

*Liam Rado
property*

CONTRACT TO BUY AND SELL REAL ESTATE
(Seller's Remedy Limited to Liquidated Damages)

THIS CONTRACT TO BUY AND SELL REAL ESTATE is entered into by and between the City of Grand Junction, a Colorado home rule municipality, hereinafter referred to as "the City", and Robert G. Jones, Elizabeth G. Jones, the APA 73 Trust, Larry C. Jones, Martha Jones, William R. Jones and Carol Jones, hereinafter referred to as "the Sellers".

1. The undersigned agent hereby acknowledges having received from the City the sum of \$5,000.00, in the form of a check, to be held by RE/MAX, The Grand Junction Real Estate Group, Inc., broker for the seller, in broker's escrow or trustee account, as earnest money and part payment for the real property described on Exhibit "City-Jones Real Property" attached hereto and incorporated herein by reference, hereinafter referred to as "the Property". Said \$5,000.00 is non-refundable, except as otherwise provided herein, unless the Sellers are unable to deliver merchantable title as set forth herein.

2. Subject to the provisions set forth herein, the City hereby agrees to purchase the Property, and the Sellers agree to sell the Property upon the terms and conditions stated herein.

3. The purchase price for the Property shall be \$648,000.00, payable as follows: \$5,000.00 in earnest money as set forth above; The balance of \$643,000.00 in the form of "good funds" shall be paid at closing. The City and the Sellers each agree to pay their own closing costs according to local custom.

4. The purchase price shall include the Property, all improvements thereon or appurtenant thereto, and any and all other rights appurtenant to the Property, including all water and water rights, ditches and ditch rights, water shares and water stock certificates used on or appurtenant to the Property described on Exhibit "City-Jones Water" attached hereto and incorporated herein by reference, free and clear of all taxes, liens and encumbrances.

5. A current commitment for title insurance policy in an amount equal to the purchase price, at the Sellers' expense, shall be furnished to the City on or before September 8, 1993. The Sellers shall cause the title insurance policy to be delivered to the City after closing and pay the premium thereon.

6. The date of closing shall be the date for delivery of deed as provided in paragraph 7. The hour and place of closing shall be as designated by the Sellers' Title Company. Changes in time, place and date may be made with the consent of both the Sellers and the City.

7. Title shall be merchantable in the Sellers, except as stated in this paragraph and in paragraphs 8 and 9. Subject to payment or tender as above provided and compliance by the City with the other terms and provisions hereof, the Sellers shall execute and deliver a good and sufficient general warranty deed to the City on November 5, 1993, or, by mutual agreement, at an earlier date, conveying the Property free and clear of: all taxes, except the general taxes for the year of closing; free and clear of all liens for special improvements installed as of the

date of the City's signature hereon, whether assessed or not; free and clear of all liens and encumbrances, including liens or assessments with respect to water, water/ditch shares and certificates; and subject to building and zoning regulations.

8. Except as stated in paragraphs 7 and 9, if title is not merchantable and written notice of defect(s) is given by the City to the Sellers or the Sellers' agent on or before date of closing, the Sellers shall use reasonable effort to correct said defect(s) prior to date of closing. If the Sellers are unable to correct said defect(s) on or before date of closing, at the Sellers' option and upon written notice to the City on or before date of closing, the date of closing shall be extended thirty (30) days for the purpose of correcting said defect(s). Except as stated in paragraph 9, if title is not rendered merchantable as provided in this paragraph 8, at the City's option, this contract shall be void and of no effect and each party hereto shall be released from all obligations hereunder and all payments and things of value received hereunder shall be returned to the City.

9. Any encumbrance required to be paid may be paid at the time of settlement from the proceeds of this transaction or any other source. Provided, however, at the option of either party, if the total indebtedness secured by lien(s) on the Property exceeds the purchase price, this contract shall be void and of no effect and each party hereto shall be released from all obligations hereunder and all payments and things of value received hereunder shall be returned to the City.

