

RESOLUTION NO. 25

SERIES 1997

A RESOLUTION APPROVING A CONTRACT OF SALE WITH BARBARA K. DEWEY; AND MAKING AN APPROPRIATION THEREFORE

WHEREAS, the Town of Breckenridge desires to purchase certain real property from Barbara K. Dewey; and

WHEREAS, a proposed Contract of Sale between the Town and Barbara K. Dewey has been prepared, a copy of which is marked Exhibit "A", attached hereto and incorporated herein by reference ("Agreement"); and

WHEREAS, the Town Council of the Town of Breckenridge has reviewed the proposed Agreement, and finds and determines that it would be in the best interests of the Town and its residents for the Town to enter into the proposed Agreement; and

WHEREAS, Rule 6.1(b) of the Council Procedures and Rules of Order provides that a Resolution may be used to approve a contract; and

WHEREAS, it is further necessary for the Town Council to make a supplemental appropriation from the unappropriated fund balance in the General Fund in order to provide the necessary funds for the acquisition of the property from Barbara K. Dewey and related matters; and

WHEREAS, the Finance Director on behalf of the Town Manager has certified that funds are available for appropriation in the General Fund unappropriated funds balance in the required amount; and

WHEREAS, a public hearing on the proposed supplemental appropriation was held on July 22, 1997 as required by Section 10.12(a) of the Breckenridge Town Charter.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE, COLORADO, as follows:

Section 1. The proposed Agreement with Barbara S. Dewey (Exhibit "A" hereto) is approved; and the Town Manager's prior execution of such Agreement for and on behalf of the Town of Breckenridge is hereby ratified, confirmed and approved.

Section 2. The Town Manger is hereby authorized, empowered and directed to take all necessary and appropriate action to close the purchase of the real property contemplated by the Agreement. In connection therewith, the Town Manager shall have full power and authority to do and perform all matters and things necessary to the purchase and acquisition of the property described in the Agreement, including but not limited to the following:

1. The making, execution and acknowledgement of settlement statements, closing agreements and other usual and customary closing documents;
2. The acceptance of delivery of the Deed to subject real property;
3. The recording of the Deed to the subject property with the Summit County Clerk and Recorder; and
4. The performance of all other things necessary to the acquisition of the subject property by the Town.

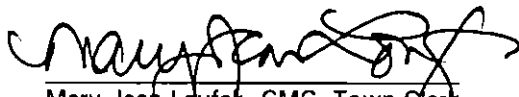
Section 3. An appropriation is made to the Capital Project Program in the amount of \$224,000 from the General Fund unappropriated fund balance for the 1997 budget year.

Section 4. This Resolution shall become effective upon its adoption.

RESOLUTION APPROVED AND ADOPTED THIS 22ND DAY OF JULY, 1997.


ATTEST:

TOWN OF BRECKENRIDGE


Mary Jean Loufek, CMC, Town Clerk


Stephen C. West, Mayor

APPROVED IN FORM:


Town Attorney

7/22/97
Date

CONTRACT OF SALE

THIS CONTRACT OF SALE ("Contract"), dated July 24, 1997, is between BARBARA S. DEWEY ("Seller") and the TOWN OF BRECKENRIDGE, a Colorado municipal corporation ("Buyer").

1. Property. Seller hereby agrees to sell to the Buyer, and the Buyer agrees to purchase from the Seller, the fee simple property described as:

Lots 1, 2 and 3, Block 1, Abbett Addition to the Town of Breckenridge; also known as 308 North French Street, Breckenridge, Colorado 80424

(Such real property, together with its appurtenances, is hereinafter called the "Property").

2. Purchase Price. The purchase price to be paid by the Buyer to the Seller for the Property is Two Hundred Thousand Dollars (\$200,000.00) ("Purchase Price"), payable as follows:

A. Ten Thousand Dollars (\$10,000.00) in the form of Buyer's check to be held by Ten Mile Title, Inc. ("Closing Agent") as Earnest Money and part of the Purchase Price ("Earnest Money"); and

B. The balance in cash or certified funds at time of Closing.

3. Buyer's Right Of Entry And Inspection. During the term of this Contract the Buyer, its agents, employees, contractors and engineers, shall have the right from time to time to enter upon the Property at their risk for the purpose of inspecting the same and conducting surveys, engineering studies, borings, soil tests, investigations, feasibility studies and the like. Within a reasonable time after such entries Buyer shall restore the Property to its prior condition. The Buyer agrees to indemnify and save the Seller harmless from all claims arising by reason of such entries.

