

GAR06COL

TYPE OF RECORD:	PERMANENT
CATEGORY OF RECORD:	DEED (WARRANTY)
NAME OF PROPERTY OWNER OR GRANTOR:	BERTA DONN GARDNER AND MARILYN DWE KOTICH
PURPOSE:	AVALON THEATRE EXPANSION
ADDRESS:	640 COLORADO AVENUE, WEST ONE-HALF OF LOTS 19 AND 20 IN BLOCK 116 IN THE CITY OF GRAND JUNCTION
PARCEL NO:	2945-144-19-945
CITY DEPARTMENT:	PUBLIC WORKS AND PLANNING
YEAR:	2006
EXPIRATION:	NONE
DESTRUCTION:	NONE

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06/12/2006 01:14 PM
Janice Ward CLK&REC Mesa County, CO
RecFee \$5.00 SurChg \$1.00
DocFee \$5.73

WARRANTY DEED

Grantors, Berta Donn Gardner and Marilyn Dwe Kotich, as Tenants in Common, whose address is 212 Alcove Drive, Grand Junction, Co 81503, for the consideration of the sum of FIFTY SEVEN THOUSAND THREE HUNDRED SEVENTY FIVE and 00/100 Dollars, (\$57,375.00), in hand paid, hereby sell and convey to GRAND JUNCTION DOWNTOWN DEVELOPMENT AUTHORITY whose legal address is:248 S. 4th Street, Grand Junction, Co., 81501, the following real property in the County of Mesa and State of Colorado, to wit:

the West one-half of Lots 19 and 20 in Block 116 of the
CITY OF GRAND JUNCTION

also known by street and number as: 640 Colorado Avenue, Grand Junction, Co 81501

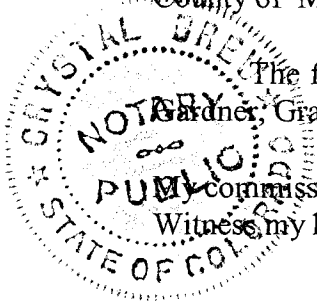
with all its appurtenances, and warrant the title to the same, subject to:
taxes for 2006 and subsequent years and all easements and restrictions of record

Dated this 26 day of May, 2006.

Berta Donn Gardner
Berta Donn Gardner

Marilyn Dwe Kotich
Marilyn Dwe Kotich

State of Colorado)
County of Mesa)



The foregoing was acknowledged before me this 26th day of May, 2006, by Berta Donn Gardner, Grantor.

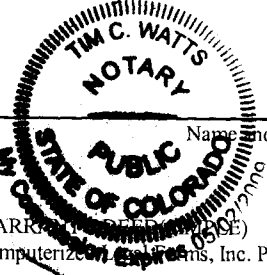
My commission expires: 2-17-2010
Witness my hand and official seal.

Crystal Brew
Notary Public

State of Colorado)
County of Larimer)

The foregoing was acknowledged before me this 26th day of May, 2006, by Marilyn Dwe Kotich, Grantor.

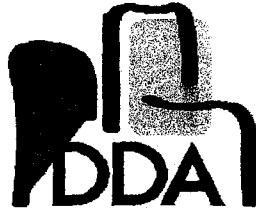
My commission expires: 5-2-09
Witness my hand and official seal.



Tim C. Watts
Notary Public

Name and Address of Person Creating Newly Created Legal Description (§38-35-106.5, C.R.S.)

original -
copy in file



Downtown Development Authority

May 11, 2006

Berta Gardner
212 Alcove Drive
Grand Junction, CO

Dear Berta,

Thank you for working with us on the purchase of 640 Colorado Avenue. We greatly appreciate your cooperation on this matter. Although we have not specific plans for the property at this time, we feel that as we look at the long-term uses of the Avalon Theatre, this location is key to that facilities viability.

Because we are in no rush to act, I would like to respond to your request for time in vacating the premise by writing to authorize your continued use of the facility for storage through the month of July, 2006. If this is not adequate, or your circumstances change, please let me know if for any reason you will not be able to comply with a final vacation by July 31st of this year.

Again thank you for your efforts in allowing us to continue to improve our lovely downtown.

Cordially yours,

A handwritten signature in black ink, appearing to read "H. Stalf".

