

**PURCHASE AND SALE AGREEMENT**

**FOR**

**BELDEN PLACE, MINTURN, COLORADO 81645**

This Purchase and Sale Agreement (the “**Agreement**”) is executed by Miners Base Camp, LLC, a Colorado limited partnership (“**Seller**”), and \_\_\_\_\_ (“**Purchaser**”).

1. Purchase and Sale. Seller hereby agrees to sell and Purchaser hereby agrees to buy for the price, and on the terms and conditions set forth in this Agreement, the following real property located in Eagle County, Colorado, legally described below (the “**Unit**” or “**Residence**”), as more particularly described herein (the Unit and Residence, are sometimes collectively referred to as the “**Property**”):

TBD (the “**Plat**”). Unit \_\_\_\_, a resubdivision of parcels \_\_\_\_, \_\_\_\_, \_\_\_\_, \_\_\_\_, \_\_\_\_, \_\_\_\_, pursuant to the Final Plat Belden Place, P.U.D. as recorded at Reception No. \_\_\_\_\_ on \_\_\_\_\_, 2024, in the office of the Clerk and Recorder, Eagle County, Colorado.

The Property has an address of 1251 Main Street, Minturn, Colorado 81645.

2. Purchase Price. The purchase price for the Property shall be \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) (the “**Purchase Price**”), payable as follows:

a. Earnest Money. Purchaser shall pay to Seller five percent (5%) of the Purchase Price (exclusive of upgrades) or \$ \_\_\_\_\_, as an earnest money deposit (the “**Earnest Money**”) within eight (8) days after mutual execution of this Agreement. An additional Earnest Money deposit in the amount of \_\_\_\_% of the Purchase Price shall be due within three days of the completion of framing and receipt of framing approval by Town of Minturn. Purchaser’s failure to timely deliver the Earnest Money to Seller shall constitute a default by Purchaser under the Agreement. Seller shall not be required to hold any Earnest Money in a separate account but shall be required to disburse the Earnest Money for the direct benefit of the development of the Property as Seller deems necessary at Seller’s sole discretion. Any interest on the Earnest Money shall accrue for the benefit of Seller, and Purchaser shall have no claim on such interest, except as otherwise specifically provided in this Agreement. The Earnest Money will be credited toward payment of the Purchase Price at the Closing of the purchase and sale of the Property (excluding interest earned on the Earnest Money, if any). **EXCEPT AS PROVIDED IN THIS AGREEMENT, THE EARNEST MONEY SHALL NOT BE REFUNDABLE.**

b. Balance. Purchaser shall pay the balance of the Purchase Price, plus any other amounts owing by Purchaser to Seller under this Agreement (including without limitation any outstanding sums due under any Change Orders, as such term is defined in Section 4(g) below) at Closing in cash or certified funds, subject to adjustments under Section 8 below.

c. Personal Property. The Purchase Price shall include those items of personal property set forth in **Exhibit A** and incorporated herein, as well as heating and plumbing fixtures, HVAC system equipment, water heater, ventilating fans, lighting, refrigerator/freezer, microwave oven, cook top range/range hood and fan, garbage disposal, fire alarm and dishwasher. The Residence is being sold unfurnished and will contain only the appliances and equipment itemized in this Agreement including **Exhibit A** and in the Plans and Specifications, defined below.

d. Financial Capability of Purchaser. Purchaser understands and agrees that this Agreement is not contingent upon Purchaser obtaining financing for Closing or Purchaser represents that on the date of execution of this Agreement, Purchaser has obtained financing and waives any implied financing contingency.

e. Legal Review Period. Purchaser shall have until 5:00 P.M. Mountain Time on the seventh (7<sup>th</sup>) day after execution of this Agreement, for Purchaser's legal review. If Purchaser determines that Purchaser does not wish to purchase the Unit, in Purchaser's sole and subjective discretion, Purchaser may terminate this Agreement by giving written notice of termination to Seller on or before the expiration of the legal review deadline. Upon receipt of the Notice of Termination, this Agreement shall terminate, be of no further force and effect, and all Earnest Money shall be returned to Purchaser (if any). If no Notice of Termination is given, then this Agreement shall remain in full force and effect and the first Earnest Money deposit shall be immediately due and payable per paragraph 2(a).

### 3. Construction of the Residence.

a. Substantial Completion. Seller shall substantially complete construction of the Residence within two (2) years of execution of this Agreement by Purchaser. Purchaser understands and agrees that Seller shall not be liable for any delays legally recognized as excusable, as described in Sections 7(e), 12(b), or 12(c) below. The Residence will be deemed substantially complete for all purposes under this Agreement on the date a temporary or conditional certificate of occupancy or any other document evidencing that the Residence may be legally occupied, whether subject to conditions or otherwise, is issued for the Residence by an appropriate governmental authority.

b. Plans and Specifications. The Residence will be constructed by Seller in substantial conformance with plans and specifications (the "**Plans and Specifications**") prepared by TAB Associates, Inc. (the "**Architect**"). Purchaser acknowledges prior receipt of the copy of the Plans and Specifications. Seller reserves the right, at its option, to substitute or change fixtures, equipment and materials, and make other minor modifications to the Plans and Specifications as Seller determines if the Architect certifies that the quality and value of the Residence remains substantially unaffected by such substitutions and changes.

c. Interior Selections. Purchaser acknowledges and agrees that Seller has completed all interior finish selections for the Residence, subject to the changes discussed in **Exhibit B** which the parties anticipate to be the only changes to the interior finishes selected by Seller. All further changes to the interior specifications from those already selected or set forth in **Exhibit B** shall be documented by Change Order pursuant to Section 4(g) below. Purchaser shall pay one hundred percent (100%) of the price of all such changes to Seller upon Purchaser's

selection of changes to any interior items, which sums shall be non-refundable to Purchaser and not considered part of the Earnest Money. Seller, in its sole discretion, may deny any request for upgrades to the interior finishes.

d. Square Footage. Statements of approximate square footages of the Residence may be made in the Plans and Specifications. Purchaser acknowledges, however, that square footage calculations may be made in a variety of manners, and as long as the Residence is constructed substantially in accordance with the Plans and Specifications, Purchaser will have no right to rescind this Agreement, nor will Purchaser be entitled to any claim for breach of this Agreement or adjustment of the Purchase Price, on account of alleged discrepancies in square footage calculations. For example, the architectural method measures square footage from the outside edge of the exterior walls to the mid-point of the interior walls and is often used as the measurement in architectural plans. Another method, typically used in condominium maps and recorded condominium declarations, varies from the architectural method and measures square footage from the inside edge of the exterior walls to the inside edge of the interior walls. PURCHASER HEREBY ACKNOWLEDGES THAT PURCHASER HAS REVIEWED AND ACCEPTED THE PLANS AND SPECIFICATIONS AND HAS INDEPENDENTLY VERIFIED THE SQUARE FOOTAGES CONTAINED THEREIN.

e. Control of Construction. Purchaser acknowledges that control, direction and supervision of all construction personnel at the Property will lie exclusively with Seller and that Purchaser may not issue any instructions to, or otherwise interfere with, construction personnel. Purchaser will not perform any work or contract with Seller's contractors or other builders, contractors, interior decorators, or others to perform work in or about the Property until title is transferred to Purchaser at the Closing. Purchaser will indemnify, defend and hold harmless Seller, and its contractors, subcontractors, employees and agents, against any claims, demands, loss, damages, liability, or other expense that Seller may incur by reason of Purchaser's breach of any provision of this Section.

