

## NEW CONSTRUCTION REAL ESTATE PURCHASE CONTRACT

This is a legally binding Real Estate Purchase Contract ("REPC"). If you desire legal or tax advice, consult your attorney or tax advisor.

### OFFER TO PURCHASE AND EARNEST MONEY DEPOSIT

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ ("Offer Reference Date") \_\_\_\_\_ ("Buyer") offers to purchase from \_\_\_\_\_ ("Seller") the Property described below and ☐ delivers to the Buyer's Brokerage with this offer, or ☐ agrees to deliver no later than four (4) calendar days after Acceptance (as defined in Section 25), Earnest Money in the amount of \$\_\_\_\_\_ in the form of \_\_\_\_\_. After Acceptance of the REPC by Buyer and Seller, and receipt of the Earnest Money by the Brokerage, the Brokerage shall have four (4) calendar days in which to deposit the Earnest Money into the Brokerage Real Estate Trust Account.

Buyer's Brokerage \_\_\_\_\_ Phone: \_\_\_\_\_

Received by: \_\_\_\_\_ on \_\_\_\_\_ (Date)  
(Signature above acknowledges receipt of Earnest Money)

### OTHER PROVISIONS

#### 1. PROPERTY:

**1.1 Location.** The Earnest Money Deposit is given to secure and apply on the purchase of a new Residence (the "Residence") described below to be constructed by Seller on a parcel of real property (the "Lot") located at: \_\_\_\_\_, in the City of \_\_\_\_\_ County of \_\_\_\_\_, State of Utah, more particularly described as Lot No. \_\_\_\_\_ in the \_\_\_\_\_ Subdivision/Development, or alternatively as follows: \_\_\_\_\_ (collectively referred to hereinafter as the "Property"). The Purchase Price for the Property ☐ INCLUDES ☐ DOES NOT INCLUDE, the Lot.

**1.2 Home Design.** Seller shall construct the Residence and related improvements described as the ☐ \_\_\_\_\_ model house plan; or ☐ custom design, in accordance with the Plans & Specifications as provided in Section 7(g) and 9.1 below, and any applicable plans, CC&Rs, and declaration of condominium.

**1.3 Improvements.** Seller represents that the Property will be connected to the utility service lines and serviced by the additional improvements identified below. **(check applicable boxes):**

**(a) Utility Services**

☐ well ☐ public water ☐ private water ☐ natural gas ☐ propane ☐ electricity ☐ telephone ☐ cable  
☐ public sewer ☐ septic tank ☐ other (specify) \_\_\_\_\_

**(b) Additional Improvements**

☐ dedicated paved road ☐ private paved road ☐ other road (specify) \_\_\_\_\_  
☐ curb & gutter ☐ rolled curb ☐ sidewalk  
☐ other (specify) \_\_\_\_\_

**1.4 Permit Fees.** Seller agrees to pay for building permit fees, impact fees, landscape bonds, and all connection fees except for the following: \_\_\_\_\_.

**1.5 Water Service.** The Purchase Price for the Property shall include all water rights/water shares, if any, that are the legal source of Seller's current culinary water service and irrigation water service, if any, to the Property. The water rights/water shares will be conveyed or otherwise transferred to Buyer at Closing by applicable deed or legal instruments. The following water rights/water shares, if applicable, are specifically excluded from this sale: \_\_\_\_\_

**1.6 Survey.** Seller shall ensure that the Lot corners have been staked by a licensed surveyor and that upon Substantial Completion of the Residence as defined in Section 12.2 below, the stakes are still in place. Any additional survey work shall be at the option of Buyer and shall be paid for by Buyer.

**2. PURCHASE PRICE.** The Purchase Price for the Property is \$ \_\_\_\_\_. Except as provided in this Section, the Purchase Price shall be paid as provided in Sections 2.1(a) through 2.1(d) below. Any amounts shown in 2.1(c) and 2.1(d) may be adjusted as deemed necessary by Buyer and Buyer's Lender (the "Lender").

