

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

3  
4 **VALLEY BROOK TOWNHOMES**  
5 **PRE-CONSTRUCTION CONTRACT TO BUY AND SELL REAL ESTATE**  
6 (September 21, 2010)

7 Date: \_\_\_\_\_  
8

9 **1. AGREEMENT.** Buyer agrees to buy, and Seller agrees to sell, the "Unit" defined below on the  
10 terms and conditions set forth in this contract ("**Contract**"). If Buyer is more than one individual,  
11 Buyer will take title to the Unit as:  **Joint Tenants**  **Tenants In Common.**

12 **2. DEFINED TERMS.**

13 **2.1 Unit.** The Unit is Unit \_\_\_\_\_, Valley Brook Townhomes. The Unit will be known as:  
14 \_\_\_\_\_, Breckenridge, Colorado 80424. The Valley Brook  
15 Townhomes ("**Project**") is to be constructed by Seller on Tracts 1, 2, and 3, Valley Brook  
16 Subdivision, according to the plat recorded August 5, 2010 under Reception No. 943931 of  
17 the records of the Clerk and Recorder of Summit County, Colorado. Upon the recording of  
18 the Declaration of Covenants, Conditions and Restrictions of the Valley Brook Townhomes  
19 (the "**Declaration**") and the Map for Valley Brook Townhomes (the "**Map**"), in the records  
20 of the Clerk and Recorder of Summit County, Colorado the Unit will be legally described  
21 as:

22 Unit \_\_\_\_, Valley Brook Townhomes, Town of Breckenridge, County  
23 of Summit and State of Colorado, according to the map thereof  
24 recorded in the records of the Clerk and Recorder of the County of  
25 Summit, Colorado and as defined and described in the Declaration of  
26 Covenants, Conditions and Restrictions of the Valley Brook  
27 Townhomes also recorded in the records of the Clerk and Recorder of  
28 the County of Summit, Colorado, together with any "Common  
29 Elements" that are appurtenant to such Unit, and subject to the rules  
30 and regulations of the Valley Brook Homeowners Association, a  
31 Colorado nonprofit corporation, together with the interests, easements,  
32 rights, benefits, improvements and attached fixtures appurtenant  
33 thereto.

34  
35 (all of the foregoing property and rights are hereinafter collectively referred to in this  
36 Contract as the "**Unit**").

37  
38 **2.2 "Will" or "Will Not" Defined.** The terms "Will" or "will not" indicate a mandatory  
39 obligation to act or to refrain from acting as specifically indicated in the context of the  
40 sentence in which such word is used.

41  
42 **2.3 Terminology.** Wherever applicable, the pronouns in this Contract designating the  
43 masculine or neuter apply equally to the feminine, neuter, and masculine genders.  
44 Furthermore, wherever applicable within this Contract, unless the context clearly requires  
45 otherwise, the singular includes the plural, and the plural includes the singular.

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**2.4 Other Defined Terms.** The following terms are defined in the following sections of this Contract:

<b>TERM:</b>	<b>DEFINED IN SECTION:</b>
Area	§10.3
Association	§8.3.2
Association Assessments	§8.3.4
Association's Transfer Fee	§18.5
Bedroom	§13
Buildings	§5
CIC	§8.3.1
CIC Documents	§8.3.2
Closing	§15
Closing Company	§6.2
Common Elements	§5
Construction Activities	§30.3
Contract	§1
Day	§3.3.1
Declaration	§2.1
Earnest Money Holder	§6.2
Exceptions	§8.2
Force Majeure Delay	§15.1.2
Good Funds	§6.3
Holiday	§3.3.2
Homeowner's Manual	§30.9
Housing Covenant	§30.1
Lawsuit	§28
Limited Warranty Contract	§30.9
Map	§2.1
MEC	§3.2
New Loan	§7.1
Notice of Title Objection	§9.1
Phase	§5
Project	§2.1
SCHA	§30.6
Standard Finish Package	§10.7.1
Status Letter	§18.5
Substantial Completion	§10.4
Title Commitment	§8.1
Townhome Unit	§5
Unit	§2.1
Upgrade Options	§10.7.2
Upgrade Option Price List	§10.7.2
Will/Will Not	§2.2
Working Drawings	§10.1

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**3. DATES AND DEADLINES.**

1 3.1 The following dates and deadlines apply to this Contract:  
2

Item No.	Reference	Event	Date or Deadline
1	§ 6.2.1	Alternative Earnest Money Deadline	
2	§ 7.1	Loan Application Deadline	
3	§ 7.2	Loan Conditions Deadline	
4	§ 8.1	Title Deadline	
5	§ 9.1	Title Objection Deadline	
6	§ 15	<b>Closing Date</b>	See §18
9	§ 35	<b>Acceptance Deadline Date</b>	
10	§ 35	<b>Acceptance Deadline Time</b>	

3  
4 3.2 **Applicability of Terms.** A check or similar mark in a box means that such provision is  
5 applicable. The abbreviation “N/A” or the word “Deleted” means not applicable and when  
6 inserted on any line in **Dates and Deadlines** (§3.1), means that the corresponding provision  
7 of this Contract to which reference is made is deleted. The abbreviation “**MEC**” (mutual  
8 execution of this Contract) means the date upon which both parties have signed this  
9 Contract.

10 3.3 **Day; Computation of Period of Days, Deadline.**

11 3.3.1 **Day.** As used in this Contract, the term “*day*” means the entire day ending at 11:59  
12 p.m., United States Mountain Time (Standard or Daylight Savings as applicable).

13 3.3.2 **Computation of Period of Days, Deadline.** In computing a period of days, when  
14 the ending date is not specified, the first day is excluded and the last day is included,  
15 e.g., three days after MEC. If any deadline falls on a Saturday, Sunday or federal or  
16 Colorado state holiday (“**Holiday**”), such deadline will be extended to the next day  
17 that is not a Saturday, Sunday or Holiday.

18 4. **INCLUSIONS AND EXCLUSIONS.**

19 4.1 **Inclusions.** The Purchase Price includes the following items (“**Inclusions**”):

20 4.1.1 **Fixtures.** The Unit will include any lighting, heating, plumbing, ventilating fixtures,  
21 inside telephone, network and coaxial (cable) wiring and connecting blocks/jacks,  
22 mirrors, floor coverings, built-in kitchen appliances, and garage door openers  
23 including two remote controls affixed to the Unit as of Closing.

24 4.1.2 **Personal Property.** The following are included if on the Unit as of Closing:  
25 washer, clothes dryer, screens, heating stoves, and all keys. If checked, the  
26 following are included:  **Water Softeners**  **Smoke/Fire Detectors**   
27 **Security Systems**  **Satellite Systems** (including satellite dishes).

28 4.1.3 **Other Inclusions:** \_\_\_\_\_ photovoltaic (PV) panel(s) located on roof of one of  
29 the Buildings in the Project (Note: the PV panel for the Unit is not necessarily  
30 located on the roof of the Building in which the Unit is located).

1           **4.1.4 Conveyance of Personal Property.** The Personal Property to be conveyed at  
2 Closing will be conveyed by Seller free and clear of all taxes (except personal  
3 property taxes for the year of Closing), liens and encumbrances. Conveyance will be  
4 by Bill of Sale as described in §18.7.

5 **5. THE PROJECT.** The Unit will be part of the Project. The Project will be established under the  
6 Declaration and the Map, both of which will be recorded in the records of the Clerk and Recorder  
7 of Summit County prior to “**Closing**” (as defined in §15). Pursuant to the Declaration and Map, the  
8 Project will be divided into units and common elements. Each unit will include interest in the  
9 general and limited common elements appurtenant to such units (collectively, the “**Common**  
10 **Elements**”). More specifically, Seller anticipates that the Project will consist of a \_\_\_\_ buildings  
11 (collectively, the “**Buildings**”) containing approximately 42 units. The Project will be constructed  
12 in phases (each, a “**Phase**”) to be constructed as determined by Seller in its sole and subjective  
13 discretion. Pursuant to the Declaration, Seller may, in its sole and absolute discretion, create  
14 additional units and Common Elements as part of the Project or eliminate units and Common  
15 Elements as part of the Project.

16           **5.1.1 Preliminary Floor Plans.** Preliminary floor plans for the Project which depict the  
17 approximate location of the Unit that is the subject of this Contract are attached to  
18 this Contract as **Exhibit “A”**.

19           **5.1.2 Preliminary Site Plan.** The preliminary site plan for the Project is attached to this  
20 Contract as **Exhibit “B”**.

21 **6. PURCHASE PRICE AND TERMS.**

22 **6.1 Price and Terms.** The Purchase Price set forth below will be payable in U.S. Dollars by  
23 Buyer as follows:

Item No.	Reference	Item	Amount	Amount
1	§ 6.1	Purchase Price	\$	
2	§ 6.2	Earnest Money		\$
3	§ 6.4	New Loan		
4				
5				
6	§ 6.3	Cash at Closing		
7		<b>TOTAL</b>	\$	\$

24  
25 **6.2 Earnest Money.** The Earnest Money set forth in this section, in the form of personal  
26 check, is part payment of the Purchase Price and will be payable to and held by Land Title  
27 Guarantee Co. – Breckenridge, Colorado (“**Earnest Money Holder**”), in its trust account,  
28 on behalf of both Seller and Buyer. The Earnest Money deposit will be tendered with this  
29 Contract unless the parties mutually agree to an **Alternative Earnest Money Deadline**  
30 (§ 3.1) for its payment. Closing Instructions signed by Buyer, Seller and Earnest Money  
31 Holder must be obtained on or before delivery of Earnest Money to Earnest Money Holder.  
32 The parties authorize delivery of the Earnest Money deposit to the company conducting the  
33 Closing (“**Closing Company**”) at or before Closing. In the event Earnest Money Holder has  
34 agreed to have interest on Earnest Money deposits transferred to a fund established for the  
35 purpose of providing affordable housing to Colorado residents, Seller and Buyer

1 acknowledge and agree that any interest accruing on the Earnest Money deposited with the  
2 Earnest Money Holder in this transaction will be transferred to such fund.

3 **6.2.1 Alternative Earnest Money Deadline.** The deadline for delivering the Earnest  
4 Money, if other than at the time of tender of this Contract is as set forth as the  
5 **Alternative Earnest Money Deadline** (§3.1).

6 **6.3 Form of Funds; Time of Payment; Funds Available.** All amounts payable by the parties  
7 at Closing, including any loan proceeds, Cash at Closing and closing costs, must be in funds  
8 that comply with all applicable Colorado laws, including electronic transfer funds, certified  
9 check, savings and loan teller's check and cashier's check ("**Good Funds**"). All funds  
10 required to be paid at Closing must be timely paid to allow disbursement by Closing  
11 Company at Closing **OR SUCH PARTY WILL BE IN DEFAULT**. Buyer represents that  
12 Buyer, as of the date of this Contract,  **Does**  **Does Not** have funds that are  
13 immediately verifiable and available in an amount not less than the amount stated as Cash  
14 at Closing in §6.1.

15 **6.4 New Loan.**

16 **6.4.1 Buyer to Pay Loan Costs.** Buyer will timely pay Buyer's loan costs, loan discount  
17 points, prepaid items and loan origination fees, as required by lender.

18 **6.4.2 Buyer May Select Financing.** Buyer may select financing appropriate and  
19 acceptable to Buyer, including a different loan than initially sought, except as  
20 restricted in §6.4.3.

21 **6.4.3 Loan Limitations.** Buyer may purchase the Unit using any of the following types  
22 of loan:

23  **Conventional**  **FHA**  **VA**  **Other** \_\_\_\_.

24  
25 **6.4.4 Good Faith Estimate – Monthly Payment and Loan Costs.** Buyer is advised to  
26 review the terms, conditions and costs of Buyer's New Loan carefully. If Buyer is  
27 applying for a residential loan, the lender generally must provide Buyer with a good  
28 faith estimate of Buyer's closing costs within three days after Buyer completes a  
29 loan application. Buyer should also obtain an estimate of the amount of Buyer's  
30 monthly mortgage payment. If the New Loan is unsatisfactory to Buyer, then Buyer  
31 may terminate this Contract pursuant to §7.2 no later than **Loan Conditions**  
32 **Deadline** (§3.1).

33 **7. FINANCING CONDITIONS AND OBLIGATIONS.**

34 **7.1 Loan Application.** If Buyer is to pay all or part of the Purchase Price by obtaining one or  
35 more new loans ("**New Loan**") Buyer, if required by such lender, will make a verifiable  
36 application by **Loan Application Deadline** (§3.1).

37 **7.2 Loan Conditions.** If Buyer is to pay all or part of the Purchase Price with a New Loan, this  
38 Contract is conditional upon Buyer determining, in Buyer's subjective discretion, whether  
39 the New Loan is satisfactory to Buyer, including its availability, payments, interest rate,  
40 terms, conditions, and cost of such New Loan. This condition is for the benefit of Buyer. If  
41 such New Loan is not satisfactory to Buyer, Seller must receive written notice to terminate

1 from Buyer, no later than **Loan Conditions Deadline** (§3.1), at which time this Contract  
2 will terminate. **IF SELLER DOES NOT TIMELY RECEIVE WRITTEN NOTICE TO**  
3 **TERMINATE, THIS CONDITION WILL BE DEEMED WAIVED, AND BUYER'S**  
4 **EARNEST MONEY WILL BE NONREFUNDABLE, EXCEPT AS OTHERWISE**  
5 **PROVIDED IN THIS CONTRACT** (e.g., Title).

6  
7 **8. EVIDENCE OF TITLE AND COMMON INTEREST COMMUNITY DOCUMENTS.**

8  
9 **8.1 Evidence of Title.** On or before **Title Deadline** (§3.1), Seller will cause to be furnished to  
10 Buyer, at Seller's expense, a current commitment for owner's title insurance policy ("**Title**  
11 **Commitment**") in an amount equal to the Purchase Price. At Seller's expense, Seller will  
12 cause the title insurance policy to be issued and delivered to Buyer as soon as practicable at or  
13 after Closing. The title insurance commitment must commit to delete or insure over the  
14 standard exceptions which relate to: (1) parties in possession, (2) unrecorded easements, (3)  
15 survey matters, (4) any unrecorded mechanics' liens, (5) gap period (effective date of  
16 commitment to date deed is recorded), and (6) unpaid taxes, assessments and unredeemed  
17 tax sales prior to the year of Closing. Any additional premium expense to obtain this  
18 additional coverage will be paid by Buyer.

19 Note: The title insurance company may not agree to delete or insure over any or all of the  
20 standard exceptions. Buyer has the right to review the Title Commitment. If the Title  
21 Commitment or its provisions are not satisfactory to Buyer, Buyer may exercise Buyer's  
22 rights pursuant to §9.1.

23  
24 **8.2 Link to Exceptions.** The title insurance commitment will provide linked internet access to  
25 all documents listed in the schedule of exceptions ("**Exceptions**").