Harold Stalf
Executive Director

**CONTRACT TO BUY & SELL REAL ESTATE
(COMMERCIAL)**

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

Date: May 11TH, 2006

Purchase Price: \$57,375.00
and other good and valuable consideration

1. AGREEMENT. Buyer agrees to buy, and the undersigned Sellers agree 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 **Grand Junction Downtown Development Authority ("DDA")**, a political subdivision of the State of Colorado.

h.d.g.
M.D.K.
MS

b. Sellers. Sellers are ^{*Sub*} **Berta D. Gardner, Marilyn D. Kotich and Edith Flagg**, as tenants in common, or their assigns.

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

The W 1/2 of Lots 19 and 20, Block 116, City of Grand Junction, Mesa County, Colorado, also known as street and number 640 Colorado Avenue, Grand Junction, Colorado 81501,

together with the interests, easements, rights, benefits, improvements and attached fixtures appurtenant thereto, all interest of Sellers in vacated streets and alleys adjacent thereto, except as herein excluded.

d. Dates and Deadlines.

Item No.	Reference	Event	Date or Deadline
1	§ 5	Title Deadline	May 17, 2006
2	§ 6a	Title Objection Deadline	May 22, 2006
3	§ 6b	Off-Record Matters Deadline	May 22, 2006
4	§ 6b	Off-Record Matters Objection Deadline	May 26, 2006
5	§ 7a	Seller's Property Disclosure Deadline	May 17, 2006
6	§ 7c	Inspection Objection Deadline	May 26, 2006
7	§ 7d	Resolution Deadline	May 26, 2006
8	§ 8	Closing Date	June 5, 2006
9	§ 20a	DDA Board Ratification Deadline	May 17, 2006
10	§ 13	Possession Date	June 5, 2006
11	§ 24	Acceptance Deadline Date	May 15, 2006

e. Attachments. The following exhibits, attachments and addenda are a part of this Contract:

Attachment "A": General Warranty Deed

38 **f. Applicability of Terms.** A check or similar mark in a box means that such
 39 provision is applicable. The abbreviation "N/A" means not applicable. The abbreviation
 40 "MEC" (mutual execution of this contract) means the latest date upon which both parties
 41 have signed this Contract.
 42

43 **3. INCLUSIONS AND EXCLUSIONS.** The Purchase Price shall include all real property
 44 interests, easements, rights and benefits appurtenant as well as any fixtures attached to the
 45 Property on the date of this contract, including but not limited to lighting, heating, plumbing,
 46 ventilating and air conditioning fixtures, inside telephone wiring, and floor coverings.
 47

48 **4. PURCHASE PRICE AND TERMS.** The Purchase Price set forth below shall be
 49 payable in U.S. Dollars by Buyer as follows:
 50

Item No.	Reference	Item	Amount	Amount
1	§	Purchase Price	\$ 57,375.00	
2	§	Earnest Money		\$
3	§	Cash at Closing		\$
4		TOTAL	\$ 57,375.00	\$

51 Note: If there is an inconsistency between the Purchase Price on the first page and this § 4, the
 52 amount in § 4 shall control.
 53

54 **5. EVIDENCE OF TITLE.** On or before **Title Deadline** (§2d, Item No. 1), Sellers shall
 55 cause to be furnished to the City Attorney, at Sellers' expense, a current commitment for owner's
 56 title insurance policy ("Title Commitment") in an amount equal to the Purchase Price, together
 57 with true and legible copies of all instruments referred to therein, including, but not limited to,
 58 true and legible copies of any plats, declarations, covenants, conditions and restrictions
 59 describing, affecting or burdening the Property and true and legible copies of any other
 60 documents listed in the schedule of exceptions ("Exceptions"). Sellers shall have the obligation
 61 to furnish the documents pursuant to this subsection without any request or demand by Buyer.
 62 The Title Commitment together with copies of such documents furnished pursuant to this
 63 Section shall constitute the title documents ("Title Documents"). The Title Documents shall set
 64 forth all matters of record necessary to permit a determination whether title is merchantable or
 65 satisfactory to Buyer. At Sellers' expense, Sellers shall cause the title insurance policy to be
 66 issued and delivered to Buyer as soon as practicable at or after Closing. If a title insurance
 67 commitment is furnished, it shall commit to delete or insure over the standard exceptions which
 68 relate to:
 69

- 70 **a.** parties in possession,
- 71 **b.** unrecorded easements,
- 72 **c.** survey matters,
- 73 **d.** any unrecorded mechanic's liens, and
- 74 **e.** gap period (effective date of the Title Commitment to the date deed is recorded).