**2.1 Method of Payment.** The Purchase Price will be paid as follows:

- \$ \_\_\_\_\_ **(a) Earnest Money Deposit.** Under certain conditions described in the REPC, this deposit may become non-refundable.
- \$ \_\_\_\_\_ **(b) Construction Deposit.** This amount shall be due and shall become **NON-REFUNDABLE** to Buyer as provided in Section 2.2 below.
- \$ \_\_\_\_\_ **(c) Permanent Loan.** Buyer agrees to apply for a "Permanent Loan" on terms acceptable to Buyer as provided in Section 8.2(c) below. If an FHA/VA loan applies, see attached FHA/VA Loan Addendum.
- \$ \_\_\_\_\_ **(d) Balance of Purchase Price in Cash at Settlement.**

\$ \_\_\_\_\_ **PURCHASE PRICE. Total of lines (a) through (d).** The Purchase Price may be increased if additional costs are incurred for any Change Orders as provided in Section 9.3. Such Change Orders shall be paid for as provided in Section 9.3.

**2.2 Construction Deposit.**

**(a) Delivery of Construction Deposit.** Provided Buyer has not cancelled the REPC pursuant to Section 8.1(b) below, then no later than the Pre-Construction Meeting, referenced in Section 9.2, or as otherwise agreed to in writing by Buyer and Seller, Buyer ☐ **WILL** ☐ **WILL NOT** deliver directly to the Seller a Construction Deposit. Seller may only use the Construction Deposit for the purpose of constructing the Residence and/or purchase of the Lot. The Earnest Money Deposit and Construction Deposit, if applicable, shall be credited toward the Purchase Price at Settlement as defined in Section 3.1 below.

**(b) Non-Refundable Construction Deposit.** Except as provided in Section 8, Buyer acknowledges that upon delivery of the Construction Deposit to the Seller, the Construction Deposit shall be **NON-REFUNDABLE** to Buyer unless Seller fails to close the transaction in accordance with the terms of the REPC. In such event, the remedies set forth in Section 17.2 shall apply.

**3. SETTLEMENT AND CLOSING.**

**3.1 Settlement.** Settlement shall take place no later than the Settlement Deadline referenced in Section 24(f), or as otherwise mutually agreed by Buyer and Seller in writing. "Settlement" shall occur only when all of the following have been completed: (a) Buyer and Seller have signed and delivered to each other or to the escrow/closing office all documents required by the REPC, by the Lender, by the title insurance and escrow/closing offices, by written escrow instructions (including any split closing instructions, if applicable), or by applicable law; (b) any monies required to be paid by Buyer or Seller under these documents (except for the proceeds of any Permanent Loan) have been delivered by Buyer or Seller to the other party, or to the escrow/closing office, in the form of cash, wire transfer, cashier's check, or other form acceptable to the escrow/closing office.

**3.2 Prorations.** All prorations, including, but not limited to, homeowner's association dues, property taxes for the current year, rents, and interest on assumed obligations, if any, shall be made as of the Settlement Deadline referenced in Section 24(f), unless otherwise agreed to in writing by the Buyer and Seller. Such writing could include the settlement statement. The provisions of this Section 3.2 shall survive Closing.

**3.3 Special Assessments.** Any assessments for capital improvements as approved by the HOA (pursuant to HOA governing documents) or as assessed by a municipality or special improvement district, prior to the Settlement Deadline shall be paid for by: ☐ **Seller** ☐ **Buyer** ☐ **Split Equally Between Buyer and Seller** ☐ **Other (explain)** \_\_\_\_\_

**3.4 Fees/Costs/Payment Obligations.** Unless otherwise agreed to in writing, Buyer and Seller shall each pay their respective fees charged by the escrow/closing office for its services in the settlement/closing process. Buyer agrees to be responsible for homeowners' association and private and public utility service transfer fees, if any, and all utilities and other services provided to the Property after the Settlement Deadline. Utility service connection and hook-up fees shall however, be paid by Seller as provided in Section 1.4. The escrow/closing office is authorized and directed to withhold from Seller's proceeds at Closing, sufficient funds to pay off on Seller's behalf all mortgages, trust deeds, judgments, mechanic's liens, tax liens and warrants. The provisions of this Section 3.4 shall survive Closing.

**3.5 Closing.** For purposes of the REPC, "Closing" means that: (a) Settlement has been completed; (b) the proceeds of any new loan have been delivered by the Lender to Seller or to the escrow/closing office; and (c) the applicable Closing documents have been recorded in the office of the county recorder. The actions described in 3.5 (b) and (c) shall be completed within four calendar days after Settlement.

**4. POSSESSION.** Unless otherwise agreed to in writing, Seller shall deliver physical possession to Buyer upon Closing.

