

**The Wellington Neighborhood  
Contract to Buy Real Estate  
(Combined Master, Revised 5-25-07)**

The purpose of this Contract is to set forth the terms of the purchase of real property in the Wellington Neighborhood. The parties have agreed as follows:

**1. Seller**                      Poplar Wellington, Inc.( "Poplar"), a Colorado Corporation  
   PO Box 4626  
   Breckenridge, CO 80424  
   E-mail: [courtney@poplarhouse.com](mailto:courtney@poplarhouse.com)  
   Fax 970.453.5303  
   Tel 970.453.5303

**2. Buyer**                      *title to be taken as joint tenants or tenants in common*  
   Address:  
   Address:  
   Facsimile:  
   E-mail:  
   Telephone:

**3. Property**                      Model:  
  
   The Wellington Neighborhood,  
   According to the recorded plat thereof,  
   Summit County, Colorado  
  
   The Property will exclude mineral and water rights, if any. The  
   Property has been, or will be, constructed by Traditional  
   Neighborhood Builders, Inc., which company is providing the limited  
   warranty attached hereto as Exhibit B.

**4. Terms**                      Purchase Price  
  
   Permitted Improvements \*  
  
   Total \_\_\_\_\_  
  
   Less: Earnest Money Received \_\_\_\_\_  
  
   Amount Due at Closing\*\*

\* To be included in a future resale price, "Permitted Improvements" must be approved by the Town. \*\* As adjusted by normal and customary closing costs.

**5. Earnest Money**

The Earnest Money listed above is part payment for the Purchase Price. The Earnest Money shall be held by Land Title and Guarantee ("Land Title").

**6. New Loan**

The Buyer shall make written application for a New Loan within ten (10) days of the execution of this Contract.

Buyer shall within thirty (30) days provide Seller a written loan commitment.

If Buyer fails to meet either of these deadlines, Seller may elect to terminate this Contract.

Buyer shall be responsible for all costs associated with the New Loan, including application fees, origination costs, discount fees, appraisal fees, mortgage insurance, etc.

**7. Title & Governing Documents Review**

Seller shall, at its expense, within twenty (20) days of the Contract Date furnish Buyer: a) a current commitment for title insurance as provided below together with copies of all exceptions (the "Title Documents"; and b) a copy of the Wellington Neighborhood Association declaration, bylaws and rules, regulations and estimated annual budget (the "Governing Documents").

Buyer may within five (5) days of receipt of Title and Governing Documents give Seller written notice of unsatisfactory provisions in any of these documents, in which case the Seller shall have five (5) days to address Buyer's concerns. In the event that Buyer is not satisfied, Buyer may within five (5) days of receipt of Seller's response to Buyer's concerns elect in writing to terminate the Contract. In the event that Buyer fails to give timely notice of his/her election to terminate, any objections to the Title and Governing Documents shall be deemed waived and the Contract shall remain in effect.

**8. Title**

Title shall be merchantable, free and clear of all liens and encumbrances and Seller shall deliver a general warranty deed, such deed subject to the Governing Documents, items listed in paragraphs 12 and 13 below, title commitment exceptions, normal and customary mineral reservations, and apparent easements. Personal property included in the sale shall be conveyed by bill of sale free and clear of all taxes, liens, and encumbrances.

## 9. Closing

The Estimated Closing Date is : \_\_\_\_\_. Seller shall provide at least two weeks notice of the Actual Closing Date. Seller shall use its best efforts to complete the improvements by the Estimated Closing Date. Notwithstanding, if completion of the improvements is delayed for any reason whatsoever, Seller may at its election delay the Estimated Closing Date a reasonable length of time until the improvements are completed. If the Estimated Closing Date is delayed by more than ninety (90) days, Buyer may give written notice of election to terminate; in which event the Contract shall be terminated.

Notwithstanding anything in the Contract to the contrary, Seller's obligation to perform hereunder is conditioned upon the Town of Breckenridge and other governmental entities approving the sale *and releasing the Property from the Wellington Neighborhood Restrictive Covenant*. In the event of unreasonable delays in obtaining such approvals *and release*, Seller may elect to terminate this agreement whereupon the Earnest Money shall be returned.

*Buyer's obligation to perform hereunder is conditioned upon the Buyer selling \_\_\_\_\_ ("Buyer's Real Estate") by \_\_\_\_\_. In the event that Buyer has not sold Buyer's Real Estate by such date, Buyer may elect, in writing delivered to Seller within three (3) days of the above date, to terminate the Contract. In the event that Buyer fails to give timely notice of his/her election to terminate, this Buyer's Contingency shall be deemed waived and the Contract shall remain in effect.*

*Notwithstanding anything in this Contract to the contrary, Seller shall continue to market and take offers on the Property (the "Other Offer"). Prior to accepting any Other Offer, Seller shall give Buyer oral notice (either via direct phone contact or voice mail) of its intent to sell the Property to another party. Upon the Seller giving such notice, Buyer shall have 72 hours to elect to waive the foregoing contingency regarding sale of Buyer's Real Estate. In the event that Buyer fails to give timely notice of his/her election to waive the contingency regarding sale of Buyer's Real Estate, then this Contract shall be deemed terminated, the parties shall be released from further liability hereunder, Seller may sell to any such other party upon any such terms as it may elect, and Buyer's earnest money shall be returned. In the event that Buyer gives timely notice of its election to waive the contingency regarding sale of Buyer's Real Estate, then this contract shall remain in full force and effect and Buyer's earnest money shall be deemed non-refundable.*

Real estate taxes for the year of closing shall be prorated based upon estimated taxes for such year. Association fees for the month of closing shall be prorated and three months of Association fees shall be collected. Current estimated Association fees are \$60.00 per month. Each party shall pay their normal and customary closing costs. The Seller shall pay for Land Title closing services.

