

**ORDINANCE NO. 2003-7  
TOWN OF RICO**

**AUTHORIZING THE PURCHASE OF LOT 4 THROUGH 14, BLOCK 27**

**WHEREAS**, Andy Massik owns lots 4 through 14, Block 27 (Property), and has offered to sell such lots to the Town of Rico for park purposes at below fair market value; and,

**WHEREAS**, C.R.S. §31-15-101(1)(d) authorizes municipalities to acquire real property and the Rico Home Rule Charter §14.1 authorizes the Trustees to acquire property by Ordinance; and,

**WHEREAS**, the lots are adjacent to the existing School/Town Park (Jones Memorial Park) for which the Town and the Dolores County School District have recently signed an intergovernmental agreement establishing the park area as a school park and Town park;

**WHEREAS**, the Board of Trustees recognizes the Town population is growing and that acquisition of the Property will allow for expansion of the current Park area;

**WHEREAS**, the Board of Trustees finds that acquisition of the Property will promote the health, safety and general welfare of the Rico community by providing an expanded park area in the center of Town to serve the future larger population;

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF RICO, COLORADO**, the following:

**SECTION 1. ACQUISITION OF PROPERTY AUTHORIZED**

The attached Contract to Buy and Sell Real Estate is hereby approved and the Mayor and Town Staff are authorized to execute such documents as may be necessary to execute the contract and close on the Property.

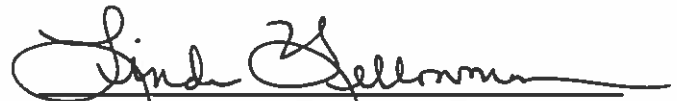
**SECTION 2. EFFECTIVE DATE.** This Ordinance shall be effective immediately upon final adoption.


**SECTION 3. POSTING AND PUBLISHING.** This Ordinance shall be posted at the Rico Post Office and Rico Town Hall and published in the Rico Sun-Times.

**INTRODUCED, READ, APPROVED AND ADOPTED BY THE BOARD OF TRUSTEES OF THE TOWN OF RICO on the 19<sup>th</sup> day of November, 2003.**

**READ AND APPROVED ON SECOND AND FINALLY READ AFTER CONDUCTING A PUBLIC HEARING BY THE BOARD OF TRUSTEES OF THE TOWN OF RICO on the 10<sup>th</sup> day of December, 2003.**

  
By: Thomas A. Clark, Mayor

  
Attest: Linda Yellowman, Town Clerk  
[Town Seal]

  
Approved as to Form: Eric James Heil, Esq.  
Town Attorney

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

**CONTRACT TO BUY AND SELL REAL ESTATE  
(COMMERCIAL) (SELLER OR PRIVATE FINANCING)**

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

2. **DEFINED TERMS.**

a. **Buyer.** Buyer will take title to the real property described below.

b. **Property.** The property is the following described real estate: Lots 4 and 14, Block 27, Town of Rico, in the County of Dolores, Colorado, commonly known as No. 14d Glasgow Avenue, Rico, CO 81332, together with the interests, easements, rights, benefits, improvements and attached fixtures appurtenant thereto, all interest of Seller in vacated streets and alleys adjacent thereto, except as herein excluded.

c. **Dates and Deadlines.**

Item No.	Reference	Event	Date or Deadline
1	§5a	Loan Application Deadline	n/a
2	§5b	Loan commitment deadline	n/a
3	§5c	Buyer's Credit Information Deadline	None requested
4	§5d	Disapproval of Buyer's Credit Deadline	n/a
5	§5d	Existing Loan Document Deadline	n/a
6	§5d	Objection to Existing Loan Deadline	n/a
7	§5d	Approval of Loan Transfer Deadline	n/a
8	§6a	Appraisal Deadline	n/a
9	§7a	Title Deadline	December 10, 2003
10	§7a	Survey Deadline	December 10, 2003
11	§7b	Document Request Deadline	December 10, 2003
12	§8a	Title Objection Deadline	December 12, 2003
13	§8b	Off-Record Matters Deadline	December 12, 2003
14	§8b	Off-Record Matters Objection Deadline	December 12, 2003
15	§10	Seller's Property Disclosure Deadline	None
16	§10a	Inspection Objection Deadline	December 12, 2003
17	§10b	Resolution Deadline	December 17, 2003
18	§11	Closing Date	December 19, 2003
19	§16	Possession Date	Upon closing
20	§16	Possession Time	Upon closing
21	§28	Acceptance Deadline Date	December 6, 2003
22	§28	Acceptance Deadline Time	5:00 p.m. MDT

d. **Attachments.** The following exhibits, attachments and addenda are a part of this contract: *None*

