

**J & J CONSTRUCTION OF NORTHERN COLORADO, LLC**  
**JOURNEY HOMES, LLC**  
**7251 WEST 20<sup>th</sup> STREET #L-200**  
**GREELEY, COLORADO 80634**  
**(970) 352-7072**  
**(970) 330-5357**

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

**THIS FORM AND ALL EXHIBITS ATTACHED HERETO HAVE NOT BEEN APPROVED BY THE COLORADO REAL ESTATE COMMISSION**

**AGREEMENT FOR PURCHASE AND SALE**  
**(RESIDENTIAL) (NEW CONSTRUCTION)**

**THIS AGREEMENT** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, by and between ("Seller") and ("Buyer") as  joint tenants  tenants in common  tenant in severalty [**check appropriate box**].

**WITNESSETH:**

1. **PROPERTY.** Seller owns and Buyer agrees to purchase the following-described real property situate in \_\_\_\_\_ County, Colorado, to-wit:

Lot:

Block:

Subdivision:

Commonly known as

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Street Address	City	State	Zip Code
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together with any and all improvements constructed or to be constructed thereon (collectively, the "Property").

2. **PURCHASE PRICE.** The Purchase Price for the Property shall be \$ \_\_\_\_\_, plus customary closing costs paid by a buyer of real estate in the State of Colorado, which shall be payable as follows:

A. **Earnest Money Deposit.** \$ \_\_\_\_\_ as part payment of the Purchase Price in the form of \_\_\_\_\_, payable to and held by \_\_\_\_\_ Lawyers Title Insurance Corporation ("Title Company"), ("**Earnest Money Deposit**"), payable or deliverable upon the execution of this Agreement. The Title Company shall hold the Earnest Money Deposit in a non-segregated account at a depository selected by Seller. Any and all interest earned on said Earnest Money Deposit shall be that of the Seller, and shall not be applied to the Purchase Price at closing. Buyer acknowledges that if for any reason whatsoever this transaction does not close the Title Company only needs to receive written instructions from Seller as to the disbursement of the Earnest Money. Any Real Estate Broker involved in this transaction shall have no claim to the Earnest Money Deposit.

B. **Additional Provisions.** (Insert hereinafter any additional provisions relating to the payment of the Purchase Price. If additional earnest money deposit is due during the term of this Agreement from Buyer, such amount shall also be referred to herein as the "Earnest Money Deposit", and be treated in the same manner as described in Paragraph 2.A, unless otherwise provided hereinafter.)

C. **Payment of Balance.** \$ \_\_\_\_\_, plus any and all of Buyer's closing costs, in cash or certified funds at closing.

D. **Late Payments.** If any amount due hereunder from Buyer is unpaid by the date due under this Agreement, such payment shall bear interest from the date the payment is due at the rate of eighteen percent (18%) per annum.

3. **NEW LOAN.**

A. **Terms.** Subject to the terms and conditions of Paragraph 3.D. and 3.E., this Agreement is contingent upon Buyer obtaining a commitment for  conventional,  FHA, or  VA new mortgage loan [**check appropriate box for type of loan**] in the amount of \$ \_\_\_\_\_ for a term of not less than **30** years with an interest rate at the prevailing rate in effect for similar mortgage loans at the time of closing. Such commitment shall be in form and substance reasonably acceptable to Seller. The loan will be secured by a first deed of trust. This contingency shall be terminated upon delivery of a loan commitment to Seller.

B. Loan Application. Buyer shall use its best efforts to obtain the loan and, accordingly, agrees to make a diligent, truthful, proper and verifiable loan application to a lender(s), without delay, but in no event later than seven (7) days from the date of this Agreement. Buyer further agrees to promptly (within 48 hours after each request from any lender) furnish such verifications of bank accounts and employment or any other instruments or information as may be required by lender to process Buyer's application. Within seven (7) days from the date of this Agreement, Buyer shall give Seller written notice of the name and address of each lender with which Buyer has submitted an application for a loan. In the event Buyer fails to apply for said loan within said period, or does not diligently furnish requested loan information within Buyer's control within the time frames set forth herein, Buyer shall be in default hereunder and Seller, in its sole and absolute discretion, may pursue Seller's remedies described herein.

C. Expenses of Loan. Buyer agrees to (i) pay the usual expenses incident to negotiating and obtaining said loan, including, but not limited to, amounts required by lender as fees and the amounts escrowed for taxes and fire and casualty insurance premiums; (ii) execute without delay any and all mortgage, deed of trust, and other forms required by lender; and (iii) otherwise comply with any and all requirements imposed by lender in connection therewith.