10. (a) The Sellers shall, within five (5) days of acceptance of this contract by the Sellers, furnish to the City at no cost to the City true copies of all information and documents in possession of the Sellers regarding field surveys, geological surveys and studies, engineering studies, and environmental studies. (b) The Sellers and the City agree that the City, its officers, employees, agents, contractors and licensees, will be permitted for a period commencing on the date of acceptance of this contract by the Sellers and ending on the date which is sixty (60) days after said date of acceptance ("Inspection Period"), to have access to and make inspections of the Property for the purposes of conducting field surveys, engineering studies, geological surveys and studies, and environmental studies. (c) If the City, during the Inspection Period, determines in good faith that the condition of the Property is unsuitable for use by the City for reasons including, but not limited to, unstable soils or geology, groundwater, or the existence of any hazardous and/or regulated substances and materials which are located on or under the Property, the City shall notify the Sellers of such defect(s) in writing. The Sellers shall then have fifteen (15) days after receipt of said notice to either reasonably correct said defect(s) or to terminate this Agreement. If this Agreement is so terminated, neither party shall have any further rights under this Contract and all payments and things of value received hereunder shall be returned to the City. If written notice of any unsatisfactory condition(s) is not mailed to the Sellers as set forth above, the physical condition of the Property shall be deemed to be satisfactory.

11. Real and personal property taxes for the year of closing, based on the most recent levy and assessment, pre-paid rents, water rents and water assessments, sewer rents, FHA mortgage insurance premiums and interest on encumbrances, if any, shall be apportioned to date

of delivery of deed; such apportionment shall be considered final settlement. The Sellers shall be responsible for any sales, use or other taxes that may accrue because of this transaction.

12. Possession of the Property shall be delivered to the City on date of deed delivery. If the Sellers fail to deliver possession on the date herein specified, the Sellers shall be subject to eviction and shall be liable for a daily rental of \$100.00 until possession is delivered.

13. In the event the Property shall be damaged by fire, flood or other casualty prior to time of closing, in an amount of not more than ten percent (10%) of the total purchase price, the Sellers shall be obligated to repair the same before the date herein provided for delivery of deed. In the event such damage is not or cannot be repaired within said time or if the damages exceed such sum, this contract may be terminated at the option of the City and all payments and things of value received hereunder shall be returned to the City. Should the City elect to carry out this contract despite such damage, the City shall be entitled to all the credit for the insurance proceeds resulting from such damage, not exceeding, however, the total purchase price.

14. 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 as herein provided, there shall be the following remedies:

(a) IF THE CITY IS IN DEFAULT, then all payments and things of value received hereunder shall be forfeited by the City and retained on behalf of the Sellers and both parties shall thereafter be released from all obligations hereunder. It is agreed that such payments and things of value are LIQUIDATED DAMAGES, and (except as provided in subparagraph (c)) are the Seller's SOLE AND ONLY REMEDY for the City's failure to perform the obligations of this contract. The Sellers expressly waive the remedies of specific performance and additional damages;

(b) IF THE SELLERS ARE IN DEFAULT, the City may elect to treat this contract as (1) terminated, in which case all payments and things of value received hereunder shall be returned to the City and the City may recover such damages as may be proper, or (2) as being in full force and effect and the City shall have the right to an action for specific performance or damages, or both.

(c) Anything to the contrary herein notwithstanding, in the event of any litigation arising out of this contract, the court may award to the prevailing party all reasonable costs and expenses, including attorneys' fees.

15. The City and the Sellers agree that, in the event of any controversy regarding the earnest money held by the Seller's broker, unless mutual written instruction is received by said broker, said broker shall not be required to take any action but may await any proceeding, or at said broker's option and discretion, may interplead any moneys or things of value into court and may recover court costs and reasonable attorney's fees from the Sellers.

16. In the event the Sellers should choose to effectuate a "tax deferred exchange" with respect to this contract, the City agrees that it will, at no cost to the City, cooperate with the Sellers by executing documents and following procedures as may be required by the IRS in order to achieve a tax deferred exchange, which may include the use of a facilitator.

17. This entire contract and the City's obligation to proceed under its terms is expressly conditioned upon the consent and approval of the City Council of the City of Grand Junction. If such consent and approval is not obtained on or before September 1, 1993, then this contract shall automatically become void and of no effect, in which case all payments and things of value received hereunder shall be returned to the City.

18. This contract contains the entire agreement between the parties and cannot be changed or modified except by a written instrument subsequently executed by the parties hereto. This contract and the terms and conditions hereof apply to and are binding upon the heirs, successors and authorized assigns of both parties.

19. Subject to paragraph 16, if this proposal is accepted by the Sellers in writing and the City receives notice of such acceptance on or before August 26, 1993, this instrument shall become a contract between the Sellers and the City and shall inure to the benefit of the heirs, successors and assigns of such parties.

