

# J. P. KING AUCTION COMPANY, INC.

## REAL PROPERTY SALE CONTRACT

**Eagles Nest  
Ridgway (Ouray County), Colorado  
October 11, 2007 at 11:00 AM (MT)**

BIDDER NO. \_\_\_\_\_

THIS REAL PROPERTY SALE CONTRACT ("Sale Contract"), made October 11, 2007, by and between Vincent L. Kontny and Joan D. Kontny Trust ("Seller"), whose address is 35000 South Highway 550, Montrose, Colorado 81401, and

\_\_\_\_\_ ("Buyer"),  
whose address is \_\_\_\_\_

Seller is represented in this sale by J. P. King Auction Company, Inc. ("King"), an Alabama corporation headquartered at 108 Fountain Avenue in Gadsden, Alabama 35901 (telephone 800-662-5464 or 256-546-5217 and facsimile 256-543-8036) and its broker, J. Craig King ("Broker") whose address is 108 Fountain Avenue, Gadsden, Alabama 35901 (unless otherwise noted, King and Broker collectively referred to as "Auctioneer").

NOW, THEREFORE, in consideration of the agreements and covenants herein, and other good and valuable consideration, the adequacy and receipt of which are acknowledged, the parties being duly authorized and empowered to execute this Sale Contract and intending to be legally bound agree as follows:

### AGREEMENTS

#### **ARTICLE I – AGREEMENT TO PURCHASE**

**1.1.** Seller agrees to sell and Buyer agrees to buy, pursuant to the terms herein, the real property described below ("Property").

**1.2.** The terms for the Auction ("Terms of Auction") are incorporated into this Sale Contract which defines the entire agreement between Seller and Buyer for the purchase and sale of the Property, whether by auction ("Auction") or otherwise.

**1.3.** The Terms of Auction complement this Sale Contract and may differ in some respects from it. In the event of any conflict between the Terms of Auction and this Sale Contract, the Sale Contract shall control in all instances.

**1.4.** In the event of a sale of the Property other than by Auction, Buyer is advised that the Terms of Auction are still incorporated into this Sale Contract to define the entire agreement between Seller and Buyer for the purchase and sale of the Property, and Buyer is advised to obtain, read, and fully understand the Terms of Auction before entering into this Sale Contract.

#### **ARTICLE II – THE PROPERTY**

**2.1.** The Property is described in the legal description contained in the title commitment prepared by Land Title Guarantee Company ("Property"). The Property is located at 1036 Pleasant Valley Road, Ridgway, Colorado 81432.

**2.2.** Should any survey, now existing or later made, indicate greater or lesser acreage or square footage in the Property than represented by Seller or Auctioneer, no adjustment will be made to the purchase price ("total contract price") to be paid by Buyer to Seller for the Property.

**ARTICLE III – TOTAL CONTRACT PRICE**

**3.1.** The Property’s selling price and scheduled payments follows:

HIGH BID PRICE: ..... \$ \_\_\_\_\_

ADD – 10.00 % BUYER'S PREMIUM..... \$ \_\_\_\_\_

SUBTOTAL ..... \$ \_\_\_\_\_

LESS – BUYER INCENTIVE PROGRAM CREDIT (if any)..... \$( \_\_\_\_\_ )  
(1.50 % of qualifying written, opening bid of (\$ \_\_\_\_\_ )

TOTAL CONTRACT PRICE..... \$ \_\_\_\_\_

LESS – EARNEST MONEY DEPOSIT (10.00%) \$ \_\_\_\_\_

BIDDER DEPOSIT \$( 50,000.00 )

BALANCE EARNEST MONEY DEPOSIT TO PAY..... \$( \_\_\_\_\_ )

BALANCE OF TOTAL CONTRACT PRICE OWED ..... \$ \_\_\_\_\_

**3.2.** All payments must be made in U. S. Dollars.

**3.3.** Buyer’s earnest money deposit (“Buyer’s deposit”) shall be paid to Land Title Guarantee Company, the designated escrow/closing agent (“Escrow Agent”), and Escrow Agent shall administer the deposit and conduct the closing of the sale of the Property (“closing”).

**3.4.** This is a cash sale which is not contingent upon any matter including, but not limited to, Buyer’s ability to obtain financing for this purchase.

**3.5.** The balance of the total contract price owed by Buyer for the Property does not include Buyer’s closing costs, any costs associated with financing, any prepaid or prorated closing charges, or taxes applicable to Buyer.