75
 76 Any additional premium expense to obtain this additional coverage shall be paid by
 77 Sellers. Sellers shall cause the title insurance policy to be delivered to Buyer as soon as
 78 practicable, at or after Closing.
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80 6. **TITLE.**

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a. Title Review. Buyer shall have the right to inspect the Title Documents. Written notice by Buyer of unmerchantability of title or any other unsatisfactory title condition shown by the Title Documents shall be signed by or on behalf of Buyer and given to Sellers on or before the **Title Objection Deadline** (§2d), or within five (5) business days after receipt by Buyer of any change to the Title Documents or endorsement(s) to the Title Commitment together with a copy of the 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. Sellers shall deliver to the City Attorney, on or before the **Off-Record Matters Deadline** (§2d Item No. 3), true copies of all lease(s), agreement(s), contract(s), notice(s) and surveys in Sellers' possession pertaining to or affecting the Property and shall disclose to the City Attorney all easements, liens or other title matters (including, without limitation, rights of first refusal and options) not shown by the public records of which Sellers have actual knowledge. The documents and information referred to in the preceding sentence shall constitute "Off-Record Matters." Buyer shall have the right to inspect the Property to determine if any third party(s) has any right in the Property not shown by the public records (such as an unrecorded easements, unrecorded lease, or boundary line discrepancies). Written notice of any unsatisfactory condition(s) disclosed by Sellers or revealed by such inspection(s) shall be signed by or on behalf of Buyer and mailed to Sellers on or before the **Off-Record Matters Objection Deadline** (§2d Item No. 4). If Buyer does not mail Buyer's notice by said date, Buyer shall be deemed to have accepted the condition of title subject to such rights, if any, of third parties of which Buyer has actual notice.

c. Right to Object, Cure. If Sellers receive notice of unmerchantability of title or any other unsatisfactory title condition(s) as provided in §6a and 6b above, Sellers shall use reasonable efforts to correct said items and bear any nominal expense(s) to correct the same prior to Closing. If such unsatisfactory title condition is not corrected to Buyer's satisfaction on or before Closing, this Contract shall then terminate; provided, however, Buyer may, by written notice given to Sellers on or before Closing, waive objection to such items.

7. **PROPERTY DISCLOSURE AND INSPECTION.**

a. Sellers' Property Disclosure. On or before **Sellers' Property Disclosure Deadline** (§2d Item No. 5), Sellers agree to provide the City Attorney with a written disclosure of any and all adverse matters regarding the Property of which Sellers have current and actual knowledge.

b. Inspection. After Sellers have accepted this Contract, Buyer shall have the right, at Buyer's expense, to conduct inspections of the physical condition of the Property ("Inspections"). The Inspections may include, but not be limited to, boundary surveys,

126 engineering surveys, soil samples and surveys, and environmental surveys which
127 including sampling and testing of building materials.

128
129 **c. Inspection Objection Deadline.** If the physical condition of the Property is
130 unsatisfactory as determined by Buyer's sole and subjective discretion, Buyer shall, on or
131 before Inspection Objection Deadline (§2d Item No. 6) either:

- 132
133 (1) notify Sellers in writing that this Contract is terminated, in which case all
134 payments and things of value received hereunder shall be returned to Buyer, or
135
136 (2) provide Sellers with a written description of any unsatisfactory physical condition
137 which Buyer requires Sellers to correct, at no cost or expense to Buyer, before the
138 Resolution Deadline ("Notice to Correct").
139

140 **d. Resolution Deadline.** If a Notice to Correct is received by Sellers and if Buyer
141 and Sellers have not agreed in writing to a settlement thereof on or before **Resolution**
142 **Deadline** (§2d Item No. 7), this Contract shall terminate and all payments and things of
143 value received hereunder shall be returned to Buyer, unless before such termination
144 Sellers receive Buyer's written withdrawal of the Notice to Correct.
145

