

COLORADO DEPARTMENT OF REGULATORY AGENCIES  
OFFICE OF POLICY AND RESEARCH

# HOME INSPECTORS

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## 2001 SUNRISE REVIEW



# STATE OF COLORADO

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**DEPARTMENT OF REGULATORY AGENCIES**  
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Bill Owens  
Governor

October 15, 2001

Members of the Colorado General Assembly  
c/o the Office of Legislative Legal Services  
State Capitol Building  
Denver, Colorado 80203

Dear Members of the General Assembly:

The Colorado Department of Regulatory Agencies has completed its evaluation of the sunrise application for regulation of home inspectors and is pleased to submit this written report. The report is submitted pursuant to §24-34-104.1, Colorado Revised Statutes (C.R.S.), which provides that the Department of Regulatory Agencies shall conduct an analysis and evaluation of proposed regulation to determine whether the public needs, and would benefit from, the regulation.

The report discusses the question of whether there is a need for the regulation in order to protect the public from potential harm, whether regulation would serve to mitigate the potential harm, and whether the public can be adequately protected by other means in a more cost-effective manner.

Sincerely,

A handwritten signature in black ink that reads "M. Michael Cooke".

M. Michael Cooke  
Executive Director

# Table of Contents

The Sunrise Process .....	1
<i>Background</i> .....	1
<i>Methodology</i> .....	1
Proposal for Regulation .....	2
<i>Profile of the Profession</i> .....	2
Summary of Current Regulation .....	5
<i>The Colorado Regulatory Environment</i> .....	5
<i>Federal Regulation</i> .....	6
<i>Regulation in Other States</i> .....	6
Analysis and Recommendation .....	8
<i>Public Harm</i> .....	8
<i>Need for Regulation</i> .....	15
<i>Alternatives to Regulation</i> .....	16
<i>Conclusion</i> .....	17
Appendix A – Contract to Buy and Sell Real Estate (Residential) .....	19
Appendix B – Notice to Terminate Inspection Notice .....	27

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## **The Sunrise Process**

### Background

Colorado law, §24-34-104.1, Colorado Revised Statutes (C.R.S.), requires that individuals or groups proposing legislation to regulate any occupation or profession first submit information to the Department of Regulatory Agencies (DORA) for the purposes of a sunrise review. The intent of the law is to impose regulation on occupations and professions only when it is necessary to protect the public health, safety or welfare. DORA must evaluate the information submitted in order to prepare a report evaluating the justification for regulation based upon the following criteria contained in the sunrise statute:

(I) Whether the unregulated practice of the occupation or profession clearly harms or endangers the health, safety, or welfare of the public, and whether the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument;

(II) Whether the public needs, and can reasonably be expected to benefit from, an assurance of initial and continuing professional or occupational competence;

(III) Whether the public can be adequately protected by other means in a more cost-effective manner.

Any professional or occupational group or organization, any individual, or any other interested party may submit an application for the regulation of an unregulated occupation or profession. Applications must be accompanied by supporting signatures and must include a description of the proposed regulation and justification for such regulation. Applications received by July 1 must have a review completed by DORA by October 15 of the year following the year of submission.

### Methodology

The sunrise review process included review of the sunrise application, a review and comparison of other state's regulation and a review of available literature. We interviewed numerous stakeholders including professionals in the real estate and financial industries, regulators in other states and various consumer representatives.

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## ***Proposal for Regulation***

The Colorado chapters of the American Society of Home Inspectors (ASHI) and the National Association of Home Inspectors (NAHI) have submitted a sunrise application to the Department of Regulatory Agencies (DORA) for review in accordance with the provisions of §24-34-104.1, Colorado Revised Statutes (C.R.S.). The application identifies licensure of home inspectors as the appropriate level of regulation necessary to protect the public. DORA investigates the need for regulation of a previously unregulated occupation or profession based on the three criteria contained in §24-34-104.1(4), C.R.S.

### ***Profile of the Profession***

Prospective purchasers of residential property are the primary consumers of home inspection services. According to the application, home inspectors provide "an objective visual examination of the physical structure and systems of the home." The purpose of the inspection is to alert clients of any potential defects or problems with the property.

Inspectors are independent businesspeople, usually conducting inspections without supervision or oversight by any government agency. A typical inspection of a single-family residence takes approximately two to four hours. Inspectors generally provide clients with a written evaluation of the home's heating, ventilation, and air conditioning (HVAC) system, plumbing and electrical systems, roof, attic, walls, ceiling, floors, windows and doors, foundation, basement and exterior.

Unless the inspector is also a licensed engineer, the inspector is prohibited from making an evaluation of the structural integrity of the building. The written evaluation may include a recommendation for an evaluation by a specific professional if a component of the home shows evidence of a problem.

Fees for inspections vary with the individual inspector or company. However, they typically range from \$100 to \$300 for a single family home, depending on the scope and complexity of the inspection, the style, type of construction, age and size of the home.