26 **8.3 Common Interest Community Documents.**

27 **8.3.1 Common Interest Community Disclosure. THE PROPERTY WILL BE**  
28 **LOCATED WITHIN A COMMON INTEREST COMMUNITY ("CIC") AND**  
29 **WILL BE SUBJECT TO THE DECLARATION FOR SUCH COMMUNITY.**  
30 **THE OWNER OF THE PROPERTY WILL BE REQUIRED TO BE A**  
31 **MEMBER OF THE OWNER'S ASSOCIATION FOR THE COMMUNITY**  
32 **AND WILL BE SUBJECT TO THE BYLAWS AND RULES AND**  
33 **REGULATIONS OF THE ASSOCIATION. THE DECLARATION, BYLAWS,**  
34 **AND RULES AND REGULATIONS WILL IMPOSE FINANCIAL**  
35 **OBLIGATIONS UPON THE OWNER OF THE PROPERTY, INCLUDING**  
36 **AN OBLIGATION TO PAY ASSESSMENTS OF THE ASSOCIATION. IF**  
37 **THE OWNER DOES NOT PAY THESE ASSESSMENTS, THE**  
38 **ASSOCIATION COULD PLACE A LIEN ON THE PROPERTY AND**  
39 **POSSIBLY SELL IT TO PAY THE DEBT. THE DECLARATION, BYLAWS,**  
40 **AND RULES AND REGULATIONS OF THE COMMUNITY MAY**  
41 **PROHIBIT THE OWNER FROM MAKING CHANGES TO THE**  
42 **PROPERTY WITHOUT AN ARCHITECTURAL REVIEW BY THE**  
43 **ASSOCIATION (OR A COMMITTEE OF THE ASSOCIATION) AND THE**  
44 **APPROVAL OF THE ASSOCIATION. PURCHASERS OF PROPERTY**  
45 **WITHIN THE COMMON INTEREST COMMUNITY SHOULD**  
46 **INVESTIGATE THE FINANCIAL OBLIGATIONS OF MEMBERS OF THE**  
47 **ASSOCIATION. PURCHASERS SHOULD CAREFULLY READ THE**

1                   **DECLARATION FOR THE COMMUNITY AND THE BYLAWS AND**  
2                   **RULES AND REGULATIONS OF THE ASSOCIATION.**

3                   **8.3.2 CIC Documents Delivered to Buyer.** The “*CIC Documents*” pertaining to the Unit  
4 consist of: (a) the Declaration; (b) the Articles of Incorporation and Bylaws of  
5 Valley Brook Homeowners Association, a Colorado nonprofit corporation (the  
6 “*Association*”); (c) the Map; and (d) the Rules and Regulations of Valley Brook  
7 Townhomes. Prior to Closing, Seller will cause the Association to be created. By  
8 signing this Contract Buyer acknowledges receiving from Seller a preliminary draft  
9 of each of the CIC Documents and that Buyer has read understands and approves  
10 such documents. Subject to §8.3.5, final versions of all CIC Documents will be  
11 substantially similar to the preliminary drafts received by Buyer, and Seller will  
12 furnish to Buyer a copy of the CIC Documents in their final form at or prior to  
13 Closing. The Declaration may be executed and recorded prior to or in conjunction  
14 with Closing, but Seller has no obligation to provide Buyer with a copy of the  
15 executed and/or recorded Declaration. The Project (including, without limitation,  
16 the Unit), the Association and its members (including, without limitation, Buyer),  
17 will be subject to and governed by the terms, conditions and provisions of the CIC  
18 Documents.

19                   **8.3.3 Map.** At or prior to Closing, Seller will deliver to Buyer a copy of the Map in its  
20 final form, indicating the location, dimensions and configuration of the Unit, which  
21 will be substantially consistent with the location, dimensions and configuration of  
22 the Unit indicated in the “Working Drawings” (as defined in §10.1). The Map may  
23 be executed and recorded prior to or in conjunction with Closing, but Seller has no  
24 obligation to provide Buyer with a copy of the executed and/or recorded Map. The  
25 Project (including without limitation, the Unit), the Association and its members  
26 (including, without limitation, Buyer) will be subject to and governed by the terms,  
27 conditions and provisions of the Map.

28                   **8.3.4 Association Membership; Budget.** Upon becoming owner of the Unit, Buyer will  
29 automatically become a member of the Association and will be responsible for the  
30 payment of all assessments levied by the Association in amounts and in accordance  
31 with the terms of the CIC Documents (the “*Association Assessments*”). By  
32 execution of this Contract, Buyer acknowledges and agrees that Seller has provided  
33 Buyer with an estimated budget for the Association which sets forth the estimated  
34 amount of Association Assessments for which Buyer, as owner of the Unit, will  
35 initially be responsible and that Buyer has reviewed such estimated budget and  
36 accepts the same. Based on changes made to the CIC Documents pursuant to §8.3.5,  
37 the estimated budget for the Association may change prior to Closing. In such event,  
38 Seller will provide Buyer with a revised estimated budget, but in no event will  
39 Buyer be entitled to terminate this Contract based on such revised estimated budget.  
40 The actual budget, and resulting Association Assessments may vary significantly  
41 from the estimates provided. The affairs of the Association will be managed by the  
42 board of directors of the Association pursuant to the CIC Documents.

43                   **8.3.5 Seller’s Right to Revise CIC Documents.** Seller, to the extent Seller deems  
44 necessary in its sole judgment, may revise the draft CIC Documents for the purposes  
45 of: (a) establishing different or additional easements, reservations, restrictions or  
46 other title matters which in the sole judgment of Seller are necessary for, consistent

1 with, or in furtherance of the Project; (b) meeting the requirements government  
2 governmental bodies or agencies or any lending institutions; (c) establishing the  
3 final allocation of interests to the Units; or (d) making any additions, deletions or  
4 modifications to such draft documents that in the sole judgment of Seller are  
5 necessary for, consistent with, or in the furtherance of the development of the  
6 Project. If Seller makes any such additions, deletions or modifications, Buyer will  
7 not have any right to terminate this Contract or claim that Seller is in breach of any  
8 obligation under this Contract. Subject to §10 of this Contract, Seller's revisions  
9 will not significantly change the location, size or configuration of the Unit as  
10 depicted on the Working Drawings

11 **9. TITLE REVIEW.**

12 **9.1 Title Review.** Buyer has the right to inspect the Title Commitment. Buyer must provide  
13 written notice of unmerchantability of title or any unsatisfactory form or content of Title  
14 Commitment ("**Notice of Title Objection**"). Such notice must be signed by or on behalf of  
15 Buyer and delivered to Seller on or before **Title Objection Deadline** (§3.1), provided that  
16 the Title Commitment is received by Buyer in a timely manner. If there is an endorsement  
17 to the Title Commitment that adds a new Exception to title, the modified Title Commitment  
18 and an internet link to the new Exception must be delivered to Buyer. Provided, however,  
19 Buyer has five days to deliver the Notice of Title Objection after receipt by Buyer of the  
20 endorsement to the Title Commitment. If Seller does not receive Buyer's Notice of Title  
21 Objection by the applicable deadline specified above, Buyer accepts the condition of title as  
22 disclosed by the Title Commitment as satisfactory. The title exceptions described on the  
23 attached **Exhibit "C"** are accepted by Buyer, and may not form the basis for a title  
24 objection.

25 **9.2 Special Taxing Districts. SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO**  
26 **GENERAL OBLIGATION INDEBTEDNESS THAT IS PAID BY REVENUES**  
27 **PRODUCED FROM ANNUAL TAX LEVIES ON THE TAXABLE PROPERTY**  
28 **WITHIN SUCH DISTRICTS. PROPERTY OWNERS IN SUCH DISTRICTS MAY**  
29 **BE PLACED AT RISK FOR INCREASED MILL LEVIES AND TAX TO SUPPORT**  
30 **THE SERVICING OF SUCH DEBT WHERE CIRCUMSTANCES ARISE**  
31 **RESULTING IN THE INABILITY OF SUCH A DISTRICT TO DISCHARGE**  
32 **SUCH INDEBTEDNESS WITHOUT SUCH AN INCREASE IN MILL LEVIES.**  
33 **BUYERS SHOULD INVESTIGATE THE SPECIAL TAXING DISTRICTS IN**  
34 **WHICH THE PROPERTY IS LOCATED BY CONTACTING THE COUNTY**  
35 **TREASURER, BY REVIEWING THE CERTIFICATE OF TAXES DUE FOR THE**  
36 **PROPERTY, AND BY OBTAINING FURTHER INFORMATION FROM THE**  
37 **BOARD OF COUNTY COMMISSIONERS, THE COUNTY CLERK AND**  
38 **RECORDER, OR THE COUNTY ASSESSOR.**

39 **9.3 Right to Object, Cure.** Buyer's right to object includes, but not be limited to, those  
40 matters set forth in §§9.1 and 16. If Seller receives notice of unmerchantability of title or  
41 any other unsatisfactory title condition or commitment terms as provided in §9.1, Seller will  
42 use reasonable efforts to correct said items and bear any nominal expense to correct the  
43 same prior to Closing. If such unsatisfactory title condition is not corrected to Buyer's  
44 satisfaction on or before Closing, this Contract will terminate; provided, however, Buyer  
45 may, by written notice received by Seller on or before Closing, waive objection to such  
46 items.

1           **9.4 Title Advisory.** The Title Commitment affects the title, ownership and use of the Unit and  
2 should be reviewed carefully. Additionally, other matters not reflected in the Title  
3 Commitment may affect the title, ownership and use of the Unit, including without  
4 limitation, boundary lines and encroachments, area, zoning, unrecorded easements and  
5 claims of easements, leases and other unrecorded agreements, and various laws and  
6 governmental regulations concerning land use, development and environmental matters.  
7           **THE SURFACE ESTATE MAY BE OWNED SEPARATELY FROM THE**  
8           **UNDERLYING MINERAL ESTATE, AND TRANSFER OF THE SURFACE**  
9           **ESTATE DOES NOT NECESSARILY INCLUDE TRANSFER OF THE MINERAL**  
10           **RIGHTS OR WATER RIGHTS. THIRD PARTIES MAY HOLD INTERESTS IN**  
11           **OIL, GAS, OTHER MINERALS, GEOTHERMAL ENERGY OR WATER ON OR**  
12           **UNDER THE UNIT, WHICH INTERESTS MAY GIVE THEM RIGHTS TO**  
13           **ENTER AND USE THE UNIT.** Such matters may be excluded from or not covered by the  
14 title insurance policy. Buyer is advised to timely consult legal counsel with respect to all  
15 such matters as there are strict time limits provided in this Contract [e.g., **Title Objection**  
16 **Deadline** (§3.1)].

17           **10. CONSTRUCTION OF THE UNIT.**

18           **10.1 Working Drawings.** Seller will cause the Unit to be constructed in substantial compliance  
19 with the draft plans and drawings dated \_\_\_\_\_, 20\_\_ by Seller's  
20 architect, interior designers and other engineers and consultants retained by Seller  
21 ("**Working Drawings**"). By signing this Contract, Buyer acknowledges that Seller has  
22 advised Buyer that the Working Drawings are on file with Seller at its offices located  
23 at \_\_\_\_\_, Breckenridge, during regular business hours upon at least two  
24 business days' notice to Seller. By execution of this Contract Buyer acknowledges and  
25 agrees that he or she has had the opportunity to review the Working Drawings, and that he  
26 or she approves the Working Drawings. Buyer agrees to accept the Unit subject to all terms  
27 and depictions of the Unit on the Working Drawing concerning any other Townhome Units  
28 and subject to the provisions of this §10. With respect to the location, size and  
29 configuration of the Unit and Common Elements, the final building plans will be  
30 substantially similar to the Working Drawings. Seller makes no representation and has no  
31 obligation to Buyer of any kind or nature concerning depictions on the Working Drawings  
32 or final building plans concerning any other unit. Once completed, a complete copy of the  
33 final building plans for the Project will be maintained in Seller's offices and will be  
34 available for Buyer's review and inspection by appointment upon at least two business  
35 days' notice to Seller Seller's normal business hours.

36           **10.2 Seller's Modifications.** With respect to the location and configuration of the Unit, the  
37 Working Drawings are incorporated into and made a part of this Contract. Subject to the  
38 other provisions of this Contract, the terms and depictions relating to the Unit contained  
39 within the Working Drawings are binding upon Buyer and Seller. However, Seller may  
40 substitute materials and make other modifications to the Working Drawings which Seller  
41 deems necessary, in its sole judgment, for the purposes of: (a) resolving unworkable design  
42 or construction situations; (b) making any modifications to the Working Drawings which in  
43 the sole judgment of Seller are necessary or consistent with the development of the Project,  
44 (c) accommodating unknown or unforeseen site conditions, (d) making substitutions for  
45 materials so long as the replacement materials are equivalent or superior to the materials  
46 originally specified in the Working Drawings; (e) making substitutions for materials in the  
47 event of a discontinuation of such materials by their manufacturer or supplier; and (f)

1 meeting the requirements of applicable laws, governmental regulations, governmental  
2 bodies or agencies, lending institutions or insurers. Such substitutions or modifications will  
3 not significantly diminish the Area (as defined in §10.3) or significantly alter the  
4 configuration of the Unit. Buyer acknowledges that certain features, items, and equipment  
5 (including, without limitation, paint, tile, stone and/or other mechanical equipment) are  
6 subject to change or variation naturally or by the manufacturer and may vary from those  
7 depicted on the Working Drawings. The term “Working Drawings” as used in this Contract  
8 will include any adjustments or modifications made pursuant to this §10.2.

9 **10.3 Area of the Unit and Common Elements.** There are many different ways to measure the  
10 square footage of the Unit or Common Elements, such as measurements from the outside of  
11 perimeter walls or measurements from the inside of perimeter walls. Statements of  
12 approximate dimensions, floor areas, ceiling heights or volumes (collectively, the “*Area*”)  
13 of the Unit or the Common Elements may be made in the Working Drawings, marketing  
14 materials or other items reviewed by Buyer. The CIC Documents may calculate the Area of  
15 the Unit and/or any Common Elements, in a manner which differs from the method of  
16 measurement reflected in the Working Drawings, or marketing or other materials reviewed  
17 by Buyer. Buyer expressly acknowledges and agrees that Buyer is not relying on any  
18 statements of the Area of the Unit or Common Elements, in any form, in entering into this  
19 Contract, and that Seller’s only obligation in this regard is to deliver the Unit and Common  
20 Elements in substantial compliance with the Working Drawings as provided in this §10 and  
21 in §11. Buyer will accept the Unit and Common Elements as constructed so long as the  
22 Unit as constructed is not materially inconsistent with the Working Drawings and otherwise  
23 in accordance with the other terms of this Contract, subject to the provisions of this §11.  
24 Buyer further acknowledges and agrees that **SELLER DISCLAIMS ANY AND ALL**  
25 **REPRESENTATIONS, WARRANTIES, OBLIGATIONS, OR LIABILITIES**  
26 **CONCERNING THE AREA OF THE UNIT, THE COMMON ELEMENTS AND/OR**  
27 **THE PROJECT. BUYER ACCEPTS SUCH DISCLAIMER, AND AGREES THAT**  
28 **SELLER DOES NOT HAVE ANY OBLIGATION OR LIABILITY TO BUYER**  
29 **RELATED TO THE AREA OF THE UNIT AND THE COMMON ELEMENTS,**  
30 **AND BUYER WAIVES ALL CLAIMS WITH RESPECT THERETO.**

31 **10.4 Completion of Construction of the Unit.** Seller will diligently pursue “Substantial  
32 Completion” of the Unit. “*Substantial Completion*” of the Unit is defined to mean and the  
33 Unit will be deemed Substantially Completed when Seller obtains a certificate of  
34 occupancy covering the Unit and the Unit is ready for occupancy. Seller currently estimates  
35 the Unit will be Substantially Completed by February 1, 2011. Seller will give notice to  
36 Buyer when the Unit is Substantially Complete. **BUYER ACKNOWLEDGES THAT**  
37 **THIS DATE IS ONLY AN ESTIMATE AND IS PROVIDED FOR GENERAL**  
38 **PLANNING AND INFORMATIONAL PURPOSES ONLY. SELLER WILL NOT BE**  
39 **BOUND IN ANY WAY BY ITS ESTIMATE OF SUBSTANTIAL COMPLETION BY**  
40 **FEBRUARY 1, 2011.** Notwithstanding the foregoing, subject to any “Force Majeure  
41 Delays” (as defined in §15.1.2), and any other applicable provision of this Contract, the  
42 Unit will be Substantially Completed no later than April 1, 2011, unless a later date is  
43 mutually agreed upon by the parties.

