

RESOLUTION NO. 1513

**A RESOLUTION OF THE GOLDEN CITY COUNCIL
AUTHORIZING AN EXTENSION OF AN EXCLUSIVE RIGHT TO
SELL LISTING CONTRACT WITH MOUNTAIN MARKETING
ASSOCIATES**

WHEREAS, City Council authorized an Exclusive Right to Sell Listing Contract with Mountain Marketing Associates in May 1998, by Resolution 905 ; and


WHEREAS, City Council authorized an Extension to the Exclusive Right to Sell Listing Contract with Mountain Marketing Associates in May 2001, by Resolution 1200; and

WHEREAS, City Council wishes to extend the contract until May 2006.

THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GOLDEN,
COLORADO:


Section 1. The Mayor is authorized to execute the extension of the contract, substantially in the form attached hereto as Exhibit A.

Adopted this 14th day of October, 2004.



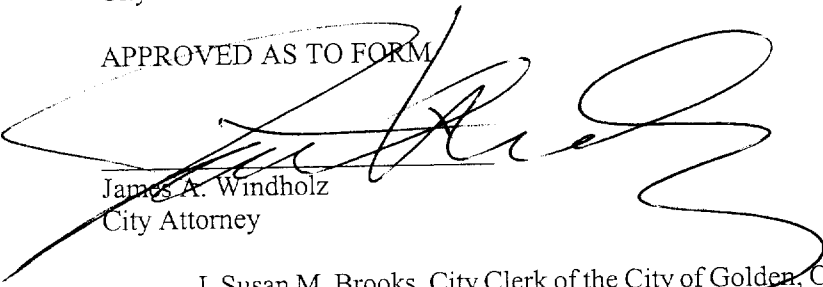
Charles J. Baroch
Mayor

ATTEST:



Susan M. Brooks, MMC
City Clerk

APPROVED AS TO FORM

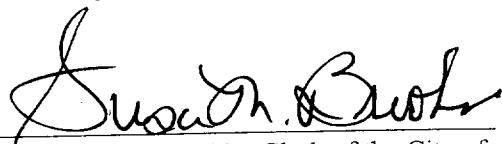


James A. Windholz
City Attorney

I, Susan M. Brooks, City Clerk of the City of Golden, Colorado, do hereby certify that the foregoing is a true copy of a certain Resolution adopted by the City Council of the City of Golden, Colorado at a regular meeting thereof held on the 14th day of October, A.D., 2004.

(SEAL)

ATTEST:



Susan M. Brooks, City Clerk of the City of
Golden, Colorado

FIRST AMENDMENT TO EXCLUSIVE RIGHT TO SELL
LISTING CONTRACT
BETWEEN CITY OF GOLDEN ("SELLER")
AND MOUNTAIN MARKETING ASSOCIATES, LTD. ("BROKER")

This first amendment is entered into as of its effective date, as hereinafter provided, between SELLER and BROKER,

WITNESSETH THAT

Whereas the parties entered into a certain Exclusive Right to Sell Listing Contract ("Listing Contract") dated May 20, 1998 pursuant to which Seller listed certain real estate for sale with Broker; and

Whereas the parties wish to extend the Listing Contract;

1. Listing Period. Section 5 of the Listing Contract, fixing the listing period, is hereby amended so that the listing period shall run through May 20, 2004, and Seller's right to terminate may be exercised during the month of January in 2002, 2003 or 2004.

2. Effective Date. The effective date of this Amendment shall be the date on which both parties have signed this instrument.

3. Entire Agreement. The Listing Contract, together with this Amendment, shall constitute the entire agreement between the parties and shall integrate and supersede any and all negotiations and agreements regarding the subject matter involved.

SELLER:
City of Golden, a Colorado
municipal corporation

By: 

Jan C. Schenck, Mayor

Date

BROKER:
Mountain Marketing Associates, Ltd.

