

BRK08PSI

TYPE OF RECORD:	PERMANENT
CATEGORY OF RECORD:	DEED (WARRANTY)
NAME OF PROPERTY OWNER OR GRANTOR OR GRANTEE:	BURKE FAMILY INVESTMENT CLUB, LLP
PURPOSE:	PUBLIC SAFETY INITIATIVE
ADDRESS:	553 UTE AVENUE
PARCEL NO:	2945-143-32-017
CITY DEPARTMENT:	PUBLIC WORKS AND PLANNING
YEAR:	2008
EXPIRATION DATE:	NONE
DESTRUCTION DATE:	NONE

AFTER RECORDING MAIL TO:

City of Grand Junction
Attn: City Real Estate Manager
250 North 5th Street
Grand Junction, CO 81501

SPECIAL WARRANTY DEED

920926

THIS DEED, dated January 4, 2008, between **Burke Family Investment Club LLP**, a Colorado limited liability partnership, who acquired title as Burke Family Investment Club, a Colorado general partnership ("**Grantor**"), and **The City of Grand Junction**, a Colorado home rule municipality ("**Grantee**"), whose legal address is 250 North 5th Street, Grand Junction, CO 81501:

WITNESS, that the Grantor, for and in consideration of the sum of **Four Hundred Fifty Thousand and no/100 Dollars (\$450,000.00)**, the receipt and sufficiency of which is hereby acknowledged, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell, convey and confirm unto the Grantee, its successors and assigns forever, all of its rights, title and interest which the Grantor has in and to the real property, together with improvements, if any, situate, lying and being in the County of Mesa and State of Colorado, described in **Exhibit A**, attached hereto (the "**Property**").

TOGETHER with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, claim and demand whatsoever of the Grantor, either in law or equity, of, in and to the Property, with the hereditaments and appurtenances, subject, however, to the matters and exceptions set forth in **Exhibit B**, attached hereto and made a part hereof for all purposes (the "**Permitted Exceptions**");

TO HAVE AND TO HOLD the said Property, with the appurtenances, subject to the Permitted Exceptions, unto the Grantee, its successors and assigns forever. The Grantor, for itself, its successors and assigns, does covenant and agree that it shall and will **WARRANT AND FOREVER DEFEND** the Property in the quiet and peaceable possession of the Grantee, its successors and assigns, against all and every person or persons lawfully claiming the whole or any part thereof, by, through or under the Grantor, but not otherwise, except for the Permitted Exceptions.

It is understood and agreed that the Property is being conveyed "**AS IS, WHERE IS, WITH ALL FAULTS**" and, except for the special warranties of title made above, Grantor has not made and is not now making and specifically disclaims any warranties, representations or guarantees of any kind or character with respect to the Property, including without limitation, all warranties concerning the merchantability, fitness for a particular purpose, quality, condition, size, value, suitability, legal entitlement status, and boundary locations of the Property. Grantee acknowledges that Grantee is relying on Grantee's own inspection and investigation of the Property, and not information provided by Grantor, to satisfy itself as to the condition of the Property. Grantee assumes the risk that adverse matters may not have been revealed by Grantee's inspections and investigations.

IN WITNESS WHEREOF, the Grantor has caused its name to be hereunto subscribed the day and year first above written.

[SIGNATURES & ACKNOWLEDGEMENTS ON FOLLOWING PAGE]

EXHIBIT A
(Legal Description)

Lots 13, 14, 15 and 16 in
Block 139 of
CITY OF GRAND JUNCTION

7. Unpatented mining claims, reservations or exceptions in patents or in Acts authorizing the issuance thereof.

BILL OF SALE, ASSIGNMENT AND ASSUMPTION

THIS BILL OF SALE, ASSIGNMENT AND ASSUMPTION is made as of the 4th day of January, 2008, by and between Burke Family Investment Club LLP, a Colorado limited liability partnership, f/k/a Burke Family Investment Club, a Colorado general partnership (“**Assignor**”), and The City of Grand Junction, a Colorado home rule municipality (“**Assignee**”).

W I T N E S S E T H:

NOW, THEREFORE, for good and valuable consideration, receipt and sufficiency of which are hereby acknowledged Assignor and Assignee hereby agree as follows:

Assignor hereby sells, transfers, assigns and conveys to Assignee the following:

All right, title and interest of Assignor, if any, in and to the tangible personal property (“**Personalty**”) located on or affixed and/or attached to that certain land and improvements located in the County of Mesa, State of Colorado, as more particularly described in **Exhibit A**, attached hereto and made a part hereof (“**Real Property**”).

All right, title and interest of Assignor in and to that certain lease described on **Exhibit B** attached hereto and made a part hereof (the “**Lease**”) relating to the leasing of space in the Real Property and all of the rights, interests, benefits and privileges of the lessor thereunder.

TO HAVE AND TO HOLD the foregoing described property unto Assignee, its successors and assigns forever.

Assignee hereby accepts the assignment of the Lease and agrees to assume and discharge, in accordance with the terms thereof, all of the obligations thereunder arising from and after the date hereof.

Assignee agrees to indemnify and hold harmless Assignor from any cost, liability, damage or expense (including attorneys’ fees and costs) arising out of or relating to Assignee’s failure to perform any of the lessor’s obligations under the Lease to the extent arising from and accruing on or after the date hereof.

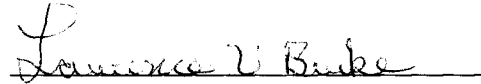
This Bill of Sale, Assignment and Assumption may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

This Bill of Sale, Assignment and Assumption shall inure to the benefit of, and be binding upon, the respective successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Bill of Sale, Assignment and Assumption as of the date first above written.

ASSIGNOR:

Burke Family Investment Club LLP,
a Colorado limited liability partnership



Name: Lawrence V. Burke

Title: General Partner

Date Executed: Jan 3 2008

ASSIGNEE:

The City of Grand Junction,
a Colorado home rule municipality



Name: City Attorney

Title: _____

Date Executed: 04 Jan 2008

EXHIBIT A
(Legal Description)

Lots 13, 14, 15 and 16 in
Block 139 of
CITY OF GRAND JUNCTION

Contract to Buy & Sell Real Estate

THIS FORM HAS IMPORTANT LEGAL CONSEQUENCES AND THE PARTIES SHOULD CONSULT LEGAL AND TAX OR OTHER COUNSEL BEFORE SIGNING.