D. Loan Commitment. This Agreement is contingent upon Buyer obtaining a written loan commitment on or before ("Loan Commitment Deadline"). This contingency shall be deemed waived unless Seller receives from Buyer, no later than **Loan Commitment Deadline** written notice of Buyer's inability to obtain such loan commitment. If Buyer so notifies Seller, this Agreement shall terminate and the Earnest Money Deposit shall be returned to Buyer. **IF SELLER DOES NOT RECEIVE WRITTEN NOTICE TO TERMINATE AND BUYER DOES NOT CLOSE, BUYER SHALL BE IN DEFAULT AND THE EARNEST MONEY DEPOSIT SHALL NOT BE RETURNED TO BUYER. BUYER'S DECISION NOT TO PURSUE A LOAN SHALL NOT BE DEEMED AS BUYER'S INABILITY TO OBTAIN A LOAN COMMITMENT.**

E. Backup Commitment. Within seven (7) days from the date of this Agreement, Buyer agrees to submit a backup loan application and all required documentation to Mr. Gene Gustafson of Countrywide Home Loans (970) 214-7607. Buyer agrees to perform pursuant to this Agreement and obtain a loan through **either** lender of Buyer's choosing or Countrywide Home Loans in order to ensure the timely close of this transaction. A loan must be fully approved by **Loan Commitment Deadline** and all loan contingencies removed, or Buyer shall submit a complete backup loan package with Mr. Gene Gustafson. If Buyer cannot close on time due to lender issues, Buyer shall close with Countrywide Home Loans, subject to approval by Countrywide Home Loans.

4. **CONSTRUCTION OF RESIDENCE**. The Purchase Price of the Property includes construction of a single-family residence to be built by the Seller in substantial compliance with the floor plans, renderings and/or Option Selection Addendum (collectively, the "Plans") identified on Exhibit A attached hereto and incorporated herein by reference. It is the understanding of the parties that the Purchase Price includes allowances for those specific items ("**Specifications**") identified on Exhibit B attached hereto and incorporated herein by reference. A description of the options which Buyer has selected in connection with the construction of the residence ("**Options**") are identified on Exhibit C attached hereto and incorporated herein by reference. Notwithstanding the foregoing, Buyer hereby acknowledges and agrees that:

A. In the event that the walks, streets and final grading of the Property are not completed prior to the date of closing, a reasonable escrow amount guaranteeing completion of such items shall be acceptable in lieu of and until actual completion.

B. Seller shall have the right to construct the residence as shall best conform, in Seller's sole and absolute discretion, to the grade of the lot upon which the residence is being constructed or in accordance with the recommendation of Seller's engineers. Seller shall not be responsible in any manner for grading subsequent to installation of landscaping or grading changes made by Buyer or any other person or entity.

C. Seller, in its sole and absolute discretion, shall have the right to substitute any and all materials, equipment and fixtures of equal or better quality for the materials, equipment and fixtures specified on the Plans, Specifications and the Options selected by Buyer.

D. Seller reserves the right to make changes in the construction of the residence as may be required from time to time by Seller's construction lender or any governmental entity having jurisdiction over the Property.

E. No additions, modifications, changes and/or alterations to the residence requested by Buyer shall be allowed unless the same is requested in writing by Buyer and approved in writing by Seller. Seller is under no obligation to approve any such addition, modification, change, or alteration. Any resulting increase in cost due to such additions, modifications, changes or alterations shall be paid by Buyer to Seller upon demand by Seller, and any such sums shall be retained by Seller as liquidated damages in the event Buyer does not close this transaction. In the event Buyer does not close this transaction, for any reason whatsoever, Seller shall not be obligated to reimburse Buyer for any and all sums which Buyer may pay, or has paid to third party suppliers, contractors or materialmen for any and all upgrades and/or options. Any benefit to Seller for upgrades and/or options paid for by Buyer shall be retained by Seller as liquidated damages as a result of Buyer's failure to close this transaction.

F. The Purchase Price for the Property shall be equitably adjusted in the event Seller encounters (i) subsurface or latent physical conditions on the Property differing materially from those indicated on the Plans, or (ii) unknown physical conditions on the Property of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Plans.

5. **CHANGE ORDERS.** Buyer may select options in addition to any provided for on the Plans and Specifications provided in this Agreement. To request a change order Buyer shall execute a written change order form (“**Change Order**”) to be provided by Seller and submit such Change Order to Seller. **There is a non refundable administrative cost to Buyer of One Hundred Fifty Dollars (\$150) per Change Order submitted.** The administrative cost of any such Change Order shall be non-refundable (except as specifically provided herein), and shall be paid in full by Buyer in cash upon submission of the Change Order form. Seller shall be under no obligation to accept any requested Change Order submitted by Buyer. Each Change Order shall specify the change, addition, or deletion, and the method of payment of the additional cost including, without limitation, any adjustment in the Purchase Price and any extensions of time for performance hereunder. If any Change Order is not accepted by Seller, any deposit and the administrative cost paid by Buyer for the Change Order shall be returned to Buyer. If Seller agrees to a requested Change Order from Buyer, Seller shall sign the Change Order form. Change Orders will only be honored if signed by both Buyer and Seller. If the Purchase Price increases as a result of a Change Order, Buyer’s lender shall deliver to Seller within three (3) business days following the date of the Change Order, written verification that such increase in Purchase Price shall not affect Buyer’s ability to qualify for the new loan to be obtained by Buyer, and that either the loan amount or the cash required at closing, or some accommodation thereof, shall be increased as necessary to pay the increase in Purchase Price.

