

NAKOMA

REAL ESTATE PURCHASE CONTRACT ("REPC")

This is a legally binding contract. If you desire legal or tax advice, consult your attorney or tax advisor.

EARNEST MONEY DEPOSIT

_____ (individually and collectively, "Buyer"), offers to purchase the Condominium Unit described in Section 1 below and agrees to tender to Friends of Flagstaff, L.L.C., a Utah limited liability company ("Seller"), concurrent with the execution of this REPC by Buyer, an earnest money deposit equaling _____ percent (_____%) of the Purchase Price (as defined below) (the "Deposit" as defined in Section 2.2 below) which shall be deposited in an interest bearing escrow account with _____. ("Title Company").

OFFER TO PURCHASE PROPERTY:

1. **DEFINITIONS.** Except as otherwise defined or where the context otherwise clearly provides, certain capitalized terms are used herein as defined terms and have the meanings as defined in the Declaration of Condominium for Nakoma dated August 9, 2006 and recorded in the Office of the Summit County Recorder on August 22, 2006, as Entry No. 788158, in Book 1811, at Page 1764, as amended from time to time ("Declaration"). The Plat and other documents forming part of the Declaration are hereby incorporated herein by reference and made a part of this REPC with the same force and effect as if set forth in full herein.

2. PROPERTY DESCRIPTION AND PURCHASE PRICE.

2.1 **Description of the Property.** The Deposit is given to secure and apply toward the purchase of Unit No. _____ (the "Condominium") of Nakoma, a condominium project situated in Park City, Utah (the "Project").

2.2 **Purchase Price.** The purchase price for the Condominium shall be the sum of \$ _____ ("Purchase Price"), payable as follows:

\$ _____ (a) **Initial Deposit.** Upon Acceptance of this offer by all parties, Buyer shall pay to Seller the Initial Deposit. If the Initial Deposit is delivered prior to the commencement of construction of the Condominium, it shall be held in escrow by _____ ("Title Company") in an interest bearing account, with interest accruing for the benefit of Buyer prior to the commencement of construction. Upon the commencement of construction of the Condominium, the Initial Deposit shall be released to Seller and any accrued interest prior to the commencement of construction shall be released to Buyer. If construction is in process at the time of Acceptance, the Initial Deposit shall be paid directly to Seller. If the Initial Deposit is paid prior to the commencement of construction, Buyer shall complete and deliver to Seller for delivery to the Title Company concurrent with the execution of this REPC, an IRS Form W-9 or similar form as required by law for the Title Company to report to the Buyer and the IRS the amount of any interest earned and paid to Buyer with respect to the Initial Deposit.

\$ _____ (b) **Second Deposit.** At such time during the construction process as Seller notifies Buyer that the roof of the building containing the Condominium has been substantially completed (for purposes of this Section 2, the term "substantially completed" shall mean the construction of the building's roof trusses and the installation of sheathing material, but not the installation of an ice or water shield or roof covering), Buyer shall tender to Seller an additional earnest money _____ ten percent (_____%) of the Purchase Price ("Second Deposit"). The Initial Deposit and the Second Deposit shall be referred to collectively herein as the "Deposit". Seller shall not be required to hold the Deposit in a separate account but may disburse the Deposit for the direct benefit of the development of the Project as Seller deems necessary at Seller's sole discretion. Any interest earned on the Deposit after the commencement of construction shall accrue for the benefit of Seller. Buyer will be credited toward payment of the Purchase Price at

the closing of the purchase and sale of the Condominium (the “Closing”) with the total amount of the Deposit, without interest. BUYER ACKNOWLEDGES AND AGREES THAT THE DEPOSIT MAY BE UTILIZED BY SELLER IN THE ACQUISITION AND CONSTRUCTION OF THE PROJECT.

\$ _____ (c) **Balance.** Buyer shall pay the balance of the Purchase Price (which shall be the Purchase Price less Deposit paid by Buyer plus any other amounts owing by Buyer to Seller under this REPC), in cash, by wire transfer or in certified funds at the Closing.

3. **NON-REFUNDABLE DEPOSIT.** Immediately following the end of Buyer’s Review Period, set forth in Section 35 below, the Deposit shall become non-refundable to Buyer, unless (i) Seller elects to return the Deposit following Buyer’s default hereunder in accordance with Section 24 below, (ii) Seller fails to complete the Condominium as provided under Sections 9 and 10 below, or (iii) Seller otherwise defaults and Buyer is not in default, in which case the entire Deposit would then be refunded to Buyer.

4. **FINANCING.**

4.1 **Financing.** Buyer understands and agrees that this REPC **is not** contingent upon Buyer obtaining financing for Closing and that Buyer shall be responsible for obtaining its own financing for the purchase of the Condominium. Seller may, but shall not be obligated to, provide assistance by notifying Buyer of potential financing sources. Buyer shall be solely responsible for the accuracy and completeness of all materials submitted to any lender.

4.2 **Appraisal of Property.** Buyer’s obligation to purchase the Condominium **is not** conditioned upon an appraisal of the Condominium.

5. **CONSTRUCTION.**

5.1 **Plans and Specifications.** Seller shall construct the Condominium in substantial compliance with the plans and specifications prepared by Seller’s architect, Jack Thomas Associates (the “Architect”), as approved by the Planning and Building Departments of Park City, which are hereby incorporated into this REPC by this reference (“Plans and Specifications”) and in substantial compliance with the Buyer’s Specifications listed Exhibit “B” as attached to this REPC. A copy of the Plans and Specifications is available for review by Buyer during normal business hours at the offices of the Architect, located at 1352 W. White Pine Canyon Rd. Park City, Utah 84060 or at such other location as Seller may determine and notify Buyer. Seller agrees to construct the Condominium Buyer acknowledges and agrees that it is a widely-observed construction industry practice for preconstruction plans and specifications for any Condominium or building to be changed and adjusted from time to time in order to accommodate ongoing “in the field” construction needs. These changes and adjustments are essential in order to permit all components of the Units and the buildings to be integrated into a well-functioning and aesthetically pleasing product in an expeditious manner. Due to the foregoing, Buyer understands and agrees that changes in the dimensions of the Condominium, rooms, balconies, terraces and in the location of telephones, electric, cable television and other utility outlets, windows, doors, walls, partitions, lighting fixtures, electric panel boxes, and the general layout of the Project are subject to changes made by Seller in its sole discretion. Buyer acknowledges and agrees that it is to Buyer’s benefit to allow Seller to make such changes to the Project. Furthermore, Seller reserves the right, at its option, to substitute or change fixtures, equipment and materials, and make other modifications to the Plans and Specifications as Seller determines, if the Architect determines, in his reasonable judgment, that the quality and value of the Condominium remain substantially unaffected by such substitutions and changes.