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Home inspectors may operate their business as a sole proprietorship, or in partnership with another inspector. Other forms of legal structure such as Limited Partnership, Corporation (including Sub-Chapter S) or Limited Liability Company are also available.

There are no minimum qualifications for home inspectors conducting business in Colorado. Inspectors currently have a wide variety of backgrounds and experience. Many inspectors have experience in the construction industry. Some have real estate or engineering backgrounds. According to the applicant, it is possible that some individuals currently providing home inspection services in the state have no prior education or experience in the construction or inspection field.

### Education

Most of the states that have regulatory programs for home inspectors require education, experience or a combination of both in order to practice in that state. Typically, a home inspector receives training on the job from another inspector. Many inspectors have backgrounds in related industries, such as construction or building inspection.

There are several education options available. These range from classroom training programs that may take several days through the trade associations to less formal correspondence programs offered by various private education entities. The cost for the programs range from \$250 for one of the correspondence programs to over \$1,000 plus travel expenses for one of the schools. All of the programs and schools reviewed for this report indicated that they provide the education necessary to pass the private credentialing examinations.

### Private Credentialing

There are two major nationally recognized private organizations that provide certification for home inspectors, the American Society of Home Inspectors, Inc (ASHI), and the National Association of Home Inspectors (NAHI). The Colorado chapters of both of these organizations have joined in submitting the sunrise application.

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Both of these organizations provide education, code of ethics, practice standards, examination, and certification for their members. To be certified, an applicant must perform a specified number of inspections for a fee. Copies of the inspection reports are submitted to the accrediting body for evaluation. If the inspection reports demonstrate a satisfactory level of competence, the applicant is allowed to take the credentialing body's examination. The examination used by ASHI was developed and updated by the Examination Board of Professional Home Inspectors (EBPHI).

According to EBPHI, the examination meets the standards developed by the National Commission for Certifying Agencies and the American Psychological Association's "Standards for Educational and Psychological Testing". A private vendor, Assessment Services, Inc. (ASI), administers the examination nationally. The examination evaluates knowledge in several key areas including:

- Structural Components;
- Exterior;
- Roofing;
- Plumbing;
- Heating;
- Cooling;
- Electrical;
- Insulation and Ventilation;
- Interiors;
- Fireplaces and Solid Fuel Burning Appliances;
- Professional Practices.

Once a satisfactory score on the examination is achieved, an applicant may begin using the credential of the private credentialing organization. Both national credentialing organizations require continuing education in the inspection field to maintain their certification.

According to the applicants, there are approximately 200 members of the two major associations residing and practicing in Colorado. The applicants indicate that the two associations represent about 25 to 30 percent of the approximately 600 home inspectors in the state.

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## **Summary of Current Regulation**

### *The Colorado Regulatory Environment*

There is no state regulatory program or oversight in Colorado. However, various regulatory practice acts, such as those for engineers and architects allow licensees to conduct business as an inspector. These practice acts also prohibit someone who is not a licensee from practicing or issuing evaluations that fall under the scope of practice of the respective licensing act. For example, according to Colorado law, only an engineer may evaluate the structural integrity of a building.

Some local jurisdictions have requirements for inspections. For example, the City of Boulder requires that rental properties undergo periodic inspections to ensure the safety of tenants. However, while the city requires the use of a city-approved form for the inspections, it has not established standards for the qualifications of the inspector.

There are no state or federal laws that require a prospective purchaser to obtain a home inspection prior to purchasing a property. However, the Federal Department of Housing and Urban Development (HUD) requires appraisers to perform an abbreviated inspection as part of a HUD appraisal.

The standard Contract to Buy and Sell Real Estate (Residential) (attached to this report as Appendix A) which is approved by the Colorado Real Estate Commission (Commission) is used in most residential real estate transactions. Commission regulations do not require an inspection as a condition of a real estate transaction. However, the standard contract contains two provisions relevant to the home inspector profession.

The first provision of interest is item 16, the Seller's Property Disclosure Deadline. This item requires the seller of real property to disclose to the potential buyer information about the condition of the house and its systems on a Seller's Property Disclosure form approved by the Commission. This form must be provided to the buyer prior to the closing.

The disclosure form states that the broker involved in the sale of the property does not guarantee the information contained in the form. It also states that the form is not intended to be a substitute for an inspection of the property.



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The second provision of interest to the home inspection industry is item 17, the Inspection Objection Deadline. The contract specifies that the buyer has the right to have an inspection of the property and that if the results are not to the satisfaction of the buyer, the buyer has two options. Option one is to notify the seller in writing that the contract is terminated by completing the Notice to Terminate portion of the Inspection Notice (attached to this report as Appendix B). Option two is for the buyer to provide the seller with a Notice to Correct. Upon receipt of a Notice to Correct, the seller may make the requested repairs, or terminate the contract.