**5. CONFIRMATION OF AGENCY DISCLOSURE.** Buyer and Seller acknowledge prior written receipt of agency disclosure provided by their respective agent that has disclosed the agency relationships confirmed below. At the signing of the REPC:

Seller's Agent \_\_\_\_\_, represents [ ☐ ] Seller [ ☐ ] both Buyer and Seller as a Limited Agent;

Seller's Brokerage \_\_\_\_\_, represents [ ☐ ] Seller [ ☐ ] both Buyer and Seller as a Limited Agent;

Buyer's Agent \_\_\_\_\_, represents [ ☐ ] Buyer [ ☐ ] both Buyer and Seller as a Limited Agent;

Buyer's Brokerage \_\_\_\_\_, represents [ ☐ ] Buyer [ ☐ ] both Buyer and Seller as a Limited Agent.

**6. TITLE / TITLE INSURANCE / LIENS.**

**6.1 Title to Property.** Seller represents that Seller has fee title to the Property and will convey marketable title to the Property to Buyer at Closing by general warranty deed unless otherwise agreed to in writing by Buyer and Seller. The Property will be delivered to Buyer at Closing, free and clear of mechanic's liens and claims for mechanic's liens. Buyer does agree to accept title to the Property subject to the contents of the Commitment for Title Insurance (the "Commitment") provided by Seller under Section 7(b), and as reviewed and approved by Buyer under Section 8.1(a). The provisions of this Section 6.1 shall survive Closing.

**6.2 Title Insurance & Additional Coverage.** At Settlement, Seller agrees to pay for and cause to be issued in favor of Buyer, through the title insurance agency that issued the Commitment (the "Issuing Agent"), the most current version of the *ALTA Homeowner's Policy of Title Insurance (the "Homeowner's Policy")*. If the *Homeowner's Policy* is not available through the Issuing Agent, Buyer and Seller further agree as follows: (a) Seller agrees to pay for the *Homeowner's Policy* if available through any other title insurance agency selected by Buyer; (b) if the *Homeowner's Policy* is not available either through the Issuing Agent or any other title insurance agency, then the Seller agrees to pay for, and Buyer agrees to accept, the most current available version of an *ALTA Owner's Policy of Title Insurance ("Standard Coverage Owner's Policy")* available through the Issuing Agent.

**6.3 Protection Against Liens and Civil Action.** Notice is hereby provided in accordance with the Residence Lien Restriction and Lien Recovery Fund Act of the Utah Code that an "owner" may be protected against liens being maintained against an "owner- occupied residence" and from other civil action being maintained to recover monies owed for "qualified services" performed or provided by suppliers and subcontractors as a part of this contract, if either section (1) or (2) is met: (1)(a) the owner entered into a written contract with an original contractor, a factory built housing retailer, or a real estate developer; (b) the original contractor was properly licensed or exempt from licensure under Utah Construction Trades Licensing Act at the time the contract was executed; and (c) the owner paid in full the contracting entity in accordance with the written contract and any written or oral amendments to the contract; or (2) the amount of the general contract between the owner and the original contractor totals no more than \$5,000. (3) An owner who can establish compliance with either section (1) or (2) may perfect the owner's protection by applying for a Certificate of Compliance with the Division of Occupational and Professional Licensing.

**7. SELLER DISCLOSURES.** No later than the Seller Disclosure Deadline referenced in Section 24(a), Seller shall provide to Buyer the following documents which are collectively referred to as the "Seller Disclosures":

- (a) A Seller property condition disclosure form for the Lot and any improvements;
  - (b) A Commitment for the policy of title insurance as referenced in Sections 6.1 and 6.2;
  - (c) A copy of the recorded CC&R's, rules and regulations affecting the Property, and a copy of the recorded Plat for the Development, if any;
  - (d) A copy of the most recent minutes, budget and financial statement for the homeowners' association, if any;
  - (e) Written notice of any claims and/or conditions known to Seller relating to environmental, soil stability, drainage or other problems or other known defects in the Property that materially affect its value that cannot be discovered by a reasonable inspection by an ordinary prudent Buyer;
  - (f) Evidence of any water rights and/or water shares referenced in Section 1.5;
  - (g) Plans & Specifications for the Residence, or reduction copies thereof as defined in Section 9.1;
  - (h) Name of contractor and contractor's license number;
  - (i) If applicable and pursuant to 16 C.F.R., part 460 the type, thickness, and R-value of the insulation that will be installed in each part of the house.
  - (j) Builder's Warranty (if different from Section 11); and
  - (k) Other (specify) \_\_\_\_\_
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## 8. BUYER'S CONDITIONS OF PURCHASE.