Date: October 2, 2007

1. **AGREEMENT.** Buyer agrees to buy and the undersigned Seller agrees to sell the Property defined below on the terms and conditions set forth in this Contract.

2. **DEFINED TERMS.**

a. **Buyer.** Buyer will take title to the real property described below as The City of Grand Junction, a Colorado home rule municipality.

b. **Seller.** Seller is Burke Family Investment Club, LLP, a Colorado limited liability partnership.

c. **Property.** The Property is the following legally described real estate:

2945-143-32-017: Lots 13 to 16, Inclusive, Block 139, City of Grand Junction;

Together commonly known as 553 Ute Avenue, Grand Junction, CO 81501.

The foregoing Parcel shall be conveyed to Buyer together with all of the interests, easements, rights, benefits and privileges appurtenant thereto.

d. **Dates and Deadlines.**

Item No.	Reference	Event	Date or Deadline
1	§5	Title Deadline	October 22, 2007
2	§6a.	Title Objection Deadline	October 26, 2007
3	§6b.	Off-Record Matters Deadline	October 26, 2007
4	§6b.	Off-Record Matters Objection Deadline	October 15, 2007
5	§7	Seller's Property Disclosure Deadline	October 8, 2007
6	§7b.	Inspection Objection Deadline	October 19, 2007
7	§7c.	Resolution Deadline	October 26, 2007
8	§21b.	City Council Ratification Deadline	November 7, 2007
9	§8	Closing Date	January, 2008
10	§13	Possession Date	January, 2008
11	§13	Possession Time	5:00 p.m. M.S.T.
12	§25	Acceptance Deadline Date	October 8, 2007
13	§25	Acceptance Deadline Time	2:00 p.m. M.S.T.

e. **Attachments.** The following exhibits, attachments and addenda are a part of this contract: Attachment "A": Seller's Property Disclosure and Attachment "B": Warranty Deed

f. **Applicability of Terms.** A check or similar mark in a box means that such provision is applicable. The abbreviation "N/A" means not applicable.

3. **INCLUSIONS AND EXCLUSIONS.**

a. The purchase price includes the following items ("Inclusions"):
(1) Fixtures.

b. **Instruments of Transfer.** The Inclusions are to be conveyed at Closing free and clear of all taxes, liens and encumbrances.

c. **Exclusions.** The following attached fixtures are excluded from this sale:

NA

4. **PURCHASE PRICE AND TERMS.** The Purchase Price set forth below shall be payable in U.S. Dollars by Buyer as follows:

Item No.	Reference	Item	Amount	Amount
1	§ 4	Purchase Price	\$450,000.00	
2	§ 4a	Earnest Money		\$ 10,000.00
3	§ 4b	Cash at Closing		\$ 440,000.00
4		TOTAL	\$450,000.00	\$ 450,000.00

This offer is subject to the expiration or termination of existing lease terms and is considered as if the property is vacant as of the date of possession.

a. **Earnest Money.** The Earnest Money set forth in this Section, in the form of Buyer's check, is part payment of the Purchase Price and shall be payable to and held by Abstract and Title Company of Mesa County, ("Closing Company"), in its trust account, on behalf of both Seller and Buyer. The parties authorize delivery of the Earnest Money to the Closing Company at or before closing.

b. **Cash at Closing.** All amounts paid by Buyer at Closing including Cash at Closing, plus Buyer's closing costs, shall be in funds which comply with all applicable Colorado laws, which include Buyer's check, cash, electronic transfer funds, certified check, savings and loan teller's check and cashier's check ("Good Funds").

5. **EVIDENCE OF TITLE** On or before Title Deadline (§2d, Item 1), Seller shall cause to be furnished to Buyer's City Attorney with a copy to Buyer's City Real Estate Manager, at Seller's expense, a current commitment for owner's title insurance policy ("Title Commitment") in an amount equal to the Purchase Price, together with true and legible copies of all instruments referred to therein, including, but not limited to, true and legible copies of any plats, declarations, covenants, conditions and restrictions describing, affecting or burdening the Property and true and legible copies of any other documents listed in the schedule of exceptions ("Exceptions"). Seller shall have the obligation to furnish the documents pursuant to this subsection without any request or demand by Buyer. The Title Commitment together with copies of such documents furnished pursuant to this Section shall constitute the title documents ("Title Documents"). The Title Commitment shall commit to delete or insure over the standard exceptions which relate to:

- (1) parties in possession,
- (2) unrecorded easements,
- (3) survey matters
- (4) any unrecorded mechanics' liens,
- (5) unpaid taxes, assessments and unredeemed tax sales prior to year of Closing, and
- (6) gap period (effective date of the Title Commitment to the date the deed is recorded).

Any additional premium expense to obtain this additional coverage shall be paid by Seller. Seller shall cause the title insurance policy to be delivered to Buyer as soon as practicable, at or after Closing.

6. **TITLE.**

a. **Title Review.** Buyer shall have the right to inspect the Title Documents. Written notice by Buyer to Seller of unmerchantability of title or of any other unsatisfactory condition shown by the Title Documents shall be signed by or on behalf of Buyer and given to Seller on or before the Title Objection Deadline (§2d, Item 2), or

within five (5) business days after receipt by Buyer of any Title Document(s) or endorsement(s) adding new Exception(s) to the Title Commitment together with a copy of the Title Document(s) adding new Exception(s) to title, whichever is later. If Buyer does not mail its notice by the date(s) specified above, Buyer shall be deemed to have accepted as satisfactory the condition of title as disclosed by the Title Documents.

b. **Matters not Shown by the Public Records.** Seller shall deliver to Buyer, on or before the **Off-Record Matters Deadline** (§2d, Item 3), true copies of all lease(s) and survey(s) in Seller's possession pertaining to the Property and shall disclose to Buyer all easements, liens or other title matters not shown by the public records of which Seller has actual knowledge. Buyer shall have the right to inspect the Property to determine if any third party(ies) has any right in the Property not shown by the public records (such as an unrecorded easement, unrecorded lease, or boundary line discrepancy). Written notice of any unsatisfactory condition(s) disclosed by Seller or revealed by such inspection shall be signed by or on behalf of Buyer and mailed to Seller on or before the **Off-Record Matters Objection Deadline** (§2d, Item 4). If Buyer does not mail Buyer's notice by said date, Buyer accepts title subject to such rights, if any, of third parties of which Buyer has actual knowledge.

c. **Right to Cure.** If Seller receives notice of unmerchantability of title or any other unsatisfactory title condition(s) or commitment terms as provided in §6a or §6b above, Seller shall use reasonable efforts to correct said items and bear any nominal expenses to correct the same prior to Closing. If such unsatisfactory title condition(s) are not corrected on or before Closing, this contract shall then terminate; provided, however, Buyer may, by written notice given to Seller, on or before Closing, waive objection to such items.