**ARTICLE IV – DISCLAIMER**

**4.1.** As a material part of the consideration for this Agreement, Seller and Buyer agree that the Property is being sold in “**AS IS, WHERE IS**” condition with all burdens, circumstances, defects, faults, dangers, hazards, issues, material facts, problems, and other relevant matters, whether latent or patent, whether past, present, or future, and whether or not referenced herein, or in the Terms of Auction, and Buyer knowingly, voluntarily, unconditionally, and irrevocably waives, releases, and discharges Seller and Auctioneer from any claim that Buyer may otherwise have had with respect to the Property, the Auction, this Sale Contract, and the transaction contemplated.

**4.2.** To the fullest extent allowed by law, Seller and Auctioneer unconditionally disclaim any guarantee, representation, and warranty of every kind, whether expressed, implied, or statutory, whether oral or written, with respect to the Property, the surrounding area, the Auction, the Terms of Auction and all matters referenced therein (including, but not limited to, all matters referred to within this Article, plus the section on “Bidder’s Due Diligence” included in the Terms of Auction), plus all other relevant matters, whether past, present, or future, and whether or not referenced herein, in the Terms of Auction, or elsewhere, except for limited warranties that may be given by Seller to Buyer in the deed of conveyance, or as expressly stated herein.

**4.3.** Maps, depictions, and sketches included in the marketing material for the Auction are for illustration purposes only and neither Seller nor Auctioneer warrants or guarantees these materials or related information to be accurate or complete.

**4.4.** Buyer acknowledges and agrees that it is Buyer’s exclusive responsibility to make and independently verify such factual, legal, and other inquiries, inspections, investigations, and studies as Buyer deems appropriate, desirable, and

necessary with respect to the Property, the Auction, this Sale Contract, and this sale, all of which shall be at Buyer's exclusive cost, and Seller and Auctioneer shall have no liability whatsoever on any basis or in any amount.

4.5. Buyer acknowledges and agrees that, in executing this Sale Contract and purchasing the Property, Buyer is not relying upon any guarantee, representation, or warranty of any kind that Seller and Auctioneer have disclaimed, nor is Buyer relying upon any assertion, brochure, claim, document, information, literature, map, projection, sketch, or statement of any kind with respect to the Property and any improvements thereon, including the surrounding area and all relevant circumstances, facts, issues, and matters, whether past, present, or future, whether expressed or implied, whether oral or written, whether material or immaterial, and whether given or made by, or on behalf of, Seller or Auctioneer. Instead, Buyer is relying solely upon Buyer's independent due diligence, inspection, investigation, and findings with respect to the Property, the surrounding area, the Auction, the Terms of Auction and all relevant matters whether past, present, or future, and whether or not referenced herein, in the Terms of Auction, or elsewhere.

4.6. Seller and Auctioneer shall not be liable to Buyer for any relief, including, but not limited to, adjustment, allowance, damages, reformation, or rescission, based upon the failure of the Property to conform to any specific condition, expectation, standard, or any third-party documents or information.

#### **ARTICLE V – FIXTURES AND PERSONAL PROPERTY**

5.1. This sale includes all built-in appliances, cabinets, fixtures, carpet (attached wall-to-wall), installed systems (cooling, electrical, heating, lighting, mechanical, plumbing, and vacuum), in-ground plantings (including flowers, shrubbery, and trees), window treatments (blinds, drapes, and hardware), and all other items and things permanently attached to the Property.

5.2. A list of certain personal property items to be made part of this Sale Contract as referenced herein, will convey with the Property. The Seller and Auctioneer shall have no liability whatsoever to Buyer for any subsequent claim of variance, deficiency, or defect in the personal property conveyed.

#### **ARTICLE VI – DISCLOSURES**

6.1. Any disclosures made and information given by Seller and/or Auctioneer to Buyer regarding the Property and any improvements thereon, the surrounding area, and all circumstances, facts, issues, and other matters relevant to this sale are provided subject to the disclaimers stated herein. All disclosures, information, representations, and statements made or given are attributable solely to Seller and not Auctioneer, and these represent Seller's belief at the time this Sale Contract was drafted, but nothing is guaranteed or warranted to be accurate, complete, or correct.

6.2. A list of property specific disclosures has been made a part of this Sale Contract as referenced herein.

6.3. State law enforcement may maintain a database of known sex offenders who reside within the area. Information regarding sex offenders may be obtained by contacting local law enforcement authorities. Buyer relies exclusively upon Buyer's own due diligence and inquiry into this issue and Buyer acknowledges having done all of the research that Buyer desires to do or, in the alternative, Buyer waives the right to research this issue prior to entering into this Sale Contract. Buyer unconditionally and irrevocably acknowledges and agrees that Buyer has not relied upon Seller or Auctioneer for any information regarding this issue and Seller and Auctioneer are not required to provide any additional information regarding the proximity to the Property of registered sex offenders.