**8.1 DUE DILIGENCE CONDITION.** Buyer's obligation to purchase the Property **IS** conditioned upon Buyer's satisfactory completion of Buyer's Due Diligence as defined in this Section 8.1 inclusive below. This condition is referred to as the "Due Diligence Condition." All of Buyer's Due Diligence shall be completed on or before the Due Diligence Deadline referenced in Section 24(b). Buyer's Due Diligence shall be paid for by Buyer and shall be conducted by individuals or entities of Buyer's choice. Seller agrees to cooperate with Buyer's Due Diligence. Buyer agrees to pay for any damage to the Property resulting from any inspections or tests during the Due Diligence.

**(a) Due Diligence Items.** Buyer's Due Diligence shall consist of the following:

(i) Buyer's review and approval of the Seller Disclosures referenced in Section 7 above, and  
(ii) Any other tests, evaluations and verifications of the Property deemed necessary or appropriate by Buyer, such as: environmental issues or geologic conditions; setback requirements, utility easements, the costs and availability of homeowners' insurance and flood insurance, if applicable; water source, availability and quality; the location of property lines; regulatory use restrictions or violations; fees for services such as HOA dues, municipal services, and utility costs; convicted sex offenders residing in proximity to the Property; and any other matters deemed material to Buyer in making a decision to purchase the Property.

**(b) Right to Cancel or Waive Due Diligence Condition.** Buyer shall have the right to cancel the REPC or waive the Due Diligence Condition as provided below.

(i) **Buyer's Right to Cancel or Resolve Objections.** If Buyer, in Buyer's sole discretion, determines that the results of Buyer's Due Diligence are unacceptable, Buyer may either: (A) no later than the Due Diligence Deadline referenced in Section 24(b), cancel the REPC by providing written notice to Seller, whereupon the Earnest Money Deposit and the Construction Deposit, if applicable, shall be released to Buyer without the requirement of further written authorization from Seller; or (B) no later than the Due Diligence Deadline referenced in Section 24(b), resolve in writing with Seller any objections Buyer has arising from Buyer's Due Diligence.

(ii) **Failure to Cancel or Resolve Objections.** If Buyer fails to cancel the REPC or fails to resolve in writing any objections Buyer has arising from Buyer's Due Diligence, as provided in Section 8.1(b)(i), Buyer shall be deemed to have waived the Due Diligence Condition.

### **8.2 FINANCING CONDITION (check applicable boxes):**

**(a) Construction Loan.** The obligations of the parties under the REPC ☐ **ARE** ☐ **ARE NOT** conditioned upon ☐ Buyer ☐ Seller obtaining a "Construction Loan" in the amount sufficient to construct the Residence.

**(b) Failure to Obtain Construction Loan.** Whether the Construction Loan is being obtained by Buyer or Seller, if the proceeds of that loan are not available for disbursement by the Construction Loan Funding Deadline referenced in Section 24(d), Buyer or Seller may cancel this REPC by providing written notice to the other party no later than four (4) days after the Construction Loan Funding Deadline; whereupon the Earnest Money Deposit and the Construction Deposit, if applicable, shall be released to Buyer without the requirement of further written authorization from Seller.

**(c) Permanent Loan.** Buyer's obligation to purchase the Property ☐ **IS** ☐ **IS NOT** conditioned upon Buyer obtaining the Permanent Loan as referenced in Section 2.1(c) above.

**(d) Cash Purchase/Proof of Funds.** If Buyer's obligation to purchase the Property **IS NOT** conditioned upon Buyer qualifying for the Construction Loan and/or the Permanent Loan as referenced in 8.2 (a) and (c) above (the "Applicable Loans"), Section 8.3 below shall not apply. If Buyer is paying cash, then no later than the Due Diligence Deadline referenced in Section 24(b), Buyer shall provide to Seller a current financial statement ("Proof of Funds"), evidencing Buyer's financial ability to close the purchase of the Property. If Seller, in Seller's sole discretion, is not satisfied with the Proof of Funds provided by Buyer, Seller may cancel the REPC by providing written notice to Buyer no later than seven (7) days after the Due Diligence Deadline. In such event, the Earnest Money Deposit, and Construction Deposit, if applicable, shall be released to Buyer without the requirement of further written authorization from Seller, and neither party shall have any further rights or obligations to each other under the REPC or otherwise. If Seller does not cancel the REPC as provided in this Section 8.2(d), Seller shall be deemed to have waived any objection to Buyer's Proof of Funds.