44 **10.5 Completion of the Common Elements.** Seller will construct the Common Elements of the  
45 Project in substantial compliance with the Working Drawings, and in Phases as the Project  
46 is developed. So long as the Unit is Substantially Completed as provided in §10.4,  
47 incomplete items of construction within the Common Elements will not delay Closing.

1 Buyer specifically acknowledges and agrees, without limitation, that due to seasonal  
2 weather conditions and other factors, including ongoing Project construction, certain  
3 portions of the Common Elements, including, without limitation, surface components or  
4 improvements such as paving, hardscaping and landscaping, may not be completed by the  
5 time that Substantial Completion of the Unit as set forth in §10.4 is achieved and Closing  
6 occurs. Seller will complete the Common Elements for the Phase of the Project in which the  
7 Unit is located as soon as reasonably possible when weather conditions and other factors  
8 permit, but in no event later than eight months after Substantial Completion of the Unit,  
9 subject to Force Majeure Delays. The remainder of the Common Elements of the Project  
10 will be completed on a “Phase by Phase” basis as soon as reasonably possible when  
11 weather conditions and other factors permit, but in no event shall the Common Elements for  
12 a Phase be completed later than six months after Substantial Completion of such Phase.

## 13 **10.6 Control During Construction.**

14 **10.6.1 Control-Generally.** Seller’s contractors will have the sole authority, direction and  
15 supervision over all construction means, methods, techniques and procedures and all  
16 personnel involved in the construction of the Project, including the Unit. To  
17 facilitate orderly completion of the Project and the Unit, neither Buyer nor Buyer’s  
18 agents or employees will issue separate instructions to such personnel or otherwise  
19 interfere with work in progress. Neither Buyer nor Buyer’s agents, employees, or  
20 contractors will conduct or perform work anywhere within the Project or the Unit at  
21 any time prior to Closing. Due to hazardous conditions and insurance requirements,  
22 Buyer and Buyer’s agents and employees will be prohibited from entering onto the  
23 construction site for the Project and the Unit without the prior written consent of  
24 Seller, which consent will be or withheld in Seller’s sole judgment. In instances  
25 where Seller allows access to the Project or the Unit, Buyer will comply with all  
26 rules and regulations for the construction site established by Seller and Seller’s  
27 contractors, and will, prior to entering the construction site, execute all waivers and  
28 indemnities required by Seller and/or Seller’s contractors. If Buyer fails or refuses  
29 to sign such documents, then Buyer will not be allowed access to the Project or the  
30 Unit. Any requests by Buyer to enter the construction site for the Project or the Unit  
31 will be made in writing and at least five business days in advance. Notwithstanding  
32 the foregoing, Buyer acknowledges that while Seller may, under certain  
33 circumstances, allow limited access to the construction site for the Project and the  
34 Unit, Seller is under no obligation to permit such access at any time.

35 **10.6.2 Buyer’s Indemnity.** Buyer will indemnify and hold Seller, and Seller’s employees,  
36 agents, and contractors harmless from and against any demands, claims, causes of  
37 action, liens (including, without limitation, mechanic’s and materialman’s liens),  
38 fines, penalties, damages, liabilities, judgments, and expenses (including, without  
39 limitation, attorneys’ fees) incurred in connection with or arising from any injury or  
40 damage to any person who, or property which, is present on or about the  
41 construction site for the Project or the Unit and that is caused by any act or omission  
42 by Buyer or Buyer’s agents, or employees conducted on or about the construction  
43 site for the Project or the Unit.

## 44 **10.7 Interior Selections.**

1           **10.7.1 Standard Finish Package.** The Purchase Price includes the basic interior finishes  
2           of the Unit described on the attached **Exhibit “D”** (“*Standard Finish Package*”).

3  
4           **10.7.2  Upgrade Options.** If this §10.7.2 is checked, Buyer has elected to purchase  
5           certain upgrades to the Unit’s interior as described on the attached **Exhibit “E”** (the  
6           “*Upgrade Options*”). The cost of the Upgrade Options is \$\_\_\_\_\_, which  
7           amount has been paid to Seller by Buyer at the time of the execution of this  
8           Contract. The cost of the Upgrade Options is not part of the Purchase Price for the  
9           Unit. **THE UPGRADE OPTIONS ARE NOT AN ALLOWED CAPITAL**  
10           **IMPROVEMENT UNDER THE HOUSING COVENANT, AND THE COST**  
11           **OF THE UPGRADE OPTIONS IS NOT RECOVERABLE WHEN BUYER**  
12           **SELLS THE UNIT.** Once paid by Buyer the cost of the cost of the Upgrade Option  
13           is nonrefundable.

14   **11. WALK-THROUGH AND PUNCH LIST.**

15           **11.1 Walk-Through and Punch List Procedure.** Incomplete item of construction in the Unit  
16           that do not significantly affect the occupancy or use of the Unit (including, but not limited  
17           to, “punch list” items) will not delay Closing and the Unit will still be considered  
18           Substantially Complete regardless of such items. Buyer may schedule with Seller a walk-  
19           through inspection of the Unit to take place during the 15-day period immediately  
20           preceding the Closing. Buyer may have no more than two persons participate in the walk-  
21           through inspection, including Buyer. During the walk-through inspection, the parties will  
22           together prepare a punch list of items to be completed with the Unit after Closing (the “*Unit*  
23           ***Punch List***”). Buyer and Seller will sign the Unit Punch List immediately after the walk-  
24           through inspection or, if Buyer fails to sign the Unit Punch List Seller will sign Unit Punch  
25           List and promptly deliver the same to Buyer, and no subsequent additions to the Unit Punch  
26           List will be permitted. Seller either will complete all items listed on the Unit Punch List  
27           before Closing or will proceed diligently to complete such items within the 120-day period  
28           following Closing to the extent reasonably possible and subject to Force Majeure Delays. If  
29           Buyer fails to schedule a walk-through inspection or fails to participate in a scheduled  
30           walk-through inspection of the Unit), Buyer will be deemed to have irrevocably waived  
31           Buyer’s right to a walk-through inspection of the Unit and the preparation of the “Unit  
32           Punch List,” and Buyer will be deemed to have accepted the Unit in its condition as of  
33           Closing. Seller has the right to approve all people in attendance at the walk-through (other  
34           than Buyer) and in an effort to facilitate an orderly process.

35           **11.2 Right Of Access To Repair.** After Closing, Buyer will permit ingress and egress to Seller,  
36           its employees, agents, representatives, and contractors over, across, and through the Unit  
37           when necessary for the limited purpose of completing the Unit Punch List and other minor  
38           construction items and performing warranty maintenance and repair, and also over, across  
39           and through the Project to complete the Common Elements. Seller agrees that in  
40           undertaking such work, it will use reasonable efforts to minimize any inconvenience to  
41           Buyer. The terms of this §11.2 apply to Buyer’s heirs, successors and assigns.  
42           Notwithstanding the foregoing, Buyer’s heirs, successors and assigns will not be permitted  
43           to make any additions to, or otherwise alter or modify, the Unit Punch List.

1 **12. SOURCE OF WATER AND SANITATION.** The Unit has a water tap providing the right to  
2 obtain potable water from the Town of Breckenridge Municipal Water System. The Unit also has a  
3 sewer tap providing the right to use the sanitary sewer system owned and operated by the Upper  
4 Blue Sanitation District. Both the Town of Breckenridge and the Upper Blue Sanitation District  
5 charge a period fee for use of their systems.

6 **13. CARBON MONOXIDE ALARMS.** If the Unit has a fuel-fired heater or appliance, a fireplace,  
7 or an attached garage and include one or more rooms lawfully used for sleeping purposes  
8 (“*Bedroom*”), the parties acknowledge that Colorado law requires that Seller assure the Unit has an  
9 operational carbon monoxide alarm installed within fifteen feet of the entrance to each Bedroom or  
10 in a location as required by the applicable building code.

11 **14. METHAMPHETAMINE DISCLOSURE (Residential Property Only).** If the Unit is  
12 residential, and Seller knows that methamphetamine was ever manufactured, processed, cooked,  
13 disposed of, used or stored at the Unit, Seller is required to disclose such fact. No disclosure is  
14 required if the Unit was remediated in accordance with state standards and other requirements are  
15 fulfilled pursuant to §25-18.5-102, C.R.S. Buyer further acknowledges that Buyer has the right to  
16 engage a certified hygienist or industrial hygienist to test whether the Unit has ever been used as a  
17 methamphetamine laboratory. If Buyer’s test results indicate that the Unit has been contaminated  
18 with methamphetamine, but has not been remediated to meet the standards established by rules of  
19 the State Board of Health promulgated pursuant to §25-18.5-102, C.R.S., Buyer will promptly give  
20 written notice to Seller of the results of the test, and Buyer may terminate this Contract,  
21 notwithstanding any other provision of this Contract.

22 **15. CLOSING.** “*Closing*” will occur upon Seller’s delivery to Buyer of the deed in accordance with  
23 the terms and conditions of this Contract, and Buyer’s payment of the Cash at Closing and other  
24 amounts due from Buyer under this Contract. Buyer’s failure to perform all of Buyer’s obligations  
25 at Closing will constitute a default under this Contract.

26 **15.1 Closing Date.** The Closing Date will be established as follows:

27 **15.1.1 Estimated Closing.** Closing will occur on the date that is no fewer than fifteen nor  
28 more than sixty days after Seller delivers to Buyer notice that Substantial  
29 Completion of the Unit has occurred as is provided for in §10.4. In such notice will  
30 specify the actual date, time and place of Closing.

31 **15.1.2 Force Majeure Delays.** In the event of delays causes beyond the reasonable control  
32 of Seller (such as, but not limited to, acts of God, strikes, work stoppages,  
33 unavailability of or delay in receiving labor or materials, defaults or delays by  
34 contractors or subcontractors, permits or approvals, including, without limitation,  
35 building permits, weather conditions, customary seasonal construction limitations,  
36 fire or other casualty, or any legal proceedings, orders or judgments commenced or  
37 secured a third party that could impair the development of use of the Project for its  
38 intended purposes)(each, a “*Force Majeure Delay*”), then the time for Seller’s  
39 performance under this Contract will be extended for a period of time equal to the  
40 length of each Force Majeure Delay, or any longer period as may be reasonably  
41 necessary or appropriate to accommodate the effect of the Force Majeure Delay.  
42 Seller will not be responsible or liable for any damages which Buyer may suffer as a  
43 result of any Force Majeure Delays.

- 1 **16. TRANSFER OF TITLE.** Subject to tender or payment at Closing as required herein and  
2 compliance by Buyer with the other terms and provisions hereof, Seller will execute and deliver a  
3 good and sufficient special warranty deed to Buyer in the form attached to this Contract as **Exhibit**  
4 **“F”**, at Closing, conveying the Unit free and clear of all taxes except the general taxes for the year  
5 of Closing. Except as provided herein, title will be conveyed free and clear of all liens, including  
6 any governmental liens for special improvements installed as of the date of Buyer’s signature  
7 hereon, whether assessed or not. Title will be conveyed subject to:
- 8 **16.1** those specific Exceptions described by reference to recorded documents as reflected in the  
9 Title Commitment accepted by Buyer in accordance with **Title Review** (§9.1);
- 10 **16.2** distribution utility easements (including cable TV);
- 11 **16.3** those specifically described rights of third parties not shown by the public records of which  
12 Buyer has actual knowledge,
- 13  
14 **16.4** the “Residential Housing Restrictive Covenant and Notice of Lien For Valley Brook  
15 Townhomes” (copy attached as **Exhibit “G”**); and
- 16  
17 **16.5** the Declaration.
- 18 **17. PAYMENT OF ENCUMBRANCES.** Any encumbrance required to be paid will be paid at or  
19 before Closing from the proceeds of this transaction or from any other source.
- 20 **18. CLOSING COSTS, DOCUMENTS AND SERVICES.**
- 21 **18.1 Good Funds.** Buyer and Seller will pay, in Good Funds, their respective closing costs and  
22 all other items required to be paid at Closing, except as otherwise provided herein.
- 23 **18.2 Closing Information and Documents.** Buyer and Seller will furnish any additional  
24 information and documents required by Closing Company that will be necessary to  
25 complete this transaction. Buyer and Seller will sign and complete all customary or  
26 reasonably required documents at or before Closing.
- 27 **18.3 Closing Services Fee.** The fee for real estate closing services will be paid at Closing one-  
28 half by Buyer and one-half by Seller.
- 29 **18.4 Closing Instructions.** Buyer and Seller agree to execute the Closing Instructions required  
30 by the Closing Company. Such Closing Instructions are not executed with this Contract.
- 31 **18.5 Status Letter and Transfer Fees.** Any fees incident to the issuance of Association’s  
32 statement of assessments (“*Status Letter*”) will be paid by Seller. Any transfer fees  
33 assessed by the Association (“*Association’s Transfer Fee*”) will be paid by Seller.
- 34 **18.6 Local Transfer Tax.** The sale of the Unit pursuant to this Contract is exempt from the  
35 Town of Breckenridge Real Estate Transfer Tax.
- 36 **18.7 Bill of Sale.** Seller will execute and deliver to Buyer a Bill of Sale for the Personal Property  
37 in the form that attached as **Exhibit “H.”**

- 1           **18.8 Other Actions.** Buyer and Seller will execute and deliver such other documents, including,  
2 but not limited to, those required pursuant to this Contract, and take such other actions as  
3 may be required pursuant to this Contract or as otherwise necessary to accomplish Closing  
4 and carry out their respective obligations under this Contract.
- 5 **19. PRORATIONS.** The following will be prorated to **Closing Date** (§3.1), except as otherwise  
6 provided:
- 7           **19.1 Taxes.** Personal property taxes, if any, and general real estate taxes for the year of Closing,  
8 based on the most recent mill levy and most recent assessed valuation.
- 9           **19.2 Association Assessments.** Current regular Association Assessments paid in advance will  
10 be credited to Seller at Closing. Cash reserves held out of the regular Association  
11 Assessments for deferred maintenance by the Association will not be credited to Seller  
12 except as may be otherwise provided by the CIC Documents. Seller represents that the  
13 Association Assessments are currently payable at \$ \_\_\_\_\_ per \_\_\_ and that there  
14 are no unpaid regular or special assessments against the Unit. Such assessments are subject  
15 to change as provided in the CIC Documents. Seller agrees to promptly request the  
16 Association to deliver to Buyer before **Closing Date** (§3.1) a current Status Letter.
- 17           **19.3 Other Prorations.** The following additional items or expenses will be prorated at closing:  
18 \_\_\_\_\_.
- 19           **19.4 Final Settlement.** Unless otherwise agreed in writing, all prorations described in this §19  
20 will be final.
- 21 **20. POSSESSION.** Possession of the Unit will be delivered to Buyer at Closing. **BUYER**  
22 **ACKNOWLEDGES THAT ACCESS TO THE UNIT MAY BE SUBJECT TO**  
23 **TEMPORARY INCONVENIENCES DUE TO ONGOING CONSTRUCTION AND**  
24 **OTHER ACTIVITIES OF SELLER WITHIN AND ADJACENT TO THE PROJECT.**
- 25 **21. REPRESENTATION CONCERNING PRINCIPAL RESIDENCE STATUS.** Buyer  
26 represents that Buyer will occupy the Unit as Buyer’s principal residence.
- 27 **22. ASSIGNABILITY AND INUREMENT.** This Contract is not assignable by Buyer without  
28 Seller’s prior written consent, which consent may be granted, withheld or conditionally approved  
29 in Seller’s sole and absolute discretion. Except as so restricted, this Contract inures to the benefit of  
30 and be binding upon the heirs, personal representatives, successors and assigns of the parties.
- 31 **23. CAUSES OF LOSS, INSURANCE.** If the Unit or any of the Inclusions are damaged by fire,  
32 other perils or causes of loss prior to Closing in an amount of not more than ten percent of the total  
33 Purchase Price, Seller is obligated to repair the same before **Closing Date** (§3.1). In the event such  
34 damage is not repaired within said time or if the damage exceeds such sum, this Contract may be  
35 terminated at the option of Buyer by delivering to Seller written notice of termination on or before  
36 Closing. Should Buyer elect to carry out this Contract despite such damage, Buyer will be entitled  
37 to a credit at Closing for all insurance proceeds that were received by Seller (but not the  
38 Association, if any) resulting from such damage to the Unit and Inclusions, plus the amount of any  
39 deductible provided for in such insurance policy. Such credit cannot exceed the Purchase Price. If  
40 Seller has not received such insurance proceeds prior to Closing, then Seller will assign such  
41 proceeds at Closing, plus credit Buyer the amount of any deductible provided for in such insurance

1 policy, but not to exceed the total Purchase Price.