5.2 **Square Footage.** Buyer acknowledges that the square footages shown on the Plat and the Declaration are not the square footages of the Condominium after it is built. The square footages shown on the Plat and Declaration include the following land: (i) the land upon which the Condominium will be built, and (ii) land that will surround the Condominium after it is built and which will constitute common areas and limited common areas of the Project. Statements of approximate square footages of the Condominium, as well as of the Common Areas and Facilities located within the Project, may be made in the Plans and Specifications, the Plat and the Declaration. Buyer acknowledges, however, that square footage calculations may change during the course of construction, and

may be determined in a variety of methods. For example, architects often measure square footage from the outside edge of the exterior walls to the mid-point of the interior walls. Another method, typically used in condominium plats, measures square footage from the inside edge of the exterior walls to the inside edge of the interior walls. So long as the Condominium is constructed substantially in accordance with the Plans and Specifications, Buyer will have no right to rescind this REPC, nor will Buyer be entitled to any claim for breach of this REPC or adjustment of the Purchase Price, on account of alleged discrepancies in square footage calculations. BUYER HEREBY ACKNOWLEDGES THAT BUYER HAS REVIEWED AND ACCEPTED THE PLANS AND SPECIFICATIONS AND HAS HAD THE OPPORTUNITY TO INDEPENDENTLY VERIFY THE SQUARE FOOTAGES CONTAINED THEREIN.

5.3 Construction Process. Buyer acknowledges that control, direction and supervision of all construction personnel at the construction site will lie exclusively with Seller and that Buyer may not issue any instructions to, request construction modifications from, or otherwise interfere with, construction personnel. Buyer shall not perform any work or contract with Seller's contractors or other builders, contractors, interior decorators, or others to perform work in or about the Condominium until title is transferred to Buyer at the Closing. Buyer shall not enter upon the construction site or the unfinished Condominium without prior written notice to, and consent of, Seller. Buyer shall indemnify, defend and hold harmless Seller, and its contractors, subcontractors, employees and agents against any claims, demands, loss, damages, liability, or other expense that they may incur by reason of Buyer's breach of any provision of this Section 5.3.

5.4 Fixtures. Unless excluded herein, the Condominium shall include: plumbing; heating; water; kitchen and bathroom cabinets; kitchen appliances consisting of refrigerator/freezer, dishwasher, range/oven, microwave oven and garbage disposal; permanently affixed light fixtures and bulbs; bathroom fixtures; wiring for cable television; floor coverings; washer/dryer, and finishes per Plans and Specifications as referenced in Section 5.1 of this REPC.

5.5 Interior Selections. Buyer shall be provided interior selection manuals by Seller's representative. Seller's representatives will be available to assist Buyer in completing these selections. Buyer acknowledges and agrees that the selection of all interior items must be completed on or before the deadline date ("Selection Deadlines") set forth for such item in the applicable notice received from Seller. Due to construction activity sequences unique to multi-unit and multi-facility construction, the Selection Deadlines are critical to the successful development of the Project. Design and construction scheduling must be finalized well in advance of commencement of various phases of construction and any delay results in significant additional costs, including rescheduling and redesign costs, overhead expenses, construction delays and overall Project coordination. Accordingly, in the event that Buyer fails to complete such selections by a Selection Deadline, Seller may complete all selections on behalf of Buyer and construct the Condominium in accordance with such selections and in such event Buyer agrees to accept the selections chosen by Seller.

5.6 Change Orders. Buyer shall not contract for any work on the Condominium, and Buyer agrees that no work will be permitted on or in the Condominium by anyone other than Seller until Closing, except in accordance with the conditions below. Buyer acknowledges and agrees that Seller will not directly contract with Buyer with respect to any requested changes in the Plans and Specifications relating to the Condominium but that Buyer may request such changes in accordance with the conditions below.

- (a) Buyer must request from Seller the written approval of Seller for permission to contract for any work to the Condominium if such work is to be performed or if any materials for such work are ordered prior to the Closing, which approval will not be unreasonably withheld, provided Buyer contracts directly with Seller's general contractor. Notwithstanding the foregoing, Seller's approval of any additional work may be withheld by Seller in Seller's sole discretion if such work would result in a delay in the substantial completion of the Condominium or other units within the Project, would otherwise affect the scheduling of Seller's work on the Condominium, would change the exterior appearance of the Condominium, or if such work is to be performed by someone other than Seller's general contractor. In the event any such work to the Condominium contracted by Buyer, with or without Seller's consent or whether such Seller consent is implied or otherwise, results in a delay in the substantial completion of the Condominium

or other units in the Project, or otherwise affects the scheduling of Seller's work on the Condominium, Buyer shall pay to Seller at Closing all direct and indirect costs and damages incurred by Seller arising from such work, including, without limitation, interest on the unpaid Purchase Price at the rate of eighteen percent (18%) per annum during the period of any such delay. Nothing herein shall be deemed to eliminate or limit any remedy available to Seller in the event of Buyer's breach of this Section 5.6.

- (b) If Seller's written approval is secured by Buyer for such work, Buyer shall provide Seller with a copy of the contract(s) for such work and any change orders issued in connection with the contract(s). Seller shall require Buyer to deposit to Seller amounts sufficient to cover the cost of the work to be performed under the contract(s), and Seller or the Title Company, as applicable, shall make disbursements from that escrow account to pay all contractors and suppliers for the additional work requested by Buyer. Buyer shall bear the expense of any charge by the Title Company or any charge incurred by Seller in establishing such an escrow account. Buyer acknowledges that Seller is not to be a party to any such contract between Buyer and the general contractor and that any funds deposited with the Title Company or paid directly to the general contractor pursuant to this Section 5.6 shall not be considered part of the Deposit, and Seller shall not be obligated under any circumstances to have such funds returned to Buyer upon any termination of this REPC. Except for any amounts to be paid from funds on deposit with Seller or the Title Company, Buyer shall promptly pay all contractors, subcontractors, material suppliers and laborers for all additional work requested by Buyer, shall not permit any mechanics' or materialmen's liens to be filed against any portion of the Project, and shall indemnify and hold Seller harmless of and from all claims, losses, damages, costs and other liabilities of any type or nature incurred in connection with any additional work or change order requested by Buyer. In the event that a lien is threatened or filed against any portion of the Project as a result of Buyer's work or change orders, Seller may, but shall not be obligated to, pay any amounts necessary to obtain a discharge of such lien, and any amounts so advanced shall be repaid by Buyer to Seller upon demand, together with interest at the rate of eighteen percent (18%) per annum from date of disbursement by Seller. In addition, Buyer acknowledges and agrees that Seller shall not be responsible for the quality of, or defects in, any such changes in the work or for insuring same against loss or casualty prior to Closing. Buyer is advised to confirm with the contractor that contractor's insurance will cover any such loss, Buyer acknowledging that the cost of such insurance may be included in the cost of any such work.

5.7 Buyer's Inspection and Punch List. Buyer or Buyer's agent, may, upon reasonable notice and at a reasonable time, but not later than _____ calendar days prior to Closing, conduct a "walk-through" inspection of the Condominium to determine only that the Condominium is as described in Sections 5.4 and 5.5. Upon such inspection, Buyer may, at Buyer's option, prepare a list (the "Punch List") of any incomplete items within the Condominium. Any items requested by Buyer to be on the Punch List must be reasonable. Seller will complete the items on the Punch List at Seller's expense within thirty (30) calendar days after Closing, unless Seller is delayed for reasons beyond its control. From and after the Closing, Buyer grants Seller and its agents access to Buyer's Condominium at reasonable times during normal business hours to complete Punch List items. Buyer understands that paving, exterior cement work, landscaping and final exterior finish may not be completed when a temporary or conditional certificate of occupancy is issued and that Seller will complete such paving, exterior cement work, landscaping and final exterior finish work as soon as practicable thereafter. Buyer understands that items of uncompleted construction, which do not materially affect occupancy, will not delay Closing. Buyer's refusal to timely close this transaction due to the need for reasonable further work (to be noted on the Punch List) shall constitute a default by Buyer under this REPC.

