

**NEW HOME PURCHASE CONTRACT**

Single Family Detached  
To Be Constructed

THIS CONTRACT HAS IMPORTANT LEGAL AND FINANCIAL CONSEQUENCES AND YOU SHOULD CONSULT LEGAL, TAX OR OTHER COUNSEL BEFORE SIGNING

“Reference Date”: \_\_\_\_\_ (this date will not be entered until the Seller executes this Contract).

**1. THE PARTIES AND THE PROPERTY**

\_\_\_\_\_ and \_\_\_\_\_, (hereinafter referred to as “Buyer”) agree(s) to buy, and **ASHBY CONSTRUCTION, INC.**, (hereinafter referred to as “Seller”) agrees to sell, on the terms and conditions set forth in this Contract, that certain new dwelling unit (the “Dwelling Unit”) described as follows:

Model: \_\_\_\_\_

Subdivision: \_\_\_\_\_

Block: \_\_\_\_\_ Lot: \_\_\_\_\_

Address: \_\_\_\_\_

Subject to all of the limited warranties, terms, covenants, provisions and easements contained in this Contract or otherwise referred to herein. Buyer and Seller may be individually referred to herein as “Party” and collectively as “Parties”.

**2. PURCHASE PRICE AND TERMS**

\$ \_\_\_\_\_ shall be the Base Price

\$ \_\_\_\_\_ shall be the Lot Premium

\$ \_\_\_\_\_ shall be the total charge for Options

\$ \_\_\_\_\_ shall be the Seller-paid Closing Costs

\$ \_\_\_\_\_ shall be the TOTAL PURCHASE PRICE (to be paid to the Seller at Closing, as defined herein).

3. **PAYMENT TERMS**

\$ \_\_\_\_\_ shall be the Earnest Money Deposit paid upon execution of this contract and held by \_\_\_\_\_.

\$ \_\_\_\_\_ shall be the Non-Refundable Payment required for options or upgrades selected on the Option Selection Sheet, which shall be paid to Seller when Buyer signs this Contract and shall be **non-refundable**, unless otherwise stated in this Contract.

\$ \_\_\_\_\_ shall be the balance due to Seller at Closing (note: in addition, Buyer shall be responsible for prorated taxes and Buyer-Paid Closing Costs).

4. **DEFINITIONS**

**“Base Price”** shall mean the price of the Dwelling Unit prior to Lot Premium, Options or other charges.

**“Certificate of Occupancy”** shall be the document issued by the City of Douglas or Converse County Building Department certifying that the Dwelling Unit has been completed in conformance with the local building codes and is ready for human habitation.

**“Closing”** (and all derivations thereof) refers to the completion of the transaction described in this Contract including the transfer of title of the Property to the Buyer and final payment to Seller.

**“Completion Date” or “Completion”** shall be the date by which the Dwelling Unit is completed, as evidenced by a Certificate of Occupancy.

Estimated Completion Date: \_\_\_\_\_

Buyer(s) Initials: \_\_\_\_\_ Seller(s) Initials: \_\_\_\_\_

**“Date of Acceptance”** shall be the date Seller executes this Contract, which date shall be entered as the Reference Date at the top of page 1 of this Contract and is sometimes called the “Reference Date”.

**“Declaration”** is that Declaration of Covenants, Conditions and Restrictions conditioning and/or restricting the use of the Lot and the improvements thereon. The Declaration is a restriction upon the Property and runs with the land. The Declaration is recorded as Document No. \_\_\_\_\_ in the real property records of the County of Converse, State of Wyoming.

**“HOA” or “Homeowner’s Association”** shall be the duly incorporated organization of the owners of all the Dwelling Units comprising the Project. The HOA documents are recorded as Document No. \_\_\_\_\_ in the real property records in the County of Converse, State of Wyoming.

**“Lot”** shall mean the platted ground upon which the Dwelling Unit is situated.

**“Options”** shall mean those features of the Dwelling Unit which are not standard or included in the Base Price. Options must be purchased in addition to the Base Price. Options are listed on the “Options/Upgrade Worksheet” attached hereto as Exhibit A. Failure to list a possible feature on the Options/Upgrade Worksheet does not mean that it is standard.

**“Party” or “Parties”** shall mean the Buyer or Seller individually or collectively.

**“Proof of Funds”** shall mean evidence that Buyer possesses adequate cash to meet the cash payment obligation of the Contract, to be determined as to its sufficiency solely by the judgment of Seller.

**“Property”** shall mean the Dwelling Unit and the Lot upon which it is situated.

**“Punch-list”** shall be a list of unfinished work or minor deficiencies identified during a pre-Closing walk-through of the Dwelling Unit conducted by the Buyer with a representative of Seller as set forth at Section 15(a).

**“Purchase Price”** shall mean the total amount of money to be paid by Buyer to Seller for the purchase of the Dwelling Unit, Options and Lot Premium.

**“Qualified Lender”** shall mean a mortgage lender who is capable of funding the Buyer’s contemplated mortgage loan and who is satisfactory in the sole opinion of the Seller.

**“Standard Features”** shall mean the Dwelling Unit features included in the Base Price. Standard Features may be changed at the sole discretion of Seller without advanced notice; provided, however, that no change to Standard Features made after the Reference Date shall apply to or affect this Contract.