### *Federal Regulation*

There is no formal regulation of home inspectors at the federal level. Most federally backed mortgage guarantee programs, such as Federal Housing Administration (FHA) and Veterans Administration (VA), have requirements for licensed appraisers to make a simple visual inspection of the property as part of the appraisal process. There is a federal requirement that states license appraisers, and that the licensing program for this profession include education and examination on the process of arriving at a reasonable estimate of the fair market value for a property. However, there is a difference in estimating the value of a property and evaluating the condition and systems within the property. Appraisers are not required to undergo any training for home inspection purposes.

### *Regulation in Other States*

There are approximately 20 states that have some type of regulatory requirements for home inspectors. These requirements include practice standards, simple registration programs, certification or a comprehensive licensing program. A summary of the states and their programs is included as Table 1 on the following page.

Table 1  
State Regulatory Programs

Type - R= Registration, C= Certification, L= Licensure, PS= Practice Standards  
AC = Regulatory authority has a statutorily created advisory committee with industry representation.

State	Agency	Type	Qualification	When Started
AL	Secretary of State	R	National credentials or membership in approved organization or licensed contractor	1996
AZ	Board of Technical Registration	C	Insurance, education and examination	2000
AR	Secretary of State	R	Insurance, national credentials or apprenticeship	1996
CA		PS		
CT	Consumer Protection Commission (AC)	L	Education or experience and examination	2000
GA		PS		
LA	Independent Board	L	Education or experience and examination	1997
MD*		PS		
MA	Independent Board	L	Insurance, national examination, contracts on file	2000
MT		PS		
NV	Real Estate Commission	C	Background check, Insurance, 40 hours education and examination	1998
NJ**	Engineer Board (AC)	L		2001
NC	Insurance	L	Education or 6 years experience in construction or licensed contractor	1996
OR	Construction Contractor Board (AC)	C		1998
RI	Construction Contractor Board (AC)	L	Regulations proposed	2001
SC	Builders Board	L	National certification and 1 year apprenticeship	2001
SD	Real Estate Commission	L	40 hours education and examination	2001
TX	Real Estate Commission	L	Education or apprenticeship and examination	1981
WI	Professional Registrations Division	C		1999

\*Maryland licensing legislation pending in the General Assembly.

\*\*New Jersey program authorized by legislature in 1998. However, no regulations have been passed therefore inspectors are unable to obtain licenses.

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## ***Analysis and Recommendation***

The sunrise criteria are very clear and specific regarding justification for the creation of a new regulatory program. The burden is upon the applicant to document through the application process that the occupation or profession being considered meets all three criteria. The application for the regulation of home inspectors does not meet the statutory burden.

### ***Public Harm***

The first sunrise criterion asks:

*Whether the unregulated practice of the occupation or profession clearly harms or endangers the health, safety, or welfare of the public, and whether the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument;*

In the case of home inspectors, public harm would take the form of economic damage, which would fall under the category of public welfare in terms of the statutory criteria. The contention is, that because the purchase of a house is such a major investment, that a complete home inspection is necessary. It is further argued by the applicant that an improper inspection harms the consumer.

Evidence has not been presented that the unregulated practice of home inspections clearly harms the public. In fact, it is not clear that any harm identified is easily recognizable. Inspections are a voluntary, contractual arrangement between two parties, the prospective purchaser of the property, and the home inspector. There are no statutory or regulatory requirements that an inspection be conducted to determine the condition of real property.

As discussed previously in this review, it is estimated that there are 72,000 home sales in Colorado each year. A survey conducted by national real estate and home inspector organizations concludes that almost 80 percent of home sales involve an inspection. Yet, there are few complaints. The Better Business Bureau reports only 11 complaints over a three-year period from 1997 through 2000, an average of less than four per year. It is reasonable to conclude that professional referrals and word of mouth advertising work well in this industry.

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As recently as 10 years ago, real estate agents and brokers discouraged the use of independent inspectors in residential real estate transactions. According to the applicant and real estate professionals contacted for this review, many real estate brokers viewed inspectors as obstructionists, causing unnecessary complications in real estate transactions.

This view has changed in recent years. In fact, in 1998 the Commission authorized the creation of a Specialty Licensing Task Force to investigate the impacts of regulation of home inspectors. The task force prepared a "White Paper" for the Commission containing findings and recommendations. The task force found that approximately 72,000 home sales occur in Colorado annually and that, increasingly, those purchasing homes rely upon a home inspection before making their decision. The task force report did not quantify the number of inspections. However, the report did state that a majority of the transactions involved an inspection.

One potential benefit of regulation mentioned by several real estate professionals contacted for this review is a shifting of legal liability in transactions involving a qualified inspector. There have been civil and administrative cases resulting from complaints initiated by buyers who discover defects in purchased property. In these complaints, the buyer attempts to hold the listing broker responsible for the defects alleging that the broker knew, or should have known, the defects were present. The logic seems to prevail with some brokers that if an independent inspector did not find a defect, then at the very least, there is an additional party to involve in any civil action.

The purpose of a regulatory program is to protect the public health, safety and/or welfare. A major component of any sunrise review is an evaluation of the harm to consumers by the unregulated practice of the occupation or profession.