By: 

Timothy J. Casey

Date

SECOND AMENDMENT TO EXCLUSIVE RIGHT TO SELL
LISTING CONTRACT
BETWEEN CITY OF GOLDEN ("SELLER")
AND MOUNTAIN MARKETING ASSOCIATES, LTD. ("BROKER")

This first amendment is entered into as of its effective date, as hereinafter provided, between SELLER and BROKER,

WITNESSETH THAT

Whereas the parties entered into a certain Exclusive Right to Sell Listing Contract ("Listing Contract") dated May 20, 1998 pursuant to which Seller listed certain real estate for sale with Broker; and

Whereas the parties wish to extend the Listing Contract;

1. Listing Period. Section 5 of the Listing Contract, fixing the listing period, is hereby amended so that the listing period shall run through May 20, 2006, and Seller's right to terminate may be exercised during the month of January in 2005 and 2006.

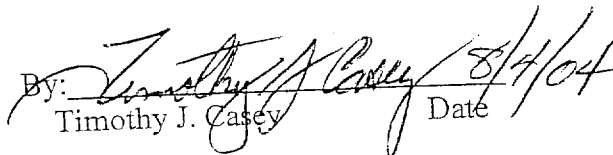
2. Effective Date. The effective date of this Amendment shall be the date on which both parties have signed this instrument.

3. Entire Agreement. The Listing Contract, together with this Amendment, shall constitute the entire agreement between the parties and shall integrate and supersede any and all negotiations and agreements regarding the subject matter involved.

SELLER:
City of Golden, a Colorado
municipal corporation

By: _____ Date
Charles Baroch, Mayor

BROKER:
Mountain Marketing Associates, Ltd.

By:  Date
Timothy J. Casey

Mountain Marketing Associates, Ltd.
P.O. Box 2340, 100 South Ridge St., Suite 105
Breckenridge, CO 80424
Phone: (970) 453-2571, Fax: (970) 453-5490

THIS FORM HAS IMPORTANT LEGAL CONSEQUENCES AND THE PARTIES SHOULD CONSULT LEGAL AND TAX OR OTHER COUNSEL BEFORE SIGNING.
Compensation charged by real estate brokers is not set by law. Such charges are established by each real estate broker.
DIFFERENT BROKERAGE RELATIONSHIPS ARE AVAILABLE WHICH INCLUDE BUYER AGENCY, SELLER AGENCY, SUBAGENCY OR TRANSACTION-BROKER.

EXCLUSIVE RIGHT-TO-SELL LISTING CONTRACT
(FARM AND RANCH/VACANT LAND)
(SELLER AGENCY)

Breckenridge, Colorado May 20, 19 98

City of Golden, a Colorado municipal corporation

Name(s) of Owner(s)

("Seller") hereby irrevocably appoint(s)

Mountain Marketing Associates, Ltd.
P.O. Box 2340, 100 S. Ridge Street, Suite 105, Breckenridge, CO 80424

Broker's Name and Address

("Broker") as Seller's exclusive agent for the purposes and under the terms specified herein, and the parties agree:

1. **PURPOSE OF AGENCY.** The purpose of this agency contract ("Listing Contract") is to engage the efforts of Broker to accomplish the sale of the real property legally described as:
See attached Exhibit A

also known as Beaver Brook properties Clear Creek County CO
Street Address City State Zip

together with the following water rights:

none

the following water stock:

none

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

n/a

and all items of personal property to be conveyed pursuant to Section 8 (collectively, the "Property").

2. **BROKER'S SERVICES.** Broker is a limited agent of the Seller and will represent only Seller.