f. Deviations. It is understood and agreed that Seller is not building the Residence to the precise specifications or designs of any marketing materials or to the specifications of Purchaser. Any marketing materials of Seller are displayed for illustrative purposes only and shall not constitute an agreement or commitment on the part of Seller to deliver the Residence in exact accordance with any such marketing materials or to the specifications of Purchaser. Furthermore, Purchaser understands and acknowledges that the Residence may contain conditions, or undergo changes, which during the ordinary course of construction, may result in minor deviation from the Plans and Specifications, and may also result in cosmetic or structural changes from the originally intended manner of construction. Such conditions may result from the type of materials used or available, the process and procedures used for construction of the Residence, and may include, without limitation, conditions such as: (i) variations in the texture and thickness of stucco or other textured or smooth finishing, including cracks in such materials; (ii) settlement cracks in drywall, concrete, stucco, flatwork and block walls; (iii) twisting and warping of materials, including without limitation, wood and plastics, which can result in cracks, bulges and other types of imperfections; (iv) deviations in color, grain and texture that may occur in wood products, concrete, tile, granite, stone and other finish

materials; (v) shrinkage, swelling, expansion or settlement of construction materials; and (vi) conditions resulting from normal wear, tear or deterioration.

g. Change Orders. Any changes to the Plans and Specifications, including any interior finishes, requested by Purchaser (each a “**Change Order**”) shall be made on the Seller’s Change Order form and are subject to prior approval by Seller in writing, upon such terms and conditions as Seller and Purchaser may mutually agree. Seller shall be under no obligation to consent to any Change Order requests. Upon mutual execution of the Change Order, Purchaser shall be required to pay all direct and indirect costs arising from the requested change order, including but not limited to: (i) interest on Seller’s construction loan due to delays in Closing caused or contributed to by the additional work; (ii) the actual costs of any additional labor and materials required to perform the Change Order work, plus a fifteen percent (15%) administrative fee; and (iii) the administrative costs incurred by Seller in securing any additional permits or authorizations from any applicable governmental body. All funds for Change Orders are to be paid directly to Seller and used for completion of the changes requested, without obligation to have any unused funds returned to Purchaser upon the termination of this Agreement, unless such termination shall result from Seller’s breach of contract or unless otherwise specified in this Agreement. Seller shall be under no obligation to commence construction of any agreed-upon changes to the Plans and Specifications until receipt of all funds due.

h. Inspection by Purchaser. Upon reasonable advance request, Seller will allow Purchaser and Purchaser’s authorized representatives to tour the Property while it is under construction. Purchaser acknowledges that during construction of the Residence or any other construction upon the Property, hazardous conditions and insurance and security requirements prevent Purchaser and Purchaser’s representatives from entering the construction site unless accompanied by an authorized representative of Seller. Any tour of the construction site by Purchaser and Purchaser’s representatives will be at their own risk. Purchaser and Purchaser’s representatives waive all claims against Seller and its contractors, subcontractors, employees and agents and their respective employees and agents for personal injury or property damage caused by any person or thing during such a tour. Purchaser will indemnify, defend and hold harmless Seller and its contractors, subcontractors, employees and agents against any claims, demands, loss, damages, liability or other expense arising out of such tour.

4. Limited Warranty. Seller warrants that all work shall be performed in a good and workmanlike manner, in material conformance with the Plans and Specifications including the recommendations of the design professionals identified therein, and all work shall be in conformance with all applicable provisions of the zoning ordinances of any governmental authority having jurisdiction over the Residence. Except as provided by Colorado law, Seller warrants that all materials incorporated in and made a part of the structure of the Residence shall be new as of the date of installation and shall remain free from defects in workmanship or quality for a period of one (1) year from the date of issuance by an appropriate governmental authority of a permanent or final certificate of occupancy for the Residence. Seller represents that Seller will cause to be remedied, by repair or replacement, any structural defects in the Residence which appear within one (1) year after the date of Closing and which result from faulty material or workmanship, provided that Purchaser gives Seller written notice of any such defect within ten (10) days after Purchaser’s discovery of the defect. Any such notice shall be addressed to Seller

at the address following Seller's signature below, or such other address for notice furnished to Purchaser in accordance with Section 13 below. Purchaser's sole remedy (in lieu of all remedies implied by law or otherwise) against Seller in connection with such defects shall be to require Seller to correct the defect in material or workmanship. Seller shall not be responsible for any defects where the cause is determined to result from Purchaser's actions or negligence. ***Seller's warranty hereunder is nontransferable and in no event shall any subsequent purchaser of the Residence be entitled to any claim for repair, replacement or otherwise of any part of the Residence, including without limitation the structural components of the Residence, except as may be required by law. Additionally, by executing this Agreement Purchaser agrees to include the foregoing confirmation of non-transferability of Seller's warranty in any subsequent purchase and sale agreement for the Residence.***

This limited warranty does not extend or relate to any items of tangible personal property in the Residence (whether or not such property is attached to or installed in the Residence) including, without limitation, any range, oven, range hood and fan, microwave, garbage disposal, dishwasher, refrigerator, hot water heater, components of the heating system and any fire, alarm or other life-safety or security system installed in or servicing the Residence. Seller will assign to the Purchaser at Closing any unexpired warranties Seller has received from the manufacturers of such tangible personal property, to the extent such warranties are assignable. Seller shall not be responsible for the performance of any such manufacturer under the manufacturer's warranties. WITH REGARD TO ANY APPLIANCES OR SUCH OTHER ITEMS OF TANGIBLE PERSONAL PROPERTY, WHETHER OR NOT WARRANTED BY MANUFACTURERS, SELLER DISCLAIMS ALL WARRANTIES INCLUDING, BUT NOT LIMITED TO, THOSE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

PURCHASER AGREES TO COMPLY WITH ALL MAINTENANCE MANUALS AND OTHER DOCUMENTS AND RECOMMENDATIONS PROVIDED TO PURCHASER WITH RESPECT TO THE INSPECTION, OPERATION AND ROUTINE MAINTENANCE OF ALL SYSTEMS, EQUIPMENT, AND SIMILAR ITEMS (INCLUDING, BUT NOT LIMITED TO, MECHANICAL, ELECTRICAL, PLUMBING, STRUCTURAL AND EXTERIOR SYSTEMS AND IMPROVEMENTS) MADE PART OF OR SERVING THE PROPERTY. PURCHASER UNDERSTANDS AND AGREES THAT IF PURCHASER FAILS TO FOLLOW THE INSPECTION, MAINTENANCE AND REPAIR REQUIREMENTS AND STANDARDS CONTAINED IN SUCH MANUAL OR MATERIALS DELIVERED TO PURCHASER AND SUCH FAILURE CAUSES, WHETHER IN WHOLE OR IN PART, DAMAGE TO THE PROPERTY OR OTHER PROPERTY, THE RESULTING DAMAGE SHALL NOT BE COVERED BY THIS LIMITED WARRANTY AND SHALL FURTHER BE DEEMED NOT TO BE THE RESULT OF A DESIGN OR CONSTRUCTION DEFECT.

EXCEPT AS STATED IN THE FIRST PARAGRAPH OF THIS LIMITED WARRANTY ABOVE, SELLER MAKES NO WARRANTY OR REPRESENTATION OF ANY NATURE, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THOSE OF WORKMANLIKE CONSTRUCTION, HABITABILITY, DESIGN, CONDITION, OR QUALITY AS TO THE PROPERTY UNDERLYING THE PROPERTY, THE RESIDENCE, OR THE OTHER IMPROVEMENTS CONSTITUTING THE PROPERTY, AND, TO THE EXTENT PERMITTED BY LAW, SELLER SPECIFICALLY EXCLUDES SUCH MATTERS

IN CONSIDERATION OF THE EXPRESS WARRANTIES GIVEN UNDER THIS AGREEMENT.

EXCEPT AS EXPRESSLY DISCLOSED BY THE SOILS REPORT DESCRIBED IN SECTION 20(p) BELOW, SELLER MAKES NO REPRESENTATION OR WARRANTY CONCERNING ANY GEOLOGICAL OR ENVIRONMENTAL MATTERS AND SPECIFICALLY EXCLUDES GEOLOGICAL AND ENVIRONMENTAL MATTERS FROM ANY WARRANTIES GIVEN UNDER THIS AGREEMENT.

