

## **OFFER AND PURCHASE AND SALE AGREEMENT**

This Offer and Purchase and Sale Agreement ("Offer and Agreement") is given by \_\_\_\_\_  
\_\_\_\_\_ whose address is \_\_\_\_\_  
\_\_\_\_\_ (individually and collectively, "Buyer") to \_\_\_\_\_  
\_\_\_\_\_ whose address is \_\_\_\_\_  
\_\_\_\_\_ (individually and collectively, "Seller") with  
respect to the Premises commonly known as and numbered \_\_\_\_\_  
\_\_\_\_\_ and more particularly described in Section 10, below  
("Premises").

### **OFFER**

#### **1. LEAD**

This Section 1, "Lead", applies only if all or part of the Premises consists of any housing constructed prior to 1978. If no part of the Premises consists of any housing constructed prior to 1978, then this Section 1 does not apply and is without any force or effect. Except as otherwise provided, the remainder of this Offer and Agreement, however, does apply and has full force and effect.

#### **BEFORE MAKING AN OFFER, BUYER SHOULD INITIAL THE CORRECT BOX(ES), IF ANY**

BUYER HAS RECEIVED AND REVIEWED A COPY OF AN EPA-APPROVED LEAD HAZARD INFORMATION PAMPHLET(S), INCLUDING THE EPA DOCUMENT ENTITLED "PROTECT YOUR FAMILY FROM LEAD IN YOUR HOME" (EPA 747-K-99-001), OR AN EQUIVALENT LEAD HAZARD INFORMATION PAMPHLET THAT HAS BEEN APPROVED FOR USE IN NEW MEXICO BY THE EPA.

BUYER HAS RECEIVED AND REVIEWED A COPY OF THE LEAD WARNING STATEMENT, ENTITLED "DISCLOSURE OF INFORMATION ON LEAD-BASED PAINT AND/OR LEAD-BASED PAINT HAZARDS", ATTACHED AS EXHIBIT A, COMPLETED AND SIGNED BY THE SELLER.

BUYER HAS HAD A 10-DAY PERIOD IN WHICH TO CONDUCT A RISK ASSESSMENT OR INSPECTION FOR THE PRESENCE OF LEAD-BASED PAINT AND/OR LEAD-BASED PAINT HAZARDS IN OR UPON ANY HOUSING OR OTHER BUILDING CONSITUTING ALL OR PART OF THE PREMISES.

BUYER WAIVES THE OPPORTUNITY TO HAVE A 10-DAY PERIOD IN WHICH TO CONDUCT A RISK ASSESSMENT OR INSPECTION FOR THE PRESENCE OF

LEAD-BASED PAINT AND/OR LEAD-BASED PAINT HAZARDS IN OR UPON ANY HOUSING OR OTHER BUILDING CONSITUTING ALL OR PART OF THE PREMISES.

**BUYER SHOULD SIGN THE FOLLOWING STATEMENT,  
IF CORRECT**

BUYER ACKNOWLEDGES RECEIPT AND REVIEW OF AN EPA APPROVED LEAD HAZARD INFORMATION PAMPHLET AND A COMPLETED AND SIGNED COPY OF EXHIBIT A, AND FURTHER ACKNOWLEDGES HAVING HAD, OR WAIVED, 10-DAYS IN WHICH TO CONDUCT A RISK ASSESSMENT OR RISK INSPECTION BEFORE BEING BOUND BY THIS DOCUMENT.

\_\_\_\_\_  
Buyer  
Date and Time

\_\_\_\_\_  
Buyer  
Date and Time

**UNTIL THE DISCLOSURES RELATED TO LEAD HAZARD AND LEAD-BASED PAINT HAZARDS HAVE BEEN COMPLETED, AND THE 10-DAY PERIOD FOR RISK ASSESSMENT OR INSPECTION HAS PASSED OR BEEN WAIVED BY THE BUYER, NEITHER THE BUYER NOR THE SELLER MAY ENTER INTO AN AGREEMENT RELATING TO THE OFFER, ACCEPTANCE, PURCHASE OR SALE OF ANY PREMISES ALL OR PART OF WHICH CONSISTS OF ANY HOUSING CONSTRUCTED PRIOR TO 1978, AND ANY SUCH PURPORTED AGREEMENT SHALL BE INVALID.**

**2. PROPERTY TAX**

**BEFORE MAKING AN OFFER, BUYER SHOULD INITIAL THE CORRECT BOX(ES),  
IF ANY**

BUYER HAS RECEIVED (FROM OR VIA THE SELLER) AND REVIEWED A WRITTEN COPY OF THE COUNTY ASSESSOR'S ESTIMATE OF THE AMOUNT OF THE PROPERTY TAX LEVY WITH RESPECT TO THE PREMISES (ATTACHED AS EXHIBIT B IF THIS BOX IS CHECKED), AND ACKNOWLEDGES THAT THE ESTIMATE IS BASED UPON THE LISTED PRICE OF THE PREMISES.

BUYER ACKNOWLEDGES THAT THE COUNTY ASSESSOR'S ESTIMATE OF THE AMOUNT OF THE PROPERTY TAX LEVY WITH RESPECT TO THE

PREMISES IS NOT READILY AVAILABLE, AND WAIVES DISCLOSURE OF A COPY OF THAT ESTIMATE.

**BUYER SHOULD SIGN THE FOLLOWING STATEMENT,  
IF CORRECT**

BUYER ACKNOWLEDGES RECEIPT AND REVIEW, OR WAIVER, OF A COPY OF THE COUNTY ASSESSOR'S ESTIMATE OF THE AMOUNT OF THE PROPERTY TAX LEVY WITH RESPECT TO THE PREMISES, BASED UPON THE LISTED PRICE OF THE PREMISES.