The applicant indicates that the public welfare is potentially at risk from the unregulated practice of home inspection in two areas. The first area relates to the ethics of the individual inspector. The second is the competency of the individual inspectors.

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## Ethics

Both ASHI and NAHI promote codes of ethics for their members. Both organizations' codes stress accurate, professional reports and avoiding conflicts of interest. Potential conflict of interest issues involved in a home inspection include:

- Inspectors using the inspection process to solicit business from the buyer or seller to make recommended repairs;
- Inspectors inspecting property in which they have a financial interest;
- Sellers having the fee for the inspection contingent upon the outcome of the report or closing on the property;
- Inspectors collecting fees from the seller rather than the buyer.

The problems associated with using the inspection process to solicit repair business for the inspector is obvious. Recommending unnecessary repairs to generate additional income would definitely create a conflict. There are also issues with recommending specific contractors and receiving referral fees. Some states prohibit regulated inspectors from making repairs on any inspected property for a period of two years to reduce this unethical practice.

Inspecting a property that the inspector has a financial interest in or having the inspection fee contingent upon closing both call the objectivity of the inspector into question. In both situations, the report could be slanted to encourage a potential buyer to complete the purchase by overlooking potential problems that could cause the transaction to be terminated.

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Some homeowners contract with an inspector when listing their property for sale. ASHI maintains that buyers should not rely on an inspection report prepared by an inspector paid by a seller. After all, in this situation, the seller is the client of the inspector. However, this appears to contradict the concept of a professional home inspection, since it is required to be an objective evaluation of the home and its systems. Indeed, if it is truly an objective evaluation there is nothing wrong with this practice. It may alert the homeowner to potential issues with the property that the homeowner may correct or disclose before listing the property.

### Competency

The second area of potential risk to the public is related to the competency of individual inspectors. Residential housing purchases amount to approximately \$1.5 billion annually in Colorado. According to the applicant and the Commission, a majority of these transactions involve an inspection.

The applicants maintain that because there is no state regulation of the inspection industry, the public is at risk. The contention is that the home buying public is relying on the inspection before making a decision on the largest single investment most families will make in their lives.

The position of the industry representatives contacted is that since there is no regulatory oversight, anyone can provide inspection services regardless of experience or qualifications. Since there are no minimum standards for home inspector qualifications, the quality of inspections varies. The applicant claims some inspectors do not have the necessary expertise to effectively evaluate some systems or components of the house. Therefore, consumers who rely on this information could be misled into believing major systems are in good working order only to be required to make expensive repairs after purchasing the home. However, consumers utilizing the services of an inspector are capable of checking references and qualifications before contracting for services.

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Some realtors contacted for this review expressed concerns about the qualifications of inspectors. However, some of their concerns extend to what the applicant would consider to be qualified inspectors. These realtors expressed frustration at inspection reports that are vague or contain information the realtors consider to be insignificant.

Charges of vagueness result from reports that include recommendations to consult with other construction professionals. This sometimes occurs when an inspection reveals indications that a problem may exist but does not reveal enough evidence to support a definitive conclusion. For example, rust on a heat exchanger in a furnace may indicate a problem, but unless the exchanger is obviously cracked, the inspector may recommend contacting a HVAC contractor. Another example, cracks in the basement or crawlspace, could be an indication of possible expansive soils. The inspector may recommend contacting a geologist to investigate this possibility.

Insignificant information included in inspection reports may be information such as "screen in master bedroom has a hole in it" or "missing tile in shower enclosure." Some realtors view these types of observations as frivolous and unnecessary. They are concerned that these remarks make it more difficult to conclude sales.

Inspectors defend both practices in completing inspection reports. "An inspection is an objective visual examination of the physical structure and systems of a house."<sup>1</sup> Most inspectors do not hold themselves out to be experts in all phases of construction. They maintain that it is their function to direct their clients to obtain the appropriate expert advice based on their observations. Observations about any physical deficiency of the property are subject to reporting to the client.

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<sup>1</sup> [www.independentinspector.org](http://www.independentinspector.org) 4/4/001

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The applicant provided nine examples of public harm that occurred due to alleged professional incompetence. All of the examples involved civil actions against an inspector and in some cases included contractors, realtors, and sellers. The applicant was unable to provide documentation on the total number of civil cases involving home inspectors. It is also unknown what qualifications the inspectors in the provided cases held. The cases, as provided by the applicant, are as follows:

- 1992 - A County Court entered a \$149 judgment against an inspector in a case involving water damage that was not reported;
- 1992 - An arbitration hearing awarded a homeowner \$304 in a case involving an unreported structural defect. The seller was also a defendant;
- 1992 - An HVAC contractor and an inspector were sued in County Court in a case involving an alleged faulty furnace. The inspector settled for a small confidential amount;
- 1992 - Several contractors and an inspector were sued in District Court over alleged movement of a fireplace, the inspector settled for a small confidential amount;
- 1993 - A purchaser was awarded \$8,163 in arbitration in a case involving fireplace movement;
- 1993 - A District Court case named the seller, an inspector and a real estate broker as defendants alleging inadequate combustion air in the furnace room. The inspector settled with the claimant for \$10,000;
- 1993 - A District Court case named an inspector and several contractors co-defendants in a case alleging serious structural defects. The inspector settled for a modest confidential amount;
- 1996 - A District Court case named an inspector, a real estate broker and the seller as co-defendants in a case alleging structural movement. The inspector settled for \$2,500;
- 1999 - A District Court case named an inspector, a real estate broker, the seller, and a contractor as co-defendants in a case alleging code violations and structural deficiencies. The inspector settled for a small confidential amount.