Except as otherwise provided in this limited warranty, Purchaser purchases the Property “as is” and assumes the risk of damage occurring in the Residence after Closing.

The provisions of this Section shall survive Closing.

5. Title. Title will be marketable in Seller at the time of Closing, subject to the matters set forth in **Exhibit C** attached hereto and made a part hereof, the Association Documents referred to in Section 6 below and those matters shown on the Plat. At least Thirty (30) days prior to the anticipated Closing date, Seller, at its expense, will give to Purchaser a title insurance commitment (the “**Commitment**”) issued by a title insurance company of Seller’s choice (the “**Title Company**”) to insure the title to the Property in Purchaser’s name for the amount of the Purchase Price. After the Closing, Seller, at its expense, will cause the Title Company to issue to Purchaser a title insurance policy in conformance with the Commitment. If the Commitment discloses the existence of any defects in title, other than those set forth in **Exhibit C**, including the standard printed exceptions appearing in the Title Commitment, and such defects render title to any portion of the Lot unmarketable and the defects are not waived by Purchaser, Purchaser must give Seller written notice of the title defects within ten (10) days after receipt of the Commitment. Thereafter, Seller will have forty-five (45) days in which Seller may elect to cure the defects and render title marketable or provide title insurance against the defects, and the Closing shall be postponed accordingly. If Seller fails to cure the defects or provide title insurance after timely notice of the defects, Purchaser, as its sole remedy, may elect, within fifteen (15) days after the end of the forty-five (45) day period, either (a) to terminate this Agreement, in which event all amounts paid to Seller under this Agreement will be returned to Purchaser (other than amounts paid because of changes to the Plans and Specifications, including Change Orders and upgrades as shown on any Worksheets, requested by Purchaser and allowed by Seller, in its sole discretion, for which Purchaser will continue to be liable), and neither party will have any further obligations under this Agreement; (b) with Seller’s consent, to grant one or more additional periods of time within which Seller shall continue to attempt to cure, remove or obtain title insurance protection against the exceptions; or (c) to accept title with all defects as shown in the Commitment, without adjustment in the Purchase Price. If Purchaser fails to give timely notice of termination, Purchaser will be deemed to have elected to accept title as shown in the Commitment and to have waived all defects. Purchaser expressly relinquishes and waives any and all other remedies, claims, demands, and causes of action at law or in equity against Seller for failure to deliver marketable title. No equitable title to the Property will pass to Purchaser until Closing.

6. Property Owners' Association Matters.

a. Association. Purchaser acknowledges that as owner of the Property, Purchaser shall be subject to the provisions of and restrictions contained in the Belden Place Declaration of Covenants, Conditions and Restrictions (“**Declarations**”) and the Plat, shall automatically become a member of the Belden Place Owners Association, Inc. (the “**Association**”), will be required to pay assessments to the Association, and shall be governed by the Association’s articles of incorporation, bylaws, and rules and regulations from time to time in effect.

b. Other Restrictions. Purchaser also acknowledges that Purchaser shall be subject to all other instruments and documents recorded with the Clerk and Recorder of the Eagle County, Colorado, which concern and restrict the use, occupancy and maintenance of the Property.

c. Documents. The governing documents of the Association including, without limitation, the Belden Place Declarations; the articles of incorporation, bylaws and rules and regulations of the Association; minutes, if any, of both the Association owners’ meetings and Association directors’ meetings during the 12-month period immediately preceding the date of this Agreement; and financial documents consisting of the Association’s annual budget, annual balance sheet, if any; and annual income and expenditures statement, if any, (collectively, the “**Association Documents**”). Purchaser may access the Association documents at: <https://www.beldenplacecolorado.com/>

7. Closing.

a. Closing Date. The Closing shall occur after substantial completion of the Residence at a date, hour and place designated by Seller; or, at Seller’s or Seller’s agent’s option, Closing will be accomplished by an exchange of the required documents by certified mail or overnight express courier service selected by Seller. Seller, or Seller’s agent, will give to Purchaser written notice of the date of Closing at least ten (10) days in advance of the scheduled Closing date, which date may be extended by subsequent written notice of Seller provided such subsequent notice is at least five (5) days in advance of the new scheduled Closing date. A certification by one of Seller’ employees or agents that notice was given to Purchaser will be conclusive for purposes of proving that notice was in fact given. If Purchaser fails to receive any notice because Purchaser failed to advise Seller of any change of address or because Purchaser failed to pick up correspondence, Purchaser will not be relieved of Purchaser’s obligation to proceed with Closing on the Closing date unless Seller agrees in writing to postpone the Closing date. Purchaser understands that Seller is not required to reschedule or to permit a delay in Closing.

b. Purchaser’s Failure to Close on Closing Date. In the event Purchaser fails to close the transaction contemplated by this Agreement on the Closing date for any reason other than for a delay desired, requested or caused by Seller (including Purchaser’s failure to obtain or procure any document or instrument required at Closing), Purchaser shall further be required to pay Seller, at the time of Closing, interest computed at the annual rate of eighteen percent (18%) on the outstanding balance of the Purchase Price from the Closing Date through and including the date of actual Closing. In addition to Seller’s right to receive interest as aforesaid to compensate Seller for costs and inconvenience due to the delay in Closing, if Closing is delayed by acts or

omissions of Purchaser, Purchaser shall be deemed in default under the Agreement and Seller reserves all rights, at Seller's sole option, to also pursue all remedies available to Seller under the Agreement as a result of a Purchaser's default in failing to timely close, which remedies shall be cumulative, unless otherwise expressly provided.

c. Closing Procedures. The Closing shall be held in Eagle County, Colorado, at a time and place specified by Seller in the notice given under Section 7(a) above, unless extended pursuant to Section 7(a) above, or at such other time and place as shall be mutually acceptable to Seller and Purchaser. At the Closing, the parties shall take the following actions:

i. Seller shall deliver to Purchaser an executed and acknowledged special warranty deed to the Property subject only to those matters as set forth in Section 5 of this Agreement and any other title exceptions waived by Purchaser or permissible pursuant to Section 5 above;

ii. Seller shall convey title to the personal property and fixtures installed within the Residence by a bill of sale;

iii. Purchaser shall pay the balance of the Purchase Price as required by Section 3(b) above; and

iv. Purchaser and Seller shall execute and deliver such other documents, pay such other amounts, and take such other actions as may be necessary to accomplish the Closing and carry out their obligations under this Agreement.

d. Closing Costs. Purchaser agrees to pay the cost of any endorsements to the Commitment or title policy, the cost of Purchaser's lender's title insurance coverage, the documentary fee on the deed conveying the Property, the fee for recording the deed, any sales taxes on the personal property conveyed and any transfer assessment or tax imposed upon the sale of the Property by any governmental, quasi-governmental or private entity including, without limitation, the real estate transfer assessment for The Town of Minturn in the amount of One Percent (1%) of the Purchase Price at Closing. Seller shall pay the base premium for title insurance coverage for Purchaser in the amount of the Purchase Price. If, at the request of Purchaser, the Closing is held in a place other than the Eagle County, Colorado, Purchaser shall pay at Closing all costs of whatever kind or nature incurred by Seller or its agents in accommodating Purchaser, including, without limiting the generality of the foregoing, all costs of any courier service or postage. Seller and Purchaser agree to pay all other costs associated with the Closing that are customarily paid by sellers and purchasers in similar transactions in Eagle County, Colorado, including, without limitation, one-half of the Title Company's closing fee. Purchaser agrees to pay Seller a \$500 utility deposit at Closing that will be refunded when Seller is satisfied that all utilities have been successfully transferred to Purchaser's account of responsibility. If Purchaser has not caused all utilities serving the Property to be transferred into Purchaser's name with Purchaser being solely financially responsible for same within ten (10) days of Closing, Seller shall have the right to terminate all utility services not transferred, without liability of any nature to Purchaser for disruption of such services and Purchaser shall thereafter be solely responsible for causing all disrupted utility services to be restored to the Property at



Purchaser's sole costs and expense, including without limitation costs of connection and all penalties, if any.

e. Punch List. Items of uncompleted construction, which do not materially affect occupancy, will not delay the Closing. Purchaser and Seller may, at Purchaser's option, prepare a list (the "**Punch List**") of any incomplete items within the Residence within five (5) days prior to the date of Closing. Seller will endeavor to complete the items on the Punch List at Seller's expense within the later to occur of sixty (60) working days after preparation of the Punch List or sixty (60) working days after the date of Closing, subject to extension for such period as Seller is delayed for reasons outside of its control. Purchaser understands that paving, exterior cement work, landscaping and final exterior finish may not be completed when a temporary or conditional certificate of occupancy is issued and that Seller will complete such paving, exterior cement work, landscaping, utilities and infrastructure, and final exterior finish work as soon as practicable thereafter.