\_\_\_\_\_  
Buyer  
Date and Time

\_\_\_\_\_  
Buyer  
Date and Time

**IF THE BUYER MAKES THIS OFFER (A) BEFORE RECEIPT OF THE COUNTY ASSESSOR'S ESTIMATE OF THE AMOUNT OF THE PROPERTY TAX LEVY WITH RESPECT TO THE PREMISES, AND (B) WITHOUT HAVING WAIVED RECEIPT OF THAT ESTIMATE BECAUSE IT IS NOT READILY AVAILABLE, THEN, NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS OFFER AND AGREEMENT, NEITHER THE BUYER NOR THE SELLER MAY ENTER INTO AN AGREEMENT RELATING TO THE OFFER, ACCEPTANCE, PURCHASE OR SALE OF THE PREMISES, AND ANY SUCH PURPORTED AGREEMENT SHALL BE INVALID.**

**3. PUBLIC IMPROVEMENT DISTRICT (PID)**

This Section 3, "Public Improvement District (PID)", applies only if all or part of the Premises is located in a Public Improvement District (PID). If no part of the Premises is located in a Public Improvement District (PID), then this Section 3 does not apply and is without any force or effect. Except as otherwise provided, the remainder of this Offer and Agreement, however, does apply and has full force and effect.

**BEFORE MAKING AN OFFER, BUYER SHOULD INITIAL THE CORRECT BOX(ES),  
IF ANY**

NO PART OF THE PREMISES IS LOCATED IN A PUBLIC IMPROVEMENT DISTRICT (PID).

ALL OR PART OF THE PREMISES IS LOCATED IN A PUBLIC IMPROVEMENT DISTRICT (PID).

**IF ALL OR PART OF THE PREMISES IS LOCATED IN A PUBLIC IMPROVEMENT DISTRICT (PID), THEN, BEFORE MAKING THIS OFFER, THE BUYER SHALL BE PROVIDED (BY OR VIA THE SELLER) WITH A COPY OF THE WRITTEN NOTICE OF INFORMATION, AS FILED WITH THE COUNTY CLERK, THAT FORMS THE PUBLIC IMPROVEMENT DISTRICT (PID). ,THAT NOTICE OF INFORMATION SHOULD FOLLOW THE FORM OF AND INCLUDE THE INFORMATION SET OUT IN EXHIBIT C.**

**BUYER SHOULD SIGN THE FOLLOWING STATEMENT,  
IF CORRECT**

BUYER ACKNOWLEDGES RECEIPT OF A COPY OF THE WRITTEN NOTICE OF INFORMATION, AS FILED WITH THE COUNTY CLERK, THAT FORMS THE PUBLIC IMPROVEMENT DISTRICT (PID),AND FURTHER ACKNOWLEDGES THAT HE, SHE, THEY OR IT HAS BEEN ADVISED AS TO THE INFORMATION SET OUT IN EXHIBIT C.

\_\_\_\_\_  
Buyer  
Date and Time

\_\_\_\_\_  
Buyer  
Date and Time

**IF ALL OR A PART OF THE PREMISES IS IN A PUBLIC IMPROVEMENT DISTRICT (PID), AND THE BUYER MAKES THIS OFFER BEFORE BUYER'S RECEIPT OF A COPY OF THE WRITTEN NOICE OF INFORMATION, THEN NEITHER THE BUYER NOR THE SELLER MAY ENTER INTO AN AGREEMENT RELATING TO THE OFFER, ACCEPTANCE, PURCHASE OR SALE OF THE PREMISES, AND ANY SUCH PURPORTED AGREEMENT SHALL BE INVALID.**

#### **4. HOMEOWNER ASSOCIATION (HOA)**

This Section 4, “Homeowner Association (HOA)”, applies only if all or part of the Premises is located within a development that is subject to a Homeowner Association. If no part of the Premises is located within a development that is subject to a Homeowner Association, then this Section 4 does not apply and is without any force or effect. Except as otherwise provided, the remainder of this Offer and Agreement, however, does apply and has full force and effect.

#### **BEFORE MAKING AN OFFER, BUYER SHOULD INITIAL THE CORRECT BOX(ES), IF ANY**

SELLER HAS NOT PROVIDED BUYER WITH A WRITTEN STATEMENT THAT ALL OR PART OF THE PREMISES IS WITHIN A DEVELOPMENT THAT IS SUBJECT TO A HOMEOWNER ASSOCIATION.

SELLER HAS PROVIDED BUYER WITH A WRITTEN STATEMENT THAT ALL OR PART OF THE PREMISES IS WITHIN A DEVELOPMENT THAT IS SUBJECT TO A HOMEOWNER ASSOCIATION.

BUYER HAS RECEIVED (FROM OR VIA THE SELLER) AND REVIEWED EACH OF THE FOLLOWING:

- DISCLOSURE CERTIFICATE FROM THE HOMEOWNER ASSOCIATION (A FORM OF DISCLOSURE STATEMENT IS ATTACHED AS EXHIBIT D. IF THE HOMEOWNER ASSOCIATION HAS ITS OWN FORM, THE HOMEOWNER ASSOCIATION FORM MAY BE USED.).
- THE DECLARATION OF THE HOMEOWNER ASSOCIATION, OTHER THAN THE PLATS AND PLANS;
- THE BYLAWS OF THE HOMEOWNER ASSOCIATION;
- ANY COVENANTS, CONDITIONS AND RESTRICTIONS APPLICABLE TO THE PREMISES, OR ANY PART OF IT; AND
- ANY RULES OF THE HOMEOWNER ASSOCIATION.