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Inquiries were made to the Colorado Office of the Attorney General as well as consumer protection divisions of the larger district attorney offices. None of these government agencies were able to quantify complaints made against home inspectors. The Better Business Bureau reports 1,630 inquiries and 11 complaints in the home inspection category for calendar years 1997 through 2000.

Some realtors consider an inspection by an independent party as added insurance against future litigation. In fact, some inspection companies carry insurance policies to indemnify them against lawsuits based on material items missed on an inspection.<sup>2,3</sup> In California, strong support by the real estate community for regulation of home inspectors was at least partially fueled by a belief that an inspection by a qualified inspector will reduce a real estate broker's potential liability if a material defect is found in the future.<sup>4</sup> However, according to the sunset criteria, protection of real estate professionals is not justification for the creation of a regulatory program.

The Specialty Licensing Task Force created by the Colorado Real Estate Commission issued a "Statement of Need" which recommended supporting regulation of the industry indicating: "...there are court cases and a plethora of available testimony to demonstrate such a need to the real estate, home inspection and related industries, as well as the legislature."<sup>5</sup> However, the task force report did not document specific cases or information.

The task force recommended standards of practice and prohibited acts for potential licensees. One proposal would prohibit home inspectors who are not registered engineers from performing engineering activities. However, the provisions of §12-25-105, C.R.S., the Engineer and Surveyor Act, already prohibit these actions.

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<sup>2</sup> Crawford, Dave "Home Inspections: An Advantage for REALTORS in Today's Market" Realty Times November 19, 1998

<sup>3</sup> Mandell, Arthur, "Warning From a Home Inspector Don't let an inspection increase your risk of liability" Today's REALTOR, August, 1996

<sup>4</sup> Harper, Dean K.P., "Elevating The Standards Of Home Inspectors And Reducing The Exposure Of Real Estate Brokers" Bowles & Verna Real Estate Bulletin [WWW.bowlesverna.com/articles/realestate1.html](http://WWW.bowlesverna.com/articles/realestate1.html)

<sup>5</sup> Memo to The Colorado Real Estate Commission from the Specialty Licensing Task Force October 13, 1998

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The application proposes the creation of a new regulatory program to license home inspectors. Licensing is the most restrictive form of regulation. The applicant maintains that licensure is necessary to ensure home inspectors maintain a minimum of competency in order to protect consumers. The applicant acknowledges in the application materials that licensure will reduce the number of practitioners, at least initially, and increase costs to consumers.

There have been a handful of court cases resulting in judgments or settlements averaging less than \$4,300. The fact that consumers have been successful in obtaining settlements indicates that there is currently an adequate process to protect the public without the formulation of a new regulatory program.

### *Need for Regulation*

The second sunrise criterion asks:

*Whether the public needs, and can reasonably be expected to benefit from, an assurance of initial and continuing professional or occupational competence.*

The applicants have requested licensure as the appropriate level of regulation, and suggested certification by ASHI as the standard for licensure. There are several concerns with this type of regulatory structure.

First, licensure is a restriction on the practice of the occupation. Licensure restricts entry to the occupation and performance of the regulated activity to those licensed. However, the licensing standard advanced by the applicant provides that unlicensed persons will be authorized to practice.

Licensing statutes prohibit anyone not licensed from practicing the occupation. In order to become ASHI certified, an applicant must perform 100 inspections for compensation and then submit them to ASHI for evaluation. If a licensing law were in place, it would be impossible for anyone not currently ASHI certified to become licensed in the state. The probable solution to this problem is creation of at least two levels of licensure to allow new applicants to enter the field.

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Second, it cannot be demonstrated that certification by ASHI is an assurance that the public will be protected. The applicants submitted several instances of alleged harm to the public caused by improper inspections. However, the applicant did not document the qualifications of those inspectors. It is possible that some of those inspectors would have been qualified for licensure under the proposed licensing standards.

It has also been documented through an investigative television report aired in Colorado Springs, that inspectors certified by ASHI have conducted inspections on homes in that area and failed to inform consumers of defects in the homes. This indicates that the initial and continuing professional competency evaluations proposed by the applicant cannot be reasonably expected to protect the public.

