

The printed portions of this form approved by
the Colorado Real Estate Commission (TD 73-11-83)

IF THIS FORM IS USED IN A CONSUMER CREDIT TRANSACTION, CONSULT LEGAL COUNSEL.
THIS IS A LEGAL INSTRUMENT. IF NOT UNDERSTOOD, LEGAL, TAX OR OTHER COUNSEL SHOULD BE CONSULTED BEFORE SIGNING.

DEED OF TRUST
(Due on Transfer — Creditworthy Restriction)

THIS DEED OF TRUST is made this 1st day of January, 19 94, between EDWIN A. ZINK (Borrower),

whose address is 4166 County Road 203, Durango, CO 81301 and the Public Trustee of the County in which the Property (see paragraph 1) is situated (Trustee); for the benefit of RUBY N. ZINK AS PERSONAL REPRESENTATIVE OF THE ESTATE OF JOHN W. ZINK, deceased and RUBY N. ZINK, individually (Lender), whose address is 4181 County Road 203, Durango, CO 81301

Borrower and Lender covenant and agree as follows:

1. Property in Trust. Borrower in consideration of the indebtedness herein reflected and the trust herein created, hereby grants and conveys to Trustee in trust, with power of sale, the following described property located in the County of La Plata, State of Colorado:

SEE EXHIBIT "A" ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE

which has the address of 4166 County Road 203 (Street), Durango, Colorado 81301 (Zip Code)

(Property Address), together with all its appurtenances (Property).

2. Note; Other Obligations Secured. This Deed of Trust is given to secure to Lender: A. the repayment of the indebtedness evidenced by Borrower's note (Note) dated January 1, 19 94, in the principal sum of Two Hundred Fifty Thousand and NO/100 U.S. Dollars, with interest on the unpaid principal balance from January 1, 19 94, until paid, at the rate of eight (8) percent per annum, with principal and interest payable at 4181 County Road 203, Durango, CO 81301 or such other place as the Lender may designate, in payments of

Dollars (U.S. \$) due on the _____ day of each beginning 19, such payments to continue until the entire indebtedness evidenced by said Note is fully paid; however, if not sooner paid, the entire principal amount outstanding and accrued interest thereon, shall be due and payable on 19.

SEE EXHIBIT "B" ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE



L-12495

and Borrower is to pay to Lender a late charge of five (5) % of any payment not received by the Lender within thirty (30) days after payment is due; and Borrower has the right to prepay the principal amount outstanding under said Note, in whole or in part, at any time without penalty except

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B. the payment of all other sums, with interest thereon at two (2) % per annum, disbursed by Lender in accordance with this Deed of Trust to protect the security of this Deed of Trust; and C. the performance of the covenants and agreements of Borrower herein contained.

3. Title. Borrower covenants that Borrower owns and has the right to grant and convey the Property, and warrants title to the same, subject to general real estate taxes for the current year, easements of record or in existence, and recorded declarations, restrictions, reservations and covenants, if any, as of this date and except those set forth on Exhibit A attached hereto.

4. Payment of Principal and Interest. Borrower shall promptly pay when due the principal of and interest on the indebtedness evidenced by the Note, and late charges as provided in the Note and shall perform all of Borrower's other covenants contained in the Note.

5. Application of Payments. All payments received by Lender under the terms hereof shall be applied by Lender first in payment of amounts due pursuant to paragraph 23 (Escrow Funds for Taxes and Insurance), then to amounts disbursed by Lender pursuant to paragraph 9 (Protection of Lender's Security), and the balance in accordance with the terms and conditions of the Note

Return to: Ruby N. Zink 4181 CR 203, Durango, CO 81301

6. **Prior Mortgages and Deeds of Trust; Charges; Liens.** Borrower shall perform all of Borrower's obligations under any prior deed of trust and any other prior liens. Borrower shall pay all taxes, assessments and other charges, fines and impositions attributable to the Property which may have or attain a priority over this Deed of Trust, and leasehold payments or ground rents, if any, in the manner set out in paragraph 23 (Escrow Funds for Taxes and Insurance) or, if not required to be paid in such manner, by Borrower making payment when due, directly to the payee thereof. Despite the foregoing, Borrower shall not be required to make payments otherwise required by this paragraph if Borrower, after notice to Lender, shall in good faith contest such obligation by, or defend enforcement of such obligation in, legal proceedings which operate to prevent the enforcement of the obligation or forfeiture of the Property or any part thereof, only upon Borrower making all such contested payments and other payments as ordered by the court to the registry of the court in which such proceedings are filed.