**“Start Date”** shall mean the date upon which Seller begins excavation of the foundation for construction of the Dwelling Unit.

Estimated Start Date: Already Under Construction

Buyer(s) Initials: \_\_\_\_\_ Seller(s) Initials: \_\_\_\_\_

**“You”** shall mean the Buyer.

**5. FINANCING REQUIREMENTS**

(a) Buyer intends to pay the balance due at Closing, including closing costs, association dues, reserve payments, loan fees and costs and prorations by:

- o VA Loan Initial \_\_\_\_\_
- o FHA Loan Initial \_\_\_\_\_
- o Conventional Loan Initial \_\_\_\_\_
- o Other \_\_\_\_\_ Initial \_\_\_\_\_

(b) If Buyer intends to obtain any mortgage loan, then Buyer shall promptly apply for a mortgage loan with a Qualified Lender and shall supply such Qualified Lender all required information.

(c) Buyer shall pay all loan application and origination fees, discount points, mortgage insurance, VA funding fees and other loan expenses except as may be provided for elsewhere in this Contract.

(d) If Buyer obtains a “lock-in rate” for its loan, Buyer agrees that it will not hold Seller responsible for completion of construction of the home within the locked in rate time frame. Buyer further acknowledges that the risk of obtaining a loan with a lock-in rate rests solely with Buyer and Buyer shall not hold Seller liable in the event Buyer loses its locked in rate, and Buyer agrees that it will close on the subject property regardless of its loan interest rate. Seller shall have no liability in the event that an interest rate lock agreement made between Buyer and Buyer’s lender expires prior to the Closing.

(e) In the event five percent (5%) or more of the Purchase Price is to be paid in cash, Buyer shall provide Proof of Funds satisfactory to Seller within **twenty-one days** of the Reference Date. In the event said Proof of Funds is unsatisfactory to Seller, Seller shall have the right to cancel this Contract and, in that instance, return the Earnest Money Deposit and any Non-Refundable Payment(s) to Buyer.

(f) Buyer and Seller shall each pay half of the Closing agent’s and escrow agent’s fees, if any.

(g) All payments shall be paid in cash, electronic funds transfer, certified check, cashier’s check or savings and loan teller’s check (which are known as Good Funds) unless otherwise agreed to by Seller.

**6. LOAN APPLICATION DEADLINES**

(a) Buyer provided to Seller, upon execution of this Contract, a prequalification letter from a lender satisfactory to Seller.

(b) If at any time during the Buyer’s loan review process, Buyer learns of credit issues that may delay or prevent Buyer’s ultimate qualification for a loan to complete the Closing, Buyer

shall immediately notify Seller in writing. If, upon learning of Buyer's issues with its ability to obtain a loan, Seller feels insecure with Buyer's ability to complete this transaction, Seller may give Buyer five (5) days' written notice thereof and unless Buyer can provide further assurances of its ability to perform, Seller may thereafter terminate this Contract and shall be entitled to retain all of Buyer's Earnest Money Deposit and Non-Refundable Payment(s).

(c) Within approximately forty (40) days before the Completion Date, Seller shall notify Buyer of an anticipated Closing date. Within ten (10) days after receiving such notice, Buyer shall obtain a firm commitment letter issued by Buyer's lender to Seller. If Buyer is unable to obtain said commitment letter within said time frame, Seller shall have the right to terminate this Contract at any time thereafter and shall be entitled to retain all Buyer's Earnest Money Deposit and Non-Refundable Payment(s).

(d) Seller makes no representation as to the loan fees or the interest rate that may be obtainable by Buyer, and Buyer agrees to enter into a mortgage loan agreement at market rates. Seller makes no representations, warranties or guarantees regarding interest rate locks.

(e) The presentation of a prequalification letter by the Buyer to Seller shall constitute an agreement by the Buyer that Buyer agrees to perform all of the terms, conditions and agreements contained therein. If Buyer's prequalification letter is subject to any contingency whatsoever and if it reasonably appears that Buyer will not be able to satisfy such contingency on or before Closing, Seller may, at its discretion and at any time, elect to cancel this Contract and refund Buyer's Earnest Money Deposit and Non-Refundable Payment(s), without interest. Buyer hereby authorizes Buyer's prospective lender to transmit to Seller any and all information regarding the status of Buyer's loan application and approval.

## **7. PAYMENT**

(a) Buyer shall provide timely payment at or before Closing as provided by this Contract. In the event Buyer fails to close within five (5) days of Completion, this Contract may be canceled at the sole option of Seller and all obligations of each Party to the other shall terminate except that (i) Seller shall be entitled to retain Buyer's Earnest Money Deposit and Non-Refundable Payment(s) and (ii) Seller may require that Buyer additionally pay Seller the contract price of all upgrades and Options completed or committed to by Seller for which Buyer did not make a Non-Refundable Payment as set forth on the Option Worksheet. BUYER ACKNOWLEDGES THAT SELLER INTENDS TO RELY UPON BUYER'S COMMITMENT TO CLOSE PURCHASE OF THE DWELLING UNIT AS SET FORTH HEREIN, and that Seller intends to borrow money, enter contracts, spend money and undertake other obligations based upon said commitment. In the event that Seller cancels this Contract pursuant to this paragraph, Buyer acknowledges that Seller will have been damaged in an uncertain amount and that forfeiture of Buyer's Earnest Money Deposit and Non-Refundable Payment(s) to Seller and payment of any amounts pursuant to Section 7(a)(ii) shall act as liquidated damages and upon the receipt of same, Seller waives any additional claim against Buyer due to Buyer's failure to Close.