6. SELLER DISCLOSURES. Seller shall deliver the following documents to Buyer on or before the Seller Disclosure Deadline described in Section 35 below, which documents collectively referred to as the "Seller Disclosures." Buyer understands that no other Seller Disclosures are required for this transaction, other than those listed below:

- (a) a preliminary commitment for the policy of title insurance;
- (b) a copy of the Declaration;
- (c) a copy of the Certificate of Amendment and Amended and Restated Master Declaration of Covenants Conditions and Restrictions of Empire Pass recorded December 14, 2004 as Entry No. 719855, in Book 1666, at Page 1054 in the office of the Recorder of Summit County, Utah, as amended by that certain Supplemental Declaration to the Certificate of Amendment and Amended and Restated Master Declaration of Covenants, Conditions and Restrictions of Empire Pass recorded on November 29, 2005 in the Office of the Summit County Recorder as Entry Number 760063 in Book 1754 at Page 1106 ("Master Declaration");
- (d) a copy of the estimated Owners Association first year budget and scheduled fees;
- (e) a copy of the Final Report of Remediation Activities ("Remediation Report");
- (f) a copy of the floor plans for the Condominium;
- (g) name of contractor and contractor's license number;
- (h) Talisker Club Membership Application
- (i) Other: _____

7. OWNERS' ASSOCIATION MATTERS.

7.1 **Owners' Association.** Buyer acknowledges that as Owner of the Condominium, Buyer shall be subject to the provisions of and restrictions contained in the Declaration and the Plat, including the obligation to pay Common Assessments for Buyer's share of Common Expenses as provided therein, shall automatically become a member of the Association established for the Project under the Declaration and shall be governed by the Association's Articles, Bylaws, and rules and regulations from time to time in effect.

7.2 **Master Association.** Buyer understands that the Project is part of a larger development know as "Empire Pass." Buyer acknowledges that as Owner of the Condominium, Buyer shall be subject to the provisions and restrictions contained in the Master Declaration, shall automatically become a member of the Empire Pass Homeowners Association established pursuant to the Master Declaration (the "Master Association") and shall be governed by the Master Association's articles of incorporation, bylaws, and rules and regulations from time to time in effect. These documents require, among other things, the payment of assessments to the Master Association, which assessments may be payable separate from, or included as part of, the assessments levied by the Association. Buyer hereby acknowledges that, as more particularly defined in the Master Declaration, the Master Association has the right to assess a transfer fee upon an Owner conveying a Unit to a third party. The transfer fee equals the gross sales price of a Unit multiplied by the Transfer Assessment Rate. As more particularly described in the Master Declaration, the "Transfer Assessment Rate" means one percent (1%) unless and until the Board of Directors of the Master Association adopts a different rate. Buyer agrees to pay such transfer fee in accordance with the provisions of the Master Declaration. The provisions of this Section 7.2 shall survive Closing.

7.3 **Other Restrictions.** Buyer also acknowledges that Buyer shall be subject to all other instruments and documents recorded in the office of the Recorder of Summit County, Utah, which concern and restrict the use, occupancy and maintenance of the Project.

7.4 **Seller's Right to Make Changes.** Seller reserves the right to amend the Declaration or Plat, or any other document listed in Section 6, above, at any time or from time to time prior to the Closing as Seller may deem necessary or desirable to make corrections or to meet the requirements of applicable laws, governmental regulations, lending institutions, marketing programs, or otherwise. Buyer acknowledges that Seller has reserved additional rights to amend the Declaration and the articles of incorporation and bylaws of the Association after the Closing for the purposes and under the conditions outlined under those documents.

8. BUYER'S RIGHT TO CANCEL BASED ON EVALUATIONS AND DOCUMENT REVIEW.

8.1 **Document Review.** Buyer's obligation to purchase under this REPC is conditioned upon Buyer's review and approval of the Seller Disclosures referenced in Section 6, and is collectively referred to as Buyer's "Evaluations and Review." Unless otherwise provided in this REPC, Buyer's Evaluations and Review shall be at the expense of the Buyer and shall be conducted by individuals or entities of Buyer's choice.

8.2 **Period for Completion and Review of Evaluations and Review.** No later than the end of Buyer's Review Period referenced in Section 35 below, Buyer shall: (a) complete all Evaluations and Review; and (b) determine if the Seller Disclosures are acceptable to Buyer.

8.3 **Right to Cancel or Object.** If Buyer determines that the Seller Disclosures are unacceptable, Buyer may, no later than the end of Buyer's Review Period, either (a) cancel this REPC by providing written notice to Seller, whereupon the Deposit shall be released to Buyer; or (b) provide Seller with written notice of objections.

8.4 **Failure to Respond.** If by the end of Buyer's Review Period, Buyer does not: (a) cancel this REPC as provided in Section 8.3; or (b) deliver written objections to Seller regarding the Seller Disclosures, then the Seller Disclosures shall be deemed approved by Buyer.

8.5 **Response by Seller.** If Buyer timely provides written objections to Seller, then the Buyer and Seller shall have seven (7) calendar days after Seller's receipt of Buyer's objections (the "Response Period") in which to agree in writing upon the manner of resolving Buyer's objections. Seller may, but shall not be required to, resolve Buyer's objections. If Buyer and Seller have not agreed in writing upon the manner of resolving Buyer's objections, Buyer may cancel this REPC by providing written notice to Seller no later than the last day of the Response Period, whereupon the entire Deposit shall be released to Buyer. If Buyer does not cancel this REPC by the end of the Response Period as provided in this Section, Buyer's objections shall be deemed waived by Buyer.

8.6 **Phased Development.** Buyer is advised that the Project may be constructed in several phases. Seller shall determine in its sole and exclusive discretion the size, scope and duration of each phase of construction and development of the Project. Seller makes no representation, warranty or guaranty of any kind that all phases will be completed. The ongoing construction within the Project may impact Buyer's use and enjoyment of the Condominium and Project, including but not limited to view corridors from the Condominium and the Project. Consequently, as part of Buyer's Evaluations & Review, Seller strongly encourages Buyer to consult with planners, engineers, legal counsel and other professionals regarding all aspects of this transaction.

9. **CONSTRUCTION COMPLETION.** The Condominium shall be deemed "Substantially Complete" when a Temporary Certificate of Occupancy ("TCO") for the Condominium or any other document evidencing that the Condominium may be legally occupied, whether subject to conditions or otherwise, is issued for the Condominium by Park City. The Condominium shall be Substantially Complete within twenty-four (24) months after the foundation has been poured unless extended pursuant to Section 10 hereof ("Completion Date"). Buyer acknowledges and understands that a TCO for the Condominium may not require completion of the Common Areas and Facilities of the Project including, but not limited to, landscaping, trails, the Talisker Club (as described in Section 16), amenities, etc., and the Buyer shall have no right to delay Closing until such Common Areas and Facilities are completed.