### **8.3 APPLICATION FOR LOAN.**

**(a) Preferred Lender.** Buyer shall obtain a "Pre-Qualification Letter" from \_\_\_\_\_ (the "Preferred Lender"). Notwithstanding the requirement for Buyer to obtain a Pre-Qualification Letter from the Preferred Lender, Buyer is not required to obtain a loan from the Preferred Lender and may additionally apply for and obtain a loan from any mortgage lender of Buyer's choosing (the "Alternate Lender").

**(b) Application.** No later than seven (7) days after Acceptance of the REPC by Buyer and Seller as defined in Section 25 below, Buyer shall apply for any applicable loans from the Preferred Lender and, if applicable, the Alternate Lender in order to obtain a Pre-Qualification Letter. Buyer shall pay all loan application fees as required by the Preferred Lender. Buyer will promptly provide any documentation required by the Preferred Lender.

**(c) Pre-Qualification Letter.** No later than the Due Diligence Deadline referenced in Section 24(b), Buyer agrees to provide to Seller a Pre-Qualification Letter from the Preferred Lender and, if applicable, the Alternate Lender. Buyer agrees to diligently work to obtain the Pre-Qualification Letter.

**(d) Right to Cancel.** If the Preferred Lender or, if applicable, the Alternate Lender fails to provide Buyer with a Pre-

Qualification Letter, or if the Pre-Qualification Letter contains conditions unacceptable to the Buyer or Seller, Buyer or Seller may cancel the REPC by providing written notice to the other party no later than four (4) days after the Due Diligence Deadline; whereupon the Earnest Money and Construction Deposit, if applicable, shall be released to Buyer without the requirement of further written authorization from Seller. If the REPC is not canceled as provided in this Section 8.3(d), Buyer and Seller shall be deemed to have waived any objections regarding the lack of, or any conditions contained in the Pre-Qualification Letter.

#### **8.4 FAILURE TO OBTAIN PERMANENT LOAN.**

**(a) Failure to Obtain Permanent Loan.** If after expiration of the Settlement Deadline referenced in Section 24(f), Buyer fails to obtain the Permanent Loan, meaning that the proceeds of the Permanent Loan have not been delivered by the Lender to Seller or to the escrow/closing office as required under Section 3.5 of the REPC, then Buyer or Seller may cancel the REPC by providing written notice to the other party; whereupon the Earnest Money Deposit and the Construction Deposit if applicable, shall be retained by the Seller.

**(b) Seller's Exclusive Remedy.** In the event of a cancellation based on the Buyer's failure to obtain a permanent loan as described in Section 8.4(a), Seller agrees to accept as Seller's exclusive remedy, the Earnest Money Deposit and the Construction Deposit, if applicable, as liquidated damages. Buyer and Seller agree that liquidated damages would be difficult and impractical to calculate, and the Earnest Money Deposit and the Construction Deposit, if applicable, is a fair and reasonable estimate of Seller's damages in the event Buyer fails to obtain the Permanent Loan.

#### **9. PLANS & SPECIFICATIONS / PRE-CONSTRUCTION MEETING.**

**9.1 Plans & Specifications.** The Plans & Specifications contain descriptions of the type of materials to be used in finishing the Residence, a dollar allowance for specific items, and copies of the floor plans and elevations for the Residence and any Change Orders as described below. Buyer's selection of color, grade and type of finishing materials (including appliances, floor coverings, fixtures, cabinets, etc.) may differ from the Plans & Specifications, and may change the Substantial Completion Deadline and the Purchase Price. Seller agrees to construct the Residence in substantial compliance with the Plans & Specification and to place the Residence within the approved building area on the Lot as permitted by the local municipal authority. Buyer acknowledges that the Residence, upon Substantial Completion, may vary from the exact dimensions shown on the Plans & Specifications.