6. **COLORS AND OPTIONS.** Buyer agrees that colors and options selected by Buyer may only be available within the time frame specified by the Seller and only through suppliers designated by Seller using forms provided by Seller for such purpose. In the event a given color or optional item is unavailable Buyer shall select a compatible color or item listed on the option sheet provided by Seller within two (2) business days after notice that the color or item is unavailable. If Buyer fails to make such selections within the specified time Seller shall have the right to make the selections on behalf of Buyer and Buyer agrees to accept such selections. Any color or option selected by Buyer shall be subject to the final approval of Seller, in Seller’s sole and absolute discretion.

7. **DIRECTION OF WORKING FORCES.** Buyer agrees that direction and supervision of the working forces including, but not limited to, any and all subcontractors rests exclusively with Seller, and Buyer shall not issue any direction, supervision or instruction to or otherwise interfere with the working forces.

8. **ADDITIONAL WORK.** Unless authorized by Seller, Buyer shall not contract for additional work with Seller’s subcontractors, materialmen or suppliers nor engage other subcontractors to perform work on the Property until the residence is complete and title is transferred to Buyer.

9. **OCCUPANCY.** The Property shall not be occupied by Buyer, nor shall any property of Buyer be stored therein, until the residence is fully completed, the Purchase Price has been paid to Seller, and title is transferred to Buyer.

10. **SUBSTANTIAL COMPLETION.** Seller will use reasonable efforts to substantially complete and convey the Property within six (6) months after commencement of construction. Notwithstanding the foregoing, the date of substantial completion and the date of conveyance shall be automatically extended for a period equal to any period of time during which Seller is prevented from performing by strikes, labor disputes, weather, the unavailability or shortage of labor or materials, force majeure, or any other matters beyond the reasonable control of Seller. If, pursuant to this paragraph, substantial completion of the Property is delayed beyond nine (9) months after the date of this Agreement, any party to this Agreement shall have the right to terminate this Agreement by giving written notice thereof to the other party(s) and, upon such termination, all monies paid by Buyer hereunder shall be returned, without interest, to Buyer. Issuance of a temporary or conditional certificate of occupancy by any governmental entity having jurisdiction thereof shall constitute conclusive evidence that the Property has been completed in accordance with the Plans, Specifications, and Options.

11. **SERVICES.** Seller makes no representation with respect to the availability of telephone, internet, cable or postal services.

12. **NOTICE OF COMPLETION AND WALK-THROUGH.** Prior to the closing, Buyer shall inspect the Property with an agent of Seller at a designated time set by Seller and, at such time, will specify by notice in writing to Seller any and all matters which Buyer claims do not conform to the requirements of this Agreement. Such matters may be repaired after the date of closing. Except as set forth in said written notice, acceptance by Buyer of the deed to the Property shall be deemed to be full performance by Seller of each and every obligation of Seller under this Agreement. Buyer shall not enter the construction site during the period of construction. Buyer shall only be allowed on the construction site upon reasonable notice to Seller, at a time and date to be scheduled by Seller and in the presence of Seller’s designated representative. Buyer shall not have the right to enter the construction site, for any purpose, without compliance with the above requirements. Buyer and any guests, licensees or invitees hereby unconditionally release and waive any claim or cause of action for personal injury or property damage against Seller which may result in connection with Buyer’s entrance on the construction site, with or without approval from Seller.

13. **SELLER'S WARRANTY.**

A. **Warranty.** Within seven (7) days subsequent to execution of this Agreement, Seller shall mail a copy of Seller’s homeowner’s warranty program to Buyer. If Buyer does not notify Seller, in writing, of non receipt of such warranty program then Buyer is deemed to have received a copy. Buyer acknowledges and agrees that said warranty program constitutes the sole warranty by Seller, whether express or implied. **THE IMPLIED WARRANTIES OF WORKMANLIKE CONSTRUCTION AND HABITABILITY ARE HEREBY EXPRESSLY DISCLAIMED, AND ARE OF NO FORCE AND EFFECT.** Except for the Seller’s

homeowner's warranty program, the home is being purchased in its "AS IS" physical condition.

