

RESOLUTION NO. 101-07

**A RESOLUTION AUTHORIZING THE SALE CONTRACT FOR A PORTION OF THE  
PROPERTY LOCATED AT 2741 D ROAD, GRAND JUNCTION, COLORADO**

**RECITALS:**

By Resolution 150-05 the City Council authorized the purchase of property from Parkerson Brothers LLC for the Riverside Parkway project.

That contract among other things provided that the City would convey a remnant parcel back to Parkerson once the final alignment was determined for the Parkway. The price for that conveyance was established at ninety-one thousand (\$91,000.00) dollars.

The Parkway construction in the vicinity of the property has been completed and accordingly the remnant parcel may be conveyed in accordance with the attached contract.

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

1. The property described in the attached contract shall be conveyed to Parkerson Brothers LLC for a price of ninety-one thousand (\$91,000.00) dollars.
2. All actions heretofore taken by the officers, employees and agents of the City relating to the sale of the property which are consistent with the provisions of the negotiated Agreement for Purchase and Sale of Real Property and this Resolution are hereby ratified, approved and confirmed.
3. The officers, employees and agents of the City are hereby authorized and directed to take all actions necessary or appropriate to complete the sale of the described property. Specifically, City staff is directed to effectuate this Resolution and the agreement, including the execution and delivery of the deed and such documents as are necessary to complete the sale.

DATED this 18<sup>th</sup> day of July 2007.

/s/: Bonnie Beckstein  
President of the Council Pro Tem  
City of Grand Junction, Colorado

Attest:

/s/: Stephanie Tuin  
Stephanie Tuin  
City Clerk

# AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY

This AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY (the "Agreement") is made and entered into by and between **PARKERSON BROTHERS, LLC, a Colorado limited liability company**, of 710 South 15<sup>th</sup> Street, Grand Junction, CO 81501 ("Purchaser" or "Buyer") and **CITY OF GRAND JUNCTION, a Colorado home-rule municipality**, of 250 North 5<sup>th</sup> Street, Grand Junction, CO 81501 ("Seller").

## ARTICLE I CONTRIBUTION AND ACCEPTANCE

1.1 The Property. Subject to the terms and provisions hereof, Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, title to the real property described as follows:

See Exhibit "A" attached hereto and by this reference incorporated herein (the "Property")

together with all tangible and intangible personal property of any kind attached to, located at or used exclusively in connection with the Property, including without limitation the following, if any, owned by Seller or in which Seller has an interest:

(a) All of Seller's right, title and interest, insofar as it relates to the Property, in and to all contracts or agreements, indemnities and claims, surveys, soil tests, market studies, traffic studies, plats, plans, landscape plans, engineering data, architectural and engineering plans and specifications, environmental studies, endangered species and regulatory reports, drawings, feasibility studies and other reports of any kind, character or description prepared for use in connection with the Property, in the possession of or under the control of Seller;

(b) The non-exclusive right to use any permits, licenses, options, development plans, planning and zoning rights or other similar items related to the Property, to the extent transferable.

All property referred to in subsection (a) and (b) is referred to as the Personalty. The Personalty and the Property are collectively referred to as the Property.

1.2 Effective Date. The "Effective Date" of this Agreement shall be the date which is the last date of execution by Seller and Buyer.

## ARTICLE II PURCHASE PRICE

2.1 Purchase Price. The purchase price for the Property shall be Ninety-One Thousand Dollars (\$91,000) ("Purchase Price"), to be paid by Purchaser to Seller as follows:

(a) Earnest Money Deposit. Within five (5) business days of execution of this Agreement, Buyer will deliver to Abstract & Title Co. of Mesa County, Inc. ("Title Company"), the sum of \$5,000 ("Earnest Money Deposit"). If Buyer terminates this Agreement pursuant to Article V, the Title Company shall refund the Earnest Money Deposit to Buyer. If Buyer does not terminate this Agreement pursuant to Article V, then the Earnest Money Deposit shall be held by the Title Company as a partial payment of the Purchase Price, which shall be

non-refundable to Buyer except (i) in the event of Seller's default under this Agreement or (ii) as provided in Article III, VI and VII. At Closing, the Title Company shall deliver to Seller the entire Earnest Money Deposit.

(b) Cash at Closing. Buyer shall pay to Seller at Closing the balance of the purchase price of \$86,000, in the form of cash, wire transfer, or certified funds.

### ARTICLE III SURVEY AND TITLE MATTERS

3.1 Survey. Within five (5) business days from the Effective Date, at Seller's sole cost and expense, Seller shall provide to Buyer a survey (herein the "Survey") of the Property, prepared by a licensed surveyor or registered professional engineer and shall furnish the Title Company with copies of such survey.