***The Buyer shall pay real estate transfer tax, if any.***

**10. Buyer's Inspection  
Approval**

At least three (3) days before the Actual Closing Date, Buyer and a representative of Traditional Neighborhood Builders, Inc. shall inspect the improvements and agree on a list of items, if any, which will be completed prior to closing (the "Punch List"). Also during the inspection, the Traditional Neighborhood Builders, Inc. representative shall review with the Buyer the Buyer Inspection Acknowledgement as set forth in Exhibit D. Traditional Neighborhood Builders, Inc. shall complete such Punch List items prior to closing.

**Buyer's closing on the Contract shall be conclusively deemed as Buyer's acceptance of the improvements and that the Punch List items, if any, have been satisfactorily completed; and that the Buyer is accepting the improvements "as is" subject only to Traditional Neighborhood Builders, Inc. Limited Warranty obligations set forth in Exhibit B.**

In the event that the parties cannot agree on whether an item should be included in the Punch List or has been satisfactorily completed, or if the Buyer fails to execute the Buyer Inspection Acknowledgment; then, in any such event(s), Seller may elect to terminate the Contract in which event all things of value shall be returned and the parties released from further liability hereunder.

**11. Limited Warranty**

Traditional Neighborhood Builders, Inc., shall provide Buyer a Limited Warranty as set forth in Exhibit B. The Traditional Neighborhood Builders, Inc. Limited Warranty shall be a part of and hereby is incorporated into this Contract.

**12. Restrictive  
Covenant**

*The Property is being conveyed subject to a Employee Housing Restrictive Covenant and Agreement, a summary of which is contained in Exhibit C. In the event of a conflict between the Restrictive Covenant Summary contained in Exhibit C and the actual Restrictive Covenant, the actual Restrictive Covenant shall control.*

**13. Historic Mining  
Activity**

Breckenridge is located in a historic mining district and historic mining activities have impacted large portions of Summit County. While the

materials on the Property consist primarily of dredge piles containing native river rock, the historic Union Mill Site (partially located within the Wellington Neighborhood just east of French Gulch Road and Bridge Street) and the Wellington-Oro Mine (located on French Gulch Road approximately one-third mile east of the Wellington Neighborhood) have garnered the attention of the United States Environmental Protection Agency. Between 1887 and 1972 the Wellington and Oro Mines (which were connected underground, and were worked together since 1903) provided millions of dollars worth of zinc, lead, silver, and gold, making the Wellington-Oro Mine the largest producing mine in the Breckenridge Mining District, and Summit County. These mining activities in combination with dredge boats looking for gold severely disturbed the landscape and habitat of French Creek.

Specifically, the EPA has been concerned with the existence of surface wastes which may pose a human health hazard at the Union Mill Site and the Wellington-Oro Mine; and second, concentrations of heavy metals in ground water flowing from the Wellington-Oro underground mine workings which flow into French Creek and pose a threat to downstream trout habitat.

With respect to the Property and the neighborhood, the EPA, the United States Department of Justice, the Colorado Department of Public Health and Environment and the Colorado Department of Law have entered into a Prospective Purchaser Agreement concerning the Wellington Neighborhood. The benefits of the Prospective Purchaser Agreement are threefold: a) the PPA sets forth a protocol for regrading, filling and covering with clean fill any potentially contaminated areas; b) through the PPA the federal and state governments provide a "covenant not to sue" thereby limiting environmental liability; and c) as part of the process to enter into the PPA, the EPA and CDPH&E have undertaken various tests and reviewed data concerning the site, including a Phase I Environmental Site Assessment.

In addition to addressing historic mining waste as provided in the PPA, development of the Wellington Neighborhood site offers some additional environmental benefits, the most significant being the repair and reclamation of approximately 60 acres of land that had been damaged by the historic mining activity, funding a significant portion of Wellington-Oro Mine remediation activities and reducing climate impact by reducing vehicle miles traveled by locals commuting to work.

Buyer acknowledges that Seller has offered to provide, upon request, various documents concerning the historic mining activities and related environmental impacts, including: Phase I Environmental Site

Assessment conducted by Adrian Brown Consultants in June, 1999; Breckenridge Sanitation District Inclusion Petition and Sewer Line Extension Agreement; and Prospective Purchaser Agreement between the developer, the EPA, the U.S. Department of Justice, the Colorado Department of Public Health and Environment and the Colorado Department of Law.

**14. Future Development** Buyer acknowledges that the Wellington Neighborhood may be expanded onto vacant parcels located south and east of the Property.

**15. Default / Termination** Any default by Buyer shall entitle Seller to the sole remedy of retaining Buyer's earnest money as liquidated damages. Any default by the Seller shall entitle Buyer to elect to treat the agreement as terminated, in which case the earnest money shall be returned and Buyer may recover damages; or to pursue an action for specific performance. Prevailing party shall be entitled to an award of reasonable attorney fees and costs.

In the event that the Contract is terminated by either party pursuant to any provision of this Contract, then in such event all things of value shall be returned and the parties released from any further liability hereunder.

Any disagreement or dispute between the Buyer and Seller in any way related to this Contract, whether founded in contract, tort, statute, or equity, and which cannot be resolved, shall be expeditiously and inexpensively determined by the process set forth in paragraph 10 of the Limited Warranty, Expeditious Determination of All Claims and Disagreements. Buyer's agreement to this expedited and inexpensive dispute resolution process is partially in consideration of the amount of the Purchase Price which is lower than it would be if Seller were subject to the inherent cost, risk and uncertainty of formal judicial proceedings.

