

# CONTRACT TO BUY AND SELL REAL PROPERTY

The Colorado Real Estate Commission has not approved this Contract.

It has important legal and tax consequences. Seller's Attorney prepared it.

**Legal, tax or other advisors should be consulted before signing.**

1. **Parties and Property:** The undersigned identified below as Purchaser ("Purchaser") agrees to buy and the undersigned identified below as Seller ("Seller") agrees to sell, on the terms and conditions set forth in this Contract, the real estate described as follows:

A portion of the tract of land described at Reception No. 20050107319 on record at the Clerk and Recorder Office of Larimer County, located in the Southwest Quarter of Section 12, Township 9 North, Range 69 West of the 6th Principal Meridian, County of Larimer, State of Colorado being more particularly described as follows:

Considering the West line of the said Southwest Quarter of said Section 12 as bearing South 00°00'00" East and with all bearings contained herein relative thereto:

**BEGINNING** at the Southwest corner of said Section 12; thence, North 89°43'31" East, 361.15 feet along the South line of said Section to a point on the southwesterly prolongation of the centerline of the North Poudre Ditch; thence, as it now exists by the following eleven courses and distances, North 39°50'06" East, 216.34 feet; thence, North 46°45'19" East, 126.60 feet; thence, North 61°40'48" East, 85.70 feet; thence, North 79°51'53" East, 132.42 feet; thence, South 82°05'26" East, 167.95 feet; thence, North 84°28'59" East, 109.06 feet; thence, North 67°51'24" East, 204.63 feet; thence, North 63°44'14" East, 165.16 feet; thence, North 52°40'49" East, 91.66 feet; thence, North 29°08'02" East, 89.53 feet; thence, North 08°38'01" East, 295.43 feet; thence, departing said centerline South 89°19'25" West, 49.38 feet; thence, North 57°43'00" West, 1,800.00 feet to a point on the West line of the said Southwest Quarter; thence, South 00°00'00" East, 1,842.81 feet to the Point of Beginning.

The above West Parcel contains 39.508 acres more or less, and being subject to a right of way for the North Poudre Ditch over the 50.00 feet lying Northerly and Westerly of the above described centerline, and also being subject to rights of way for County Roads over the Westerly 30.00 feet and the Southerly 30.00 feet thereof, County of Larimer, State of Colorado.

Also known as: A portion of 11754 N County Road 15, Wellington, CO 80549

A portion of Larimer County Parcel Number: 99120-00-045 ("Property").

2. **Inclusion/Exclusions:** The purchase price shall include the following items: **NONE.**

(a) **Fixtures. NONE.**

(b) **Personal Property. NONE.**

(c) **Water Rights.** The following described water rights: **NONE.** Colorado Source of Water Addendum SWA35-8-07 is attached and hereby incorporated by reference.

3. **Purchase Price:** The purchase price set forth below (the "Purchase Price"), which is the sum of the highest bid obtained at public auction held on October 24, 2009 together with a Buyer's premium which shall be 10% of the highest bid for non-internet bids and 11% for internet bids, shall be payable in U. S. Dollars by Purchaser as follows:

a.	Highest Bid at Auction:	\$ _____
	Plus 10% Buyer's Premium (non-internet):	\$ _____
	Plus 11% Buyer's Premium (internet):	\$ _____
	<b>Total Purchase Price</b>	<b>\$ _____</b>

b. **Earnest Money:** \$10,000.00 in the form of good funds, as non-refundable earnest money deposit and part payment of the Purchase Price, payable to and to be held by the Broker and/or Closing Agent in its trust account on behalf of both Seller and Purchaser. The parties authorize delivery of the earnest money deposit from the Broker to the Closing Agent at or before closing.

c. **Cash at Closing:** The balance of the Purchase Price, after credit for the earnest money, shall be paid by Purchaser at closing in the manner set forth in Section 4 below.

d. **Loan:** Purchaser is not prohibited from attempting to obtain a loan for the Purchase Price but this Contract is **not contingent** on Purchaser obtaining a loan.

4. **Good Funds:** All payments required at closing shall be made in funds that comply with all applicable Colorado laws.