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

3. **INCLUSIONS AND EXCLUSIONS.**

a. The Purchase Price includes the following terms (Inclusions):

(1) **Fixtures.** N/A

(2) **Other Inclusions.** N/A

(3) **Trade Fixtures.** With respect to trade fixtures, Seller and Buyer agree as follows: *None, N/A*

b. **Instruments of Transfer.** The Inclusions are to be conveyed at Closing free and clear of all taxes, liens, encumbrances, except as provided in §12. Conveyance shall be by bill of sale or other applicable legal instrument.

c. **Exclusions.** The following attached fixtures are excluded from this sale: *None*

**CONTRACT TO BUY-SELL LOTS 4 THROUGH 14, BLOCK 27, TOWN OF RICO**

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

Item No.	Reference	Item	Amount	Amount
1	§4	Purchase Price	\$42,500.00	
2	§4a	Earnest Money		\$14,000.00
3	§4b	New Loan		n/a
4	§4c	Assumption Balance		n/a
5	§4d	Seller or Private Financing		\$28,500.00
6	§4e	Cash at Closing		-0-
7		<b>TOTAL</b>	<b>\$42,500.00</b>	<b>\$42,500.00</b>

a. **Earnest Money.** The Earnest Money set forth in this Section, in the form of *General Fund Check*, is part payment of the Purchase Price and shall be payable to and held by Seller on December 11<sup>th</sup>, 2003, as specified in §24 b.

b. **New Loan.** (omitted - not applicable)

c. **Assumption** (omitted - not applicable)

d. **Seller or Private Financing.** Buyer agrees to execute a promissory note payable to: *Seller* on a note form NTD 81-11-83 (Default Rate) secured by a first deed of trust encumbering the Property using the form as indicated: Strict Due on Sale (TD 72-7-96).

Buyer Shall Not execute and deliver at Closing, a Security Agreement and UCC-1 Financing Statement granting the holder of the promissory note a lien on the personal property included in this sale. The promissory note shall be interest and principal, with interest accruing on the purchase price balance of \$28,500.00 at the rate of 8% simple interest per annum, such interest shall begin accruing on June 19<sup>th</sup>, 2004. Payments shall be semi-annual, with the payment due dates and amounts set forth as follows: **First Payment - June 19<sup>th</sup>, 2004**, in the amount of \$7,125.00; **Second Payment - December 19<sup>th</sup>, 2004**, in the amount of \$7,980.00; **Third Payment - June 19<sup>th</sup>, 2005**, in the amount of \$7,695.00; and **Fourth and Final Payment - December 19<sup>th</sup>, 2005**, in the amount of \$7,410.00. If not paid sooner, the balance of principal and accrued interest shall be due and payable on December 31<sup>st</sup>, 2006. Payments Shall Not be increased by 1/12 of the estimated annual real estate transfer taxes and Shall Not be increased by 1/12 of estimated annual property insurance premium. The loan shall also contain the following terms: if any payment is not received within 10 calendar days after its due date, a late charge of 5% of such monthly payment shall be due. Interest on lender disbursements under the deed of trust shall be 14% per annum. Default interest rate shall be 14% per annum. Buyer may prepay without a penalty.

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

**5. FINANCING CONDITIONS AND OBLIGATIONS.**

a. **Loan Application.** (omitted, not applicable)

b. **Loan Commitment.** (omitted, not applicable)

c. **Credit Information.** (omitted, not applicable)

d. **Existing Loan.** (omitted - not applicable)

**6. APPRAISAL PROVISIONS.**

a. **Appraisal Condition.** This subsection a Shall Not apply.

b. **Cost of Appraisal.** Cost of any appraisal to be obtained after the date of this contract shall be timely paid by Buyer.