(b) If Buyer's check is returned for non-sufficient funds, Buyer shall replace same with a cashier's check within twenty-four (24) hours of notice by Seller or this Contract shall be void and all obligations of each Party to the other Party shall end.

## 8. EVIDENCE OF TITLE

(a) Seller shall provide to Buyer, at Seller's expense, a current commitment for an owner's title insurance policy in an amount equal to the Purchase Price not later than ninety (90) business days from final execution of this Contract. If Buyer requests copies of instruments listed in the schedule of exceptions, Seller shall cause the title insurance company to provide same to Buyer. That request shall be made within three (3) business days of Buyer's receipt of the title commitment. Seller shall only be obligated to provide copies of instruments which are of record in the office of the clerk and recorder of the county in which the Dwelling Unit is located. If Buyer shall disapprove of the title or any condition thereof on legitimate grounds of marketability, Buyer, as its sole remedy, shall have the right to terminate this Contract by notifying Seller in writing within five (5) business days of the later of (1) receipt of the title insurance commitment or (2) receipt of copies (or abstracts) of the exceptions, if so requested, and Buyer shall be entitled to a return of its Earnest Money Deposit. Otherwise, Buyer shall be deemed to have accepted the condition of title and shall have no cause of action.

(b) Seller shall pay the premium for a standard owner's policy of title insurance at Closing and shall direct the title company to deliver the policy to Buyer as soon as practicable thereafter. Buyer shall be responsible for paying any additional premiums for an extended owner's policy of title insurance or, if required by Buyer's lender, a lender's policy of title insurance.

## 9. CONSTRUCTION

(a) Construction is to be in conformance with the appearance, style and workmanship of the model home(s) located at the project, if applicable. **Certain fixtures and finishes in the model homes may be upgrades or Options, or may not be available if items have been discontinued.**

The roof style, front elevation and orientation of the floorplan are as shown on the attached Exhibits, if applicable. Seller reserves the right to make minor variations in construction measurements, materials and techniques which do not substantially affect the square footage of a room or the Dwelling Unit, nor affect the quality or style of construction or finish. Examples are Seller's intended use of a variety of siding styles, exterior paint and roofing colors for variety; and location of electrical outlets, doors and windows which are generally approximately located on the drawings. Dimensions and areas depicted on advertising materials are approximate. Some exterior colors might not be available on certain Dwelling Units or Lots.

Finished floor elevation shall be established by Seller to effect adequate drainage, which may result in access configurations different from those shown on advertising materials or previously built floorplans.

(b) Seller shall have the right to substitute materials, equipment and fixtures of equal or better quality than specified or shown in the model(s), or as stated on the Construction Standards and Specifications.

(c) The following Exhibits pertain to the construction of the Dwelling Unit and are attached hereto in the following sequence and made a part hereof for all purposes:

Exhibit A - The Option/Upgrade Sheet  
Exhibit B - The Floor Plan

Exhibit C - The Front Elevation  
Exhibit D - Lot Location Plan (Site Plan)  
Exhibit E - Construction Standards and Specs  
Exhibit F - Limited Warranty

(d) Any special conditions shall be addressed as Amendments to the Contract.

#### **10. START DATE AND COMPLETION DATE**

(a) Seller has already started the Project prior to writing this Contract with the Buyer(s). The remaining Construction duration and the Completion Date are subject to the project workloads and the time of the year and are OFTEN affected by events beyond the control, or even within the control, of Seller.

(b) Extra time will be required for each day of delay caused by Buyer, Change Orders, strike, war, civil unrest, acts of God, weather, governmental or regulatory acts or other causes beyond the control of the Seller.

(c) Seller shall not be required to give Buyer notice of any delay, nor shall a written Contract Amendment be required to validate any extension pursuant to Section 10(c).

#### **11. OPTIONS**

(a) Buyer agrees to purchase and Seller agrees to sell those Options selected by Buyer as indicated by Buyer's initials on the Options Worksheet (which is attached to the Contract as Exhibit A), all for the Options price indicated in Section 2 of this Contract. In the event of a conflict between the Option Worksheet and the amount listed in Section 2, the total of the individual options prices in the Options Worksheet will prevail.

(b) Buyer shall select the Options and shall pay one-half of the estimated costs for said Options prior to their construction or installation, but in any event, no later than thirty (30) days after the Reference Date. These amounts are stated as the Non-Refundable Payment in Section 3 and, except as otherwise stated in this Contract, ARE NOT REFUNDABLE. Seller shall have no obligation to construct or install any Options for which Buyer fails to timely remit a Non-Refundable Payment.

(c) Seller reserves the right to change Options pricing without notice. Seller is not obligated to maintain any offered price; Options selected after the Reference Date may be more expensive than stated in the Option Worksheet attached to the Contract.