8. Adjustments. The following items shall be adjusted as of the date of Closing:

a. Taxes and Assessments. Real property taxes and assessments for the year of Closing, generally as a percentage of based upon the most current assessment and levy, and all assessments or charges imposed on the Property by any governmental, quasi-governmental or private entity including, without limitation, the Association, shall be apportioned to the date of Closing. If real property taxes have not been assessed specifically to the Property in such prior year, Seller may reasonably estimate the amount of such taxes attributable to the Property, which estimate shall be apportioned to the date of Closing and shall be considered a final settlement.

b. Association's Working Capital Reserve. At Closing, Purchaser shall pay to the Association an amount equal to two (2) times the then current monthly installment of the annual Common Expense Assessment, as defined by and determined in accordance with the Declarations.

c. Fees for Extended Closing Date. In the event Purchaser fails to close the transaction contemplated by this Agreement on the Closing date for any reason other than for a delay desired, requested or caused by Seller (including Purchaser's failure to obtain or procure any document or instrument required at Closing), the adjustments set forth in Sections 8(a) and 8(b) above shall be made as of the original Closing date. In addition, Purchaser will pay to Seller interest computed at the annual rate of eighteen percent (18%) on such amounts, which interest shall be paid by Purchaser at the actual Closing date, for the period beginning on the original Closing date and continuing through the actual Closing date.

9. Possession. Purchaser will have possession of the Property upon completion of the Closing. After Purchaser takes possession, portions or phases of construction may remain uncompleted. Seller and its agents, contractors, and employees will have the right to enter on the Property as necessary to complete punch list work, and Purchaser acknowledges that construction activities may take place on or within the Property after Purchaser takes possession of the Property. Seller and its agents, contractors and employees will take reasonable measures relative to the safety of Purchaser and Purchaser's lessees, family, guests and invitees. Purchaser acknowledges that Purchaser's possession will constitute Purchaser's agreement that Purchaser will indemnify and

hold harmless Seller and its agents, contractors and employees from and against any and all loss or liability on account of such entry by Purchaser or such other persons. The terms and covenants of this Section will survive the Closing. Further, the terms and covenants of this Section are supplemental to and are not substituted for the covenants, conditions, and restrictions set forth in the Beaver Creek Covenants.

10. **Brokers.** Each party represents to the other that no real estate broker other than Mick Kelly of LIV Sotheby's International Realty (the "**Broker**") and \_\_\_\_\_ (the "**Cooperating Broker**") has any claim for compensation or expenses as a result of this transaction and each party shall indemnify the other against any claims for commissions or other compensation by any other broker or finder with whom the indemnifying party has dealt. Seller agrees to compensate the Broker and the Cooperating Broker for services rendered in this transaction not to exceed 2.5% for the Cooperating Broker. Purchaser, by signing this Agreement, acknowledges prior, timely receipt of notice that the Broker and its agents are agents of Seller, unless such agency relationship is modified by an addendum to this Agreement. In addition, Purchaser acknowledges that the agency relationship between the Purchaser and the Cooperating Broker has previously been disclosed to the Purchaser and that the Cooperating Broker is not acting as an agent of the Seller. Purchaser further acknowledges that certain principals of Seller may also hold an ownership interest in Broker. Broker and Cooperating Broker are not parties to this Agreement. The joinder of neither Broker nor Cooperating Broker is required to amend or terminate this Agreement.

#### 11. Remedies Upon Default.

a. Seller's Default Before Closing. If Seller is in default under this Agreement before Closing, and if, within fifteen (15) business days after receipt from Purchaser of written notice of the default, Seller fails to commence the steps necessary to cure the default and to complete the cure within a reasonable time, and if Purchaser is in compliance with all its obligations under this Agreement, then Purchaser may terminate this Agreement by written notice to Seller. In that event, the Earnest Money (without interest) and all monies paid to Seller for Change Orders shall be returned to Purchaser, and the parties will have no further liability to each other except for those obligations which, by their express terms, survive termination of this Agreement. Alternatively, Purchaser may waive such default and proceed to Closing, and Purchaser shall have the right of specific performance to enforce Seller's obligation to close. Notwithstanding the foregoing, Purchaser shall have all rights and remedies available to Purchaser by law or in equity with respect to any failure by Seller to substantially complete construction of the Residence in accordance with the timing set forth in this Agreement.

b. Purchaser's Default Before Closing. If Purchaser is in default before Closing, then subject to Section 11(c) below, Seller's sole remedy shall be to terminate this Agreement. In that event, Seller shall be entitled to retain the Earnest Money and any interest as liquidated damages as well as all payments for any Change Orders. Purchaser and Seller agree that if Purchaser is in breach of Purchaser's obligations under this Agreement, it will be difficult to determine Seller's damages, which include (without limitation) the lost opportunity of selling the Property to another purchaser while it was under contract to Purchaser. Consequently, the

liquidated damages provided in this Agreement are a fair and reasonable estimate of Seller's damages.

Further, if Seller elects to terminate this Agreement following a default by Purchaser, and if, at the time of Seller's exercise of that remedy, there remains outstanding and unpaid any invoice for work and/or materials benefiting the Property and ordered by Purchaser, then Seller shall have the right, in addition to any other rights and remedies reserved or allowed for Seller under this Agreement or by law, to pay those invoices to ensure that no mechanic's or materialman's lien will be imposed against the Property, and to charge Purchaser for all amounts so paid by Seller. Any amounts paid by Seller for such work or materials will bear interest at an annual rate equal to eighteen percent (18%), beginning the fifth day after Seller gives notice to Purchaser of the amount paid by Seller and due from Purchaser.

c. Exceptions to Limitations on Seller's Remedies. The limitations on Seller's remedies above shall not apply in the event of a default by Purchaser arising from Purchaser's recording of this Agreement (or a memorandum of it) in violation of Section 15 below.

d. Default After Closing. In the event of a default by either party arising after Closing, the non-defaulting party shall have all rights and remedies permitted by law, subject to the express limitations set forth in other provisions of this Agreement.

e. Effect of Closing. Except as provided by Colorado law and any limitations imposed thereby, claims brought by Purchaser in connection with this Agreement must be brought no later than one (1) year after the Closing Date. Upon conveyance of the Property and completion of the Closing, Seller and Purchaser shall be released from their respective obligations under this Agreement except those that, by their express terms, survive Closing.