#### **BUYER SHOULD SIGN THE FOLLOWING STATEMENT, IF CORRECT**

BUYER ACKNOWLEDGES RECEIPT OF COPIES OF A DISCLOSURE CERTIFICATE FROM THE HOMEOWNER ASSOCIATION AND THE OTHER DOCUMENTS LISTED ABOVE.

\_\_\_\_\_  
Buyer  
Date and Time

\_\_\_\_\_  
Buyer  
Date and Time

**IF ALL OR A PART OF THE PREMISES IS WITHIN A DEVELOPMENT SUBJECT TO A HOMEOWNER ASSOCIATION, THEN THE BUYER HAS THE RIGHT TO CANCEL ANY AGREEMENT RELATING TO THE OFFER, ACCEPTANCE, PURCHASE OR SALE OF THE PREMISES, WITHIN SEVEN (7) DAYS AFTER RECEIVING A DISCLOSURE CERTIFICATE FROM THE HOMEOWNER ASSOCIATION.**

**5. SEPTIC TANK**

This Section 5, “Septic Tank”, applies only if a septic tank or other on-site liquid waste system is located on the Premises or serves all or part of the Premises. If no septic tank or other on-site liquid waste system is located on the Premises or serves all or part of the Premises, then this Section 5 does not apply and is without any force or effect. Except as otherwise provided, the remainder of this Offer and Agreement, however, does apply and has full force and effect.

**BEFORE MAKING AN OFFER, BUYER SHOULD INITIAL THE CORRECT BOX(ES), IF ANY**

BUYER ACKNOWLEDGES BEING ADVISED BY SELLER THAT THE PREMISES:

- DOES NOT HAVE, AND IS NOT SERVED BY, A SEPTIC TANK OR OTHER ON-SITE LIQUID WASTE SYSTEM.
- DOES HAVE, OR IS SERVED BY, A SEPTIC TANK OR OTHER ON-SITE LIQUID WASTE SYSTEM.

**IF THE PREMISES CONTAIN OR ARE SERVED BY A SEPTIC TANK OR OTHER ON-SITE LIQUID WASTE SYSTEM, THEN THE SELLER SHOULD HAVE THE TANK OR SYSTEM EVALUATED AND SHOULD PROVIDE THE BUYER WITH A COPY OF THE**

**EVALUATION REPORT. ANY FURTHER INSTRUCTIONS OF THE NEW MEXICO ENVIRONMENT DEPARTMENT SHOULD BE FOLLOWED.**

BUYER HAS RECEIVED AND REVIEWED A COPY OF A TIMELY “ONSITE WASTEWATER SYSTEM EVALUATION FORM” (OR OTHER EVALUATION FORM APPROVED BY THE NEW MEXICO ENVIRONMENT DEPARTMENT), RELATING TO THE PREMISES AND ITS ON-SITE LIQUID WASTE SYSTEM, AND ANY OTHER PERMITS OR DOCUMENTATION REQUIRED BY THE NEW MEXICO ENVIRONMENT DEPARTMENT.

**BUYER SHOULD SIGN THE FOLLOWING STATEMENT, IF CORRECT**

BUYER ACKNOWLEDGES RECEIPT AND REVIEW OF THE “ONSITE WASTEWATER SYSTEM EVALUATION FORM” (OR OTHER EVALUATION FORM APPROVED BY THE NEW MEXICO ENVIRONMENT DEPARTMENT) AND OTHER PERMITS AND DOCUMENTS REQUIRED BY THE NEW MEXICO ENVIRONMENT DEPARTMENT.

\_\_\_\_\_  
Buyer  
Date and Time

\_\_\_\_\_  
Buyer  
Date and Time

**6. WELL, WATER AND WATER RIGHTS**

This Section 6, “Well, Water and Water Rights”, applies only if all or any part of the Premises has or is subject to a well, water or other water rights, other than those available by a municipal or other common water system. If no part of the Premises has or is subject to a well, water or other water rights, other than those provided by a municipal or other common water system, then this Section 6 does not apply and is without any force or effect. Except as otherwise provided, the remainder of this Offer and Agreement, however, does apply and has full force and effect.

**BEFORE MAKING AN OFFER, BUYER SHOULD INITIAL THE CORRECT BOX(ES), IF ANY**

BUYER ACKNOWLEDGES BEING ADVISED BY SELLER THAT, TO THE KNOWLEDGE OF THE SELLER, THE PREMISES:

- DOES NOT HAVE, AND IS NOT SERVED BY, A WELL, WATER OR OTHER WATER RIGHTS, OTHER THAN THOSE PROVIDED BY A MUNICIPAL OR OTHER COMMON WATER SYSTEM
- DOES HAVE, OR IS SERVED BY, A WELL, WATER OR OTHER WATER RIGHTS, OTHER THAN THOSE PROVIDED BY A MUNICIPAL OR OTHER COMMON WATER SYSTEM

**WATER AND WATER RIGHTS ISSUES ARE COMPLICATED**

**IF THE BUYER WISHES TO DETERMINE THAT A WELL, WATER OR WATER RIGHTS WILL SERVE THE PREMISES AFTER THE CLOSING, THE BUYER SHOULD CONTACT A LAWYER OR OTHER PERSON EXPERIENCED IN WATER AND WATER RIGHTS**

**IF THE BUYER WISHES TO DETERMINE WHETHER OTHERS MAY HAVE RIGHTS OR INTERESTS IN A WELL, WATER OR WATER RIGHTS, THE BUYER SHOULD CONTACT A LAWYER OR OTHER PERSON EXPERIENCED IN WATER AND WATER RIGHTS**

**IF A WELL, WATER OR WATER RIGHTS ARE TO BE TRANSFERRED WITH THE PREMISES, THE BUYER LIKELY WILL HAVE TO REGISTER THAT TRANSFER WITH THE OFFICE OF NEW MEXICO STATE ENGINEER**

**BUYER SHOULD SIGN THE FOLLOWING STATEMENT, IF CORRECT**

BUYER ACKNOWLEDGES BEING ADVISED TO CONTACT A LAWYER OR OTHER PERSON EXPERIENCED IN WATER AND WATER RIGHTS, AND BEING ADVISED THAT TRANSFER OF A WELL, WATER OR WATER RIGHTS LIKELY WILL REQUIRE FILINGS WITH THE OFFICE OF THE NEW MEXICO STATE ENGINEER.