7. **Property Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire or hazards included within the term "extended coverage" in an amount at least equal to the lesser of (1) the insurable value of the Property or (2) an amount sufficient to pay the sums secured by this Deed of Trust as well as any prior encumbrances on the Property. All of the foregoing shall be known as "Property Insurance".

The insurance carrier providing the insurance shall be qualified to write Property Insurance in Colorado and shall be chosen by Borrower subject to Lender's right to reject the chosen carrier for reasonable cause. All insurance policies and renewals thereof shall include a standard mortgage clause in favor of Lender, and shall provide that the insurance carrier shall notify Lender at least ten (10) days before cancellation, termination or any material change of coverage. Insurance policies shall be furnished to Lender at or before closing. Lender shall have the right to hold the policies and renewals thereof.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower.

Insurance proceeds shall be applied to restoration or repair of the Property damaged, provided such restoration or repair is economically feasible and the security of this Deed of Trust is not thereby impaired. If such restoration or repair is not economically feasible or if the security of this Deed of Trust would be impaired, the insurance proceeds shall be applied to the sums secured by this Deed of Trust, with the excess, if any, paid to Borrower. If the Property is abandoned by Borrower, or if Borrower fails to respond to Lender within 30 days from the date notice is given in accordance with paragraph 16 (Notice) by Lender to Borrower that the insurance carrier offers to settle a claim for insurance benefits, Lender is authorized to collect and apply the insurance proceeds, at Lender's option, either to restoration or repair of the Property or to the sums secured by this Deed of Trust.

Any such application of proceeds to principal shall not extend or postpone the due date of the installments referred to in paragraphs 4 (Payment of Principal and Interest) and 23 (Escrow Funds for Taxes and Insurance) or change the amount of such installments. Notwithstanding anything herein to the contrary, if under paragraph 18 (Acceleration; Foreclosure; Other Remedies) the Property is acquired by Lender, all right, title and interest of Borrower in and to any insurance policies and in and to the proceeds thereof resulting from damage to the Property prior to the sale or acquisition shall pass to Lender to the extent of the sums secured by this Deed of Trust immediately prior to such sale or acquisition.

All of the rights of Borrower and Lender hereunder with respect to insurance carriers, insurance policies and insurance proceeds are subject to the rights of any holder of a prior deed of trust with respect to said insurance carriers, policies and proceeds.

8. **Preservation and Maintenance of Property.** Borrower shall keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property and shall comply with the provisions of any lease if this Deed of Trust is on a leasehold. Borrower shall perform all of Borrower's obligations under any declarations, covenants, by-laws, rules, or other documents governing the use, ownership or occupancy of the Property.

9. **Protection of Lender's Security.** Except when Borrower has exercised Borrower's rights under paragraph 6 above, if the Borrower fails to perform the covenants and agreements contained in this Deed of Trust, or if a default occurs in a prior lien, or if any action or proceeding is commenced which materially affects Lender's interest in the Property, then Lender, at Lender's option, with notice to Borrower if required by law, may make such appearances, disburse such sums and take such action as is necessary to protect Lender's interest, including, but not limited to, disbursement of reasonable attorney's fees and entry upon the Property to make repairs. Borrower hereby assigns to Lender all right Borrower may have by reason of any prior encumbrance on the Property or by law or otherwise to cure any default under any prior encumbrance.

Any amounts disbursed by Lender pursuant to this paragraph 9, with interest thereon, shall be an additional indebtedness of Borrower secured by this Deed of Trust. Such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof, and Lender may bring suit to collect any amounts so disbursed plus interest specified in paragraph 2B (Note: Other Obligations Secured). Nothing contained in this paragraph 9 shall require Lender to incur any expense or take any action hereunder.

10. **Inspection.** Lender may make or cause to be made reasonable entries upon and inspection of the Property, provided that Lender shall give Borrower notice prior to any such inspection specifying reasonable cause therefor related to Lender's interest in the Property.

