

# 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:

Commencing at a point 858 feet South of Northwest corner of SW ¼ of Section 9, Township 7 North, Range 69 West of the 6th P.M.; thence East 600 feet, more or less, to the East line of W ½ of NW ¼ of SW ¼ of said Section, thence South along said line 330 feet, thence West 660 feet, more or less, to the West line of Section 9, thence North 330 feet along Section line to the point of beginning; County of Larimer, State of Colorado.

Also known as: 218 South Overland Trail, Fort Collins, CO 80521

Larimer County Parcel Number: 97093-00-032 ("Property").

2. **Inclusion/Exclusions:** The purchase price shall include the following items:

(a) **Fixtures. NONE.**

(b) **Personal Property. Gas cook top, built in oven, trash compactor, dishwasher and microwave oven.**

(c) **Water Rights.** The following described water rights: **One Eight (1/8) Share of Pleasant Valley Ditch Company.** 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 November 19, 2011 together with a Buyer's premium which shall be 10% of the highest bid for non-internet bids or 11% for internet bids, shall be payable in U. S. Dollars by Purchaser as follows:

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

b. **Earnest Money:** \$25,000.00 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.

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

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

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 number **598-H0320519-081-KA3** prepared by **Commonwealth Land Title Insurance 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.

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 **December 19, 2011** or an earlier date as the parties may mutually agree. Closing shall occur at Heritage Title Company, 2510 East Harmony Road, Suite 201, Fort Collins, CO 80528 Phone: 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 Special Warranty Deed at closing, conveying the Property free and clear of all liens and encumbrances, and warrant the title against all persons claiming under Seller, 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 2011 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. Purchaser acknowledges that it was Purchaser's responsibility to inspect and investigate all aspects of the Property and improvements prior to bidding at the Auction. 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. Purchaser accepts the Property to the maximum extent permitted by law, in an "AS IS" condition and basis, with all faults, including that Purchaser assumes and agrees to accept all past, present or future liability for the condition. Purchaser waives the right to conduct a hazardous waste inspection.

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) 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 only to the extent that the damage is covered by any insurance policy on the property.

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, the Purchaser may extend the closing date up to 15 days by tendering to Seller in advance \$200.00 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. Purchaser shall not have the right to specific performance of this contract.

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.

d. Arbitration: Any claim arising out of or in any way related to the rights, duties, and obligations described in this Contract shall be submitted to final and binding arbitration in accordance with this paragraph, within six (6) months of the event on which the claim is based. The arbitration shall be administered by the American Arbitration Association, and shall proceed under the Commercial Arbitration Rules then in effect and adopted and applied by the American Arbitration Association. The panel of arbitrators shall consist of three arbitrators. One arbitrator shall be selected by one party, one arbitrator shall be selected by the other party, and the third arbitrator shall be selected by the two arbitrators that have been chosen. If the two arbitrators are unable to agree to the selection of a third arbitrator, the third arbitrator shall be selected by the American Arbitration Association in accordance with the Commercial Arbitration Rules. In addition, to comply with all of the Commercial Arbitration Rules, each party shall be required to make "Disclosures" as set forth in Colorado Rule of Civil Procedure (C.R.C.P.) 26(a)(1), which disclosures shall be made within ten (10) days after a date is selected for the arbitration hearing. In addition to such disclosures, each party shall disclose to the other party the "Disclosure of Expert Testimony" as set forth in C.R.C.P. 26 (a)(2)(A) and 26(2)(B), which disclosures shall be made at least twenty (20) days prior to the date of the arbitration hearing. The arbitration shall be conducted in Larimer County, Colorado. The arbitrators shall follow Colorado law in making an award. Written findings of fact and conclusions of law shall be issued by the arbitrators.