\_\_\_\_\_  
Buyer  
Date and Time

\_\_\_\_\_  
Buyer  
Date and Time

**7. OFFER**

Buyer hereby offers to purchase from Seller the Premises, upon the terms and conditions set out in the Purchase and Sale Agreement below.



**8. ACCEPTANCE**

Seller may accept this Offer by signing this Offer and Purchase and Sale Agreement and returning one signed copy to Buyer on or before \_\_\_\_\_ o'clock \_\_.m., \_\_\_\_\_, \_\_\_\_\_ 20\_\_\_. If the Seller accepts this Offer and Purchase and Sale Agreement, then Seller and Buyer will become legally obligated to sell and purchase the Premises upon the following terms and conditions:

**PURCHASE AND SALE AGREEMENT**

**9. BASIC AGREEMENT**

Seller will sell and Buyer will purchase the Premises upon the terms and conditions set forth below.

**10. PREMISES**

The term "Premises" refers to that real estate commonly known as and numbered \_\_\_\_\_

\_\_\_\_\_ County, New Mexico. The real estate may be more specifically described in Exhibit E, if that Exhibit is completed and attached. If it is not, and a more complete description of the real estate constituting a part of the Premises is required for any reason, then the Parties agree to supplement this Agreement with a satisfactory description.

The term "Premises" also includes, without limitation, any and all: improvements to the subject real estate, including without limitation buildings, fixtures, walls, fencing, sprinklers or other watering systems, and landscaping; stove, dishwasher, screens, storms doors and windows and antennae, whether or not characterized as personalty; rights, privileges, easements and appurtenances to the real estate, including without limitation development rights, water rights, mineral rights, easements, rights-of-way and means of access.

The term "Premises" also includes: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

**11. EXCLUSIONS FROM SALE**

Notwithstanding the provisions of Section 10, the term "Premises" does not include, and the following items will be excluded from the sale and purchase: refrigerator, freezer, clothes washer, clothes dryer, trailer houses and structures not affixed to permanent foundations.

In addition, the term "Premises" does not include: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**12. DEPOSIT**

At the time this Offer and Purchase and Sale Agreement is signed by both the Buyer and Seller, the Buyer will deposit the sum of \_\_\_\_\_ Dollars (US \$ \_\_\_\_\_) (the "Deposit") with the title insurance company identified in Section 17 ("Title Company"). The Deposit and any other funds paid by the Buyer to the Title Company prior to closing will be held by the Title Company in escrow, subject to the terms and conditions of this Agreement. The Deposit and any such other funds will not necessarily be held in an interest bearing account. If the transaction contemplated herein closes, any interest will be paid to the Seller. If the transaction does not close, any interest will be paid to the party entitled to the Deposit. In the event of any disagreement between the parties, the escrow agent may retain the Deposit and any other funds paid under this Agreement, and any interest earned thereon, pending instructions mutually given by the Seller and the Buyer.

**13. PURCHASE PRICE AND PAYMENT**

The Purchase Price, including the Deposit ("Purchase Price") is \_\_\_\_\_ Dollars (US \$ \_\_\_\_\_).

The Buyer will pay the Purchase Price as follows:

\$ \_\_\_\_\_ being the Deposit, to the Title Company, pursuant to Section 12, at the time this Offer and Purchase and Sale Agreement is signed by both the Buyer and Seller; and

\$ \_\_\_\_\_ to the Title Company, in cash or by certified check, at the Closing, for appropriate allocation and distribution by the Title Company at or as soon as reasonably possible after Closing.

#### **14. PERFORMANCE, DEED AND TITLE POLICY**

Subject to the conditions and conditions of this Agreement, upon full compliance by Buyer with his, her, their or its obligations to be satisfied before or at Closing, Seller will sell and convey title to Premises to the Buyer by delivery of statutory warranty deed and otherwise will fully comply with his, her, their or its obligations to be satisfied at Closing, including without limitation causing the Title Company to issue an owners title insurance policy to the Buyer, in an amount equal to the Purchase Price. Subject to the conditions and conditions of this Agreement, upon full compliance by Seller with his, her, their or its obligations to be satisfied before or at Closing, Buyer will pay the Purchase Price in the amount and otherwise as provided in Section 13, and otherwise will fully comply with his, her, their or its obligations to be satisfied at Closing. The statutory warranty deed and the owner's title insurance policy will be subject to Title Matters which have been approved by Buyer, or as to which Buyer has waived or is deemed to have waived objection, pursuant to Section 18 below.

#### **15. CLOSING COSTS AND PRORATIONS**

Real estate taxes, assessments, rents, and utilities will be prorated between the parties through the date of Closing. Other costs arising in connection with this transaction will be paid as described below. Matters not specified will be allocated in accordance with customary allocations in the county in which the Premises are located, provided that Buyer shall be responsible for all costs and expenses incurred in connection with any financing or loan arranged by Buyer to purchase the Premises, and any mortgage, deed of trust, real estate contract or other agreement or instrument related to that financing or loan, including without limitation all "prepaid" fees and costs.

