

AUCTION REAL ESTATE SALES CONTRACT

THIS CONTRACT, made this the 13th day of October 2018, by and between **Hurd Creek Ranch Company** (“Seller”) whose address is _____ and _____ (“Buyer”) whose address is _____.

1. AGREEMENT TO PURCHASE. In consideration of the sum as identified in Paragraph 2 below, the mutual covenants herein set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller agrees to sell to Buyer, by (Special Warranty Deed for land) and (Bargain and Sale Deed for water rights, where applicable), and Buyer agrees to purchase from Seller, pursuant to the terms and conditions hereinafter set forth, the following selected real property (the “Property”) in Grand County, as described in the attached **Exhibit A**, which is incorporated by reference and made a part hereto.

2. High Bid Price \$ _____

6.00 % Buyer’s Premium \$ _____

Total Purchase Price \$ _____

Non-Refundable Down Payment/Deposit \$ _____

In U.S. Funds, based on (10%) of the Total Purchase Price and due on the first legal banking day following the Auction Date, to be held in a non-interest-bearing escrow account by Closing Agent.

Balance of Purchase Price \$ _____

In U.S. Good Funds available for immediate withdraw in accordance with C.R.S. § 38-35-125(1)(a), due at Closing, not including Buyer’s closing or financing costs, prepaids or credited prorations.

3. CLOSING. Closing shall take place with **Land Guarantee Title Company** (“Closing Agent”), whose address is **78336 US Highway 40, Suite B3, Winter Park, CO 80482** on or before **Friday, November 16th, 2018** (the “Closing Date”). The contact person is **Leslie L Larkins** 970-722-0454 llarkins@ltgc.com. Seller and Buyer shall execute and deliver any notices, statements, certificates, affidavits, releases or other documents required by this Contract, the Title Commitment (as hereinafter defined) or applicable law, including the Deeds described in Paragraph 8 of this Contract and an Assignment and Assumption of Leases which shall assign any leases of the Property to Buyer. Buyer shall pay, or cause to be paid, Seller the Total Purchase Price and shall execute and deliver to any tenant of the Property an acknowledgement of receipt of its security deposit in form required by applicable law. Possession of the Property shall be delivered at Closing, subject to those matters contained in the Deed, Title Commitment and this Contract. Time is of the essence in this Contract.

4. **TAXES AND OTHER PRORATIONS.** The current year's Property Taxes shall be prorated between Seller and Buyer at Closing based upon the amount of taxes for the prior year. All unpaid taxes for prior years, if any, shall be the responsibility of Seller. Buyer shall assume the payment of taxes for the year of Closing and all subsequent years. In addition, all rents, operating expenses and utilities shall be prorated between Seller and Buyer as of the Closing Date and Seller shall pay to Buyer any tenant security deposits and Buyer shall pay to Seller any prepaid security deposits paid by Seller for utilities or other items. The prorations contained in this Paragraph 4 shall constitute a final settlement between Seller and Buyer and shall expressly survive the Closing.
5. **CLOSING COSTS.**
- (a) **Seller's Costs.** At Closing, Seller shall pay the fees for preparation of the Deed and issuance of the Owner's Title Policy (as hereinafter defined), and all costs relating to tax certificates and overnight courier fees and messenger charges on behalf of the Seller.
 - (b) **Buyer's Costs.** At Closing, Buyer shall pay the recording costs of the Deed, overnight courier fees and messenger charges on behalf of the Buyer, escrow fees, if any (other than Closing Agent's closing fee), as well as all additional closing fees not allocated to Seller under this Contract.
 - (c) **Closing Agent's** closing fees shall be split equally (50/50) between the Seller and Buyer.
 - (d) **Survey.** Any survey of adjacent tracts purchased in a combination will be for the perimeter only, and no interior survey shall be provided by Seller.
6. **SALE NOT CONTINGENT ON FINANCING.** This sale is not contingent upon financing or due diligence. BUYER ACKNOWLEDGES AND AGREES THAT BUYER'S OBLIGATIONS UNDER THIS CONTRACT ARE NOT CONTINGENT UPON BUYER OBTAINING A LOAN FROM ANY LENDER. Accordingly, buyer shall be obligated to perform its obligations under this contract whether or not buyer can obtain a loan to finance the purchase of the property.
7. **DOWN PAYMENT/ DEPOSIT AND CLOSING AGENT.** Buyer and Seller hereby acknowledge and agree that Closing Agent shall hold and deliver the Down Payment/Deposit, in accordance with the terms and conditions of this Contract, and that Closing Agent shall be relieved of all liability and held harmless by both Seller and Buyer in the event Closing Agent makes a disbursement of the Down Payment/Deposit in accordance with the terms and provisions of this Contract. Closing Agent shall be relieved from any responsibility or liability and held harmless by both Seller and Buyer in connection with the discharge of any Closing Agent's duties hereunder provided that Closing Agent exercises ordinary and reasonable care in the discharge of said duties. Both parties understand that the Buyer's Down Payment/Deposit is non-refundable.
8. **TRANSFER OF TITLE; DISCLAIMER OF WARRANTIES ("AS-IS" CONVEYANCE).** At Closing, Seller shall deliver to Buyer a Special Warrant Deed for surface land tracts and/or Bargain and Sale Deed for water rights, where applicable (the "Deed"), which shall convey fee simple title to the Property to Buyer without any warranties, including, without limitation, habitability or fitness for a particular purpose. Buyer acknowledges the following conditions to the transfer of title:
- (a) Buyer warrants and acknowledges to and agrees with Seller, and United Country – Gingery & Associates, Inc., ("Auctioneer") that Buyer is purchasing the Property in an "As-Is, Where Is" condition "WITH ALL FAULTS" and specifically and expressly without any warranties, representations or guarantees, either expressed or implied, of any kind, nature, or type whatsoever, from or on behalf of the Seller and Buyer acknowledges that the Deed will contain appropriate disclaimers to this effect.
 - (b) Buyer acknowledges to and agrees with Seller and Auctioneer that with respect to the Property, Seller and Auctioneer have not, do not, and will not make any warranties or representations, expressed or implied, or arising by operation of law, including, but in no way