2 **24. RECOMMENDATION OF LEGAL AND TAX COUNSEL.** By signing this document, Buyer  
3 acknowledges that the respective broker(s) has advised that this document has important legal  
4 consequences and has recommended the examination of title and consultation with legal and tax or  
5 other counsel before signing this Contract.

6 **25. TIME OF ESSENCE, DEFAULT AND REMEDIES.** Time is of the essence of this Contract. If  
7 any note or check received as Earnest Money hereunder or any other payment due hereunder is not  
8 paid, honored or tendered when due, or if any obligation hereunder is not performed or waived as  
9 herein provided, there will be the following remedies:

10 **25.1 If Buyer is in Default.** All Earnest Money (whether or not paid by Buyer) will be forfeited  
11 by Buyer, paid to Seller, and retained by Seller. Both parties will thereafter be released  
12 from all obligations hereunder. It is agreed that the Earnest Money specified in §6.1 is  
13 LIQUIDATED DAMAGES, and not a penalty, which amount the parties agree is fair and  
14 reasonable and (except as otherwise provided in this Contract), said forfeiture will be  
15 SELLER'S SOLE AND ONLY REMEDY for Buyer's failure to perform the obligations of  
16 this Contract. Seller expressly waives the remedies of specific performance and additional  
17 damages.

18 **25.2 If Seller is in Default.** Buyer may elect to treat this Contract as cancelled, in which case all  
19 Earnest Money received hereunder will be returned and Buyer may recover such damages  
20 as may be proper, or Buyer may elect to treat this Contract as being in full force and effect  
21 and Buyer have the right to specific performance or damages, or both.

22 **26. LEGAL FEES, COST AND EXPENSES.** In the event of any litigation relating to this Contract,  
23 prior to or after **Closing Date** (§3.1), the court must award to the prevailing party all reasonable  
24 costs and expenses, including attorney and legal fees.

25 **27. MEDIATION.** If a dispute arises relating to this Contract, prior to or after Closing, and is not  
26 resolved, the parties will first proceed in good faith to submit the matter to mediation. Mediation is  
27 a process in which the parties meet with an impartial person who helps to resolve the dispute  
28 informally and confidentially. Mediators cannot impose binding decisions. The parties to the  
29 dispute must agree, in writing, before any settlement is binding. The parties will jointly appoint an  
30 acceptable mediator and will share equally in the cost of such mediation. The mediation, unless  
31 otherwise agreed, will terminate in the event the entire dispute is not resolved within thirty days of  
32 the date written notice requesting mediation is delivered by one party to the other at the party's last  
33 known address. This section will not alter any date in this Contract, unless otherwise agreed.

34 **28. EARNEST MONEY DISPUTE.** Except as otherwise provided herein, Earnest Money Holder  
35 will release the Earnest Money as directed by written mutual instructions, signed by both Buyer  
36 and Seller. In the event of any controversy regarding the Earnest Money (notwithstanding any  
37 termination of this Contract), Earnest Money Holder is not required to take any action. Earnest  
38 Money Holder, at its option and sole discretion, may: (a) await any proceeding, (b) interplead all  
39 parties and deposit Earnest Money into a court of competent jurisdiction and will recover court  
40 costs and reasonable attorney and legal fees, or (c) provide notice to Buyer and Seller that unless  
41 Earnest Money Holder receives a copy of the Summons and Complaint or Claim (between Buyer  
42 and Seller) containing the case number of the lawsuit ("**Lawsuit**") within one hundred twenty days  
43 of Earnest Money Holder's notice to the parties, Earnest Money Holder is authorized to return the

1 Earnest Money to Buyer. In the event Earnest Money Holder does receive a copy of the Lawsuit,  
2 and has not interpleaded the monies at the time of any Order, Earnest Money Holder is required to  
3 disburse the Earnest Money pursuant to the Order of the Court. The parties reaffirm the obligation  
4 of **Mediation** (§27).

5 **29. TERMINATION.** In the event this Contract is terminated, all Earnest Money received hereunder  
6 will be returned and the parties will be relieved of all obligations hereunder, subject to §§ 27 and  
7 28.

8 **30. ADDITIONAL PROVISIONS.** The following additional provisions are part of this Contract:

9 **30.1 Residential Housing Covenant.** Buyer acknowledges receipt of a copy of the “**Residential**  
10 **Housing Restriction and Notice of Lien For Valley Brook Townhomes**” described in  
11 §16.4 (“**Housing Covenant**”). Buyer further acknowledges having read the Housing  
12 Covenant, and having had the opportunity to ask the Broker and Seller about the terms,  
13 conditions, limitations and restrictions of the Housing Covenant. Buyer agrees to accept the  
14 Unit subject to the Housing Covenant, and at Closing will execute such documentation as  
15 may be reasonably requested by Seller confirming Buyer’s understandings and agreements  
16 set forth in this §30.1.

17 **30.2 No Investment Representations.** Buyer acknowledges that neither Seller nor any of its  
18 agents or employees have made any warranties or representations upon which Buyer has  
19 relied concerning the investment value, the possibility or probability of profit or loss, or the  
20 tax consequences which may result from the purchase of the Unit. Seller expressly  
21 disclaims and denies any representation from any source as to the possible economic  
22 benefit arising from ownership of the Unit.

23 **30.3 Seller’s Disclosure Regarding Construction Activities; Buyer’s Waiver.** Buyer is hereby  
24 advised of and Seller hereby discloses that the Unit is located in an area that is subject to or  
25 near ongoing construction activities (collectively, the “**Construction Activities**”). The  
26 Construction Activities are expected to generate an unpredictable amount of visible, audible  
27 and odorous impacts and disturbances. The Construction Activities may include, without  
28 limitation: (a) construction traffic (including, without limitation, construction vehicles,  
29 equipment and vehicles used or owned by Seller, and Seller’s employees, agents and  
30 contractors; and (b) construction activities (including, without limitation, grading,  
31 excavation, clearing, site work, relocation of roadways and public utilities and construction  
32 of improvements) relating to the Project. Buyer acknowledges that the Construction  
33 Activities, and the impacts and disturbances generated by the Construction Activities, may  
34 occur in and around the Unit and the Project, and may occur during daytime and nighttime  
35 (subject to any applicable use restrictions imposed by the Town or any other entity having  
36 jurisdiction over the subject properties from time to time) and may be temporarily or  
37 permanently interrupted, discontinued or modified, in whole or in part, from time to time.  
38 Buyer may not rescind this Contract or claim any breach of this Contract on account of the  
39 existence, occurrence, or the temporary or permanent interruption, discontinuance or  
40 modification of the Construction Activities, and such impacts and disturbances. The  
41 Seller’s deed of conveyance to the Unit will contain a covenant from Buyer forever waiving  
42 and releasing any claims Buyer, its successors and assigns may have against Seller arising  
43 in any way out of the impacts and disturbances generated from the Construction Activities.

1           **30.4 Mold Disclosure.** Buyer acknowledges that Seller has advised Buyer that mold can  
2 proliferate in various environments in the Unit and the Common Elements, including,  
3 among others, damp areas such as bathrooms and within walls and partitions, which can  
4 cause damage. to the Unit and the Common Elements and may be harmful to human health.  
5 Nothing in this §30.4 gives Buyer any rights to the Common Elements beyond those  
6 described in the Declaration. **SELLER HEREBY DISCLAIMS ANY AND ALL**  
7 **REPRESENTATIONS, WARRANTIES, OBLIGATIONS OR LIABILITIES**  
8 **CONCERNING MOLD OR THE POSSIBLE PRESENCE OF MOLD IN THE UNIT**  
9 **AND/OR THE COMMON ELEMENTS OR THE REMAINDER OF THE**  
10 **PROJECT. BUYER ACCEPTS SUCH DISCLAIMER, AND AGREES THAT**  
11 **SELLER DOES NOT HAVE ANY OBLIGATION OR LIABILITY FOR, AND**  
12 **BUYER WAIVES CLAIM AGAINST SELLER, AND ITS CONTRACTORS,**  
13 **EMPLOYEES OR AGENTS, RELATED TO, ANY OCCURRENCES OF MOLD**  
14 **AFFECTING THE UNIT OR THE COMMON ELEMENTS OR THE REMAINDER**  
15 **OF THE PROJECT, INCLUDING ANY LIABILITY OR LOSS ARISING FROM**  
16 **ANY PERSONAL INJURY, PROPERTY DAMAGE OR LOSSES, OR DEATH**  
17 **ARISING FROM OR ASSOCIATED WITH ANY OCCURRENCE OR PRESENCE**  
18 **OF MOLD, WHETHER AND WHENEVER KNOWN OR UNKNOWN, OR**  
19 **SUSPECTED OR UNSUSPECTED, ALL TO THE FULLEST EXTENT**  
20 **PERMITTED BY LAW.** Buyer specifically agrees that the prevention of mold in the Unit  
21 and the Common Elements and the remainder of the Project will be the exclusive  
22 responsibility of Buyer, the other owners of Townhome Units within the Project, and the  
23 Association.

24           **30.5 Radon Disclosure.** Buyer acknowledges that Seller has advised Buyer that the Colorado  
25 Department of Health and the Environment, the United States Environmental Protection  
26 Agency, and other agencies and parties have historically detected elevated levels of  
27 naturally occurring radon gas in residential structures throughout the State of Colorado.  
28 Such occurrences of, and long-term exposure to, elevated levels of radon gas may be  
29 harmful to human health and may also adversely affect the value of the Unit and the  
30 Project. **SELLER HEREBY DISCLAIMS ANY AND ALL REPRESENTATIONS,**  
31 **WARRANTIES, OBLIGATIONS OR LIABILITIES CONCERNING RADON GAS**  
32 **OR THE POSSIBILITY OF RADON GAS ENTERING THE UNIT AND/OR THE**  
33 **PROJECT. BUYER ACCEPTS SUCH DISCLAIMER, AND AGREES THAT**  
34 **SELLER DOES NOT HAVE ANY OBLIGATION OR LIABILITY FOR, AND**  
35 **BUYER WAIVES ANY CLAIM AGAINST SELLER, AND ITS CONTRACTORS,**  
36 **EMPLOYEES OR AGENTS, RELATED TO ANY OCCURRENCES OF RADON**  
37 **GAS AFFECTING THE UNIT OR THE PROJECT, INCLUDING, BUT NOT**  
38 **LIMITED TO, ANY LIABILITY OR LOSS ARISING FROM ANY PERSONAL**  
39 **INJURY, PROPERTY DAMAGE OR LOSSES, OR DEATH ARISING FROM OR**  
40 **ASSOCIATED WITH ANY OCCURRENCE OR PRESENCE OF RADON GAS,**  
41 **WHETHER AND WHENEVER KNOWN OR UNKNOWN, OR SUSPECTED OR**  
42 **UNSUSPECTED, ALL TO THE FULLEST EXTENT PERMITTED BY LAW.** Buyer  
43 specifically agrees that the prevention of radon gas accumulation in the Unit and the Project  
44 will be the exclusive responsibility of Buyer, the owners of other Townhome Units within  
45 the Project, and the Association.

46           **30.6 Disclosure Concerning Fire Walls and Sound Transmission Rating.** The one and two  
47 family units in the Project are separated at the property lines by a common two-hour fire-  
48 resistance rated wall assembly, having a sound transmission rating of 45. The units in the

1 two family units are separated from each other by wall and floor assemblies of one-hour  
2 fire-resistance ratings and a sound transmission rating of 45.

3  
4 **30.7 SCH A Not A Broker.** Pursuant to §12-61-101(4), C.R.S., the Summit Combined Housing  
5 Authority (“*SCHA*”), its officers and employees, are not “real estate brokers” or “real estate  
6 salespersons” as defined by law, and are not subject to regulation by the Colorado Real  
7 Estate Commission. Accordingly, it is understood and agreed by and between all parties to  
8 this Contract that any reference to a “broker” in any document related to the transaction  
9 described in this Contract is not meant to refer to *SCHA* acting as a “real estate broker” or  
10 “real estate salesperson” as that term is defined by law, but is instead to *SCHA* acting as a  
11 multi-jurisdictional housing authority and as a public official in the conduct of its official  
12 duties as described in §12-61-101(4), C.R.S. It is further acknowledged that while certain  
13 employees of *SCHA* may be licensed real estate salespersons or brokers under Colorado  
14 law, the activities of such employees in connection with this Contract are not being  
15 performed or represented as being performed in their capacity as licensed salespersons or  
16 brokers, but rather as employees of *SCHA* acting as public officials in the conduct of their  
17 official duties.