#### **12. SELECTIONS**

As this project has already been started prior to the writing of this Contract, some or all selection items may have already been selected by the Seller and are not available for the Buyer to change. A complete list of all the items that have already been selected by the Seller was provided to the Buyer prior to the signing of this Contract by all Parties. By signing this Contract, Buyer hereby agrees to the installation of all items that have already been chosen for and/or installed in the Dwelling Unit. If any items are still available for the Buyer to make selections, then Seller will contact Buyer to make an appointment for the Buyer to meet with a representative of Seller and select any of the items still

needing to be selected. Those items may include: (a) paint colors for both interior and exterior of the Dwelling Unit; (b) cabinet wood species and color; (c) carpet; (d) LVT flooring; (e) countertops and tile backsplashes (if applicable). Once any remaining selections are made and approved by both Parties, all selections shall become final.

### **13. CHANGES**

(a) There shall be no changes made to the work without a written amendment to the Contract signed by both Buyer and Seller, which amendment shall clearly describe the change(s) and state the cost thereof and any extension of the construction time (“Change Order”).

(b) All Contract changes may only be authorized by an officer of Seller.

(c) Seller shall not be obligated to approve, accept or undertake any proposed or requested addition, modification or change, and may refuse to undertake any Option or requested change.

(d) Seller may require payment for any change to be made in advance. Any payment may be non-refundable at the sole discretion of Seller. Buyer shall pay for all costs of Buyer-initiated changes regardless of whether Buyer purchases the Dwelling Unit.

(e) **BUYER SHALL NOT MAKE CHANGES DIRECTLY WITH ANY ON-SITE PERSONNEL.** In order to be binding on the Seller, any change made with on-site personnel must be reduced to a written Change Order, which is executed by an officer of the Seller.

### **14. SITE VISIT AND SAFETY**

(a) Buyer may schedule site visits during construction. Visits must be coordinated with an agent of the Seller.

(b) **BUYER MUST CHECK IN WITH THE ASHBY CONSTRUCTION REPRESENTATIVE PRIOR TO ENTERING THE CONSTRUCTION AREA. NO EXCEPTIONS ARE ALLOWED. AT NO TIME SHALL BUYER COMMUNICATE DIRECTLY WITH WORKERS OR SUBCONTRACTORS.**

(c) **NO VISITORS WILL BE ALLOWED IN WORK AREAS DURING OR AFTER WORK HOURS WITHOUT BEING ESCORTED BY THE PROJECT SUPERINTENDENT OR HIS REPRESENTATIVE. BUYER’S REALTOR IS NOT AN AUTHORIZED ESCORT.** The superintendent’s ability to accommodate requests is secondary to his obligation to manage the work and visits must be scheduled in advance.

(d) Buyer acknowledges that Buyer’s unauthorized entry onto the site is a violation of the conditions of this Section 14 and is a serious breach of safety protocols creating potential danger to Buyer, Buyer’s guests and/or representatives and Seller’s workers, as well as potential liability exposure for Seller. **BUYER HEREBY RELEASES AND AGREES TO INDEMNIFY, DEFEND AND HOLD SELLER HARMLESS FROM AND AGAINST ANY LAWSUIT OR CLAIM RESULTING FROM BUYER’S BREACH OF THIS SECTION 14.**

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(e) SHOULD BUYER OR ANY GUEST OR REPRESENTATIVE OF BUYER ENTER ONTO THE SITE WITHOUT AN APPROVED ESCORT OR DURING NON-WORKING HOURS, BUYER WILL BE DEEMED TO HAVE COMMITTED A MATERIAL BREACH OF THIS CONTRACT.

## **15. COMPLETION AND FINAL WALK-THROUGH INSPECTION**

(a) Upon Completion, Seller will schedule a final walk-through of the Dwelling Unit with the Buyer. At this time, Buyer will have the opportunity to inspect the work and any deficiencies, defects or errors will be noted in writing on the inspection report. This report is known as the “Punch-list”.

(b) Seller shall promptly correct all deficiencies, defects or errors on the Punchlist. “Promptly”, as used here, allows for a reasonable period to notify and schedule the appropriate tradespeople, obtain parts, etc. Punchlist items may be corrected after Closing; failure to complete the Punchlist prior to Closing shall not be cause to delay or postpone Closing, nor shall payment of any monies be withheld.

## **16. CLOSING**

(a) Closing shall occur within five (5) days of the Completion Date, or as otherwise agreed in writing between the Parties. At Closing, Buyer shall make payment of all monies due and owing and sign all documents necessary for the purchase of the Dwelling Unit and Seller shall provide to the Buyer a Warranty Deed, policy of title insurance and keys. Failure of either Party to perform as required herein shall be a default by that Party.

(b) Seller makes no guarantee of the Completion Date and Buyer specifically acknowledges that the Completion Date is difficult to determine with any specificity due to circumstances beyond the control of Seller that can delay execution of work. Buyer waives any claim for damages based upon the achievement or non-achievement of any specific Completion Date, except as may otherwise be provided for in a written amendment to this Contract by all Parties.

(c) The Closing agent and/or escrow agent shall be designated by Seller.

(d) Title shall be conveyed in fee simple free and clear of all taxes, liens and encumbrances except the general taxes for the year of Closing and except for the following: utility easements; those matters reflected by the title documents accepted by Buyer in accordance with Section 8; those rights, if any, of third parties in the Property not shown by the public records; inclusion of the Dwelling Unit in any special taxing district; building and zoning regulations; matters identified on the Warranty Deed; and the benefits and burdens conferred by the Declaration and Homeowners’ Association documents (if applicable). Real property taxes for the year of Closing shall be prorated between the Parties.