10. **UNAVOIDABLE DELAY.** In the event the construction of the Condominium is delayed beyond the Completion Date set forth in Section 9, or in the event any obligation herein is rendered impossible, as the result of work stoppages, material shortages, interruption of transport, non-availability of subcontractors, strikes, fire, flood, storms or other weather, avalanche, governmental regulations, failure to secure any necessary governmental approvals despite Seller's good faith diligent efforts, contractor's or subcontractor's breaches of contract, court orders, Buyer change orders permitted by Seller in Seller's sole discretion, acts of God, or other causes beyond the reasonable control of Seller, the Completion Date shall automatically be extended for a reasonable period based on the nature of the delay, but in no event later than one hundred twenty (120) calendar days after the Completion Date, or, if applicable, the obligation rendered impossible will be released. Buyer understands and agrees that the nature of purchasing newly constructed property includes risks of delay beyond the direct control of the Seller. While it is the intention of the Seller to meet the Completion Date as set forth in Section 9, the Buyer agrees that the Seller will not be held in any way liable for any costs or expenses incurred or suffered by the Buyer due to any of the foregoing events, including but not limited to the following:

- (a) changes in interest rates, financing fees, or title fees;
- (b) moving, transportation, travel expenses, or storage expenses;
- (c) hotel or other accommodation expenses;
- (d) increases in the cost of furnishings;

- (e) liabilities to third parties based on commitments made, or obligations incurred by Buyer;
or
- (f) lost rents or other revenues.

Buyer understands that Seller recommends that Buyer not make any arrangements related to items (a) through (f) above until Seller provides Buyer with written notice of receipt of the TCO ("Notice of Substantial Completion").

11. **CONVEYANCE OF TITLE.** Title to the Condominium shall be transferred by the Seller executing and delivering at closing a Special Warranty Deed, conveying the Condominium to Buyer subject to: (i) conditions, covenants, restrictions and provisions contained in or shown on the Declaration, the Master Declaration (defined below) or Plat; (ii) covenants, conditions, restrictions, easements, rights-of-way, and other matters of sight or record; (iii) mortgages, trust deeds, and other encumbrances or liens created by or resulting from acts or omissions of Buyer; (iv) property taxes and governmental assessments for the current year, not yet due and payable as of the date of Closing; (v) reservations and exclusions of mineral rights; and (vi) such exceptions as are customarily contained in a standard owner's title insurance policy for comparable properties (collectively, the "Permitted Exceptions").

12. **CLOSING.**

12.1 **Closing Procedures.** The Seller shall provide the Buyer with the Notice of Substantial Completion following Seller's receipt of the TCO for the Condominium. Buyer and Seller agree to execute all closing documents within fourteen (14) calendar days after Buyer's receipt of the Notice of Substantial Completion ("Closing Deadline"). **Buyer understands and agrees that prior to receipt of the Notice of Substantial Completion, preliminary estimated dates of the issuance of the TCO may be communicated by the Seller or Seller's representative as a courtesy, but should not be deemed final or binding.** If, at the request of Buyer, an extension is granted by Seller such that the Closing is held on any date later than the Closing Deadline, the prorations set forth below shall be made as of the Closing Deadline, and in addition, Buyer shall pay to Seller interest computed at the annual rate of eighteen percent (18%) on the amount to be paid by Buyer at the Closing for the period beginning on the Closing Deadline and continuing through the actual Closing date.

12.2 **Closing Definitions:** "Closing" shall occur only when **all** of the following have been completed: (a) Seller delivers to Buyer the Notice of Substantial Completion; (b) Buyer and Seller have signed and delivered to Title Company all documents required by this REPC, by written escrow instructions or by applicable law; (c) all monies required to be paid by Buyer under these documents have been delivered by Buyer to Seller or to the Title Company in the form of collected or cleared funds; and (d) any monies required to be paid by Seller under these documents have been delivered by Seller to Buyer or to the Title Company in the form of collected or cleared funds. The transaction will be considered "Closed" when **all** of the additional following items have been completed: (i) all applicable Closing documents have been recorded in the office of the Summit County Recorder; and (ii) the proceeds from the sale have been delivered to Seller.

12.3 **Closing Costs.** At Closing, Seller and Buyer agree to pay, in equal portions, the fee for escrow services in connection with this REPC and the transaction contemplated hereunder. Buyer agrees to pay all costs of recording or filing any instruments which convey title to the Buyer and any transfer assessment or tax imposed upon the sale of the Condominium by any governmental, quasi-governmental or private entity, including, but not limited to, the transfer fee described in Section 7.2 above. Taxes and assessments for the current year, association assessments, utilities, and other expenses shall be prorated as of the Closing Deadline, unless otherwise agreed to in writing by the parties. Such writing may include the Closing statement.

12.4 **Assessments and Working Capital Fund.** At Closing, Buyer shall pay to the Association all assessments which are due and payable as of the date of Closing with respect to the Condominium. Moreover, at Closing, Buyer agrees to pay to the Association an amount equal to three (3) months' regular Common Assessments, as determined in accordance with the Declaration, to establish a working capital fund to cover initial Association expenses and to provide a reserve for future emergency expenses. Such payment is in addition to the regular Common Assessments payable by the Owner of each Unit pursuant to the Declaration and Master Declaration. Buyer agrees to pay this sum as part of Buyer's Closing costs at Closing.

13. **TITLE INSURANCE.** At Closing, Seller agrees to pay for an A.L.T.A. standard coverage owner's policy of title insurance in the amount of the Purchase Price insuring title in the Condominium to be vested in Buyer, subject to the Permitted Exceptions.

14. **POSSESSION.** Seller shall deliver physical possession to Buyer within **24 hours after the sale is Closed.**

15. **CONFIRMATION OF AGENCY DISCLOSURE.** At the signing of this REPC, Buyer and Seller acknowledge:

(CHECK APPLICABLE BOXES):

The Listing Agent, _____, represent	<input type="checkbox"/> Seller <input type="checkbox"/> Buyer <input type="checkbox"/> Both Buyer and Seller as a Limited Agent
The Selling Agent, _____, represents	<input type="checkbox"/> Seller <input type="checkbox"/> Buyer <input type="checkbox"/> Both Buyer and Seller as a Limited Agent
The Listing Broker, _____, represents	<input type="checkbox"/> Seller <input type="checkbox"/> Buyer <input type="checkbox"/> Both Buyer and Seller as a Limited Agent
The Selling Broker, _____, represents	<input type="checkbox"/> Seller <input type="checkbox"/> Buyer <input type="checkbox"/> Both Buyer and Seller as a Limited Agent

16. **TALISKER CLUB.** The Talisker Club (the "Club") is a private non-equity club with certain facilities within and outside of Empire Pass offering access to those facilities, privileges and services to its members. The Club is developed and operated by a third-party entity ("Club Developer") that is not owned, controlled or otherwise affiliated with Seller. As a result, Seller makes no representations or warranties of any kind regarding the nature or operations of the Club. The Purchase Price for the Condominium includes the membership deposit for the Club, which is presently \$100,000.00 ("Membership Deposit"). Seller is not involved in, and shall have no liability for the development or operations of, the Club, failure of the Club Developer to complete construction of the Club facilities, failure of Club Developer to provide accurate or complete information regarding the Club, changes in dues or other financial terms, changes in services or facilities, or the failure of the Club or Club Developer to satisfy the expectations of Buyer.