5. **Evidence of Title:** Seller shall cause to be furnished to Purchaser, at Seller's expense, a current commitment for owner's title insurance policy in an amount equal to the Purchase Price. Purchaser acknowledges the receipt of the title insurance commitment order number **598-H0253084-081-KA3** prepared by **Heritage Title Company** ("title documents"), and accepts the condition of the title as reflected in the title documents and exceptions on Schedule B - Section 2 subject to fulfillment of the requirements set forth on Schedule B - Section 1 as previously provided to Purchaser. Purchaser understands and agrees that he or she is purchasing a portion of the property described in the above named title insurance commitment and that a new title insurance commitment will be issued revising the legal description to that described in Paragraph 1 here.

6. **Title Advisory:** The title documents affect the title, ownership and use of the Property. Additionally, other matters not reflected in the title documents may affect the title, ownership and use of the Property, including without limitation boundary lines and encroachments, area, zoning, unrecorded easements and claims of easements, leases and other unrecorded agreements, and various laws and governmental regulations concerning land use, development and environmental matters. The surface estate may be owned separately from the underlying mineral estate and transfer of the surface estate does

not necessarily include transfer of the mineral rights. Third parties may hold interests in oil, gas, other minerals, geothermal energy or water on or under the Property, which interests may give them rights to enter and use the Property. Such matters may be excluded from the title insurance policy.

Purchaser acknowledges that an adequate opportunity to consult legal counsel with respect to all such matters has been given prior to the auction or Purchaser has elected to waive the right to investigate such matters.

7. **Date of Closing:** The date of closing shall be **November 23, 2009** or an earlier date as the parties may mutually agree. Closing shall occur at **Heritage Title Company, 4532 McMurry Avenue, Suite 210, Fort Collins, CO 80525, Telephone: 970-493-3051** ("Closing Agent"), at a time selected by Broker. Possession of the Property shall be delivered to Purchaser on the closing date and time.

8. **Transfer of Title:** Subject to payment at closing as required herein, Seller shall execute and deliver a General Warranty Deed at closing, conveying the Property free and clear of all liens and encumbrances except and subject to patent limitations, easements, covenants, restrictions and limitations of use, reservations, building and zoning regulations, mineral leases, conveyances or reservations, existing as well as recorded rights-of-way, real property taxes and assessments for the year 2009 and all subsequent years and all other exceptions on schedule B-Section 2 reflected in the title documents.

9. **Special Districts and Defined:** **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.**

Purchaser accepts the effect of the Property's inclusion in such special taxing district(s) if any.

10. **Condition of Improvements:** Purchaser has inspected the Property, improvements and all items of personal property (if applicable) and made a careful evaluation of its condition. Seller makes the sale of the Property and improvements without representation or warranty. Purchaser acknowledges and represents that they have made such review and investigation of the Property and the improvements thereon as they deem necessary and advisable and have consulted such records, outside resources, consultants and engineers as they deem appropriate and that the purchase is based solely upon their review, investigation and consultation. Purchaser relies solely upon his or her inspection of the Property

and voluntarily accepts said Property and every part thereof in the condition it now exists, in “as is” condition with all faults, known or unknown, including latent or hidden defects. Purchaser acknowledges that it is Purchaser’s responsibility to inspect and investigate such premises, consult such outside records and sources, consultants and engineers, as they deem appropriate to determine whether the Property complies with applicable local, state and federal environmental and hazardous material laws, building, zoning codes and regulations prior to executing this Contract. Purchaser acknowledges that there may be water wells on the Property that are not registered with the State of Colorado. Seller makes no representations of the condition, quality, legal authority to use, or future use, if any, of any water wells on the Property. Seller makes no representations of the acreage or square footage of the Property or improvements on it and Purchaser waives any requirement of Seller to disclose square footage.

11. **Insurability:** Purchaser has investigated or waives the right to determine the availability, terms, conditions and premium for property insurance.

12. **Closing Costs, Documents and Services:** Purchaser and Seller shall pay their respective closing costs, except as otherwise provided herein. Purchaser and Seller shall sign and complete all customary or required documents at or before closing. Fees for real estate closing and settlement services provided by the Closing Agent shall be divided equally between Seller and Purchaser. Seller shall pay the documentary fee/transfer tax if any. Seller will pay for a standard title policy in the amount of the Purchase Price.

13. **Prorations:** The following shall be prorated to **Closing Date**, except as otherwise provided:

**Taxes:** Any general real estate taxes for the year of closing, based on the most current mill levy and assessment available. Special improvement district taxes, if any will not be prorated but will be payable by the Purchaser when assessed.