6.4 Common Interest Community Disclosure. **THE PROPERTY IS LOCATED WITHIN A COMMON INTEREST COMMUNITY AND IS SUBJECT TO THE DECLARATION 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. THE 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.**

Not Conditional on Review. Buyer acknowledges that Buyer has received a copy of the owners' association (Association) declarations, bylaws, rules and regulations, party wall agreements, minutes of most recent annual owners' meeting and minutes of any directors' meetings during the 6-month period immediately preceding Title Deadline, if any (Governing Documents), most recent financial documents consisting of (a) annual balance sheet, (b) annual income and expenditures statement, and (c) annual budget (Financial Documents), if any (collectively CIC Documents). Buyer has reviewed them, agrees to accept the benefits, obligations and restrictions that they impose upon the Property and its owners and waives any right to terminate this Contract due to such documents, notwithstanding the provisions of § 8e.

**ARTICLE VII – BUYER'S DEPOSIT**

**7.1.** Immediately upon the execution of this Sale Contract, Buyer shall pay Ten percent (10.00%) of the total contract price for the Property as Buyer's deposit to Escrow Agent to be held on deposit by Escrow Agent in a designated bank escrow account, insured by Federal Deposit Insurance Corporation, and Escrow Agent shall administer the funds in accordance with this Sale Contract. This escrow account shall be non-interest bearing, unless otherwise required by law.

**7.2.** The parties agree Escrow Agent shall be relieved of all liability and held harmless by them so long as Escrow Agent holds Buyer's Deposit and makes any disbursement from it in accordance with this Sale Contract and the Escrow Agreement previously executed by Escrow Agent with Seller and Auctioneer.

**7.3.** In the event of any controversy regarding Buyer's Deposit, Escrow Agent shall not be required to take any action, but may await the result of any proceeding, or at Escrow Agent's discretion, interplead Buyer's deposit into a court of competent jurisdiction for determination, and Escrow Agent shall thereafter have no liability whatsoever on any basis and for any amount with regards to Buyer's deposit and this Sale Contract.

**ARTICLE VIII – BROKER INVOLVEMENT**

**8.1.** Buyer warrants that Buyer (check one) ... [ \_\_\_\_\_ is] ... [ \_\_\_\_\_ is not] ... represented by a qualified, licensed, real-estate broker in this transaction. If Buyer is represented by a broker, the broker's full name, firm, and address are:

\_\_\_\_\_

**8.2.** Buyer warrants not to have contacted or communicated with any real-estate agent or broker about the Property, other than Auctioneer and any broker identified in the previous paragraph, and no other real-estate agent or broker was in any way instrumental in effecting this sale of the Property and there are no brokerage commissions, expenses, fees, or other sums due to any other real-estate agent or broker.

**8.3.** Buyer agrees to hold Seller and Auctioneer harmless against any claim by any real-estate agent or broker not properly registered with and qualified by Auctioneer in the Buyer-Broker Incentive Program (see below), and Buyer shall indemnify Seller and Auctioneer against any action, arbitration, award, claim, cost, damage, deficiency, demand, expense, injury, judgment, liability, loss, or suit of every kind, including attorneys' fees and costs of defense, asserted by a real-estate agent or broker as a result of, or in relation to, the Auction, this Sale Contract, the transaction contemplated, or any related dealings involving Buyer, Seller, and/or Auctioneer.

**8.4.** Buyer understands that upon closing, Seller shall pay Auctioneer a commission pursuant to the terms of a separate, written agreement.

**ARTICLE IX – BUYER-BROKER INCENTIVE PROGRAM**

**9.1.** If the Buyer-Broker Incentive Program is in effect for the Auction, a properly licensed broker ("Buyer-Broker") who timely registers and qualifies with Auctioneer in accordance with the terms of this program shall be paid a commission by Seller at closing, in accordance with the terms of this program, provided that both Buyer-Broker and the Buyer that Buyer-Broker represents fulfill all requirements under the Terms of Auction, this Sale Contract, and this incentive program.

**9.2.** If for any reason closing does not occur, including, but not limited to, the default of any party hereto, no commission shall be due or paid to any Buyer-Broker and Seller and Auctioneer shall have no liability on any basis and for any amount.