7. **PROPERTY DISCLOSURE AND INSPECTION.** On or before Seller's **Property Disclosure Deadline** (§2d, Item 5), Seller shall complete and return to Buyer the attached ~~Seller's Property Disclosure~~ (**Attachment "A"**), providing a written disclosure of adverse matters regarding the Property completed by Seller to the best of Seller's current actual knowledge.

a. **Inspection.** Buyer shall have the right, at Buyer's expense, to conduct inspections of the physical condition of the Property and Inclusions ("Inspections"). The inspections may include, but not be limited to, boundary surveys, engineering surveys, soil samples and surveys and environmental surveys. Buyer is responsible for payment of all inspections, surveys, engineering reports, environmental reports or for any other work performed at Buyer's request and shall pay for any damage which occurs to the Property and Inclusions as a result of such activities if Closing does not occur as provided herein. If Buyer does not close as provided for herein, Buyer shall not permit claims or liens of any kind against the Property for inspections, surveys, engineering reports, environmental reports and for any other work performed on the Property at Buyer's request. The provisions of this subsection shall survive the termination of this Contract.

b. **Inspection Objection Deadline.** If the physical condition of the Property or Inclusions is unsatisfactory as determined by Buyer's sole and subjective discretion, Buyer shall, on or before the **Inspection Objection Deadline** (§2d, Item 6), either:

(1) notify Seller in writing that this Contract is terminated, in which case all payments and things of value received hereunder shall be returned to Buyer, or

(2) provide Seller with a written description of any unsatisfactory physical condition(s) which Buyer requires Seller to correct at no cost or expense to Buyer ("Notice to Correct"), on or before the **Resolution Deadline** (§2d, Item 7).

If written notice is not mailed to Seller on or before the **Inspection Objection Deadline** (§2d, Item 6), the physical condition of the Property and Inclusions shall be deemed to be satisfactory to Buyer.

c. **Resolution Deadline.** If a Notice to Correct is timely mailed to Seller and if Buyer and Seller have not agreed in writing to a settlement thereof on or before the **Resolution Deadline** (§2d, Item 7), this Contract shall terminate and all payments and things of value received hereunder shall be returned to Buyer, unless before such termination Seller receives Buyer's written withdrawal of the Notice to Correct.

8. **CLOSING.** Delivery of deed from Seller to Buyer shall be on the date specified as the **Closing Date** (§2d, Item 9) or by mutual agreement at an earlier date ("Closing"). The hour and place of Closing shall be as designated by mutual agreement between Seller and Buyer at Abstract & Title Company of Mesa County, Inc.

9. **TRANSFER OF TITLE.** Subject to tender or payment at Closing as required herein and compliance by Buyer with the other terms and provisions hereof, Seller shall execute and deliver a good and sufficient General Warranty Deed to Buyer (**Attachment "B"**), at Closing, conveying the Property free and clear of all taxes except the general taxes for the year of Closing. The Property is sold subject to a lease to Drive Train Industries, the terms of which are assigned by the Seller and which have been disclosed to the Buyer. Except as provided herein, title shall be conveyed free and clear of all liens, including any governmental liens for special improvements installed as of the date of Buyer's signature hereon, whether assessed or not. Title shall be conveyed subject to:

a. those specific Exceptions described by reference to recorded documents as reflected in the Title Documents accepted by Buyer in accordance with §6a [Title Review];

b. those specifically described rights of third parties not shown by the public records of which Buyer has actual knowledge and which were accepted by Buyer in accordance with §6b [Matters not Shown by the Public Records]; and

c. no others.

10. **PAYMENT OF ENCUMBRANCES.** Any encumbrance required to be paid shall be paid at or before Closing from the proceeds of this transaction or from any other source.

11. **CLOSING COSTS, DOCUMENTS AND SERVICES.** Buyer and Seller shall pay, in Good Funds, their respective Closing costs and all other items required to be paid at Closing, except as otherwise provided herein. Buyer and Seller shall sign and complete all customary or reasonably required documents at or before Closing. Fees for real estate Closing services shall be paid at Closing by One-Half by Buyer and One-Half by Seller. Any sales and use tax that may accrue because of this transaction shall be paid when due by Seller.

12. **PRORATIONS.** The following shall be prorated to the **Closing Date** (§2d, Item 9), except as otherwise provided:

a. **Personal Property Taxes.** Personal property taxes, if any, shall be paid by Seller

b. **General Real Estate Taxes.** General real estate taxes shall be prorated to the Closing Date based on the most recent mill levy and the most recent assessment;

c. **Utilities and Other Services.** Seller shall pay for all fees and charges for all utilities and services which have accrued as of the Closing Date. Buyer shall be responsible for all utilities fees and services which accrue thereafter.

d. **Final Settlement.** Unless otherwise agreed in writing, these prorations shall be final.

13. **POSSESSION.** Possession of the Property shall be delivered to Buyer on **Possession Date** (§2d, Item 10) and **Possession Time** (§2d, Item 11), free and clear of any and all leases and tenancies. If Seller, after Closing, fails to deliver possession as specified Seller shall be subject to eviction and shall be additionally liable to Buyer for payment of \$100.00 per day from the Possession Date until possession is delivered.

