

RESOLUTION NO. 50

SERIES 2000

A RESOLUTION APPROVING A CONTRACT OF SALE WITH CHRISTIE HEIGHTS PARTNERSHIP

WHEREAS, the Town of Breckenridge desires to purchase certain real property from Christie Heights Partnership; and

WHEREAS, a proposed Contract of Sale between the Town and Christie Heights Partnership 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.

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

Section 1. The proposed Agreement with Christie Heights Partnership (Exhibit "A" hereto) is approved; and the Town Manager is hereby authorized, empowered and directed to execute such Agreement for and on behalf of the Town of Breckenridge.

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:

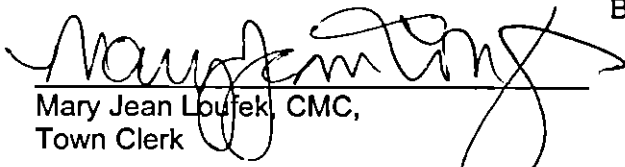
1. The making, execution and acknowledgment of settlement statements, closing agreements and other usual and customary closing documents;
2. The acceptance of delivery of the Deed to subject real property;
3. The recording of the Deed to the subject property with the Summit County Clerk and Recorder;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

Section 3. This Resolution shall become effective upon its adoption.

RESOLUTION APPROVED AND ADOPTED THIS 26TH DAY OF SEPTEMBER, 2000.

TOWN OF BRECKENRIDGE

ATTEST:


Mary Jean Loufek, CMC,
Town Clerk

By 
Sam Mamula, Mayor

APPROVED IN FORM


Town Attorney

9/26/00
date

CONTRACT OF SALE

THIS CONTRACT OF SALE ("Contract"), dated as of the 27th day of September, 2000 is between CHRISTIE HEIGHTS PARTNERSHIP, a California general partnership ("Seller") and the TOWN OF BRECKENRIDGE, a Colorado municipal corporation (referred to herein as "Buyer" with respect to matters concerning the purchase of the property and as "Town" with respect to matters concerning approvals pursuant to Codes of the Town of Breckenridge).

1. Property. Seller hereby agrees to sell to the Buyer, and the Buyer agrees to purchase from the Seller, the fee simple property generally identified on Exhibit A hereto as the Purchase Area, which generally includes Lots 1-10 and 22-24 and the road areas adjacent to such lots as shown on the Proposed Site Plan of Cucumber Creek Estates approved by the Town under Development Permit No. 98-3-3 ("Permit") and all appurtenances thereto ("Property").

2. Purchase Price. The purchase price to be paid by the Buyer to the Seller for the Property shall be the appraised value of the Property as determined by an appraisal to be obtained within sixty days of the date hereof by Buyer at its sole cost and expense ("Appraised Value") payable as follows:

A. One Hundred Thousand Dollars (\$100,000.00) in the form of Buyer's check to be held by Land Title Guarantee Company in an interest bearing account ("Closing Agent") as Earnest Money and part of the Purchase Price ("Earnest Money"); and

B. Four Million Six Hundred Fifty Thousand and no/100 Dollars (\$4,550,000.00) in cash or certified funds at the time of Closing; and

C. The difference between the Appraised Value and Four Million Seven Hundred Fifty Thousand and no/100 Dollars (\$4,750,000.00) in the form of a charitable contribution by Seller to Buyer, it being agreed that the Appraised Value will represent the fair market value of the Property.

3. Buyer's Right Of Entry And Inspection. For a period of thirty (30) days from the date of this Contract ("Inspection Period") 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, investigations, feasibility studies, hearings and the like, provided that Buyer shall not disturb the Property and shall not make any borings or excavations, without Seller's prior reasonable approval in writing. The Buyer agrees to indemnify and save the Seller harmless from all claims arising by reason of such entries. Prior to the end of the Inspection Period, Buyer shall have the right to terminate this Contract for any reason or no reason by giving written notice to Seller of such termination. If Buyer does deliver such notice of termination, the Closing Agent shall refund the Earnest Money to Buyer and this Contract shall become null and void and each party shall be released from any further obligation hereunder, except for Buyer's foregoing indemnity.

4. Closing. Closing shall occur on the tenth (10th) day following the last to occur of the satisfaction of all of the Buyer's contingencies to Closing as set forth in Paragraph 14 hereof and the satisfaction of all of Seller's contingencies to Closing as set forth in Paragraph 15 hereof, at the office 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 special warranty deed for the Property. The title to the Property so conveyed shall be fee simple absolute title, subject only to those title exceptions accepted by Buyer pursuant to Paragraph 5 hereof and except for and subject to those matters or conditions set forth in Subparagraphs 15D, E, F and G hereof; and except the lien of the general property taxes for the year of Closing, and subsequent years.