B. Expansive Soil, Damage Exceptions to Warranty. BUYER HEREBY ACKNOWLEDGES THAT HE/SHE HAS BEEN ADVISED BY SELLER, AND UNDERSTANDS, THAT THE SOILS WITHIN THE STATE OF COLORADO CONSIST OF BOTH EXPANSIVE SOILS AND LOW-DENSITY SOILS, WHICH WILL ADVERSELY AFFECT THE INTEGRITY OF THE RESIDENCE IF THE RESIDENCE AND THE PROPERTY ARE NOT PROPERLY MAINTAINED. BUYER FURTHER UNDERSTANDS THAT IT HAS A DUTY TO PROPERLY MAINTAIN THE PROPERTY IN ORDER TO MINIMIZE OR PREVENT ANY DAMAGE AS A RESULT OF EXPANSIVE SOILS. THE BUYER, UPON EXECUTION HEREOF, ACCEPTS THE CONDITIONS OF THE PROPERTY AND THE RESIDENCE "AS IS", AND WITHOUT ANY WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, EXCEPT THOSE CONTAINED IN THE HOMEBUILDERS WARRANTY WHICH IS MADE A PART OF THIS CONTRACT AND THE INDUSTRY STANDARD ONE-YEAR WARRANTY. FOR EXAMPLE, SHOULD THE RESIDENCE BE BUILT ON EXPANSIVE SOIL, PRECAUTIONS MUST BE TAKEN WITH RESPECT TO VEGETATION PLANNING, WATERING, AND RAINWATER DRAINAGE AROUND THE DRIVEWAYS AND FOUNDATIONS TO PREVENT DAMAGE. SHIFTING AND CRACKING OF CONCRETE SLABS IS NORMAL AND SHOULD BE EXPECTED IN AREAS WITH EXPANSIVE SOIL AND IF MINOR, IS NO CAUSE FOR CONCERN. SELLER SHALL COMPLETE THE GRADING OF THE PROPERTY AND SHALL ESTABLISH SWALES AND DRAINAGE PATTERNS WHICH CONFORM TO THE FINAL APPROVED GRADING PLAN AND IN A MANNER WHICH WILL ASSURE THAT ANY WATER FALLING ON THE PROPERTY, WHETHER FROM NATURAL PRECIPITATION OR FROM LAWN IRRIGATION, WILL FLOW AWAY FROM THE RESIDENCE. BUYER HEREBY COVENANTS AND AGREES TO MAINTAIN THE GRADING, SWALES, AND DRAINAGE PATTERNS ESTABLISHED BY SELLER. IN THE EVENT THAT BUYER CHANGES OR FAILS TO MAINTAIN SAID GRADES, SWALES, AND DRAINAGE PATTERNS IN ANY MANNER, BUYER SHALL BE SOLELY RESPONSIBLE FOR ANY AND ALL DAMAGES CAUSED BY IMPROPER DRAINAGE, AND BUYER SHALL INDEMNIFY AND HOLD SELLER HARMLESS FROM ANY AND ALL COSTS, EXPENSES, DAMAGES, AND LIABILITIES, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES, INCURRED BY SELLER ARISING FROM OR IN ANY WAY RELATED TO BUYER'S CHANGE OF OR FAILURE TO MAINTAIN SAID GRADES AND DRAINAGE PATTERNS.

C. Flatwork. THE PARTIES ACKNOWLEDGE THAT IT IS IMPOSSIBLE TO PREVENT CRACKING, PITTING, SCALING, AND/OR SPALLING IN DRIVEWAYS, WALKWAYS, PATIOS, STEPS, AND OTHER CONCRETE WORK (HEREINAFTER COLLECTIVELY "FLATWORK") DUE TO THE NATURE OF THE MATERIAL, TOGETHER WITH THE SOILS, WEATHER AND OTHER CONDITIONS EXISTING IN COLORADO. BUYER UNDERSTANDS THAT THE FLATWORK WILL MOST LIKELY CRACK AFTER CLOSING AND SELLER SHALL HAVE NO LIABILITY WITH RESPECT TO THE FLATWORK, EXCEPT AS PROVIDED IN SELLER'S HOMEOWNER'S WARRANTY PROGRAM.

D. Limitation on Warranty. BUYER EXPRESSLY UNDERSTANDS AND AGREES THAT, EXCEPT AS OTHERWISE PROVIDED IN SUBPARAGRAPH 13.A. HEREOF AND EXCEPT FOR THOSE ITEMS NOTED IN THE WALK-THROUGH INSPECTION DESCRIBED IN PARAGRAPH 12 ABOVE, BUYER IS PURCHASING THE PROPERTY AND THE RESIDENCE AND OTHER IMPROVEMENTS CONSTRUCTED THEREON, IN THEIR "AS IS" CONDITION EXISTING AT THE TIME OF CLOSING. BUYER FURTHER UNDERSTANDS, ACKNOWLEDGES, AND AGREES THAT ANY AND ALL OTHER REPRESENTATIONS AND WARRANTIES, AND ANY OTHER CLAIMS OR LIABILITIES OF ANY NATURE, EXPRESS OR IMPLIED INCLUDING, BUT NOT LIMITED TO, THOSE OF WORKMANLIKE CONSTRUCTION, HABITABILITY, DESIGN, CONDITION, QUALITY OR OTHERWISE, AS TO THE PROPERTY AND THE RESIDENCE AND OTHER IMPROVEMENTS CONSTRUCTED THEREON, ARE EXPRESSLY DISCLAIMED BY SELLER AND WAIVED BY BUYER. EXCEPT AS EXPRESSLY PROVIDE HEREIN, BUYER FURTHER WAIVES ANY AND ALL CLAIMS WHICH BUYER MAY HAVE AGAINST SELLER, NOW OR IN THE FUTURE, WHETHER FOR BREACH OF CONTRACT, NEGLIGENCE, BREACH OF WARRANTY, OR OTHERWISE, RELATING TO ALL MATTERS DESCRIBED IN THIS AGREEMENT. EXCEPT FOR THE WARRANTIES PROVIDED IN SUBPARAGRAPH 13.A. HEREOF BUYER ASSUMES THE RISK OF ANY AND ALL DAMAGE OCCURRING IN OR APPEARING ON THE PROPERTY OR THE RESIDENCE AND OTHER IMPROVEMENTS CONSTRUCTED THEREON FROM AND AFTER THE DATE OF CLOSING, REGARDLESS OF THE CAUSE THEREOF. BUYER'S ASSUMPTION OF THIS RISK IS PARTIALLY IN CONSIDERATION OF THE AMOUNT OF THE PURCHASE PRICE STATED HEREIN, WHICH IS LOWER THAN IT WOULD BE IF SELLER WERE TO BE HELD RESPONSIBLE FOR ANY SUCH RISKS BY VIRTUE OF ANY BREACH OF CONTRACT, NEGLIGENCE, EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES.