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:** The sale and this contract are contingent upon written acceptance of Seller by 5:00 PM M.S.T. on Monday, November 21, 2011. This contract is deemed an irrevocable offer of purchase and if timely accepted by the Seller then the Purchaser's obligations hereunder 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 portions of the structure on the property may have been built before January 1, 1978. A Lead Based Paint Disclosure is hereby attached and made a part of this Contract. 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.** Seller does not know if the property was previously used as a methamphetamine laboratory. The parties acknowledge that 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, otherwise Purchaser agrees to waive all further right to terminate the agreement and assumes all liability for remediation or other damages related to the presence of methamphetamines on the Property.

26. **Carbon Monoxide Alarms:** If the improvements on the Property have a fuel-fired heater or appliance, a fireplace, or an attached garage and include one or more rooms lawfully used for sleeping purposes (Bedroom), the parties acknowledge that Colorado law requires that Seller assure the Property has an operational carbon monoxide alarm installed within fifteen feet of the entrance to each Bedroom or in a location as required by the applicable building code. Purchaser waives this requirement and agrees to assume the responsibility to install functional carbon monoxide alarms.

27. **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.

28. **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 or email shall also be considered as originals.

29. **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 19<sup>th</sup> day of November, 2011.**

**Purchaser(s):**

_____	_____
(Sign)	(Sign)
_____	_____
(Print Purchaser Name)	Bid No. (Print Purchaser Name)
_____	_____
_____	_____
Address	
_____	_____
Telephone Number	
_____	
Email	

If more than one Purchaser do you want title to be in joint tenancy? \_\_\_\_yes\_\_\_\_no  
or other, please explain: \_\_\_\_\_.

Seller's signature below indicates specific approval of the purchase price per paragraph 20:

**Seller:**

\_\_\_\_\_  
Joy Ranell Santner, Successor Trustee, under the J.R. Astle Living Trust, dated March 23, 2006

\_\_\_\_\_ **Date Signed.**                      \_\_\_\_\_ **Time Signed MST.**

**Seller's Address:** 1131 Lawrence Drive, Fort Collins, CO 80521  
**Seller's Telephone:** 970-222-1388 Mobile 970-407-8073 Home  
**Seller's Email:** jsan1131@aol.com

**ACKNOWLEDGEMENTS**

The undersigned Broker(s) acknowledges receipt of the Earnest Money deposit specified in § 3.

**Co-op Buyer Broker Company Brokerage Relationship**

The Selling Company and its licensees have been engaged in this transaction as

- |  |   |
|--|---|
| <input type="checkbox"/> Buyer (Purchaser) Agent | <input type="checkbox"/> Dual Agent         |
| <input type="checkbox"/> Seller Agent/Subagent   | <input type="checkbox"/> Transaction-Broker |

**Listing Company Brokerage Relationship**

The Listing Company and licensees have been engaged in this transaction as

- |  |                                     |
|--|-------------------------------------|
| <input checked="" type="checkbox"/> Seller Agent | <input type="checkbox"/> Dual Agent |
| <input type="checkbox"/> Transaction-Broker      |                                     |

**BROKERS' COMPENSATION DISCLOSURE:**

Selling Company's compensation or commission is to be paid by:

- |   |                                      |
|---|--------------------------------------|
| <input type="checkbox"/> Buyer  | <input type="checkbox"/> Seller      |
| <input checked="" type="checkbox"/> Listing Company, if pre-approved. | <input type="checkbox"/> Other _____ |

(To be completed by Listing Company)

Co-op Buyer Broker Company's compensation or commission is to be paid by:

- |                                |  |                                |
|--------------------------------|--|--------------------------------|
| <input type="checkbox"/> Buyer | <input checked="" type="checkbox"/> Seller | <input type="checkbox"/> Other |
|--------------------------------|--|--------------------------------|

Co-op Buyer Broker Company:

\_\_\_\_\_

*Name of Company*

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

Co-op Buyer Broker Company's Address: \_\_\_\_\_

Co-op Buyer Broker Company's Telephone #: \_\_\_\_\_

Co-op Buyer Broker 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