

WDC76WAT

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: WATER RIGHTS (CONTRACT)

NAME OF AGENCY OR CONTRACTOR: WATER DEVELOPMENT  
COMPANY BY SOL T. TUTTLE

STREET ADDRESS/PARCEL NAME/SUBDIVISION/PROJECT: RIGHT TO  
DIVERT TWENTY CUBIC FT OF WATER OUT OF THE COLORADO RIVER  
TO THE GRAND JUNCTION COLORADO RIVER PIPELINE, PRIORITY NO  
787, CIVIL ACTION NO 8303, WATER RIGHTS EXCHANGE

CITY DEPARTMENT: PUBLIC WORKS

YEAR: 1976

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

AGREEMENT

Agreement made at Grand Junction, Colorado on the 8th day of May, 1981, between WATER DEVELOPMENT COMPANY, a joint venture ("Development Co.") and the CITY OF GRAND JUNCTION, COLORADO, a municipal corporation ("City").

A. On or about February 23, 1976, Development Co. and the City exchanged certain water rights on the Gunnison and Colorado Rivers. To accomplish such exchange, the City and Development Co. executed the following instruments:

A.1 By instrument of conveyance recorded in Book 1060 at Page 481 in the records of Mesa County, Colorado, the City conveyed the following described water right to Development Co.:

The right to divert twenty (20) cubic feet of water per second of time out of the Colorado River under Priority No. 787, conditional, awarded by the District Court of Mesa County in civil action No. 8303, a supplemental adjudication proceeding pertaining to water rights in former Colorado Water District No. 42) to the Grand Junction-Colorado River Pipeline, which right is now designated as Basin Rank No. 3964, in Water Division No. 5, pursuant to the tabulation dated 10-74, prepared by the office of the State Engineer of Colorado.

(which water right is referred to in this instrument as the "Colorado Right".)

A.2 By ruling of the Referee of Water Division No. 5 entered in Case No. W-2915 on October 27, 1977, subsequently confirmed by the Water Court, the point of diversion of the Colorado Right, as awarded by decree dated July 25, 1959 in Civil Action No. 8303 entered by the District Court of Mesa County, Colorado, was changed to the common headgate of the J. T. Pearce Ditch and W. A. Shelton Ditch. The new point of diversion of the Colorado Right is located on the southerly bank of the Colorado River at a point from which the North Quarter Corner of Section 21, Township 6 South, Range 93 West, 6th P.M., bears South 79°05' East 4,071.9 feet.

A.3 Development Co., by instrument recorded in Book 492 at Page 417 in the records of Gunnison County, Colorado, conveyed to the City the following described water rights:

3.0 c.f.s. of water decreed to the 75 Ditch, Ditch No. 1, under Priority No. 1, dated September 14, 1906, and 3.0 c.f.s. of water decreed to said ditch under Priority No. 273, dated April 29, 1941, out of the Gunnison River in old Water District No. 59; 1.5 c.f.s. of water decreed to the Pioneer Ditch, Ditch No. 5, under Priority No. 5, dated May 1, 1894 and 2.0 c.f.s. of water decreed to said ditch under Priority No. 206, dated April 19, 1943, out of the Tomichi Creek, in old Water District No. 28; 0.5 c.f.s. of water decreed to Hartman No. 2 Ditch, Ditch No. 10, under Priority No. 10, dated May 1, 1884, out of Stubbs Gulch in old Water District No. 28, all in Water Division No. 4, State of Colorado.

(All of which water rights described in this Recital Paragraph A.3 are referred to in this instrument as the "Gunnison Rights".)

B. The parties to this Agreement have concluded that the best interests of each of them would best be served if the City withdraws its Application for change of the Gunnison Rights and sells the Colorado Right to Development Co.

C. Development Co. has agreed to purchase the Colorado Right from the City for the purchase price described in Section 2 of this Agreement.

Therefore, in consideration of their mutual promises and other considerations, the parties agree:

1. Time and Place of Closing.

1.1 Closing of the transaction specified in this Agreement will occur in Grand Junction, Colorado on the 15th business day following approval and ratification of this Agreement by the Council of the City of Grand Junction. If this Agreement is ratified and approved by the Council of Grand Junction, closing will occur on the date specified at 2:00 o'clock P.M. in the offices of Dufford, Waldeck and Williams, Grand Junction, Colorado.

1.2 Within fifteen (15) days after execution of this Agreement, the Manager of the City will submit this Agreement to the Council of City for consideration and approval.

2. Purchase Price. Development Co. agrees to pay City a total purchase price of \$54,810.00 payable as provided in Subsection 3.2 below.

3. Closing. At closing the following will occur:

3.1 City will reconvey the Gunnison Rights to Development Co. by conveyance wherein the City will warrant title to such water rights against all persons, corporations or associations claiming by, through or under the City.

3.2 Development Co. will pay the purchase price in the following manner: At closing, Development Co. will pay City the sum of \$4,810.00 by cash or certified funds. The remaining balance of \$50,000.00 will be paid in five (5) equal annual installments of \$10,000.00 each, plus interest at the rate of ten percent (10%) per annum payable on the installment payment dates. The deferred balance of the sales and purchase price will be represented by Development Co.'s promissory note in the form attached as Appendix A, which note will be secured by mortgage covering the Colorado Right in the form of Appendix B attached to this Agreement.