14. **NOT ASSIGNABLE.** This Contract shall not be assignable by Buyer without Seller's prior written consent. Except as so restricted, this Contract shall inure to the benefit of and be binding upon the heirs, personal representatives, successors and assigns of both parties.

15. **CONDITION OF AND DAMAGE TO THE PROPERTY AND INCLUSIONS.** Except as otherwise provided in this Contract, both the Property and the Inclusions shall be delivered in the condition existing as of the date of this Contract, ordinary wear and tear excepted.

16. **LEGAL AND TAX COUNSEL; AMBIGUITIES.** (a) Buyer and Seller have each obtained the advice of its/their own legal and tax counsel regarding this Contract or has knowingly declined to do so. (b) The parties agree that the rule of construing ambiguities against the drafter shall have no application to this Contract.

17. **TIME OF THE ESSENCE/REMEDIES.** 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 or waived as herein provided, there shall be the following remedies:

a. **If Buyer is in Default,** the Earnest Money shall be paid to Seller and both parties shall thereafter be released from all obligations hereunder, except for the duties created by §7a. It is agreed that the Earnest Money is **LIQUIDATED DAMAGES** and is **SELLER'S SOLE AND ONLY REMEDY** for 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,** Buyer may elect to treat this Contract as canceled in which case all payments and things of value received hereunder shall be returned to Buyer and Buyer may either recover such damages as may be proper, or Buyer may elect to treat this Contract as being in full force and effect and Buyer shall have the right to specific performance of damages, or both.

Costs and Expenses. In the event of any arbitration or litigation relating to this Contract, each party shall share the costs of such arbitrator but otherwise all reasonable costs and expenses, including reasonable attorney fees, shall be paid by each respective party.

18. **MEDIATION.** If a dispute arises relating to this Contract, prior to or after Closing, and is not resolved, the parties shall first proceed in good faith to submit the matter to mediation. Mediation is a process in which the parties meet with an impartial person who helps to resolve the dispute informally and confidentially. Mediators cannot impose binding decisions. The parties to the dispute must agree before any settlement is binding. The parties will jointly appoint an acceptable mediator and will share equally in the cost of such mediation. The mediation, unless otherwise agreed, shall terminate in the event the entire dispute is not resolved thirty (30) calendar days from the date written notice requesting mediation is sent by one party to the other. This section shall not alter any date in this Contract, unless otherwise agreed in writing.

19. **EARNEST MONEY DISPUTE.** Notwithstanding any termination of this Contract, Buyer and Seller agree that, in the event of any controversy regarding the Earnest Money and things of value held by Closing Agent (unless mutual written instructions are received by the holder of the Earnest Money and things of value), Closing Agent shall not be required to take any action but may await any proceeding, or at Closing Agent's option and sole discretion, may interplead all parties and deposit any moneys or things

of value into the District Court of Mesa County, Colorado.

20. **TERMINATION.** In the event this Contract is terminated, all payments and things of value received hereunder shall be returned and the parties shall be relieved of all obligations hereunder, subject to §7a (Inspection Costs), §7b (if Seller is in Default), §18 (Mediation), and §19 (Earnest Money Dispute).

21. **ADDITIONAL PROVISIONS.**

a. **Purchase in Lieu of Condemnation.** Buyer is a governmental authority and has determined that the purchase of the Property is necessary for the health, safety and welfare of the inhabitants of the City of Grand Junction; therefore, Buyer has the authority, pursuant to the laws of the State of Colorado, to acquire the Property through condemnation proceedings by exercising its power of eminent domain. Notwithstanding the preceding statements, Buyer desires to purchase the subject property through friendly negotiations and thereby avoid condemnation proceedings.

b. **City Council Consent.** The execution of this Contract by the City Manager of the City of Grand Junction and Buyer's obligation to proceed under its terms and conditions is expressly conditioned upon and subject to the formal ratification, confirmation and consent of the Grand Junction City Council with regards to: (1) the terms, covenants, conditions, duties and obligations to be performed by Buyer in accordance with this Contract, and (2) the allocation of funds to pay the Purchase Price and all other costs and expenses necessary to perform Buyer's due diligence inspections of the Property. In the event such ratification, confirmation and consent is not obtained on or before the **City Council Ratification Deadline** (§2d, Item 5), this Contract shall automatically terminate, both parties shall thereafter be released from all obligations hereunder and the Earnest Money received hereunder shall be returned to Buyer.

c. **No Fees or Commissions.** Buyer and Seller each warrant that no person or selling agency has been employed or retained to solicit or secure this Contract upon any agreement or understanding for a commission, percentage, brokerage or contingent fee. Each party agrees to defend, indemnify and hold the other party harmless from any claim for real estate brokerage commissions or finder's fees arising out of this Contract.

d. **Instrument of Transfer.** Buyer and Seller each agree that title to the Property will be conveyed from Seller to Buyer in the exact form of the General Warranty Deed attached hereto as Attachment "B" and incorporated herein by reference.

22. **ENTIRE AGREEMENT; SUBSEQUENT MODIFICATION; SURVIVAL.** This Contract constitutes the entire contract between the parties relating to the subject hereof and any prior agreements pertaining thereto, whether oral or written, have been merged and integrated into this Contract. No subsequent modification of any of the terms of this Contract shall be valid or binding upon the parties or enforceable unless made in writing and signed by the parties. Any obligation in this Contract which by its terms is intended to be performed after termination or Closing shall survive the same.

23. **FACSIMILE.** Signatures may be evidenced by facsimile. Documents with original signatures shall be provided to the other party at Closing or earlier upon request of any party.

24. **NOTICE.** Except for the notice requesting mediation described in §18, any notice to Buyer shall be effective when received by Buyer and any notice to Seller shall be effective when received by Seller.

25. **NOTICE OF ACCEPTANCE; COUNTERPART.** This proposal shall expire unless accepted in writing, by Buyer and Seller, as evidenced by their signatures below, and the offering party receives notice of such acceptance pursuant to §24 on or before **Acceptance Deadline Date** (§2d, Item No. 12) and **Acceptance Deadline Time** (§2d,

Item No. 13). If accepted, this document shall become a contract between Seller and Buyer, subject to ratification by the Grand Junction City Council (§21 a.).