### **ARTICLE X – BUYER INCENTIVE PROGRAM**

**10.1.** If the Buyer Incentive Program is in effect for the Auction, a bidder who timely registers and qualifies with Auctioneer in accordance with the terms of this program and then becomes the Buyer of the Property shall be paid a credit by Seller at closing, to be applied against the total contract price of the Property, in accordance with the terms of this program, provided that Buyer fulfills all requirements under the Terms of Auction, this Sale Contract, and this program.

**10.2.** If for any reason closing does not occur, including, but not limited to, the default of any party hereto, no credit shall be due or paid to any Buyer and Seller and Auctioneer shall have no liability on any basis and for any amount.

### **ARTICLE XI – CASUALTY**

**11.1.** All risk of loss or damage to the Property shall be borne exclusively by Seller until closing. Immediately upon closing, all risk of loss shall be borne exclusively by Buyer.

**11.2.** In the event the Property is, in the opinion of Seller, significantly damaged or destroyed by fire or other casualty after the execution of this Sale Contract and before closing, Seller shall have the option to restore the Property to its pre-casualty condition or cancel this Sale Contract, after giving written notice to Buyer of the option Seller selects. In the event Seller chooses to cancel this Sale Contract, Buyer's deposit shall be promptly and fully refunded and this shall be a complete and final settlement with Buyer of all of Seller's obligations to Buyer herein, or otherwise relating to the Property and this sale. Should Seller desire to restore the Property to its pre-casualty condition, Seller shall have one hundred twenty (120) days, immediately following the date on which written notice is given to Buyer, to complete restoration. In the event Seller timely completes restoration, Seller shall give written notice of this fact to Buyer and closing shall immediately occur. In the event Seller does not timely complete restoration, Buyer shall have the option to give written notice to Seller of Buyer's intention to terminate this Sale Contract and Buyer's obligations herein shall then be immediately ended and Buyer's deposit shall be promptly and fully refunded, together with any interest accrued thereon, if applicable, or Buyer may continue to seek performance from Seller under this Sale Contract.

### **ARTICLE XII – SELLER'S BREACH**

**12.1.** If Seller defaults in the performance of any term or obligation herein and closing does not timely occur as a result, Buyer shall have the option to give Seller written notice of Buyer's intention to terminate this Sale Contract and Buyer's obligations herein shall be immediately ended and Buyer's deposit shall be promptly and fully refunded, together with any interest accrued thereon, if applicable, or Buyer may have all rights allowed by law and in equity and pursuant to this Sale Contract, including the right to pursue a claim against Seller for specific performance of this Sale Contract, including Seller's payment of Buyer's reasonable attorneys' fees and costs.

**12.2.** In no event shall Auctioneer have any liability whatsoever on any basis and for any amount as a result of Seller's breach of this Sale Contract or other wrongful act or omission.

### **ARTICLE XIII – BUYER'S BREACH**

**13.1.** If Buyer defaults in the performance of any term or obligation herein and closing does not timely occur as a result, Seller shall give written notice to Buyer that Buyer's deposit shall be immediately forfeited to Seller and King (but not King's Broker) as reasonable liquidated damages and not as a penalty against Buyer. Seller and King shall split Buyer's deposit as agreed upon under a separate agreement between them dated August 7, 2007, and keep their respective shares. Buyer forever waives and releases any right to sue Seller, Auctioneer, or Escrow Agent to recover the Buyer's deposit, or any part thereof, on the grounds that it is unreasonable in amount, or that its retention by Seller and Auctioneer is wrongful or a penalty not agreed upon by the parties as reasonable liquidated damages.

**13.2.** If Buyer defaults in the performance of any term or other obligation herein and closing does not timely occur as a result, Seller shall have all rights allowed by law and in equity and pursuant to this Sale Contract, including the right to pursue a claim against Buyer for additional damages, specific performance of this Sale Contract, or cancellation of the sale, and including Buyer's payment of Seller's reasonable attorneys' fees and costs.

**13.3.** Unless Auctioneer or Auctioneer's Broker breached any duty owed to Seller, Auctioneer shall not have any liability whatsoever on any basis and for any amount as a result of Buyer's breach of this Sale Contract or other wrongful act or omission.

**ARTICLE XIV – CONVEYANCE AND TITLE**

**14.1** Seller shall convey fee simple title to the Property to Buyer by warranty deed, free and clear of all liens and encumbrances, except as specified in the “exceptions” of the title commitment, the Terms of Auction, this Sale Contract, and subject to all existing covenants, easements, restrictions, and matters of record.