limited to, any warranty as to the value, physical condition, square footage, environmental condition, zoning, good repair, operability, habitability, tenantability, suitability, merchantability, profitability, marketability, past or present compliance with any rules, regulations, covenants or restrictions, development potential or fitness for a particular use or purpose of the property.

- (c) Buyer acknowledges that it is Buyer's responsibility to make such legal, factual, and other inquiries and investigations, as Buyer deems necessary with respect to the Property. Buyer acknowledges that Buyer has executed this Contract based solely on its own independent due diligence investigations and findings, and not in reliance on any information provided by SELLER OR AUCTIONEER or their affiliates, agents, officers, employees or representative. Buyer acknowledges that Buyer has not relied, and is not relying upon information, document, sales brochures or other literature, maps or sketches, projection, pro forma, statement, representation, guarantee or warranty (whether expressed or implied, oral or written, material or immaterial) that may have been given or made by or on behalf of the Seller or Auctioneer.
- (d) Buyer shall look only to Seller, and not to Auctioneer, as to all matters regarding this Contract and the Property. The Auctioneer shall not be responsible or liable in any way if the transaction does not close.
- (e) Without in any way limiting the generality of the preceding subparagraphs (a) through (d), Buyer specifically acknowledges and agrees that Buyer hereby waives, releases and discharges any claim it has, might have had, or may have against Seller and Auctioneer with respect to the condition of the Property, either patent or latent.

9. **PROPERTY INSPECTION.** It is the Buyer's sole responsibility to perform all inspections (physical, legal, economic, environmental, archeological, or otherwise) on the Property and to be satisfied as to its condition prior to making an offer on the Property, to review all property information and due diligence materials, to independently verify any information Buyer deems necessary including information available in public records, and to inquire of public officials as to the applicability of and compliance with land use and environmental laws building ordinances, zoning, health & safety codes, and any other local, state, or federal laws and regulations.

Buyer is responsible for the costs of all inspections, surveys, engineering reports, environmental studies, including, but not limited to, lead-based paint tests, or for any other work performed at Buyer's request and Buyer shall pay for any damage which occurs to the Property or to any person as a result of such activities. Buyer shall not permit any claims or liens of any kind against the Property for inspections, surveys, engineering reports, or for any other work performed on the Property at Buyer's request. Buyer agrees to indemnify, protect and hold Seller and Auctioneer harmless against any liability, damage, cost or expense incurred, directly or indirectly, by Seller, as result of Buyer's inspection, examination, or survey of the Property, either prior to, on or after the date hereof. This indemnity includes Seller's right to recover all costs and expenses incurred by Seller to enforce this section, including Seller's reasonable attorney's fees. Buyer agrees to repair any damage caused by such inspections and to restore the Property to its condition prior to the inspection. This Paragraph 9 shall expressly survive the Closing and any termination of this Contract.