20. A copy of this contract may be signed by each party in counterparts, separately, and when each party has signed a copy, the copies taken together shall constitute a full and complete contract.

21. The Sellers and the City have each obtained the advice of their own legal and tax counsel.

The City of Grand Junction, Colorado
Purchaser

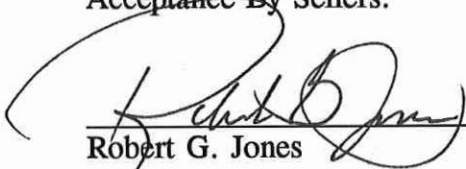


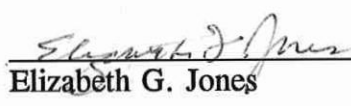
for Mark K. Achen, City Manager

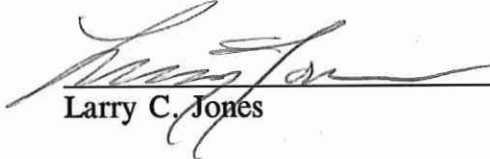
Dated: August 19, 1993

Purchaser's Address: Attention City Property Agent, 250 North 5th Street, Grand Junction, Colorado 81501.

Acceptance By Sellers:

 8/25/93
Robert G. Jones Date

 8/25/93
Elizabeth G. Jones Date

 8/19/93
Larry C. Jones Date

 8/19/93
Martha Jones Date

William R. Jones Date

Carol Jones Date

 8-26-93
~~APA Trust~~ Date
James S. Thomas Trustee

Seller's Address: c/o Larry Jones, 714 Birdie Drive, Grand Junction, Colorado 81506.

EXHIBIT "CITY-JONES REAL PROPERTY"

A tract of land located in a part of Sections 22 and 23, Township 11 South, Range 101 West of the 6th P.M., County of Mesa, State of Colorado, being more particularly described as follows:

Commencing at the S $\frac{1}{4}$ corner of said Section 22;
thence North 00°11'00" West along the West line of the SE $\frac{1}{4}$ of said Section 22 a distance of 400.00 feet;
thence South 87°59'10" East 10.00 feet;
thence North 89°49'00" East 40.00 feet to the TRUE POINT OF BEGINNING;
thence North 87°52'00" East 400.00 feet;
thence North 52°28'36" West 206.70 feet;
thence North 13°21'36" West 159.00 feet;
thence North 16°48'24" East 451.00 feet;
thence North 47°12'36" West 253.60 feet;
thence South 89°14'19" East 2464.38 feet;
thence South 89°52'06" East 345.43 feet;
thence South 01°17'57" East 1319.57 feet;
thence North 88°12'24" West 373.49 feet;
thence North 88°33'36" West 1330.37 feet;
thence North 01°05'29" West 55.06 feet;
thence North 88°33'36" West 968.70 feet;
thence along the arc of a curve to the right whose radius is 318.10 feet and whose long chord bears North 44°22'18" West a distance of 443.44 feet;
thence North 00°11'00" West 11.79 feet to the TRUE POINT OF BEGINNING;
EXCEPT a parcel of land situated in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 23, more specifically described as follows:
Beginning at a point which bears North 89°56'26" East 375.59 feet and North 00°02'00" West 873.05 feet from the Southwest corner of said Section 23;
thence North 03°22'00" West 455.71 feet to a point on the North line of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 23;
thence following said line South 89°52'00" East 26.50 feet;
thence leaving said line South 00°02'00" East 454.86 feet to the point of beginning;
EXCEPT tract conveyed to County of Mesa, State of Colorado for road by instrument recorded October 4, 1966 in Book 901 at page 298.

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date of the City's signature hereon, whether assessed or not; free and clear of all liens and encumbrances, including liens or assessments with respect to water, water/ditch shares and certificates; and subject to building and zoning regulations.

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17. This entire contract and the City's obligation to proceed under its terms is expressly conditioned upon the consent and approval of the City Council of the City of Grand Junction. If such consent and approval is not obtained on or before September 1, 1993, then this contract shall automatically become void and of no effect, in which case all payments and things of value received hereunder shall be returned to the City.

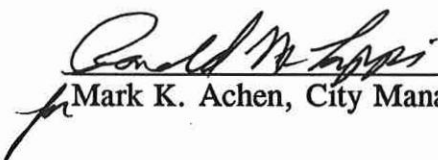
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21. The Sellers and the City have each obtained the advice of their own legal and tax counsel.