**14.2.** Buyer agrees to accept title to the Property subject to: (a) all standard exclusions and printed exceptions set forth in the owner’s policy of title insurance, including all matters that would be disclosed by a current and accurate survey of the Property, (b) taxes and liens for taxes not yet due and payable, (c) easements for public utilities affecting the Property, (d) all other easements or claims to easements, covenants, restrictions, and rights-of-way affecting the Property; (e) rights and claims of any persons in possession, (f) all title exceptions referenced in the title commitment, (g) land-use laws, (g) applicable statutes, rules, and regulations, (h) zoning ordinances, and (i) all matters herein waived by Buyer (individually and collectively (a) through (i) are referred to as “permitted title exceptions”).

**14.3.** If the title commitment reveals a defect in title which is not one of the permitted title exceptions, or if prior to closing a new defect in title is disclosed by an updated endorsement to the title commitment, which defect is not one of the permitted title exceptions, prior to closing Buyer may either waive such defect or give written notice of such to Seller and Escrow Agent not later than five (5) days from the date of discovery of such defect in title, whereupon Seller may, at its option, attempt to cure such defect prior to closing, or decline to cure the defect. If Buyer has given written notice to Seller of a defect in title which Buyer does not waive, and Seller is unable or unwilling to cure the defect on or before closing, this Sale Contract shall be terminated without liability to either party and Buyer’s deposit shall be promptly and fully refunded, together with any interest accrued thereon, if applicable, except that, upon written notice to Buyer, Seller shall have the right, at Seller’s sole election, to extend the date of closing by up to sixty (60) days, but not longer, to allow time for Seller to attempt to cure any defect in title.

**14.4.** Seller shall not voluntarily create or cause any lien or other encumbrance to attach to the Property between the date this Sale Contract is made and closing.

**ARTICLE XV – CLOSING**

**15.1.** Closing shall be conducted at the office of Escrow agent, whose address is Land Title Guarantee Company, 218 Sherman, Ridgway, Colorado 81432 (telephone 970-626-3157), on or before 5:00 p.m. on November 12, 2007 (“closing date”).

**15.2.** At closing, Seller shall deliver to Buyer the deed provided for herein to convey good and clear title to the Property to Buyer, and Buyer shall pay to Seller the balance of the purchase price owed in cash or by confirmed bank wire transfer of funds.

**15.3.** Seller shall solely pay the costs for preparing the deed and all other legal documents needed to convey title to the Property to Buyer, including reproduction costs and the costs to record the release of every encumbrance against the Property, plus Seller’s attorney’s fees.

**15.4.** Buyer shall solely pay the costs for the owner’s policy of title insurance, the transfer (documentary) taxes on the deed, the costs for recording the deed, and all other closing, financing, and sale costs, plus Buyer’s attorney’s fees.

**15.5.** The current year’s assessments and any special assessments, association dues and fees, current year’s *ad valorem* taxes, insurance, interest, rents, and all similar items applicable shall be prorated between Seller and Buyer to the closing date, with Buyer being responsible for the day of closing. Should any additional assessments, other costs, or taxes be levied or charged as a result of any change of use of the Property attributable to Buyer, such amounts shall be the exclusive responsibility of Buyer to pay.

**15.6.** Closing may be conducted by mail.

**15.7.** Seller shall grant Buyer possession of the Property immediately upon closing.

**ARTICLE XVI – ASSIGNMENT AND THIRD PARTIES**

**16.1.** Neither party may assign or transfer any interest in this Sale Contract without the prior, written consent of the other.

**16.2.** Nothing contained in this Sale Contract, or in any document or instrument executed by a party in connection with the sale contemplated, shall create any rights in, or be deemed to have been executed for, the benefit of any person or entity not a party hereto, except as expressly provided herein.

**ARTICLE XVII – AGENCY**

**17.1.** The parties understand and agree that Auctioneer is acting solely as a single agent and exclusively representing Seller on this Sale Contract, the transaction contemplated, and all related matters, and Auctioneer is not acting as a sub-agent, Buyer’s agent, or limited consensual dual agent.

**ARTICLE XVIII – HOLD HARMLESS AND INDEMNIFICATION**

**18.1.** A party at fault shall hold a party not at fault, as well as Auctioneer, harmless from, and indemnify the party not at fault against, any action, arbitration, award, claim, cost, damage, deficiency, demand, expense, indemnity, injury, judgment, liability, loss, obligation, or suit of every kind, including reasonable attorneys’ fees and costs of defense, asserted by any person, real or artificial, or by any entity of government, that the party not at fault incurs as a result of any act, error, omission, or wrongdoing attributable to the party at fault or that party’s agents, assigns, attorneys, brokers, contractors, directors, employees, invitees, licensees, members, officers, representatives, shareholders, or successors in interest, and which arises out of this Sale Contract, the transaction contemplated, or the related dealings of the parties, except as expressly provided herein.