**9.2 Pre-Construction Meeting.** Prior to the Pre-Construction Meeting Deadline, Buyer and Seller shall meet to review the Plans & Specifications and plot plan, and sign a *Change Order Addendum* which itemizes and identifies any changes to the Plans & Specifications for the Residence. Any payments and/or fees as required by the REPC and any *Change Order Addenda* shall be paid in full at the conclusion of the Pre-Construction Meeting, unless a separate payment schedule is otherwise agreed to in writing by Buyer and Seller. To the extent that a choice of color, grade, or type of material is still required after the Pre-Construction Meeting, Buyer shall notify Seller in writing of such selections no later than ☐ **10 days**, or ☐ **\_\_\_ days** after receipt of Seller's written request for such selections. If Buyer has not notified Seller in writing of such selections, Seller shall have the right to make said selections, at Seller's sole discretion, to avoid delay in Substantial Completion of the Residence.

**9.3 Change Orders.** No change will be made to the Plans & Specifications except by a written *Change Order Addendum* signed in advance by Buyer and Seller. Any *Change Order Addendum* shall set forth: (a) the changes to be made; (b) any adjustment in the Purchase Price; and (c) any change in the Substantial Completion Deadline. Payments made by Buyer to Seller for any Change Orders may only be used for construction of the Residence. Buyer understands that any Change Orders requested may affect the appraised value of the Residence and the terms and conditions of available financing.

**10. ADDITIONAL TERMS.** There ☐ **ARE** ☐ **ARE NOT** addenda to the REPC containing additional terms. If there are, the terms of the following addenda are incorporated into the REPC by this reference: ☐ **Addendum No. \_\_\_\_\_** ☐ **FHA/VA Loan Addendum** ☐ **Plans and Specifications** ☐ **Change Order Addendum No. \_\_\_\_\_** ☐ **Other (specify) \_\_\_\_\_**

**11. SELLER WARRANTIES.** Unless Seller is providing an alternate Builder's Warranty under Section 7(j) (in which case this Section 11 shall not apply) Seller **DOES** warrant the heating, cooling, electrical, plumbing and landscape sprinkler systems (including all gas and electric appliances), fixtures, and structural elements of the Residence (including the roof, walls, and foundation) against defects in material and workmanship for a period of one year after the Settlement Deadline. Seller further warrants that as of the date Seller delivers possession of the Residence to Buyer, any private well or septic tank serving the Residence shall have applicable permits and shall be in working order and fit for its intended purpose. The provisions of this Section 11 shall survive Closing.

## **12. WALK-THROUGH INSPECTION / SUBSTANTIAL COMPLETION / CONSTRUCTION COMPLIANCE**

**12.1 Walk-Through Inspection.** Not less than ☐ **7 DAYS** ☐ \_\_\_\_\_ **DAYS** prior to Settlement, Buyer may conduct a "walk-through" inspection of the Residence. If, as of Settlement, minor work remains to be completed, corrected or replaced on the Residence, then Buyer, pending completion of such work, may withhold in escrow at Settlement, a reasonable amount agreed to by Seller, Buyer and mortgage lenders, if applicable, sufficient to pay for completion of such work. If such work is not completed within ☐ **30 DAYS** ☐ \_\_\_\_\_ **DAYS** after Settlement, the amount so escrowed may, at Buyer's option, be released to Buyer as liquidated and agreed damages for failure to complete. The failure of Buyer to conduct a walk-through inspection prior to Settlement shall not constitute a waiver by Buyer of the right to receive on the date of possession, the Property as required under the REPC.

**12.2 Substantial Completion.** The Residence shall be considered "Substantially Complete" when occupancy of the Residence is allowable under the rules, ordinances and laws of the appropriate civil jurisdiction in which the Residence is located. In the absence of such governmental regulations, Substantial Completion shall be when the Residence is ready for occupancy and only minor work remains to be completed, corrected or replaced. Subject to the exceptions referenced in Section 13, the Substantial Completion Deadline shall be as referenced in Section 24(e). Seller shall provide Buyer written notice of Substantial Completion of the Residence. Change Orders may extend the Substantial Completion Deadline.

**12.3 Construction Access.** Buyer agrees that during the period of construction Seller shall have the unrestricted right to access the Property for the purpose of construction of the Residence and any necessary subdivision improvements if applicable. Buyer shall have the right to reasonable inspection of the Property. However, Seller reserves the right to limit Buyer's inspection of the Property in order to not hinder, interfere, or delay the work. Buyer assumes all risks and liability associated with all such inspections.

**12.4 Construction Compliance.** Construction of the Residence shall be in accordance with the standards and requirements of all applicable Federal, State, and Local governmental laws, ordinances and regulations, and in compliance with restrictive covenants applicable to the Lot. The Residence shall be correctly situated on the Lot. Construction shall also be done in accordance with the site plan as previously agreed to by Seller and Buyer.