11. **Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender as herein provided. However, all of the rights of Borrower and Lender hereunder with respect to such proceeds are subject to the rights of any holder of a prior deed of trust.

In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Deed of Trust, with the excess, if any, paid to Borrower. In the event of a partial taking of the Property, the proceeds remaining after taking out any part of the award due any prior lien holder (net award) shall be divided between Lender and Borrower, in the same ratio as the amount of the sums secured by this Deed of Trust immediately prior to the date of taking bears to Borrower's equity in the Property immediately prior to the date of taking. Borrower's equity in the Property means the fair market value of the Property less the amount of sums secured by both this Deed of Trust and all prior liens (except taxes) that are to receive any of the award, all at the value immediately prior to the date of taking.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the condemnor offers to make an award or settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date such notice is given, Lender is authorized to collect and apply the proceeds, at Lender's option, either to restoration or repair of the Property or to the sums secured by this Deed of Trust.

Any such application of proceeds to principal shall not extend or postpone the due date of the installments referred to in paragraphs 4 (Payment of Principal and Interest) and 23 (Escrow Funds for Taxes and Insurance) nor change the amount of such installments.

12. **Borrower Not Released.** Extension of the time for payment or modification of amortization of the sums secured by this Deed of Trust granted by Lender to any successor in interest of Borrower shall not operate to release, in any manner, the liability of the original Borrower, nor Borrower's successors in interest, from the original terms of this Deed of Trust. Lender shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Deed of Trust by reason of any deed made by the original Borrower or Borrower's successors in interest.

13. **Forbearance by Lender.** Borrower, or any party benefited by Lender, exercising any right or remedy hereunder, or otherwise afforded by law, shall not be a waiver or preclude the exercise of any such right or remedy.

14. **Remedies Cumulative.** Each remedy provided in the Note and this Deed of Trust is distinct from and cumulative to all other rights or remedies under the Note and this Deed of Trust or afforded by law, or equity, and may be exercised concurrently, independently or successively.

15. **Successors and Assigns Bound; Joint and Several Liability; Captions.** The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower, subject to the provisions of paragraph 24 (Transfer of the Property; Assumption). All covenants and agreements of Borrower shall be joint and several. The captions and headings of the paragraphs in this Deed of Trust are for convenience only and are not to be used to interpret or define the provisions hereof.

16. **Notice.** Except for any notice required by law to be given in another manner, (a) any notice to Borrower provided for in this Deed of Trust shall be in writing and shall be given to be effective upon (1) delivery to Borrower or (2) mailing such notice by first-class U.S. mail, addressed to Borrower at Borrower's address stated herein or at such other address as Borrower may designate by notice to Lender as provided herein, and (b) any notice to Lender shall be in writing and shall be given and be effective upon (1) delivery to Lender or (2) mailing such notice by first-class U.S. mail, to Lender's address stated herein or to such other address as Lender may designate by notice to Borrower as provided herein. Any notice provided for in this Deed of Trust shall be deemed to have been given to Borrower or Lender when given in any manner designated herein.

17. **Governing Law; Severability.** The Note and this Deed of Trust shall be governed by the law of Colorado. In the event that any provision or clause of this Deed of Trust or the Note conflicts with the law, such conflict shall not affect other provisions of this Deed of Trust or the Note which can be given effect without the conflicting provision, and to this end the provisions of the Deed of Trust and Note are declared to be severable.

18. Acceleration; Foreclosure; Other Remedies. Except as provided in paragraph 24 (Transfer of the Property; Assumption), upon Borrower's breach of any covenant or agreement of Borrower in this Deed of Trust, or upon any default in a prior lien upon the Property, (unless Borrower has exercised Borrower's rights under paragraph 6 above), at Lender's option, all of the sums secured by this Deed of Trust shall be immediately due and payable (Acceleration). To exercise this option, Lender may invoke the power of sale and any other remedies permitted by law. Lender shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided in this Deed of Trust, including, but not limited to, reasonable attorney's fees.