**16. Miscellaneous**

- a) Buyer shall not record this contract or any memorandum thereof;
- b) This Contract shall not be assignable;
- c) *Buyer represents and warrants that he/she has not used any brokers in connection with this transaction and that he/she will indemnify Seller from any liability or expense resulting from any claims for commissions arising in connection with this transaction;*
- d) David O'Neil, a Wellington Neighborhood founder and manager and member of the Seller, is a licensed attorney and real estate broker;
- e) There will be no change orders except as approved by Seller, in its sole discretion and subject to such terms as it may require;
- f) Signatures may be evidenced by facsimile; and

g) Notices shall be effective after receipt or twenty-four hours after sending via overnight courier.

**17. Site Visits**

Buyer acknowledges that the construction site is hazardous and agrees not to go on the site without escort by Seller's project manager or employee. Buyer agrees that in event he/she visits the site, with or without escort, that he/she shall release and indemnify the Seller from any injury, damages, death or other losses suffered by Buyer or Buyer's invitees regardless of cause.

**18. Contract Documents**

The Exhibits and attachments thereto form a part of this Contract (collectively referred to as the "Contract Documents"). Other than as expressed in writing in the Contract Documents, there are no other promises, understandings or agreements between the parties. In the event of any inconsistencies between the Contract Documents and the [www.poplarhouse.com](http://www.poplarhouse.com) web page and various distributed materials, the Contract Documents shall control. No subsequent modification of this Contract shall be binding unless made in writing signed by the parties.

**19. Legal and Other Counsel**

**This Contract has important legal consequences and the Buyer should consult legal and tax or other counsel before signing.**

**20. Right to Rescind**

Buyer may elect by written notice to Seller (via fax, mail, overnight courier, e-mail or hand delivery) to rescind this Contract, with or without cause, at Buyer's sole option, at any time within five (5) days following the Contract Date. In such event, all things of value shall be returned and the parties released from further liability hereunder. If Buyer does not provide written notice within such time, Buyer's right to rescind is waived.

**21. Not an Offer to Sell**

Seller's delivery of the Contract Documents shall not be construed as an offer to sell real estate and the parties shall be bound only upon mutual execution and delivery of this Contract. Prior to execution and delivery, prices are subject to change without notice.

**22. Surviving Closing**

The terms of this Contract and any Exhibits attached hereto shall survive closing.

### 23. Additional Terms

So Agreed:

POPLAR WELLINGTON, INC  
(a Colorado Corporation)  
“Seller”

“Buyer”

\_\_\_\_\_  
David G. O’Neil, Manager

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Exhibits:

Exhibit A: The Plans

Exhibit B: Traditional Neighborhood Builders, Inc. Limited Warranty

Exhibit C: Restrictive Covenant

Exhibit D: Buyer Inspection Acknowledgement



## **Exhibit A: The Plans**

Seller shall provide the following:

The residence shall be constructed in substantial conformance with the Plans and interior finish packages; however, the Seller reserves the right to make changes or substitutions in the Plans, construction of the Residence and interior finish packages (a) as may be required, authorized or approved by governmental agencies, (b) to correct errors, omissions or oversights in the Plans, (c) to meet unanticipated construction or site requirements, (d) to make necessary relocations of electrical, plumbing, heating or similar services and equipment, or other elements of the Residence, and (e) as Seller may deem appropriate so long as materials of substantially equal or better quality are used. Buyer acknowledges that the final grade and configuration of the Residence on the Lot will be dictated by TNB's construction practices and natural contours of the Lot, and may vary from that viewed by Buyer prior to or during construction.

**Exhibit B**  
**Traditional Neighborhood Builders, Inc. Limited Warranty**

**1. One Year Warranty** For a period of one (1) year beginning on the closing date (“Warranty Period”), Traditional Neighborhood Builders, Inc. (“TNB”) warrants to Buyer, and only Buyer, that: a) The Residence will be free from defects in workmanship and materials due to non-compliance with the structural, mechanical, electrical and quality standards of the Summit County home building industry; and b) The Residence will be free from defects in the installation of the plumbing, heating and electrical systems resulting in a non-compliance with the applicable plumbing, mechanical, or electrical code in effect at the time the Residence was constructed; provided, however, that this warranty does not apply to defects in an appliance, fixture, or item of equipment or defects in the plumbing, or electrical systems caused by defects in an appliance, fixture, or item of equipment.

**2. Foundation Warranty and Expansive Soils Exclusion** TNB warrants that the foundation for the improvements to the property will be constructed according to the recommendations of a licensed engineer as the result of the investigations and tests made on the subject property by a licensed engineer. Buyer acknowledges that the Property contains a shallow, frost protected foundation system (the “Foundation System”) and that the Foundation System and the crawl space must remain heated and above freezing. Except as for the warranty set forth above, Seller and TNB do not warrant against damage or defects caused by or resulting from failure to heat the crawl space, rising or lowering of water tables, expansion or contraction of the soil or other soil conditions; and Seller and TNB shall have no responsibility to Buyer nor to any subsequent purchasers of the Residence under any circumstances for any damage which occurs or may occur as a result of any shifting or movement of slabs or foundation movement of the Residence caused in whole or in part by failure to heat the crawl space, the quality or type of soil, or earth movement, soil or earth subsidence or expansion of any kind or by moisture of any kind, or from failure to maintain proper drainage adjacent to the Residence and elsewhere on the site, or from construction techniques when damage is caused in whole or in part by any of the above described causes or sources, such damage to include but not be limited to property damage, personal injury, loss of income, emotional distress, death, loss of use, loss of value, and adverse health effects, or any other effects. Any implied warranties, including an implied warranty of workmanlike construction, an implied warranty of habitability, or an implied warranty of fitness for a particular use, are hereby waived and disclaimed. Buyers acknowledge that that Seller has offered to provide, upon request, the Soils Report for the site and have had the right and opportunity to have same examined by their own engineers and other experts as they see fit and are satisfied that they understand the importance, meaning and requirements of both the Soils Report and this Expansive Soils Exclusion.