**12.5. Regulatory Changes.** If any regulatory requirements for construction of the Residence change during the course of construction and result in an increase in the costs of labor and/or materials, the Seller reserves the right to adjust the Purchase Price for the Property to correspond with such regulatory changes. In such event, the Seller shall provide the Buyer with a specific description of the regulatory change(s) and an itemization of the costs incurred to comply with the change(s).

**13. UNAVOIDABLE DELAY.** In the event the Residence is not Substantially Complete by the Substantial Completion Deadline as referenced in Section 24(e) due to interruption of transport, availability of materials, strikes, fire, flood, weather, governmental regulations, acts of God, or similar occurrences beyond the control of the Seller, the Substantial Completion Deadline shall be extended for a reasonable period based on the nature of the delay. In such event, the Seller shall notify the Buyer of the delay.

**14. AUTHORITY OF SIGNERS.** If Buyer or Seller is a corporation, partnership, trust, estate, limited liability company, or other entity, the person executing the REPC on its behalf warrants his or her authority to do so and to bind Buyer and Seller.

**15. COMPLETE CONTRACT.** The REPC together with its addenda, any attached exhibits, and Seller Disclosures, constitutes the entire contract between the parties and supersedes and replaces any and all prior negotiations, representations, warranties, understandings or contracts between the parties. The REPC cannot be changed except by written agreement of the parties.

**16. MEDIATION.** Any dispute relating to the REPC arising prior to or after Closing: ☐ **SHALL** ☐ **MAY AT THE OPTION OF THE PARTIES** first be submitted to mediation. Mediation is a process in which the parties meet with an impartial person who helps to resolve the dispute informally and confidentially. Mediators cannot impose binding decisions. The parties to the dispute must agree before any settlement is binding. The parties will jointly appoint an acceptable mediator and share equally in the cost of such mediation. If mediation fails, the other procedures and remedies available under the REPC shall apply. Nothing in this Section 16 prohibits any party from seeking emergency legal or equitable relief, pending mediation. The provisions of this Section 16 shall survive Closing.

## **17. DEFAULT.**

**17.1 Buyer Default.** If Buyer defaults, Seller may elect one of the following remedies: (a) cancel the REPC and retain the Earnest Money Deposit and the Construction Deposit, if applicable, as liquidated damages; (b) maintain the Earnest Money Deposit in trust, retain the Construction Deposit if applicable, and sue Buyer to specifically enforce the REPC; or (c) return the Earnest Money Deposit to Buyer, retain the Construction Deposit and pursue any other remedies available at law.

**17.2 Seller Default.** If Seller defaults, Buyer may elect one of the following remedies: (a) cancel the REPC, and in addition to the return of the Earnest Money Deposit and the Construction Deposit if applicable, Buyer may elect to accept from Seller, as liquidated damages, a sum equal to the Earnest Money Deposit; or (b) maintain the Earnest Money Deposit in trust and sue Seller to specifically enforce the REPC; or (c) accept a return of the Earnest Money Deposit and Construction Deposit, if applicable, and pursue any other remedies available at law. If Buyer elects to accept liquidated damages, Seller agrees to pay the liquidated damages to Buyer upon demand.

**18. ATTORNEY FEES AND COSTS/GOVERNING LAW.** In the event of litigation or binding arbitration to enforce the REPC, the prevailing party shall be entitled to costs and reasonable attorney fees incurred in the litigation and/or arbitration. However, attorney fees shall not be awarded for participation in mediation under Section 16. The REPC shall be governed by and construed in accordance with the laws of the State of Utah. The provisions of this Section 18 shall survive Closing.

**19. NOTICES.** Except as provided in Section 25, all notices required under the REPC must be: (a) in writing; (b) signed by the Buyer or Seller giving notice; and (c) received by the Buyer or the Seller, or their respective agent, or by the brokerage firm representing the Buyer or Seller, no later than the applicable date referenced in the REPC.

**20. NO ASSIGNMENT.** The REPC and the rights and obligations of Buyer and Seller hereunder, are personal to Buyer and Seller. The REPC may not be assigned by Buyer or Seller without the prior written consent of the other party. Provided, however, the transfer of Buyer's interest in the REPC to any business entity in which Buyer holds a legal interest, including, but not limited to, a family partnership, family trust, limited liability company, partnership, or corporation (collectively referred to as a "Permissible Transfer"), shall not be treated as an assignment by Buyer that requires Seller's prior written consent. Furthermore, the inclusion of "and/or assigns" or similar language on the line identifying Buyer on the first page of the REPC shall constitute Seller's written consent only to a Permissible Transfer.