- (a) Broker shall promote the interests of the Seller with the utmost good faith, loyalty and fidelity, including, but not limited to:
- (1) Seeking a price and terms which are acceptable to the Seller; except that Broker shall not be obligated to seek additional offers to purchase the Property while the Property is subject to a contract for sale;
 - (2) Presenting all offers to and from the Seller in a timely manner regardless of whether the Property is subject to a contract for sale;
 - (3) Disclosing to the Seller adverse material facts actually known by the Broker;
 - (4) Counseling the Seller as to any material benefits or risks of a transaction actually known by the Broker;
 - (5) Advising the Seller to obtain expert advice as to material matters about which the Broker knows but the specifics of which are beyond the expertise of the Broker;
 - (6) Accounting in a timely manner for all money and property received; and
 - (7) Informing the Seller that such Seller may be vicariously liable for the acts of such Seller's agent or any subagent when the Broker is acting within the scope of the agency relationship.
- (b) Broker shall not disclose the following information without the informed consent of the Seller:
- (1) That the Seller is willing to accept less than the asking price for the Property;
 - (2) What the motivating factors are for the Seller to sell the Property;
 - (3) That the Seller will agree to financing terms other than those offered;
 - (4) Any material information about the Seller unless the disclosure is required by law or failure to disclose such information would constitute fraud or dishonest dealing; or
 - (5) Any facts or suspicions regarding circumstances which may psychologically impact or stigmatize any real property pursuant to Colorado law.

(c) Broker shall disclose to any prospective buyer all adverse material facts actually known by Broker including but not limited to adverse material facts pertaining to the title to the Property and the physical condition of the Property, any material defects in the Property, and any environmental hazards effecting the Property which are required by law to be disclosed.

3. **SALE.** "Sale of the Property" or "Sale" means the voluntary transfer or exchange of any interest in the Property or the voluntary alienation of the right to acquire any interest in the Property (including a contract or lease).

4. **EFFECT OF THIS LISTING CONTRACT.** By this appointment, Seller agrees to conduct all negotiations for the sale of the Property only through Broker, and to refer to Broker all inquires received in any form from real estate brokers, salespersons, prospective buyers, tenants or any other source during the time this Listing Contract is in effect. Seller authorizes Broker to disclose any facts about the Property. In addition, Seller agrees that any Broker compensation which is conditioned upon the Sale of the Property shall be earned by Broker as set forth herein without any discount or allowance for any efforts made by Seller or by any representative of Seller in connection with the Sale of the Property.

5. **THE LISTING PERIOD.** Broker's authority shall begin May 20, 1998, and shall continue through May 20, 2001 * ("Listing Period").

6. **PRICE AND TERMS.** Price: U.S. \$ See below. Terms: Price and terms to be determined in Seller's sole discretion.

Minimum amount of earnest money deposit U.S. \$ will vary in the form of a check.

* except that Seller may terminate this Agreement, and thus the listing period with or without cause, by giving Broker written notice of such termination during the month of January in 1999, 2000 or 2001.

7. **DEPOSITS.** Broker is authorized to accept earnest money deposits pursuant to a proposed Sale contract. Broker is authorized to deliver the earnest money deposit to the closing agent, if any, at or before the closing of the Sale contract.

8. **PRICE TO INCLUDE.** The purchase price includes the following items if owned by Seller (a) if attached to the Property on the date of the agreement for Sale: lighting, heating, plumbing, ventilating, and air conditioning fixtures, TV antennas, water softeners, smoke/fire/burglar alarms, security devices, inside telephone wiring and connecting blocks/jacks, plants, mirrors, floor coverings, intercom systems, built-in kitchen appliances, sprinkler systems and controls, built-in vacuum systems (including accessories), and garage door openers including 0 remote controls; (b) if on the Property whether attached or not on the date of this Listing Contract: storm windows, storm doors, window and porch shades, awnings, blinds, screens, curtain rods, drapery rods, fireplace inserts, fireplace screens, fireplace grates, heating stoves, storage sheds, all keys; and (c) nothing else.

The above described items ("Inclusions") shall be conveyed by Seller to buyer by bill of sale at closing, all in their present condition, ordinary wear and tear excepted, conveyed free and clear of all taxes, liens and encumbrances unless assumed by buyer. The following attached fixtures are excluded from the Sale: none.

9. **TITLE AND ENCUMBRANCES.** Except as provided in Paragraph 28, Seller represents to Broker that title to the Property is solely in Seller's name. Seller shall deliver to Broker true copies of all relevant title materials, lease(s) and survey(s) in Seller's possession and shall disclose to Broker all easements, liens and other encumbrances, if any, on the Property, of which Seller has knowledge. Seller authorizes the holder of any obligation secured by an encumbrance on the Property to disclose to Broker the amount owing on said encumbrance and the terms thereof.