The City of Grand Junction, Colorado
Purchaser

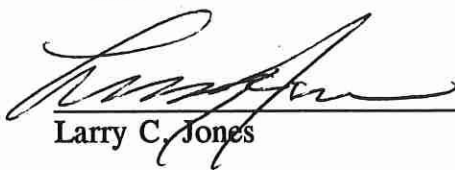



Mark K. Achen, City Manager

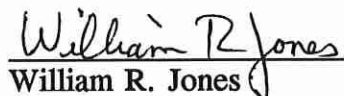
Dated: August 19, 1993


Purchaser's Address: Attention City Property Agent, 250 North 5th Street, Grand Junction, Colorado 81501.

Acceptance By Sellers:

<u>Robert G. Jones</u>	<u>Date</u>
	8/19/93
Larry C. Jones	Date

<u>Elizabeth G. Jones</u>	<u>Date</u>
	8/19/93
Martha Jones	Date

	8/21/93
William R. Jones	Date

	8/21/93
Carol Jones	Date

<u>APA Trust</u>	<u>Date</u>
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Seller's Address: c/o Larry Jones, 714 Birdie Drive, Grand Junction, Colorado 81506.

EXHIBIT "CITY-JONES REAL PROPERTY"

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thence North 00°11'00" West along the West line of the SE $\frac{1}{4}$ of said Section 22 a distance of 400.00 feet;

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EXCEPT a parcel of land situated in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 23, more specifically described as follows:

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EXCEPT tract conveyed to County of Mesa, State of Colorado for road by instrument recorded October 4, 1966 in Book 901 at page 298.

EXHIBIT "CITY-JONES WATER RIGHTS"
(Water Rights, Ditch Rights, Water Shares & Stock Certificates)

also known as Tiara Rado Subdivision-Phase III

(Street Address)

Grand Junction, CO 81503

(City) (Zip)

together with the following water rights:

any and all appurtenant thereto

the following water stock:

*Included in sale to city
G. J. O.*

60 shares of Redland Irrigation stock under Lift #2 ;

all well rights, reservoir or storage rights, if any; all pumping or well equipment, if any; the following growing crops:

none ;

and all items of personal property to be conveyed pursuant to Section 7 (herein collectively referred to as the "Property").

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6. The date of closing shall be the date for delivery of deed as provided in paragraph 7. The hour and place of closing shall be as designated by the Sellers' Title Company. Changes in time, place and date may be made with the consent of both the Sellers and the City.

7. Title shall be merchantable in the Sellers, except as stated in this paragraph and in paragraphs 8 and 9. Subject to payment or tender as above provided and compliance by the City with the other terms and provisions hereof, the Sellers shall execute and deliver a good and sufficient general warranty deed to the City on November 5, 1993, or, by mutual agreement, at an earlier date, conveying the Property free and clear of: all taxes, except the general taxes for the year of closing; free and clear of all liens for special improvements installed as of the

date of the City's signature hereon, whether assessed or not; free and clear of all liens and encumbrances, including liens or assessments with respect to water, water/ditch shares and certificates; and subject to building and zoning regulations.

8. Except as stated in paragraphs 7 and 9, if title is not merchantable and written notice of defect(s) is given by the City to the Sellers or the Sellers' agent on or before date of closing, the Sellers shall use reasonable effort to correct said defect(s) prior to date of closing. If the Sellers are unable to correct said defect(s) on or before date of closing, at the Sellers' option and upon written notice to the City on or before date of closing, the date of closing shall be extended thirty (30) days for the purpose of correcting said defect(s). Except as stated in paragraph 9, if title is not rendered merchantable as provided in this paragraph 8, at the City's option, this contract shall be void and of no effect and each party hereto shall be released from all obligations hereunder and all payments and things of value received hereunder shall be returned to the City.

9. Any encumbrance required to be paid may be paid at the time of settlement from the proceeds of this transaction or any other source. Provided, however, at the option of either party, if the total indebtedness secured by lien(s) on the Property exceeds the purchase price, this contract shall be void and of no effect and each party hereto shall be released from all obligations hereunder and all payments and things of value received hereunder shall be returned to the City.