## 12. Risk of Loss; Casualty.

a. Allocation of Risk. Seller shall bear the risk of loss to the Property until the Closing. After Closing, Purchaser shall bear all such risk of loss.

b. Termination Following Casualty. If casualty by fire or otherwise occurring prior to Closing damages more than 30% of the Residence, then Seller shall have the right to terminate this Agreement by giving notice to Purchaser within twenty (20) days after the date of the casualty damage. With any such notice, Seller shall return to Purchaser the Earnest Money, Purchaser acknowledging that Purchaser shall have no other remedy for Seller's failure to proceed to Closing because of such damage, and the parties shall be released from all other obligations under this Agreement. If (i) the casualty damage exceeds the percentage limitations set forth above, and if Seller does not give Purchaser notice of Seller's intent to terminate this Agreement within twenty (20) days as provided above, or (ii) the casualty damage does not exceed such percentage limitations set forth above, then in either case, Seller shall repair the damage and rebuild the Residence as soon as reasonably practicable, and the Closing shall be delayed as necessary to allow the completion of such repair and rebuilding work.

The Architect shall be the sole party responsible for determining the percentage of damages for purposes of this Section.

c. Eminent Domain. No taking by eminent domain of a portion of the Property that does not exceed 30% of the Lot, or substantially interfere with or diminish the practical enjoyment and use by Purchaser of the Residence shall be deemed grounds for termination of this Agreement. In the event, however, that a taking by eminent domain results in a taking of more than 30% of the Lot or diminishes the practical enjoyment and use of the Residence, prior to the Closing date, this Agreement shall be deemed to have automatically terminated, in which event the Earnest Money and all other amounts paid to Seller in connection with this Agreement (including Change Order and upgrade costs) shall be returned to Purchaser, and neither party shall have any further obligations under this Agreement. Notwithstanding the foregoing, Purchaser may independently assert any separate claims against the condemning authority.

### 13. Notices.

a. Form. All notices or deliveries required under this Agreement shall be hand-delivered or given by facsimile or email transmittal, regular mail, or overnight courier directed to the address of Purchaser and Seller set forth under their signatures. All notices so given shall be considered effective, if hand-delivered, when received; if delivered by facsimile or email transmittal, upon delivery; if delivered by courier, one business day after timely deposit with the courier service, charges prepaid; or if mailed, three days after deposit, first class postage prepaid, with the United States Postal Service. Either party may change the address to which future notices shall be sent by notice given in accordance with this Section. Seller's agent or Broker may send notices at the direction of and in place of Seller.

b. Purchaser Designated for Notice. If there is more than one Purchaser, Seller shall be required to give notice to only one of those parties. Purchaser shall designate the party to receive notice, and if no one party is designated, Seller shall be deemed to have given adequate notice with notice given in accordance with this Section to any one of the parties comprising Purchaser.

14. Assignment. Purchaser shall not, and has no right to, assign, sell or transfer Purchaser's interest in this Agreement without Seller's prior written consent, which consent may be arbitrarily or unreasonably withheld, in Seller's sole discretion. If Purchaser is a corporation, or other business entity, trustee or nominee, a transfer of any equitable, beneficial, legal or principal interest in or of Purchaser will constitute an assignment of the Agreement requiring Seller's consent. Seller's consent may be conditioned in any manner it desires, in its sole discretion, including but not limited to payment to Seller of a percentage of the newly assigned purchase price. The fact that Seller refuses to give its consent to an assignment shall not give rise to any claim for any damages against Seller. Any purported or attempted assignment of this Agreement without Seller's written consent, including, without limitation, the inclusion of the Purchaser's purchase interest in the Property in a real estate multiple listing service, shall be voidable and shall place Purchaser in default under Section 11 above, at the option to Seller.

Seller may assign its rights and delegate its duties under this Agreement to any affiliate of Seller without Purchaser's consent. If any assignment by Seller (or its successors or assigns) shall be for the purpose of securing a lender to Seller (or its successors or assigns), Purchaser's rights under this Agreement shall, at the option of such lender, be subject and subordinate to the rights

of such lender. In the event of a conflict between this Section and any other Section of this Agreement, this Section shall prevail.

15. Prohibition Against Recording. Neither this Agreement nor any memorandum or notice of it shall be recorded. If Purchaser violates this restriction, the event of recording shall be considered a default by Purchaser, and Seller shall have all remedies available to it as a result of such default, including, without limitation, terminating this Agreement and retaining the Earnest Money and any interest earned on it, and bringing an action for damages and/or equitable relief. The recording of this Agreement or any memorandum or notice of it shall not be considered for any purpose as constituting a cloud or defect upon the marketability of Seller's title to the Property or any other property adjacent to or in the vicinity to the Property.

16. SPECIAL DISTRICTS. SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO GENERAL OBLIGATION INDEBTEDNESS THAT IS PAID BY REVENUES PRODUCED FROM ANNUAL TAX LEVIES ON THE TAXABLE PROPERTY WITHIN SUCH DISTRICTS. PROPERTY OWNERS IN SUCH DISTRICTS MAY BE PLACED AT RISK FOR INCREASED MILL LEVIES AND TAX TO SUPPORT THE SERVICING OF SUCH DEBT WHERE CIRCUMSTANCES ARISE RESULTING IN THE INABILITY OF SUCH A DISTRICT TO DISCHARGE SUCH INDEBTEDNESS WITHOUT SUCH AN INCREASE IN MILL LEVIES. PURCHASER SHOULD INVESTIGATE THE SPECIAL TAXING DISTRICTS IN WHICH THE PROPERTY IS LOCATED BY CONTACTING THE COUNTY TREASURER, BY REVIEWING THE CERTIFICATE OF TAXES DUE FOR THE PROPERTY, AND BY OBTAINING FURTHER INFORMATION FROM THE BOARD OF COUNTY COMMISSIONERS, THE COUNTY CLERK AND RECORDER, OR THE COUNTY ASSESSOR.

17. Potable Water Source. THE SOURCE OF POTABLE WATER FOR THE PROPERTY IS A WATER PROVIDER, WHICH CAN BE CONTACTED AS FOLLOWS:

Town of Minturn  
301 Boulder St., #309  
Minturn, CO 81645  
Telephone: (970) 827-5645  
Website: [www.minturn.org](http://www.minturn.org)

18. Enforcement; Mandatory Alternative Dispute Resolution.

**IMPORTANT NOTICE:** The procedures set forth below ("**Procedures**") require the mediation and arbitration of disputes, and therefore affect important legal rights. Purchaser should review these Procedures carefully, and consult with legal counsel of their own choosing about the meaning and effect of these Procedures.

a. Agreement to Avoid Litigation. Seller and Purchaser agree to encourage the amicable resolution of disputes involving the Property, without the emotional and financial costs of litigation. Accordingly, Seller and Purchaser covenant and agree that those claims, grievances or disputes described herein (each a "**Claim**") shall be resolved using the procedures set forth below in lieu of filing suit in any court.

b. Claims. All Claims arising out of or relating to the interpretation, application or enforcement of this Agreement, or the rights, obligations and duties of either party under this Agreement, or relating to the design or construction of improvements on the Property shall be subject to the provisions herein.

c. Notice. Either party having a Claim (“**Claimant**”) against the other party (“**Respondent**”) (collectively, the “**Parties**”) shall notify the Respondent in writing (the “**Notice**”), stating plainly and concisely:

i. The nature of the Claim, including any third parties involved and Respondent’s role in the Claim;

ii. The legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

iii. Claimant’s proposed remedy; and

iv. That Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim, and that Claimant will cooperate with Respondent in Respondent’s efforts to resolve the Claim.

d. Negotiation and Mediation.

i. The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation.

ii. If the Parties do not resolve the Claim within thirty (30) days of the date of the Notice (or within such other period as may be agreed upon by the Parties) (“**Termination of Negotiations**”), Claimant may pursue legal and equitable claims in the Eagle County District Court. Both parties agree to jurisdiction and venue of the Claims in Eagle County District Court, Eagle County, State of Colorado.

e. Tolling Agreement. Purchaser and Seller agree that, so long as the notice of a Claim is given as provided in Section 18(c) above prior to the expiration of any statute of limitations affecting said Claim imposed by this Agreement or applicable law, then if said statute of limitations shall have expired during the time that the parties have submitted the Claim to the procedures of this Section 18, same shall be tolled until ten (10) days after the date of the Termination of Negotiations.