Third, a licensing program establishes that only persons who have demonstrated competency established in the licensing standards are qualified to perform the professional service. There are many individuals from a variety of backgrounds who are qualified to perform home inspection services including general contractors, building officials, and insurance adjusters. There are also other licensed professionals who may be qualified and interested in performing this service such as architects and engineers. While statutory exemptions can be provided for licensed professionals, it is not practical to provide exemptions for unlicensed individuals without explicitly stating qualifications.

### *Alternatives to Regulation*

The third sunrise criterion asks:

*Whether the public can be adequately protected by other means in a more cost-effective manner.*

As documentation of actual harm, the applicant submitted summaries of several court cases involving possible harm caused by a home inspector. In these cases, the amount of damage ranged from \$149 to \$10,000. The most significant information revealed in this documentation is that the public has an adequate mechanism through small claims or civil court to be made whole without a licensing program.

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In fact, most licensing programs do not serve to compensate the public for damages. A licensing program may take disciplinary action against a licensee for violating a statute, regulation or perhaps a professional standard.

For example, if an electrician were to improperly wire a building (and an inspector did not catch the problem) and this improper wiring job resulted in a fire with major damage, the consumer is not able to seek recourse through the State Electrical Board. The State Electrical Board can deny, suspend, or revoke the electrician's license. However, it cannot order the electrician to pay any damages to the consumer. The consumer, to recover damages, must seek a judgment in a court of law.

There are exceptions to this regulatory standard however. In real estate, licensed brokers are required to pay into the Real Estate Recovery Fund, which is used to compensate victims of real estate fraud. In other programs licensing authorities usually have the ability to enter into stipulated agreements with licensees as a form of discipline; it is possible to include restitution in a stipulated agreement.

However, this situation requires the licensee to agree to pay restitution. If the licensee refuses, the authority may discipline the license and the recourse for the harmed public is civil court to seek financial compensation. It is also possible to require inspectors to maintain a bond, however, in most cases insurance companies will not pay a bond unless a court has found the bond holder to be liable for damages. Again, this requires the harmed public to seek redress in the courts regardless of the presence of a regulatory authority.

### Conclusion

There is no question that the purchase of a home is a major investment for a buyer. Prospective buyers are well served by making use of all reasonable sources of information before making a purchase. Of the average 72,000 home sales each year, a majority are facilitated by licensed real estate brokers. Attorneys, title companies, licensed appraisers, land surveyors, banks, mortgage lenders, builders, contractors, and other professionals are also frequently involved.

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According to both the applicants and the Colorado Division of Real Estate, home inspectors are becoming increasingly involved in home sales. A survey commissioned by the National Association of Realtors and ASHI reported that nationally 77 percent of homebuyers requested an inspection prior to purchasing a home. While some realtors still express misgivings about the use of inspectors, calling them deal breakers, many are encouraging clients to use inspectors. The survey reported that 92 percent of realtors always recommend an inspection to their clients. The majority of the real estate associations contacted for this review supported the regulation of home inspectors. However, the justification for this support may not be based on a desire to protect the public.

In the survey conducted by the National Association of Realtors and ASHI it was found the real estate agent (or broker) recommended the inspector performing the inspection 69 percent of the time. If the proposal for regulation is mainly concerned with the qualifications of inspectors, real estate agents in the state can easily educate the public without the creation of a new regulatory program.

The judgment and professionalism of all of these individuals are factors in the decision to purchase a home. Perhaps one of the key professional judgments is that of the appraiser. The appraiser is responsible for establishing a value for the property. If a buyer purchases a property at or below its appraised value it could be argued that any minor defects are not relevant, because the buyer received a fair exchange in the transaction.

Further, the Commission could develop an approved brochure with guidelines for selecting a qualified inspector. This brochure could be available from brokers at the time an offer is made on a home. This option would not prevent the prospective buyer from obtaining the services of an inspector who did not meet the recommended guidelines. Nor would it place a barrier to entry for those desiring to provide inspection services. It would provide public protection by assisting consumers in making informed choices. Although there may be a slight cost to the real estate licensing program for this option, as one of the advocates for standards in the inspection industry, it is reasonable to expect that the industry would accept the expense.

***Recommendation - The General Assembly should take no action based on the application request for regulation of home inspectors.***

# Appendix A – Contract to Buy and Sell Real Estate (Residential)

The printed portions of this form have been approved by the Colorado Real Estate Commission. (CBS 1-9-99)

THIS FORM HAS IMPORTANT LEGAL CONSEQUENCES AND THE PARTIES SHOULD CONSULT LEGAL AND TAX OR OTHER COUNSEL BEFORE SIGNING.

## CONTRACT TO BUY AND SELL REAL ESTATE (RESIDENTIAL)

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

1. **AGREEMENT.** Buyer agrees to buy and the undersigned Seller agrees to sell the Property defined below on the terms and conditions set forth in this contract.

### 2. **DEFINED TERMS.**

a. **Buyer.** Buyer, \_\_\_\_\_, will take title to the real property described below as ☐ Joint Tenants ☐ Tenants In Common ☐ Other \_\_\_\_\_.

b. **Property.** The Property is the following legally described real estate:

in the County of \_\_\_\_\_, Colorado,  
commonly known as No. \_\_\_\_\_

Street Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
together with the interests, easements, rights, benefits, improvements and attached fixtures appurtenant thereto, all interest of Seller in vacated streets and alleys adjacent thereto, except as herein excluded.