17. **SELLER'S REPRESENTATIONS.** Seller represents that Seller has fee title to the Condominium and will convey marketable title to Buyer at Closing by Special Warranty Deed. To enable Seller to make the conveyance as herein provided, Seller may, at the time of delivery of the Special Warranty Deed, use the purchase money or any portion thereof to clear the title of any or all encumbrances or interests. Seller makes no representations or warranties, expressed or implied, regarding construction of the Project improvements except as otherwise provided herein.

18. **BUYER'S COVENANTS, REPRESENTATIONS AND WARRANTIES.**

18.1 **Condition of Title.** Buyer agrees to accept title to the Condominium subject to the Permitted Exceptions.

18.2 **Property Taxes; Assessments.** Following the Closing, Buyer agrees to promptly pay, as the same may become due and payable, all property taxes and all assessments of every kind and nature which are or may be assessed with respect to the Condominium being purchased.

18.3 **Acknowledgement.** Buyer acknowledges that it has reviewed and understands all documents referenced in this REPC. Further, Buyer acknowledges that Seller has advised Buyer to obtain legal counsel and tax advice to review all aspects of the transaction contemplated by this REPC, and to represent Buyer in connection with the examination of title and the Closing. Buyer acknowledges that he/she has read, understands and agrees to be bound by the Brokerage Disclaimer that is attached to this REPC as Exhibit "A".

18.4 **No Investment Representations.** Buyer acknowledges that neither Seller nor any of its agents or employees has made any warranties or representations upon which Buyer has relied concerning: (i) the investment

value of the Condominium; (ii) the possibility or probability of profit or loss resulting from ownership or rental of the Condominium; or (iii) the tax consequences that may result from the purchase of the Condominium. Buyer acknowledges that the market value of the Condominium may change from the time this REPC is executed to the time of Closing due to market factors beyond the control of Seller.

18.5 Condition of View. Buyer understands and accepts that there will be substantial additional development at Empire Pass in the future. Such development will result in reduction of trees and other foliage, construction of additional roads, sidewalks and trails, increases in traffic, impacts on view corridors and similar effects, both expected and unexpected. Buyer acknowledges that neither Seller, nor any of its brokers, sales representatives, agents or employees have made any representations regarding the existence, preservation or permanence of any view from the Condominium or the Project, nor have they given Buyer any assurances whatsoever that Seller either can or will take action to restrict or control the development of any of the real property adjacent to or in the vicinity of the Condominium or the Project.

18.6 Mountain Conditions. Buyer acknowledges and understands that ownership of real property in mountain areas involves certain inherent inconveniences. These include, but are not limited to, (a) dripping water onto decks and porches from snow melt, (b) snow and ice build-up on roofs, decks and porches during winter months, and the need to remove snow and ice to prevent leaking or damage to these structures, (c) the need to maintain adequate internal temperature of the Condominium in order to prevent broken pipes, (d) difficulty or temporary inability to access the Condominium due to harsh weather, and (e) other inconveniences arising from the sometimes severe winter conditions in the Rocky Mountains.

18.7 Natural Materials. Buyer acknowledges and understands that wood siding and wood floors may be used for certain portions of the Condominium as part of the Plans and Specifications. Buyer understands that any wood products included as part of the Condominium are natural materials subject to the laws of nature, and therefore, some warping, twisting, shrinkage, cracking and splitting may occur. Buyer acknowledges that noise transference is greater for wood floors than for carpeted floors.

18.8 Ski Facility. Buyer acknowledges the Project is located adjacent to a public skiing facility and year-round recreation area (the "Ski Facility"), which area may generate an unpredictable amount of visible, audible and odorous impacts and disturbances from activities relating to the construction, operation, use and maintenance thereof. The activities associated with the Ski Facility include, without limitation: (i) vehicular and residential traffic, including, without limitation, (a) buses, vans, snowcats, snowmobiles and other vehicles which transport residents and guests around and through the Ski Facility, and (b) construction vehicles and equipment; (ii) activities relating to the construction, operation and maintenance of ski trails, skiways and skier bridges and tunnels relating to the Ski Facility, including, without limitation, (a) construction, operation and maintenance of access roads serving the Ski Facility, snow-making equipment and chair lifts, gondolas and other skier transportation systems, and (b) operation of snow-grooming vehicles and equipment, and safety and supervision vehicles; and (iii) activities relating to the use of the Ski Facility, including, without limitation, skiing, snow-boarding, hiking, horseback riding, bicycling and other recreational activities.

18.9 Ski Area Operations. Buyer acknowledges that Seller is not the operator of the Ski Facility, and accordingly, Seller cannot make any representations relating thereto. Neither Seller nor any of its employees or agents has made any representations regarding the opening or closing dates of the Ski Facility or other nearby ski areas in any given year. Buyer fully understands that the operator of those ski areas may decide, in its sole discretion, whether any or all of the ski lifts within those ski areas should be operated. Buyer further acknowledges that the construction of the ski run and lift adjacent to the Project may not be completed at the time of Closing.

18.10 Off Site Improvements. Buyer acknowledges and agrees, that, inasmuch as Buyer is purchasing the Condominium during a period of construction at the Project, and the Closing will occur prior to the completion of the construction of other Condominiums at the Project, there will be certain inconveniences, including, but not limited to, interruption of travel caused by road construction, noise, dust, odors and debris associated with construction, until all construction within the Project is complete. Buyer waives all claims against Seller with respect to any such inconveniences and nuisances.

18.11 Cracking and Settling. Buyer acknowledges and understands that residential construction is an industry inherently subject to variations and imperfections, and items which do not materially affect safety or structural integrity shall be deemed "expected minor flaws." Buyer further acknowledges that such expected minor flaws do not constitute construction defects. Such expected minor flaws include, without limitation: (i) variations in the texture and thickness of stucco or other textured or smooth finishing, including cracks in such materials; (ii) settlement cracks in drywall, concrete, stucco, flatwork and block walls; (iii) twisting and warping of natural materials including, without limitation, wood and plastics, which can result in cracks, bulges, and other types of imperfections; (iv) deviations in color, grain, and texture that may occur in wood products, concrete, tile, granite, stone, and other finish materials; (v) shrinkage, swelling, expansion, or settlement of construction materials; and (vi) conditions resulting from normal wear, tear, or deterioration.

18.12 Development. Buyer acknowledges and agrees that Seller retains the right to develop the Project according to its plans, which may change from time to time, including the right to build Units which may differ substantially from the models of Units, if any, offered to Buyer or built elsewhere in the Project. Buyer further acknowledges and agrees that Seller retains the right at any time, and from time to time, without notice, for whatever reason Seller deems appropriate, in its sole and absolute discretion: (i) to change the style, design, size, price or any other feature of any Units that Seller may build in the Project; (ii) to change the timing of its construction of any other Units contemplated by Seller's development plan, as such plan may be amended from time to time; (iii) to use any method of marketing to sell, lease or otherwise dispose of any or all of its remaining or future inventory of Units; (iv) to expand the Project to include additional buildings, amenities, Units and Common Areas and Facilities as more expressly set forth in the Declaration, and that such additional improvements may affect sight-paths and views from existing buildings and the Condominium; and (v) to exercise any reserved Developmental Rights or any other rights of Declarant as more expressly set forth in the Declaration.