14. DATE OF CLOSING. The date of closing shall be . The hour and place of closing shall be designated by Seller. Seller shall deliver possession of the Property to Buyer pursuant to paragraph 9. Notwithstanding the foregoing, Seller shall have the unconditional right to extend the closing date up to an additional thirty (30) days, at the sole and absolute discretion of Seller.

15. EVIDENCE OF TITLE.

A. Title Commitment. A current commitment for title insurance policy in an amount equal to the

Purchase Price shall be furnished to Buyer at least fifteen (15) days prior to the date of closing ("Title Deadline"). Seller shall deliver the title insurance policy to Buyer after closing and pay the premium thereon.

B. Delivery of Deed/Exceptions to Title. Except as otherwise specified in this Subparagraph 15.B and in Subparagraph 15.C hereof, title to the Property shall be merchantable in Seller. Subject to payment or tender as above provided and compliance with the other terms and conditions hereof by Buyer, Seller shall execute and deliver a good and sufficient special warranty deed to Buyer on the date of closing conveying the Property free and clear of all liens and encumbrances except general taxes for the year of closing and subsequent years; any taxes or assessments arising by reason of the inclusion of the Property in a fire protection district, recreation and park district, water and sanitation district, or metropolitan district; easements, rights-of-way, covenants, and restrictions in existence or of record which will not affect the occupancy of the Property as a residence; and liens for special improvements thereafter installed and assessed and subject to any applicable building and zoning regulations.

C. Copies of Exceptions. On or before **Title Deadline**, Seller, at Seller's expense, shall furnish to Buyer, a copy of any plats, declarations, covenants, conditions and restrictions burdening the Property, and copies of any other documents listed in the schedule of exceptions. This requirement shall pertain only to documents as shown of record in the office of the clerk and recorder(s). The title insurance commitment, together with any copies or summaries of such documents furnished pursuant to this section, constitute the title documents ("Title Documents").

D. Title Review/Right to Cure Defects. Buyer shall have a right to inspect the Title Documents. If title is not merchantable, written notice of defect(s) must be given by Buyer or Buyer's agent to Seller or Seller's agent within seven (7) days from the date the title commitment is furnished to Buyer, otherwise Buyer will be deemed to have accepted the condition of title to the Property. If Buyer provides such notice, Seller shall have the right, at its sole option, to correct such items and to extend the date of closing for not more than thirty (30) days. If title is not rendered merchantable within said thirty (30) days, then Buyer shall have the right, at his sole option, to terminate this Agreement by giving written notice thereof to Seller and, upon such termination, all monies paid by Buyer hereunder shall be returned, without interest, to Buyer and both parties shall be released from any further obligations hereunder; provided, however, Buyer may, on or before closing, waive objection to said unsatisfactory title condition(s).

E. Special Taxing Districts. **SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO GENERAL OBLIGATION INDEBTEDNESS THAT IS PAID BY REVENUES 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 TO 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.**

F. 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 and claims of 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 this contract.

16. **PRORATIONS.** General taxes for the year in which the closing occurs shall be prorated to the date of closing based upon the most recent mill levy and assessment available from government authorities. Any homeowner association fees or water and sewer charges shall also be prorated the date of closing. Fees for real estate closing services shall not exceed \$200, and shall be paid at closing equally by Seller and Buyer. If the closing is held later than the closing date established pursuant to Paragraph 14 hereof through no fault of Seller, the above items shall be prorated to the original closing date. All adjustments and prorations at the time of closing shall be final.

17. **RISK OF LOSS.** Prior to the date of closing, the risk of loss with respect to the residence shall be borne by Seller. In case of any partial or total destruction of the residence, the estimated completion date may be extended by Seller; provided, however, that if completion is delayed beyond twelve (12) months after Seller's receipt of Buyer's loan approval, any party to this Agreement shall have the right to terminate this Agreement by giving written notice thereof to the other party, and upon such termination, all monies paid by Buyer hereunder shall be returned, without interest, to Buyer. Notwithstanding the foregoing, if the residence is damaged to an extent exceeding thirty (30) percent of the then reconstruction cost of the residence, Seller shall have the right, at its sole option, to terminate this Agreement by giving written notice thereof to Buyer and, upon such termination, all monies paid by Buyer hereunder shall be returned, without interest, to Buyer. In no event shall Seller be responsible for any flooding, storm, natural disaster, storm water run-off resulting from Buyer's failure to landscape or Buyer's election to change the grade of the Property, extreme weather, or any other cause beyond the reasonable control of Seller.