### c. **Dates and Deadlines.**

Item No.	Reference	Event	Date or Deadline
1	§ 5a	Loan Application Deadline	
2	§ 5b	Loan Commitment Deadline	
3	§ 5c	Buyer's Credit Information Deadline	
4	§ 5c	Disapproval of Buyer's Credit Deadline	
5	§ 5d	Existing Loan Documents Deadline	
6	§ 5d	Objection to Existing Loan Deadline	
7	§ 5d	Approval of Loan Transfer Deadline	
8	§ 6a	Appraisal Deadline	
9	§ 7a	Title Deadline	
10	§ 7a	Survey Deadline	
11	§ 7b	Document Request Deadline	
12	§ 7c, § 8a	Governing Documents & Title Objection Deadline	
13	§ 8b	Off-Record Matters Deadline	
14	§ 8b	Off-Record Matters Objection Deadline	
15	§ 8c	Right Of First Refusal Deadline	
16	§ 10	Seller's Property Disclosure Deadline	
17	§ 10a	Inspection Objection Deadline	
18	§ 10b	Resolution Deadline	
19	§ 11	Closing Date	
20	§ 16	Possession Date	
21	§ 16	Possession Time	
22	§ 28	Acceptance Deadline Date	
23	§ 28	Acceptance Deadline Time	

d. **Attachments.** The following exhibits, attachments and addenda are a part of this contract:

e. **Applicability of Terms.** A check or similar mark in a box means that such provision is applicable. The abbreviation "N/A" means not applicable.

### 3. **INCLUSIONS AND EXCLUSIONS.**

a. The Purchase Price includes the following items (Inclusions):

(1) **Fixtures.** If attached to the Property on the date of this contract, lighting, heating, plumbing, ventilating, and air conditioning fixtures, TV antennas, inside telephone wiring and connecting blocks/jacks, plants, mirrors, floor coverings, intercom systems, built-in kitchen appliances, sprinkler systems and controls, built-in vacuum systems (including accessories), garage door openers including \_\_\_\_\_ remote controls; and \_\_\_\_\_

(2) **Other Inclusions.** If on the Property whether attached or not on the date of this contract: storm windows, storm doors, window and porch shades, awnings, blinds, screens, window coverings, curtain rods, drapery rods, fireplace inserts, fireplace screens, fireplace grates, heating stoves, storage sheds, and all keys. Check applicable box(es) if included: ☐ Water Softeners, ☐ Smoke/Fire Detectors, ☐ Security Systems, ☐ Satellite Systems (including satellite dishes and accessories); and \_\_\_\_\_

(3) **Parking and Storage Facilities.** The use of the following parking facility(ies): \_\_\_\_\_; and the following storage facilities: \_\_\_\_\_

(4) **Water Rights.** The following legally described water rights: \_\_\_\_\_

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b. **Instruments of Transfer.** The Inclusions are to be conveyed at Closing free and clear of all taxes, liens and encumbrances, except as provided in § 12. Conveyance shall be by bill of sale or other applicable legal instrument(s). Any water rights shall be conveyed by \_\_\_\_\_ deed or other applicable legal instrument(s).

c. **Exclusions.** The following attached fixtures are excluded from this sale: \_\_\_\_\_.

57 4. **PURCHASE PRICE AND TERMS.** The Purchase Price set forth below shall be payable in U. S. Dollars by  
58 Buyer as follows:  
59

Item No.	Reference	Item	Amount	Amount
1	§ 4	Purchase Price	\$	
2	§ 4a	Earnest Money		\$
3	§ 4b	New Loan		
4	§ 4c	Assumption Balance		
5	§ 4d	Seller or Private Financing		
6	§ 4e	Cash at Closing		
7		TOTAL	\$	\$

60  
61 a. **Earnest Money.** The Earnest Money set forth in this Section, in the form of \_\_\_\_\_, is part payment  
62 of the Purchase Price and shall be payable to and held by \_\_\_\_\_, in its trust account, on behalf of  
63 both Seller and Buyer. The parties authorize delivery of the Earnest Money deposit to the Closing Company, if any, at or  
64 before Closing.

65 b. **New Loan.** Buyer shall obtain a new loan set forth in this Section and as follows:

66 ☐ Conventional ☐ FHA ☐ VA ☐ Other \_\_\_\_\_

67 This loan will be secured by a \_\_\_\_\_ (1st, 2nd, etc.) deed of trust.

68 The loan may be increased to add the cost of mortgage insurance, VA funding fee and other items for a total loan  
69 amount, not in excess of \$ \_\_\_\_\_, which shall be amortized over a period of \_\_\_\_\_ years at  
70 approximately \$ \_\_\_\_\_ per month including principal and interest not to exceed \_\_\_\_\_% per annum, plus, if required by  
71 Buyer's lender, a monthly deposit of 1/12 of the estimated annual real estate taxes, property insurance premium, and mortgage  
72 insurance premium. If the loan is an adjustable interest rate or graduated payment loan, the monthly payments and interest  
73 rate initially shall not exceed the figures set forth above.