10. (a) The Sellers shall, within five (5) days of acceptance of this contract by the Sellers, furnish to the City at no cost to the City true copies of all information and documents in possession of the Sellers regarding field surveys, geological surveys and studies, engineering studies, and environmental studies. (b) The Sellers and the City agree that the City, its officers, employees, agents, contractors and licensees, will be permitted for a period commencing on the date of acceptance of this contract by the Sellers and ending on the date which is sixty (60) days after said date of acceptance ("Inspection Period"), to have access to and make inspections of the Property for the purposes of conducting field surveys, engineering studies, geological surveys and studies, and environmental studies. (c) If the City, during the Inspection Period, determines in good faith that the condition of the Property is unsuitable for use by the City for reasons including, but not limited to, unstable soils or geology, groundwater, or the existence of any hazardous and/or regulated substances and materials which are located on or under the Property, the City shall notify the Sellers of such defect(s) in writing. The Sellers shall then have fifteen (15) days after receipt of said notice to either reasonably correct said defect(s) or to terminate this Agreement. If this Agreement is so terminated, neither party shall have any further rights under this Contract and all payments and things of value received hereunder shall be returned to the City. If written notice of any unsatisfactory condition(s) is not mailed to the Sellers as set forth above, the physical condition of the Property shall be deemed to be satisfactory.

11. Real and personal property taxes for the year of closing, based on the most recent levy and assessment, pre-paid rents, water rents and water assessments, sewer rents, FHA mortgage insurance premiums and interest on encumbrances, if any, shall be apportioned to date

of delivery of deed; such apportionment shall be considered final settlement. The Sellers shall be responsible for any sales, use or other taxes that may accrue because of this transaction.

12. Possession of the Property shall be delivered to the City on date of deed delivery. If the Sellers fail to deliver possession on the date herein specified, the Sellers shall be subject to eviction and shall be liable for a daily rental of \$100.00 until possession is delivered.

13. In the event the Property shall be damaged by fire, flood or other casualty prior to time of closing, in an amount of not more than ten percent (10%) of the total purchase price, the Sellers shall be obligated to repair the same before the date herein provided for delivery of deed. In the event such damage is not or cannot be repaired within said time or if the damages exceed such sum, this contract may be terminated at the option of the City and all payments and things of value received hereunder shall be returned to the City. Should the City elect to carry out this contract despite such damage, the City shall be entitled to all the credit for the insurance proceeds resulting from such damage, not exceeding, however, the total purchase price.

14. 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 as herein provided, there shall be the following remedies:

(a) IF THE CITY IS IN DEFAULT, then all payments and things of value received hereunder shall be forfeited by the City and retained on behalf of the Sellers and both parties shall thereafter be released from all obligations hereunder. It is agreed that such payments and things of value are LIQUIDATED DAMAGES, and (except as provided in subparagraph (c)) are the Seller's SOLE AND ONLY REMEDY for the City's failure to perform the obligations of this contract. The Sellers expressly waive the remedies of specific performance and additional damages;

(b) IF THE SELLERS ARE IN DEFAULT, the City may elect to treat this contract as (1) terminated, in which case all payments and things of value received hereunder shall be returned to the City and the City may recover such damages as may be proper, or (2) as being in full force and effect and the City shall have the right to an action for specific performance or damages, or both.

(c) Anything to the contrary herein notwithstanding, in the event of any litigation arising out of this contract, the court may award to the prevailing party all reasonable costs and expenses, including attorneys' fees.

15. The City and the Sellers agree that, in the event of any controversy regarding the earnest money held by the Seller's broker, unless mutual written instruction is received by said broker, said broker shall not be required to take any action but may await any proceeding, or at said broker's option and discretion, may interplead any moneys or things of value into court and may recover court costs and reasonable attorney's fees from the Sellers.

16. In the event the Sellers should choose to effectuate a "tax deferred exchange" with respect to this contract, the City agrees that it will, at no cost to the City, cooperate with the Sellers by executing documents and following procedures as may be required by the IRS in order to achieve a tax deferred exchange, which may include the use of a facilitator.

17. This entire contract and the City's obligation to proceed under its terms is expressly conditioned upon the consent and approval of the City Council of the City of Grand Junction. If such consent and approval is not obtained on or before September 1, 1993, then this contract shall automatically become void and of no effect, in which case all payments and things of value received hereunder shall be returned to the City.

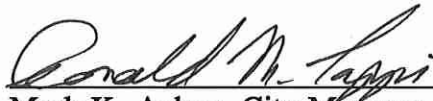
18. This contract contains the entire agreement between the parties and cannot be changed or modified except by a written instrument subsequently executed by the parties hereto. This contract and the terms and conditions hereof apply to and are binding upon the heirs, successors and authorized assigns of both parties.