18  
19 **30.8 Venue; Waiver of Right to Jury Trial.** Venue for any legal action arising out of this  
20 Contract is proper only in the courts of Summit County, Colorado. **BOTH PARTIES**  
21 **WAIVE THE RIGHT TO A JURY TRIAL IN ACTION TO ENFORCE,**  
22 **INTERPRET, OR CONSTRUE THIS CONTRACT.**

23  
24 **30.9 Seller Not Liable For Damages. IN NO EVENT WILL SELLER BE LIABLE FOR**  
25 **ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING,**  
26 **BUT NOT LIMITED TO, LOSS OF ANTICIPATED PROFITS, REVENUE OR**  
27 **SAVINGS, OR ANY SIMILAR CLAIM ARISING FROM THE SELLER’S**  
28 **BREACH OF THIS CONTRACT, EVEN IF SELLER HAS BEEN ADVISED OF**  
29 **THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION APPLIES**  
30 **NOTWITHSTANDING THE FAILURE OF AN ESSENTIAL PURPOSE OF ANY**  
31 **LIMITED REMEDY.**

32 **30.10 Limited Warranty.** At Closing, Buyer and Seller will execute and Seller will deliver to  
33 Buyer a Limited Warranty for the Unit in a form substantially similar to the attached  
34 **Exhibit “I”** (the “*Limited Warranty Contract*”), along with a homeowner’s manual, which  
35 will include, among other items, care instructions and other information related to the  
36 upkeep and maintenance of the Unit (the “*Homeowner’s Manual*”). By executing this  
37 Contract, Buyer acknowledges that it has reviewed and understands the sample form of the  
38 Limited Warranty Contract. **EXCEPT AS OTHERWISE PROVIDED IN THE**  
39 **LIMITED WARRANTY AGREEMENT AND EXCEPT FOR WORK ITEMS ON**  
40 **THE “UNIT PUNCH LIST” (AS DEFINED IN §11), BUYER IS PURCHASING THE**  
41 **UNIT IN ITS “AS IS” “WHERE IS” CONDITION, “WITH ALL FAULTS,”**  
42 **EXISTING AT THE TIME OF CLOSING, SUBJECT TO SELLER’S OBLIGATION**  
43 **TO COMPLETE THE COMMON ELEMENTS AS PROVIDED FOR IN §10.5.**  
44 **BUYER UNDERSTANDS, ACKNOWLEDGES AND AGREES THAT ALL OTHER**  
45 **REPRESENTATIONS AND WARRANTIES, OF ANY NATURE, EXPRESS OR**  
46 **IMPLIED, INCLUDING, BUT NOT LIMITED TO THOSE OF WORKMANLIKE**  
47 **CONSTRUCTION, HABITABILITY, DESIGN, CONDITION, QUALITY,**  
48 **MERCHANTABILITY, FITNESS FOR A PARTICULAR USE OR OTHERWISE**  
49 **WITH RESPECT TO THE UNIT OR THE COMMON ELEMENTS, OR ANY**

1           **IMPROVEMENTS, FIXTURES, EQUIPMENT, APPLIANCES OR OTHER**  
2           **PERSONAL PROPERTY IN THE UNIT OR THE COMMON ELEMENTS, ARE**  
3           **EXPRESSLY DISCLAIMED BY SELLER AND WAIVED BY BUYER, TO THE**  
4           **FULLEST EXTENT PERMITTED BY LAW. EXCEPT FOR THE WARRANTIES**  
5           **PROVIDED IN THE LIMITED WARRANTY CONTRACT, BUYER ACCEPTS,**  
6           **AND ASSUMES THE RISK OF, ALL DAMAGE OR DEFECTS TO OR OF THE**  
7           **UNIT OR THE COMMON ELEMENTS, OR ANY IMPROVEMENTS, FIXTURES,**  
8           **EQUIPMENT, APPLIANCES OR OTHER PERSONAL PROPERTY IN THE UNIT**  
9           **OR THE COMMON ELEMENTS, EXISTING AS OF CLOSING OR ANY TIME**  
10           **THEREAFTER, REGARDLESS OF THE CAUSE AND AGREES THAT HE OR**  
11           **SHE WILL COMPLY WITH THE HOMEOWNER'S MANUAL. EXCEPT FOR**  
12           **THE WARRANTIES PROVIDED IN THE LIMITED WARRANTY AGREEMENT,**  
13           **BUYER ALSO, TO THE FULLEST EXTENT PERMITTED BY LAW: (A) WAIVES**  
14           **ALL CLAIMS RELATING TO DAMAGE OR DEFECTS TO OR OF THE UNIT**  
15           **OR THE COMMON ELEMENTS, OR ANY IMPROVEMENTS, FIXTURES,**  
16           **EQUIPMENT, APPLIANCES OR OTHER PERSONAL PROPERTY IN THE UNIT**  
17           **OR THE COMMON ELEMENTS, WHETHER ARISING UNDER COMMON LAW**  
18           **OR STATUTE, WHETHER BASED ON BREACHES OF WARRANTY, TORT OR**  
19           **ANY OTHER THEORY AT LAW OR IN EQUITY; AND (B) WAIVES ALL**  
20           **DAMAGES, WHETHER ACTUAL, SPECIAL, CONSEQUENTIAL, PUNITIVE OR**  
21           **OTHERWISE, OR OTHER REMEDIES OR RELIEF RELATED TO ANY SUCH**  
22           **DAMAGES OR DEFECTS.** Buyer's acceptance and assumption of this risk and waiver of  
23           claims, damages and other relief are partially in consideration of the amount of the  
24           Purchase Price, which is lower than it would be if Seller was to be held responsible for any  
25           such risks, damages, or defects by virtue of any express or implied representations or  
26           warranties or if Buyer did not waive such claims, damages, and other relief.

27  
28           **30.11 No Personal Liability.** In carrying out any of the provisions of this Contract or in  
29           exercising any power or authority thereby, there will be no personal liability of the Seller,  
30           its governing body, staff, consultants, officials, attorneys, representatives, agents, or  
31           employees.

32  
33           **31. GOOD FAITH.** Buyer and Seller acknowledge that each party has an obligation to act in good  
34           faith under this Contract

35           **32. ENTIRE AGREEMENT, MODIFICATION, SURVIVAL.** This Contract and its exhibits  
36           constitute the entire agreement between the parties relating to the subject hereof, and any prior  
37           agreements pertaining thereto, whether oral or written, have been merged and integrated into this  
38           Contract. No subsequent modification of any of the terms of this Contract will be valid, binding  
39           upon the parties, or enforceable unless made in writing and signed by the parties; oral amendments  
40           to this Contract are not permitted. Any obligation in this Contract that, by its terms, is intended to be  
41           performed after termination or Closing survives Closing and is fully enforceable thereafter.

42           **33. NOTICE, DELIVERY, AND CHOICE OF LAW.**

43           **33.1 Physical Delivery.** All notices must be in writing, except as provided in §33.2. Any  
44           document, including a signed document or notice, delivered to Buyer is effective when  
45           physically received by Buyer, any signatory on behalf of Buyer, any named individual of  
46           Buyer, any representative of Buyer, or Brokerage Firm of Broker working with Buyer  
47           (except for delivery, after Closing, of the notice requesting mediation described in §27) and

1 except as provided in §33.2, below. Any document, including a signed document or notice,  
2 delivered to Seller is effective when physically received by Seller, any signatory on behalf  
3 of Seller, any named individual of Seller, any representative of Seller, or Brokerage Firm of  
4 Broker working with Seller (except for delivery, after Closing, of the notice requesting  
5 mediation described in §27) and except as provided in §33.2, below.

6 **33.2 Electronic Delivery.** As an alternative to physical delivery, any document, including any  
7 signed document or written notice may be delivered in electronic form only by the  
8 following indicated methods:  **Facsimile**  **Email**  **Internet**  **No Electronic**  
9 **Delivery.** Documents with original signatures will be provided upon request of any party.

10 **33.3 Choice of Law.** This Contract and all disputes arising hereunder will be governed by and  
11 construed in accordance with the laws of the State of Colorado that would be applicable to  
12 Colorado residents who sign a contract in Colorado for property located in Colorado.

13 **34. (Section deleted)**

14 **35. NOTICE OF ACCEPTANCE, COUNTERPARTS.** This proposal expires unless accepted in  
15 writing, by Buyer and Seller, as evidenced by their signatures below, and the offering party  
16 receives notice of such acceptance pursuant to §33 on or before **Acceptance Deadline Date** (§3.1)  
17 and **Acceptance Deadline Time** (§3.1). If accepted, this document becomes a contract between  
18 Seller and Buyer. A copy of this document may be executed by each party, separately, and when  
19 each party has executed a copy thereof, such copies taken together will be a full and complete  
20 contract between the parties.

Date: \_\_\_\_\_  
Buyer's  
Name: \_\_\_\_\_

Date: \_\_\_\_\_  
Buyer's  
Name: \_\_\_\_\_

Buyer's Signature  
Address: \_\_\_\_\_  
\_\_\_\_\_

Buyer's Signature  
Address: \_\_\_\_\_  
\_\_\_\_\_

Phone No.: \_\_\_\_\_  
Fax No.: \_\_\_\_\_  
Email  
Address: \_\_\_\_\_

Phone No.: \_\_\_\_\_  
Fax No.: \_\_\_\_\_  
Email  
Address: \_\_\_\_\_

21  
22 **[NOTE: If this offer is being countered or rejected, do not sign this document. Refer to §36]**

23  
24 Date: \_\_\_\_\_

25  
26 Seller's Name:

27  
28 SUMMIT HOUSING DEVELOPMENT CORPORATION, a Colorado nonprofit corporation  
29

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By: \_\_\_\_\_

Timothy J. Gagen, Town Manager  
Attorney-in-Fact

Address: P.O. Box 168, Breckenridge, Colorado 80424  
Phone No.: (970)453-2251  
Fax No.: (970)547-3104  
Email Address: timg@townofbreckenridge.com

**36. COUNTER; REJECTION.** This offer is  **Countered**  **Rejected.**

**Initials only of party (Buyer or Seller) who countered or rejected offer** \_\_\_\_\_

**END OF CONTRACT TO BUY AND SELL REAL ESTATE**

**37. BROKER'S ACKNOWLEDGMENTS AND COMPENSATION DISCLOSURE.**

(To be completed by Broker working with Buyer)

Broker  **Does**  **Does Not** acknowledge receipt of Earnest Money deposit specified in §6.1 and, while not a party to this Contract, agrees to cooperate upon request with any mediation concluded under §27. Broker agrees that if Earnest Money Holder is other than the Brokerage Firm identified in §37 or §38, Closing Instructions signed by Buyer, Seller, and Earnest Money Holder must be obtained on or before delivery of Earnest Money to Earnest Money Holder.

Broker is working with Buyer as a:  **Buyer's Agent**  **Seller's Agent**  **Transaction-Broker** in this transaction.

This is a **Change of Status**.

Brokerage Firm's compensation or commission is to be paid by:  **Listing Brokerage Firm**  **Buyer**  **Other** \_\_\_\_\_.

Date: \_\_\_\_\_

Brokerage Firm's Name: \_\_\_\_\_

Broker's Name: \_\_\_\_\_

\_\_\_\_\_  
Broker's Signature

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

Phone No.: \_\_\_\_\_

Fax No.:

Email Address:

**38. BROKER'S ACKNOWLEDGMENTS AND COMPENSATION DISCLOSURE.**

(To be completed by Broker working with Seller)

Broker  **Does**  **Does Not** acknowledge receipt of Earnest Money deposit specified in §6.1 and, while not a party to this Contract, agrees to cooperate upon request with any mediation concluded under §27  
Broker agrees that if Earnest Money Holder is other than the Brokerage Firm identified in §37 or §38, Closing Instructions signed by Buyer, Seller, and Earnest Money Holder must be obtained on or before delivery of Earnest Money to Earnest Money Holder.

Broker is working with Seller as a:  **Seller's Agent**  **Buyer's Agent**  **Transaction-Broker** in this transaction.

This is a **Change of Status**.

Brokerage Firm's compensation or commission is to be paid by  **Seller**  **Buyer**  **Other** \_\_\_\_\_.

Date:

Brokerage Firm's  
Name:

Broker's Name:

Broker's Signature

Address:

Phone No.:

Fax No.:

Email Address:

LIST OF EXHIBITS

Exhibit	Description
A	Preliminary Floor Plans
B	Preliminary Site Plan
C	Permitted Title Exceptions
D	Standard Finish Package
E	Upgrade Options
F	Special Warranty Deed
G	Housing Covenant
H	Bill of Sale
I	Limited Warranty

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EXHIBIT "A"  
TO VALLEY BROOK TOWNHOMES PRE-CONSTRUCTION CONTRACT TO BUY AND SELL  
REAL ESTATE

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**PRELIMINARY FLOOR PLANS**

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EXHIBIT "B"  
TO VALLEY BROOK TOWNHOMES PRE-CONSTRUCTION CONTRACT TO BUY AND SELL  
REAL ESTATE

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**PRELIMINARY SITE PLAN**

1 EXHIBIT "C"  
2 TO VALLEY BROOK TOWNHOMES PRE-CONSTRUCTION CONTRACT TO BUY AND SELL  
3 REAL ESTATE  
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5  
6 **PERMITTED TITLE EXCEPTIONS**

- 7
- 8 **1.** Right of the proprietor of a vein or lode to extract and remove his ore therefrom, should the same  
9 be found to penetrate or intersect the property that is the subject of this Contract, and a right of way  
10 for ditches or canals constructed by the authority of the United States, as reserved in United States  
11 Patent recorded June 08, 1915 in Book 89 at Page 92 of the records of the Clerk and Recorder of  
12 Summit County, Colorado.  
13
  - 14 **2.** Any tax, lien, fee, or assessment by reason of inclusion of the property that is the subject of this  
15 Contract in the Breckenridge Sanitation District as evidenced by instrument recorded November  
16 08, 1982 under Reception No. 247679 of the records of the Clerk and Recorder of Summit County,  
17 Colorado.  
18
  - 19 **3.** Easements, notes and dedications as shown and reserved on the recorded plat of Breckenridge  
20 Airport Subdivision recorded November 24, 1981 under Reception No. 232254 and an Amended  
21 Replat of the Breckenridge Airport Subdivision recorded December 21, 1990 under Reception No.  
22 397666, all of the records of the Clerk and Recorder of Summit County, Colorado.  
23
  - 24 **4.** Terms, conditions and provisions of amendment to Parking Lease recorded December 14, 2009 at  
25 Reception No. 928308 of the records of the Clerk and Recorder of Summit County, Colorado.  
26
  - 27 **5.** Notes, dedications and easements set forth on the plat for Valley Brook Subdivision recorded  
28 August 05, 2010 under Reception No. 943931 of the records of the Clerk and Recorder of Summit  
29 County, Colorado.  
30
  - 31 **6.** Terms, conditions and provisions of Residential Housing Restrictive Covenant recorded August 06,  
32 2010 at Reception No. 944064 of the records of the Clerk and Recorder of Summit County,  
33 Colorado.  
34

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EXHIBIT "D"  
TO VALLEY BROOK TOWNHOMES PRE-CONSTRUCTION CONTRACT TO BUY AND SELL  
REAL ESTATE

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**STANDARD FINISH PACKAGE**

1 EXHIBIT "E"  
2 TO VALLEY BROOK TOWNHOMES PRE-CONSTRUCTION CONTRACT TO BUY AND SELL  
3 REAL ESTATE  
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6 **UPGRADE OPTIONS**  
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1 EXHIBIT "F"  
2 TO VALLEY BROOK TOWNHOMES PRE-CONSTRUCTION CONTRACT TO BUY AND SELL  
3 REAL ESTATE  
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5  
6  
7 **SPECIAL WARRANTY DEED**

8  
9 **THIS DEED**, made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, between SUMMIT  
10 HOUSING DEVELOPMENT CORPORATION, a Colorado nonprofit corporation, whose address is c/o P.O.  
11 Box 168, Breckenridge, Colorado 80424 ("Grantor") and \_\_\_\_\_  
12 \_\_\_\_\_, whose address is \_\_\_\_\_  
13 \_\_\_\_\_ ("Grantee"):

14  
15 **WITNESSETH**, that the Grantor, for and in consideration of the sum of  
16 \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), the receipt and sufficiency of which is hereby  
17 acknowledged, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell,  
18 convey and confirm, unto the Grantee(s), \_\_\_\_\_ heirs and assigns forever, all the real property, together  
19 with improvements, if any, situate, lying and being in the Town of Breckenridge, Summit County, Colorado,  
20 described as follows:

21  
22 Unit \_\_\_\_, Valley Brook Neighborhood, Town of Breckenridge, County of Summit and  
23 State of Colorado (the "Unit"), according to the map thereof recorded in the records of the  
24 Clerk and Recorder of the County of Summit, Colorado and as defined and described in the  
25 Declaration of Covenants, Conditions and Restrictions of the Valley Brook Townhomes  
26 also recorded in the records of the Clerk and Recorder of the County of Summit, Colorado,  
27 together with any common elements appurtenant to such Unit, and subject to the rules and  
28 regulations of the Valley Brook Homeowners Association, a Colorado nonprofit  
29 corporation, together with the interests, easements, rights, benefits, improvements and  
30 attached fixtures appurtenant thereto.