**ARTICLE XIX – NOTICE**

**19.1.** Any notice between the parties permitted, required, or otherwise relating to this Sale Contract, the transaction contemplated, or the related dealings of the parties, shall be given in writing including, but not limited to, notice which addresses approval, breach, cancellation, claim, closing, complaint, consent, default, demand, objection, option, termination, waiver, or exercise of right.

**19.2.** Notice shall be deemed given by a party and effective on the date when personally delivered to the other party or, in lieu of personal delivery, when addressed to the other party at the address set forth herein and deposited in the mail handled by the United States Postal Service and sent certified mail with postage prepaid and a receipt retained, or sent by a nationally-recognized overnight courier or delivery service with a receipt retained.

**19.3.** A copy of any notice shall simultaneously be given to Auctioneer at the addresses listed on page one of this Sale Contract.

**ARTICLE XX – LEGAL ACTION AND ARBITRATION**

**20.1.** Any action, claim, controversy, or dispute arising out of this Sale Contract including, but not limited to, its breach, enforcement, interpretation, termination, validity, or the transaction contemplated, the Auction, or any related dealings between Seller, Bidder, Buyer, and/or Auctioneer (“Sale Issues”), whether controlled by federal or state law, and whether an issue of law or equity, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined and resolved exclusively by final and binding arbitration, with no appeal permitted, except as provided by applicable law for the judicial review or enforcement of arbitration decisions.

**20.2.** The arbitration shall be administered by Judicial Arbitration and Mediation Services, Inc., or its successor, pursuant to its “Comprehensive Arbitration Rules and Procedures” then in effect, and heard and decided by a panel of three (3) independent arbitrators. Judgment on the arbitration award may be entered in any court having jurisdiction.

**20.3.** Each party unconditionally and irrevocably waives all right to a trial by jury in any action, proceeding, or counterclaim arising out of or related to this Sale Contract, the transactions contemplated, and the related dealings of the parties.

**20.4.** The costs of arbitration, including the fees and expenses of the arbitrators, but not including the parties’ attorneys’ fees, shall initially be paid equally by the parties.

**20.5.** The prevailing party shall be entitled to collect from the other its full costs associated with the arbitration, including reasonable attorneys’ fees.

**20.6.** The parties agree that the filing, proceedings, rulings, decisions, result, and award from any arbitration shall be permanently kept confidential and not disclosed in any form or manner to any entity, media, or person whatsoever, and the parties shall jointly move the court entering judgment on the arbitration award to so order.

**20.7.** Any arbitration or other adversarial proceeding must be commenced within one (1) year from the date of the Auction or when the cause of arbitration accrued, whichever first occurs, or it will be forever barred. The right of arbitration shall accrue, and the one-year (1) limitation period shall begin to run, from the date the breach, damage, or injury is sustained and not when discovered.

**ARTICLE XXI – BINDING EFFECT**

**21.1.** This Sale Contract shall be binding upon the parties and their agents, assigns, attorneys, beneficiaries, brokers, directors, distributees, employees, executors, heirs, legatees, members, officers, representatives, shareholders, and successors in interest.

**ARTICLE XXII – CHOICE OF LAW, JURISDICTION, AND VENUE**

**22.1.** This Sale Contract, the transaction contemplated, and all related dealings of the parties shall be exclusively construed and governed in accordance with the laws of the State of Colorado, without regard to its conflict of laws principles.

**22.2.** The exclusive jurisdiction and venue for any controversy or claim between the parties shall be the County of Ouray in the State of Colorado.

**ARTICLE XXIII – SEVERABILITY, HEADINGS, PRONOUNS, AND CONSTRUCTION**

**23.1.** If any clause or provision of this Sale Contract is held illegal, invalid, or unenforceable, it is the parties' intention that the remainder of this Sale Contract shall not be affected and, in lieu of such clause or provision that is held illegal, invalid, or unenforceable, there shall be added, as a part of this Sale Contract, a clause or provision as similar in term and effect as such illegal, invalid, or unenforceable clause or provision as may be possible, legal, valid, and enforceable.

**23.2.** Article headings are for reference only and not intended to expand or restrict the scope or substance of the provisions of this Sale Contract. Any reference herein to an Article heading includes all relevant sections, subsections, and paragraphs within that Article.