<b>Item</b>	<b>Buyer</b>	<b>Seller</b>	<b>N/A</b>
Closing Costs			
Settlement Agent Fee	1/2	1/2	
Transaction Document Preparation (including settlement statement and deed)	1/2	1/2	
Flood Zone Certification		X	
Special Assessment Search		X	
Removal of Standard Exceptions	X		
Recording			
Deed, Loan and other Buyer's documents	X		
Title Clearing and other Seller's documents		X	
Inspections (specify)	X		
Title Insurance			
Commitment		X	
Owners Policy		X	
Mortgagees Policy	X		
Mortgage Costs			
Appraisal	X		
Points	X		
Origination Fee	X		
Commitment Fee	X		
Loan Document Preparation (including Note and Mortgage or Deed of Trust)	X		
Tax Service Fee	X		
Mortgage Insurance	X		
Other (specify)			

Survey (specify type)	X		
Flood Zone Certification	X		

**16. CLOSING DATE AND POSSESSION**

In this Agreement, the term "Closing" refers to the contemporaneous performance by the parties of their obligations under this Agreement, including, without limitation, the delivery of the deed by the Seller and the payment of the Purchase Price by the Buyer. Closing will occur at the offices of the Title Company, on \_\_\_\_\_, 20\_\_\_\_ at such time as may be reasonably designated by the Title Company. Upon written agreement of Buyer and Seller, the date of Closing may be advanced to an earlier date which is mutually acceptable. Buyer will be entitled to physical possession of the Premises when the deed to the Premises has been recorded and the Purchase Price paid to the Seller. Buyer and Seller acknowledge that the deed may be recorded and the Purchase Price paid to the Seller after the date of the Closing.

**17. TITLE INSURANCE COMPANY**

The parties will appoint \_\_\_\_\_  
\_\_\_\_\_, whose address is \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_, and whose telephone number or email address is \_\_\_\_\_  
\_\_\_\_\_ to issue the title insurance required under this Agreement and to act as the closing agent for the purpose of closing the transactions contemplated by this Agreement.

**18. TITLE CONTINGENCY**

On or before the fifth (5th) business day following the Seller’s execution of this Agreement, Seller will order for the benefit of the Buyer a commitment for an owner's title insurance policy, together with accurate copies of all matters of record referred to in the commitment, including without

limitation those matters of record referred to in Schedule B of the commitment. The commitment will be ordered from and issued by the Title Company.

Buyer will have seven (7) calendar days after receipt of the commitment and copies of all matters of record, to review the commitment and any matters of record or other exclusion or exception noted therein. Such matter(s) of record, exclusions or exceptions (except for those which are, or form the basis for, standard exclusions or exceptions in title insurance commitments and policies normally issued by the Title Company) shall be referred to as the "Title Matters".

If, within such seven (7) calendar day period, Buyer delivers written notice ("Buyer's Objection Notice ") to Seller specifying objection to any Title Matter(s), then Seller will make a good faith effort to correct or eliminate the Title Matter(s) specified in the Buyer's Objection Notice; provided that Seller will not be required to expend more than one percent (1%) of the Purchase Price in the aggregate to correct or eliminate those Title Matter(s); further provided however, notwithstanding the foregoing, Seller will be obligated to expend an amount equal to the net proceeds arising from the sale of the Premises to satisfy and obtain the release of any mortgage, lien or other interest granted by Seller or any lien or encumbrance securing a judgment entered against Seller. The Buyer will be deemed to have accepted and to maintain no objection to any Title Matters not specified in the Buyer's Objection Notice.

If the Seller is unable to correct or eliminate any Title Matter specified in the Buyer's Objection Notice, then, on or before the seventh (7<sup>th</sup>) calendar day following delivery by Seller to Buyer of written notice ("Seller's Notice") specifying any Title Matter that Seller is unable to correct or eliminate, Buyer may elect to terminate this Agreement by giving written notice of termination to Seller, whereupon the Deposit will be refunded to Buyer and all other obligations of the parties hereunder will cease and this Agreement will be null and void. If Buyer fails to terminate this Agreement by giving written notice of termination to Seller on or before such seventh (7<sup>th</sup>) calendar day following delivery of the Seller's Notice, Buyer will be deemed to have waived any objections to any Title Matter specified in the Seller's Notice.

## **19. FINANCING CONTINGENCY**

Buyer's obligations under this Agreement will be contingent upon Buyer's receipt, on or before the fourteenth (14th) calendar day following the acceptance of the Offer by Seller, of a commitment for a residential mortgage loan in the principal amount of ninety percent (90%) of the Purchase Price, or such lower amount as Buyer subsequently may apply for, at currently available interest rates. Buyer will make a good faith application to at least one bank or other mortgage lender on or before the seventh (7th) calendar day following the acceptance of the Offer by the Seller, and will diligently prosecute such application. If Buyer fails to receive a mortgage loan commitment on or before the fourteenth (14th) calendar day following the acceptance of the Offer by Seller, and on or before the seventeenth (17th) calendar day, Buyer notifies Seller in writing that Buyer is terminating this Agreement because of such failure, then the Deposit will be refunded to Buyer and all other obligations of the parties hereunder will cease and this Agreement will be null and void. If the Buyer fails to terminate this Agreement by giving written notice of termination to Seller on or before such seventeenth (17<sup>th</sup>) calendar day following acceptance of the Offer by Seller, Buyer will be deemed to have waived his, her, their or its rights to terminate the Agreement pursuant to this Section 19.