3.3 The City will convey the Gunnison Rights to Development Co. by form of conveyance which will warrant title to the Gunnison Rights against all persons claiming by, through or under the City.

4. Withdrawal of Application. Within ten (10) days after closing, the City will withdraw its application for change of water right filed in the Water Court for Water Division No. 4 as Case No. W-2788 and take such other action and file such additional pleadings as may be necessary to completely terminate the request for change of point of diversion filed in Case No. W-2788.

5. Use of Colorado Right. Development Co. agrees to hold and use the Colorado Right subject to the terms, conditions and provisions of the Ruling of Referee entered in connection with Case No. W-2915 in the Water Court for Water Division No. 5 on October 27, 1977.

6. Council Approval or Rejection. If the Council of the City of Grand Junction fails to confirm, ratify and approve the terms, conditions and provisions of this instrument when presented to it for its consideration, then this Agreement will, effective the date of the Council's refusal to approve and confirm the terms and conditions hereof, become null and void and the parties restored to the same rights they had prior to execution of this Agreement.

7. Effect of Agreement. The provisions of this instrument shall inure to the benefit of and be binding upon the heirs, personal representatives and successors in interest of the parties.

8. Prior Agreements. If the Council of the City ratifies and approves this Agreement, then the terms and provisions hereof supersede any prior agreements, oral or written, between the City and Development Co. with respect to the water rights described herein.

9. Survival of Certain Provisions. The provisions of Sections 4, 5 and 8 of this Agreement will survive the closing of this transaction, if closing occurs.

ATTEST:

*Mewa B. Lockhart, CMC*  
*City Clerk*

CITY OF GRAND JUNCTION, COLORADO

By *James B. Wypocki*  
Manager

WATER DEVELOPMENT COMPANY

By *Sally Little*

By *Tom Bae*

By *P. Kelly - 5*

PROMISSORY NOTE

\$50,000.00

June 25, 1981  
Grand Junction, CO

In installments as provided below, the undersigned promise to pay to the order of THE CITY OF GRAND JUNCTION, COLORADO at its municipal offices in Grand Junction, Colorado, the principal sum of FIFTY THOUSAND DOLLARS (\$50,000.00), payable in five (5) equal annual installments on the 25th day of June of each year, commencing June 25, 1982, together with interest at the rate of ten percent (10%) per annum payable on the install\_ ment payment dates.

Makers have the right to prepay all or any part of this Note at any time after date.

The Makers, endorsers, sureties and guarantors of this Note severally waive demand, presentment for payment, protest, notice of protest and non-payment of this Note, and all defenses on the grounds of any extension of time for payment that may be given by the holder to them or any of them. If this Note or payments thereon are not paid when due, they agree to pay reasonable attorney's fees and all costs of collection and also waive all exemptions in case of suit thereon.

WATER DEVELOPMENT COMPANY

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_

**Appendix Only  
DO NOT SIGN**

APPENDIX B

REAL ESTATE MORTGAGE

THIS MORTGAGE executed at Grand Junction, Colorado on this 25th day of June, 1981, between WATER DEVELOPMENT COMPANY ("Mortgagor") and THE CITY OF GRAND JUNCTION, COLORADO ("Mortgagee").

1. Grant of Mortgage. For good and valuable consideration of the aggregate sum of \$50,000.00 as stated in the promissory note ("Note") of the same date as this Mortgage, the Mortgagor conveys and grants to the Mortgagee, his successors or assigns, the following described water right and other interests located in Garfield County, Colorado:

The right (presently conditional) to divert 20 c.f.s. of water through the common headgate and point of diversion of the J. T. Pearce Ditch and the W. A. Shelton Ditch, under Basin Rank No. 3964 -- as established by the office of the State Engineer of Colorado by tabulation dated October 1974 (former Water District No. 42, Priority No. 787, conditional). The point of diversion of the water right described above (being the common headgate of the J. T. Pearce Ditch and the W. A. Shelton Ditch) is located at a point on the southerly bank of the Colorado River at a point from which the North Quarter Corner of Section 21, Township 6 South, Range 93 West, 6th P.M., bears South 79°05' East 4,071.9 feet.

(which water right as described above is referred to in this instrument as the "Property").

to have, hold and retain, together with all easements, rights-of-way, improvements, ditches, ditch rights, and other appurtenances located upon or used in connection with the Property, subject to the terms and provisions of this instrument, and subject to the terms and conditions of the Ruling of the Referee of Water Division No. 5 entered in Case No. W-2915, in the Water Court for Division No. 5, on October 27, 1977, and subsequently approved by the Water Court Judge.

2. Warranty of Title. The Mortgagor, for himself and his successors or assigns, warrants to the Mortgagee, his successors or assigns, that the Mortgagor is the owner of the Property and has full power and lawful right to convey and encumber the Property; that the Property is free from all liens and encumbrances (except as specifically stated in this instrument) and that the Mortgagor, his successors or assigns, will make such further assurances and execute such additional documents reasonably necessary to perfect the Mortgagee's lien created by the Mortgage.