18.13 Report on Soil and Environmental Conditions. Buyer acknowledges and understands that the Project is situated in an historic mining area, that the Project has been historically impacted by mining activities and that, as a result, there were areas of mine waste materials on the surface of the ground that were elevated in metals, particularly lead and arsenic. Buyer acknowledges and understands that a prior owner had responsibility for sampling, testing and remediating the surface within the Project. Buyer acknowledges receipt of the Remediation Report, and shall have the opportunity to undertake such evaluation of reports, studies and other materials regarding the environmental conditions of the property beneath and surrounding the Condominium prior to the end of Buyer's Review Period. Seller shall have no obligations or liabilities of any kind or nature to Buyer in connection with the condition of the surface, soils, water or other environmental conditions affecting the Condominium, the Project or surrounding area.

18.14 Corporations, Partnerships and Associations, and Liability. If Buyer is a corporation, partnership, trust, estate, joint venture, limited liability company or other entity, Buyer shall deliver to Seller at or prior to Closing a copy of any approval required by Buyer's organization documents, certified by the appropriate representative of Buyer, together with any other documents required by Title Company or Utah law to enable Buyer to hold title to the Unit. Buyer represents and warrants that at Closing Buyer will be in good standing and authorized, as necessary, to conduct its business in Utah. If Buyer is comprised of two or more parties, they shall be jointly and severally obligated under this REPC.

18.15 Other Property Uses Within Empire Pass. Buyer acknowledges that other properties located in the vicinity of the Project may be developed pursuant to the land uses and restrictions set forth in the applicable zoning for Empire Pass, with no representation being made herein concerning the planned uses of such other properties. Buyer acknowledges that the zoning for the property on which the Project is located and for other properties in the vicinity of the Project is established and governed by the Park City Land Management Code, a Development Agreement between Park City and United Park City Mines Co., and other actions taken, and expected to be taken in the future by Park City. By executing this REPC, Buyer has not relied upon any statements or representations regarding Empire Pass, the Project or any other properties, including, without limitation, any representations made by Seller or Broker, except for the statements and representations expressly set forth in this REPC.

18.16 **As-Is Purchase.** Except as otherwise provided in this Section 16, Buyer is purchasing the Condominium "AS IS" and assumes the risk of damage occurring in the Condominium after Closing, regardless of the cause.

18.17 **Buyer's Representations and Covenants as to Foreign National Status.** The United States Department of the Treasury, Office of Foreign Assets Control ("OFAC"), prohibits Seller from engaging, directly or indirectly, in transactions with individuals or entities on OFAC's list, as updated from time to time, of Specially Designated Nationals and Blocked Persons (the "SDN List"). OFAC also administers, from time to time, sanction and embargo programs involving certain designated countries (each an "Embargoed Country"). By signing this REPC, Buyer represents and warrants to Seller that Buyer is not an individual, organization or other entity with whom Seller or its affiliates are prohibited from transacting business, or with whom they may transact business only subject to the imposition of significant fines or penalties ("Prohibited Buyer"). If at any time Buyer becomes, or is discovered to be a Prohibited Buyer: (i) Seller reserves the right to delay the Closing pending Seller's investigation into the matter; (ii) if Seller is advised and/or determines that Buyer is a Prohibited Buyer, Seller reserves the right to terminate this REPC and/or to take all actions necessary to comply with the requirements of the OFAC and any other laws, rules or regulations governing Prohibited Buyers; and (iii) if it is discovered after the Closing that Buyer is a Prohibited Buyer, then Buyer shall, immediately and without further action or notice on behalf of Seller, forfeit any use, voting and other rights attached to the Condominium and shall not be entitled to a refund of any deposits, fees or other monies paid with respect to the Condominium.

18.18 **Release of Claims; Indemnification.** Buyer hereby waives and expressly releases Seller and its agents from any and all claims arising from or relating to loss, damages, inconveniences and nuisances that may result from the conditions described in Sections 18.5 through 18.13 above. Buyer hereby agrees to indemnify and hold Seller and its parent and sister companies, affiliates, subsidiaries, employees, agents, officers and directors harmless from and against any and all loss, threat of loss, suits, claims, actions, liabilities, damages, obligations, demands, costs and expenses (including attorney's fees and expert witness fees) arising out of or in connection with any breach by Buyer of any covenant, representation or warranty contained in this Section 18 or any untrue statement made by Buyer in this Section 18.

19. **INSULATION.** Pursuant to the Federal Trade Commission's Trade Regulation Rule on Labeling and Advertising of Home Insulation (16 C.F.R., Part 460), set forth below is information for Units in the Project:

<u>Location</u>	<u>Type</u>	<u>Thickness (inches)</u>	<u>R-Value</u>
Exterior Walls	Blown in Fiberglass	5.5 inches	R-20
Common Walls (none)	n/a	n/a	n/a
Roof	Blown in Fiberglass	12 inches	R-48

The insulation disclosures do not relate to doors or windows in the Units. Notwithstanding the foregoing, insulation may be of lesser thickness and R-value than indicated above in certain limited areas where the design of the Units does not permit greater thickness or as a result of settlement of the Units. Examples of locations where thickness and R-value may vary include locations where studs are placed in walls, at corners and windows. The R-values stated above are based on the representations of the manufacturer and/or the installer of the insulation and Seller does not warrant or represent that these R-values are correct. Seller has the right to make substitutions as to the type, thickness and R-value of the insulation installed in the Condominium purchased hereunder without obtaining Buyer's consent, so long as there are no substantial changes in the R-value of the insulation installed in a substantial portion of the Condominium.

20. **ASSIGNMENT OF REPC.** This REPC is personal to Buyer and Buyer shall NOT assign this REPC. Any purported assignment of this REPC by Buyer shall be voidable at the option of Seller. Seller may assign its rights and delegate its duties under this REPC to any third party without Buyer's consent. Buyer acknowledges and agrees that Buyer's covenant in this Section 20 is necessary to protect Seller's legitimate business. If any assignment by Seller (or its successors or assigns) shall be for the purpose of securing a lender to Seller (or its successors or assigns), Buyer's rights under this REPC shall, at the option of such lender, be subject and subordinate

to the rights of lender's mortgage or deed of trust, even if such mortgage or deed of trust is filed after the date hereof. In the event of a conflict between this Section and any other section of this REPC, this Section shall prevail.

21. **RADON.** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Utah. Additional information regarding radon and radon testing may be obtained from the applicable county public health unit.

22. **MOLD.** Mold, mildew, fungi bacteria and microbiologic organisms (collectively, "Molds") are present in soil, air and elsewhere in the environment. Molds can proliferate in various environments, including, without limitation, damp areas such as crawl spaces, attics, bathrooms, within walls and partitions and in basements. Certain parties have expressed concerns about the possible adverse effects on human health from exposure to Molds. Due to various reasons, including the varying sensitivities of different individuals to various types of Molds, there currently exist no state or federal standards regarding acceptable levels of exposure to Molds. Buyer is advised to perform his or her own investigation regarding the presence of Molds in the Condominium and acknowledges that Seller will not be responsible for damage caused by Mold.