(e) Buyer further acknowledge that if Buyer fails to Close the transaction as provided for by this Contract, Seller will be damaged in an indeterminate amount and agrees that Buyer’s Earnest Money Deposit and Non-Refundable Payment(s) shall be forfeited to Seller as liquidated damages.

**17. POSSESSION**

(a) Buyer shall be entitled to possession after Closing.

(b) Buyer shall not be allowed possession of the Dwelling Unit prior to Closing and payment of the entire Purchase Price. Possession shall include habitation, storage of furniture, or use of any sort.

**18. CONSTRUCTION WARRANTY**

(a) Seller shall provide a Limited Warranty to the Buyer at Closing. Buyer acknowledges receipt of a copy of the Limited Warranty at the time of signing this Contract. The Limited Warranty is the only warranty, express or implied, which Seller makes to the Buyer.

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(b) IT IS HEREBY EXPRESSLY UNDERSTOOD AND AGREED BY THE PARTIES HERETO THAT, EXCEPT FOR THE LIMITED WARRANTY AND EXCEPT FOR THOSE ITEMS NOTED IN THE "PUNCH LIST" PURSUANT TO THE FINAL WALK-THROUGH INSPECTION (SEE SECTION 15), SELLER IS NOT FURNISHING ANY OTHER WARRANTIES. BUYER UNDERSTANDS, ACKNOWLEDGES AND AGREES THAT ANY AND ALL OTHER REPRESENTATIONS AND WARRANTIES OF ANY NATURE, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THOSE OF WORKMANLIKE CONSTRUCTION, HABITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USE, DESIGN, CONDITION, QUALITY OR OTHERWISE AS TO THE DWELLING UNIT, THE PROPERTY AND OTHER IMPROVEMENTS CONSTRUCTED OR INSTALLED THEREON OR THEREIN, ARE EXPRESSLY DISCLAIMED BY SELLER AND WAIVED BY BUYER.

(c) EXCEPT FOR THE LIMITED WARRANTY, BUYER ASSUMES THE RISK OF ANY AND ALL DAMAGE OCCURRING IN OR APPPEARING ON THE PROPERTY OR THE DWELLING UNIT AND OTHER IMPROVEMENTS CONSTRUCTED THEREON AND APPURTENANT THERETO FROM AND AFTER THE DATE OF CLOSING, REGARDLESS OF THE CAUSE THEREOF.

(d) Buyer agrees that by Closing the purchase of the Dwelling Unit as contemplated by this Contract, Buyer accepts the terms of the Limited Warranty and agrees to be bound by them whether Buyer actually signs the Limited Warranty or not. Buyer acknowledges that Buyer has read the Limited Warranty.

(e) Buyer agrees that, prior to initiating any lawsuit, mediation, arbitration or other civil action against Seller for construction defects, omissions or errors, or for any other reason, Buyer must first:

i. Notify Seller in writing delivered by certified mail, return receipt requested, by overnight courier service (e.g. FedEx or UPS) or by personal service, of the nature of any claim, error or omission ("Alleged Defect"), stating the location and description of each Alleged Defect in sufficient detail to determine the general nature of the Alleged Defect and any damages claimed to have been caused by the Alleged Defect ("Defect Notice"). Failure to so notify Seller within thirty (30) days of Buyer's first discovery of the Alleged Defect shall be deemed a waiver of any right to assert a

claim for said Alleged Defect, or any other claim for the same Alleged Defect in another location on the property as a continuing defect, error or omission.

ii. Allow Seller thirty (30) days from the date Seller receives the Defect Notice to assess the Alleged Defect and forty-five (45) days from the date Seller receives the Defect Notice to commence repairs if necessary, which repairs shall be pursued diligently to conclusion. Seller shall be granted reasonable access to the Property for that purpose. In the event Seller denies liability of the Alleged Defect or Buyer disagrees with Seller’s proposed repairs, Buyer expressly agrees to participate in the Dispute Resolution Process outlined in Section 22. The Parties expressly agree that as long as Seller acts in accordance with this Section 18(e), that Seller shall be deemed to have acted in good faith.

iii. Buyer agrees to the following covenants and restrictions, which shall survive Closing:

a. Buyer shall regularly inspect and treat for mold.

b. Buyer will maintain rain gutter downspout extenders in the down and extended position at all times and clear obstructions. Buyer acknowledges and agrees that failure to do so may cause excessive water to penetrate the ground adjacent the foundation and that water penetration may cause excessive swelling of soils possibly damaging the foundation.

c. Buyer shall not plant plants within five feet of the perimeter of the foundation; Buyer shall not water within five feet of the perimeter of the foundation.