## **20. INSPECTION CONTINGENCY**

Buyer's obligations under this Agreement will be contingent upon Buyer's satisfaction with the result of such inspections (including without limitation, structural, insect, radon) of the Premises as Buyer, at his, her, their or its sole cost, may cause to be conducted on or before the fourteenth (14th) calendar day following the acceptance of the Offer by the Seller. Buyer also will be entitled to re-inspect the Premises, at the Buyer's sole cost, within two (2) calendar days of the Closing for the limited purpose of confirming the condition of the Premises has not changed since the completion of the inspections referred to in the preceding sentence. Buyer and Buyer's inspectors and consultants will be entitled to have reasonable access to the Premises from time to time for the purposes of making such inspections, provided that Buyer will indemnify Seller from any and all liability, claims, damages, losses, costs or expenses, including attorney fees, suffered, paid or incurred by Seller to the extent arising out of or as a consequence of Buyer's exercise of rights under this Section 20. If Buyer is not satisfied with the condition of the Premises or any portion thereof and, on or before the seventeenth (17<sup>th</sup>) calendar day following the acceptance of the Offer

by the Seller, Buyer notifies Seller in writing that Buyer is terminating this Agreement because of such dissatisfaction, then the Deposit will be refunded to Buyer and all other obligations of the parties hereunder will cease and this Agreement will be null and void. If the Buyer fails to terminate this Agreement by giving written notice of termination to Seller on or before the seventeenth (17<sup>th</sup>) calendar day following acceptance of the Offer by Seller, Buyer will be deemed to have waived his, her, their or its rights to terminate the Agreement pursuant to this Section 20.

If §56-7-1 N.M.S.A. 1978 Comp. applies to the inspections carried out pursuant to, and the indemnification obligations arising under, this Section 20, the agreement to indemnify shall not apply to liability, claims, damages, losses, costs or expenses, including attorney fees, arising out of (i) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications by the indemnitee, or the agents or employees of the indemnitee; or (ii) the giving of or the failure to give directions or instructions by the indemnitee, or the agents or employees of the indemnitee, where such giving or failure to give directions or instructions is the primary cause of bodily injury to persons or damage to property.

## **21. AS IS**

Buyer acknowledges that Buyer will have ample opportunity under this Agreement to, and will, examine the Premises, and that if Buyer accepts the deed and otherwise closes the sale and purchase transaction contemplated by this Agreement, Buyer will do so on the basis that all of the Premises are being accepted "as is", in their current condition as of the time of Closing, based solely upon Buyer's inspection(s) of the Premises. Buyer acknowledges that neither Seller nor any person acting on behalf of Seller has made any statement, representation or warranty to Buyer or Buyer's representative(s) with respect to the Premises, or any of it, or its condition or value, and Buyer is not relying upon any statement, representation or warranty of Seller with respect to the Premises, or any of it, or its condition or value.

## **22. TIME IS OF THE ESSENCE**

Time is of the essence with respect to all obligations arising under this Agreement.



### **23. DEFAULT, REMDIES, ATTORNEY'S FEES**

If either party defaults in the performance of his, her, their or its obligations under this Agreement, the non-defaulting party shall be entitled to all rights and remedies available at law or in equity, including without limitation, specific performance.

In any action or proceeding arising out of this Agreement, the prevailing party will be entitled to recover reasonable costs and expenses paid or incurred by such party enforcing its rights hereunder, including without limitation attorney fees.

### **24. NOTICE**

Any notice required or permitted hereunder shall be deemed delivered to: (a) the Buyer, (i) if actually delivered, on the date of delivery; or (ii) if sent by FedEx or other courier service that routinely maintains a record of attempted and successful deliveries, on the date of first attempted delivery on a business day in the jurisdiction of attempted delivery, provided the notice is addressed to the Buyer at the address specified in the initial, unnumbered paragraph of this Agreement, or (b) the Seller, (i) if actually delivered, on the date of delivery, and (ii) if sent by FedEx or other courier service that routinely maintains a record of attempted and successful deliveries, on the date of first attempted delivery on a business day in the jurisdiction of attempted delivery, provided the notice is addressed to Seller at the address specified in the initial, unnumbered paragraph of this Agreement. Either party, by notice given pursuant to this Section 24, may designate a substitute recipient and/or address for notices directed to itself.

### **25. BROKER**

Seller will indemnify and hold Buyer harmless from and against any loss or damage, including reasonable attorneys' fees and expenses, paid or incurred by Buyer as a result of any unappealable judicial determination that any person, whether or not a real estate broker, is entitled to compensation on account of the purchase and sale of the Premises because of any act or omission of Seller, except to the extent otherwise specifically provided in this Agreement. Buyer will indemnify and hold Seller harmless from and against any loss or damage, including reasonable attorneys' fees and expenses, paid or incurred by Seller as a result of any unappealable judicial determination that any person, whether or not a real estate broker, claiming compensation on account of the purchase and sale of the Premises because of any act or omission of Buyer, except to the extent otherwise specifically provided in this Agreement.

**26. ELECTRONIC DOCUMENTS, COUNTERPARTS**

This Agreement and other documents which are transmitted by electronic means (whether email, fax or otherwise) with electronic signatures conforming to requirements of law, will be effective and binding on each party signing the same.

This Agreement may be executed through the use of separate signature pages or in any number of counterparts, and each of such counterparts will, for all purposes, constitute one agreement binding on all the parties, notwithstanding that all parties are not signatories to the same counterpart.

**27. ENTIRE AGREEMENT**

The Offer and this Agreement constitutes the sole and exclusive agreement by and among Buyer and Seller, or any of them, with respect to the subject matter hereof, and any and all other agreements, understandings or contracts, whether written or oral, howsoever denominated or characterized, with respect to the Premises, between the Buyer and the Seller or any of them, are merged herein and extinguished. The Offer and this Agreement may be amended only by a writing executed by all of the Parties.