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, within fourteen (14) days of the date of this Contract. 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 premium for such title insurance policy at Closing, and shall have the title insurance policy delivered to Buyer as soon as practicable after Closing. Buyer shall be responsible for payment for any additional premiums for any endorsements to such title insurance policy.

Buyer shall give written notice to Seller within twenty (20) 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 ten (10) 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 ten (10) 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 end of the Inspection Period to terminate this Contract by delivery of written notice of termination to Seller. If Buyer does not deliver to Seller such notice of termination prior to the end of the Inspection Period, Buyer shall be deemed to have accepted the title proposed to be delivered by Seller. If Buyer does deliver such notice of termination, the Closing Agent, on the eleventh (11) day after delivery of such notice, shall refund the Earnest Money to Buyer subject to Seller's right of reimbursement as provided for in Paragraph 16 hereof, and this Contract shall become null and void and each party shall be released from any further obligation 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. Costs. Buyer shall pay the cost of recording the deed conveying the Property to it and the cost of any endorsements to the Owner's title insurance policy. 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. Seller's Representations Concerning Environmental Matters. To 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 "petroleum" and "fuel products", as defined by Section 25-15-101 et seq., C.R.S., as amended, or by any regulations promulgated thereunder; (iv) any "hazardous waste" as defined by the Colorado Hazardous 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. Buyer acknowledges that Seller has represented and Buyer is aware of the currently existing outhouse facility on the Property. Buyer understands and acknowledges that the representations contained in this Paragraph 10 are based on Seller's actual knowledge derived from Seller's ownership of the subject property. Seller's representations and warranties in this Paragraph 10 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 within two (2) years after Closing as result of any intentional misrepresentation contained in this Paragraph 10. Buyer acknowledges that Seller has not made any inquiry into the environmental condition of the Property and releases Seller from any obligation to have inquired into the environmental condition of the Property.

11. 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.

12. 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.

13. Disclaimer by Seller. Buyer acknowledges and agrees that, other than the representations set forth in Paragraph 10 preceding, Seller has not made, does not hereby make and expressly disclaims any representations, warranties, promises, covenants, agreements or guarantees of any kind or character whatsoever, whether express or implied, oral or written, past, present or future, of, as to, concerning or with respect to (i) the value, nature, quality or condition of the Property, including without limitation, the water, soil and geology; (ii) the suitability of the Property for any and all activities and uses which Buyer may conduct or desire to conduct thereon; (iii) the compliance of or by the Property or its operation with any laws, rules, ordinances or regulations of any applicable governmental authority; (iv) the habitability, merchantability, marketability, profitability or fitness for a particular purpose of the Property; (v) the manner, quality, state of repair or lack of repair of the Property; or (vi) any other matter with respect to the Property. Except for those express representations specifically set forth in Paragraph 10 of this Contract, Buyer further acknowledges and agrees that Seller has not made, does not hereby make and expressly disclaims any representations regarding compliance with any environmental protection, pollution or land use laws, rules, regulations, orders or requirements, including, but not limited to those cited or described in said Paragraph 10. Buyer expressly acknowledges and agrees that, having been given the opportunity to inspect the Property, Buyer is relying and will rely solely on its own investigation of the Property and not on any information provided or to be provided by Seller, other than the express representations made in this Contract. Buyer further acknowledges and agrees that any information provided or to be provided with respect to the Property was obtained from a variety of sources and that Seller has not made and will not make any independent investigation or verification of such information and makes no representations as to the accuracy or completeness of such information. Buyer further acknowledges and agrees that, to the maximum extent permitted by law, the sale of the Property as provided for herein is made on an "AS IS" basis with all faults, The provisions of this Paragraph shall survive the Closing.

14. Buyer's Contingencies. The obligation of the Buyer to purchase the Property is contingent upon all of the following occurring (any of which may be waived by the Buyer):

A. Buyer's determination, through soil tests, environmental assessment, or such other means as Buyer may select, in its discretion, but subject to terms and conditions of Paragraph 3, that the Property is not contaminated by any hazardous waste, underground storage tank, petroleum, regulated substance or similar material.

B. Subdivision of the Cucumber Creek Estates property to create the Property, as more fully provided for in Subparagraph 15.B below, in order to allow for the legal transfer of the Property to Buyer.

C. Town obtaining funds, through a bond issue, lease purchase agreement, or other financing method selected by the Town in its sole and absolute discretion, sufficient to allow Town to complete its purchase of the Property as described in this Contract.

D. 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 any of such contingencies not later than ten (10) days prior to Closing, this Contract shall terminate, in which event the Earnest Money shall be returned to Buyer and each party shall be released from any further obligation hereunder, subject, however, to the obligation of Buyer to reimburse Seller for certain of Seller's costs and expenses as provided in Paragraph 16 and to the obligations, terms and conditions of Paragraph 17, which shall survive termination.