10. **TITLE.** Buyer hereby acknowledges receipt of a title commitment (the "Title Commitment") issued by the Closing Agent as agent for **Land Title Guarantee Company** (the "Title Insurer"). Buyer hereby agrees to accept title to the Property subject to (i) all standard exclusions and printed exceptions set forth in the Title Commitment, including all matters that would be disclosed by a current and accurate survey of the Property; (ii) liens for taxes not yet due and payable; (iii) easements for public utilities affecting the Property; (iv) all other easements or claims to easements, covenants, restrictions and rights-of-way affecting the Property; (v) rights and claims of parties in

possession; and (vi) all title exceptions referenced in Schedule B of the Title Commitment (the foregoing title matters are herein referred to as the "Permitted Title Exceptions"). Any applicable zoning ordinances, other land use laws and regulations, together with taxes for the current year and those matters, if any, which are waived by Buyer pursuant to this Paragraph 10, shall also be deemed Permitted Title Exceptions. At or prior to Closing, Seller shall satisfy all requirements in the Title Commitment which are the responsibility of Seller and Buyer shall satisfy all requirements in the Title commitment which are the responsibility of Buyer. At Closing, Seller, at its cost, shall cause the Title Insurer to issue and deliver to Buyer an owner's policy of title insurance (the "Title Policy"), insuring Buyer's fee simple estate in the Property in the amount of the Total Purchase Price, subject to the Permitted Title Exceptions.

Buyer also acknowledges and agrees that:

- a. Maps and depictions included in the marketing material for the auction are for illustration purposes only and neither Seller nor Auctioneer warrants or guarantees any of these materials or other information to be accurate or complete.
- b. Any fencing situated on the Property is not necessarily an indication of the Property boundary.
- c. Buyer shall be responsible for its own due diligence regarding the availability and/or accessibility of any utilities or the suitability for building on the Property. In addition, the Buyer shall be responsible for obtaining any and all permits for installation of utilities, wells, septic systems, and/or any costs related to such installation. Permits, tanks, meters, lines, and any other applicable fees shall be at the Buyer's expense.
- d. Only the fixtures, machinery and equipment currently attached to or located upon the Property will be conveyed to Buyer.
- e. The Property is selling subject to restrictive covenants and easements as shown in the Title Commitment and any Survey.

11. **FIXTURES AND PERSONAL PROPERTY.** Only the permanent fixtures currently attached to the Property will be conveyed to Buyer and no other personal property will be conveyed with the sale of the Property.

12. **TITLE DEFECTS.** Buyer shall not have any right to object to any Title Defects which comes to Buyer's knowledge following execution of this Contract. Buyer is purchasing the property in AS-IS condition.

13. **COMMISSIONS.**

- (a) **Brokerage.** Buyer warrants and represents that Buyer [] is [] is not represented by a Buyer's Broker in this transaction. If Buyer is represented by a Buyer's Broker, the Buyer's Broker's name is: _____. The Buyer's Broker must have performed all requirements of the Buyer Broker Guidelines as provided by the Auctioneer. Failure to properly register or comply with the provisions of the Guidelines will disqualify the Buyer's Broker from receiving any commission.
- (b) **Agency Disclosure.** Auctioneer has acted as agent for Seller in this transaction and is to be paid a commission by Seller pursuant to a separate written agreement between Seller and Auctioneer.

14. **BREACH OF CONTRACT BY SELLER.** If Seller defaults in the performance of any of its obligations pursuant to this Contract, and Closing fails to occur by reason thereof, Buyer, as its sole remedy, may terminate this Contract and receive the Down Payment/Deposit, or waive the default and proceed to Closing. In no event shall Buyer bring any lawsuit against Seller or Auctioneer, and Seller and Auctioneer will in no way be liable to Buyer, for any damages including special, incidental

or consequential damages, or economic loss and/or attorney fees or for any cause of action for specific performance of any nature whatsoever.

15. **BREACH OF CONTRACT BY BUYER.** In the event the purchase and sale contemplated in this Contract is not consummated as a result of Buyer's default, Buyer's Down Payment/Deposit shall be forfeited to Seller, and Seller shall have all rights as allowed by law to file for damages, specific performance or cancellation of this transaction, with Buyer to be responsible for all costs of suit, including attorney's fees and court costs.