31  
32 also known by street and number as: \_\_\_\_\_, Breckenridge,  
33 Colorado 80424

34  
35 **TOGETHER** with all and singular the hereditaments and appurtenances thereto belonging, or in any  
36 wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits  
37 thereof; and all the estate, right, title, interest, claim and demand whatsoever of the Grantor, either in law or  
38 equity, of, in and to the above bargained premises, with the hereditaments and appurtenances;

39  
40 **TO HAVE AND TO HOLD** the said premises above bargained and described with the  
41 appurtenances, unto the Grantee(s), \_\_\_\_\_ heirs and assigns forever. The Grantor, for itself and its  
42 successors, covenants and agrees that it shall and will WARRANT AND FOREVER DEFEND the above-  
43 bargained premises in the quiet and peaceable possession of the Grantee(s), \_\_\_\_\_ heirs and assigns,  
44 against all and every person or persons claiming the whole or any part thereof, by, through or under the  
45 Grantor(s); subject to those title exceptions set forth on the attached **Exhibit "A"**, which is incorporated  
46 herein by reference.

47  
48 Grantor and Grantee further agree that the Unit is located in an area that is subject to or near  
49 ongoing construction activities (collectively, the "**Construction Activities**"). The Construction Activities

1 are expected to generate an unpredictable amount of visible, audible and odorous impacts and  
2 disturbances. The Construction Activities may include, without limitation: (a) construction traffic  
3 (including, without limitation, construction vehicles, equipment and vehicles used or owned by Grantor,  
4 and Grantor's employees, agents and contractors); and (b) construction activities (including, without  
5 limitation, grading, excavation, clearing, site work, relocation of roadways and public utilities and  
6 construction of improvements) relating to the Project as defined in the Declaration of Covenants,  
7 Conditions and Restrictions of the Valley Brook Townhomes described above. Grantee acknowledges that  
8 the Construction Activities, and the impacts and disturbances generated by the Construction Activities,  
9 may occur in and around the Unit and the Project, and may occur during daytime and nighttime (subject to  
10 any applicable use restrictions imposed by the Town of Breckenridge acting in its governmental capacity,  
11 or any other entity having jurisdiction over the abovedescribed real property from time to time) and may  
12 be temporarily or permanently interrupted, discontinued or modified, in whole or in part, from time to  
13 time. Grantee forever waives and releases any claims Grantee, \_\_\_\_\_ successors and assigns may have  
14 against Grantor which in any way arise out of the impacts and disturbances generated from the  
15 Construction Activities. The parties intend, declare, covenant, and agree that this paragraph is a covenant  
16 running with the land and is intended to be and shall be binding upon the Grantee and all subsequent  
17 owners of the abovedescribed real property. Grantee agrees that any and all requirements of the laws of the  
18 State of Colorado to be satisfied in order for the paragraph to constitute a restrictive covenant running with  
19 the land shall be deemed to be satisfied in full or, in the alternative, that an equitable servitude has been  
20 created to insure that these restrictions run with the land.

21  
22 GRANTOR:

23  
24 SUMMIT HOUSING DEVELOPMENT CORPORATION, a Colorado nonprofit corporation  
25  
26  
27  
28

29 \_\_\_\_\_  
By: Timothy J. Gagen, Town Manager, attorney in fact

30  
31 ACCEPTANCE

32  
33 This Special Warranty Deed and the covenants, conditions, restrictions, acknowledgments and  
34 other provisions contained in it and the Permitted Exceptions listed on Exhibit "A" are accepted by  
35 Grantee this \_\_\_\_\_ day of \_\_\_\_\_ 200\_.

36  
37 GRANTEE:  
38  
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41 \_\_\_\_\_  
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47

1 STATE OF COLORADO )  
2 ) ss.  
3 COUNTY OF SUMMIT )  
4

5 The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
6 20\_\_\_\_, by Timothy J. Gagen, Town Manager, as attorney-in-fact for Summit Housing Development  
7 Corporation, a Colorado nonprofit corporation.

8  
9 WITNESS my hand and official seal.

10  
11 My commission expires: \_\_\_\_\_.  
12

13  
14  
15 \_\_\_\_\_  
16 Notary Public  
17

18  
19 STATE OF COLORADO )  
20 ) ss.  
21 COUNTY OF SUMMIT )  
22

23 The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
24 20\_\_\_\_, by \_\_\_\_\_.

25  
26 WITNESS my hand and official seal.

27  
28 My commission expires: \_\_\_\_\_.  
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33 Notary Public  
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Exhibit "A"  
To Special Warranty Deed

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**Title Exceptions**

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1 EXHIBIT "G"  
2 TO VALLEY BROOK TOWNHOMES PRE-CONSTRUCTION CONTRACT TO BUY AND SELL  
3 REAL ESTATE  
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7 **HOUSING COVENANT**  
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1 EXHIBIT "H"  
2 TO VALLEY BROOK TOWNHOMES PRE-CONSTRUCTION CONTRACT TO BUY AND SELL  
3 REAL ESTATE  
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7 **BILL OF SALE**  
8

9 This Bill of Sale dated as of \_\_\_\_\_, 200\_, is made by SUMMIT HOUSING  
10 DEVELOPMENT CORPORATION, a Colorado nonprofit corporation ("Seller"), to  
11 \_\_\_\_\_ ("Buyer").

12 For ten dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is  
13 hereby acknowledged, Seller hereby sells and conveys to Buyer all of Seller's right, title and interest of in  
14 and to all tangible personal property installed by Seller in the townhouse unit described below as of the  
15 date of this Bill of Sale, including, but not limited to the following:

16  
17 All personal property located in or attached to the Unit described below as of the date of  
18 this Bill of Sale, including, but not limited to, washer, clothes dryer, storm windows, storm  
19 doors, window and porch shades, awnings, blinds, screens, window coverings, curtain rods,  
20 drapery rods, fireplace inserts, fireplace screens, fireplace grates, heating stoves, storage  
21 sheds, and all keys. If checked, the following are included:  **Water Softeners**   
22 **Smoke/Fire Detectors**  **Security Systems**  **Satellite Systems** (including satellite  
23 dishes), together with one photovoltaic (PV) panel located on roof of one of the Buildings  
24 in the Project as defined in the Declaration of Covenants, Conditions and Restrictions of the  
25 Valley Brook Townhomes described below (Note: the PV panel for the Unit is not  
26 necessarily located on the roof of the Building in which the Unit is located)

27  
28 (collectively, the "Personal Property").

29  
30 The Personal Property is located at:

31  
32 Unit \_\_\_\_, Valley Brook Neighborhood, Town of Breckenridge, County of Summit and  
33 State of Colorado, according to the map thereof recorded in the records of the Clerk and  
34 Recorder of the County of Summit, Colorado and as defined and described in the  
35 Declaration of Covenants, Conditions and Restrictions of the Valley Brook Townhomes  
36 also recorded in the records of the Clerk and Recorder of the County of Summit, Colorado,  
37 together with any common elements appurtenant to such Unit, and subject to the rules and  
38 regulations of the Valley Brook Homeowners Association, a Colorado nonprofit  
39 corporation, together with the interests, easements, rights, benefits, improvements and  
40 attached fixtures appurtenant thereto.

41  
42 **THE PERSONAL PROPERTY IS SOLD IN ITS "AS IS," WHERE IS" CONDITION, WITH ALL**  
43 **FAULTS AND DEFECTS, IF ANY. SELLER DOES NOT MAKE ANY WARRANTY OR**  
44 **REPRESENTATION OR MERCHANTABILITY, SUITABILITY, OR FITNESS FOR A**  
45 **PARTICULAR PURPOSE, OR ANY OTHER REPRESENTATION, EXPRESS OR IMPLIED,**  
46 **CONCERNING THE PERSONAL PROPERTY. ANY SUCH ANY SUCH REPRESENTATION**  
47 **OR WARRANTY IS EXPRESSLY DISCLAIMED BY SELLER AND IRREVOCABLY WAIVED**  
48 **BY BUYER. BUYER, BY HIS OR HER ACCEPTANCE OF THIS BILL OF SALE,**  
49 **ACKNOWLEDGES THAT INSPECTION OF AND SATISFACTION WITH THE PERSONAL**

1 **PROPERTY. BUYER WAIVES ALL CLAIMS (IF ANY) AGAINST SELLER, NOW OR**  
2 **HEREAFTER ARISING, REGARDING THE QUALITY OR FITNESS OF THE PERSONAL**  
3 **PROPERTY.**

4  
5 Notwithstanding the foregoing, to the extent there are any items of the Personal Property for which the  
6 manufacturer provides a warranty, and to the extent such warranties are assignable, Seller assigns its rights  
7 to such manufacturer's warranties to Buyer. Buyer expressly acknowledges that Seller makes such  
8 assignment without liability to or recourse against Seller.

9  
10 Executed as of the date set forth above.

11  
12 **SELLER:**

13  
14 SUMMIT HOUSING DEVELOPMENT CORPORATION, a Colorado nonprofit corporation  
15  
16  
17

18 \_\_\_\_\_  
19 By: Timothy J. Gagen, Town Manager, attorney in fact  
20

21 **ACCEPTANCE**

22  
23 \_\_\_\_\_, as Buyer, hereby accepts and agrees to the  
24 provisions of this Bill of Sale.  
25

26 **BUYER:**  
27  
28  
29  
30 \_\_\_\_\_  
31  
32  
33  
34 \_\_\_\_\_  
35  
36

37 [REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]  
38

1 STATE OF COLORADO )  
2 ) ss.  
3 COUNTY OF SUMMIT )  
4

5 The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
6 20\_\_\_\_, by Timothy J. Gagen, Town Manager, as attorney-in-fact for Summit Housing Development  
7 Corporation, a Colorado nonprofit corporation.

8  
9 WITNESS my hand and official seal.

10  
11 My commission expires: \_\_\_\_\_.

12  
13  
14  
15 \_\_\_\_\_  
16 Notary Public

17  
18  
19 STATE OF COLORADO )  
20 ) ss.  
21 COUNTY OF SUMMIT )  
22

23 The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
24 20\_\_\_\_, by \_\_\_\_\_.

25  
26 WITNESS my hand and official seal.

27  
28 My commission expires: \_\_\_\_\_.

29  
30  
31  
32 \_\_\_\_\_  
33 Notary Public

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1 EXHIBIT "I"  
2 TO VALLEY BROOK TOWNHOMES PRE-CONSTRUCTION CONTRACT TO BUY  
3 AND SELL REAL ESTATE  
4

---

5  
6 **LIMITED WARRANTY**  
7

8 Summit Housing Development Corporation, a Colorado nonprofit corporation  
9 ("**SHDC**"), warrants to the \_\_\_\_\_ (insert name of Buyer)  
10 that for a period of one (1) year from the date of the issuance of a certificate of occupancy  
11 for the Unit at the Valley Brook Townhomes in Breckenridge, Colorado referenced in  
12 this Contract (the "**Unit**"), the Unit will be free from defects in materials and  
13 workmanship according to all applicable building codes, governmental standards, and in  
14 accordance with the "Standards of Construction" attached hereto as **Exhibit A**. The  
15 provisions of this Limited Warranty will survive the Closing, and will inure to the benefit  
16 of the Buyer for the duration of the Limited Warranty as set forth below. SHDC, at its  
17 option, will repair or replace any defects which fall within the scope of this Limited  
18 Warranty as defined below.  
19

20 1. **NO IMPLIED WARRANTIES:** This Limited Warranty is in lieu of all  
21 other warranties, express, implied, or statutory, written or oral, including, without  
22 limitation, any implied warranty of habitability, merchantability, or fitness for a particular  
23 purpose, with regard to the Unit covered by this Limited Warranty. Buyer understands  
24 and agrees that this Limited Warranty is the only warranty provided by SHDC and that  
25 by accepting this Limited Warranty Buyer is expressly waiving any implied warranty of  
26 habitability, merchantability, or fitness for a particular purpose which might otherwise  
27 apply to the Unit.  
28

29 2. **WARRANTIES OF A THIRD PARTY:** This warranty does not cover  
30 any appliance, piece of equipment, or other item which is a consumer product, for the  
31 purposes of the Magnuson-Moss Warranty Act (15 U.S.C. §2301-2312) and SHDC  
32 expressly disclaims any implied warranties with respect thereto. However, any product,  
33 appliances, materials, or goods which have been installed in the Unit which have written  
34 warranties provided by the manufacturer will be assigned and passed on to the Buyer  
35 under this Contract. These warranties are the responsibility of the manufacturer of the  
36 product and not SHDC; however, for the period of the warranty provided hereunder,  
37 SHDC will assist Buyer in any dealings or negotiations with the manufacturer of such  
38 products with regard to any warranty claim with respect to such products. Some  
39 manufacturers' warranties may be in effect from the date of installation rather than the  
40 date of the issuance of a final certificate of occupancy. In this circumstance, the  
41 manufacturer's period of warranty will control over any other warranty provided by  
42 SHDC hereunder.  
43

44 3. **COVERAGE:** Subject to the exclusions set forth herein, SHDC warrants  
45 as follows:  
46

1           A.     For a period of one (1) year from the date of the issuance of a certificate of  
2 occupancy for the Unit SHDC warrants that the following items will be free from defects  
3 in materials or workmanship: doors, windows, plumbing fixtures and cabinet work,  
4 unless the manufacturer provides a warranty, in which case the manufacturer's warranty  
5 will prevail.

6  
7           B.     For a period of sixty (60) days from the date of the issuance of a certificate  
8 of occupancy for the Unit SHDC will make minor adjustments to cabinets, doors,  
9 windows, and reset loose ceramic tiles.

10  
11           C.     For a period of sixty (60) days from the date of the issuance of a certificate  
12 of occupancy for the Unit SHDC will warrant that the plumbing system is free of  
13 stoppages unless the stoppage is found to be caused by the Buyer. Dripping faucets,  
14 toilet adjustments and toilet seats are warranted for only the first thirty (30) days, unless  
15 such defect arises from a defect in the product or in its installation, in which case,  
16 SHDC's warranty will be for a period of one (1) year from the date of the issuance of a  
17 final certificate of occupancy. Thermal expansion of the pipes, indicated by normal noise  
18 in the pipes or heating system, is not covered under this Limited Warranty.

19  
20           D.     For a period of one (1) year from the date of the issuance of a certificate of  
21 occupancy for the Unit, SHDC warrants that the plumbing, heating, and electrical  
22 systems will be free of defective materials or workmanship which affect the proper  
23 functioning of the systems. During the warranty period, Buyer is responsible for  
24 undertaking proper maintenance of such systems, such as changing filters or washers and  
25 glycol refresh. SHDC will not be liable for any failure of these systems which is  
26 attributable to Buyer failing to provide proper maintenance.

27  
28           E.     For a period of one (1) year from the date of the issuance of a certificate of  
29 occupancy for the Unit the roof will be free from leaks or other defects caused by  
30 defective materials or workmanship. This warranty is void if Buyer or Buyer's agents  
31 alter or modify the design of the roof or any materials installed thereon or otherwise  
32 cause damage to the roof or roofing materials. This limited warranty does not cover any  
33 leaks or damage caused by ice dams or snow accumulation on the roof, as provided in  
34 Section 4(C).

35  
36           F.     For a period of one (1) year from the date of the issuance of a certificate of  
37 occupancy for the Unit the foundation, walks, driveways, floors, ceilings, walls and other  
38 internal or external parts of the project which are not otherwise covered under this  
39 Limited Warranty will be free of defects in materials or workmanship which substantially  
40 affect the Unit's structural value, cosmetic appearance, or substantially interrupt the plane  
41 of the item's surface unless salt materials are use on the concrete which will flake the  
42 surface.