**3. Mold Excluded** Buyer acknowledges that mold, fungus and related spores are ubiquitous and that because of the nature of many of the materials used in the construction of the Property, there may occur the development or growth of molds, spores or other types of materials and that certain persons may have an allergic or adverse health reaction to these types of molds, spores or other materials. Due to the various materials that are utilized in construction, it is impossible to prevent or preclude the development of certain molds, spores and related matters by

which allergic reactions may occur. Wood materials, soil materials and other materials may cause allergic or adverse health reactions or exacerbate existing allergic, adverse health or physical conditions. Further, after construction, the presence of other materials causing allergic or adverse health reactions, allergens, molds, spores, plant materials and other conditions may develop which, because of the nature of construction activity, human occupation, introduction of water or other materials, may cause allergic or adverse health reactions, exacerbation of allergic conditions or pre-existing conditions and similar events or consequences to a person who has allergies, pre-existing conditions or has the potential to develop allergic or adverse health reactions. Buyer hereby states and acknowledges that it is aware of such risks and that Buyer is willingly and voluntarily assuming the risk of such allergic or adverse health reactions or changes caused by or exacerbated by living in the Property. Buyer hereby waives, releases and discharges Seller and agrees to indemnify Seller from and against any and all claims arising from, caused by, related to or in any manner commenced with any injury, claim, cause of action, bodily injury, allergic or adverse health reaction, property damages in any manner related to the development or growth of molds, mycotoxin, fungi or any related materials in or at the Property. Any implied warranties, including an implied warranty of workmanlike construction, an implied warranty of habitability, or an implied warranty of fitness for a particular use, are hereby waived and disclaimed.

**4. Chemical Damage to Concrete Garage Floors, Concrete Pans, Concrete Steps and Concrete Walkways** In general, deicing and anti-icing are accomplished through the use of various chemicals including aqueous solution of various chlorides (e.g. magnesium chloride, sodium chloride, and calcium chloride) or other chemicals such as calcium magnesium acetate (CMA), urea, or others. Although the efficacy of these chemicals for deicing and anti-icing has been clearly demonstrated, possible detrimental effects to concrete pavements, bridge decks, concrete garage floors, concrete pans, concrete steps and/or concrete walkways have not been fully examined and documented. Consequently, Seller and TNB do not warrant against chemical damage to concrete garage floors, concrete pans, concrete steps and/or concrete walkways caused by or resulting from any deicing and anti-icing chemicals. Any implied warranties, including an implied warranty of workmanlike construction, an implied warranty of habitability, or an implied warranty of fitness for a particular use, are hereby waived and disclaimed.

**5. Consumer Products Excluded** Any appliance, item of equipment, or other item in the Residence, which is a “consumer product” for the purposes of the Magnuson-Moss Warranty Act (15 U.S.C. Para. 2301 through 2312) is hereby excluded from the coverage of the Limited Warranty. The following are examples of “consumer products”, although other items in the Residence may also be consumer products: refrigerator, range/oven, dishwasher, garbage disposal, furnace, hot water heater, clothes washer and dryer, and thermostat.

**6. Assignments of Manufacturers’ Warranties** TNB hereby assigns to Buyer the manufacturers’ warranties on all appliances, equipment, and “consumer products” installed in the Residence. A copy of each of these warranties will be left in the home prior to occupancy. Buyer should follow the procedure set forth in the applicable warranty if a defect appears in any appliance, item of equipment, or other consumer product.

**7. Other Exclusions From Coverage** In addition to expansive soils, mold and consumer products, the liability of Seller and TNB under this Limited Warranty shall NOT apply or extend to, the Seller and TNB assume no responsibility for, loss or damage caused by:

- a) Defects in design, installation, or materials which Buyer supplied, installed, or had installed under his direction.
- b) Additions, alterations, or modifications to the Residence or real property on which it is located done by or at the direction of Buyer.
- c) Introduction of excessive water into the soils surrounding the Residence by parties other than Seller or TNB or parties under the control of Seller or TNB.
- d) Normal wear and tear or normal deterioration.
- e) Normal shrinkage caused by drying of the Residence and the materials used therein within tolerance generally acceptable under Summit County building standards. This includes but is not limited to wood framing, exterior wood siding and trim, wood floors, paneled wood doors, etc.
- f) Normal settling of the Residence within tolerances generally acceptable under the Summit County building standards.
- g) Dampness and condensation caused by the failure to provide sufficient ventilation after occupancy by parties other than TNB or parties under the control of TNB.
- h) Dampness in crawl space caused by failing to open the foundation vents.
- i) Water line and/or sewer line freezing due to failure to heat the crawl space and/or failure to maintain the living space at 65 degrees or above;
- j) Negligent or intentional failure to maintain the Residence by parties other than TNB or parties under the control of the Seller.
- k) Changes in the grading of the ground around the Residence by parties other than TNB or parties under the control of the TNB.
- l) Failure to maintain the grades, swales, and drainage patterns established by TNB which assure that any water falling on the property surrounding the Residence, whether from natural precipitation or lawn irrigation, will flow positively away from the Residence.
- m) Landscaping installed by or at the direction of Buyer.
- n) Insects or animals.
- o) Failure to maintain the Residence in good condition and repair.
- p) Failure of Buyer to take timely action to minimize such loss or damage and/or failure of Buyer to give TNB proper or timely notice of the defect.
- q) Accidents, natural disasters, or acts of God, including, but not limited to: fire, explosion, smoke, water escape, changes in the water table, wind, hail, extraordinary snow, lightning, falling trees, aircraft and vehicles, flood, and earthquake.
- r) Soil movement where the resulting loss or damage is compensated for by legislation or covered by insurance.
- s) Any defect which does not result in actual loss or damage.
- t) Frozen sill cocks.
- u) Defects which may be constructed as subjective because they relate to natural characteristics of materials such as wood grain, visible knots, inconsistencies in texture, etc.