In case of Sale, Seller agrees to convey, by a special warranty deed, only that title Seller has in the Property. All monetary encumbrances (such as mortgages, deeds of trust, liens, financing statements) shall be paid by Seller and released except as Seller and buyer may otherwise agree. Existing monetary encumbrances are as follows: none.

The Property is subject to the following leases and tenancies:
Colorado Forest Service lease and Colorado Division of Wildlife lease.

If the Property has been or will be assessed for local improvements installed at the time of signing a Sale contract, Seller will be responsible for payment of same unless otherwise agreed. Broker may terminate this Listing Contract upon written notice to Seller that title is not satisfactory to Broker.

10. **EVIDENCE OF TITLE.** Seller agrees to furnish buyer, at Seller's expense, Seller's choice of a commitment for, and a policy of, title insurance or an abstract of title to the Property certified to a current date in the amount specified by any Sale contract.

11. **PRORATIONS.** General taxes for the year of closing, based on the taxes for the calendar year immediately preceding closing, rents, water and sewer charges, owner's association dues, and interest on continuing loan(s), if any, and nothing else

It be prorated to the date of closing.

12. POSSESSION. Possession of the Property shall be delivered to buyer as follows:
on date of closing and delivery of deed

subject to the leases and tenancies as described in Section 9.

13. MATERIAL DEFECTS - BROKER DISCLOSURES - INSPECTION. Seller agrees that any defects of a material nature (including, but not limited to, structural defects; soil conditions; violations of health, zoning or building laws; nonconforming uses and zoning variances) actually known by Broker must be disclosed by Broker to any prospective buyer. Seller agrees that any buyer may have the Property and Inclusions inspected. Seller agrees to provide buyer with a Seller's Property Disclosure form completed to the best of Seller's current, actual knowledge.

14. COMMISSION TO BROKER.

(a) **Commission.** In consideration of the services to be performed by Broker, Seller agrees to pay Broker as follows:

(1) **Sale Commission.** (i) 8 (%) of the gross sales price in U.S. dollars, ~~or (ii) \~~
if any real estate agent, other than an agent licensed with Mountain Marketing Associates, Ltd., is involved in the sale; or 5% of the gross sales price in U.S. dollars if only an agent(s) licensed with Mountain Marketing Associates, Ltd. is involved in the sale.

(2) **Lease Commission.** (i) n/a (%) of the gross rental under the lease in U.S. dollars, or (ii)

(b) **When Earned.** Such commission shall be earned upon the happening of any of the following:

- (1) Any Sale of the Property within the Listing Period by Seller, by Broker or by any other person;
- (2) ~~Broker finding a buyer who is ready, willing and able to complete the transaction as specified herein by Seller;~~
- (3) Any Sale of the Property within 180 calendar days subsequent to the expiration of the Listing Period ("Holdover Period") to anyone with whom Broker negotiated and whose name was submitted, in writing, to Seller by Broker during the Listing Period (including any extensions thereof); provided, however, that Seller shall owe no commission to Broker under this subsection (3) if a commission is earned by another licensed real estate broker acting pursuant to an exclusive right-to-sell listing contract or an exclusive agency listing contract entered into during the Holdover Period.

(c) **When Applicable and Payable.** The commission obligation shall apply to a Sale made during the Listings Period or made during any extension of such original or extended term. The commission described in subsection (a)(1) shall be payable at the time of the closing of the Sale as contemplated by subsection (b)(1) or (b)(3), ~~or upon fulfillment of subsection (b)(2) where either the offer made by such buyer is accepted by Seller or by the refusal of Seller to consummate the Sale as agreed upon.~~

(d) **Lease and Lease Option Commissions.** If the transaction consists of a lease or a lease and right to purchase the Property, the commission relating to the lease shall be as provided in subsection (a)(2), payable as follows:
n/a

15. LIMITATION ON BROKER'S COMPENSATION. Broker shall not accept compensation from the buyer, the buyer's agent, or any entity participating in or providing services for the Sale without the written consent of Seller.

