institution the deposits or accounts of which are insured or guaranteed by a federal or state agency. Lender shall apply the Funds to pay said taxes, assessments and insurance premiums. Lender may not charge for so holding and applying the Funds, analyzing said account or verifying and compiling said assessments and bills. Lender shall not be required to pay Borrower any interest or earnings on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. The Funds are pledged as additional security for the sums secured by this Deed of Trust.

If the amount of the Funds held by Lender shall not be sufficient to pay taxes, assessments and insurance premiums as they fall due, Borrower shall pay to Lender any amount necessary to make up the deficiency within 30 days from the date notice is given in accordance with paragraph 16 (Notice) by Lender to Borrower requesting payment thereof.

Upon payment in full of all sums secured by this Deed of Trust, Lender shall simultaneously refund to Borrower any Funds held by Lender. If under paragraph 18 (Acceleration; Foreclosure; Other Remedies) the Property is sold or the Property is otherwise acquired by Lender, Lender shall apply, no later than immediately prior to the sale of the Property or its acquisition by Lender, whichever occurs first, any Funds held by Lender at the time of application as a credit against the sums secured by this Deed of Trust.

24. Transfer of the Property; Assumption. The following events shall be referred to herein as a "Transfer": (i) a transfer or conveyance of title (or any portion thereof, legal or equitable) of the Property (or any part thereof or interest therein), (ii) the execution of a contract or agreement creating a right to title (or any portion thereof, legal or equitable) in the Property (or any part thereof or interest therein), (iii) or an agreement granting a possessory right in the Property (or any portion thereof), in excess of three (3) years, (iv) a sale or transfer of, or the execution of a contract or agreement creating a right to acquire or receive, more than fifty percent (50%) of the controlling interest or more than fifty percent (50%) of the beneficial interest in the Borrower, (v) the reorganization, liquidation or dissolution of the Borrower. Not to be included as a Transfer are (i) the creation of a lien or encumbrance subordinate to this Deed of Trust, (ii) the creation of a purchase money security interest for household appliances, or (iii) a transfer by devise, descent or by operation of the law upon the death of a joint tenant. At the election of Lender, in the event of each and every Transfer:

(a) All sums secured by this Deed of Trust shall become immediately due and payable (Acceleration).

(b) If a Transfer occurs and should Lender not exercise Lender's option pursuant to this paragraph 24 to Accelerate, Transferee shall be deemed to have assumed all of the obligations of Borrower under this Deed of Trust including all sums secured hereby whether or not the instrument evidencing such conveyance, contract or grant expressly so provides. This covenant shall run with the Property and remain in full force and effect until said sums are paid in full. The Lender may without notice to the Borrower deal with Transferee in the same manner as with the Borrower with reference to said sums including the payment or credit to Transferee of undisbursed reserve Funds on payment in full of said sums, without in any way altering or discharging the Borrower's liability hereunder for the obligations hereby secured.

(c) Should Lender not elect to Accelerate upon the occurrence of such Transfer then, subject to (b) above, the mere fact of a lapse of time or the acceptance of payment subsequent to any of such events, whether or not Lender had actual or constructive notice of such Transfer, shall not be deemed a waiver of Lender's right to make such election nor shall Lender be estopped therefrom by virtue thereof. The issuance on behalf of the Lender of a routine statement showing the status of the loan, whether or not Lender had actual or constructive notice of such Transfer, shall not be a waiver or estoppel of Lender's said rights.

25. Borrower's Copy. Borrower acknowledges receipt of a copy of the Note and this Deed of Trust.

Continued on reverse side.



EXHIBIT "D"

<u>NAME OF STRUCTURE</u>	<u>AMOUNT</u>	<u>ADJUDICA- TION DATE</u>	<u>APPROPRIA- TION DATE</u>	<u>PRIORITY NUMBER</u>
Forslund Ditch	1.0cfs	3/2/1910	5/1/1885	33
Lindstrom	0.6cfs	3/2/1910	5/1/1885	31
Lindstrom #2	2.0cfs	3/2/1910	5/1/1885	32
Pass Creek #1	1.0cfs	3/2/1910	5/1/1885	34
C M Omer Ditch	3.0cfs	3/2/1910	5/30/1885	35
Forslund High- line Ditch	1.3cfs	11/16/1912	5/21/1912	190

The printed portions of this form approved by  
the Colorado Real Estate Commission (CP 40-2-81)

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

**COUNTERPROPOSAL**

RE: Proposed contract for the purchase of property described as: Those portions of Parcels 2 and 3 of the property known as the Hill Ranch which are defined on the attached Exhibit "A" to this contract including all that property South of the dividing line between Parcels marked 4B and 3 on said Exhibit "A" and West of Highway 9, East of the centerline of the Blue River and north of a line to be determined by survey, which totals not less than 65 acres, all known as the "Purchase Parcel"

also known as number N/A  
situated in the \_\_\_\_\_ County of Summit, Colorado, dated April 27, 19 88 between Town of Breckenridge, Seller, and Gerald Hillyard and Julie Hillyard, Purchaser.