146 **e. Representations and Warranties Regarding Environmental Matters.**

- 147
148 (1) Sellers represent and warrant that:
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150 (a) Sellers have no current and actual knowledge of any Hazardous Material at,
151 upon, under or within the Property or, to the best of Sellers' knowledge, within
152 any contiguous real estate and
153
154 (b) Sellers shall not cause or permit to be introduced any Hazardous Material at,
155 upon, under or within the Property from now until Closing.
156
157 (2) The term "Hazardous Material" for the purposes of this Contract means:
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159 (a) any hazardous or toxic substance, material or waste, including, but not limited
160 to, those substances, materials, and wastes listed in the United States
161 Department of Transportation Hazardous Material Table (49 CFR 172.101) or
162 by the Environmental Protection Agency as hazardous substances (40 CFR
163 Part 302) and amendments thereto and replacements therefor; or
164
165 (b) such substances, materials or wastes as are regulated by the Resource
166 Conservation and Recovery Act of 1976 (RCRA) or the Comprehensive
167 Environmental Response, Compensation and Liability Act of 1980
168 (CERCLA) or any amendments thereto or orders, and regulations, directions,
169 or requirements thereunder; or
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171 (c) "underground storage tanks," "petroleum," "petroleum by products,"
172 "regulated substance," "oil" or "used oil" as defined by Colorado law,
173 including §25-7-101 et seq.; or
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- (d) "hazardous waste" as defined by the Colorado Waste Act, C.R.S. §25-15-101 et seq., or by any regulations promulgated thereunder; or
- (e) Any substance the presence of whether on, in or under the Property is prohibited by any law similar to those set forth above; or
- (f) Any other substance which by law, regulation or ordinance requires special handling in its collection, storage, treatment or disposal.

- (3) Notwithstanding the definition set forth above, for purposes of this Contract, the term "Hazardous Material" does not include asbestos or asbestos containing materials in the building or fixtures on the Property or lead paint, if any, on the Property as of the date of this Contract.
- (4) To the best of Sellers' knowledge, as of the date of this Contract and as of the date of Closing, the Property (including land, surface water, ground water and improvements) is now and will then be free of all Hazardous Materials as defined herein.
- (5) Buyer represents and warrants that the completion of the Closing by Buyer shall evidence Buyer's acceptance of the physical condition, including the environmental condition, of the Property WHERE IS, AS IS, without warranty or representation from Sellers except as expressly stated in this Section 7.

f. Damage; Liens; Indemnity. Buyer is responsible for payment for all inspections, surveys, engineering reports or any other work performed at Buyer's request. Buyer shall pay for any damage which occurs to the Property as a result of such activities if Closing does not occur. Buyer shall not permit claims or liens of any kind against the Property for inspection, surveys, engineering reports and for any other work performed on the Property at Buyer's request if Closing does not occur. Buyer agrees to hold Sellers harmless from and against any liability, damage, cost or expense incurred by Sellers in connection with the Inspections. If Buyer has not acted in good faith or reasonably, Sellers may recover reasonable costs and expenses incurred by Sellers to enforce this subsection, including Sellers' reasonable attorney fees. The provisions of this subsection shall survive the termination of this Contract.

8. CLOSING. Delivery of deed from Sellers to Buyer shall be at Closing ("Closing"). Closing shall be on the date specified as **Closing Date** (§2d Item No. 8) or at an earlier date upon request of Buyer. The hour and place of Closing shall be as designated by mutual agreement between Sellers and Buyer.

9. TRANSFER OF TITLE. Subject to terms and provisions hereof, Sellers shall execute and deliver a good and sufficient General Warranty Deed (**Attachment "A"**) to Buyer, at Closing, conveying the Property free and clear of all taxes except the general taxes for the year of Closing. 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:

- 223 a. those specific Exceptions described by reference to recorded documents as
224 reflected in the Title Documents accepted by Buyer in accordance with §6a (Title
225 Review);
226
227 b. the Off-Record Matters and those specifically described rights of third parties not
228 shown by the public records of which Buyer has actual knowledge and which were
229 accepted by Buyer in accordance with §6b (Matters not Shown by the Public Records);
230 and
231
232 c. inclusion of the Property within any special taxing district.
233