## **8. Procedures**

a) **Written Notice of Claim** If Buyer discovers a defect which is covered by this Limited Warranty, Buyer must give written notice to TNB at 375 Belford, PO Box 937, Frisco, CO 80443, such notice providing: The nature of the defect; the date the defect first occurred, the loss or damage claimed and the times during the week that TNB may have access to the Residence to inspect the loss or damage and take corrective action. Such notice must be received by TNB as soon as practicable after Buyer either discovers or, in the exercise of reasonable diligence, would have discovered the defect in the Property or the loss or damage caused by such defect, but in any event not later than 365 days after the Limited Warranty given hereby commences.

b) **Emergency Repairs** If the defect is covered by this Limited Warranty and constitutes an emergency situation, the Buyer can notify TNB and obtain emergency response information by telephone at 970.453.5303, Ext 15. Emergency situations are only:

- 1) Total loss of heat;
- 2) Total loss of electricity;
- 3) Total sewer stoppage;
- 4) Plumbing leak that cannot be stopped without shutting off all the water in the Residence;
- 5) Roof leak;
- 6) Total loss of hot water; or
- 7) Inability to securely lock the home.

c) **Non-emergency Repairs** If the defect is covered by this Limited Warranty and is not an emergency situation, then TNB will schedule repairs within thirty (30) days.

d) **Online filing of the "Warranty Request Form"** SHALL NOT CONSTITUTE WRITTEN NOTICE OF CLAIM or be construed in any way as fulfilling the notice requirements set forth in this paragraph 7.

## **9. Remedies**

a) **Repair or Replacement** If, following the inspection of the Residence, TNB determines that a valid warranty claim exists, TNB shall repair or replace, at its option the defective item. TNB shall not be responsible if (i) a repaired area of prefinished material does not match in color and/or texture or (ii) patterns in floor coverings, wall coverings, or other finished surfaces have been discontinued. All work shall be performed by TNB or subcontractors chosen by TNB. TNB will not honor invoices, bills or receipts for labor performed or materials furnished by or at the direction of Buyer.

b) **Warranty Not Extended** Actions taken by TNB to correct a defect(s) shall not extend the term of this warranty.

**10. Assignment** The warranties provided in this Limited Warranty Agreement are personal to Buyer and may not be transferred or assigned by Buyer to subsequent owners of the Residence.

**11. Expeditious Determination of All Claims and Disagreements** Any disagreement or dispute between the Buyer and Seller or Buyer and TNB pursuant to the Wellington Neighborhood Contract to Buy Real Estate or this Limited Warranty or affecting the Residence or any claim in any way related to the Wellington Neighborhood Contract to Buy Real Estate, the Limited Warranty or occupancy of the Property that cannot be resolved, shall be expeditiously and inexpensively determined by the following method: One, or more, of the parties may declare that a

dispute or claim exists, in which event the matter shall be referred within seven (7) days to the Judicial Arbitrator Group ("JAG"), Denver, Colorado or if JAG is unavailable, to such other impartial arbitrator group as may be selected by the Seller. A single, fair and just arbitrator from such group shall be selected by the Seller.

The arbitration shall be conducted by the arbitrator and by the parties at the JAG offices in Denver, Colorado pursuant to the following method and without participation of attorneys or other legal advisors: Ten days before the arbitration is to begin, each party shall submit to the arbitrator a summary statement of no more than five double-spaced and typewritten pages that shall set forth the following sections: (i) a succinct statement of the nature and extent to the dispute, (ii) a summary of the position of the submitting party, (iii) a summary of the evidence in support of the position of the submitting party, including a list of witnesses and what they would state on the subject, and a list of documents and what pertinence they have to the dispute, and (iv) a request for specific relief sought. No other written submission to the arbitrator shall be permitted before, during or after the arbitration other than as related to procedural matters. For purposes of this section, if the Buyer or an officer of the Seller or TNB is an attorney, he shall be deemed a "party" and allowed to participate.

The arbitration shall consume no more than eight hours, seven hours of which shall be devoted to testimony (to the extent necessary) and the arbitrator shall control the course thereof according to whatever order or pattern he deems fair, but allowing sufficient time for cross-examination of any and all witnesses. No cross examination shall exceed in length the direct examination of the same witness. Within the eight-hour limitation, each party shall be permitted a 15-minute opening statement and 15-minute closing statement. No formal rules of procedure or evidence shall be required, and the arbitrator shall control the proceedings and decorum thereof, including determinations of relevance, as he sees fit for a fair, just and prompt determination of the dispute. Interpretation of the Wellington Neighborhood Contract to Buy Real Estate and this Limited Warranty shall be in the arbitrator's sole discretion. Each party may present expert testimony as to standards of the Summit County home building industry. Within seven (7) days of the arbitration, the arbitrator shall issue a written decision, which shall be final and binding upon the parties and for which there shall be no appeal permitted to any court or other tribunal. The parties shall then in good faith promptly effectuate the arbitrator's decision.