If Lender invokes the power of sale, Lender shall give written notice to Trustee of such election. Trustee shall give such notice to Borrower of Borrower's rights as is provided by law. Trustee shall record a copy of such notice as required by law. Trustee shall advertise the time and place of the sale of the Property, for not less than four weeks in a newspaper of general circulation in each county in which the Property is situated, and shall mail copies of such notice of sale to Borrower and other persons as prescribed by law. After the lapse of such time as may be required by law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder for cash at the time and place (which may be on the Property or any part thereof as permitted by law) in one or more parcels as Trustee may think best and in such order as Trustee may determine. Lender or Lender's designee may purchase the Property at any sale. It shall not be obligatory upon the purchaser at any such sale to see to the application of the purchase money.

Trustee shall apply the proceeds of the sale in the following order: (a) to all reasonable costs and expenses of the sale, including, but not limited to, reasonable Trustee's and attorney's fees and costs of title evidence; (b) to all sums secured by this Deed of Trust; and (c) the excess, if any, to the person or persons legally entitled thereto.

19. Borrower's Right to Cure Default. Whenever foreclosure is commenced for nonpayment of any sums due hereunder, the owner of the Property or parties liable hereon shall be entitled to cure said defaults by paying all delinquent principal and interest payments due as of the date of cure, costs, expenses, late charges, attorney's fees and other fees all in the manner provided by law. Upon such payment, this Deed of Trust and the obligations secured hereby shall remain in full force and effect as though no Acceleration had occurred, and the foreclosure proceedings shall be discontinued.

20. Assignment of Rents; Appointment of Receiver; Lender in Possession. Additional security is provided. Borrower hereby assigns to Lender the rents of the Property; however, Borrower shall, prior to Acceleration under paragraph 18 (Acceleration; Foreclosure; Other Remedies) or abandonment of the Property, have the right to collect and retain such rents as they become due and payable.

Lender or the holder of the Trustee's certificate of purchase shall be entitled to a receiver for the Property after Acceleration under paragraph 18 (Acceleration; Foreclosure; Other Remedies), and shall also be so entitled during the time covered by foreclosure proceedings and the period of redemption, if any; and shall be entitled thereto as a matter of right without regard to the solvency or insolvency of Borrower or of the then-owner of the Property, and without regard to the value thereof. Such receiver may be appointed by any Court of competent jurisdiction upon ex parte application and without notice - notice being hereby expressly waived.

Upon Acceleration under paragraph 18 (Acceleration; Foreclosure; Other Remedies) or abandonment of the Property, Lender, in person or agent or by judicially-appointed receiver, shall be entitled to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. All rents collected by Lender or the receiver shall be applied, first, to payment of the costs of preservation and management of the Property, second, to payments due upon prior liens, and then to the sums secured by this Deed of Trust. Lender and the receiver shall be liable to account only for those rents actually received.

21. Release. Upon payment of all sums secured by this Deed of Trust, Lender shall cause Trustee to release this Deed of Trust and shall produce for Trustee the Note. Borrower shall pay all costs of recordation and shall pay the statutory Trustee's fees. If Lender shall not produce the Note as aforesaid, then Lender, upon notice in accordance with paragraph 16 (Notice) from Borrower to Lender, shall obtain, at Lender's expense, and file any lost instrument bond required by Trustee or pay the cost thereof to effect the release of this Deed of Trust.

22. Waiver of Exemptions. Borrower hereby waives all right of homestead and any other exemption in the Property under state or federal law presently existing or hereafter enacted.

~~23. Escrow Funds for Taxes and Insurance. This paragraph 23 is not applicable if Funds as defined below are being paid pursuant to a prior encumbrance. Subject to applicable law, Borrower shall pay to Lender, on each day installments of principal and interest are payable under the Note, until the Note is paid in full, a sum (hereinafter referred to as "Funds") equal to _____ of the yearly taxes and assessments which may accrue primarily over this Deed of Trust plus _____ of yearly premium installments for Property Insurance, all as reasonably estimated initially and from time to time by Lender on the basis of assessments and bills and reasonable estimates thereof, taking into account any excess Funds not used or shortages.~~

The principal of the Funds shall be held in a separate account by the Lender in trust for the benefit of the Borrower and deposited in an institution the deposits or accounts of which are insured or guaranteed by a federal or state agency. Lender shall apply the Funds to pay said taxes, assessments and insurance premiums. Lender may not charge for so holding and applying the Funds, analyzing and verifying and compiling said assessments and bills. Lender shall not be required to pay Borrower any interest or earnings on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds showing credits and debits to the Funds and the purposes for which each debit to the Funds was made. The Funds are pledged as additional security for the sums secured by this Deed of Trust.