3.2 Title Commitment Review. Within ten (10) business days from the Effective Date, Seller shall, at its sole cost and expense, furnish to Buyer a current commitment (hereinafter called the "Title Commitment") for the issuance of an owner's policy of title insurance in the amount of \$91,000 to Buyer from the Title Company, together with good legible copies of all documents constituting exceptions to Seller's title. Buyer shall have a period equal to the Inspection Period in which to review such items and to deliver to Seller in writing such objections as Buyer may have to anything contained or set forth in the Title Commitment or Survey. Any items to which Buyer does not object within the Inspection Period shall be deemed to be "Permitted Exceptions." As to items to which Buyer makes objection, Seller shall have the right, but not the obligation, to attempt to effectuate the cure of such objections. In the event Seller is not able to cure such matters prior to Closing, Buyer shall have the right to either (i) terminate this Agreement, in which event neither party hereto shall have any further obligations hereunder, or (ii) waive such title matters and proceed to Closing, whereupon such waived title matters shall also be deemed "Permitted Exceptions." In the event Buyer terminates this Agreement pursuant to the provisions of this Section 3.2, the Earnest Money Deposit shall be returned to Buyer.

If following the title review period, any new title matters are reflected in an update to the Title Commitment, then at Buyer's sole option, Buyer may approve such new title matter as an additional Permitted Exception, or Buyer may object to such new title matter. If Buyer objects to a new title matter, then the provisions for Seller cure and the provisions for Buyer's remedies in the event Seller is not able to cure, as set forth in the preceding paragraph, shall apply to such new title matter.

3.3 Title Policy. At Closing, Seller shall furnish Buyer, at Seller's sole cost and expense, with an owner's title insurance policy issued by the Title Company, in an amount equal to the Purchase Price, on standard ALTA Policy Form B 1992, insuring good and indefeasible title to the Property in Buyer, subject only to the Permitted Exceptions and meeting the following criteria:

(a) The standard exceptions relating to parties in possession, unrecorded easements, survey matters, mechanics liens, the gap period and unpaid taxes and assessments prior to the year of closing shall be deleted;

(b) The policy shall include all endorsements requested by Buyer, but Buyer shall pay for the cost of such endorsements.

All exceptions, conditions or requirements described in Schedule B-1 of the Title Commitment shall be released and/or satisfied prior to or at Closing and such items and requirements shall not be exceptions to the owner's title insurance policy to be provided by Seller.

#### **ARTICLE IV ADDITIONAL ITEMS TO BE FURNISHED TO BUYER BY SELLER**

4.1 Submission Items. Within five (5) business days from the Effective Date, Seller shall furnish to Buyer, except to the extent previously delivered, the following:

(a) Copies of all soil, demographic and engineering reports in Seller's possession or control, and copies of any reports or studies (including, without limitation, endangered species, wetlands studies, environmental studies or impact reports, approvals, conditions, orders or declarations, and physical inspection reports of employees, principals, consultants, governmental authorities or insurance carriers) in Seller's possession or control in respect of the physical condition or operation of the Property.

(b) Copies of any and all engineering reports, inspection reports, notices or other materials in Seller's possession or control, regarding or evidencing the presence, or lack thereof, on the Property or released from the Property of any Hazardous Substances (hereinafter defined). As used herein, "Hazardous Substances" shall mean and include, but shall not be limited to, all substances and materials which are included under or regulated by any local, state or federal law, rule or regulation, pertaining to environmental regulation contamination, clean-up or disclosure ("Applicable Environmental Laws"), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601 et seq.), the Resource, Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99-499 100 Stat. 1613), the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.), the Emergency Planning and Community Right to Know Act of 1986 (42 U.S. C. § 1101 et seq.) and all amendments of the foregoing, or any state superlien or environmental clean-up or disclosure statutes. Without limiting the foregoing, the term Hazardous Substances shall include asbestos, polychlorinated biphenyls, petroleum products and raw materials which include hazardous constituents.

#### **ARTICLE V INSPECTION**

5.1 Inspection Period. Buyer shall have thirty (30) days after the Effective Date (the "Inspection Period") within which to review all of the Submission Items and to make any physical inspections and to conduct any audits of the Property as may be desired by Buyer. If, within the Inspection Period, Buyer determines that Buyer does not desire to close this Agreement for any reason whatsoever in Buyer's sole discretion, Buyer may give written notice of such fact to Seller on or before the last day of the Inspection Period. In that event, this Agreement shall immediately terminate without further liability on the part of Buyer or Seller and the Earnest Money Deposit shall be returned to Buyer.