4. Closing. Closing shall occur on August 1, 1997 at 1 o'clock P.M. at the office of the Closing Agent at 200 North Ridge Street, Breckenridge, Colorado, or at such earlier date and time or other location as the parties may agree upon. At Closing Buyer shall pay the Purchase Price as provided in Paragraph 2, and the Seller shall execute and deliver to Buyer a general warranty deed for the Property. The title to the Property so conveyed shall be a good and merchantable fee simple absolute title, both of record and in fact, free of all liens and encumbrances, except (i) those title exceptions accepted by Buyer pursuant to Paragraph 5 hereof; (ii) the lien of the general property taxes for the year of Closing, and subsequent years; and (iii) the two (2) fence encroachments depicted on the survey described in Paragraph 10. Seller shall also execute at Closing an affidavit confirming that no work has been performed nor materials supplied under the authority or direction of Seller which could give rise to the assertion of a mechanic's or materialmen's lien against the Property.

5. Title Insurance; Title Review. Seller shall furnish to Buyer, at Seller's expense, a current commitment for an owner's title insurance policy in an amount equal to the Purchase Price, on or before July 21, 1997. Such title insurance shall be issued by Closing Agent. Copies of instruments (or abstracts of instruments) listed in the schedule of exceptions ("Exceptions") in the title insurance commitment, and any endorsement thereto, shall also be furnished to Buyer at Seller's expense. Seller shall pay the title insurance premium at Closing, and shall have the title insurance policy delivered to Buyer as soon as practicable after Closing.

Buyer shall give written notice to Seller within three (3) days after receipt of the title insurance commitment, or any endorsement thereto adding new Exceptions, of any Exceptions which are not acceptable to the Buyer. Seller shall have three (3) days from the receipt of the Buyer's notice within which to determine whether to cure or remove those Exceptions which are not acceptable to the Buyer. Should the Seller elect not to cure or remove any Exceptions which are not acceptable to the Buyer, the Seller shall give the Buyer written notice of such Exceptions within the three (3) day period, otherwise the Seller shall be deemed to have elected to cure or remove all of the Exceptions which are unacceptable to the Buyer. If Seller elects not to cure or remove any Exceptions which are unacceptable to Buyer, Buyer shall then have until the time of Closing to terminate this Contract by delivery of written notice of termination to Seller. If Buyer does not deliver to Seller such notice of termination within such time period, Buyer shall be deemed to have accepted the title proposed to be delivered by Seller.

Should the Buyer elect to terminate this Contract, the Closing Agent shall promptly refund to Buyer the Earnest Money, and this Contract shall become null and void and each party shall be released from any further obligation to hereunder.

6. Risk Of Loss. The Property shall be held at the risk of the Seller until legal title has passed and possession has been given to the Buyer.

7. Documentary Fees/Costs. The conveyance of the Property to the Buyer is exempt from the state documentary fee pursuant to Section 39-13-104(1)(a), C.R.S., and from the Town of Breckenridge Real Estate Transfer Tax pursuant to Section 3-3-6(B) of the Breckenridge Town Code. Buyer shall pay the cost of recording the deed conveying the Property to it. Seller shall pay the cost of the title insurance premium and tax certificate. Each party shall pay one-half of the reasonable cost of closing services charged by Closing Agent. Otherwise, each party shall pay at Closing usual and customary closing costs.

8. Real Estate Taxes. Real estate taxes for the year of Closing shall be pro rated as of Closing on the basis of the previous year's taxes, and shall be considered a final settlement.