**28. GOVERNING LAW**

The interpretation and construction of the Offer and this Agreement, and the determination of the rights and obligations of the parties, shall be governed by the laws of the state of New Mexico, without regard for its conflict of laws principles.

**29. SPOUSES**

The spouse of each married Seller hereby consents to the transaction contemplated herein, and agrees to, and will, sign and deliver such deeds and other documents as reasonably may be requested by the Title Company to evidence such consent and to effect the transfer to Buyer of any and all rights which said spouse may have in or to the Premises.

**30. TAX REPORTING**

Seller represent that Seller is not a nonresident alien for purposes of United States income taxation, and that the social security number(s) of Seller and Seller's Spouse are: \_\_\_\_\_

\_\_\_\_\_ and \_\_\_\_\_.

**31. INDEMNIFICATION, HOLD HARMLESS.**

Each of the Buyer and Seller will indemnify and hold harmless each of Lisa Hebenstreit Realty, LLC, a New Mexico limited liability company, its subsidiaries, divisions and departments, and each of their respective owners, operators, partners, members, shareholders, managers, directors, officers, employees, consultants or attorneys (collectively, “Indemnified Parties”), from and against any and all liability, claim, damage, loss, cost, expense or damage, including attorney fees, that all or any of them may suffer, pay or incur arising out of or as a consequence of this Offer and Purchase and Sale Agreement or any act or omission of any of the Indemnified Parties.

**EACH PARTY ACKNOWLEDGES THAT HE, SHE, THEY, OR IT HAS BEEN ADVISED THAT SIGNING THIS OFFER AND PURCHASE AND SALE AGREEMENT WILL AFFECT HIS, HER, THEIR OR ITS LEGAL RIGHTS AND RESPONSIBILITIES WITH RESPECT TO THE PREMISES, AND MAY RESULT IN TAX CONSEQUENCES. EACH PARTY ACKNOWLEDGES THAT HE, SHE, THEY OR IT HAS BEEN ADVISED TO OBTAIN COMPETENT LEGAL AND TAX ADVICE BEFORE SIGNING THIS OFFER AND PURCHASE AND SALE AGREEMENT.**

**SELLER**

**BUYER**

\_\_\_\_\_

Date

\_\_\_\_\_

Date

\_\_\_\_\_

Date

\_\_\_\_\_

Date

**EXHIBIT A**  
**DISCLOSURE OF INFORMATION ON LEAD-BASED PAINT AND/OR LEAD-BASED**  
**PAINT HAZARDS (INCLUDING LEAD WARNING STATEMENT)**

**Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards**

**Lead Warning Statement**

Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The Seller of any interest in residential real property is required to provide the Buyer with any information on lead-based paint hazards from risk assessments or inspections in the Seller's possession and notify the Buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.

**Seller's Disclosure**

(a) Presence of lead-based paint and/or lead-based paint hazards (*circle (i) or (ii) below*):

(i) Known lead-based paint and/or lead-based paint hazards are present in the housing (*explain*)

\_\_\_\_\_  
\_\_\_\_\_  
*(use additional sheet if necessary)*

Additional information available to the Seller concerning any lead-based paint and/or lead-based paint hazards present in the housing, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazard, and the condition of the painted surfaces, is presented below:

\_\_\_\_\_  
\_\_\_\_\_  
*(use additional sheet if necessary)*

(ii) Seller has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.

(b) Records and reports available to the Seller (*circle (i) or (ii) below*):

(i) Seller has provided the Buyer with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing, any common areas, and any other residential dwellings in multifamily housing (provided, in the case of multifamily housing, such information is part of an evaluation or reduction of lead-based paint and/or lead-based paint hazards in the multifamily housing as a whole) (list documents below).

\_\_\_\_\_  
\_\_\_\_\_  
*(use additional sheet if necessary)*

- (ii) Seller has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

**Buyer's Acknowledgment** (*initial*)

- (a) Buyer has received copies of all information listed above. \_\_\_\_\_
- (b) Buyer has received the pamphlet Protect Your Family from Lead in Your Home. \_\_\_\_\_
- (c) Buyer has (*initial (i) or (ii) below*):
  - (i) received a 10-day period (or other written, mutually agreed upon period) to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards;  
\_\_\_\_\_
  - or
  - (ii) waived the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards. \_\_\_\_\_

**Agent's (if any) Acknowledgement** (*initial*)

- (a) Agent, if any, has informed the Seller of the Seller's obligations under 42 U.S.C. 4852(d) and is aware of his/her responsibility to ensure compliance.

**Certification of Accuracy**

The following parties have reviewed their respective statements above and certify, to the best of their respective knowledge, that their respective statements are true and accurate.

\_\_\_\_\_  
Seller  
Date

\_\_\_\_\_  
Seller  
Date

\_\_\_\_\_  
Buyer  
Date

\_\_\_\_\_  
Buyer  
Date

\_\_\_\_\_  
Agent (if any)  
Date

\_\_\_\_\_  
Agent (if any)  
Date

EXHIBIT B

COUNTY ASSESSOR'S ESTIMATE OF THE AMOUNT OF PROPERTY TAX LEVY

EXHIBIT C

PUBLIC IMPROVEMENT DISTRICT  
INFORMATION DISCLOSURE STATEMENT

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

1. All or a Part of the Premises is within a Public Improvement District.
2. The purpose of the Public Improvement District is: **(The PID purpose should be described)**

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3. The Buyer will be obligated to pay any property tax or special levy that is imposed by the Public Improvement District board.
4. In addition to any property tax or special levy that is imposed by the Public Improvement District board, the Buyer will be obligated to pay any other state, county or other local governmental taxes and assessments.
5. **Special Levies. (One of the first two boxes should be marked. If the second box is marked, then one of the two indented boxes also should be marked and any blank should be completed.)**