**23.3.** Words used in the present tense also include the past and future tense, as the context requires.

**23.4.** Wherever used in this Sale Contract, the singular shall include the plural, the plural shall include the singular, and pronouns shall be read as masculine, feminine or neuter, as the context requires.

**23.5.** The parties agree that this Sale Contract have been mutually agreed upon by them and no legal inference, presumption, principle, or other rule of draftsmanship or construction shall be used in favor of or against either of them.

**ARTICLE XXIV – MISCELLANEOUS**

**24.1.** Buyer certifies to be of legal age and have full capacity and competence to understand, enter into, execute, and deliver this Sale Contract.

**24.2.** If Buyer is purchasing the Property on behalf of an arm of government or business entity (i.e., corporation, limited liability company, etc.) (“artificial person”), Buyer shall be personally liable under this Sale Contract until such time as the artificial person presents Seller with acceptable, written evidence of the artificial person’s good standing in its state of formation, plus a duly-passed and executed resolution or similar written authority from its board of directors or other governing authority that authorizes the purchase of the Property and agrees for the artificial person to be bound by this Sale Contract.

**24.3.** This Sale Contract may be signed in multiple counterparts and each shall be an original of this Sale Contract, with all counterparts constituting a single instrument.

**24.4.** A facsimile signature shall be considered as valid as an original signature.

**24.5.** This Sale Contract and the incorporated Terms of Auction contain the entire undertaking between the parties regarding the Auction, the transaction contemplated, and all related dealings of the parties, and there are no oral or written agreements, inducements, promises, representations, or warranties other than those expressly set forth.

**24.6.** This Sale Contract supersedes any previous agreement, negotiation, or understanding between the parties regarding the transaction contemplated, and such have been merged here and shall not survive execution of this Sale Contract.

**24.7.** No deletion, modification, supplement, or waiver of any term of this Sale Contract shall be effective unless made in writing and executed by the parties with the same formality as this Sale Contract.

**24.8.** The failure of either party to insist upon the strict performance of any term of this Sale Contract shall not be construed as a waiver of any subsequent default of the same or similar nature.

**24.9.** Each party had the opportunity to seek the independent advice of legal counsel of its choosing and each has either done so or has voluntarily decided to forgo such advice, with full understanding of the risk involved in this course with regard to the Property, Auction, Sale Contract, and this sale..



**24.10.** Each party acknowledges that it has received and read the Terms of Auction and this Sale Contract in their entirety, understands and fully accepts all of the terms contained, and has received an executed copy of this Sale Contract.

**24.11.** In addition to any other attachments, exhibits, or other documents or materials referenced herein, the following Attachments are attached hereto and incorporated herein by reference:

- Exhibit A - Property Specific Disclosures
- Attachment I - Brokerage Disclosure to Buyer
- Attachment II - Personal Property List
- Attachment III - Seller's Property Disclosure
- Attachment IV - Title Commitment

***ARTICLE XXV – TIME OF THE ESSENCE***

**25.1.** Time is of the essence of this Sale Contract. Each party shall fully perform all respective obligations herein at such times as to ensure that closing occurs on the date specified, or any mutually agreed-upon extension of that date.

***ARTICLE XXVI – SURVIVAL***

**26.1.** This Sale Contract and all of its terms shall survive closing.

IN WITNESS WHEREOF, the parties being duly authorized and empowered have agreed to the terms herein and executed this Sale Contract intending to be legally bound.

SELLER: VINCENT L. KONTRNY AND JOAN D. KONTRNY TRUST

ADDRESS:  
35000 s Highway 550  
Montrose, CO 81401

Signature \_\_\_\_\_  
Vincent L. Kontny, Trustee

35000 s Highway 550  
Montrose, CO 81401

Signature \_\_\_\_\_  
Joan D. Kontny, Trustee

ADDRESS:  
\_\_\_\_\_  
\_\_\_\_\_

BUYER:  
Signature \_\_\_\_\_  
Print Name \_\_\_\_\_  
Social Security No. \_\_\_\_\_  
Federal Tax ID No. \_\_\_\_\_  
Phone No. (Work) \_\_\_\_\_  
(Home) \_\_\_\_\_  
(Fax ) \_\_\_\_\_

ADDRESS:  
\_\_\_\_\_  
\_\_\_\_\_

BUYER:  
Signature \_\_\_\_\_  
Print Name \_\_\_\_\_  
Social Security No. \_\_\_\_\_  
Federal Tax ID No. \_\_\_\_\_  
Phone No. (Work) \_\_\_\_\_  
(Home) \_\_\_\_\_  
(Fax ) \_\_\_\_\_