18. **DEFAULT.** Time is of the essence hereof, and if any payment or other condition hereof is not

made, tendered, or performed, or waived as herein provided, there shall be the following remedies: If Buyer is in default, Seller may elect to treat this Agreement as cancelled, in which case all payments and things of value received hereunder shall be forfeited and retained on behalf of Seller, and Seller may recover such damages as may be proper, or Seller may elect to treat this Agreement as being in full force and effect, and Seller shall have the right to specific performance or damages, or both. If Seller is in default, Buyer may elect to treat this Agreement as cancelled, in which case all payments and things of value received hereunder shall be returned. Any Earnest Money deposit(s) paid to Seller shall be returned to Buyer as the sole and exclusive remedy available to the Buyer for such default. This limitation shall include any claims for attorneys' fees, interest and actual or consequential damages. It is agreed that the return of the Earnest Money shall represent the reasonable estimate by the parties of the amount of damages that Buyer would suffer. Buyer hereby waives any other remedy it may have. Buyer, at its option, may elect to waive the performance of any condition, contingency or provision in Buyer's favor set forth in this Agreement. Should any action be brought by Seller to enforce or interpret this Agreement, Seller shall be entitled to receive all reasonable costs and expenses, including reasonable attorney's fees, incurred in such action.

19. **ARBITRATION.** Seller and Buyer agree to submit to binding arbitration any and all claims, disputes and controversies between or among them (and their respective employees, officers, directors, attorneys and other agents) relating to the construction of the residence which is the subject of this Agreement. Such arbitration shall proceed in **Greeley, Colorado**, shall be governed by Colorado law and shall be conducted in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association ("AAA"). The decision and award of the arbitrators are intended to be final and binding between the parties as to all claims that were or could have been raised in the arbitration. The parties are waiving their right to seek remedies in court, including their right to a jury trial. The award will be enforceable in any court of competent jurisdiction and judgment may be entered thereon.

Arbitration hereunder shall be before a 3-person panel of neutral arbitrators, consisting of one person from each of the following categories:

- A. An attorney who has practiced in the area of construction law for at least 10 years;
- B. A person with at least 10 years experience in the residential construction industry; and
- C. A person with at least 10 years experience in the residential real estate subdivision and development industry.

The AAA shall submit a list of persons meeting the criteria outlined above for each category of arbitrator, and the parties shall select one person from each category in the manner established by the AAA.

Notwithstanding the foregoing, in any dispute between the parties that is arbitratable hereunder, where the aggregate of all claims and the aggregate of all counterclaims each is an amount less than \$10,000 the arbitration shall be before a single neutral arbitrator with at least 10 years experience in the residential construction industry to be selected in accordance with the Construction Industry Arbitration Rules of the AAA and shall proceed under the expedited procedures of said rules.

In any arbitration hereunder, discovery shall be permitted in accordance with Chapter 4 of the Colorado Rules of Civil Procedure, save and except that depositions shall not be permitted absent the consent of all parties. Scheduling of such discovery may be determined by the arbitrators, and any discovery disputes shall be finally determined by the arbitrators.

The Colorado Rules of Evidence shall control the admission of evidence at the hearing in any arbitration conducted hereunder, provided however, no error by the arbitrators in application of the rules of evidence shall be grounds, as such, for vacating the arbitrators' award.

The arbitrators shall award to the prevailing party, if any, as determined by the arbitrators, all of its costs and fees. "Costs and fees" means all reasonable pre- and post-award expenses of the arbitration, including the arbitrators' fees, administrative fees, travel expenses, out-of-pocket expenses such as copying and telephone, court costs, witness fees and attorneys' fees.

The parties agree to exchange final witness and exhibit lists and copies of all exhibits no later than 30 days prior to the commencement of the arbitration.

The arbitrator shall issue his or her award within 30 days of the completion of the arbitration hearing or, if post-hearing briefs are submitted, within 30 days of receipt of the briefs. If the parties file post-hearing briefs, they shall submit such briefs within 20 days of the completion of the hearing. No extensions of time will be permitted.

In the event the arbitrator requires any advance fees to be paid, the parties will divide those equally. If the arbitration award requires any party to pay more than one-half of the fees, the parties shall adjust credit for payment of the advance fee to accurately reflect payment required under the award.

The arbitration hearing shall not be open to the public. The decision shall not be published. The parties agree that the arbitrators' decision shall not establish a precedent.

Nothing contained in this Agreement shall preclude Seller from commencing an action in a court of

competent jurisdiction to foreclose a mechanic's lien, which action may be stayed pending completion of the arbitration process. The stay of the court proceeding preserves Seller's right to foreclose on its mechanic's lien if Seller prevails in the arbitration. The institution and maintenance of any court action to foreclose a mechanic's lien shall not constitute a waiver of the right or obligation of any party to submit any claim or dispute to arbitration.

**ARBITRATION DISCLOSURES:**

(1) ARBITRATION IS FINAL AND BINDING ON THE PARTIES.

(2) THE PARTIES ARE WAIVING THEIR RIGHT TO SEEK REMEDIES IN COURT, INCLUDING THE RIGHT TO A JURY TRIAL.