**A special levy has not been authorized by the Public Improvement District.**

**A special levy has been authorized by the Public Improvement District. As to that that special levy, either:**

**the maximum special levy that is authorized to be imposed upon property in the district is \$\_\_\_\_\_; or**

**a special levy to be imposed upon the property in the district has been prepaid in full as provided in the rate or method of apportionment.**

6. **General Obligation Bonds. (One of the following two boxes should be marked. If the second box is marked, then the blanks should be completed.) Either:**



**General Obligation Bonds have not been issued.**

**General Obligation Bonds have been issued, and the following information relates to those Bonds:**

- **The amount of general obligation bonds that that are outstanding is \_\_\_\_\_ (\$\_\_\_\_\_)**
- **The amount of annual debt service on outstanding general obligation bonds is \_\_\_\_\_ (\$\_\_\_\_\_).**
- **The maximum rate and amount of property taxes that may be imposed upon the property in the district are limited only by the amount of of debt outstanding.**
- **The estimated or projected annual mill levy or special levy per one thousand dollars (\$1,000) of assessed value as of the date of this disclosure statement is \$\_\_\_\_\_. This estimated levy or rate may be increased by the Public Improvement District board when necessary to meet debt obligations.**

**7. Failure to pay the property tax or special levy could result in foreclosure of the Premises.**

8. More information concerning the rate of the property tax or the amount of the assessment and the due date of each may be obtained from the governing body that authorized the formation of the Public Improvement District.
9. A feasibility study was completed as part of the formation of the Public Improvement District. That feasibility study is available through the governing body that authorized the formation of the Public Improvement District.
10. A copy of the most recent Notice filed by the Public Improvement District, if any, was filed in the records of the \_\_\_\_\_ County Clerk, at Book \_\_\_\_\_, Page \_\_\_\_\_ on \_\_\_\_\_, 20\_\_\_\_, and is attached.

EXHIBIT D

HOMEOWNER ASSOCIATION DISCLOSURE CERTIFICATE

TO: \_\_\_\_\_ (“Lot Owner”)  
[insert name of Lot Owner]

The name of the Homeowner Association is: \_\_\_\_\_

There  is or  is not a right of first refusal or other restraint on the free alienability of the Premises.

The terms and conditions of any right of first refusal or other restraint on the free alienability of the Lot follow: \_\_\_\_\_  
(use additional sheet if necessary)

The amount of the monthly common expense assessment for the Lot is: \_\_\_\_\_

The amount of any unpaid common expense assessment currently due and payable from the Lot Owner is: \_\_\_\_\_

The amount of any unpaid special assessment currently due and payable from the Lot Owner is: \_\_\_\_\_

Other fees, if any, payable by Lot Owner or lots within the development subject to the Homeowner Association are: \_\_\_\_\_  
(use additional sheet if necessary)

The amount of capital expenditures anticipated by the Homeowner Association and approved by the Board of Directors of the Homeowner Association (“Board”) for the current fiscal year is \_\_\_\_\_ and for the two next succeeding fiscal years are \_\_\_\_\_ and \_\_\_\_\_.

The amount of any reserves for capital expenditures is \_\_\_\_\_. The amount of any portions of those reserves designated by the Homeowner Association for any approved projects are: \_\_\_\_\_

The most recent regularly prepared balance sheet and income and expense statement, if any, of the Homeowner Association are attached to this Homeowner Disclosure Certificate, as Exhibit A and B.

The current operating budget of the Homeowner Association is attached to this Homeowner Disclosure Certificate, as Exhibit C.

Any unsatisfied judgment(s) of the Homeowner Association is (are): \_\_\_\_\_  
\_\_\_\_\_  
*(use additional sheet if necessary)*

Any pending suit(s) against the Homeowner Association is (are): . \_\_\_\_\_  
\_\_\_\_\_  
*(use additional sheet if necessary)*

The status of any pending suit(s) material to the Homeowner Association of which the Homeowner Association has actual knowledge is (are): \_\_\_\_\_  
\_\_\_\_\_  
*(use additional sheet if necessary)*

The following described insurance coverage, if any, is currently provided for the benefit of the owners of lots within the development subject to the Homeowner Association and the Board:  
\_\_\_\_\_  
\_\_\_\_\_  
*(use additional sheet if necessary)*

The remaining term of each leasehold estate, if any, affecting the Homeowner Association is (are): \_\_\_\_\_  
\_\_\_\_\_  
*(use additional sheet if necessary)*

The provisions governing any extension or renewal of each such leasehold estate, if any, are:  
\_\_\_\_\_  
\_\_\_\_\_  
*(use additional sheet if necessary)*

The contact person for the Homeowner Association is \_\_\_\_\_  
and the contract information for the Homeowner Association is \_\_\_\_\_  
\_\_\_\_\_  
*(use additional sheet if necessary)*

THIS DISCLOSURE CERTIFICATE CONTAINS INFORMATION THAT IS CURRENT AS OF THE DATE ON WHICH THE DISCLOSURE CERTIFICATE IS FURNISHED TO LOT OWNER BY THE HOMEOWNER ASSOCIATION.

*[insert name of Homeowner Association]*  
a New Mexico non-profit corporation

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By:  
Title:

**THE HOMEOWNER ASSOCIATION DISCLOSURE CERTIFICATE SHOULD  
HAVE THE FOLLOWING ATTACHED TO IT:**

EXHIBIT A BALANCE SHEET

EXHIBIT B INCOME AND EXPENSE STATEMENT

EXHIBIT C CURRENT OPERATING BUDGET

EXHIBIT E

DESCRIPTION OF REAL ESTATE