16. OTHER BROKERS, ASSISTANCE - MULTIPLE LISTING SERVICE.

(a) Broker shall seek assistance from and offer compensation to the following brokers outside of the listing company:
(Check all that apply.)

(1) Other Brokers representing Seller ("Subagents").
(Subagents representing Seller owe duties of utmost good faith, loyalty and fidelity to Seller only. Seller may be vicariously liable for the acts of Subagents when acting in the scope of the agency relationship.)

Broker will offer compensation to Subagents as follows: (i) 4 (%) of the gross sales price in U.S. dollars or (ii)
n/a

(2) Brokers representing the buyer ("Buyer Agents").
(Buyer Agents representing buyer owe duties of utmost good faith, loyalty and fidelity to buyer only. Seller is not vicariously liable for the acts of Buyer Agents.)

Broker will offer compensation to Buyer Agents as follows: (i) 4 (%) of the gross sales price in U.S. dollars, or (ii)
n/a

(3) Brokers assisting the buyer in the transaction but not acting as agents ("Transaction-Brokers").
(Transaction-Brokers must exercise reasonable skill and care for the parties. Seller is not vicariously liable for the acts of Transaction-Broker)

Broker will offer compensation to Transaction-Brokers as follows: (i) 4 (%) of the gross sales price in U.S. dollars, or (ii)
n/a

(b) Broker will will not submit the Property to a multiple listing service.

17. **IN-COMPANY DUAL AGENCY AND TRANSACTION-BROKER.** If a written Dual Agency Addendum or Transaction-Broker Addendum is signed by Seller, Broker may show Property to buyers represented or assisted by Broker.

18. **FORFEITURE OF PAYMENTS.** In the event of a forfeiture of payments made by a buyer, the sums received shall be divided between Broker and Seller, one-half thereof to Broker, but not to exceed the commission agreed upon herein, and the balance to Seller.

19. **COST OF SERVICES; REIMBURSEMENT.** Unless otherwise specified in Section 28, Broker shall bear all expenses incurred by Broker, if any, to market the Property and to compensate cooperating brokers, if any. Broker will not obtain or order any other products or services unless Seller agrees in writing to pay for them promptly when due. Unless otherwise agreed, Broker shall not be obligated to advance funds for the benefit of Seller in order to complete a closing. (Examples: surveys, radon tests, soil tests, title reports, engineering studies.) Seller shall reimburse Broker for payments made by Broker for such other products or services authorized by Seller.

20. **MAINTENANCE OF THE PROPERTY.** Seller agrees that Broker shall not be responsible for maintenance of the Property nor shall Broker be liable for damage of any kind occurring to the Property, unless such damage shall be caused by the negligence of Broker.

21. **OTHER SELLERS.** Seller acknowledges that Broker may have agreements with other sellers to market and sell their properties.

22. **NONDISCRIMINATION.** The parties agree not to discriminate unlawfully against any prospective buyer because of the race, creed, color, sex, marital status, national origin, familial status, physical or mental handicap, religion or ancestry of such person.

23. **RECOMMENDATION OF LEGAL COUNSEL.** By signing this document, Seller acknowledges that the Broker has advised that this document has important legal consequences and has recommended consultation with legal and tax or other counsel, before signing this contract.

24. **ALTERNATIVE DISPUTE RESOLUTION: MEDIATION.** If a dispute arises relating to this contract, and is not resolved, the parties involved in such dispute (Disputants) shall first proceed in good faith to submit the matter to mediation. The Disputants will jointly appoint an acceptable mediator and will share equally in the cost of such mediation. In the event the entire dispute is not resolved within thirty (30) calendar days from the date written notice requesting mediation is sent by one Disputant to the other(s), the mediation, unless otherwise agreed, shall terminate. This section shall not alter any date in this contract, unless otherwise agreed.

25. **ATTORNEY FEES.** In case of arbitration or litigation between Seller and Broker in their respective capacities, the parties agree that costs and reasonable attorney fees shall be awarded to the prevailing party.