THE CITY OF GRAND JUNCTION, a Colorado home rule municipality, Buyer:

By:
Laurie M. Kadrich, City Manager

Date of Buyer's signature: . 2007.

Buyer's Address: City Attorney, 250 North 5th Street, Grand Junction, CO 81501
With Copy to: City Real Estate Manager, 250 North 5th Street, Grand Junction, CO 81501

Buyer's Telephone Number: City Attorney: (970) 244-1506
City Real Estate Manager: (970) 244-1538

Buyer's Fax No.: City Attorney: (970) 244-1456
City Real Estate Manager: (970) 256-4022

**[NOTE: If this offer is being countered or rejected, do not sign this document.
Refer to § 26.]**

Acceptance by Burke Family Investment Club, a Colorado limited liability partnership,

By:
Larry Burke, General Partner

Date of Sellers' signature: 2007.

Seller's Address: 553 Life Avenue, Grand Junction, CO 81501-7712

Seller's Telephone Number: (719) 433-4907

Seller's Fax No.: (719) 487-2915

6. **COUNTER; REJECTION.** This offer is Countered Rejected.

Initials only of party (Buyer or Seller) who countered or rejected offer:

END OF CONTRACT

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**ATTACHMENT "A"—COUNTERPROPOSAL
TO CONTRACT DATED OCTOBER 2, 2007**

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THIS COUNTERPROPOSAL ("Counterproposal") is to that certain Contract to Buy & Sell Real Estate dated October 2, 2007 (the "Preprinted Contract"), by and between The City of Grand Junction, a Colorado home rule municipality (collectively, "Buyer") and Burke Family Investment Club LLC, a Colorado limited liability partnership ("Seller"), concerning certain real property commonly known as 553 Ute Avenue, Grand Junction, Colorado 81501 (the "Property"). If any provision in the Preprinted Contract is inconsistent with any provision contained in this Counterproposal, then the provisions contained in this Counterproposal shall control. This Counterproposal and the Preprinted Contract may hereinafter be collectively referred to as the "Agreement." Defined terms used herein shall have the same meaning as set forth in the Preprinted Contract unless expressly provided to the contrary herein.

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A. CHANGES TO PREPRINTED CONTRACT The following changes are made to the Preprinted Contract:

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(1) Section 2(d) is hereby deleted in its entirety and is replaced with the following:

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d. Dates and Deadlines

Item No.	Reference	Event	Date or Deadline
1	§5	Title Deadline	10 days after MEC
2	§6a	Title Objection Deadline	21 days after MEC
3	§6b	Off-Record Matters Deadline	10 days after MEC
4	§6b	Off-Record Matters Objection Deadline	21 days after MEC
5	§7	Seller's Property Disclosure Deadline	Not Applicable
6	§7b	Inspection Objection Deadline	21 days after MEC
7	§7c	Resolution Deadline	45 days after MEC
8	§21b	City Council Ratification Deadline	30 days after MEC
9	§8	Closing Date	January 4, 2008
10	§13	Possession Date	Closing
11	§13	Possession Time	5:00 p.m. MST
12	§25	Acceptance Deadline Date	Not Applicable
13	§25	Acceptance Deadline Time	Not Applicable

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The abbreviation "MEC" (mutual execution of this contract) means the latest date upon which both parties have signed this Contract.

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(2) In Section 2(e), the following is hereby deleted: "Attachment "A": Seller's Property Disclosure and Attachment "B": Warranty Deed," and is replaced with: "Attachment "A" – Counterproposal; and "Attachment "B" – Special Warranty Deed."

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(3) In Section 3(a)(1), the following words are added after the word "Fixtures": ", if any."

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(4) In Section 3(b), the sentence beginning with "The Inclusions . . ." is hereby deleted. The sentence is replaced by the following: "Seller's interest in the Inclusions, if any, shall be conveyed by a quit claim bill of sale."

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(5) In Section 3(c), "N/A" is hereby deleted and replaced with the following: "There may be certain fixtures or personal property owned by and/or left on the Property by the current tenant Drive Train Industries, Inc., which are not owned by Seller. Any such fixtures or personal property are expressly excluded from the definition of Inclusions."

31 (6) In Section 5, the following is hereby added after the words “. . . exceptions which
32 relate to”: “, to the extent that the same may be obtained with information currently in Seller’s possession and
33 without Seller paying additional premiums or attending costs.”

34 (7) In Section 5(1), the following is hereby added after the words “parties in possession,”:
35 “except for that certain business lease between Burke Family Investment Club LLP, a Colorado limited liability
36 partnership, as Landlord, and Drive Train Industries, Inc., a Colorado corporation, as Tenant, dated November 27,
37 2002, as it may have been amended.”

38 (8) In Section 5, the following sentence is hereby deleted: “Any additional premium
39 expense to obtain this additional coverage shall be paid by Seller.” The sentence is hereby replaced with: “Any
40 additional premium expense to obtain any additional coverage shall be paid by Buyer.”

41 (9) In Section 7, the sentence beginning “On or before . . .” is hereby deleted in its entirety.

42 (10) In Section 9, the phrase “good and sufficient General Warranty Deed to Buyer
43 (Attachment “B”)” is hereby deleted and replaced with “good and sufficient special warranty deed (“Attachment
44 B”).

45 (11) In Section 9(c), the words “no others” are hereby deleted, and the following words are
46 added: “All matters apparent from a survey and/or inspection of the Property.”

47 (12) The last sentence of Section 11 is hereby deleted and replaced with the following:
48 “Any sales and use taxes that may accrue because of this transaction shall be paid when due by Buyer.”

49 (13) Section 13 is hereby deleted in its entirety and replaced with the following:
50 “Possession of the Property shall be delivered to Buyer on **Possession Date** (§2d, item 10) and on **Possession**
51 **Time** (§2d, item 11) free and clear of any and all leases and tenancies, except for that certain business lease
52 between Burke Family Investment Club LLP, a Colorado limited liability partnership, as Landlord, and Drive
53 Train Industries, Inc., a Colorado corporation, as Tenant, dated November 27, 2002, as it may have been
54 amended. Provided that, whether or not Drive Train Industries, Inc. remains a tenant of the Property shall not
55 delay Closing, nor shall it otherwise be a condition of Closing.”