## **21. INSURANCE & RISK OF LOSS**

**21.1 INSURANCE.** During the period of construction and until Closing, the Seller shall maintain in full force and effect, at the Seller's expense, a builders risk insurance policy for the full replacement value of all completed portions of improvements included in the Residence; and all construction materials located on-site; workmen's compensation insurance in accordance with Utah law, and public general liability insurance in an amount not less than [ ] \$**\$1,000,000**.

**21.2 RISK OF LOSS.** All risk of loss to the Residence, including physical damage or destruction to the Property or its improvements due to any cause, except loss caused by a taking in eminent domain, shall be borne by Seller until the transaction is closed.

**22. TIME IS OF THE ESSENCE.** Time is of the essence regarding the dates set forth in the REPC. Extensions must be agreed to in writing by all parties. Unless otherwise explicitly stated in the REPC: (a) performance under each Section of the REPC which references a date shall absolutely be required by 5:00 PM Mountain Time on the stated date; and (b) the term "days" and "calendar days" shall mean calendar days and shall be counted beginning on the day following the event which triggers the timing requirement (e.g. Acceptance). Performance dates and times referenced herein shall not be binding upon title companies, lenders, appraisers and others not parties to the REPC, except as otherwise agreed to in writing by such non-party.

**23. ELECTRONIC TRANSMISSION AND COUNTERPARTS.** Electronic transmission (including email and fax) of a signed copy of the REPC, any addenda and counteroffers, and the retransmission of any signed electronic transmission shall be the same as delivery of an original. The REPC and any addenda and counteroffers may be executed in counterparts.

**24. CONTRACT DEADLINES.** Buyer and Seller agree that the following deadlines shall apply to the REPC:

- (a) Seller Disclosure Deadline \_\_\_\_\_ (Date)
- (b) Due Diligence Deadline \_\_\_\_\_ (Date)
- (c) Pre-Construction Meeting Deadline \_\_\_\_\_ (Date)
- (d) Construction Loan Funding Deadline \_\_\_\_\_ (Date)
- (e) Substantial Completion Deadline \_\_\_\_\_ (Date)
- (f) Settlement Deadline \_\_\_\_\_ days after the Buyer's receipt of written Notice of Substantial Completion

**25. ACCEPTANCE.** "Acceptance" occurs **only** when **all** of the following have occurred: (a) Seller or Buyer has signed the offer or counteroffer where noted to indicate acceptance; and (b) Seller or Buyer or their agent has communicated to the other party or to the other party's agent that the offer or counteroffer has been signed as required.

**26. OFFER AND TIME FOR ACCEPTANCE.** Buyer offers to purchase the Property on the above terms and conditions. If Seller does not accept this offer by: \_\_\_\_\_ [ ] **AM** [ ] **PM** Mountain Time on \_\_\_\_\_ (Date), this offer shall lapse; and the Brokerage shall return the Earnest Money Deposit to Buyer.

(Buyer's Signature)	(Offer Date)	(Buyer's Signature)	(Offer Date)
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(Buyer's Names) <b>(PLEASE PRINT)</b>	(Notice Address)	(Zip Code)	(Phone)
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(Buyer's Names) <b>(PLEASE PRINT)</b>	(Notice Address)	(Zip Code)	(Phone)
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**ACCEPTANCE/COUNTEROFFER/REJECTION**

**CHECK ONE:**

[ ] **ACCEPTANCE OF OFFER TO PURCHASE:** Seller Accepts the foregoing offer on the terms and conditions specified above.

[ ] **COUNTEROFFER:** Seller presents for Buyer's Acceptance the terms of Buyer's offer subject to the exceptions or modifications as specified in the attached ADDENDUM NO. \_\_\_\_\_.

[ ] **REJECTION:** Seller rejects the foregoing offer.

(Seller's Signature)	(Date) (Time)	(Seller's Signature)	(Date)(Time)
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(Seller's Names) <b>(PLEASE PRINT)</b>	(Notice Address)	(Zip Code)	(Phone)
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(Seller's Names) <b>(PLEASE PRINT)</b>	(Notice Address)	(Zip Code)	(Phone)
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