19. Corporations, Partnerships and Associations, and Liability.

a. Corporations. If Purchaser is a corporation, Purchaser shall deliver to Seller at or prior to Closing a copy of a resolution of Purchaser, duly adopted and certified by the secretary of Purchaser as required by the laws of the state of Purchaser’s incorporation, authorizing the purchase of the Property, together with all trade name affidavits and other documents required by Colorado law to enable Purchaser to hold title to the Property. Purchaser represents that at Closing Purchaser will be in good standing and authorized, as necessary, to conduct its business in Colorado.

b. Partnership or Association. If Purchaser is a partnership, limited liability company, joint venture, or other association, Purchaser shall deliver to Seller at or prior to Closing a copy of any approval required by Purchaser's organization documents, certified by the appropriate representative of Purchaser, together with all registration forms, trade name affidavits, and other documents required to be filed in the office of the Colorado Secretary of State, the Colorado Department of Revenue, the Clerk and Recorder for the Eagle County, or otherwise required under Colorado law to enable Purchaser to hold title to the Property. Purchaser represents and warrants that at Closing Purchaser will be in good standing and authorized, as necessary, to conduct its business in Colorado.

c. Joint and Several Liability. If Purchaser is comprised of two or more parties, they shall be jointly and severally obligated under this Agreement.

20. Representations, Warranties and Understandings of Purchaser.

a. Acknowledgment. Purchaser acknowledges that it has reviewed and understands all documents referenced in this Agreement. Further, Purchaser acknowledges that Seller has advised Purchaser to obtain legal counsel to review all aspects of the transaction contemplated by this Agreement, and to represent Purchaser in connection with the examination of title and the Closing.

b. No Representations. NO BROKER, SALESPERSON OR OTHER PERSON HAS BEEN AUTHORIZED TO GIVE ANY INFORMATION OR MAKE ANY REPRESENTATIONS OTHER THAN THOSE CONTAINED IN WRITING WITHIN THE MARKETING, ADVERTISING, INFORMATIONAL OR ANY OTHER MATERIALS PROVIDED BY SELLER, AND IF GIVEN OR MADE, SUCH INFORMATION OR REPRESENTATIONS SHALL NOT BE RELIED UPON AS HAVING BEEN AUTHORIZED BY SELLER.

c. No Investment Representations. Purchaser acknowledges that neither Seller nor any of its Brokers, agents, affiliates, contractors or employees has made any warranties or representations upon which Purchaser has relied concerning: (i) the investment, appreciation or income-producing value of the Property; (ii) the possibility or probability of profit or loss resulting from ownership of the Property; (iii) the tax benefits or consequences that may result from the purchase of the Property; or (iv) the rental or other income potential of the Property.

d. No Financing Contingency. Purchaser understands that Purchaser will be obligated to pay all cash at Closing under this Agreement, and that Purchaser's obligations under this Agreement to purchase the Property will not depend on Purchaser obtaining financing secured by a deed of trust from any third party (a "Lender") or any conditions imposed by such Lender, including, without limitation, that the Property be appraised at any specified value. Purchaser shall be solely responsible for making Purchaser's own financial arrangements to enable Purchaser to pay Seller for the Property and Purchaser acknowledges that any downward fluctuation in the value of the Property is solely the Purchaser's risk.

e. No Environmental Representation. PURCHASER ACKNOWLEDGES AND AGREES THAT SELLER HAS NOT MADE, AND SELLER HEREBY SPECIFICALLY

DISCLAIMS, ANY WARRANTY OR REPRESENTATION CONCERNING ANY GEOLOGICAL OR ENVIRONMENTAL MATTERS PERTAINING TO THE LOT OR THE RESIDENCE.

f. No Interest in Amenities. No interest in or right to use any amenity located near the Property, such as golf courses, swimming pools, spas, workout facility, club facilities, parking facilities, concierge services or the like, shall be conveyed to any Owner pursuant to this Agreement. The owners of those facilities, if any, shall have the right, in their sole discretion, to remove, relocate, discontinue operation of, restrict access to, charge fees for the use of, sell interests in or otherwise deal with such assets in their sole discretion without regard to any prior use of or benefit to Purchaser. Purchaser acknowledges that the primary inducement for Purchaser to enter into this Agreement is the Property itself, and not any amenities or common elements.

g. No View Easement. Notwithstanding any representation made to Purchaser to the contrary by Seller, any real estate agency or any agent, employee or representative of Seller, or any other person, and by signing this Agreement, Purchaser acknowledges and agrees, there is no easement or other right, express or implied, for the benefit of Purchaser or the Property for light, view or air included in or created by this Agreement or as a result of Purchaser owning the Property. Purchaser represents to Seller that it has in no way relied upon any statements or representations as to the location, height, design, dimensions or other elements of any development in the vicinity of the Property in connection with Purchaser's purchase of the Property. Any such elements depicted on models or other renderings cannot be relied upon as accurate.

h. Rental of Property. Purchaser acknowledges that the rental and all other uses of the Property will be limited by the local zoning restrictions and all Association Documents.

i. Materials. Purchaser understands that the wood products included as part of the Residence are natural materials subject to the laws of nature, and therefore, some warpage, twisting, cracking and splitting may occur. Purchaser acknowledges that noise transference is greater for wood floors than for carpeted floors. Purchaser further acknowledges that certain features, items and equipment (including, without limitation, paint, tile, stone and/or mechanical equipment) are subject to change or variation naturally or by the manufacturer and may vary from those depicted on the Plans and Specifications.

j. Insulation of Premises. Seller and Purchaser hereby acknowledge pursuant to Section 460.16 of the Federal Trade Commission Regulations regarding labeling and advertising of home insulation, that the types, thicknesses and R-Values of insulation presently anticipated to be installed in the Residence at the time of Closing shall be as set forth below:

<u>Location</u>	<u>Type of Insulation</u>	<u>Thickness</u>	<u>R-Value</u>
Walls	Batt	5 ½ inches	26
Concrete Walls	Batt/Foam	5 ½ inches	21
Roof	Batt	12 inches	50



The “R-Value” indicates the resistance of insulation to heat flow. The higher the R-Value, the greater the insulating power. Seller has not made its own independent determination of the R-Value data provided to Seller by the insulation manufacturer.

k. Radon Gas. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Colorado. Additional information regarding radon and radon testing may be obtained from a municipal public health unit. Purchaser acknowledges that Seller and the Association have not performed any testing or evaluation of, and make no representations or warranties, express or implied, concerning the past, current or future presence or absence of radon gas in the Residence. The correction or mitigation of any radon gas accumulation shall be the sole responsibility of Purchaser. Notwithstanding the foregoing, to the best of Seller’s actual knowledge, radon is not present in the Residence in excess of 4pCi/L.

l. Mold. Mold is a naturally occurring living organism that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it. Mold has been found in buildings in Colorado at levels that may pose health risks to occupants. Additional information regarding mold and mold testing may be obtained from the applicable county public health department. Purchaser acknowledges that Seller and the Association have not performed any testing or evaluation of, and make no representations or warranties, express or implied, concerning the past, current or future presence or absence of mold in the Residence. The correction or mitigation of any mold shall be the sole responsibility of Purchaser. Notwithstanding the foregoing, to the best of Seller’s actual knowledge, mold is not present in the Residence.

m. Carbon Monoxide Alarms. IN ACCORDANCE WITH COLO. REV. STAT. § 38-45-102, SELLER ASSURES PURCHASER THAT AN OPERATIONAL CARBON MONOXIDE ALARM IS INSTALLED WITHIN FIFTEEN FEET OF THE ENTRANCE TO EACH ROOM LAWFULLY USED FOR SLEEPING PURPOSES OR IN A LOCATION AS SPECIFIED IN ANY BUILDING CODE ADOPTED BY THE STATE OR ANY LOCAL GOVERNMENT ENTITY.