56 (14) Section 17(b) is hereby deleted in its entirety and replaced with the following: “Buyer
57 may elect to treat this Contract as canceled, in which case all Earnest Money received hereunder shall be returned
58 and Buyer, which shall be Buyer’s sole and exclusive remedy.”

59 (15) Section 17(c) is hereby deleted in its entirety and replaced with the following: “In the
60 event of any arbitration or litigation relating to this Contract, the arbitrator or court shall award to the prevailing
61 party all reasonable costs and expenses, including attorney and legal fees.”

62 (16) In Section 20, after the words “(Inspection Costs)” the following is hereby deleted: “§
63 17b (if Seller is in Default)”.

64 (17) Section 21(a) is hereby deleted in its entirety.

65 (18) Section 21(d) is hereby deleted in its entirety and is replaced with the following:

66 d. **Instrument of Transfer.** Buyer and Seller each agree that title to the Property will be conveyed
67 from Seller to Buyer in the exact form of a Special Warranty Deed attached hereto as Attachment “B”
68 and incorporated herein by reference, except that Exhibit A (Legal Description) of the Special Warranty
69 Deed may be adjusted to reflect the legal description of the Property shown in the Title Commitment and
70 that Exhibit B (Permitted Exceptions) of the Special Warranty Deed shall be amended include those
71 Exceptions shown in the Title Commitment.
72

73 (19) The following Additional Provision is hereby added to Section 21: "Buyer understands
 74 that the Property is currently subject to that certain business lease between Burke Family Investment Club LLP, a
 75 Colorado limited liability partnership, as Landlord, and Drive Train Industries, Inc., a Colorado corporation, as
 76 Tenant, dated November 27, 2002 (the "Lease"), a copy of which will be provided to Buyer, pursuant to §6b of
 77 the Contract. Upon Seller's execution of this Contract, Seller shall not amend any terms of the Lease without
 78 prior written approval of the Buyer. The current Lease term expires on November 30, 2007, and thereafter the
 79 term of the Lease shall be month-to-month. At Closing, Buyer shall assign to Seller all of Buyer's rights and
 80 obligations under the Lease, and Seller shall assume from Buyer all of Buyer's rights and obligations under the
 81 Lease. Without incurring any additional costs, Seller agrees to use reasonable efforts to facilitate the execution of
 82 a new lease between Buyer and Tenant, which will take effect after Closing. Buyer agrees to waive any and all
 83 claims against Seller that may arise from Buyer's negotiation of any lease or amendment to the Lease with Drive
 84 Train Industries, Inc. Notwithstanding the foregoing, however, the execution of a new lease between Drive Train
 85 Industries, Inc. and Buyer shall neither operate to delay Closing, nor shall it otherwise be a condition of Closing.
 86 Furthermore, whether or not Drive Train Industries, Inc.'s continues to remain a tenant of the Property shall
 87 neither delay Closing, nor shall it otherwise be a condition of Closing. "

88 B. **INSPECTION AND INDEMNITY.** In conducting any inspections, investigations or tests of
 89 the Property and/or documents relating to the Property ("Property Documents"), referred to in Section 7 of the
 90 Preprinted Contract, Buyer and its agents and representatives shall: (i) not damage any part of the Property or
 91 any personal property; (ii) comply with all applicable laws; (iii) promptly pay when due the costs of all tests,
 92 investigations, and examinations done with regard to the Property; (iv) not permit any liens to attach to the
 93 Property by reason of the exercise of its rights hereunder; (v) repair any damage to the Property resulting from
 94 any such inspection or tests; and (vi) notify Seller in writing of the results of any such inspection and tests within
 95 ten (10) days of obtaining the same. Buyer agrees to indemnify and hold Seller and its agents, representatives,
 96 members, managers, employees and affiliates harmless from and against any and all causes of action, claims,
 97 damages, fees (including, without limitation, attorneys' fees), losses, and injuries that may result from the
 98 inspection of the Property by Buyer or its agents. In the event that this Agreement terminates for any reason
 99 whatsoever, Buyer agrees to provide Seller with copies of all written reports, studies, surveys, audits, and
 100 appraisals that concern the Property which are in Buyer's possession or control within ten (10) business days of
 101 such termination. The obligations of Buyer in this section shall survive closing or termination of this Agreement.

102 C. **METHAMPHETAMINE LABORATORY DISCLOSURE.** The parties acknowledge that
 103 Seller is required to disclose whether Seller knows that the Property was previously used as a methamphetamine
 104 laboratory. No disclosure is required if the Property was remediated in accordance with state standards and other
 105 requirements are fulfilled pursuant to § 25-18.5-102, C.R.S. Buyer further acknowledges that Buyer has the right
 106 to engage a certified hygienist or industrial hygienist to test whether the Property has ever been used as a
 107 methamphetamine laboratory. In the event that the Property has been used as a methamphetamine laboratory,
 108 Buyer may deliver written notice to Seller, on or before the Inspection Objection Deadline, to terminate this
 109 Contract.

110 D. **GOVERNING LAW.** The Parties hereby expressly agree that the terms and conditions hereof,
 111 and that subsequent performance hereunder, shall be construed and controlled by the laws of the State of
 112 Colorado.

113 E. **HEADINGS.** Article and section headings used in this Agreement are for convenience of
 114 reference only and shall not affect the construction of any provision of this Agreement.

115 F. **ENTIRE AGREEMENT.** The entire Agreement is herein written and the Parties are not bound
 116 by any agreements, understandings, conditions or inducements not expressly set forth and stipulated hereunder.
 117 No change, alteration, amendment, modification or waiver of any of the terms or provisions hereof shall be valid
 118 unless the same shall be in writing and signed by the Parties.