If the amount of the Funds held by Lender shall not be sufficient to pay taxes, assessments and insurance premiums as they fall due, Borrower shall pay to Lender any amount necessary to make up the deficiency within 30 days from the date notice is given in accordance with paragraph 16 (Notice) by Lender to Borrower requesting payment thereof.

Upon payment in full of all sums secured by this Deed of Trust, Lender shall simultaneously refund to Borrower any Funds held by Lender. If under paragraph 18 (Acceleration; Foreclosure; Other Remedies) the Property is sold or the Property is otherwise acquired by Lender, Lender shall apply no later than immediately prior to the sale of the Property or its acquisition by Lender, whichever occurs first, any Funds held by Lender at the time of application of a credit against the sums secured by this Deed of Trust.

24. Transfer of the Property; Assumption. The following events shall be referred to herein as a "Transfer": (i) a transfer or conveyance of title (or any portion thereof, legal or equitable) of the Property, (or any part thereof or interest therein), (ii) the execution of a contract or agreement creating a right to title (or any portion thereof, legal or equitable) in the Property (or any part thereof or interest therein), (iii) an agreement granting a possessory right in the Property (or any portion thereof), in excess of three (3) years, (iv) a sale or transfer of, or the execution of a contract or agreement creating a right to acquire or receive, more than fifty percent (50%) of the controlling interest or more than fifty percent (50%) of the beneficial interest in the Borrower, (v) the reorganization, liquidation or dissolution of the Borrower. Not to be included as a Transfer are (i) the creation of a lien or encumbrance subordinate to this Deed of Trust, (ii) the creation of a purchase money security interest for household appliances, or (iii) a transfer by devise, descent or by operation of the law upon the death of a joint tenant. At the election of Lender, in the event of each and every Transfer:

(a) Borrower shall, upon Lender's request, submit information required to enable Lender to evaluate the creditworthiness of the person ("Transferee") who is, or is to be, the recipient of a Transfer, as if a new loan were being made to Transferee. If Transferee is reasonably determined by Lender to be financially unable to discharge the debt, Lender may, according to the standards normally used by persons in the business of making loans, refuse to make a loan in the same or similar circumstances. All sums secured by this Deed of Trust, at Lender's option, may be immediately due and payable to Lender.

(b) If Lender exercises such option to Accelerate, Lender shall give Borrower notice of Acceleration in accordance with paragraph 16 (Notice). The notice shall inform Borrower of the right to assert in the foreclosure proceeding the nonexistence of a default or any other defense of Borrower to Acceleration and sale. Such notice shall also provide a period of not less than 10 days from the date the notice is given within which Borrower may pay the sums delinquent due. If Borrower fails to pay such sums prior to the expiration of such period, Lender may, without further notice or demand on Borrower, invoke any remedies permitted by paragraph 18 (Acceleration; Foreclosure; Other Remedies). Lender shall give notice of such Acceleration, within thirty (30) days after notice of any Transfer is given to Lender by Borrower or Transferee in accordance with paragraph 16 (Notice). If Lender shall not give notice of such Acceleration within such thirty (30) days, then Lender will have no further right to such Acceleration.

(c) If a Transfer occurs and should Lender not exercise Lender's option pursuant to this paragraph 24 to Accelerate, Transferee shall be deemed to have assumed all of the obligations of Borrower under this Deed of Trust including all sums secured hereby, whether or not the instrument evidencing such conveyance, contract or grant expressly so provides. This covenant shall run with the Property and remain in full force and effect until said sums are paid in full. The Lender may without notice to the Borrower deal with Transferee in the same manner as with the Borrower with reference to said sums including the payment or credit to Transferee of undistributed reserve Funds on payment in full of said sums, without in any way altering or discharging the Borrower's liability hereunder for the obligations hereby secured.