This method of final and binding arbitration is in derogation of any other formal or informal method of arbitration that the parties may have heard of that otherwise may have applied by force of law, custom or habit. Moreover, this method of final and binding arbitration is without the participation of attorneys (except the arbitrator or parties that are attorneys) and is understood and agreed by the Buyer, Seller and TNB so as to provide for the relatively inexpensive and prompt resolution of any disputes. The arbitrator shall be paid a single fee of \$2,500, one-half of which is to be paid by the Buyer and one-half of which is to be paid by the Seller and/or TNB at the time the dispute is declared or within three (3) days thereof, and this apportionment shall remain in effect regardless of how the arbitrator may determine the dispute. The arbitrator is denied the authority to reapportion the arbitrator's own fee to award attorney's fees, costs or expert fees. In the event that the dispute is resolved short of the start of the arbitration hearing, the arbitrator shall refund the fee submitted by each party minus his reasonable fee for time expended to that date. Failure to honor and conform to the dispute resolution mechanism herein shall constitute a material breach of the

Wellington Neighborhood Contract to Buy Real Estate and/or this Limited Warranty and shall constitute a waiver of the claim and / or any claim related to it.

If in derogation of this Agreement for mandatory arbitration, a party should file suit in a court of law, the court shall have no authority except as provided by statute relating to the affirmance of arbitration decisions. In the event of any such filing in court, the party filing same shall advance and pay to the other party the anticipated costs of the litigation in a reasonable sum but not less than \$10,000.

In any suit, demand, claim or action (of whatever kind) brought by any party to this contract, it is agreed that the following kinds of claims, damages, costs or fees are waived and may not be sought or awarded under any circumstances (against Seller, TNB, their respective managers, members, officers, or employees or Buyer): for negligent site selection, for misrepresentation, for negligent non-disclosure of any fact or circumstance, for expert costs and fees, for attorneys fees, for annoyance, discomfort, inconvenience, and aggravation, for any form of emotional distress or psychological harm or damages, for any form of damages caused by earth movement, or earth subsidence, or earth expansion, for any form of damages caused by surface water flows, for any form of damages caused by underground or ground water flows or moisture, for any damage caused by mold, fungus or by some other agent, for exemplary or punitive damages of any kind or for any purpose (whether pursuant to statute or otherwise), for any and all claims pursuant to the Colorado Consumer Protection Act, CRS 6-1-105 *et seq.* for damages, treble or otherwise (whether pursuant to statute or otherwise), for damages for implied warranties of any kind or type, or for claims or damages that are within the exclusions, and not covered by, the Seller's and/or TNB's policy of insurance in effect at the time that construction begins on the Residence.

**12. Invalidity** If a Court should find any provision or provisions of the Wellington Neighborhood Contract to Buy Real Estate or this Limited Warranty Lease invalid, void or illegal; such finding shall in no way affect, impair or invalidate any other provisions thereof; and the remaining provisions thereof shall nevertheless remain in full force and effect.

**13. UPON CLOSING AND UPON DELIVERY, BUYER AGREES TO ACCEPT THIS WARRANTY IN LIEU OF ANY AND ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, HABITABILITY AND WORKMANSHIP, AND THE WARRANTY IS ALSO IN LIEU OF ANY CLAIMS FOR CONSEQUENTIAL DAMAGES, PERSONAL INJURY, MENTAL ANGUISH OR DISTRESS, ANNOYANCE AND INCONVENIENCE, AND FOR DAMAGES BASED UPON NEGLIGENCE, FRAUD OR MISREPRESENTATION, AND THE BUYER HEREBY EXPRESSLY WAIVES AND DISCLAIMS ANY SUCH WARRANTIES AND CLAIMS WITH RESPECT TO THE PROPERTY. THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE THE CLOSING OF THE CONVEYANCE HEREIN DESCRIBED.**

**SELLER AND TNB MAKE NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO ANY ITEMS INSTALLED IN THE PROPERTY WHICH ARE ORDERED SPECIFICALLY OR SEPARATELY BY THE BUYER. IN NO EVENT WILL SELLER OR TNB BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES FOR ANY ALLEGED BREACH OF SUCH WARRANTY OR THIS AGREEMENT AND BUYER'S REMEDY SHALL BE LIMITED TO THE EXPRESS TERMS CONTAINED WITHIN THE WARRANTY.**

**BUYER ASSUMES THE RISK OF ANY AND ALL DAMAGE OCCURRING IN OR APPEARING ON THE PROPERTY FROM AND AFTER THE DATE OF CLOSING. 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 AND TNB WERE TO BE HELD RESPONSIBLE FOR ANY SUCH RISKS BY VIRTUE OF ANY EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES.**