119 G. **NOTICES.** All notices provided for hereunder shall be deemed given and received when (i)
 120 personally delivered, (ii) upon deposit in the United States mail, postage prepaid, registered or certified mail,
 121 return receipt requested, (iii) upon transmission by facsimile on a business day, or (iv) upon receipted deposit
 122 with a nationally recognized overnight courier service designated for delivery on the next succeeding business

123 day, and addressed to the applicable Party at the address indicated below for such Party, or as to each Party, at
124 such other address as shall be designated by such Party in a written notice to the other Party:

125 If to Seller: Burke Family Investment Club LLP
126 Attn: Larry Burke
127 584 Coyote Willow Dr.
128 Colorado Springs, Colorado 80921
129 Fax: (719) 747-4161
130

131
132 With copies to: Hatch Jacobs LLC
133 Attn: Daniel L. Bray
134 950 Seventeenth Street, Suite 1700
135 Denver, Colorado 80202
136 Fax: (303) 298-1804
137

138 To Buyer: The City of Grand Junction
139 Attn: City Real Estate Manager
140 250 North 5th Street
141 Grand Junction, CO 81501
142 Fax: (970) 256-4022
143

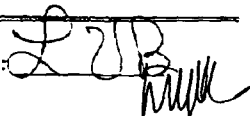
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145 With copies to: The City of Grand Junction
146 Attn: City Attorney
147 250 North 5th Street
148 Grand Junction, CO 81501
149 Fax: (970) 256-1456
150
151

152 H. **COUNTERPART SIGNATURES.** This Agreement may be executed in any number of
153 counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same
154 instrument. If this Agreement is executed by the Seller and Buyer in different locations, such execution may be
155 evidenced by delivery by facsimile to the other Party of a copy of the Agreement showing the signature of the
156 executing Party. Signatures transmitted by facsimile or pdf technology shall be acceptable for purposes of
157 creating a binding contract. In such case, the transmitting Party shall promptly deliver originals to the other to
158 verify the original execution of the Agreement.

159 I. **COMPUTATION OF TIME.** If any time period expires on a Saturday, Sunday, or legal
160 holiday of the State of Colorado, the date of performance shall be the next day which is not a Saturday, Sunday,
161 or legal holiday. For purposes of this Agreement, business days shall be any day which is not a Saturday,
162 Sunday, or legal holiday.

163 J. **TAX-DEFERRED EXCHANGE.** Buyer acknowledges that the Seller may cause this
164 transaction to be made part of a like-kind exchange under Section 1031 of the Internal Revenue Code (the
165 "Exchange"). Therefore, Buyer agrees to cooperate in such effort and permit Seller to effectuate such Exchange,
166 and Buyer agrees to execute any and all documents reasonably desired to complete such Exchange, at no cost to
167 Seller.

168 K. **NO REPRESENTATION OR WARRANTY BY SELLER. BUYER ACKNOWLEDGES**
169 **THAT, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, SELLER HAS NOT MADE**
170 **NOR DOES SELLER MAKE ANY WARRANTY OR REPRESENTATION REGARDING THE TRUTH,**
171 **ACCURACY OR COMPLETENESS OF INFORMATION REGARDING THE PROPERTY OR THE**
172 **PROPERTY DOCUMENTS OR THE SOURCE(S) THEREOF. BUYER FURTHER ACKNOWLEDGES**
173 **THAT SOME IF NOT ALL OF THE INFORMATION REGARDING THE PROPERTY AND THE**



174 PROPERTY DOCUMENTS WERE PREPARED BY THIRD PARTIES OTHER THAN SELLER AND
 175 SELLER EXPRESSLY DISCLAIMS ANY AND ALL LIABILITY FOR REPRESENTATIONS OR
 176 WARRANTIES, EXPRESS OR IMPLIED, OMISSIONS OF FACTS, STATEMENTS OF FACT AND
 177 OTHER MATTERS CONTAINED IN SUCH INFORMATION, OR FOR OMISSIONS FROM
 178 INFORMATION REGARDING THE PROPERTY OR THE PROPERTY DOCUMENTS, OR IN ANY
 179 OTHER WRITTEN OR ORAL COMMUNICATIONS TRANSMITTED OR MADE AVAILABLE TO
 180 BUYER. BUYER SHALL RELY SOLELY UPON ITS OWN INVESTIGATION WITH RESPECT TO
 181 THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE PROPERTY'S PHYSICAL,
 182 ENVIRONMENTAL OR ECONOMIC CONDITION, COMPLIANCE OR LACK OF COMPLIANCE
 183 WITH ANY LAW, ORDINANCE, ORDER, PERMIT OR REGULATION OR ANY OTHER
 184 ATTRIBUTE OR MATTER RELATING THERETO. EXCEPT AS EXPRESSLY SET FORTH
 185 HEREIN, SELLER HAS NOT UNDERTAKEN ANY INDEPENDENT INVESTIGATION AS TO THE
 186 TRUTH, ACCURACY OR COMPLETENESS OF THE INFORMATION REGARDING THE
 187 PROPERTY AND THE PROPERTY DOCUMENTS AND IS PROVIDING THE INFORMATION
 188 REGARDING THE PROPERTY AND THE PROPERTY DOCUMENTS SOLELY AS AN
 189 ACCOMMODATION TO BUYER.