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EXHIBIT A

PROPERTY SPECIFIC DISCLOSURES

*HOA Assessment:* Common Interest Community Disclosure. **THE PROPERTY IS LOCATED WITHIN A COMMON INTEREST COMMUNITY AND IS SUBJECT TO THE DECLARATION 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. THE 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.**

Not Conditional on Review. Buyer acknowledges that Buyer has received a copy of the owners' association (Association) declarations, bylaws, rules and regulations, party wall agreements, minutes of most recent annual owners' meeting and minutes of any directors' meetings during the 6-month period immediately preceding Title Deadline, if any (Governing Documents), most recent financial documents consisting of (a) annual balance sheet, (b) annual income and expenditures statement, and (c) annual budget (Financial Documents), if any (collectively CIC Documents). Buyer has reviewed them, agrees to accept the benefits, obligations and restrictions that they impose upon the Property and its owners and waives any right to terminate this Contract due to such documents, notwithstanding the provisions of § 8e.

The Property is selling subject to the Declaration of Covenants, Conditions and Restrictions for Pleasant Valley Vista Subdivision Filing No. 2 as recorded at Reception No. 169662 on May 19, 1999 in the County Clerk and Recorder's office of Ouray County, Colorado. The current yearly dues are \$200.00 payable to the Pleasant Valley Vista Filing No. 2 Homeowners Association. The association dues will be prorated through the date of closing between the Seller and the Buyer at the time of closing of the sale of the Property.

*Mineral and Water Rights:* The Seller retains no reservations to the mineral and water rights on the Property. All mineral and water rights, as owned by the Seller, will be conveyed with the real estate. **The surface estate is owned separately from the underlying mineral estate, and transfer of the surface estate does not include transfer of the mineral rights or water rights. Third parties do 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 or not covered by the title insurance policy. Buyer is advised to timely consult legal counsel with respect to all such matters as there are strict time limits provided in this Contract.**

*Seller's Property Disclosure:* As required by Colorado Real Estate Commission (SPD 19-10-05), Seller has provided a Seller's Property Disclosure for each Parcel offered in the Auction. This disclosure statement is not intended to be a substitute for prospective Buyer's hiring of qualified experts to inspect the property, nor is this disclosure a warranty or guarantee, of any kind by the Seller, Broker, or Auction Company. The buyer will be required to acknowledge receipt and acceptance of the Seller's responses to this Seller's Property Disclosure.

*Sex Offenders:* State law enforcement may maintain a database of known sex offenders who reside within the area. Information regarding sex offenders may be obtained by contacting local law enforcement authorities. Buyer relies exclusively upon Buyer's own due diligence and inquiry into this issue and Buyer acknowledges having done all of the research that Buyer desires to do or, in the alternative, Buyer waives the right to research this issue prior to entering into

this Sale Contract. Buyer unconditionally and irrevocably acknowledges and agrees that Buyer has not relied upon Seller or Auctioneer for any information regarding this issue and Seller and Auctioneer are not required to provide any additional information regarding the proximity to the Property of registered sex offenders.

*Methamphetamine Laboratory Disclosure:* The parties acknowledge that Seller is required to disclose whether Seller knows that the Property was previously used as a methamphetamine laboratory. No disclosure is required if the Property was remediated in accordance with state standards and other requirements are fulfilled pursuant to Section 25-18.5-102, C.R.S. Buyer further acknowledges that Buyer 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, Buyer may deliver written notice to Seller, on or before Closing, to terminate this Contract.

*Title Advisory:* The permitted title exceptions affect the title, ownership and use of the Property and should be reviewed carefully. Additionally, other matters not reflected in the permitted title exceptions 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 or water 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 or not covered by the title insurance policy.**

***SPECIAL TAXING 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 EXCESSIVE TAX BURDENS 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. BUYER SHOULD INVESTIGATE THE DEBT FINANCING REQUIREMENTS OF THE AUTHORIZED GENERAL OBLIGATION INDEBTEDNESS OF SUCH DISTRICTS, EXISTING MILL LEVIES OF SUCH DISTRICT SERVICING SUCH INDEBTEDNESS, AND THE POTENTIAL FOR AN INCREASE IN SUCH MILL LEVIES.**

**ATTACHMENT I**

**BROKERAGE DISCLOSURE TO BUYER**

**[Attached]**

**ATTACHMENT II**

**PERSONAL PROPERTY LIST**

**[Attached]**

**ATTACHMENT III**

**SELLER'S PROPERTY DISCLOSURE**

**[Attached]**

**ATTACHMENT IV**

**TITLE COMMITMENT**

**[Attached]**