n. RESPA Disclosure. As required by the Real Estate Settlement Procedures Act of 1974, Purchaser acknowledges that Seller has not directly or indirectly required Purchaser, as a condition of sale, to purchase either a fee owner’s or mortgagee’s title insurance policy from any particular title company. If Purchaser does not wish Seller to purchase the Title Insurance Policy from the Title Company as provided in this Agreement, Purchaser may elect to obtain such title insurance from a title company of his or her choice and shall pay, at Closing, that portion, if any, of the Title Insurance Policy premium in excess of what the premium would have been if Purchaser had accepted the Title Insurance Policy offered by Seller.

o. Colorado Common Community Disclosure:

**THE PROPERTY IS LOCATED WITHIN A COMMON INTEREST COMMUNITY AND IS SUBJECT TO THE DECLARATION OF COVENANTS FOR**

**SUCH COMMUNITY. THE OWNER OF THE PROPERTY WILL BE REQUIRED TO BE A MEMBER OF THE OWNER'S ASSOCIATION FOR THE COMMUNITY AND WILL BE SUBJECT TO THE BYLAWS AND RULES AND REGULATIONS OF THE ASSOCIATION. SUCH DECLARATION, BYLAWS, AND RULES AND REGULATIONS WILL IMPOSE FINANCIAL OBLIGATIONS UPON THE OWNER OF THE PROPERTY, INCLUDING AN OBLIGATION TO PAY ASSESSMENTS OF THE ASSOCIATION. IF THE OWNER DOES NOT PAY THESE ASSESSMENTS, THE ASSOCIATION COULD PLACE A LIEN ON THE PROPERTY AND POSSIBLY SELL IT TO PAY THE DEBT. THE DECLARATION, BYLAWS, AND RULES AND REGULATIONS OF THE COMMUNITY MAY PROHIBIT THE OWNER FROM MAKING CHANGES TO THE PROPERTY WITHOUT AN ARCHITECTURAL REVIEW BY THE ASSOCIATION (OR A COMMITTEE OF THE ASSOCIATION) AND THE APPROVAL OF THE ASSOCIATION. PURCHASERS OF PROPERTY WITHIN THE COMMON INTEREST COMMUNITY SHOULD INVESTIGATE THE FINANCIAL OBLIGATIONS OF MEMBERS OF THE ASSOCIATION. PURCHASERS SHOULD CAREFULLY READ THE DECLARATION FOR THE COMMUNITY AND THE BYLAWS AND RULES AND REGULATIONS OF THE ASSOCIATION.**

p. Notice Regarding Soils Condition. Purchaser acknowledges that Purchaser has been advised by Seller, and understands, that the soils within the State of Colorado consist of both expansive soils and low-density soils which will adversely affect the integrity of the Property if not properly maintained, and may cause concrete flatwork and paving to crack or heave due to settling, expansion and contraction. Purchaser hereby acknowledges receipt of a summary report of soils conditions attached as **Exhibit D** to this Agreement. Purchaser acknowledges that Seller makes no representations or warranties as to the accuracy of the soils report. Purchaser is solely responsible for consulting with an independent geotechnical engineer to evaluate the quality of the soils and the desirability of the Lot and Purchaser agrees to undertake obtaining all such evaluations as a material inducement to Seller entering into this Agreement.

q. Surface Estate Disclosure. **THE SURFACE ESTATE OF THE PROPERTY MAY BE OWNED SEPARATELY FROM THE UNDERLYING MINERAL ESTATE, AND TRANSFER OF THE SURFACE ESTATE MAY NOT INCLUDE TRANSFER OF THE MINERAL ESTATE. THIRD PARTIES MAY OWN OR LEASE INTERESTS IN OIL, GAS, OR OTHER MINERALS UNDER THE SURFACE, AND THEY MAY ENTER AND USE THE SURFACE ESTATE TO ACCESS THE MINERAL ESTATE.**

**THE USE OF THE SURFACE ESTATE TO ACCESS THE MINERALS MAY BE GOVERNED BY A SURFACE USE AGREEMENT, A MEMORANDUM OR OTHER NOTICE OF WHICH MAY BE RECORDED WITH THE COUNTY CLERK AND RECORDER.**

**THE OIL AND GAS ACTIVITY THAT MAY OCCUR ON OR ADJACENT TO THIS PROPERTY MAY INCLUDE, BUT IS NOT LIMITED TO, SURVEYING, DRILLING, WELL COMPLETION OPERATIONS, STORAGE, OIL AND GAS, OR PRODUCTION**

**FACILITIES, PRODUCING WELLS, REWORKING OF CURRENT WELLS, AND GAS GATHERING AND PROCESSING FACILITIES.**

**THE BUYER IS ENCOURAGED TO SEEK ADDITIONAL INFORMATION REGARDING OIL AND GAS ACTIVITY ON OR ADJACENT TO THIS PROPERTY, INCLUDING DRILLING PERMIT APPLICATIONS. THIS INFORMATION MAY BE AVAILABLE FROM THE COLORADO OIL AND GAS CONSERVATION COMMISSION.**

r. Materiality. Purchaser acknowledges and agrees that the disclaimers contained in this Section 20 are material to Seller entering into the Agreement and, as such, Purchaser specifically acknowledges Purchaser's awareness of the each disclosure and agrees to advise any subsequent purchaser of the Property of same. Purchaser agrees to hold Seller harmless from and to indemnify Seller against any and all claims arising by or through Purchaser based on any matter contained in this Section 20, and neither Purchaser nor anyone acting on behalf of Purchaser shall make any conflicting representations with respect to such matters.

21. Miscellaneous.

a. Binding Effect. This Agreement shall be binding upon and inure to the benefit of Purchaser and Seller and their respective heirs, personal representatives, successors and permitted assigns.

b. Reporting of Transaction. The Title Company or Seller shall prepare promptly after the Closing, a Form 1099-B with the Internal Revenue Service, if applicable under Section 6045(e)(2) of the Internal Revenue Code, as amended. The Title Company will also prepare the real property transfer declaration required under Colo. Rev. Stat. §39-14-102, as amended from time to time.

c. FIRPTA Affidavit. At the Closing, Seller shall deliver to Purchaser a certificate that Seller is not a non-resident alien as defined in the Internal Revenue Code and Treasury Regulations promulgated thereunder as necessary to comply with Section 1445 of the Treasury Regulations.

d. State of Colorado Withholding Requirements. Seller agrees to execute necessary documents and to comply with requirements of the State of Colorado relating to the withholding of proceeds of the Purchase Price.

e. Entire Agreement. THIS AGREEMENT EMBODIES AND CONSTITUTES THE ENTIRE UNDERSTANDING BETWEEN THE PARTIES WITH RESPECT TO THE TRANSACTIONS CONTEMPLATED HEREIN AND ALL PRIOR OR CONTEMPORANEOUS AGREEMENTS, UNDERSTANDINGS, REPRESENTATIONS AND STATEMENTS (ORAL OR WRITTEN) ARE MERGED IN THIS AGREEMENT. NEITHER THIS AGREEMENT NOR ANY PROVISION HEREOF MAY BE WAIVED, MODIFIED, AMENDED, DISCHARGED OR TERMINATED EXCEPT BY AN INSTRUMENT IN WRITING SIGNED BY THE PARTY AGAINST WHOM THE ENFORCEMENT OF SUCH WAIVER, MODIFICATION, AMENDMENT, DISCHARGE OR