**7. Evidence of Title.**

a. **Evidence of Title, Survey.** On or before Title Deadline (§2c), Seller shall cause to be furnished to Buyer, at Buyer's expense, a current commitment for owner's title insurance policy in an amount equal to the Purchase Price or if this box is checked  An abstract of title certified to a current date. If a title insurance commitment is furnished, it Shall commit to delete or insure over the standard exceptions which relate to:

- (1) parties in possession,

**CONTRACT TO BUY-SELL LOTS 4 THROUGH 14, BLOCK 27, TOWN OF RICO**

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

Any additional premium expense to obtain this additional coverage shall be paid by Buyer. An amount not to exceed \$500.00 for the cost of any improvement location certificate or survey shall be paid by Buyer. If the costs exceeds this amount, Buyer shall pay the excess on or before Closing. The improvement location certificate or survey shall be received by Buyer on or before Survey deadline (§2c). Seller shall cause the title insurance policy to be delivered to Buyer as soon as practicable at or after Closing.

**b. Copies of Exceptions.** On or before Title Deadline (§2c), Seller, at Seller's expense, shall furnish to Buyer, (1) a copy of any plats, declarations, covenants, conditions and restrictions burdening the Property, and (2) Copies of any Other Documents (or, if illegible, summaries of such documents listed in the schedule of exceptions (Exceptions)). Seller shall have the obligation to furnish these documents pursuant to this subsection if requested by Buyer any time on or before the Document Request Deadline (§2c). This requirement shall pertain only to documents as shown of record in the office of the clerk and recorder(s). The abstract or title insurance commitment, together with any copies of summaries of such documents furnished pursuant to this Section, constitute the title documents (Title Documents).

**8. TITLE**

**a. Title Review.** Buyer shall have the right to inspect the Title Documents. Written notice by Buyer of unmerchantability of title or of any other unsatisfactory title condition shown by the Title Documents shall be signed by or on behalf of Buyer and given to Seller on or before Title Objection Deadline (§2c), or within five (5) calendar days after receipt by Buyer or any Title Document(s) or endorsement(s) adding new Exception(s) to the title commitment together with a copy of the Title Document adding new Exception(s) to title. If Seller does not receive Buyer's notice by the date(s) specified above, Buyer accepts the condition of title as disclosed by the Title Documents as satisfactory.

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

**c. Special Taxing Districts.** SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO GENERAL OBLIGATION INDEBTEDNESS THAT IS PAID BY REVENUE 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 A DISTRICT DISCHARGE SUCH INDEBTEDNESS WITHOUT 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.

In the event the Property is located within a special taxing district and Buyer desires to terminate this contract as a result, if written notice is received by Seller on or before Off-Record Matters Objection Deadline (§2c), this contract shall then terminate. If Seller does not receive Buyer's notice by such date, Buyer accepts the effect of the Property's inclusion in such special taxing district(s) and waives the right to so terminate.

**d. Right to Cure.** If Seller receives notice of unmerchantability of title or any other unsatisfactory title condition(s) or commitment terms as provided in §8 or b above, Seller shall use reasonable effort to correct said items and bear any nominal expense to correct the same prior to Closing. If such unsatisfactory title condition(s) are

CONTRACT TO BUY-SELL LOTS 4 THROUGH 14, BLOCK 27, TOWN OF RICO

not corrected on or before Closing, this contract shall then terminate; provided, however, Buyer may, by written notice received by Seller, on or before Closing, waive objection to such items.

c. **Title Advisory.** The Title Documents affect the title, ownership and use of the Property and should be reviewed carefully. Additionally, other matters not reflected in the Title Documents may affect the title, ownership and use of the Property, including without limitation boundary lines and encroachments, area, zoning, unrecorded easements, leases and other unrecorded agreements, and various laws and governmental regulations concerning land use, development and environmental matters. **THE SURFACE ESTATE MAY BE OWNED SEPARATELY FROM THE UNDERLYING MINERAL ESTATE, AND TRANSFER OF THE SURFACE ESTATE DOES NOT NECESSARILY INCLUDE TRANSFER OF THE MINERAL RIGHTS, THIRD PARTIES MAY HOLD INTERESTS IN OIL, GAS OTHER MINERALS, GEOTHERMAL ENERGY OR WATER ON OR UNDER THE PROPERTY, WHICH INTERESTS MAY GIVE THEM RIGHTS TO ENTER AND USE THE PROPERTY.** Such matters may be excluded from the title insurance policy. Buyer is advised to timely consult legal counsel with respect to all such matters as there are strict time limits provided in his contract (e.g. Title Objection Deadline [§2c] AND Off-Record Matters Objection Deadline [§2c]).