(f) Buyer hereby waives any claim against Seller for damages attributable to breach of the covenants and requirements set forth in Section 18(e)iii or otherwise caused by Buyer. **BUYER INDEMNIFIES AND AGREES TO HOLD HARMLESS SELLER AGAINST ANY CLAIM, LOSS OR EXPENSE INCURRED BY SELLER AS A RESULT OF BUYER’S BREACH OF THE COVENANTS AND AGREEMENTS CONTAINED IN THIS SECTION.**

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(g) Buyer acknowledges that no home can be constructed in a manner to completely prevent mold growth; and that City building code requirements for air tightness of dwelling units restricts the circulation of fresh air which could otherwise inhibit mold growth. Buyer covenants and agrees that it is Buyer’s obligation to maintain regular ventilation and air circulation and to prevent leakage at showers and sinks by properly maintaining plumbing seals, tile grout, caulking and painted surfaces. **BUYER HEREBY EXPRESSLY WAIVES, RELEASES AND SHALL INDEMNIFY, DEFEND AND HOLD SELLER HARMLESS FROM ANY AND ALL CLAIMS FOR DAMAGES, INJURIES OR ILLNESS OR HEALTH PROBLEMS BASED UPON THE PRESENCE OF MOLD IN THE DWELLING UNIT. BUYER ACKNOWLEDGES THAT INSURANCE FOR MOLD CLAIMS IS UNATTAINABLE BY SELLER.**

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## **19. LIEN WAIVER**

Upon payment of all the monies called for herein and transfer of the title to the Buyer, Seller hereby waives all lien rights for payment of materials, labor, services, and equipment used in the construction of the Dwelling Unit.

## **20. DEFAULT**

Time is of the essence as to this Contract. Therefore, if any payment, covenant or other condition of this Contract is not made, tendered or performed as provided for herein, such failure shall constitute a material default, and the non-defaulting Party shall be entitled to the following remedies:

(a) If Buyer is in default, Seller may elect to cancel this Contract by giving written notice to Buyer, in which case all payments, deposits and things of value paid or given to Seller by Buyer shall be forfeited and kept by Seller as liquidated damages.

(b) Buyer hereby acknowledges and agrees that in the event of Buyer's default, the injury to Seller will be difficult and expensive to measure in view of Seller's financial obligations with respect to the Project; Seller's commitments made in reliance upon the Contract with Buyer; and other factors difficult to identify in advance. As a reasonable estimate of Seller's fair compensation for any damages resulting from such default, the Parties agree that the sums paid by the Buyer hereunder as the Earnest Money Deposit and Non-Refundable Payments shall be forfeited by Buyer to Seller and belong to Seller as liquidated damages and shall be Seller's only remedy.

(c) If Seller is in default, except for extension to the time of completion, as provided in Section 10, Buyer may elect to cancel this Contract by giving written notice to Seller, in which case the Earnest Money Deposit and Non-Refundable Payments paid to Seller by Buyer shall be promptly returned to Buyer without offset or payment of interest. Buyer waives any claim for damages or specific performance.

## **21. REAL ESTATE COMMISSION**

Commission paid by Seller or Seller's listing agent to Buyer's broker or agent, if any, shall be three Percent (3%) of the Purchase Price (excluding any Seller-Paid Closing Costs (if any)). Any commission obligation of Buyer in excess of three Percent (3%) shall be the responsibility of Buyer. **Seller will not pay any realtor commissions on Seller-Paid Closing costs, as listed in Section 2 (if any), regardless of whether they have or have not been added to the Purchase Price.**

## **22. DISPUTE RESOLUTION**

(a) In the event of a dispute that the Parties are unable to resolve between themselves, the Parties agree:

(i) Mediation. First, that they shall participate in a mediation conducted by a mutually acceptable third party. Either Party may notify the other Party of its request for mediation and submit a list of possible mediators to the other Party ("Mediation Notice"), from which list, or lists, the Parties shall agree upon a mediator. The mediator shall then convene a mediation at a mutually convenient time wherein the Parties shall attempt to resolve their differences. In the event the Parties reach a successful conclusion, in whole or in part, the agreement thereby reached shall be reduced to

writing by the mediator and the Parties shall each sign it and it shall be binding upon the Parties. Either Party may enter the agreement with a court of competent jurisdiction for enforcement if necessary.

(ii) Arbitration. Second, in the event mediation is unsuccessful, is not commenced within thirty (30) days of the Mediation Notice, or is not completed within forty-five (45) days of commencement, then such dispute shall be submitted to binding arbitration. For purposes of this Section 22, mediation shall be “commenced” upon the Parties agreeing upon a mediator and mediation date. The Parties agree that the arbitrator(s) presiding over any arbitration under this Contract shall have full and exclusive authority and jurisdiction to resolve all disputes between the Parties that arise out of or relate to this Contract or the events preceding its execution, including any claims of intentional misrepresentation, concealment, non-disclosure, fraud and/or fraudulent inducement alleged with respect to this Contract or the underlying transaction. Arbitration shall be in accordance with the American Arbitration Association rules, modified as follows: (1) discovery shall be allowed in accordance with the Wyoming Revised Statutes for Civil Procedure; (2) the prevailing side shall receive its reasonable attorney fees and expenses of expert testimony; and (3) the Wyoming Rules of Evidence shall govern. The decision of the arbitrator(s) shall be final and binding as to all claims that were or could have been raised in the arbitration, may be enforced by appropriate action in a court of law, and shall be subject to the appropriate provisions of the Wyoming Revised Statutes, as the same may be amended from time to time. Any dispute involving an amount greater than \$250,000 shall be heard by a panel of three (3) arbitrators, the decision of a majority of which shall be final. Arbitrators shall be mutually agreed upon except that if a panel of three (3) arbitrators is used, each Party shall choose one arbitrator to serve on the panel and the Parties’ arbitrators shall choose the third arbitrator to serve on the panel.