26. **MODIFICATION OF THIS LISTING CONTRACT.** No subsequent modification of any of the terms of this Listing Contract shall be valid, binding upon the parties, or enforceable unless made in writing and signed by the parties.

27. **ENTIRE AGREEMENT.** This Listing Contract constitutes the entire agreement 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 Listing Contract.

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

(A) Broker acknowledges that it has received a title commitment issued to Seller by the Clear Creek - Gilpin Abstract and Title Corp. (designated Order No. TC50875), including all documents referenced therein, and that Broker is aware of Seller's status of legal title as reflected in such title commitment. Broker is specifically aware of the existence of certain reverter provisions contained within the documents of conveyance from which the Seller's title is derived.

(B) Broker acknowledges that the legal ability of the Seller to convey the subject property must be authorized as provided by the laws of the State of Colorado and the Home Rule Charter of the City of Golden. Such authorization may require the adoption of an ordinance by the City Council for the City of Golden, or the approval of the electorate of the City of Golden. Seller shall incur no obligation under this Agreement by reason of the failure to obtain such authority at the time of any proposed sale.

29. **COPIES OF AGREEMENT.** This Listing Contract is executed in multiple copies and Seller acknowledges receipt of a copy of this Listing Contract signed by Broker.

30. **COUNTERPARTS.** If more than one person is named as a Seller herein, this Listing Contract may be executed by each Seller individually, and when each Seller has executed a copy of this Listing Contract, such copies taken together shall be deemed to be a full and complete contract between the parties.

Accepted:

Broker

Mountain Marketing Associates, Ltd.
P.O. Box 2340, 100 South Ridge St., Suite 105
Breckenridge, CO 80424
Phone: (970) 453-2571, Fax: (970) 453-5490

By: _____

Signature

Tim Casey

6/3/98
Date

City of Golden, a Colorado municipal corporation
911 Tenth Street, Golden, CO 80401
Bus. #: 303 384-8010 Fax #: 303 384-8001

SELLER _____

DATE

6/12/98

By: Jen C. Schenck, Mayor



LEGAL DESCRIPTION - Beaver Brook Property

Those lands located in Township 4 South, Range 72 West of the 6th Principal Meridian, Clear Creek County, Colorado, described as follows:

The following portions of Section 8: the Southeast quarter, the South half of the Southwest quarter and the Southeast quarter of the Northeast quarter; the following portions of Section 9: the Southwest quarter of the Northeast quarter, the South half of the Northwest quarter, the Southwest quarter and the North half of the Southeast quarter; the following portions of Section 10: the South half of the Northeast quarter, the Southeast quarter, the Southeast quarter of the Southwest quarter and the North half of the Southwest quarter; the following portion of Section 11: the Southwest quarter of the Southwest quarter; the following portions of Section 14: the West half of the Northeast quarter, except that portion platted as the Homestead Hideaway Annex, the portion of the East half of the Northeast quarter described in the deeds recorded in Book 223 at Page 133 and in Book 223 at Page 347, the Northwest quarter of the Northwest quarter of the Southeast quarter, the North half of the Southwest quarter and the Northwest quarter, except the East half of the Northeast quarter of the Northwest quarter; all of Section 15, except Lots 1 through 9 of Chase Subdivision; all of Section 16; all of Section 17; the following portions of Section 18: the Northeast quarter, except for the portions platted as Blue Valley Acres Unit 7, the East half of the Southeast quarter, except for the portions platted as Blue Valley Acres Unit 1, Unit 3 and Unit 7; the following portion of Section 19: the Northeast quarter of the Northeast quarter; all of Section 20, except the South half of the Southwest quarter; all of Section 21; all of Section 22; the following portion of Section 23: the Northwest quarter of the Northwest quarter and that portion of the Southwest quarter of the Northwest quarter described in the deed recorded in Book 232 at Page 45; the following portions of Section 27: the Northeast quarter of the Northeast quarter, the West half of the Northeast quarter, the East half of the Northwest quarter and the Northwest quarter of the Northwest quarter; the following portions of Section 28: the North half, the North half of the South half and the South half of the Southeast quarter; the following portion of Section 29: the Northeast quarter.