19. Subject to paragraph 16, if this proposal is accepted by the Sellers in writing and the City receives notice of such acceptance on or before August 26, 1993, this instrument shall become a contract between the Sellers and the City and shall inure to the benefit of the heirs, successors and assigns of such parties.

20. A copy of this contract may be signed by each party in counterparts, separately, and when each party has signed a copy, the copies taken together shall constitute a full and complete contract.

21. The Sellers and the City have each obtained the advice of their own legal and tax counsel.

The City of Grand Junction, Colorado
Purchaser



Mark K. Achen, City Manager

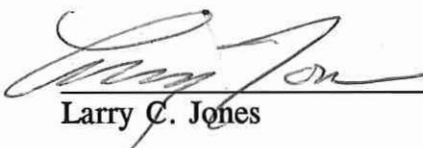
Dated: August 19, 1993

Purchaser's Address: Attention City Property Agent, 250 North 5th Street, Grand Junction, Colorado 81501.

Acceptance By Sellers:

Robert G. Jones _____ Date


Elizabeth G. Jones _____ Date


Larry C. Jones _____ Date 8/19/93


Martha Jones _____ Date 8/19/93

William R. Jones _____ Date

Carol Jones _____ Date


~~APA Trust~~ _____ Date 8/23/93
PAUL R. NOBLE, TRUSTEE

JAMES S. THOMAS, TRUSTEE

Seller's Address: c/o Larry Jones, 714 Birdie Drive, Grand Junction, Colorado 81506.

EXHIBIT "CITY-JONES REAL PROPERTY"

A tract of land located in a part of Sections 22 and 23, Township 11 South, Range 101 West of the 6th P.M., County of Mesa, State of Colorado, being more particularly described as follows:

Commencing at the S $\frac{1}{4}$ corner of said Section 22;
thence North 00°11'00" West along the West line of the SE $\frac{1}{4}$ of said Section 22 a distance of 400.00 feet;
thence South 87°59'10" East 10.00 feet;
thence North 89°49'00" East 40.00 feet to the TRUE POINT OF BEGINNING;
thence North 87°52'00" East 400.00 feet;
thence North 52°28'36" West 206.70 feet;
thence North 13°21'36" West 159.00 feet;
thence North 16°48'24" East 451.00 feet;
thence North 47°12'36" West 253.60 feet;
thence South 89°14'19" East 2464.38 feet;
thence South 89°52'06" East 345.43 feet;
thence South 01°17'57" East 1319.57 feet;
thence North 88°12'24" West 373.49 feet;
thence North 88°33'36" West 1330.37 feet;
thence North 01°05'29" West 55.06 feet;
thence North 88°33'36" West 968.70 feet;
thence along the arc of a curve to the right whose radius is 318.10 feet and whose long chord bears North 44°22'18" West a distance of 443.44 feet;
thence North 00°11'00" West 11.79 feet to the TRUE POINT OF BEGINNING;
EXCEPT a parcel of land situated in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 23, more specifically described as follows:
Beginning at a point which bears North 89°56'26" East 375.59 feet and North 00°02'00" West 873.05 feet from the Southwest corner of said Section 23;
thence North 03°22'00" West 455.71 feet to a point on the North line of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 23;
thence following said line South 89°52'00" East 26.50 feet;
thence leaving said line South 00°02'00" East 454.86 feet to the point of beginning;
EXCEPT tract conveyed to County of Mesa, State of Colorado for road by instrument recorded October 4, 1966 in Book 901 at page 298.

EXHIBIT "CITY-JONES REAL PROPERTY"

A tract of land located in a part of Sections 22 and 23, Township 11 South, Range 101 West of the 6th P.M., County of Mesa, State of Colorado, being more particularly described as follows:

Commencing at the S $\frac{1}{4}$ corner of said Section 22;
thence North 00°11'00" West along the West line of the SE $\frac{1}{4}$ of said Section 22 a distance of 400.00 feet;
thence South 87°59'10" East 10.00 feet;
thence North 89°49'00" East 40.00 feet to the TRUE POINT OF BEGINNING;
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thence leaving said line South 00°02'00" East 454.86 feet to the point of beginning;
EXCEPT tract conveyed to County of Mesa, State of Colorado for road by instrument recorded October 4, 1966 in Book 901 at page 298.