(d) Should Lender not elect to Accelerate upon the occurrence of such Transfer then, subject to (b) above, the mere fact of a lapse of time or the acceptance of payment subsequent to any of such events, whether or not Lender had actual or constructive notice of such Transfer, shall not be deemed a waiver of Lender's right to make such election nor shall Lender be estopped therefrom by virtue thereof. The issuance on behalf of the Lender of a routine statement showing the status of the loan, whether or not Lender had actual or constructive notice of such Transfer, shall not be a waiver or estoppel of Lender's said rights.

25. Borrower's Copy. Borrower acknowledges receipt of a copy of the Note and of this Deed of Trust.

EXECUTED BY BORROWER.

IF BORROWER IS NATURAL PERSON(S):

Edwin A Zink
EDWIN A. ZINK

doing business as _____

IF BORROWER IS CORPORATION:

ATTEST:

(SEAL) **UNOFFICIAL COPY**

IF BORROWER IS PARTNERSHIP:

by _____
A General Partner

STATE OF COLORADO

COUNTY OF LA PLATA } ss.

The foregoing instrument was acknowledged before me this 9/11 day of September

19 94, by* EDWIN A. ZINK

UNOFFICIAL COPY

Witness my hand and official seal

My commission expires: 6-11-97

Becky Wilmer
Notary Public
970 Main Street, Durango, CO 81301
Address



*If a natural person or persons, insert the name(s) of such person(s). If a corporation, insert, for example, "John Doe as President and Jane Doe as Secretary of Doe & Co., a Colorado corporation." If a partnership, insert, for example, "Sam Smith as general partner in and for Smith & Smith, a general partnership."

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DEED OF TRUST

FROM

TO
THE PUBLIC TRUSTEE
FOR THE USE OF

STATE OF COLORADO,

County of _____

I hereby certify that this instrument was filed for record in

my office at _____ o'clock _____ M.,

_____ 19 _____, and is duly

recorded in book _____, page _____

film No. _____ Reception No. _____

Clerk and Recorder

By _____

Notary Public

Fees, \$ _____

The following described real estate located in the County of La Plata, State of Colorado to-wit:

TRACT I:

A tract of land lying and being in the SW1/4NE1/4 of Section 28, Township 36 North, Range 9 West, N.M.P.M., being more particularly described as follows, to-wit:

BEGINNING at a point on the Southwest Corner of tract described in Deed from John W. Zink and Ruby N. Zink to Don Kolb and Ida Kolb recorded January 9, 1968 in Book 520 at Page 389 whence the N1/4 Corner of said Section 28, a brass cap, bears North 1440.60 feet:

- Thence East 906.69 feet, more or less, along the South boundary line of tract described in said Book 520 at Page 389 to the West boundary line of tract described in Deed from John W. Zink and Ruby N. Zink to Everett L. Hanson, Musa A. Hanson, Laurita N. Erickson and Ann L. Erickson recorded April 5, 1955 in Book 343 at Page 308;
- South 09° 0' East, 52.28 feet to the Southwest Corner of tract described in said Book 343 at Page 308;
- South 1° 09' East, 117.33 feet along the West boundary line of tract described in Deed from John W. Zink and Ruby N. Zink to Thomas [redacted], Jr. and Doris F. King recorded October 25, 1966 in Book 507 at Page [redacted];
- South 61° 12' East, 180.00 feet along the Southwesterly boundary line of tract described in said Book 507 at Page 431;
- East 37.30 feet, more or less, along the South boundary line of tract described in said Book 507 at Page 431 to the West right of way line of La Plata County Road No. 203;
- South 05° 15' 50" West, 178.61 feet, more or less, along said West right of way line to the Northeast Corner of tract described in Deed from John W. Zink and Ruby N. Zink to Charles R. Van Den Berg and Vivian S. Van Den Berg recorded April 22, 1974 as Reception No. 384258;
- West 1095.99 feet, more or less, along the North boundary of tract described in said Reception No. 384258 to the West boundary line of said SW1/4NE1/4;
- North 433.50 feet, more or less, along the West boundary line of said SW1/4NE1/4 to the point of beginning.

TRACT II:

A tract of land in the S1/2NE1/4 of Section 28, Township 36 North, Range 9 West, N.M.P.M., which is more particularly described as follows:

BEGINNING at a point whence the W.C. (66.0 feet South) of the Southeast Corner of said Section 28 bears South 16° 34' East, a distance of 3586.81 feet.