5.2 Indemnity Buyer hereby indemnifies and holds Seller, and its agents, officers, managers and members, harmless from and against any loss, damage, injury, claim or cause of action, including all reasonable expenses related thereto (including reasonable attorneys' fees), Seller may suffer or incur as a result of Buyer's physical inspections of the Property undertaken pursuant to this Agreement. However, Buyer's indemnity will not cover any loss or damage

resulting from the Buyer's discovery or disclosure of information relating to the condition of the Property during the Inspection Period or thereafter.

## **ARTICLE VI COVENANTS, REPRESENTATIONS AND WARRANTIES OF PARTIES**

6.1 Seller Representations and Warranties. Seller represents and warrants to Buyer that:

(a) The execution and delivery of this Agreement by Seller is binding on Seller and enforceable against Seller in accordance with its terms. No consent to such execution, delivery and performance is required from any lender, creditor, investor, judicial or administrative body, governmental authority or other party. Neither the execution of this Agreement nor the consummation of the transactions contemplated hereby will violate any restriction, court order or agreement to which Seller or the Property is subject.

(b) There are no attachments, executions, assignments for the benefit of creditors, receiverships, conservatorships or voluntary, or involuntary proceedings in bankruptcy or pursuant to any other debtor relief laws contemplated or filed by Seller or pending against Seller or the Property.

(c) Seller is not a "foreign person" but is a "United States person" as such terms are defined in the Internal Revenue Code of 1986, as amended (the "Code").

(d) There are no parties in possession of any portion of the Property except for Seller, and except any parties in possession pursuant to recorded easements, if any.

(e) No portion of the Property is subject to a right of first refusal or similar contractual right, there are no oral leases or agreements relating to the use or possession of the Property, and there are no written agreements affecting the Property that have not been recorded in the real estate records or have not been delivered to Buyer.

(f) There is no suit, action, legal or other proceeding pending, or to Seller's best knowledge, threatened, which affect the Property.

(g) There are no pending or, to Seller's best knowledge, threatened, requests, applications or proceedings to alter or restrict the zoning or other use restrictions applicable to the Property; Seller has received no notice from any municipal, state, federal or other governmental authority of zoning, building, fire, water, use, health, environmental or other statute, ordinance, code or regulatory violations issued in respect of the Property which have not been heretofore corrected and, to the best of Seller's knowledge, no such violations exist.

(h) All items delivered or to be delivered by Seller pursuant to this Agreement are and will be true, correct and complete in all respects and fairly present the information set forth in a manner that is not misleading.

6.2 Covenants. In addition to Seller's other agreements and undertakings hereunder, Seller hereby covenants and agrees with Buyer that, at Seller's sole cost and expense:

(a) Seller will promptly notify Buyer in writing of any violation, alleged violation or anticipated violation, of any law, regulation, ordinance, order or other requirement of any governmental authority having jurisdiction over or affecting the Property, or any part thereof, of which it gains knowledge or is notified, and will cure any such violation of which it gains knowledge or is notified prior to the Closing.

(b) Seller will promptly pay and discharge all fees, costs, taxes and expenses which are or could become liens or charges against the Property and which are incurred with respect to periods prior to the Closing.

6.3 Closing Updates. At Closing, Seller shall provide to Buyer a Seller Closing Certificate which shall certify, represent and warrant to Buyer, as of the date of Closing, (i) that each and every of the covenants contained in Section 7.2 of this Agreement has been fully satisfied, and (ii) that each and every of the representations and warranties contained in Section 7.1 of this Agreement are and continue to be true and correct on the date of Closing. Each of the representations, warranties and covenants, as reiterated in Seller Closing Certificate, shall survive the Closing and continue in full force and effect notwithstanding the Closing and consummation of the sale contracted for herein. Buyer's sole remedy in the event that Seller discloses a change of condition, prior to Closing, with respect to any such representation or warranty shall be to terminate this Agreement in which case the parties will be released from any further liability under this Agreement and the Earnest Money Deposit shall be returned to Buyer.

6.4 Buyer Representations and Warranties. Buyer represents and warrants to Seller that:

(a) The execution and delivery of this Agreement by Buyer is binding on Buyer and enforceable against Buyer in accordance with its terms. No consent to such execution, delivery and performance is required from any lender, creditor, investor, judicial or administrative body, governmental authority or other party. Neither the execution of this Agreement nor the consummation of the transactions contemplated hereby will violate any restriction, court order or agreement to which Buyer or the Property is subject.

(b) There are no attachments, executions, assignments for the benefit of creditors, receiverships, conservatorships or voluntary or involuntary proceedings in bankruptcy or pursuant to any other debtor relief laws contemplated or filed by Buyer or pending against Buyer or the Property.