15. Seller's Contingencies. The obligation of the Seller to sell the Property is expressly contingent upon all of the following occurring (any of which may be waived by the Seller):

A. The Appraised Value of the Property determined in accordance with Paragraph 2 being at least \$4,750,000.00.

B. Issuance by the Town of a development permit for the subdivision of the Cucumber Creek Estates property to create the Property and the easements provided for in Subparagraph 15.F below and to create within the Development Area identified on Exhibit A at least eleven (11) single family residential lots and one (1) lot allowing for such development as may be allowed by the Town on what is designated as Parcel A on Exhibit A utilizing unused single family equivalents not allocated or assigned with the Permit. Such development permit and the vested right therefor shall include building or disturbance envelopes for each lot reasonably acceptable to Seller and no new restrictions on the residences allowed to be constructed on the lots in addition to those provided for in the existing Permit, except that a restriction on the size of such residences may be acceptable to Seller.

C. Approval by the Town of a development agreement providing for extended vesting of the above described development permit for a period of fifteen (15) years, with such vesting to apply to any amendments or modifications of such development permit as may be approved by the Town.

D. An easement or right of way for access and utilities into the Development Area across Parcel A, The Penn Lode Subdivision, generally as depicted on Exhibit A, or such other easement or right of way for access and utilities as is reasonably acceptable to Seller, to be provided by Buyer at its cost and expense.

E. Identification in connection with the issuance of the development permit provided for in Subparagraph 15.B above by Seller and the Town's Department of Community Development of trees within the Property in the area uphill from the existing trail commonly known as Interstate to be cut by Seller within a period of nine (9) months following Closing to enhance views of the mountains from the residential lots, and the agreement of the Town for such trees to be cut either as a part of such development permit or by separate agreement.

F. Easements over, under, across and through the Property in form and with conditions reasonably acceptable to Seller for: a trail generally in the current location between Lots 9 and 10 as shown on the preliminary plat of Cucumber Creek Estates approved by the Town under the Permit, or such other location as may be reasonably acceptable to Seller, to allow winter access to possible gondola or lift locations within the adjacent Shock Hill Subdivision; and such utilities as may be necessary to serve the lots within the Development Area in such locations as are identified by Seller's engineer and Town Engineer and are approved as part of the development permit provided for in Subparagraph 15.B above.

G. Approval by the Town for the existing drainage detention structures constructed by Seller within the Property to remain in place and to be used for surface drainage flowing from the

Development Area and such improvements as may be constructed on the lots approved by the development permit provided for in Subparagraph 15.B above, which rights shall be set forth in an easement or other form of instrument or approval acceptable to Seller.

H. Town's agreement to a covenant running with the land to restrict the use of the Property to open space in perpetuity. As used in this Subparagraph (H), the term "open space" shall not mean that the Property shall be left in its natural and undisturbed state, but shall include (i) the construction by Buyer of trails and other areas to facilitate and support active and passive recreational activities, including, but not limited to, Nordic skiing, hiking, walking, jogging, sightseeing, fishing and similar non-motorized recreational activities; (ii) the construction, operation, repair, maintenance and replacement of an "interpretative center" for or associated with the Cucumber Gulch wetland and related facilities, provided, that, if such interpretative center is an enclosed building with a roof and walls, it shall not be constructed within the Cucumber Gulch Preventive Management Area a currently delineated and established by the Town; and (iii) the construction of any other facility associated with the above described recreational activities. The use of the Property as "open space" shall not include, however, any commercial or private (non-governmental) development activity of any kind. The Buyer's obligation to restrict use of the Property to "open space" as provided herein shall be set forth in a Restrictive Covenant in form and substance acceptable to both the Seller and Buyer

Seller, with the reasonable cooperation of Buyer, shall diligently pursue all work and applications necessary to obtain the development permit provided for in Subparagraph 15.B above, the development agreement provided for Subparagraph 15.C above, such permit as may be required to allow for trees to be cut within the Property as provided for in Subparagraph 15.E above, such easement as may be necessary to satisfy Subparagraph 15.F above, and such approval as may be necessary to satisfy Subparagraph 15.G above and Buyer, with the reasonable cooperation of Seller, shall diligently pursue all work necessary to obtain the easement or right of way for access and utilities provided for in Subparagraph 15.D above.

If the foregoing contingencies have not been satisfied on or before December 29, 2000, Seller shall have the right to terminate this Contract by written notice to Buyer, in which event the Closing Agent, on the eleventh (11th) day after delivery of such notice, shall refund the Earnest Money to Buyer, subject to Seller's right of reimbursement as provided for below, and this

Contract shall become null and void and each party shall be released from any further obligation hereunder, except for Buyer's indemnity as provided for in Paragraph 3 above.