9. Possession. Possession of the Property shall be delivered to Buyer at Closing.

10. Survey. Within five (5) days after signing this Contract Seller shall deliver to Buyer a copy of her existing survey of the Property. Prior to Closing Buyer shall obtain a recertification of Seller's survey, or, at Buyer's election, a monumented boundary survey of the Property from a registered land surveyor in Colorado. The survey obtained by Buyer shall be a

document of title and shall be subject to the provisions of Paragraph 5 of this Contract. Buyer shall pay for the survey which it obtains pursuant to this Paragraph 10.

11. Seller's Representations Concerning Environmental Matters. To the best of Seller's actual knowledge, as of the date of this Contract and as of the Closing date, the Property (including land, surface water, ground water and improvements) is now and will then be free of all contamination, including: (i) any "hazardous water", "underground storage tanks", "petroleum", "regulated substance", or "used oil" as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §§6901, et seq.), as amended, or by any regulations promulgated thereunder; (ii) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §§9601, et seq.), as amended, or by any regulations promulgated thereunder (including, but not limited to, asbestos and radon); (iii) any "oil, petroleum products, and their by-products", as defined by Section 25-17-101 et seq., C.R.S., as amended, or by any regulations promulgated thereunder; (iv) any "hazardous waste" as defined by the Colorado Waste Act, Section 25-15-101, et seq., C.R.S., or by any regulations promulgated thereunder; (v) any substance the presence of which on, in or under 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. There is expressly excluded from Seller's warranties or representations hereunder the use of common household chemicals for household and school purposes at the Property, which use has been disclosed to Buyer. Buyer understands and acknowledges that the representations contained in this Paragraph 11 are based on Seller's actual knowledge derived from Seller's ownership of the subject property. Seller's representations and warranties in this Paragraph 11 shall be deemed automatically reaffirmed by Seller on the Closing date as true and correct without the necessity of any further writing or affirmation, and shall survive the Closing and delivery of the deed(s) for the Property from Seller to Buyer. Seller understands and acknowledges that Buyer shall be entitled to act in reliance upon these representations, and Seller shall indemnify and hold Buyer harmless with respect to any and all liability incurred by Buyer as result of any intentional misrepresentation contained in this Paragraph 11. Buyer releases Seller from any obligation to have inquired into the environmental condition of the Property.

12. Real Estate Commission. The Seller and Buyer each warrant and represent to the other that they have not used the services of any broker, agent or finder who would be entitled to a commission on account of this Contract or the consummation of the transaction contemplated hereby, and agree to defend, indemnify and save the other harmless from any commission or fee which may be payable to any broker, agent or finder with whom the indemnifying party has dealt in connection with this Contract.

13. Warning Concerning Special Taxing Districts. **Special taxing districts may be subject to general obligation indebtedness that is paid by revenues produced from annual tax levies on the taxable property within such districts. Property owners in such districts may be placed at risk for increased mill levies and excessive tax burdens to support the servicing of such debt where circumstances arise resulting in the inability of such a district to discharge such indebtedness without such an increase in mill levies. Buyer should**

investigate the debt financing requirements of the authorized general obligation indebtedness of such districts, existing mill levies of such district servicing such indebtedness, and the potential for an increase in such mill levies.

14. Buyer's Contingencies. The obligations of the Buyer hereunder are expressly contingent upon the following (any of which may be waived by the Buyer):

A. The Buyer's determination, through soil tests, environmental assessment, or such other means as Buyer shall, in its discretion, select that the Property is not contaminated by any hazardous waste, underground storage tank, petroleum, regulated substance or similar material.

B. An appropriation being made by the Town Council of the Town of Breckenridge in an amount sufficient to allow the Buyer to complete the purchase of the Property in accordance with the terms of this Contract.

In the event Buyer shall give the Seller written notice of the nonfulfillment of either of such contingencies prior to Closing, this Contract shall terminate, in which event Buyer's Earnest Money shall be returned and each party shall be released from any further obligation hereunder.

15. Seller's Contingency. The obligations of the Seller hereunder are expressly contingent upon the Seller's ability to close on the sale of the Seller's business operated at the Property prior to or concurrently with the closing of the sale contemplated by this Contract. Such contingency may be waived by the Seller.

In the event Seller shall give the Buyer written notice of the nonfulfillment of such contingency prior to Closing, this Contract shall terminate, in which event Buyer's Earnest Money shall be returned and each party shall be released from any further obligation hereunder.