The undersigned Seller accepts said proposed contract, subject to the following amendments:

- (1) In Paragraph 3, Line 9, after "for this principal Payment" insert "a non-interest bearing Note in the amount of \$27,625.00 secured by a First Deed of Trust".  
In Paragraph 3, Line 10, after "favor of Seller" insert the word "encumbering".  
In Paragraph 3, Line 12, after "principal payment.", add the following sentence: "Purchaser shall provide evidence which is acceptable to Seller that the real property being used as additional security is owned free and clear by Purchaser, which evidence shall include at a minimum a mortgagee's title insurance policy paid for by the Purchaser."
- (2) In Paragraph 19(C), Line 2, after "Highway Department" insert ", that said permit will benefit not only the Purchase Parcel but also all remaining land owned by Seller south of the Purchase Parcel,".
- (3) In Paragraph 19(D), Line 6, delete the word "not".
- (4) In Paragraph 19(J), Line 2, after "to access" insert "Parcel 2 and".  
In Paragraph 19(J), Line 4, at the beginning of the line, before "the remainder" insert "Parcel 2 and".  
In Paragraph 19(J), Line 5, change "thirty (30)" to "fifty (50)".
- (5) In Paragraph 19(L), delete the entire last sentence. Insert in its place, "In the event that Purchaser closes on the purchase of the Additional Parcel, then the additional security Note amount and the amount on the Deed of Trust securing it shall be increased to \$37,188.00 and a new mortgagee's title insurance policy shall be obtained by Purchaser to insure that all property pledged as collateral remains free and clear. This additional security shall remain (Continued on attached Addendum "A")."

All other terms and conditions shall remain the same. If this counterproposal is accepted by Purchaser, as evidenced by Purchaser's signature hereon, and if Seller receives notice of such acceptance on or before May 10, 19 88, the said proposed contract, as amended hereby, shall become a contract between the parties.

THE TOWN OF BRECKENRIDGE, A  
COLORADO MUNICIPAL CORPORATION  
Seller

By: [Signature]  
Seller Gary Martinez, Town Manager  
The foregoing counterproposal is accepted this May day of 19 88

Purchaser Julie Hillyard

Purchaser Gerald Hillyard

If this counterproposal is accepted by Purchaser as aforesaid, Seller agrees to pay listing broker a commission of 10 % of the purchase price for services in this transaction, and agrees that, in the event of forfeiture of payments and things of value received hereunder and under said proposed contract, such payments and things of value shall be divided between Seller and listing broker, one-half thereof to said broker, but not to exceed the commission, and the balance to Seller.

THE TOWN OF BRECKENRIDGE, A  
COLORADO MUNICIPAL CORPORATION  
Seller

By: [Signature]  
Seller Gary Martinez, Town Manager

\*N.B. When this counterproposal is used, said proposed contract is not to be signed by Seller.  
This counterproposal must be securely attached to said proposed contract.



ADDENDUM "A" TO COUNTERPROPOSAL REGARDING PROPOSED CONTRACT FOR THE PURCHASE OF A PART OF THE HILL RANCH BETWEEN THE TOWN OF BRECKENRIDGE, AS SELLER, AND GERALD HILLYARD AND JULIE HILLYARD, AS PURCHASER, SUCH CONTRACT DATED APRIL 27, 1988:

(Continuation of Item 5)

in place until such time as Purchaser's principal payments equal at least 25% of the combined total purchase price for the Purchase Parcel and the Additional Parcel."

- (6) Seller's obligation to sell the Additional Parcel is contingent upon Purchaser not being in default under the original Note and Deed of Trust at the time of closing of the sale of the Additional Parcel.
- (7) At closing, Purchaser shall deliver to Seller, at Seller's option, either mechanics' lien waivers from all persons who have performed work on the Property for Purchaser prior to closing, or an Affidavit from Purchaser that Purchaser has not hired or retained any person who might assert a mechanic's lien against the Property.
- (8) Within five (5) days after execution of this contract by both parties, Purchaser shall submit a personal financial statement to Seller, which Seller agrees shall remain confidential. Seller shall have five (5) days after receipt to review the statement. This contract is contingent upon Seller's approval of the financial statement. If Seller does not give Purchaser written notification of its disapproval within the five (5) day review period, then this contingency will be waived. If Seller does give Purchaser written notification of disapproval within the five (5) day review period, then this contract will be null and void and all funds hereby receipted for shall be returned to Purchaser.

SELLER:

THE TOWN OF BRECKENRIDGE, A  
COLORADO MUNICIPAL CORPORATION

By: Gary Martinez 5/3/88  
Date

PURCHASER:

Gerald Hillyard Date

Julie Hillyard Date