(iii) Arbitration Awards. In the event of an arbitration, the arbitrator may make only the following awards: (a) order Seller to perform repairs in accordance with a set of specific instructions; (b) award an amount of money to Buyer; or (c) award an amount of money to Seller. In the event the Buyer is awarded an amount of money, the arbitration award shall further require the Buyer to release Seller from and indemnify Seller against any future claims or losses based on negligent construction, design defect, or breach of warranty relating to or arising out of this Contract, including any claims by subsequent purchasers of the Property, and Buyer shall be required to disclose the dispute and its resolution in any future sale of the Property. Attorney fees, expert fees and costs (“Fees and Costs”) shall be awarded to the prevailing Party. The arbitrator(s) shall determine which Party is the “prevailing” Party as well as the amount of Fees and Costs to be paid to such prevailing Party. Any award hereunder shall be construed in strict accordance with applicable case law of the state wherein the Dwelling Unit is located.

(iv) Limitation on Damages. In any dispute related to or arising out of this Contract, (a) damages shall be limited to actual damages; (b) each Party hereby irrevocably waives any right and claim to exemplary or punitive damages in any jurisdiction; and (c) the maximum amount of the award, excluding Fees and Costs, shall be the Purchase Price. In cases alleging negligent construction, design defect, or breach of warranty arising out of or related to this Contract, the maximum amount of any award of monetary damages shall be the lesser of (a) the diminution of the Property’s value (including the Dwelling Unit); (b) the cost to repair or replace the Dwelling Unit or any portion thereof; or (c) the Purchase Price.

(v) Waiver. Buyer acknowledges that by agreeing to the Dispute Resolution Procedure outlined in this Section 22, Buyer waives Buyer’s right to file a lawsuit based on breach of this Contract or any claim or theory of recovery including any claims for tort damages against

Seller for defects, errors or omissions whether or not said alleged defects, errors or omissions have caused, or may be alleged to potentially cause, any physical damage to person or property. Buyer further acknowledges and agrees that by waiving Buyer's right to pursue claims in a court of law and agreement to submit all claims to the Dispute Resolution process outlined herein, Buyer has also waived Buyer's right to a jury trial. The arbitrator's(s') decision shall include factual findings and legal reasoning and shall be final and binding upon the Parties ("Final Arbitration Decision"). The Parties shall not have the right to appeal the Final Arbitration Decision.

(b) Any documents of assignment, lease or conveyance of any Dwelling Unit or other interest in the Project shall be deemed to incorporate those provisions for dispute resolution set forth in this Section 22, as if the same were fully set forth in any such document. Any person who is injured by reason of the fact that a dispute subject to the provisions of this arbitration provision is resolved other than by arbitration may recover as damages the cost and expense incurred by reason of the fact that the dispute was not submitted to arbitration for resolution including, without limitation, all attorney fees, expert fees and costs.

(c) The terms and conditions of this Section 22 shall survive Closing.

### **23. ATTORNEY FEES**

In the event that any Party shall become in default or breach of any of the terms of this Contract, such defaulting or breaching Party shall pay all reasonable attorney fees and other expenses which the non-breaching or non-defaulting Party may incur in enforcing this Contract. This provision shall not limit any other remedies to which the Parties may otherwise be entitled.

### **24. NOT ASSIGNABLE**

This Contract shall not be assignable by Buyer without the express written consent of the Seller. Seller shall have the right, without notice to or consent by Buyer, to assign this Contract, in whole or in part, to any affiliate or subsidiary of Seller.

### **25. NO JOINT VENTURES**

There is no partnership or joint venture between Seller and Buyer, nor is one intended.

### **26. NO PRESENT TRANSFER**

This Contract shall not be construed as a present transfer of any interest in the Property. It is, rather, an agreement to transfer the Property in the future.

### **27. NOTICES**

Notice to the Parties shall be made in writing and shall be deemed given when hand-delivered or when deposited in the U.S. Mail, postage prepaid, or upon delivery to the recipient by a commercial courier service such as FedEx, and addressed as provided for on the signature page of this Contract. Notice to one Buyer shall be deemed notice to all Buyers.

**28. JOINT AND SEVERAL LIABILITY**

If two or more persons are named herein as Buyer, their obligation under this Contract shall be joint and several.

**29. BINDING**

This Contract shall be binding upon the successors, heirs and assigns of the Buyer. Any waiver or failure to enforce a term or provision in this Contract shall not impact the general validity or enforceability of this Contract or any term or condition herein. If any individual Buyer should die prior to the Closing Date, Seller reserves the right to return Buyer's Earnest Money Deposit and Non-Refundable Payment(s) without interest and less any cancellation costs and fees, and this Contract shall then be deemed to have been canceled and both Seller and Buyer shall be released from all obligations and liability hereunder.

**30. SURVIVAL OF TERMS**

All indemnity and warranty provisions, as well as all terms and conditions that by their nature must survive Closing or expressly survive Closing, shall survive Closing.

**31. SEVERABILITY**

In the event any one or more of the provisions contained in this Contract should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not be impacted or impaired. The Parties shall endeavor, in good-faith negotiations, to replace the invalid, illegal or unenforceable provisions with valid provisions, with economic effects that come as close as possible to those of the invalid, illegal or unenforceable provisions.