(c) There is no suit, action, legal or other proceeding pending, or to Buyer's best knowledge, threatened, which affect the Buyer's ability to consummate the transaction contemplated by this Agreement.

(d) By closing the transaction contemplated hereby, Buyer acknowledges that it has made or will have made all such independent inspections, investigations and inquiries as it deems necessary concerning the Property including, but not limited to, zoning, classifications, suitability for intended use, location of property boundaries, easements and rights-of-way, the status of utility extensions and availability of utilities, compliance with governmental laws, rules and regulations affecting the Property (including, without limitation, laws relating to land use, environmental conditions and health or safety). Except as specifically set forth in the Agreement, Seller, its members, officers and agents have made no representations, warranties or covenants with respect to the condition of any portion of the Property. Buyer further acknowledges that in

the event it acquires the Property, it will be doing so in its then present condition, "AS IS" without further alteration, remediation, development of infrastructure or other improvement. The foregoing disclaimer shall not apply to or in any way diminish the warranties of title contained in the Special Warranty Deed to be delivered at closing.

## **ARTICLE VII CLOSING**

7.1 Time and Place. The date of the exchange of documents (the "Closing") hereinafter described shall take place at the offices of the Title Company. The Closing shall occur on \_\_\_\_\_, 200 \_\_\_\_, or on such earlier date as may be mutually agreed upon by Seller and Buyer in writing.

7.2 Seller Delivery. At the Closing, Seller shall deliver or cause to be delivered to Buyer, at Seller's sole cost and expense, each of the following items:

(a) A special warranty deed, duly executed and acknowledged by Seller, conveying good and indefeasible fee simple title in the Property to Buyer, subject only to the Permitted Exceptions.

(b) A bill of sale and assignment duly executed and acknowledged by Seller conveying good and indefeasible title to the Personalty, if any, to Buyer.

(c) A Seller Closing Certificate, as described in Section 7.3, duly executed and acknowledged by Seller.

(d) Affidavits in a form acceptable to Buyer from Seller stating that Seller is not a "foreign person" as defined in the Internal Revenue Code, and such other information as may be required by the Internal Revenue Code.

(e) The owner's title insurance policy in the form specified in Section 3.3 hereof or a specimen format.

(f) An affidavit(s) as to debts, liens and parties in possession in the form customarily used by the Title Company, addressed to each of Buyer and the Title Company, and executed by Seller.

(g) Possession of the Property to Buyer.

(h) Any other additional documents and instruments as in the mutual opinion of Buyer's counsel and Seller's counsel are reasonably necessary to the proper consummation of this transaction.

7.3 Buyer Delivery. At the Closing, Buyer shall deliver to Seller the balance of the Purchase Price, after credit for the Earnest Money Deposit. Buyer shall also deliver any other additional documents and instruments as in the mutual opinion of Buyer's counsel and Seller's counsel are reasonably necessary to the proper consummation of this transaction.

7.4 Adjustments and Prorations. At Closing, the following items shall be adjusted or prorated between Seller and Buyer:

(a) Ad valorem taxes for the Property for the calendar year of Closing. Such proration shall be based upon the ad valorem taxes for the Property for immediately preceding calendar year.

(b) Any other assessments or obligations relating to the Property shall be prorated to the Closing.

## **ARTICLE VIII ADDITIONAL PROVISIONS**

8.1 Indemnity. Each party hereto represents to the other that such respective party has not authorized any broker or finder to act on such party's behalf in connection with the transaction described herein. Each party hereto agrees to indemnify and hold harmless the other party from and against any and all claims, losses, damages, costs or expenses of any kind or character arising out of or resulting from any agreement, arrangement or understanding alleged to have been made by such party with any broker or finder in connection with this Agreement or the transaction contemplated hereby. This obligation shall survive the closing or any earlier termination of this Agreement.

8.2 Special District Disclosure. 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 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.

## **ARTICLE IX REMEDIES OF DEFAULT**

9.1 Seller Default. Seller shall be in default hereunder upon the occurrence of any one or more of the following events:

(a) except as provided in Section 7.3 above with respect to a disclosure by Seller of a change of condition, any of Seller's warranties or representations set forth herein are materially untrue or inaccurate in any respect; or

(b) Seller shall fail to meet, comply with or perform any covenant, agreement, or obligation within the time limits and in the manner required in this Agreement.

In the event of a default by Seller of the type described in 10.1(b) above, Buyer may, at Buyer's sole option, do either of the following:

(a) terminate this Agreement by written notice delivered to Seller at or prior to the Closing in which event the Earnest Money Deposit shall be returned to Buyer; or

(b) enforce specific performance of this Agreement against Seller.