(3) PRE-ARBITRATION DISCOVERY IS GENERALLY MORE LIMITED THAN AND DIFFERENT FROM COURT PROCEEDINGS.

(4) THE ARBITRATORS' AWARD IS NOT REQUIRED TO INCLUDE FACTUAL FINDINGS OR LEGAL REASONING AND ANY PARTY'S RIGHT TO APPEAL OR TO SEEK MODIFICATION OF RULINGS BY THE ARBITRATORS IS STRICTLY LIMITED.

20. **DOCUMENTS.** Buyer expressly acknowledges receipt from the Seller or it's representatives, a copy of the Geotechnical Engineering Report and any addendums thereto for the Subdivision, and a copy of the Final Drainage Report for the Subdivision. Buyer also acknowledges receipt of all plats or maps of the Subdivision and t all exceptions to title commitments upon issuance of a title commitment pursuant to this Agreement. Buyer also acknowledges receipt of the following homeowner's association documents:

1. Declaration of Covenants, Conditions and Restrictions and any supplements thereto;
2. Bylaws and rules;
3. Minutes;
4. Operating budget, if any;
5. Annual financial statements, if any;

for the Subdivision ("Governing Documents"). The Governing Documents constitute an agreement between Buyer and the homeowner's association. Buyer is responsible to pay all assessments. The association may place a lien on the Property and possibly sell the Property to collect unpaid assessments. Any change to the exterior of the Property may be subject to architectural review and approval. All documents are provided to the Buyer as a courtesy and convenience only, and Seller does not offer any warranties with respect thereto including, but not limited to, warranties relating to accuracy or completeness thereof.

21. **SOILS DISCLOSURES/PRESALE.** Seller expressly reserves the right to revise the Purchase Price of this Agreement subsequent to an "open hole inspection" if and only if the open hole inspection indicates soils conditions that require remedial measures including, but not limited to, cassons, structural floors or any other means necessary, which are not included, nor a part of the Purchase Price pursuant to this Agreement. Subsequent to the open hole inspection if a revision to the Purchase Price is necessary, Seller shall provide to the Buyer a copy of the Foundation Recommendation prepared by a licensed soils or structural engineer as well as an Agreement to Amend/Extend Contract reflecting any revision to the Purchase Price due to any remedial measures recommended by the soils or structural engineer. Buyer shall have forty eight (48) hours following the receipt of the Agreement to Amend/Extend Contract to either accept or reject the amendment to the Agreement and the revised Purchase Price. In the event Buyer accepts the Agreement to Amend/Extend Contract, the transaction shall proceed toward closing. Should the Buyer elect to reject the Agreement to Amend/Extend Contract, this Agreement shall be terminated and all things of value shall be forthwith returned to the Buyer.

22. **ASSIGNMENT.** Buyer represents that the Property is being purchased for its own residence. This Agreement is personal to Buyer and may not be assigned by Buyer. In the event Buyer shall assign this Agreement without the prior written consent of Seller, Buyer shall be in default under the terms of this Agreement, and Seller shall have all remedies as described herein.

23. **NO CLOUD ON TITLE.** This Agreement shall not be recorded by Buyer and, upon any such attempted recording, this Agreement shall, at Seller's sole option, become null and void. Nothing herein contained shall operate to bind or cloud the title to said Property in case Buyer fails to fulfill the terms hereof. If this Agreement is cancelled for any reason, then and in that event, Buyer agrees to immediately return all copies of this Agreement to Seller.

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

25. **DAMAGE CAUSED BY BUYER.** Buyer shall be responsible for the repair and payment of any damage caused to the Property prior to closing by Buyer or Buyer's agents, engineers, and inspectors.

26. **RECEIPT OF DOCUMENTATION.** Buyer acknowledges receipt of a summary report of the site analysis and recommendations, which is a description of the soil conditions of the subdivision in which the Property is located. Additionally, Buyer acknowledges receipt of Closing Instructions.

27. **COMMISSIONS.** Commissions to selling agents shall be based on the Purchase Price less any

costs associated with Seller paid closing costs, loan fees, prepaids and/or any and all Options.

28. **AGENCY DISCLOSURE.** Buyer acknowledges that the listing agent constitutes a “Seller’s Agent”.

29. **RIGHT TO TERMINATE.** If, prior to closing, Seller determines, **in Seller’s sole and absolute discretion**, that Seller is unable to work cooperatively with Buyer, Seller shall have the unconditional right to terminate this Agreement by paying to Buyer (i) One Thousand Dollars (\$1,000), and (ii) return any Earnest Money Deposit and Change Order payments previously paid by Buyer.

30. **ADDITIONAL PROVISIONS:** \_\_\_\_\_

31. **MISCELLANEOUS.**

A. **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.

B. **Notices.** Any notices, demands or other communications required or permitted to be given by any provision of this Agreement shall be in writing and shall be deemed given when personally delivered to the party for whom intended, or when deposited in the U.S. mail, postage prepaid, addressed to the party for whom intended at the address provided on the signature page hereof or at such other address as the party may hereafter designated in writing served in the manner aforesaid.