234 **10. PAYMENT OF ENCUMBRANCES.** Any encumbrance required to be paid shall be
235 paid at or before Closing from the proceeds of this transaction or from any other source.
236

237 **11. CLOSING COSTS; DOCUMENTS AND SERVICES.** Buyer and Sellers shall pay, in
238 Good Funds, their respective Closing costs and all other items required to be paid at Closing,
239 except as otherwise provided herein. Buyer and Sellers shall sign and complete all customary or
240 reasonably required documents at or before Closing. Fees for real estate closing services shall be
241 paid at Closing by One-Half by Buyer and One-Half by Sellers. Any sales, use or other tax that
242 may accrue because of this transaction shall be paid when due by the party so responsible under
243 applicable law.
244

245 **12. PRORATIONS.** The following shall be prorated to the **Closing Date** (§8), except as
246 otherwise provided:
247

248 a. **Personal Property Taxes.** Personal property taxes, if any, shall be paid by
249 Sellers;
250

251 b. **General Real Estate Taxes.** General real estate taxes shall be prorated to the
252 Closing Date based on the most recent mill levy and the most recent assessment;
253

254 c. **Final Settlement.** Unless otherwise agreed in writing, these prorations shall be
255 final.
256

257 **13. POSSESSION.** Possession of the Property shall be delivered to Buyer on **Possession**
258 **Date** (§2d Item No. 10), free and clear of any and all leases and tenancies.
259

260 If Sellers, after Closing, fail to deliver possession as specified, Sellers shall be subject to
261 eviction and shall be additionally liable to Buyer for payment of \$150.00 per day from the
262 **Possession Date** (§2d Item No. 10) until possession is delivered.
263

264 **14. NOT ASSIGNABLE.** This Contract shall not be assignable by Buyer without Sellers'
265 prior written consent. Except as so restricted, this Contract shall inure to the benefit of and be
266 binding upon the heirs, personal representatives, successors and assigns of both parties.
267

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

271 event the Property shall be damaged by fire or other casualty prior to Closing, Sellers shall not be
272 obligated to repair any damage prior to Closing.
273

274 **16. LEGAL AND TAX COUNSEL; AMBIGUITIES.**

275
276 a. Buyer and Sellers have each obtained the advice of its/their own legal and tax
277 counsel regarding this Contract or have knowingly declined to do so.
278

279 b. The parties agree that the rule of construing ambiguities against the drafter shall
280 have no application to this Contract.
281

282 **17. TIME OF THE ESSENCE, DEFAULT AND REMEDIES.** Time is of the essence
283 hereof. If any payment due hereunder is not paid, honored or tendered when due, or if any other
284 obligation hereunder is not performed or waived as herein provided, there shall be the following
285 remedy:
286

287 a. **If Buyer is in Default:** Sellers may elect to treat this Contract as cancelled, in
288 which case all payments and things of value received hereunder shall be forfeited and
289 retained on behalf of Sellers, and Sellers may recover such damages as may proper, or
290 Sellers may elect to treat this contract as being in full force and effect and Sellers shall
291 have the right to specific performance plus its reasonable attorneys' fees.
292

293 b. **If Sellers are in Default:** Buyer may elect to treat this Contract as cancelled, in
294 which case all payments and things of value received hereunder shall be returned and
295 Buyer may recover such damages as may be proper, or Buyer may elect to treat this
296 Contract as being in full force and effect and Buyer shall have the right to specific
297 performance plus its reasonable attorneys' fees.
298

299 **18. MEDIATION.** If a dispute arises relating to this Contract, prior to or after Closing, and
300 is not resolved, the parties shall first proceed in good faith to submit the matter to mediation.
301 Mediation is a process in which the parties meet with an impartial person who helps to resolve
302 the dispute informally and confidentially. Mediators cannot impose binding decisions. The
303 parties to the dispute must agree before any settlement is binding. The parties will jointly appoint
304 an acceptable mediator and will share equally in the cost of such mediation. The mediation,
305 unless otherwise agreed, shall terminate in the event the entire dispute is not resolved thirty (30)
306 calendar days from the date written notice requesting mediation is sent by one party to the other
307 at the party's last known address. This section shall not alter any date in this Contract, unless
308 otherwise agreed in writing.
309