- Thence South 88° 40' East, a distance of 292.9 feet to the West right of way of U.S. Highway 550;
- along said right of way, North 1° 52' East, a distance of 336.25 feet to the Southerly boundary of Zink Boundary Adjustment plat filed for record January 18, 1991 as Reception No. 575593;
- North 88° 58' West, a distance of 471.46 feet along said Southerly boundary of Zink Boundary Adjustment;
- South 60° 35' 03" West, a distance of 165.27 feet along said Southerly boundary of Zink Boundary Adjustment;
- North 61° 19' 15" West, a distance of 71.76 feet along said Southerly boundary of Zink Boundary Adjustment to the East right of way of County Road No. 203;
- South 9° 46' West, a distance of 289.43 feet along said right of way;
- South 88° 08' East, a distance of 169.50 feet;
- South 89° 52' East, a distance of 254.88 feet to the point of beginning.

TRACT III:

A tract of land in the NE1/4 of Section 27 and the NE1/4 of Section 28, Township 36 North, Range 9 West, N.M.P.M. and more particularly described as follows:

BEGINNING at a point on the East right of way line of the Durango and Silverton Narrow Gauge Railroad whence the witness corner for the section corner common to Sections 27, 28, 33 and 34 (South 0° 30' 00" West, a distance of 66.0 feet from said section corner) bears South 6° 34' 52" East, a distance of 4014.76 feet, said point of beginning also being the Southwesterly Corner of that tract of land as described under Reception No. 418145 of the La Plata County Records;

- Thence South 1° 49' 15" West, a distance of 555.26 feet along said right of way to the North line of that tract of land described under Reception No. 476298 of the La Plata County records;
- along said North line the following courses:
- South 88° 12' 00" East, a distance of 614.20 feet;
- South 01° 53' 42" West, a distance of 265.89 feet;
- South 88° 06' 18" East, a distance of 1320.01 feet more or less to the centerline of the Animas River;
- North 15° 30' 17" East, along said centerline a distance of 905.36 feet to the Southeasterly Corner of said Reception No. 418145;
- North 89° 42' 00" West, along the South line of said Reception No. 418145 a distance of 2148.8 feet to the point of beginning.

ALSO LESS AND EXCEPT a tract of land conveyed to Michael T. O'Neill by John W. Zink and Ruby N. Zink in instrument recorded February 18, 1983 as Reception No. 479858.

TRACT IV:

A tract of land in the NE1/4 of Section 28, Township 36 North, Range 9 West, N.M.P.M., La Plata County, Colorado, and more particularly described as follows:

BEGINNING at a point on the East right of way line of the Durango and Silverton Narrow Gauge Railroad whence the witness corner for the section corner common to Sections 27, 28, 33 and 34 (South 0° 30' 00" West, a distance of 66.0 feet from said section corner) bears South 6° 34' 52" East, a distance of 4014.70 feet, said point of beginning also being the Southwesterly Corner of that tract of land as described under Reception No. 418145 of the La Plata County Records;

Thence: South 1° 49' 15" West, a distance of 555.26 feet along said right of way to the North line of that tract of land described under Reception No. 476598 of the La Plata County records;

- * West 100 feet, more or less, to the East right of way line of U.S. Highway No. 550;
- * North along said East right of way line 555.26 feet;
- * East 100 feet, more or less, to the point of beginning.

TOGETHER WITH: All water, water rights and ditch rights appurtenant to the above described property, including but not limited to, the following described certain rights: 2.0 c.f.s. of water, Priority #7, 10/10/1875, in the WATERFALL DITCH, Case No. 1751 (decreed) and Case No. W-1049-73 (Change of point of diversion for 0.50 c.f.s), and Thirteen (13) shares of The Animas Consolidated Ditch Co.

SUBJECT TO:

Ditches and ditch rights, but not limited to the Animas Consolidated Ditch and the Waterfall Ditch.