3. Payment of Note. If the Mortgagor, his successors or assigns, pays the Note and performs and complies with all of the stipulations, agreements, conditions and provisions of the Note and of this instrument, then this instrument and the lien and estate created by this instrument shall cease and thereafter be null and void.

4. Agreements of Mortgagor. The Mortgagor, for himself and for his successors or assigns, agrees with the Mortgagee, his successors or assigns, as follows:

(a) To pay all sums payable by virtue of the Note and this instrument promptly when such sums become due; and

(b) To pay the taxes, assessments, levies, liabilities, obligations and encumbrances of every nature levied or assessed against the Property. If the same are not promptly paid, the Mortgagee may at any time pay the same without waiving or affecting the option to foreclose or any other rights granted by this instrument. Every payment so made shall bear interest from the date thereof at the rate of 12% per annum; and

(c) To pay the costs, charges and expenses, including attorneys' fees, reasonably incurred or paid at any time by the Mortgagee because of the failure on the part of the Mortgagor to perform and comply with the provisions and conditions of the Note and this instrument, and any such payment shall bear interest from the date of such payment at the rate of 12% per annum. Costs, charges and expenses shall include, but not be limited to, any charges or expenses incurred for payment demands, notices and other charges incurred prior to initiating foreclosure or other proceedings to recover amounts due under the Note or this Mortgage; and

(d) To keep any improvements now or subsequently constructed on the Property insured against damage by fire, windstorm and extended coverage and other insurable risks in reputable insurance companies authorized to do business as such in Colorado, in amounts sufficient to prevent the parties in interest from being or becoming co-insurers of any part of the risk, and to cause such policies to contain a provision naming the Mortgagee as insured, as his interests may appear. If the Mortgagor fails to keep the improvements insured in the foregoing manner, the Mortgagee may place and pay for such insurance or any part thereof without waiving or affecting the option to foreclose or any other rights granted by this instrument. Every such payment shall bear interest from its date at the rate of 12% per annum; and

(e) Not to commit or allow waste, impairment or deterioration of the Property and not create or allow to be created any liens or charges against the Property, (other than general ad valorem taxes) which for any reason would be superior to the lien of this Mortgage; and

(f) Promptly to perform and comply with the stipulations, agreements and conditions in the Note and in this Mortgage.

5. Rights of Mortgagee Upon Default. If Mortgagor defaults in the payment of the indebtedness secured by this Mortgage or in the performance of any obligation required by this instrument, the Mortgagee or the holder of a certificate of purchase shall at once become entitled to the possession, use and enjoyment of the Property, appointment of a Receiver for the Property and to receive the rents and income from the Property. Mortgagee shall be entitled to the rents and income as a matter of right, without regard to the solvency or insolvency of Mortgagor or the then owner of the Property and without regard to the value of the Property as security for payment of the indebtedness due Mortgagee. A Receiver may be appointed by any Court of competent jurisdiction upon



ex parte application and without notice (notice being expressly waived by Mortgagor) and all rents and income from the Property shall be applied by the Receiver (subject to the orders of the Court) to the payment of the indebtedness secured by this instrument.

6. Acceleration of Amount Due. If any of the payments under the Note are not paid, or if the provisions and conditions of the Note and of this instrument are not fully performed by the Mortgagor, then and in either of these events the aggregate unpaid balance of the Note shall become due and payable at the election of Mortgagee as if the aggregate unpaid balance had been originally stipulated to be paid at the time of Mortgagee's election.

7. Additional Provisions. In addition to other rights and options granted to Mortgagee, if Mortgagor sells or contracts to sell the Property, without consent or approval of Mortgagee, then Mortgagee may elect to declare the entire remaining balance of the Note, plus interest and other charges due, due and payable immediately.

8. Protection of Conditional Water Right. Mortgagor agrees to take such action as may be necessary to maintain the water right representing the Property in good standing as a conditional water right and within the time required by law to make the Property an absolute water right. Mortgagor also agrees to comply with all of the terms and conditions stated in the Ruling of the Referee noted in Section 1 of this Mortgage and any subsequent orders or rulings entered by any court of competent jurisdiction relating to the Property.

9. Miscellaneous.

9.1 All benefits and obligations contained herein shall accrue to and be binding upon the respective parties hereto and their respective successors or assigns.

9.2 The debt this Mortgage secures may be prepaid only as provided in the Note.

9.3 Whenever the context of this instrument so requires, reference to the masculine gender shall mean the feminine or neuter gender, as applicable, and the singular shall mean the plural.

DATED this 25th day of June, 1981.

WATER DEVELOPMENT COMPANY

**Appendix Only**  
**DO NOT SIGN**

By \_\_\_\_\_

STATE OF COLORADO )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this 25th day of June, 1981, by Sol T. Tuttle, Corb S. Bedell and P. C. Klingsmith, members of the joint venture, Water Development Company.

Witness my hand and official seal.

My Commission expires: \_\_\_\_\_