16. Reimbursements of Seller.

A. Within five (5) days after execution of this Agreement by Buyer and Seller, Buyer shall reimburse Seller for any and all application fees previously paid by Seller in connection with the application filed by Seller for the development permit provided for in Subparagraph 15.B above.

b. In one event the contingencies set forth in Paragraph 15 have not been satisfied on or before December 29, 2000 and Seller gives its notice of termination as provided for therein, Buyer shall reimburse Seller for one-half (½) of all fees, costs and expenses associated with the work and applications provided to be undertaken by Seller in accordance with Paragraph 15, including, but not limited to, fees, costs and expenses incurred for land planning, surveying and legal services, within ten (10) days of receipt by Buyer of invoices from Seller for such fees, costs and expenses paid or incurred by it, up to a maximum of \$25,000.00, and Seller shall be entitled to obtain reimbursement from Closing Agent out of the Earnest Money prior to Closing Agent's refunding any of the Earnest Money to Buyer if Seller has not been reimbursed within such ten (10) days. After the end of the Inspection Period, if Buyer fails to close or elects not to close for any reason, including failure of any of Buyer's contingencies provided for in Paragraph 14 hereof, Buyer shall reimburse Seller for all fees, costs and expenses associated with the work and applications provided to be undertaken by Seller in accordance with Paragraph 15, including, but not limited to, fees, costs and expenses incurred for land planning, surveying and legal services, within ten (10) days of receipt by Buyer of invoices from Seller for such fees, costs and expenses paid or incurred by it, and Seller shall be entitled to obtain reimbursement from Closing Agent out of the Earnest Money prior to Closing Agent's refunding any of the Earnest Money to Buyer if Seller has not been reimbursed within such ten (10) days.

17. Proposed Amendment to the Colorado Constitution to Add Article XXVIII, Citizen Management of Growth. The Town acknowledges and agrees that the area of land described as Parcel D, A Replat of Christie Heights Filing No. 1 recorded March 20, 1985 at Reception No. 293888, County of Summit, State of Colorado, was and continues to be a part of Christie Heights Subdivision as set forth in such Replat and that Christie Heights Subdivision includes not only Parcel D, but also 38 Lots, Nordic Center - Sites 2A and 2B, Historic Center - Site 1 and Open Space Tracts A, B and C as shown on A Replat of Christie Heights Subdivision Filing No. 1 Amended, A Resubdivision of All of Parcels A, B, C, and a Portion of Parcel D recorded June 10, 1986 at Reception No. 318451, Summit County, Colorado ("Resubdivision Plat"). Further, the Town acknowledges and agrees that all of Parcel D not included within the resubdivision set forth on the Resubdivision Plat is a "Committed Area" as that term is defined in the proposed Constitutional Amendment, Article XXVIII, Citizen Management of Growth, Section 2(2) (a), because, based on Development Permit #98-3-3 issued by the Town for 25 single family lots and one (1) future development parcel and the Development Agreement between the Town and Seller extending the vesting of such Development Permit through October 14, 2002, the entirety of Christie Heights Subdivision includes a maximum of sixty-six (66) Lots (counting the thirty-eight (38) Lots, three (3) Sites, twenty-four (24) single family lots and one (1) future development parcel, but not the three (3) Open Space Tracts), and at least 50% of the lots in such subdivision (38 out of 66) have had central water and sewer services extended to them, and all of the lots are or shall be served by central water and sewer when the development is complete. Further, the Town agrees that it will not take any position contrary to or inconsistent with the foregoing and will continue to support the foregoing acknowledgment and agreement that Parcel D is a Committed Area, except to the extent that the Town is otherwise directed by an act of the Colorado Legislature signed into law by the Governor or a judicial decision binding on the Town with respect to such Constitutional Amendment.

20. 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. If any time period provided for herein ends on a Saturday, Sunday or legal holiday, such period shall be extended to the first business day following such Saturday, Sunday or legal holiday.

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

SELLER:

CHRISTIE HEIGHTS PARTNERSHIP,
a Colorado general partnership

By: 

Timothy J. Casey, Managing Partner

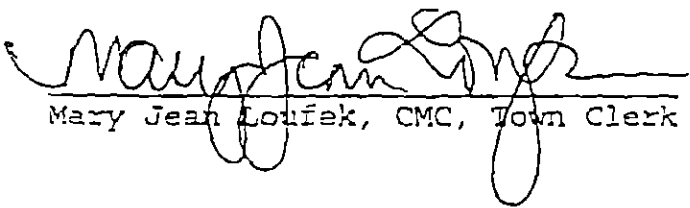
BUYER:

TOWN OF BRECKENRIDGE, a Colorado
municipal corporation

By: 

Town Manager

ATTEST:


Mary Jean Loufek, CMC, Town Clerk