23. **LIMITED WARRANTY.** Seller warrants that all materials incorporated in and made a part of the structure of the Condominium shall be new as of the date of installation and shall remain free from defects in workmanship or quality for a period of one (1) year from the date of Closing. Seller represents that Seller will cause to be remedied, by repair or replacement, any structural defects in the Condominium which appear within one (1) year after the date of Closing and which result from faulty material or workmanship, provided that Buyer gives Seller written notice of any such defect within thirty (30) calendar days after Buyer's discovery of the defect. Any such notice shall be addressed to Seller at the address following Seller's signature below, or such other address for notice furnished to Buyer. Buyer's sole remedy (in lieu of all remedies implied by law or otherwise) against Seller in connection with such defects shall be to require Seller to correct the defect in material or workmanship.

This limited warranty does not extend or relate to any items of tangible personal property in the Condominium (whether or not such property is attached to or installed in the Condominium) including, without limitation, any range, oven, range hood and fan, microwave, garbage disposal, dishwasher, refrigerator, water heater, components of the heating system and any fire, alarm or other life-safety or security system installed in or servicing the Condominium. Seller will assign to the Buyer at Closing any unexpired warranties Seller has received from the manufacturers of such tangible personal property, to the extent such warranties are assignable. Seller shall not be responsible for the performance of any such manufacturer under the manufacturer's warranties.

WITH REGARD TO ANY APPLIANCES OR OTHER ITEMS OF TANGIBLE PERSONAL PROPERTY, WHETHER OR NOT WARRANTED BY MANUFACTURERS, SELLER DISCLAIMS ALL WARRANTIES INCLUDING, BUT NOT LIMITED TO, THOSE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

EXCEPT AS STATED IN THE FIRST PARAGRAPH OF THIS LIMITED WARRANTY ABOVE, SELLER MAKES NO WARRANTY OR REPRESENTATION OF ANY NATURE, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THOSE OF WORKMANLIKE CONSTRUCTION, HABITABILITY, DESIGN, CONDITION, OR QUALITY AS TO THE PROPERTY OR OTHER IMPROVEMENTS CONSTITUTING THE PROJECT, AND SELLER HEREBY EXPRESSLY DISCLAIMS ANY SUCH REPRESENTATIONS OR WARRANTIES.

DAMAGES, WHETHER FOR BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, TORT, STATUTORY CLAIMS, REGULATORY CLAIMS, PURSUANT TO EQUITY OR OTHERWISE, SHALL BE LIMITED TO AN AMOUNT EQUAL TO THE ACTUAL DAMAGES NECESSARY TO COMPENSATE THE INJURED PARTY, AND IN NO EVENT SHALL CONSEQUENTIAL, INCIDENTAL, TREBLE DAMAGES (OR DAMAGES BASED UPON ANY OTHER MULTIPLIER), OR PUNITIVE DAMAGES BE RECOVERABLE. BUYER AND SELLER WAIVE, RELEASE AND COVENANT NOT TO ASSERT ANY RIGHT OR CLAIM TO CONSEQUENTIAL, INCIDENTAL, TREBLE (OR OTHER MULTIPLIER), OR PUNITIVE DAMAGES. IN NO EVENT AND UNDER NO CIRCUMSTANCES SHALL DAMAGES EVER EXCEED THE PRICE PAID BY BUYER FOR THE CONDOMINIUM. BUYER EXPRESSLY UNDERSTANDS AND AGREES THAT THE TERMS OF THIS ANTICIPATORY RELEASE

AND THE DAMAGE LIMITATIONS CONTAINED HEREIN ARE THE RESULT OF A KNOWING ALLOCATION OF RISK BETWEEN THE BUYER AND SELLER BASED UPON THE PURCHASE PRICE. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE PURCHASE PRICE AND OTHER CONSIDERATION WOULD HAVE BEEN HIGHER OR DIFFERENT WITHOUT THESE DAMAGE LIMITATIONS AND THESE LIMITATIONS ARE A REASONABLE MANNER OF RISK ALLOCATION BETWEEN THE PARTIES. BUYER AND SELLER INTEND THAT THESE DAMAGE LIMITATIONS WILL OR COULD BE ENFORCED, EVEN IF ANY WARRANTY OR REMEDY FAILS OF ITS ESSENTIAL PURPOSE. BUYER AND SELLER ACKNOWLEDGE AND AGREE THAT THIS DAMAGE LIMITATION AND ANY RELEASE GIVEN HEREIN SHALL HAVE BEEN GIVEN FOR AND IN CONSIDERATION OF A NEGOTIATED ARMS LENGTH TRANSACTION UPON WHICH EACH OF THE PARTIES HAD A FULL AND COMPLETE OPPORTUNITY TO NEGOTIATE.

BUYER EXPRESSLY ACKNOWLEDGES THAT THE LIMITED WARRANTY SHALL BE THE EXCLUSIVE REMEDY OF THE BUYER AND THAT NO OTHER CLAIMS OF ANY NATURE MAY BE BROUGHT AGAINST SELLER.

SELLER MAKES NO REPRESENTATION OR WARRANTY CONCERNING ANY GEOLOGICAL OR ENVIRONMENTAL MATTERS AND SPECIFICALLY EXCLUDES GEOLOGICAL AND ENVIRONMENTAL MATTERS FROM ANY WARRANTIES GIVEN UNDER THIS REPC.

Buyer hereby acknowledges and accepts such disclaimers and agrees to waive any and all rights Buyer may have by virtue of the representations and warranties disclaimed. Except as otherwise provided in this limited warranty, Buyer purchases the Condominium "AS IS" and assumes the risk of damage occurring in the Condominium after Closing, regardless of the cause. The provisions of this Section shall survive Closing.

24. **DEFAULT.** If Buyer fails to timely perform any of the obligations required hereunder, including the deposit of all necessary documents and funds by the Closing, Seller may, in its sole and absolute discretion either (i) terminate this REPC and retain the Deposit as liquidated damages without being subject to the dispute resolution procedures contained in Section 25 of this REPC or (ii) return the Deposit to Buyer and pursue any remedy available at law or equity. If Seller materially defaults and fails to cure such default after receipt of advance written notice from Buyer and a reasonable opportunity to cure the same based on the nature of the alleged material default, Buyer may either: (iii) terminate this REPC by written notice to Seller, in which event the Deposit shall be returned to Buyer and the parties shall be released of all further duties and obligations hereunder; or (iv) bring a claim under the provisions of Section 25 to specifically enforce this REPC.