SURVEYOR'S CERTIFICATE

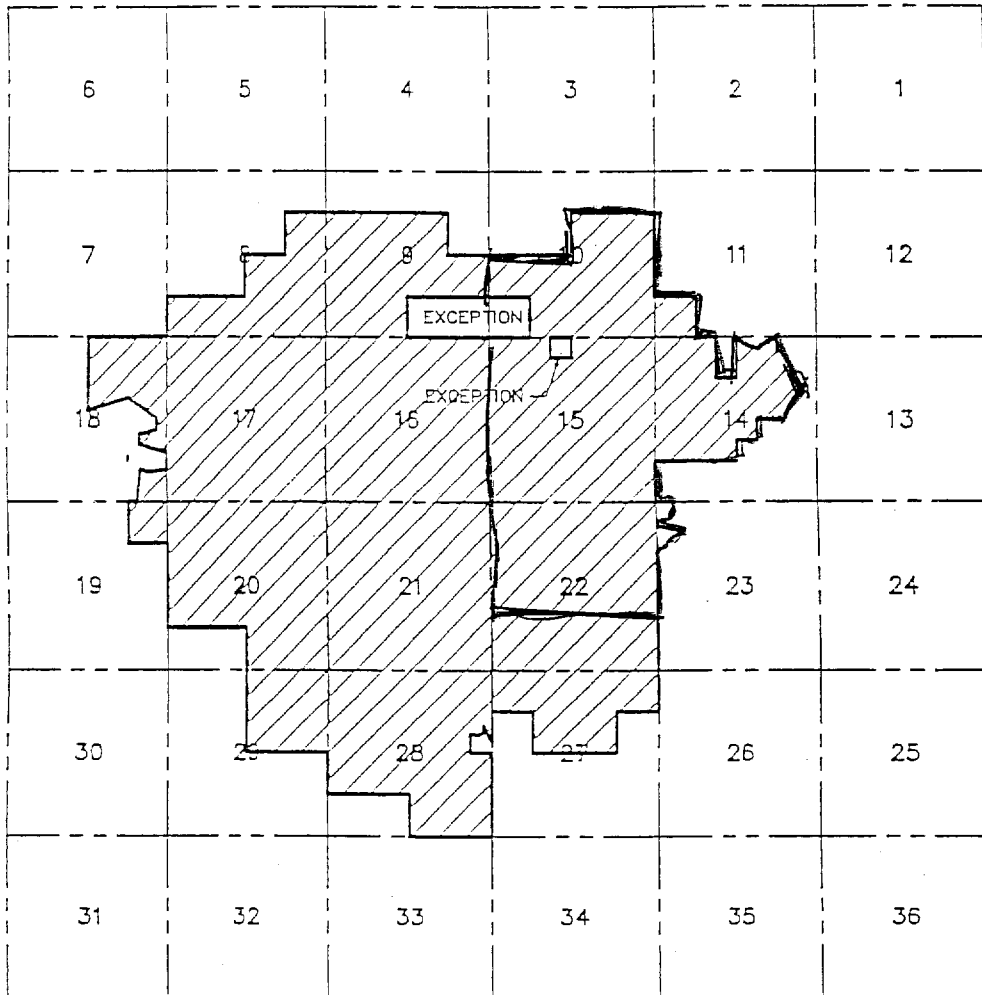
I, MICHAEL C. CREGGER, do hereby certify that this legal description was prepared by me or under my direct supervision.

PRELIMINARY

Date _____

MICHAEL C. CREGGER
Professional Land Surveyor
Colorado Registration No. 22564

EXHIBIT
CITY OF GOLDEN
BEAVER BROOK PROPERTY
TOWNSHIP 4 SOUTH, RANGE 72 WEST
OF THE 6th P.M.,
CLEAR CREEK COUNTY, COLORADO



5000 0 5000