**Homeowners Dues, Water, Sewer and Irrigation Water:** Homeowners association dues, water, sewer and irrigation water, if any, will be prorated as of the date of Closing.

14. **Condition and Damage to Property:** Except as otherwise provided in this Contract, the Property shall be delivered in the condition existing as of the date of this Contract except for ordinary wear and tear.

a. **Casualty Insurance:** In the event improvements located on the Property, if any, shall be damaged by fire or other casualty prior to the time of closing, in an amount of not more than ten percent (10%) of the total Purchase Price, then Seller shall be obligated to repair any such improvements prior to closing and no adjustment shall be made. In the event such damage is not repaired, or the damage is in excess of ten percent (10%) of the total purchase price, then Purchaser shall be entitled to terminate this Contract by delivering written notice of termination to Seller. Should Purchaser elect to carry out this Contract despite such damage, Purchaser shall be entitled to a credit, at closing, for all the insurance proceeds resulting from such damage to the Property and inclusions payable to Seller, if any,

plus the amount of any deductible provided for in such insurance policy, such credit not to exceed the total Purchase Price.

b. Damage, Inclusion and Services: Should any inclusions or services (including systems and components of the Property such as heating and plumbing) fail or be damaged between the date of this Contract and closing or possession, whichever shall be earlier, then Seller shall be liable for the repair or replacement of such inclusions or services with a unit of similar size, age and quality, or at Seller's sole election, an equivalent credit from the Purchase Price for the reasonable market value of the used inclusion as of the date of this Contract, less any insurance proceeds received by Purchaser covering such repair or replacement.

15. Time of Essence/Remedies: Time is of the essence hereof. If any note or check received as earnest money hereunder or any other payment due hereunder is not paid, honored or tendered when due, or if any other obligation hereunder is not performed or waived as herein provided, there shall be the following remedies:

a. If Purchaser Is In Default: If Purchaser is in default, Seller may elect to treat this Contract as cancelled, in which case all payments and things of value received hereunder shall be forfeited and retained on behalf of Seller and the Seller may recover such damages as may be proper or the Seller may elect to treat this Contract as being in full force and effect and Seller shall have the right to specific performance or damages, or both. The Broker shall have an independent right to pursue collection of the commission from the Purchaser. If the Purchaser fails to close by the closing date set forth above and an extension of the closing date is granted by Seller, then Purchaser shall pay \$100.00 per day as an extension fee for every day beyond the established closing date until the Contract is closed and the sale finalized.

b. If Seller Is In Default: If Seller is in default, Purchaser may elect to treat this Contract as cancelled, in which case all payments and things of value received hereunder shall be returned and Purchaser may recover such damages as may be proper.

c. Costs and Expenses: Anything to the contrary herein notwithstanding, in the event of any litigation arising out of this Contract, the court shall award the prevailing party, including the Broker, if applicable, all reasonable costs and expenses, including attorneys fees.

16. Earnest Money Dispute: Notwithstanding any termination of this Contract, Purchaser and Seller agree that, in the event of any controversy regarding earnest money and things of value held by the Broker or Closing Agent, unless mutual written instructions are received by the holder of the earnest money and things of value, the Broker or Closing Agent shall not be required to take any action but may await any proceeding or, at the Broker or Closing Agent's option and sole discretion, may interplead all parties and deposit any moneys or things of value into the above court and shall receive court costs and reasonable attorney's fees.

17. Gender Provision: As used herein, the singular includes the plural and the masculine gender the feminine and neuter genders as the context may require.

18. **Merger:** The parties mutually agree that all matters pertinent to the transaction herein set forth in the form of verbal or written advertisements, solicitation for bids and negotiations between the parties prior to execution of this Contract have been merged in the terms of this Contract and no contrary matters survive. The terms and conditions of sale set forth in the bidder registration agreement and the Real Estate Auction Terms are incorporated herein by reference and shall continue to apply unless inconsistent with a provision of this Contract and, in the case of inconsistent provisions, then those set forth in this Contract shall apply.

19. **Not Assignable:** This Contract is not assignable by Purchaser without Seller's prior written consent. Except as so restricted, this Contract shall inure to the benefit of and be binding upon the heirs, personal representatives, successors and assigns of the parties.