25. **DISPUTE RESOLUTION.** Any controversy or dispute relating to or arising under this REPC, or any dispute arising over the design, specification, surveying, planning, supervision, testing or construction of an improvement to, or survey of the Project, shall be submitted to binding arbitration, which may, but need not, be administered by the American Arbitration Association (AAA) under its Commercial Arbitration Rules, including its rules for emergency protection, or other rules as the parties may determine. Judgment on the award rendered by the arbitrator(s) may be entered in a court located in Summit County, Utah. Any judgment obtained on the award rendered by the arbitrator(s) may be enforced in and/or be the basis of a judgment in another state, to the extent permitted under applicable law. THE EXCLUSIVE VENUE OF ANY ARBITRATION PROCEEDING OR OTHER ACTION TO OBTAIN A JUDGMENT ON THE AWARD OF THE ARBITRATOR(S) SHALL BE IN THE STATE OF UTAH. BUYER HEREBY WAIVES ANY OBJECTION TO PERSONAL JURISDICTION IN UTAH IN ANY PROCEEDING BROUGHT BY SELLER PURSUANT TO THIS REPC. The provisions of this Section 24 shall survive closing.

26. **AUTHORITY OF SIGNERS.** If the Buyer or Seller is a corporation, partnership, trust, estate, limited liability company, or other entity, the person executing this REPC on its behalf warrants his or her authority to do so and to bind Buyer or Seller.

27. **COMPLETE CONTRACT.** This REPC, together with any addenda and attached exhibits, constitutes the entire agreement between the parties and supersedes and replaces any and all prior negotiations, representations, warranties, understanding or contracts between the parties. This REPC cannot be changed except by written agreement of the parties. Buyer and Seller acknowledge and agree that this Agreement supersedes and replaces the

New Construction Real Estate Purchase Contract ("Construction REPC") dated July 22, 2020. BUYER AND SELLER AGREE THE CONSTRUCTION REPC IS FULLY TERMINATED FOR ALL PURPOSES.

28. **NOTICES.** All notices or deliveries required by this REPC must be: (a) in writing; (b) signed by the party giving notice; and (c) received by the other party or the other party's agent no later than the applicable date referenced in this REPC. Notices may be (i) hand-delivered; (ii) sent by a nationally recognized overnight delivery service requiring a written acknowledgement of receipt or providing a certification of delivery or attempted delivery; (iii) sent by certified mail, return receipt requested; or (iv) sent by facsimile transmission or electronic mail with an original copy thereof transmitted to the recipient by one of the means described in items (i) through (iii) above no later than three (3) business days thereafter. All notices so given shall be considered effective: if hand-delivered, when received; if delivered by facsimile transmittal or electronic mail, upon transmission; if sent by overnight delivery service, one (1) business day after timely deposit with the service, charges prepaid; or if sent by certified mail, three (3) calendar days after deposit. Either party may change the address to which future notices shall be sent by notice given in accordance with this Section.

29. **COMMUNICATION.** All communication between Buyer and Seller shall be conducted through Seller's agent, and Buyer's agent, as set forth in Section 15, or as otherwise agreed by Seller.

30. **ABROGATION.** The representations, warranties, and acknowledgements of Buyer including without limitation those set forth in Sections 18 and 20, shall survive Closing and the conveyance of title to Buyer. Except as otherwise stated in this REPC, the provisions of this REPC shall not apply after Closing unless such provisions are contained in the other documents to which the Condominium is subject or which are otherwise binding on Buyer.

31. **RISK OF LOSS.** All risk of loss to the Condominium not caused by Seller or Buyer, including physical damage or destruction to the Condominium or its improvements due to any cause except ordinary wear and tear and loss caused by a taking in eminent domain, shall be borne by Seller prior to Closing, and thereafter borne by Buyer.

32. **TIME OF THE ESSENCE.** Time is of the essence regarding the dates set forth in this REPC. Extensions must be agreed to in writing by all parties. Unless otherwise explicitly stated in this REPC: (a) performance under each Section of this REPC which references a date shall absolutely be required by 5:00 PM Mountain Time on the stated date; and (b) the term "days" shall mean calendar days and shall be counted beginning on the day following the event which triggers the timing requirement (i.e., Acceptance, receipt of the Seller Disclosures, etc.). Performance dates and times referenced herein shall not be binding upon title companies, lenders, appraisers and others not parties to this REPC, except as otherwise agreed to in writing by such non-party.

33. **ELECTRONIC TRANSMISSION AND COUNTERPARTS.** Facsimile (fax) or electronic transmission of a signed copy of this REPC, any addenda and counteroffers, and the retransmission of any signed fax or e-mail shall be the same as delivery of an original. This REPC and any addenda and counteroffers may be executed in counterparts.

34. **ACCEPTANCE.** "Acceptance" occurs when Seller or Buyer, responding to an offer or counteroffer of the other: (a) signs the offer or counteroffer where noted to indicate acceptance; (b) communicates to the other party or to the other party's agent that the offer or counteroffer has been signed as required; and (c) the Deposit has been delivered to Seller.

35. **REPC DEADLINES.** Buyer and Seller agree that the following deadlines shall apply to this REPC:

- (a) **Seller Disclosure Deadline** _____ calendar days after Acceptance
- (b) **Buyer's Review Period** _____ calendar days after receipt of Seller Disclosures.
- (c) **Substantial Completion Deadline** _____.
- (d) **Closing Deadline** _____ calendar days after receipt of notice of Substantial Completion

36. **OFFER.** Buyer offers to purchase the Condominium on the above terms and conditions. This offer shall not create a binding contract to purchase and sell the Condominium unless and until it has been executed by Seller.

37. **BROKERAGE COMMISSION INDEMNITY.** Except for the brokers identified in Section 15 above, Seller and Buyer represent and warrant to each other that neither has contacted any real estate broker, finder, or other party in connection with this transaction, to whom any real estate brokerage, finder, or other fees may be due or payable with respect to the transaction contemplated hereby. Seller and Buyer hereby indemnify and agree to hold each other harmless from any loss, liability, damage, cost, or expenses (including reasonable attorney's fees) related to anyone claiming a commission or fee with respect to the sale of the Unit as a result of any statement, agreement, or other alleged act of the other.

38. **REPC.** Buyer acknowledges that all of the information called for in the blank spaces of this REPC were filled in by Buyer or on behalf of Buyer and that Buyer read and understood the information so called for prior to the time of execution hereof by Buyer.

39. **DATES AND COMPUTATION OF TIME.** In computing any period of time pursuant to this REPC, the day of the act or event from which the designated period of time begins to run will not be included. The last day of the period so computed will be included.

40. **GOVERNING LAW.** This REPC shall be deemed to be made and shall be construed in accordance with the laws of the State of Utah.

[Signatures on Following Page]

IN WITNESS WHEREOF, the parties have caused this REPC to be executed on the date(s) set forth below, but as of the date first set forth above.

BUYER:

_____, an individual

_____, an individual

Date: _____, 20__

Address:

E-mail: _____

SELLER:

FRIENDS OF FLAGSTAFF, L.L.C.,
a Utah limited liability company

By: _____

Name: _____

Title: _____

Date: _____, 200__

Address:

c/o Jack Thomas
P.O. Box 68393
Park City, UT 84060
Facsimile: 435-645-7514
E-mail: _____

Copies of notices sent to Seller pursuant to this REPC,
shall also be sent to the following address:

Steven P. Mehr
Ballard Spahr LLP
201 S. Main Street, Suite 800
Salt Lake City, UT 84111-2221
Facsimile: 801-321-9060
E-mail: MehrS@ballardspahr.com

Exhibit A

Brokerage Disclaimer

(See Attached)

Exhibit B

Buyer's Specifications