TERMINATION IS SOUGHT AND THEN ONLY TO THE EXTENT SET FORTH IN SUCH INSTRUMENT. NO BROKER, SALESMAN, EMPLOYEE OR AGENT OF SELLER HAS AUTHORITY TO MODIFY THE TERMS HEREIN NOR ANY AUTHORITY WHATSOEVER TO MAKE ANY REFERENCE, REPRESENTATION OR AGREEMENT NOT CONTAINED HEREIN, NOR SHALL ANY SUCH REFERENCE, REPRESENTATION OR AGREEMENT BE BINDING UPON SELLER OR IN ANY WAY AFFECT THE VALIDITY OF THIS AGREEMENT OR FORM ANY PART HEREOF. PURCHASER ACKNOWLEDGES THAT NO REPRESENTATIONS HAVE BEEN MADE BY ANY BROKER, OR BY SELLER, ITS AGENTS OR EMPLOYEES OR IN ANY MARKETING OR OTHER MATERIALS IN ORDER TO INDUCE PURCHASER TO ENTER INTO THIS AGREEMENT, OTHER THAN AS EXPRESSLY STATED HEREIN. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, PURCHASER ACKNOWLEDGES THAT NEITHER SELLER, NOR ANY BROKER, NOR SELLER'S AGENTS OR EMPLOYEES HAVE (I) MADE ANY REPRESENTATION OR STATEMENT TO PURCHASER OF THE INVESTMENT POTENTIAL OR RESALE AT ANY FUTURE DATE, AT A PROFIT OR OTHERWISE, OF THE SUBJECT PROPERTY; (II) RENDERED ANY ADVICE OR EXPRESSED ANY OPINIONS TO PURCHASER REGARDING ANY TAX CONSEQUENCES OF OWNERSHIP OF THE SUBJECT PROPERTY, OR (III) MADE ANY STATEMENT OR REPRESENTATION NOT SET FORTH IN THIS AGREEMENT. PURCHASER ACKNOWLEDGES THAT PURCHASER HAS READ AND UNDERSTANDS EACH AND EVERY PART OF THIS AGREEMENT. THE PROVISIONS OF THIS SECTION 21(E) SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT AND THE CLOSING.

f. Survival of Representations, Warranties and Covenants. All representations, warranties and covenants set forth herein shall survive the Closing.

g. Section Headings. The Section headings are inserted only for convenient reference and do not define, limit or prescribe the scope of this Agreement.

h. Force Majeure. The time required hereunder for any obligation imposed upon Seller will be extended for any delays recognized under Colorado law as legally permissible delays, including, but not limited to, delays caused by weather, inability to obtain materials, labor shortages, strikes, acts of God, governmental regulations including but not limited to public health orders related to the COVID-19 pandemic, contractor's breaches of contract, court orders and Purchaser change orders permitted by Seller in Seller's sole discretion.

i. Governing Law. This Agreement shall be construed under the provisions of Colorado law.

j. Number and Gender. The term "Purchaser" in this Agreement, or any pronoun used in place of that term, shall include the masculine, feminine, singular, plural, individuals, partnerships or corporations where applicable.

k. Severability. If any terms, covenants, or provisions of this Agreement shall be illegal or unenforceable for any reason, the same shall not invalidate any other term, covenants,

or provisions, and all of the remaining terms, covenants, and provisions shall remain in full force and effect.

l. Construction of Agreement. Seller and Purchaser intend that all provisions of this Agreement be given full effect and be enforceable strictly in accordance with their terms. If, however, any part of this Agreement is not enforceable in accordance with its terms or would render other parts of this Agreement or this Agreement in its entirety unenforceable, the unenforceable part or parts are to be judicially modified, if at all possible, to come as close as possible to the expressed intent of such part or parts and still be enforceable without jeopardy to other parts of this Agreement, or this Agreement in its entirety, and then are to be enforced as so modified. If the unenforceable part or parts cannot be so modified, such part or parts shall be unenforceable and considered null and void in order that the mutual paramount goal that this Agreement is to be enforced to the maximum extent possible strictly in accordance with its terms can be achieved. Without limiting the generality of the foregoing, if the mere inclusion in this Agreement of language granting to Seller certain rights, remedies and powers, or waiving, releasing or limiting any of Purchaser's rights, remedies or powers or Seller's obligations, results in a final determination (after giving effect to the above judicial modification, if possible) that Purchaser has the right to cancel this Agreement and receive a refund of the Earnest Money, such offending rights, powers, limitations, releases and/or waivers shall be struck, canceled and rendered unenforceable, ineffective, and null and void. Under no circumstances shall either Purchaser or Seller have the right to cancel this Agreement solely by reason of the inclusion of certain language in this Agreement, unless the specific purpose of that language is to grant a right of cancellation.

m. Effective Date. The effective date of this Agreement shall be the later of the dates on which Seller and Purchaser execute this Agreement. Notwithstanding the foregoing, this Agreement shall not be binding upon Seller until executed by an authorized representative of Seller and the full amount of the Earnest Money has been received by Seller and any checks provided by Purchaser for the Earnest Money have cleared.

n. Reservation Holder. Any current Reservation Holder that moves forward with the Seller to Purchase a Residence at any price offered by Seller to Purchaser below the Established/Published Phase 1 pricing for Belden Place Residences is not allowed to sell their Residence for 2-years from Closing.

o. Brokerage Disclaimer. Buyer acknowledges and agrees that neither LIV Sotheby's International Realty, nor any of its brokers, agents, officers, owners, or employees, (collectively, the "Brokerage Firm") are authorized to make any representations, warranties, covenants or agreements of any kind with respect to the Development, including any Unit, and that the Brokerage Firm has in fact not made any verbal, written or other representations, warranties, covenants or agreements of any kind whatsoever to or with Buyer, or Buyer's agent, relating to, among other things: (1) Any present or future view or location advantage or benefit, including without limitation, the preservation of permanence of any view or location advantage to or from any Unit; (2) Any tax or economic benefits, requirements or burdens of any kind associated with the purchase or ownership of a Unit; (3) The presence or absence of any particular soil, geological or environmental condition relation to a Unit, or within the Development or

surrounding area; (4) The timing and quality of the construction, availability or delivery of the Unit, improvements or amenities to be constructed on or made available in connection with the purchase of ownership of a Unit; (5) The presence or absence of any present or future inconvenience, nuisance or danger of any kind resulting from, among other things: sound; odor; light or view or the absence or obstruction thereof; wildlife; construction or development activities; or the use, maintenance or operation of any facilities or amenities by any neighboring property owners or developers, the Seller or others; (6) Any ability to rent or lease a Unit, or any ability to use the Unit for particular purpose or for a particular period of time; (7) The status of title to the Unit; or (8) The square footage of the Unit. As to all of the foregoing matters, Buyer hereby acknowledges and agrees that it is Buyer's sole responsibility to analyze and fully satisfy itself with respect to such matters and all other due diligence matters relating to the purchase and ownership of the Unit. Buyer agrees that if it proceeds with the purchase of the Unit, that it is doing so based solely on its own investigation of the facts, circumstances and potential of the Unit.

Buyer acknowledges and agrees to the foregoing as evidenced by the initial's below.

\_\_\_\_\_

\_\_\_\_\_

*(Signatures on following pages)*

The parties hereby EXECUTE this Purchase and Sale Agreement on the dates shown below.

**SELLER:**

**Miners Base Camp, LLC, a Colorado limited liability company**

By: \_\_\_\_\_  
Name: Donald Hartley Barnes Jr., Manager

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

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

Telephone: (248) 770-1000  
Email: dbarnes@belletire.com

**PURCHASER:**

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

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

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

Telephone: (\_\_\_\_\_) \_\_\_\_\_  
Email: \_\_\_\_\_

**LISTING BROKER:**

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

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

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

Telephone: (\_\_\_\_\_) \_\_\_\_\_  
Email: \_\_\_\_\_

**COOPERATING BROKER:**

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

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

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

\_\_\_\_\_

Telephone: (\_\_\_\_\_) \_\_\_\_\_

Email: \_\_\_\_\_



**Exhibit A**  
**(TBD)**

**Exhibit B**  
**(Interior Selections)**

**Exhibit C**  
**(Title Commitment Exceptions)**

**Exhibit D**  
**(Soils Condition)**