16. Default; Remedies. If any obligation is not performed as herein provided, there shall be the following remedies:

A. IF BUYER IS IN DEFAULT, then Buyer's Earnest Money shall be forfeited by Buyer and retained on behalf of Seller, and both parties shall thereafter be released from all obligations hereunder. It is agreed that such Earnest Money represents LIQUIDATED DAMAGES and (except as provided in Subparagraph (C)) are the SELLER'S SOLE AND ONLY REMEDY for the 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, (1) Buyer may elect to treat this Contract as terminated, in which case Buyer's Earnest Money and all interest earned thereon (if any) shall be returned to Buyer and Closing Agent and Buyer may recover such damages as may be proper, or (2) Buyer may elect to treat this Contract as being in full force and effect and Buyer 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 expenses, including attorneys' fees.

17. Notices. All notices required or provided in this Contract, if hand delivered, must be delivered during business hours on a business day and shall be deemed to have been given and received on the date-hand delivered to the party receiving the same. If the United States mails are used, the notice shall be sent certified or registered mail, return receipt requested, postage prepaid, and shall be deemed to have been given and received on the third business day from the date deposited in the United States mail addressed as follows:

TO BUYER: Gary Martinez, Town Manager
Town of Breckenridge
Post Office Box 168
Breckenridge, CO 80424

WITH A COPY (WHICH
SHALL NOT CONSTITUTE
NOTICE) TO: Timothy H. Berry, Esq.
Timothy H. Berry, P.C.
Post Office Box 2
Leadville, CO 80461

TO SELLER: Barbara S. Dewey
89900 Mill Hill Road
Bowerston, OH 44695

WITH A COPY (WHICH
SHALL NOT CONSTITUTE
NOTICE) TO: John B. Wood, Esq.
Holme Roberts & Owen LLP
1401 Pearl Street, Suite 400
Boulder, CO 80302

Each party shall have the right to designate a different address for the receipt of notices other than that set forth above, provided the party's new address is contained in a written notice given to the other party.

18. Miscellaneous.

A. This Contract contains the final and entire agreement between the parties and neither they nor their agents shall be bound by any terms, conditions or representations not herein written.

B. Time shall be of the essence of this Contract.

C. Neither party shall have the right to assign this Contract, or any interest therein, without the express written consent of the other party.

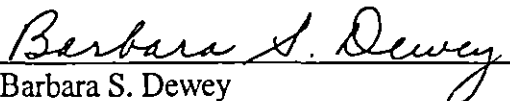
D. All unperformed obligations and covenants shall survive the Closing and the execution and delivery of the deed to the Property.

E. Seller has been advised to seek legal counsel as to this Contract.

F. A facsimile copy of this Contract, including facsimile copies including the parties' signatures, shall be valid for all purposes.

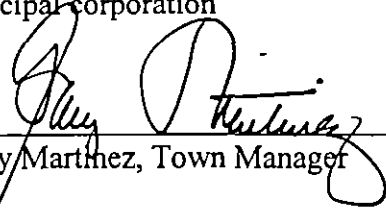
IN WITNESS WHEREOF, the parties hereto have executed this Contract of Sale on the date first above written.

SELLER:

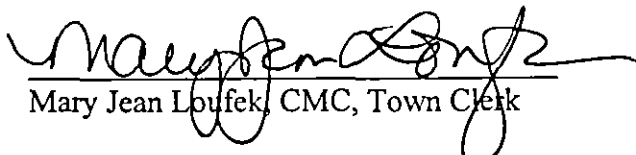

Barbara S. Dewey

BUYER:

TOWN OF BRECKENRIDGE, a Colorado municipal corporation

By 
Gary Martinez, Town Manager

ATTEST:


Mary Jean Loufek, CMC, Town Clerk

Receipt For Earnest Money

The undersigned hereby acknowledges receipt of the Earnest Money described in Paragraph 2(A) of this Contract, and agrees on behalf of the Closing Agent that such funds shall be held in the Closing Agent's trust account on behalf of the Seller and Buyer.

Signed the ___ day of _____, 1997.

TEN MILE TITLE, INC.

By _____
Title: _____