9. **LEAD-BASED PAINT.** Unless exempt, if the improvements on the Property include one or more residential dwelling(s) for which a building permit was issued prior to January 1, 1978, this contract shall be void unless a completed Lead-Based Paint Disclosure (Sales) form is signed by Seller and the required real estate licensee(s), which must occur prior to the parties signing this contract.

10. **PROPERTY DISCLOSURE AND INSPECTION.** On or before Seller's Property Disclosure Deadline (§2c), Seller agrees to provide Buyer with a written disclosure of adverse matters regarding the Property completed by Seller to the best of Seller's current actual knowledge.

a. **Inspection Objection Deadline.** Buyer shall have the right to have inspection(s) of the physical condition of the Property and Inclusions, at Buyer's expense. If the physical condition of the Property or Inclusions is unsatisfactory in Buyer's subjective discretion, Buyer shall, on or before Inspection Objection Deadline (§2c):

- (1) notify Seller in writing that this contract is terminated, or
- (2) provide Seller with a written description of any unsatisfactory physical condition which Buyer requires Seller to correct (Notice to Correct).

If written notice is not received by Seller on or before Inspection Objection Deadline (§2c), the physical condition of the Property and Inclusions, shall be deemed to be satisfactory to Buyer.

b. **Resolution Deadline.** If a Notice to Correct is received by Seller and Buyer and Seller have not agreed in writing to a settlement thereof on or before Resolution Deadline (§2c), this contract shall terminate one calendar day following the Resolution Deadline (§2c), unless before such termination, Seller receives Buyer's written withdrawal of the Notice to Correct.

c. **Damage; Liens; Indemnity.** Buyer is responsible for payment for all inspections, surveys, engineering reports or for any other work performed at Buyer's request and shall pay for any damage which occurs to the Property and Inclusions as a result of such activities. Buyer shall not permit claims or liens of any kind against the Property for inspections, surveys, engineering reports and for any other work performed on the Property at Buyer's request. Buyer agrees to indemnify, protect and hold Seller harmless from and against any liability, damage, cost or expense incurred by Seller in connection with any such inspections, claim or lien. This indemnity includes Seller's right to recover all costs and expenses incurred by Seller to enforce this subsection, including Seller's reasonable attorney's fees. The provisions of this subsection shall survive the termination of this contract.

11. **CLOSING.** Delivery of deed(s) from Seller to Buyer shall be at Closing (Closing). Closing shall be on the date specified as the Closing Date (§2c) or by mutual agreement at an earlier date. The hour and place of Closing shall be as designated by Buyer and Seller.

12. **TRANSFER OF TITLE.** Subject to tender or payment at Closing as required herein and compliance by Buyer with the other terms and provisions hereof, Seller shall execute and deliver a good and sufficient General Warranty deed to Buyer 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:

- a. those specific Exceptions described by reference to recorded documents as reflected in the Title Documents accepted by Buyer in accordance with §8b (Title Review),