DAMAGES, WHETHER FOR BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, TORT, STATUTORY CLAIMS, REGULATORY CLAIMS, PURSUANT TO EQUITY OR OTHERWISE, SHALL BE LIMITED TO AN AMOUNT EQUAL TO ACTUAL DAMAGES NECESSARY TO COMPENSATE THE INJURED PARTY, AND IN NO EVENT GREATER THAN THAT WHICH WOULD BE AWARDED UNDER THE TERMS AND PROVISIONS OF THE LIMITED WARRANTY AND IN NO EVENT SHALL CONSEQUENTIAL, INCIDENTAL, TREBLE DAMAGES (OR DAMAGES BASED UPON ANY OTHER MULTIPLIER), OR PUNITIVE DAMAGES BE RECOVERABLE. BUYER WAIVES, RELEASES, AND COVENANTS NOT TO ASSERT ANY RIGHT OR CLAIM TO CONSEQUENTIAL, INCIDENTAL, TREBLE (OR OTHER MULTIPLIER), OR PUNITIVE DAMAGES UNDER ANY CIRCUMSTANCE. IN NO EVENT AND UNDER NO CIRCUMSTANCES SHALL DAMAGES EVER EXCEED THE PRICE PAID BY THE BUYER FOR THE PROPERTY. **BUYER EXPRESSLY UNDERSTANDS AND AGREES THAT THE TERMS OF THIS ANTICIPATORY RELEASE AND DAMAGE LIMITATIONS CONTAINED HEREIN ARE THE RESULT OF A KNOWING ALLOCATION OF RISKS BETWEEN THE BUYER AND SELLER AND/OR TNB BASED UPON THE PURCHASE PRICE.** THE PARTIES ACKNOWLEDGE AND AGREE THAT THE PURCHASE PRICE AND OTHER CONSIDERATION WOULD HAVE BEEN HIGHER OR DIFFERENT WITHOUT THESE DAMAGE LIMITATIONS AND THESE LIMITATIONS ARE A REASONABLE MANNER OF RISK ALLOCATION BETWEEN THE PARTIES. BUYER, SELLER AND TNB INTEND THAT THESE DAMAGE LIMITATIONS WILL OR COULD BE ENFORCED, EVEN IF ANY WARRANTY OR REMEDY FAILS OF ITS ESSENTIAL PURPOSE. BUYER, SELLER AND TNB ACKNOWLEDGE AND AGREE THAT THIS DAMAGE LIMITATION AND ANY RELEASE GIVEN HEREUNDER SHALL HAVE BEEN GIVEN FOR AND IN CONSIDERATION OF A NEGOTIATED ARM'S LENGTH TRANSACTION UPON WHICH EACH OF THE PARTIES HAD A FULL AND COMPLETE OPPORTUNITY TO NEGOTIATE.

BUYER INTENDS THAT THIS LIMITED WARRANTY SHALL BIND ANY PERSON OR ENTITY, INCLUDING BUT NOT LIMITED TO ANY ASSOCIATION WHICH SEEKS THE BENEFIT OF THIS AGREEMENT OR SEEKS TO ENFORCE BUYER'S RIGHTS. THIS PARAGRAPH SURVIVES CLOSING, TERMINATION OR EXPIRATION OF THIS AGREEMENT.

IT IS EXPRESSLY AGREED AND UNDERSTOOD THAT THE TERMS HEREOF SHALL BE DEEMED EXCULPATORY AND SHALL SERVE AS A FULL AND COMPLETE BAR AND RELEASE OF ANY CLAIM AGAINST SELLER AND TNB EXCEPT AS MAY ARISE PURSUANT TO AND LIMITED BY THE TERMS OF THE TNB LIMITED WARRANTY. BUYER, FOR ITSELF, ITS HEIRS, SUCCESSORS, ASSIGNS, AND ANY ASSOCIATIONS TO WHICH BUYER IS A MEMBER, HEREBY AGREES, COVENANTS, AND ACKNOWLEDGES THAT BUYER'S SOLE AND ONLY REMEDIES AGAINST SELLER AND/OR TNB SHALL BE THOSE CONTAINED WITHIN THE TERMS AND PROVISIONS OF THE TNB LIMITED WARRANTY. THIS TERM AND PROVISION OF THIS CONTRACT SHALL BE DEEMED TO BE EXPANSIVE AND SHALL NOT BE DEEMED TO BE READ AS WORDS OF LIMITATION AND SHALL BE DEEMED TO INCLUDE ALL CLAIMS FOR NEGLIGENCE, STATUTORY VIOLATIONS, CLAIMS ARISING UNDER THE COLORADO CONSUMER PROTECTION ACT, THE COLORADO SOILS DISCLOSURE ACT, OR ANY EQUIVALENT CLAIM.



## **Exhibit C: Restrictive Covenant Summary**

### **Phase II Wellington Neighborhood Employee Housing Restrictive Covenant and Agreement**

The Restrictive Covenant ensures preservation of key characteristics of a traditional neighborhood, including owner occupancy and affordability. There are essentially four parts to the covenant:

#### **1. Ownership**

The houses shall be owned by individuals.

#### **2. Local Requirement**

The houses shall be used and occupied by an owner occupant who earns his or her living working 30 hours per week in Summit County or, if over 55 years of age works 15 hours per week, together with such person's spouse and minor children. There is an exception for persons over 62 who have owned their homes for seven years.

#### **3. Income Requirement**

Single family home purchasers are **not** subject to any income limits. Purchasers of other units may be subject to certain income limits which are set forth in the Restrictive Covenant, paragraph 2, A.

#### **4. Resale**

Appreciation is limited to 3% per annum **or** the percentage increase in Area Median Income, whichever is *greater*. In addition, the Seller can recover the cost of certain Permitted Improvements (finishing second floor, building garages, etc.) up to a maximum of 10% of the original purchase price. The cost of real estate commissions may not be recoverable upon resale of the Property.

Other terms of the Restrictive Covenant provide exceptions to promote flexibility; enforcement mechanisms; or developer requirements.

The actual Restrictive Covenant is available from Land Title and Guarantee or the Town of Breckenridge. The Buyer is encouraged to obtain a copy and review it. The Breckenridge Community Development Department is available to provide answers to Restrictive Covenant questions and can be reached at 970-547-3112.