**32. GOVERNING LAW**

This Contract shall be construed in accordance with the laws of the State of Wyoming. The Parties hereby consent to personal jurisdiction and exclusive venue in the state and federal courts of the County of Natrona, State of Wyoming. The Parties hereby waive any claims or defenses relating to lack of personal jurisdiction in the County of Natrona, State of Wyoming.

**33. ENTIRE AGREEMENT**

(a) Buyer represents that Buyer has read this Contract and all the Exhibits in their entirety and that this Contract and the Exhibits attached hereto constitute the entire agreement between the Parties; that it supersedes any previous representations, drafts, worksheets, or verbal statements made by Seller or its salespeople, employees or agents; and that no other agreements, promises, representations or warranties may be subsequently claimed by Buyer as made by Seller, its salespeople, employees or agents except as may be set forth herein or any amendment hereto signed by each of the Parties hereto. This Contract and the Exhibits attached hereto constitute one agreement between the Parties.

**NO VERBAL REPRESENTATIONS, OFFERS OR "GIVEAWAYS" MADE BY ANY SALESPERSON SHALL BE VALID UNLESS REDUCED TO WRITING AND SIGNED BY BOTH BUYER AND SELLER.**

(b) Buyer understands and agrees that the sales representative(s) with whom Buyer has dealt in connection with entering into this Contract has (have) no authority to agree to changes or modifications in the plans, specifications, Purchase Price or the Contract and that such changes can only be made by written agreement between Seller and Buyer which is signed by both Parties and which shall be appended hereto as an Amendment.

(c) Buyer agrees that Buyer has had the opportunity to present this Contract to an independent attorney and to negotiate provisions within this Contract. If there is a dispute between the Parties concerning the provisions of this Contract, this Contract shall be construed equally against the Parties as no single Party has been solely responsible for the drafting of this Contract.

BUYER INITIAL \_\_\_\_\_

**34. DUST AND OTHER NUISANCES**

Buyer acknowledges and understands that construction and other activities may occur near the Dwelling Unit after Closing, and that such activities may result in noise, dust and other nuisances. **BUYER DOES HEREBY AGREE TO RELEASE, DEFEND, INDEMNIFY AND HOLD SELLER HARMLESS, ITS RESPECTIVE AGENTS, CONSULTANTS, OWNERS, CONTRACTORS AND ANY EMPLOYEES FROM AND AGAINST ANY AND ALL LIABILITY OR CLAIMS WITH RESPECT THERETO OR WHICH MAY ARISE AS A RESULT THEREOF. THIS PROVISION SHALL SURVIVE CLOSING.**

BUYER INITIAL \_\_\_\_\_

**35. BUYER'S OCCUPANCY**

Buyer makes the following representations:

I/We  **DO**  **DO NOT** (check one) intend to personally occupy the Dwelling Unit.

BUYER INITIALS \_\_\_\_\_

I/We acknowledge that Seller intends to rely upon this representation.

**36. BROKER REPRESENTATION**

Buyer is represented by a Real Estate Agent Yes \_\_\_\_\_ No \_\_\_\_\_

If Yes,  
Agent Name: \_\_\_\_\_  
Firm: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone #: \_\_\_\_\_



**37. EXPIRATION**

This Contract shall be deemed void and of no force and effect, and any deposits shall be returned to Buyer, unless this Contract is signed by the Seller and a copy of the signed Contract is delivered to Buyer or Buyer’s agent by \_\_\_\_\_, 2020, at \_\_\_\_\_AM\_\_\_\_/PM\_\_\_\_\_.

**IN WITNESS WHEREOF**, the Parties hereto have executed this New Home Purchase Contract effective as of the Reference Date.

**BUYER:**

**BUYER:**

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City & State: \_\_\_\_\_  
Home Phone: \_\_\_\_\_  
Work Phone: \_\_\_\_\_  
Cell Phone: \_\_\_\_\_  
Email: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City & State: \_\_\_\_\_  
Home Phone: \_\_\_\_\_  
Work Phone: \_\_\_\_\_  
Cell Phone: \_\_\_\_\_  
Email: \_\_\_\_\_

**THIS IS A LEGALLY BINDING CONTRACT. IF YOU DO NOT UNDERSTAND THE TERMS AND CONDITIONS, CONSULT LEGAL OR OTHER COUNSEL BEFORE SIGNING.**

THIS CONTRACT OFFER WAS RECEIVED by me for Seller on \_\_\_\_\_,2020 at \_\_\_\_\_AM\_\_\_\_/PM\_\_\_\_.  
Seller Initials \_\_\_\_\_

**ACCEPTANCE OF SELLER.**

THE UNDERSIGNED Seller ACCEPTS AND AGREES TO the foregoing Contract on \_\_\_\_\_, 2020 (date), at \_\_\_\_\_ AM\_\_\_\_/PM\_\_\_\_\_.

\_\_\_\_\_  
Seller Signature Date

**REJECTION BY SELLER.**

THIS CONTRACT OFFER IS HEREBY REJECTED ON \_\_\_\_\_, 2020 (date), at \_\_\_\_\_ AM\_\_\_\_/PM\_\_\_\_\_.

\_\_\_\_\_  
Seller Signature Date