Buyer \_\_\_\_\_

Seller AM

CONTRACT TO BUY-SELL LOTS 4 THROUGH 14, BLOCK 27, TOWN OF RICO

- b. distribution utility line easements,
- c. those specifically described rights of third parties not shown by the public records of which Buyer has actual knowledge and which were accepted by Buyer in accordance with §8b (Matters Not Shown by the Public Records), and
- d. inclusion of the Property within any special taxing districts, and
- e. the benefits and burdens of any declaration and party wall agreements, if any, and,
- f. other: *none*.
13. **PAYMENT OF ENCUMBRANCES.** Any encumbrance required to be paid shall be paid at or before Closing from the proceeds of this transaction or from any other source.
14. **CLOSING COSTS; DOCUMENTS AND SERVICES.** Buyer shall pay, in Good Funds, all Closing costs and all other items required to be paid at Closing, except as otherwise provided herein. Buyer and Seller shall sign and complete all customary or reasonably required documents at or before Closing. Fees for real estate Closing services shall be paid at Closing by Buyer.
- The local transfer tax of 0% of the Purchase Price shall be paid at Closing by N/A. Any sales and use tax that may accrue because of this transaction shall be paid when due by Buyer.
15. **PRORATIONS.** The following shall be prorated to Closing Date (§2c), except as otherwise provided:
- a. **Taxes.** Personal property taxes, if any, and general real estate taxes for the year of Closing, shall be assumed by Buyer. No property taxes shall be prorated.
- b. **Rents** n/a
- c. **Other Prorations.** n/a
- d. **Final Settlement.** Unless otherwise agreed in writing, these prorations shall be final.
16. **POSSESSION.** Possession of the Property shall be delivered to Buyer on Possession Date and Possession Time (§2c), subject to the following lease(s) or tenancy(s): *none*.
- If Seller, after Closing, fails to deliver possession as specified, Seller shall be subject to eviction and shall be additionally liable to Buyer for payment of \$50.00 per day from the Possession Date (§2c) until possession is delivered.
17. **NOT ASSIGNABLE.** This contract shall not be assignable by Buyer without Seller's prior written consent. Except as so restricted, this contract shall inure to the benefit of and be binding upon the heirs, personally representatives, successors and assigns of the parties.
18. **CONDITION OF, AND DAMAGE TO PROPERTY AND INCLUSIONS.** Except as otherwise provided in this contract, the Property, Inclusions or both shall be delivered in the condition existing as of the date of this contract, ordinary wear and tear excepted.
- a. **Casualty; Insurance** In the event the Property or Inclusions shall be damaged by fire or other casualty prior to Closing, in an amount of not more than ten percent of the total Purchase Price, Seller shall be obligated to repair the same before the Closing Date (§2c). In the event such damage is not repaired within said time or if the damages exceed such sum, this contract may be terminated at the option of Buyer by delivering to Seller written notice of termination. Should Buyer elect to carry out this contract despite such damage, Buyer shall be entitled to a credit, at Closing, for all the insurance proceeds resulting from such damage to the Property and Inclusions payable to Seller but not the owner's association, if any, plus the amount of any deductible provided for in such insurance policy, such credit not to exceed the total Purchase Price.
- b. **Damage; Inclusions; Services.** Should any Inclusion(s) or service(s) (including systems and components of the Property, e.g. heating, plumbing, etc.) fail or be damaged between the date of this contract and Closing or possession, whichever shall be earlier, then Seller shall be liable for the repair or replacement of such Inclusion(s) or service(s) with a unit of similar size, age and quality, or an equivalent credit, but only to the extent that the maintenance or replacement of such Inclusion(s), service(s), or fixture(s) is not the responsibility of the owner's association, if any, less an insurance proceeds received by Buyer covering such repair or replacement.
- c. **Walk-Through; Verification of Condition.** Buyer, upon reasonable notice, shall have the right to walk through the Property prior to Closing to verify that the physical condition of the Property and Inclusions complies with this contract.

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**19. RECOMMENDATION OF LEGAL AND TAX COUNSEL.** By signing this document, Buyer and Seller acknowledge that this document has important legal consequences and has recommended the examination of title and consultation with legal and tax or other counsel before signing this contract.

**20. TIME OF ESSENCE AND REMEDIES.** Time is of the essence hereof. If any note or check received as Earnest Money hereunder or any other payment due hereunder is not paid, honored or tendered when due, or if any other obligations hereunder is not performed or waived as herein provided, there shall be the following remedies.

**a. If Buyer is in Default.**

(1) **Liquidated Damages.** All payments and things of value received hereunder shall be forfeited by Buyer and retained on behalf of Seller 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 subsection c) are SELLER'S SOLE AND ONLY REMEDY for Buyer's failure to perform the obligations of this contract. Seller expressly waives the remedies of specific performance and additional damages.