C. **Joint and Several Liability.** If two or more persons are named herein as Buyer, their obligations hereunder shall be joint and several.

D. **Binding Effect.** Except as otherwise specified herein, this Agreement shall be binding upon and inure to the benefit of Buyer and Seller and their respective heirs, personal representatives, successors and assigns.

E. **Survival of Terms.** The terms and conditions of this Agreement shall survive the closing of the Property.

F. **Pronouns, Singular and Plural.** As used herein, the masculine gender shall include the feminine gender and the singular shall include the plural, as the context may require.

G. **Headings for Convenience Only.** The paragraph headings, captions and titles contained herein are intended for convenience and reference only, and are not intended to define, limit or describe the scope or intent of any provision of this Agreement.

H. **Invalidity.** If any provision, sentence, phrase, or word of this Agreement, or any application thereof to any person or circumstance shall be held invalid, the remainder of the Agreement or the application of such provisions, sentence, phrase, or word to persons or circumstances other than those as to which it is held invalid, shall not be affected hereby.

I. **Governing Law.** This Agreement shall be construed in accordance with the laws of the State of Colorado.

J. **Insulation.** In compliance with the Federal Trade Commission’s Ruling on insulation disclosure on newly constructed homes, Buyer is hereby made aware of and Buyer acknowledges and accepts:

CEILING INSULATION		WALL INSULATION	
Type:	Blown	Type:	Unfaced Batt
Thickness:	11”	Thickness:	3-5/8”
R-Value:	R-30	R-Value:	R-13
Manuf.:	Owens Corning	Manuf.:	Owens Corning

K. **Attachments.** The following Exhibits and Attachments are hereby made a part of this Contract and Buyer acknowledges receipt of the same:

- Exhibit “A”: Home Rendering
- Exhibit “B”: Standard Specifications
- Exhibit “C”: Option Selection Addendum
- Exhibit “D”: Home Sale Contingency
- Exhibit “E”: Mold Disclosure

Closing Instructions  
Square Footage Disclosure

\_\_\_\_\_

32. **ENTIRE AGREEMENT.** BUYER REPRESENTS THAT BUYER HAS READ THIS

**AGREEMENT AND THAT THE SAME CONSTITUTES THE ENTIRE AGREEMENT BETWEEN BUYER AND SELLER AND THAT NO OTHER AGREEMENTS, PROMISES, REPRESENTATIONS, OR WARRANTIES EXCEPT THOSE EXPRESSLY SET FORTH HEREIN HAVE BEEN MADE TO BUYER BY SELLER OR THEIR SALESMEN, AGENTS, OR EMPLOYEES, AND THAT NO AMENDMENT OR MODIFICATION OF THIS AGREEMENT SHALL BE CLAIMED BY BUYER SUBSEQUENT TO THE EXECUTION HEREOF UNLESS FIRST REDUCED TO WRITING AND EXECUTED BY THE PARTIES HERETO. BUYER UNDERSTANDS AND AGREES THAT THE SALES COUNSELOR WITH WHOM BUYER HAS DEALT IN CONNECTION WITH THIS PURCHASE HAS NO AUTHORITY TO AGREE TO CHANGES OR MODIFICATIONS IN THE PLANS OR SPECIFICATIONS OR TO MAKE REPRESENTATIONS OR AGREEMENTS WITH BUYER NOT EXPRESSLY CONTAINED HEREIN IN WRITING SIGNED BY SELLER IN ACCORDANCE WITH THE TERMS OF AGREEMENT. NO MODIFICATION NOR AMENDMENT TO THIS AGREEMENT SHALL BE BINDING UPON THE PARTIES EXCEPT BY WRITTEN AGREEMENT SIGNED BY ALL PARTIES.**

**BUYER(S):**

**SELLER:**

**By:**

**Title:**

**Date:**

**Date:**

**Address:**

**Phone number:**

**SELLING AGENT:**

**LISTING AGENT:**

**By:**

**By:**

**Title:**

**Title:**

**COUNTER; REJECTION.** This offer is  **Countered**  **Rejected.**  
Initials only of party (Buyer or Seller) who countered or rejected offer

EXHIBIT "A" ATTACHED TO AND MADE PART OF THE AGREEMENT FOR PURCHASE AND SALE  
DATED \_\_\_\_\_ BY AND BETWEEN \_\_\_\_\_  
\_\_\_\_\_  
and \_\_\_\_\_ ("Buyer")  
\_\_\_\_\_  
("Seller").

EXHIBIT "B" ATTACHED TO AND MADE PART OF THE AGREEMENT FOR PURCHASE AND SALE  
DATED \_\_\_\_\_ BY AND BETWEEN \_\_\_\_\_  
\_\_\_\_\_  
and \_\_\_\_\_ ("Buyer")  
\_\_\_\_\_  
("Seller").

EXHIBIT "C" ATTACHED TO AND MADE PART OF THE AGREEMENT FOR PURCHASE AND SALE  
DATED \_\_\_\_\_ BY AND BETWEEN \_\_\_\_\_  
\_\_\_\_\_  
and \_\_\_\_\_ ("Buyer")  
\_\_\_\_\_  
("Seller").