310 **19. TERMINATION.** In the event this Contract is terminated, all payments and things of
311 value received hereunder shall be returned and the parties shall be relieved of all obligations
312 hereunder, subject to §7f (Damage; Liens; Indemnity), §17b (If Sellers are in Default), and §18
313 (Mediation).
314

315 **20. ADDITIONAL PROVISIONS.**

316
317 **DDA Board Ratification.** The execution of this Contract by the Executive Director of
318 the Buyer and Buyer's obligation to proceed under its terms and conditions is expressly

319 conditioned upon, and subject to, the formal ratification, confirmation and acceptance by Buyer's
320 Board of Directors. In the event such ratification, confirmation and consent is not obtained on or
321 before the **Board Approval Deadline** §2d Item No. 9, this Contract shall automatically
322 terminate and both parties shall thereafter be released from all obligations hereunder.
323

324 **21. ENTIRE AGREEMENT; SUBSEQUENT MODIFICATION; SURVIVAL.** This
325 Contract constitutes the entire agreement between the parties relating to the subject hereof and
326 any prior agreements pertaining thereto, whether oral or written, have been merged and
327 integrated into this Contract. No subsequent modification of any of the terms of this Contract
328 shall be valid, binding upon the parties or enforceable unless made in writing and signed by the
329 parties. Any obligation in this Contract that, by its terms, is intended to be performed after
330 termination or Closing shall survive the same.
331

332 **22. FACSIMILE.** Signatures may be evidenced by facsimile. Documents with original
333 signatures shall be provided to the other party at Closing or earlier upon request of any party.
334

335 **23. NOTICE.** Except for the notice requesting mediation described in §18, any notice to
336 Buyer shall be effective when received by Buyer and any notice to Sellers shall be effective
337 when received by Sellers.
338

339 **24. ACCEPTANCE; COUNTERPART.** This proposal shall expire unless accepted in
340 writing, by Buyer and Sellers, as evidenced by their signatures below and the offering party
341 receives notice of such acceptance pursuant to §23 on or before Acceptance Deadline Date (§2d
342 Item No. 11). If accepted, this document shall become a contract between Sellers and Buyer,
343 subject to ratification by the DDA Board of Directors. A copy of this document may be executed
344 by each party, separately, and when each party has executed a copy thereof, such copies taken
345 together shall be deemed to be a full and complete contract between the parties.
346

347 **The Grand Junction Downtown Development Authority, a political subdivision of the State**
348 **of Colorado, Buyer:**

349
350 By: [Signature] May 11, 2006
351 Harold Stalf, Executive Director Date of Buyer's signature
352

353 **Buyer's Address:** 248 S. 4th Street, Grand Junction, CO 81501
354 **With Copy to:** Grand Junction City Attorney, 250 North 5th Street, Grand Junction, CO 81501
355

356 **Buyer's Telephone Number:** (970) 245-9697
357 **City Attorney's Telephone Number:** (970) 244-1503
358 **City Attorney's Fax No.:** (970) 244-1456

[Handwritten initials]
359
360

361 **Acceptance by Berta D. Gardner, Marilyn D. Kotich ^{AND} and ~~Edith Plagg~~, Sellers:**
362 By: [Signature] May 10, 2006
363 Berta D. Gardner Date of Seller's signature
364

365 **Seller's Address:** 212 ALCOVE DR., JTI, CO 81503

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Seller's Telephone Number: 242.3955
Seller's Fax No.: NONE

By: Marilyn D. Kotich _____, 2006
Marilyn D. Kotich _____ Date of Seller's signature

Seller's Address: 212 ~~ACTMOYED TRAIL~~, FT COLLINS, CO 80520
Seller's Telephone Number: 970.482.5927
Seller's Fax No.: NONE

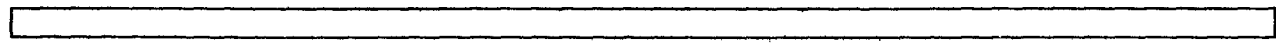
By: _____, 2006
~~Edith Flegg~~ _____ Date of Seller's signature

Seller's Address:
Seller's Telephone Number:
Seller's Fax No.:

25. COUNTER; REJECTION. This offer is Countered Rejected.

Initials only of party or parties (Buyer or Sellers) who countered or rejected offer: _____

END OF CONTRACT



MDK