20. **Contingencies:** **This is an Absolute sale. It is expressly understood and agreed that Purchaser's obligations are absolute and not contingent upon obtaining financing, performing an inspection, or any other contingency.**

21. **Soils and Geologic Hazards.** Purchaser acknowledges that the soils within the State of Colorado may consist of expansive, consolidating and/or low density materials that can adversely affect the integrity of improvements. Purchaser further acknowledges that other geologic hazards, including, but not limited to, rock falls, mudflows, unstable or potentially unstable slopes, seismic effects, radioactivity and/or ground subsidence, may adversely affect any improvements. Seller makes no warranties or representations of any kind concerning any geologic hazards or soils conditions affecting, or which may affect the Property and that notwithstanding any other provision contained in this Agreement, Purchaser is purchasing the Property "AS IS," without any representations or warranties, express or implied. Purchaser has been advised to obtain a comprehensive soils investigation for the Property. Purchaser shall be solely responsible for satisfying himself concerning the condition of soils.

22. **Lead Based Paint:** All parties to this Contract acknowledge that this Property is vacant land. No Lead Based Paint Disclosure is required. Purchaser waives the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

23. **Megan's Law:** If the presence of a registered sex offender is a matter of concern to Purchaser, then Purchaser understands that Purchaser must contact local law enforcement officials regarding obtaining such information.

24. **Fair Housing:** The Seller and Purchaser acknowledge that in the sale, purchase or exchange of real property a real estate agent has the responsibility to offer equal service to all clients and prospects without regard to race, color, religion, national origin, sex, elderliness, familial status or handicap.

25. **Methamphetamine Laboratory Disclosure.** If the Property is residential, and Seller knows that methamphetamine was ever manufactured, processed, cooked, disposed of, used or stored at the Property, Seller is required to disclosure such fact. No disclosure is required if the Property was

remediated in accordance with state standards and other requirements are fulfilled pursuant to § 25-18.5-102, C.R.S. Purchaser further acknowledges that Purchaser has the right to engage a certified hygienist or industrial hygienist to test whether the Property has ever been used as a methamphetamine laboratory. In the event that the Property has been used as a methamphetamine laboratory, Purchaser may deliver written notice to Seller, on or before Closing, to terminate this Contract.

26. **Recommendation of Legal and Tax Counsel.** By signing this document, Purchaser acknowledges that the respective broker has advised that this document has important legal consequences and has recommended the examination of title and consultation with legal and tax or other counsel before bidding on the Property.

27. **Counterparts and Facsimiles.** This Contract may be signed in one or more counterparts, each of which is deemed to be an original, and all of which shall together constitute an original Contract. Documents obtained via facsimile machines shall also be considered as originals.

28. **Colorado Foreclosure Protection Act.** Seller acknowledges that, to Seller’s current actual knowledge, the Property is not in foreclosure. If the Colorado Foreclosure Protection Act (Act) applies, then a different Contract that complies with the provisions of the Act is required, and this Contract shall be void and of no effect. The Act generally requires that (1) the Property is residential, (2) any loan secured by the Property is at least thirty days delinquent or in default, (3) Buyer does not reside in the Property for at least one year and (4) Buyer is subject to the Act. The parties are further advised to consult with their own attorney.

**Dated effective as of this 24<sup>th</sup> day of October, 2009.**

**Purchaser(s):**

\_\_\_\_\_  
(Sign)

\_\_\_\_\_  
(Sign)

\_\_\_\_\_  
(Print Purchaser Name)                      Bid No.

\_\_\_\_\_  
(Print Purchaser Name)

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Address

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Telephone Number

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Email

\_\_\_\_\_



Selling Company: \_\_\_\_\_  
*Name of Company*

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

Selling Company's Address: \_\_\_\_\_

Selling Company's Telephone #: \_\_\_\_\_

Selling Company's Fax #: \_\_\_\_\_

Listing Company: Rocky Mountain Estate Brokers Realty LLC

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

Robert Lee Johnson Broker

Listing Company's Address: 24 Oak Avenue Eaton, CO 80615

Listing Company's Telephone #: 970-454-1010

Listing Company's Fax #: 970-454-0505

Robert Lee Johnson Broker's Cellular Telephone #: 303-601-0588

Buyer Initials \_\_\_\_\_

Seller Initials \_\_\_\_\_