43  
44           4.     **EXCLUSIONS TO COVERAGE:** SHDC does not assume responsibility  
45 for any of the following, all of which are excluded from coverage under this Limited  
46 Warranty:

1  
2           A.     This Limited Warranty does not cover minor visible defects which occur  
3 more than thirty (30) days after issuance of a final certificate of occupancy, including but  
4 not limited to minor surface irregularities in flooring, doors, dry wall, cabinets,  
5 countertops, stucco, siding, concrete, appliances, plumbing fixtures, windows and  
6 missing items such as light fixtures, light bulbs, window screens, window glass, and  
7 mirrors. SHDC will assume that a minor surface defect or missing item occurred more  
8 than thirty (30) days after the issuance of a final certificate of occupancy unless the  
9 visible surface defect or missing item was noted on Buyer's punch list or otherwise  
10 disclosed to SHDC within thirty (30) days. All such items are excluded from this  
11 Limited Warranty except as set forth herein.

12  
13           B.     SHDC has no warranty liability for any defects in appliances and other  
14 manufactured items which are covered by manufacturers' warranties. SHDC will assign  
15 all such warranties to Buyer, and Buyer will follow the procedures of the manufacturers'  
16 warranty, including the completion of the manufacturer's warranty registration cards.  
17 SHDC agrees that it will provide Buyer with reasonable assistance in dealing with  
18 manufacturer's representatives in connection with any warranty claim if Buyer so  
19 requests.

20  
21           C.     This Limited Warranty does not apply to any damage or defect that is  
22 caused by ordinary wear and tear, unreasonable or unauthorized use by Buyer, lack of  
23 proper or timely maintenance, or the failure on the part of Buyer to take any reasonable  
24 or necessary corrective action to prevent such damage. This limited warranty does not  
25 cover any leaks or damage caused by ice dams or snow accumulation on the roof. The  
26 formation of ice dams or snow drifts on the roof is a common condition in high altitude  
27 areas and is not a defect in materials or workmanship. With proper maintenance and  
28 prevention, the formation of ice dams or snow drifts can be minimized but not totally  
29 eliminated. Buyer has been advised that regular maintenance and snow removal on the  
30 roof is required to minimize the damage caused by ice dams and snow accumulation.  
31 Buyer has further been advised that the installation of heat tape or other snow melt  
32 systems may also minimize any damage.

33  
34           D.     This Limited Warranty does not apply to minor defects which are the  
35 result of characteristics common to the materials used and which are commonly  
36 considered minor maintenance items, such as but not limited to, cracking, fading,  
37 warping, checking, cracks due to the drying and curing of wood, concrete, siding, stucco,  
38 plaster, masonry, caulking or similar materials, and the expansion or contraction of  
39 materials in walls, ceilings, floors, doors, and windows. This exclusion specifically  
40 applies only to minor imperfections or irregularities which occur as a normal part of the  
41 aging of the Unit. Breckenridge, Colorado is an arid environment and there will be  
42 shrinking and dry cracking in wood. Use of humidifiers will minimize this effect. Any  
43 significant cracks, warps, or expansion or contraction of materials or finishes which occur  
44 during the one year warranty period and which cause a significant cosmetic defect or  
45 distortion in any material are not excluded from SHDC's warranty hereunder.

1 E. Defects in materials or workmanship in items installed by the Buyer or by  
2 any of Buyer's contractors or subcontractors are excluded from SHDC's Warranty.

3  
4 F. Any conditions arising from the normal condensation on or expansion or  
5 contraction of materials are excluded from SHDC's warranty.

6  
7 G. Any damage, loss, or injury arising from acts, elements or natural  
8 occurrences beyond SHDC's control are excluded from SHDC's warranty.

9  
10 H. Any damage, loss, or injury, including but not limited to, bodily injury,  
11 property damage, or any consequential or incidental damage occurring to any person or  
12 property because of a defect in the Unit are excluded.

13  
14 I. Any bodily injury or property damage resulting from mold.

15  
16 5. **TRANSFER OF WARRANTY.** This warranty is offered only to the  
17 original purchaser of the Unit from SHDC, and is **NOT TRANSFERRABLE** to any  
18 subsequent purchaser of the Unit. This Limited Warranty gives the Buyer specific legal  
19 rights, and the Buyer may also have other rights under State or Federal law. The  
20 foregoing Limited Warranty will constitute the sole and exclusive remedy of any first  
21 purchaser of the Unit hereunder with reference to any defective material and  
22 workmanship, and will be the sole and exclusive warranty liability of SHDC.

23  
24 6. **PROCEDURES.**

25  
26 A. Written Notice of Claim. If Buyer discovers a defect which is covered by  
27 this Limited Warranty, Buyer must give written notice to SHDC at the address provided  
28 above specifying the name, address and telephone number of Buyer, the nature of this  
29 defect; the date the defect first occurred, the loss or damage claimed; and the times  
30 (SHDC's working hours 8:00 a.m. to 5:00 p.m., Monday through Friday) that SHDC may  
31 have access to the Unit to inspect the loss or damage, and if necessary, take corrective  
32 action. Such notice will be either delivered personally or sent by registered or certified  
33 mail, postage prepaid, return receipt requested, and must be received by SHDC as soon as  
34 practicable after Buyer either discovers or, in the exercise of reasonable diligence, should  
35 have discovered the defect in the Unit or the loss of damage caused by such defect, but in  
36 no event later than thirty (30) days after the warranty given hereby expires.

37  
38 B. Emergency Repairs. If the defect constitutes an emergency situation  
39 please contact the management company listed on the warranty information sheet  
40 supplied at Closing. The management company will be able to supply you with phone  
41 numbers for the appropriate sub-contractor. Emergency situations are only:

- 42  
43 1. Total loss of heat.  
44 2. Total loss of electricity.  
45 3. Total sewer stoppage.

- 1                   4.       Plumbing leak that cannot be stopped without shutting off all the  
2 water in the Unit.  
3                   5.       Roof leak.  
4                   6.       Total loss of hot water.

5  
6           If Buyer is unable to notify SHDC, Buyer should notify the appropriate  
7 subcontractor and the Management Company for the Valley Brook Townhomes.

8  
9           C.       SHDC Response. SHDC or its agent, representative, employee, or  
10 subcontractor will contact Buyer within: (i) 24 hours in an emergency situation, or (ii)  
11 five (5) business days in a non-emergency situation, following SHDC's receipt of the  
12 notice of the claim to schedule an Inspection of the Unit and, if necessary, to schedule the  
13 appropriate corrective action to be taken by SHDC. SHDC's agreement to inspect a  
14 complaint from Buyer is not an agreement by SHDC that the subject of the complaint is  
15 necessarily covered by this Limited Warranty. If SHDC determines that Buyer's  
16 complaint is covered by this Limited Warranty it will proceed with due diligence to  
17 complete any required corrective action undertaken, provided, however, that corrective  
18 action will be completed within 72 hours of an emergency situation. Any delay caused  
19 by strikes, labor disputes, boycotts, shortages of labor or materials, governmental action  
20 or inaction, weather, acts of God, or any other fact or circumstance beyond the reasonable  
21 control of SHDC is not a basis for a claim of lack of diligence on the part of SHDC.  
22 SHDC's obligation to proceed with due diligence will be suspended for as long as any  
23 such condition, fact, or circumstance continues to exist.

24  
25           7.       **REMEDIES.**

26  
27           A.       Repair or Replacement. If, following the inspection of the Unit, SHDC  
28 and Buyer reasonably determine that a valid warranty claim exists, SHDC will, within the  
29 time frames under Section 6(C) above, repair or replace, at its sole option, (i) the  
30 defective item; and (ii) the damage to those portions of the Unit installed by SHDC  
31 caused thereby and, upon completion of the repair or replacement, will leave the Unit in a  
32 broom clean condition. SHDC will not be responsible if patterns in floor coverings, wall  
33 coverings, or other finished surfaces have been discontinued, however, SHDC will use  
34 best efforts to obtain the same. All work will be performed by SHDC or subcontractors  
35 chosen by SHDC. SHDC is not obligated under this Limited Warranty to pay invoices,  
36 bills, or receipts for labor performed or materials furnished by or at the direction of Buyer  
37 unless such work is performed by Buyer after the time allotted for SHDC's performance  
38 of such repair or replacement.

39  
40           B.       Warranty Not Extended. Actions taken by SHDC to correct a defect(s)  
41 will not extend the term of this warranty.

42  
43           8.       **DISPUTE RESOLUTION.**

1           A.     Negotiation and Mediation. SHDC and Buyers agree to attempt resolve  
2 all disputes arising under this Limited Warranty or involving construction of the Unit  
3 through good faith negotiation and mediation.  
4

5           B.     Arbitration. If after negotiation and mediation the parties are unable to  
6 resolve a dispute involving this Limited Warranty or construction of the Unit, the dispute  
7 must be resolved through arbitration. Either party may demand in writing the arbitration  
8 of any dispute and the parties will within ten (10) days after notice of arbitration mutually  
9 select an arbitrator who will hear and determine the dispute. If the parties fail to agree on  
10 the selection of the arbitrator, then the mediator will select the arbitrator for them. The  
11 arbitration will be conducted in Breckenridge, Colorado according to the procedures  
12 determined by the arbitrator and in accordance with the Colorado Uniform Arbitration  
13 Act. The parties agree that the arbitration will take place within sixty (60) days of the  
14 date of the selection and confirmation of the availability of the arbitrator, subject only to  
15 extensions necessary to accommodate the arbitrator’s schedule.  
16

17           Each party will submit a written confidential statement of claims and defenses to  
18 the arbitrator fourteen (14) days prior to the conduct of the hearing and will exchange  
19 exhibits and a list of witnesses with the other party and the arbitrator at the same time as  
20 the confidential statements are submitted. The arbitrator will then conduct the hearing  
21 and issue a decision within thirty (30) days. The arbitrator’s decision may only be  
22 challenged or modified as permitted under the Uniform Arbitration Act and will be  
23 enforceable as a judgment against the losing party. It is the intent of this provision to  
24 provide a speedy and economical method of resolving disputes without resorting to  
25 litigation; however, if either party fails or refuses to comply with these procedures, the  
26 other party may file an action in Summit County, Colorado District Court to obtain an  
27 order compelling arbitration. The party so filing, if an order is issued will be entitled as a  
28 part of such an order to be immediately reimbursed for all attorney’s fees and costs  
29 incurred in such a filing.  
30

31 Dated: \_\_\_\_\_  
32

33 SELLER:  
34

35 SUMMIT HOUSING DEVELOPMENT CORPORATION, a Colorado nonprofit  
36 corporation  
37  
38  
39

40 \_\_\_\_\_  
41 By: Timothy J. Gagen, Town Manager, attorney in fact  
42  
43

1 BUYER:

2

3

4 \_\_\_\_\_

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**EXHIBIT "A"**  
**STANDARDS OF CONSTRUCTION**

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The Standards of Construction hereafter set forth describe the quality of workmanship and materials which SHDC and its contractors will adhere to in the construction of your new Unit and are designed to help you, as the Buyer, determine the validity of any potential claim that you have discovered defects in workmanship and/or materials in your new Unit during the Warranty Period.

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Only the most frequent problems which concern new home purchasers are addressed in these Standards of Construction. To the extent that standards have not been provided for given items in your Unit, SHDC will construct your Unit, and will warrant that your Unit has been constructed, in accordance with the structural, mechanical, electrical, and quality standards of the home building industry for the geographic area in which your Unit is located which are in effect at the time your Unit is constructed. For convenience and ease of understanding, the Standards of Construction have been expressed in terms of performance standards which set forth the acceptable tolerances for each area of concern. Noncompliance with the performance standards beyond the acceptable tolerances should be brought to SHDC's attention for inspection and, if caused by defects in workmanship and/or materials, for corrective action as provided in the Limited Warranty Agreement.

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**I. SITE WORK.**

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**A. Area of Concern:** Settling of ground around the building and the utility trenches.

**Standard:** When the areas for the building and the utilities serving the building were excavated, the holes dug were larger than the actual size of the building and the utilities installed. In certain situations, due to engineering requirements, these areas cannot be compacted when they are backfilled and are, therefore, subject to slight settlement. If settlement occurs, SHDC will fill the settled areas once during the Warranty Period provided that: (i) Buyer has not changed the grades, swales, and drainage patterns of the site and (ii) Buyer assumes full responsibility for any landscaping affected thereby. Any additional settlement must be corrected by Buyer.

**B. Area of Concern:** Drainage

**Standard:** The grading of the site will be completed in a manner which assures that any water falling on the site, whether from natural precipitation or from lawn irrigation, will flow positively away from the foundation and slabs of the building. Buyer must maintain the grades, swales, and drainage patterns established by SHDC as part of the final grade.

**II. CONCRETE FLATWORK.**

**A. Area of Concern:** Cracks in basement floor and/or slab on grade floor.

**Standard:** Cracks that do not exceed an average of 1/4 inch in width and 1/8 inch vertical displacement (where one portion of the concrete settles to a lower point than another) that does not exceed an average of 1/4 inch are to be expected.

**B. Area of Concern:** Cracks in garage slab and/or patio

1           **Standard:** Cracks that do not exceed an average of 1/8 inch in width and vertical  
2 displacement that does not exceed an average of 1/8 inch are to be expected. Buyer must immediately seal  
3 all cracks appearing in the patio with a waterproof substance.

4  
5           **C. Area of Concern:** Cracks in walkways within property boundaries and/or driveway.

6  
7           **Standard:** Cracks that do not exceed an average of 1/2 inch in width and vertical  
8 displacement that does not exceed an average of 1/2 inch are to be expected. Buyer must immediately seal  
9 all cracks appearing with a waterproof substance.

10  
11           **D. Area of Concern:** Cracks in foundation walls.

12           **Standard:** Cracks that do not exceed an average of 1/8 inch are to be expected.

13  
14           **E. Area of Concern:** Movement of concrete slabs within the building.

15           **Standard:** All concrete slabs are designed to “float” or move independently from the  
16 concrete foundation walls. Extreme or excessive movement in the slab should be brought to the SHDC’s  
17 attention.

18  
19           **F. Area of Concern:** Separation of stoops and steps.

20           **Standard:** So long as stoops and steps do not separate an average of more than one (1) inch  
21 from the building, settling, heaving, and separation of such stoops and steps is to be expected. Buyer must  
22 immediately seal cracks appearing with a waterproof substance.

23  
24           **G. Area of Concern:** Pitting, sealing and spalling of finished concrete surfaces.

25           **Standard:** Under normal conditions, concrete surfaces should not disintegrate to the extent  
26 that the aggregate is exposed, pitting, scaling, or spalling of concrete surfaces should be brought to the  
27 SHDC’s attention unless the deterioration was caused by: (i) salt, (ii) chemicals (iii) mechanical  
28 implements, or (iv) other causes beyond the reasonable control of SHDC.

29  
30           **H. Area of Concern:** Standing water on patios, stoops, and steps installed by SHDC.

31           **Standard:** After a rain, some ponding or standing water is to be expected, but such water  
32 should not remain for more than 24 hours.

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39           **III. CARPENTRY**

40           **A. Area of Concern:** Expansion and contraction of exterior trim.

41           **Standard:** Open joints between exterior trim elements, including siding and masonry, are  
42 to be expected to allow for expansion and contraction, but these are areas which should be properly  
43 caulked to exclude the entry of water. If open joints in excess of 1/4 inch in width occur, SHDC will re-  
44 caulk the open joints once during the Warranty Period. All other re-caulking is the responsibility of the  
45 Buyer.

46  
47           **B. Area of Concern:** Cracks in exterior trim boards.