In addition, in the event that Seller is unable to collect on any check delivered by Buyer to Seller or Closing Agent, then, at Seller's option, without notice, this Contract may be terminated immediately and any Down Payment/ Deposit held by Seller or Closing Agent shall be paid to Seller, and Seller may pursue any rights and remedies available at law or in equity.

16. **CASUALTY.** Except as herein provided, all risk of loss with respect to damage to the Property shall be borne by Seller until the Closing; thereafter all risk of loss shall be borne by Buyer. In the event that the Property is, in the opinion of Seller, significantly damaged or is destroyed by fire or other casualty or hazard prior to Closing, Seller shall have the option to restore the Property to its pre-casualty condition or to cancel this Contract and Buyer's Down Payment/ Deposit shall be returned as a complete and final settlement to Buyer of all Seller's obligations hereunder. Should Seller desire to restore the Property to its pre-casualty condition, Seller shall so notify Buyer and thereafter have 120 days to complete such restoration, with the Closing Date to be postponed accordingly.
17. **NOTICES.** All notices under this Contract shall be deemed delivered when personally delivered or mailed postage prepaid, certified or registered mail, return receipt requested, or when delivered by a courier service to the addresses of the parties set forth in the preamble of this Contract. Either party may change its address for notice purposes by giving written notice thereof to the other party in accordance with the terms hereof. A copy of all notices given hereunder shall be delivered to Auctioneer and Closing Agent.
18. **WAIVER.** No failure or delay on the part of Seller in exercising any right of Seller nor any action on the part of Seller or any course of dealing or partial performance shall be deemed a waiver of any right of Seller set forth herein or a modification of any terms set forth herein.
19. **ENTIRE AGREEMENT; AMENDMENT.** This written Contract and any Exhibits, Schedules and Addenda attached hereto and made a part of this Contract signed by Buyer constitute the entire and complete agreement between the parties hereto and supersede any prior oral or written agreements between the parties with respect to the Property. This Contract may not be amended, altered, modified or discharged except by an instrument in writing signed by the Buyer and Seller.
20. **SEVERABILITY.** The invalidity of any provision of this Contract shall not affect the validity or enforceability of any other provision set forth herein.
21. **ASSIGNMENT.** Buyer may not assign this Contract or Buyer's rights hereunder without the prior written consent of Seller, which consent may be given or withheld in Seller's sole discretion.
22. **BINDING EFFECT.** This Contract shall be binding upon and inure to the benefit of the parties hereto, and their respective successors, personal representatives, legal representatives, heirs and permitted assigns.

23. **COUNTERPARTS.** The Contract may be executed in one or more counterparts, each of which shall have the force and effect of an original, and all of which shall constitute but one document.
24. **ACKNOWLEDGEMENT.** The Buyer certifies that if Buyer is a natural person, he or she is of legal age and has full legal capacity and authority to understand, execute and deliver this Contract on behalf of himself or herself. If Buyer is a domestic or foreign entity (as defined by the Colorado Business Organizations Code), Buyer represents to Seller that the party executing this Contract on behalf of such entity has the authority to execute this Contract on behalf of such entity, and that such entity shall be bound by the terms and conditions contained herein.
25. **ARBITRATION OF DISPUTES.** Any dispute or claim in law or equity between Seller and Buyer directly or indirectly arising out of or relating to this Contract or any resulting transaction (including any dispute regarding whether this arbitration clause is enforceable or applicable) shall be decided by a neutral, binding arbitration and not by court action, except as provided by Colorado law for judicial enforcement or review of arbitration decisions. The arbitration shall be heard by one arbitrator and conducted in Grand County, Colorado by and in accordance with the Commercial Arbitration Rules of American Arbitration Association or its successor. Arbitration fees, including the fees and expenses of the arbitrator, shall be divided equally among the parties involved, unless awarded to the prevailing party by the arbitrator.
26. **ATTACHMENTS.** The Exhibits, Schedules and Addenda, if any, attached hereto are fully incorporated herein by reference for all purposes.

IN WITNESS WHEREOF, the parties hereto have duly executed this Contract, as of the day and year first above written.

SELLER: _____
 Printed: _____
 Address: _____
 City/St/Zip: _____
 Phone: _____
 Fax: _____
 Email: _____

SELLER: _____
 Printed: _____
 Address: _____
 City/St/Zip: _____
 Phone: _____
 Fax: _____
 Email: _____

BUYER: _____
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