190 L. SALE "AS IS, WHERE IS." BUYER ACKNOWLEDGES AND AGREES THAT UPON
 191 CLOSING, SELLER SHALL SELL AND CONVEY TO BUYER AND BUYER SHALL ACCEPT THE
 192 PROPERTY "AS IS, WHERE IS, WITH ALL FAULTS," EXCEPT TO THE EXTENT EXPRESSLY
 193 PROVIDED OTHERWISE IN THIS AGREEMENT AND ANY DOCUMENT EXECUTED BY SELLER
 194 AND DELIVERED TO BUYER AT CLOSING. EXCEPT AS EXPRESSLY SET FORTH IN THIS
 195 AGREEMENT, BUYER HAS NOT RELIED AND WILL NOT RELY ON, AND SELLER HAS NOT
 196 MADE AND IS NOT LIABLE FOR OR BOUND BY, ANY EXPRESS OR IMPLIED WARRANTIES,
 197 GUARANTEES, STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE
 198 PROPERTY OR RELATING THERETO MADE OR FURNISHED BY SELLER OR ANY REAL
 199 ESTATE BROKER, AGENT OR THIRD PARTY REPRESENTING OR PURPORTING TO
 200 REPRESENT SELLER, TO WHOMEVER MADE OR GIVEN, DIRECTLY OR INDIRECTLY,
 201 ORALLY OR IN WRITING. BUYER REPRESENTS THAT BUYER IS A KNOWLEDGEABLE,
 202 EXPERIENCED AND SOPHISTICATED BUYER OF REAL ESTATE AND THAT, EXCEPT AS
 203 EXPRESSLY SET FORTH IN THIS AGREEMENT, BUYER IS RELYING SOLELY ON BUYER'S
 204 OWN EXPERTISE AND THAT OF BUYER'S CONSULTANTS IN PURCHASING THE PROPERTY
 205 AND SHALL MAKE AN INDEPENDENT VERIFICATION OF THE ACCURACY OF ANY
 206 DOCUMENTS AND INFORMATION PROVIDED BY SELLER. BUYER WILL CONDUCT SUCH
 207 INSPECTIONS AND INVESTIGATIONS OF THE PROPERTY AS BUYER DEEMS NECESSARY,
 208 INCLUDING, BUT NOT LIMITED TO, THE PHYSICAL AND ENVIRONMENTAL CONDITIONS
 209 THEREOF, AND SHALL RELY UPON SAME. BY FAILING TO TERMINATE THIS AGREEMENT
 210 PRIOR TO THE INSPECTION OBJECTION DEADLINE, BUYER ACKNOWLEDGES THAT
 211 SELLER HAS AFFORDED BUYER A FULL OPPORTUNITY TO CONDUCT SUCH
 212 INVESTIGATIONS OF THE PROPERTY AS BUYER DEEMED NECESSARY TO SATISFY ITSELF
 213 AS TO THE CONDITION OF THE PROPERTY AND THE EXISTENCE OR NON-EXISTENCE OR
 214 CURATIVE ACTION TO BE TAKEN WITH RESPECT TO ANY HAZARDOUS MATERIALS ON OR
 215 DISCHARGED FROM THE PROPERTY, AND WILL RELY SOLELY UPON SAME AND NOT UPON
 216 ANY INFORMATION PROVIDED BY OR ON BEHALF OF SELLER OR ITS AGENTS OR
 217 EMPLOYEES WITH RESPECT THERETO, OTHER THAN SUCH REPRESENTATIONS,
 218 WARRANTIES AND COVENANTS OF SELLER AS ARE EXPRESSLY SET FORTH IN THIS
 219 AGREEMENT. UPON CLOSING, BUYER SHALL ASSUME THE RISK THAT ADVERSE
 220 MATTERS, INCLUDING, BUT NOT LIMITED TO, ADVERSE PHYSICAL OR CONSTRUCTION
 221 DEFECTS OR ADVERSE ENVIRONMENTAL, HEALTH OR SAFETY CONDITIONS, MAY NOT
 222 HAVE BEEN REVEALED BY BUYER'S INSPECTIONS AND INVESTIGATIONS.

223

[SIGNATURES ON FOLLOWING PAGE]

LJB

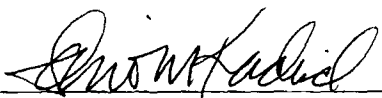
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IN WITNESS WHEREOF, the Parties hereto have caused this Addendum to be executed and delivered as of the day and year first below written.

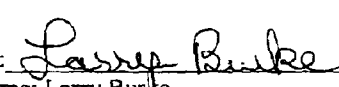
BUYER:

THE CITY OF GRAND JUNCTION,
a Colorado home rule municipality

By: 
Name: Laurie M. Kadrach
Title: City Manager
Date: 110907

SELLER:

BURKE FAMILY INVESTMENT CLUB LLP,
a Colorado limited liability partnership

By: 
Name: Larry Burke
Title: General Partner
Date: NOV. 8 2007

RESOLUTION NO. 173-07

**A RESOLUTION RATIFYING THE PURCHASE CONTRACT FOR THE PROPERTY
LOCATED AT 553 UTE AVENUE, GRAND JUNCTION, COLORADO**

RECITALS:

On November 9, 2007, the City Manager signed an agreement to purchase the property located at 553 Ute Avenue, Grand Junction, Colorado, from the Burke Family Investment Club, LLP. The execution of the contract by the City Manager and the City's obligation to proceed under its terms and conditions was expressly conditioned upon and subject to the formal ratification, confirmation and consent of the City Council.

On November 8, 2007, the owners of the property signed the purchase contract.

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

The City, by and through the City Council and the signature of its President, does hereby ratify the terms, covenants, conditions, duties and obligations to be performed by the City in accordance with the contract and allocates funds to pay the Purchase Price and all other costs and expenses necessary to perform under the contract.

PASSED and ADOPTED this 21st day of November 2007.

Attest:

/s/ James J. Doody
President of the Council

/s/ Stephanie Tuin
City Clerk

Issued with Policy No.

SCHEDULE A

Amount of Insurance: **\$450,000.00**

Policy No.: **C31-0047406**

Premium **\$1,316.00**

File No. **00920926**

Date of Policy: **January 7, 2008 at 10:40 A.M.**

1. Name of Insured:

The City of Grand Junction, a Colorado home rule municipality

2. The estate or interest in the land which is covered by this policy is:

Fee Simple

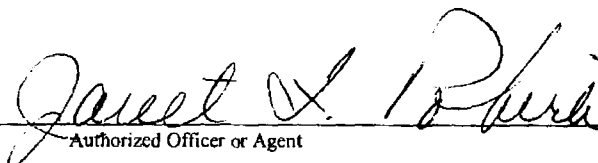
3. Title to the estate or interest in the land is vested in:

The City of Grand Junction, a Colorado home rule municipality

4. The land referred to in this policy is described in said instrument, is situated in the County of Mesa, State of Colorado, and is described as follows:

Lots 13, 14, 15 and 16 in
Block 139 of
CITY OF GRAND JUNCTION

Countersigned: _____


Authorized Officer or Agent

NM 1 PA 10
ALTA Owners
Schedule A
Form 1190-15

ALTA Owners / LH Owners
Schedule B (Colorado)
Form 1190-51

**SCHEDULE B
EXCEPTIONS FROM COVERAGE**

Policy No.: C31-0047406

File No. 00920926

This Policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof.
2. Any and all unpaid taxes, assessments and unredeemed tax sales.