**b. If Seller is in Default.** Buyer may elect to treat this contract as canceled, in which case all payments and things of value received hereunder shall be returned and Buyer may recover such damages as may be proper, or Buyer may elect to treat this contract as being in full force and effect and Buyer shall have the right to specific performance or damages, or both.

**c. Costs and Expenses.** In the event of any arbitration or litigation relating to this contract, the arbitrator or court shall award to the prevailing party all reasonable costs and expenses, including attorney fees.

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

**22. EARNEST MONEY DISPUTE.** Notwithstanding any termination of this contract, Buyer and Seller agree that, in the event controversy regarding the Earnest Money and things of value held by broker or Closing Company (unless mutual written instructions are received by the holder of the Earnest Money and things of value), broker or Closing Company shall not be required to take any action but may await any proceeding, or at broker's or Closing Company's option and sole discretion, may interplead all parties and deposit any moneys or things of value into a court of competent jurisdiction and shall recover court costs and reasonable attorney's fees.

**23. TERMINATION.** In the event this contract is terminated, all payments and things of value received hereunder shall be returned and the parties shall be relieved of all obligations hereunder, subject to §§10c, 21 and 22.

**24. ADDITIONAL PROVISIONS.** (the language in these additional provisions has not been approved by the Colorado Real Estate Commission)

a. Buyer will pay the costs of providing a promissory note and deed of trust.

b. THIS CONTRACT IS EXPRESSLY CONTINGENT UPON THE RICO BOARD OF TRUSTEES PASSING THE SECOND AND FINAL READING OF ORDINANCE 2003-7 AUTHORIZING THE ACQUISITION OF PROPERTY. IF THE BOARD OF TRUSTEES DOES NOT PASS ORDINANCE 2003-7 AUTHORIZING THE TOWN TO ACQUIRE THE PROPERTY, THE TOWN, AS BUYER, MAY CANCEL THIS CONTRACT AND RECEIVE BACK THE EARNEST MONEY AND ALL OTHER THINGS OF VALUE, NOTWITHSTANDING ANY OTHER PROVISION IN THIS CONTRACT. THE EARNEST MONEY SPECIFIED IN §4 SHALL BE DUE ON DECEMBER 11<sup>TH</sup>, 2003, IF THE RICO BOARD OF TRUSTEES FINALLY ADOPT ORDINANCE 2003-7 ON DECEMBER 10<sup>TH</sup>, 2003. IN THE EVENT THAT THE RICO BOARD OF TRUSTEES DOES NOT FINALLY ADOPT ORDINANCE NO. 2003-7 ON DECEMBER 10<sup>TH</sup>, 2003, SELLER MAY TERMINATE THIS CONTRACT.

c. Seller and Buyer acknowledge that owner financing is provided to accommodate the Town's desire to pursue grant funding to assist with the acquisition of the Property. The Town Board agrees to make its best efforts in good faith to obtain other financing for the Property by July 15<sup>th</sup>, 2004, in order to pay the outstanding balance of the owner financing provided by Seller. In the event the Town of Rico receives

CONTRACT TO BUY-SELL LOTS 4 THROUGH 14, BLOCK 27, TOWN OF RICO

grants funds from Great Outdoors Colorado, or any other state, federal or private agency, for the purpose of acquisition of the Property, then Town shall pay the outstanding balance of the owner financing and promissory note within thirty (30) days of receipt of such funds. Seller shall have the right to accelerate the payment due dates if the Town of Rico receives grant funding and such right to accelerate the payment terms shall be incorporated in the Promissory Note and this Paragraph 24.c. shall survive the Closing.

d. As a condition of this purchase contract, Buyer and Seller agree that a mutually acceptable plaque or sign naming the property in memory of Seller's family.

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

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

27. **NOTICE.** Except for the notice requesting mediation described in §21, any notice to Buyer shall be effective when received by Buyer and any notice to Seller shall be effective when received by Seller.

28. **NOTICE OF ACCEPTANCE; COUNTERPARTS.** This proposal shall expire unless acceptance in writing, by Buyer and Seller, as evidenced by their signatures below, and the offering party receives notice of acceptance pursuant to §27 on or before Acceptance Deadline Date and Acceptance Deadline Time (§2c). If accepted, this document shall become a contract between Seller and Buyer. A copy of this document may be executed by each party, separately, and when each party has executed a copy thereof, such copies taken together shall be deemed to be a full and completed contract between the parties.