Buyer shall not be required to tender performance hereunder prior to exercising the remedies set forth in this Section 10.1. In the event of a default by Seller of the type described in 10.1(a) above, Buyer may, in addition to and not to the exclusion of any other remedy at law or equity available to Buyer, bring an action against Seller for monetary damages.

9.2 Buyer Default. Unless this Agreement is terminated by Buyer in accordance with the specific provisions hereof, Buyer shall be in default hereunder if Buyer fails to meet, comply with or perform any covenant, agreement, or obligation within the time limits and in the manner required in this Agreement. In the event of a default by Buyer hereunder, Seller, as Seller's sole and exclusive remedy for such default, shall receive the Earnest Money Deposit as liquidated damages, and both parties shall be released from all obligations under this Agreement.

## **ARTICLE X MISCELLANEOUS**

10.1 Notices. All notices, demands, or other communications of any type (herein collectively referred to as "Notices") given by Seller to Buyer or by Buyer to Seller, whether required by this Agreement or in any way related to the transactions contracted for herein, shall be void and of no effect unless given in accordance with the provisions of this Section 11.1. All notices shall be in writing and delivered to the person to whom the notice is directed, either in person (provided that such delivery is confirmed by the courier delivery service), or by overnight delivery service with proof of delivery, or by United States Mail, postage prepaid, as a Registered or Certified item, Return Receipt Requested. Notices delivered by personal delivery shall be deemed to have been given at the time of such delivery and notices delivered by mail shall be effective five (5) days following the deposit of such mail in a Post Office or other depository under the care or custody of the United States Postal Service, enclosed in a wrapper with proper postage affixed and addressed, as provided below. Notice may additionally be provided by facsimile transmission so long as a copy of such notice is simultaneously forwarded by one of the other means described above. Any party hereto may change the address for notice specified above by giving the other party ten (10) days advance written notice of such change of address.

10.2 Governing Law and Forum. This Agreement shall be construed and interpreted in accordance with the laws of the State of Colorado.

10.3 No Oral Modification. This Agreement may not be modified or amended, except by an agreement in writing signed by both Seller and Buyer.

10.4 No Oral Waiver. The parties may waive any of the conditions contained herein or any of the obligations of the other party hereunder, but any such waiver shall be effective only if in writing and signed by the party waiving such conditions or obligations.

10.5 Time of Essence. Time is of the essence of this Agreement.

10.6 Attorneys' Fees. In the event it becomes necessary for either party hereto to commence legal action or any alternative dispute resolution proceeding to enforce this Agreement or any provisions contained herein, the party prevailing in such action shall be entitled to recover, in addition to all other remedies or damages, reasonable attorneys' fees and court costs incurred by such prevailing party in such suit.

10.7 Headings. The descriptive headings of the various Articles and Sections contained in this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

10.8 Total Agreement. This Agreement, including any Exhibits hereto, the Title Commitment, Survey, and the items to be furnished in accordance with Article IV hereof, constitutes the entire agreement among the parties pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings of the parties in connection therewith. No representation, warranty, covenant, agreement or condition not expressed in this Agreement shall be binding upon the parties hereto or shall affect or be effective to interpret, change or restrict the provisions of this Agreement; provided, however, that all certifications, representations and warranties of the parties contained in the statements and schedules to be furnished pursuant to Article VII shall become a part of this Agreement as though set forth herein.

10.9 Counterpart Execution. To facilitate execution, this Agreement may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this Agreement to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of each of the parties hereto. Any signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature pages. In addition, signatures may be executed by facsimile, with original signatures to follow in a reasonable time.

10.10 Holidays. In the event that the date upon which any duties or obligations, hereunder to be performed shall occur upon a Saturday, Sunday or legal holiday, then, in such event, the due date for performance of any duty or obligation shall thereupon be automatically extended to the next succeeding business day.

10.11 Brokers. Neither party has enlisted the assistance of any realtor or broker in connection with this transaction, and each party represents that no commissions or finder's fees are due to any third party as a result of this transaction. Each party agrees to indemnify and hold harmless the other party from liability for any such commissions or fees.

EXECUTED on this the \_\_\_\_\_ day of \_\_\_\_\_, 2006.

"BUYER"

PARKERSON BROTHERS, LLC, a Colorado limited liability company

By: \_\_\_\_\_  
Alan Parkerson, Manager

"SELLER"

CITY OF GRAND JUNCTION, a Colorado home rule municipality

By: \_\_\_\_\_  
Title: \_\_\_\_\_