1  
2           **Standard:** The exterior rough-sawn beams and posts used in the building will shrink, warp,  
3 twist, and develop cracks. This is normal, and unless it affects the structural integrity of the building, is  
4 not covered by the Warranty.

5  
6           **C. Area of Concern:** Loose or squeaky subfloors.

7  
8           **Standard:** The plywood subfloors will be glued and nailed to the floor joists to minimize  
9 squeaky floors. Some squeaks in the floors and stairs are normal, and unless the flooring is loose or the  
10 noise is unusually loud, such squeaks are not covered by the Warranty.

11  
12           **D. Area of Concern:** Joints in interior moldings.

13  
14           **Standard:** Open joints in moldings or between moldings and adjacent surfaces that do not  
15 exceed an average of 1/8 inch in width are to be expected. If open joints in excess of 1/8 inch occur,  
16 SHDC will re-caulk the open joints once during the Warranty Period.

17  
18           **E. Area of Concern:** Delamination or deterioration of exterior siding.

19  
20           **Standard:** Delamination or deterioration should not exceed manufacturer's specifications.  
21 To control cracking, remove snow from surface to stop freezing and thawing.

#### 22 23 **IV. MOISTURE PROOFING.**

24  
25           **A. Area of Concern:** Entry of rain and snow in attic.

26  
27           **Standard:** To properly ventilate the building, attic vents and/or louvers must be installed  
28 and the entry of rain and snow through the vents and/or louvers is to be expected under severe weather  
29 conditions.

#### 30 31 **V. ROOFING**

32  
33           **A. Area of Concern:** Leaks in roof or flashing.

34  
35           **Standard:** The roof or flashing should not leak unless caused by severe weather conditions.  
36 **The limited warranty does not cover any leaks or damage caused by ice dams or snow accumulation**  
37 **on the roof.** The formation of ice dams or snow drifts on the roof is a common condition in high altitude  
38 areas and is not a defect in materials or workmanship. With proper maintenance and prevention, the  
39 formation of ice dams or snow drifts can be minimized but not totally eliminated. Buyer has been advised  
40 that regular maintenance and snow removal on the roof is required to minimize the damage caused by ice  
41 dams and snow accumulation. Buyer has further been advised that the installation of heat tape or other  
42 snow melt systems may also minimize any damage.

43  
44           **B. Area of Concern:** Gutters and/or downspouts leak.

45  
46           **Standard:** Gutters and downspouts should not leak although gutters will overflow during  
47 heavy rains. Gutters can be damaged by ice dams.

48  
49           **C. Area of Concern:** Standing water in gutters.

1  
2           **Standard:** Since gutters are installed approximately level, small amounts of standing water,  
3 but not exceeding one (1) inch in depth, are to be expected. Buyer must keep the gutters free from  
4 obstructions.

5  
6 **VI. DOORS AND WINDOWS.**

7  
8       **A. Area of Concern:** Warped interior doors.

9  
10           **Standard:** Interior doors should not warp to exceed the National Woodwork  
11 Manufacturer's Association Standards (1/4 inch). Due to dry climate, all doors should be left in closed  
12 position to decrease warping. Humidifiers will help decrease warping.

13  
14       **B. Area of Concern:** Warped exterior doors.

15  
16           **Standard:** Exterior doors are subject to a great deal of stress due to the extreme difference  
17 in temperature from inside to outside and some warping is to be expected. However, the doors should  
18 remain operable and weather resistant and should not warp to exceed the National Woodwork  
19 Manufacturer's Association Standards (1/4 inch).

20  
21       **C. Area of Concern:** Shrinkage of interior door panels.

22  
23           **Standard:** Panels will shrink and expand and may expose unpainted wood surfaces. Care  
24 is needed to prevent scratching.

25  
26       **D. Area of Concern:** Garage doors fail to open properly.

27  
28           **Standard:** SHDC will install garage doors within the manufacturer's installation tolerances  
29 and the doors should operate properly. Some entrance of snow and rain is to be expected under normal  
30 circumstances .

31  
32       **E. Area of Concern:** Opening of doors and/or windows.

33  
34           **Standard:** Doors and windows should operate with reasonable ease and should lock and  
35 unlock freely. Buyer must keep the window tracks and the sliding door tracks free from dirt and  
36 obstructions.

37  
38       **F. Area of Concern:** Infiltration of air, dirt and dust around windows and doors.

39  
40           **Standard:** SHDC will properly install weather stripping around the exterior doors of the  
41 living area and the windows, but even with the weather stripping, some infiltration of air, dirt and dust is  
42 normally noticeable.

43  
44       **G. Area of Concern:** Broken glass and torn screens.

45  
46           **Standard:** There should be no broken glass or torn screens at the time title to the building  
47 is delivered to Buyer. Any broken glass or torn screens must be noted by Buyer at the time of the  
48 preoccupancy inspection.

1 **VII. FINISHES.**

2  
3 **A. Area of Concern:** Imperfections in drywall and gypsum wallboard.

4  
5 **Standard:** Slight imperfections such as hairline cracks not exceeding an average width of  
6 1/6 inch, nail pops, and seam lines are to be expected due to expansion and contraction of the materials  
7 and normal settling of the building. Imperfections caused by defects in workmanship such as excess  
8 compound in joints, trowel marks, cracked corner beads, and blisters in tape are not acceptable.

9  
10 **B. Area of Concern:** Ceramic tile cracks or comes loose.

11  
12 **Standard:** Ceramic tile should stay firmly in place and should not crack provided that the  
13 tile is not intentionally or accidentally struck with a hard object.

14  
15 **C. Area of Concern:** Cracked grout joints.

16  
17 **Standard:** Due to normal expansion and contraction of the materials, cracks appearing  
18 periodically in ceramic tile grout lines, particularly at the junction of the bathtub and tile, or showerpan  
19 and tile, are to be expected. Buyer must re-caulk these cracks as a part of his normal maintenance.

20  
21 **D. Area of Concern:** Exterior paint, stain, or varnish peels, deteriorates, or fades.

22  
23 **Standard:** Exterior paint and stain will be installed according to manufacturer's  
24 specifications and should not peel or deteriorate during the Warranty Period. Fading is to be expected and  
25 the degree is dependent upon the climatic conditions. Varnish, lacquer, or sealed stain on exterior surfaces  
26 will deteriorate rapidly and is not covered by the Warranty.

27  
28 **E. Area of Concern:** Interior varnish or lacquer finish deteriorates.

29  
30 **Standard:** Interior varnish or lacquer will be installed according to manufacturer's  
31 specifications and should not deteriorate during the Warranty Period. Fading is to be expected and the  
32 degree is dependent upon climatic conditions. Cracking and deterioration will occur if windows are left  
33 open or window coverings are not used.

34  
35 **F. Area of Concern:** Interior paint improperly applied.

36  
37 **Standard:** Interior paint will be applied in a manner that visually covers all wall, ceiling,  
38 and trim surfaces.

39  
40 **G. Area of Concern:** Visible carpet seams.

41  
42 **Standard:** Carpet seams will be visible; however, visible gaps and carpet sections with  
43 gaps running in different directions are not acceptable.

44  
45 **H. Area of Concern:** Carpet comes loose, seams separate, or excessive stretching occurs.  
46 Some stretching may occur during normal use. SHDC will re-stretch if necessary.

47  
48 **Standard:** Wall to wall carpeting should not come loose or should not be stretched  
49 excessively should the seams separate during the Warranty Period.

1  
2 **I. Area of Concern:** Minor fading of, and spots on, carpet.

3  
4 **Standard:** Exposure to light will cause spots on carpet and minor fading.

5  
6 **VIII. VENTILATION.**

7  
8 **A. Area of Concern:** Inadequate ventilation of attics and crawl spaces.

9  
10 **Standard:** The attic and crawl spaces will be ventilated in accordance with the  
11 requirements of the building code in effect in the jurisdiction in which the building is constructed at the  
12 time of construction.

13  
14 **IX. COUNTERTOPS AND CABINETS.**

15  
16 **A. Area of Concern:** Laminate surfaces and solid surfaces are burned or scratched.

17  
18 **Standard:** There should be no imperfection in the laminate or solid surfaces at the time of  
19 the Closing. Any defects must be noted by Buyer at the time of the preoccupancy inspection. Heavy  
20 objects or people should not put weight on countertops.

21  
22 **B. Area of Concern:** Cabinets and/or countertops separate from walls and/or ceiling.

23  
24 **Standard:** Gaps that do not exceed an average of 1/4 inch in width are to be expected due  
25 to normal shrinkage of the materials. The cabinet and countertop installation should remain secure  
26 notwithstanding the gap(s).

27  
28 **C. Area of Concern:** Cabinet malfunctions.

29  
30 **Standard:** Cabinet doors, drawers, and other operating parts should operate with  
31 reasonable ease under normal conditions.

32  
33 **D. Area of Concern:** Warped cabinet door and/or drawer front.

34  
35 **Standard:** Cabinet doors and drawer fronts should not warp to exceed 1/4 inch as measured  
36 from face frame to point of furthest warping with door or drawer front in closed position.

37  
38 **X. PLUMBING.**

39  
40 **A. Area of Concern:** Leakage of any kind from piping.

41  
42 **Standard:** No leaks of any kind should exist in any soil, waste, vent, or water pipe except  
43 where leakage is caused by flooded or inoperative septic system. Condensation on piping does not  
44 constitute leakage.

45  
46 **B. Area of Concern:** Faucet or valve leak.

47  
48 **Standard:** Faucets or valves should not leak because of defects in either material or  
49 workmanship. Leakage caused by worn washers and/or seals is the responsibility of the Buyer.

1  
2 **C. Area of Concern:** Fixtures do not hold water.

3  
4 **Standard:** Stoppers on fixtures should retain water for a sufficient length of time to  
5 accomplish the intended use of the fixtures.

6  
7 **D. Area of Concern:** Defective plumbing fixtures, appliances, or trim fittings.

8  
9 **Standard:** Fixtures, appliances, and fittings should comply with the manufacturer's  
10 Standards.

11  
12 **E. Area of Concern:** Stopped up sewers, fixtures, or drains.

13  
14 **Standard:** Due to expansion, contraction, and the flow of water through the pipes there will  
15 be noise emitted from the water pipes and drain system. Only "water hammer" or pipe vibrations should  
16 be brought to SHDC's attention.

17  
18 **F. Area of Concern:** Stopped up sewers, fixtures, or drains.

19  
20 **Standard:** Unless clogged due to Buyer's negligence, sewers, fixtures, and drains should  
21 operate properly to accomplish their intended function.

22  
23 **G. Area of Concern:** Frozen sill cocks.

24  
25 **Standard:** Outside sill cocks should not freeze provided that all hoses are removed and the  
26 water is shut off during the winter months. This includes removing hoses during freezes.

27  
28 **H. Area of Concern:** Porcelain or fiberglass surfaces crack or chip.

29  
30 **Standard:** There should be no cracks or chips in the porcelain or fiberglass surfaces at the  
31 time title to the building is delivered to Buyer. Any crack or chips must be noted by Buyer at the time of  
32 the preoccupancy inspection.

33  
34 **I. Area of Concern:** Plumbing pipes freeze and burst.

35  
36 **Standard:** To prevent freezing, drain, waste, vent, and water pipes should be adequately  
37 protected during normally anticipated cold weather as required by the applicable building code and as  
38 defined in ASHRAE design temperatures. Thermostats in the unit must be kept at minimum temperature  
39 of 55° or pursuant to the boiler manufacturer guidelines. Glycol flushes must be performed periodically  
40 according to manufacture's guidelines.

41  
42 **J. Area of Concern:** Water supply system does not deliver water.

43  
44 **Standard:** SHDC will properly install the service connections to the municipal water main  
45 or the private water supply, as appropriate. Private systems will be designated and installed in accordance  
46 with the applicable building, plumbing, and health codes.

47  
48 **XI. HEATING.** NOTE: THE STANDARDS IN THIS ARTICLE XI DO NOT APPLY TO  
49 BUILDINGS HEATED BY ACTIVE OR PASSIVE SOLAR ENERGY.

1  
2       **A. Area of Concern:** Insufficient heat.  
3

4               **Standard:** SHDC will install a heating system in accordance with the design conditions  
5 specified in the ASHRAE handbook which is capable of maintaining an inside temperature of 70 degrees  
6 F., as measured in the center of each room at a height of five feet above the floor, at design temperature,  
7 balancing registers, dampers, and other minor adjustments are the responsibility of Buyer.  
8

9       **XII. ELECTRICAL.**  
10

11       **A. Area of Concern:** Wiring does not carry its designated fuse load to the electrical lines.  
12

13               **Standard:** Wiring will conform to the applicable electrical code requirements and will be  
14 capable of carrying the designated load for normal residential use to the electrical box.  
15

16       **B. Area of Concern:** Lighting fixtures, switches, or electrical outlets do not work.  
17

18               **Standard:** All lighting fixtures, switches, and electrical outlets will be operative.  
19

20       **C. Area of Concern:** Lights flicker in parts of the building.  
21

22               **Standard:** Flickering may occur during starting of some motor driven equipment and is  
23 considered acceptable.  
24

25       **D. Area of Concern:** Fuses blow or circuit breakers kick out.  
26

27               **Standard:** Fuses and circuit breakers should not activate under normal usage, except in the  
28 case of ground fault interrupters which are susceptible to moisture and/or weather conditions. Ground  
29 fault interrupters are sensitive safety devices installed into the electrical system to protect against electrical  
30 shock and will be installed in accordance with the applicable electrical code.  
31

32       **E. Area of Concern:** Drafts from electrical outlets.  
33

34               **Standard:** The electrical junction box on exterior walls may produce an air flow whereby  
35 cold air can be drawn through the outlet into a room and is considered acceptable.  
36

37       **XIII. MAJOR STRUCTURAL DAMAGE.**  
38

39       In addition to the Warranty regarding the Standards of Construction, SHDC warrants that during  
40 the Warranty Period, the building will be free from Major Structural Damage. As used herein and in the  
41 Limited Warranty Agreement, "Major Structural Damage" means actual damage to the load-bearing  
42 portion of the building which affects its load bearing function and which vitally affects or is imminently  
43 likely to vitally affect the use of the building for dwelling purposes.  
44

45       For the purpose of clarifying the definition of Major Structural Damage, the following phrases will  
46 have the following meanings:  
47

48       **A. "Actual Damage"** means the structural failure of some part of the load bearing portion of  
49 the building.

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**B.** “Load-bearing portion of the building” means the framing members and other structural components that transmit the dead and live loads to the supporting ground and includes roof rafters and trusses, ceiling and floor joists, structural systems, load-bearing partitions and walls, supporting beams and headers, columns, and foundation systems and footings. The following components, among others are not considered load-bearing: roof singles and sheathing; dry wall and plaster; exterior siding; brick or stone facade; subfloor and flooring materials; wall tile and or other wall coverings; non load-bearing partitions; non-structural concrete floors in attached garages, basements, utility and laundry areas and other areas not finished by SHDC as living space, electrical, heating, cooling, and plumbing systems: appliances, equipment, and fixtures, paint; doors; windows; trim; cabinets; hardware and insulation.

**C.** A defect “affects the load bearing function” of the building when the defect endangers the capacity of the load bearing portion of the building to transmit the imposed live and dead loads to the ground or when the defect causes the load bearing portion of the building to become unstable.

**D.** A defect “vitaly affects the use of the building for dwelling purposes” when the defect is of such a serious nature that the continued use of the building for dwelling purposes is threatened. Although the building does not have to be rendered dangerous or otherwise uninhabitable, evidence that the defect has affected the value of the building does not necessarily demonstrate that the use of the building for dwelling purposes has been affected.