Restrictions, but omitting restrictions, if any, based on race, color, creed or national origin, as contained in Protective Covenants, recorded May 5, 1969 as Reception No. 354128

Easement and right of way for a roadway, 20 feet in width, to be used jointly with others for access to U.S. Highway No. 550, as set forth in Deed from John W. Zink and Ruby N. Zink to John M. Tannehill, recorded December 8, 1969 as Reception No. 357874, lying adjacent to the Southerly boundary of subject property. (Tract II)

Each and every right or rights of access to and from any part of the right of way of U.S. Highway 550, from and to any part of the subject property abutting upon said highway, along or across the Easterly boundary line of subject property, as granted to The Department of Highways, State of Colorado, by the District Court in and for the County of La Plata and State of Colorado, in Civil Action No. 7516, as set forth in Rule and Order recorded August 12, 1965 in Book 492 at Page 239. (Tracts I and II)

Easement and right of way, for pole line purposes, as granted to The Mountain States Telephone and Telegraph Co., by W.W. Perkins, in instrument recorded June 24, 1930 in Book 206 at Page 287, across part of the S1/2NE1/4 of Section 28, Township 36 North, Range 9 West, N.M.P.M., in which the exact location of said easement is not defined.

Terms, agreements, provisions, conditions and obligations, if applicable, as contained in Declaration of Areas of State Interest, regarding Designation of Mineral Resource Areas and Geologic Hazard Areas by Board of County Commissioners, La Plata County, recorded July 7, 1976 as Reception No. 401417.

Terms, agreements, provisions, conditions and obligations as contained in Conservation Easement Deed, between John W. Zink and Ruby N. Zink and La Plata County, Colorado, A Subdivision of Local Government of the State of Colorado, dated December 18, 1984, recorded December 21, 1984 as Reception No. S09713. (Tract I)

Reservation of right of proprietor of any penetrating vein or lode to extract his ore, in U.S. Patent recorded August 7, 1883 in Book 23 at Page 219 and recorded July 6, 1917 in Book 116 at Page 511. (S1/2NE1/4, Section 28, Township 36 North, Range 9 West and SW1/4NW1/4, Section 27, Township 36 North, Range 9 West)

Any right, interest or easements in favor of the state of Colorado, the United States of America, or the general public, which exist, have existed, or are claimed to exist in and over the waters and present and past bed and banks of the Animas River. (Tract III)

Any question, dispute or adverse claims as to any loss or gain of land as a result of any change in the river bed location by other than natural causes, or alteration through accretion, reliction, erosion or avulsion of the center thread, bank, channel or flow of waters in the Animas River lying within subject land; and any question as to the location of such center, thread, bed, bank or channel as a legal description monument or marker for purposes of describing or locating subject lands. (Tracts III)

Deed of Access Rights to and from U.S. Highway No. 550, over and across the line described in Quit Claim Deed from D&RGW R.R. to Department of Highways, State of Colorado, Dated September 20, 1963, recorded October 9, 1963 in Book 4967 at Page 200> (Tract III)

Lack of a right of access from the land to any open public road, street or highway. (Tract III)

Terms, agreements, provisions, conditions and obligations as contained in Conservation Easement Deed, between John W. Zink and Ruby N. Zink and La Plata County, Colorado, dated December 24, 1990, recorded December 27, 1990 as Reception No. 604729. (Tract III)

Easement, 25 feet in width, as granted to Michael T. O'Neill by John W. Zink and Ruby N. Zink, in instrument recorded November 24, 1982 as Reception No. 476598. (Tract III)

Terms, agreements, provisions, conditions and obligations as contained in Right of First Refusal and Option Agreement, between John W. Zink and Ruby N. Zink and Michael T. O'Neill, dated November 24, 1982, recorded November 24, 1982 as Reception No. 476599. (Tract III)

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EXHIBIT "B"

The Note shall be payable as follows: Interest shall be due and payable annually as it accrues beginning December 1, 1994, and continuing on the 1st day of December of each year until and including December 1, 1998, after which date principal and interest shall be due and payable in annual installments of Twenty-Nine Thousand Two Hundred Seven and 39/100 Dollars (\$29,207.39) beginning December 1, 1999, and continuing on the 1st day of December of each year thereafter until the entire indebtedness evidenced by the Note is fully paid; provided, however, if not sooner paid, the entire principal amount outstanding and accrued interest thereon, shall be due and payable on December 1, 2013.

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