**In the event of a conflict between this Restrictive Covenant Summary and the actual Restrictive Covenant, the actual Restrictive Covenant shall control.**

**Exhibit D:**  
**Buyer's Inspection Acknowledgement**

Pursuant to Paragraph 10 of the Contract to Buy Real Estate, Buyer acknowledges that he/she has inspected the Property, that all Punch List items have been completed and the Buyer is accepting the improvements "as is" subject only to Traditional Neighborhood Builders, Inc. Limited Warranty obligations set forth in the Contract.

The following is not an all inclusive list; however it does list certain items that; a) Have been discussed with the Traditional Neighborhood Builder, Inc. representative during the inspection; b) are the homeowner's responsibility; and c) which are NOT covered by the warranty. They are:

- **Damage as a result of the crawl space not being heated.** The crawl space must remain heated to prevent damage to the shallow, frost protected foundation system and to prevent the water lines from freezing. Do not close the heating ducts or shut off the hot water heat to the crawl space. Do not lower the heat of your house below 65 degrees as this will result in a correspondingly lower temperature in the crawl space. During the cold months, make sure that exterior crawl space vents, except the fan vent discussed below, are CLOSED and properly insulated.
- **Damage as a result of crawl space fan not operating or fan vent being blocked.** An important part of your home's ventilation system which prevents the build up of unwanted condensation is the fan operating in your crawl space. Periodically check that this fan is operating and that the fan exhaust vent is not blocked. You can check the fan by listening for it when in the crawl space. The fan exhaust can best be checked by exterior visual inspection and by placing your hand in front of the vent to make sure air is moving out of the vent.
- **Damage as a result of water being allowed to stand or being left on the wood floors.** Water left on or allowed to stand on the wood floors may result in warping, discoloration and other damage to the wood floor. The floor should be protected from dog water bowls, splashing from the sink and other sources of water. If a spill or plumbing leak occurs, water should be cleaned up immediately. Please note that oak flooring is a natural material and some shrinkage may occur.

- **Damage as a result of condensation or mold.** In the extreme alpine environment, in a tightly constructed home, it is important to prevent the build up of humidity. Excess humidity can result from bathing, cooking, entertaining, watering plants, interior painting and using a humidifier, to name a few sources of elevated humidity. Mold spores are everywhere – indoors and outdoors --- and given a continuous source of water, such as condensation condensing on a cold surface, mold growth may result. To limit the risks of condensation and mold, please: Use the bath fan when bathing and for thirty minutes after bathing; use the kitchen stove vent when cooking; make sure your dryer vent is properly hooked up and functioning; do not hang items to dry in the house, attic or crawl space; if entertaining large groups of people, watering a large number of plants or doing interior painting, crack a few windows to provide some air circulation; limit the use of a humidifier and, if you must use a humidifier, provide a source of fresh air and a means for the humidity to escape. A humidistat is available from the Seller at no charge to assist in monitoring indoor humidity.
- **Damage to exterior hose bibs as a result of leaving a hose connected to the bid at below freezing temperatures.** The hose bib will freeze if the hose is left attached when temperatures are below freezing.
- **Chemical Damage to Concrete Garage Floors, Concrete Pans, Concrete Steps and Concrete Walkways** In general, deicing and anti-icing are accomplished through the use of various chemicals including aqueous solution of various chlorides (e.g. magnesium chloride, sodium chloride, and calcium chloride) or other chemicals such as calcium magnesium acetate (CMA), urea, or others. Although the efficacy of these chemicals for deicing and anti-icing has been clearly demonstrated, possible detrimental effects to concrete pavements, bridge decks, concrete garage floors, concrete pans, concrete steps and/or concrete walkways have not been fully examined and documented. To limit the risk of chemical damage please: Use only deicing or anti-icing chemicals that the manufacturer states are safe for concrete; and regularly clean your garage floor to remove deicing and anti-icing chemicals.
- **Damage as a result of not properly maintaining appliances.** Appliances such as your furnace, boiler, thermostat, range, refrigerator, microwave, disposal and dishwasher are warranted by the manufacturer. During the walk through you have been provided with the appliance manuals and warranties. Failure to properly maintain these appliances may invalidate your warranty. Please make sure you properly maintain the appliances as suggested in the manufacturers' manuals and warranties.

**Hydro Seed Failure Due to Buyer's Improper Care** Buyer has been offered and declined to purchase a fully irrigated lot and sod lawn. Instead, Buyer's home has only the front portion of the lawn irrigated (the non irrigated area extending approximately from the front porch back to the rear of the lot, which non irrigated area requires hand watering) and the lot has been hydro seeded. Buyer must properly care for hydro seed. Proper care includes, for both the irrigated and non-irrigated areas: 1. Keeping the soil moist to get the grass seed germinated and growing. Early morning and late afternoon watering best. 2. Cut as soon and as regularly as possible. Cutting stimulates growth. 3. Add grass seed and light covering of soil to any bare spots. 4. If there are clover or weeds coming up with the grass, ignore until late June. Then, apply Scott's Weed and Feed. 5. If by mid summer clover or weeds continue, do second application of Scotts in late August / early September.

**Incomplete Garage** If garage is not completed or does not have a C.O. by closing the Buyer will not store any personal items in garage until a C.O. has been obtained.

Finally, the Buyer has been provided a copy of National Association of Homebuilders "Your New Home / and How to Take Care of It". This document provides a wealth of information on how to maintain your home and to protect your investment.

ACKNOWLEDGEMENT:

Buyer has read, understands and agrees to the foregoing.

BUYER

TRADITIONAL NEIGHBORHOOD  
BUILDERS, INC.

Do not sign until final walkthrough.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date