Town of Rico  
P.O. Box 56  
Rico, CO 81332  
Attn: Ashton Harrison, Town Manager

Bus. # (970) 967-2863  
Fax # (970) 967-2862

Buyer:  Date: 12-17-03  
By: Thomas A. Clark, Mayor

Seller:  Date: 12-6-03  
Andrew Massik

140 Charles Street, Apt. 6A  
New York, New York 10014

Phone: (917) 797-5454  
Fax: (212) 691-4090



## Counterproposal

This Counterproposal is made for that **Contract to Buy and Sell Real Estate** ("Contract") between Andrew Massik (Seller) and the Town of Rico (Buyer) for sale and purchase of Lots 4 through 14, Block 27, Town of Rico, in Dolores County, with an Acceptance Date of December 6<sup>th</sup>, 2003, and signed by the Seller.

1. The following paragraphs are hereby modified and amended and such paragraphs shall supercede the corresponding paragraphs in the Contract.

### Paragraph 2.:

b. **Property.** The property is the following described real estate: **Lots 4 through 14, Block 27, Town of Rico,** in the County of Dolores, Colorado, commonly known as **No. tbd Glasgow Avenue, Rico, CO 81332,** together with the interests, easements, rights, benefits, improvements and attached fixtures appurtenant thereto, all interest of Seller in vacated streets and alleys adjacent thereto, except as herein excluded.

### c. **Dates and Deadlines.**

Item No.	Reference	Event	Date or Deadline
1	§5a	Loan Application Deadline	n/a
2	§5b	Loan commitment deadline	n/a
3	§5c	Buyer's Credit Information Deadline	None requested
4	§5d	Disapproval of Buyer's Credit Deadline	n/a
5	§5d	Existing Loan Document Deadline	n/a
6	§5d	Objection to Existing Loan Deadline	n/a
7	§5d	Approval of Loan Transfer Deadline	n/a
8	§6a	Appraisal Deadline	n/a
9	§7a	Title Deadline	December 15, 2003
10	§7a	Survey Deadline	December 15, 2003
11	§7b	Document Request Deadline	December 15, 2003
12	§8a	Title Objection Deadline	December 17, 2003
13	§8b	Off-Record Matters Deadline	December 17, 2003
14	§8b	Off-Record Matters Objection Deadline	December 17, 2003
15	§10	Seller's Property Disclosure Deadline	None
16	§10a	Inspection Objection Deadline	December 17, 2003
17	§10b	Resolution Deadline	December 18, 2003
18	§11	Closing Date	December 19, 2003
19	§16	Possession Date	Upon closing
20	§16	Possession Time	Upon closing
21	§28	Acceptance Deadline Date (for counter-offer)	December 12, 2003
22	§28	Acceptance Deadline Time	5:00 p.m. MDT

### Paragraph 4.

a. **Earnest Money.** The Earnest Money set forth in this Section, in the form of *General Fund Check*, is part payment of the Purchase Price and shall be payable to and held by Colorado Land Title on December 12<sup>th</sup>, 2003, as specified in §24.b.

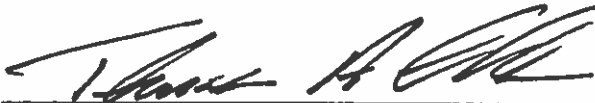
2. All other terms and conditions shall remain the same. This Counterproposal shall expire unless accepted in writing by Buyer and Seller, as evidenced by their signatures below, and the offering party to this document receives notice of such acceptance on or before December 12<sup>th</sup>,

Counterproposal to Massik-Town of Rico Contract regarding Lots 4 through 14, Block 27, Town of Rico

2003. If accepted, the proposed Contract, as amended hereby, shall become a contract between Seller and Buyer.

\_\_\_\_\_  
Andrew Massik, Seller

Date of Seller's Signature \_\_\_\_\_



\_\_\_\_\_  
Town of Rico, Buyer, by Thomas A. Clark, Mayor

Date of Buyer's Signature 12.10.03