74 Loan discount points, if any, shall be paid to lender at Closing and shall not exceed \_\_\_\_\_% of the total loan  
75 amount. Notwithstanding the loan's interest rate, the first \_\_\_\_\_ loan discount points shall be paid by \_\_\_\_\_, and the  
76 balance, if any, shall be paid by \_\_\_\_\_.

77 Buyer shall timely pay Buyer's loan costs and a loan origination fee not to exceed \_\_\_\_\_% of the loan amount.

78 c. **Assumption.** Buyer agrees to assume and pay an existing loan in the approximate amount of the  
79 Assumption Balance set forth in this Section, presently payable at \$ \_\_\_\_\_ per month including principal,  
80 interest presently at \_\_\_\_\_% per annum, and also including escrow for the following as indicated: ☐ Real Estate Taxes,  
81 ☐ Property Insurance Premium, ☐ Mortgage Insurance Premium, and \_\_\_\_\_.

82 Buyer agrees to pay a loan transfer fee not to exceed \$ \_\_\_\_\_. At the time of assumption, the  
83 new interest rate shall not exceed \_\_\_\_\_% per annum and the new monthly payment shall not exceed \$ \_\_\_\_\_  
84 principal and interest, plus escrow, if any. If the actual principal balance of the existing loan at Closing is less than the  
85 Assumption Balance, which causes the amount of cash required from Buyer at Closing to be increased by more than \$ \_\_\_\_\_,  
86 then ☐ Buyer May Terminate this contract effective upon receipt by Seller of Buyer's written notice of termination or  
87 ☐ \_\_\_\_\_.

88 Seller ☐ Shall ☐ Shall Not be released from liability on said loan, and if a VA-guaranteed loan, Seller's eligibility  
89 ☐ Shall ☐ Shall Not be reinstated. If applicable, compliance with the requirements for release from liability or reinstatement  
90 of eligibility shall be evidenced by delivery at Closing of appropriate letter of commitment from  
91 ☐ VA ☐ Lender. Cost payable for release of liability/reinstatement of VA eligibility shall be paid by \_\_\_\_\_ in  
92 an amount not to exceed \$ \_\_\_\_\_.

93 d. **Seller or Private Financing.** Buyer agrees to execute a promissory note payable to: \_\_\_\_\_  
94 \_\_\_\_\_, as ☐ Joint Tenants ☐ Tenants in Common ☐ Other \_\_\_\_\_, on the note form as  
95 indicated:

96 ☐ (UCCC - No Default Rate) NTD 82-3-95 ☐ (Default Rate) NTD 81-11-83  
97 ☐ Other \_\_\_\_\_ secured by a \_\_\_\_\_ (1st, 2nd, etc.) deed of trust encumbering the  
98 Property, using the form as indicated: ☐ Strict Due-On-Sale (TD 72-7-96) ☐ Creditworthy (TD 73-7-96)  
99 ☐ Assumable - Not Due On Sale (TD 74-7-96) ☐ Other \_\_\_\_\_.

100 Buyer ☐ Shall ☐ Shall Not execute and deliver, at Closing, a Security Agreement and UCC-1 Financing Statement  
101 granting the holder of the promissory note a \_\_\_\_\_ (1st, 2nd, etc.) lien on the personal property included in this sale. The  
102 promissory note shall be amortized on the basis of \_\_\_\_\_ ☐ years ☐ months, payable at \$ \_\_\_\_\_  
103 per month including principal and interest at the rate of \_\_\_\_\_% per annum. Payments shall commence \_\_\_\_\_  
104 \_\_\_\_\_ and shall be due on the \_\_\_\_\_ day of each succeeding month. If not sooner paid, the balance of principal and accrued  
105 interest shall be due and payable \_\_\_\_\_ after Closing. Payments ☐ Shall ☐ Shall Not be increased by 1/12 of  
106 estimated annual real estate taxes, and ☐ Shall ☐ Shall Not be increased by 1/12 of estimated annual property insurance  
107 premium. The loan shall also contain the following terms: if any payment is not received within \_\_\_\_\_ calendar days  
108 after its due date, a late charge of \_\_\_\_\_% of such monthly payment shall be due. Interest on lender disbursements under the deed  
109 of trust shall be \_\_\_\_\_% per annum. Default interest rate shall be \_\_\_\_\_% per annum. Buyer may prepay without a penalty except  
110 \_\_\_\_\_.

111 Buyer ☐ Shall ☐ Shall Not provide a mortgagee's title insurance policy, at Buyer's expense.

112 e. **Cash at Closing.** All amounts paid by Buyer at Closing including Cash at Closing, plus Buyer's closing  
113 costs, shall be in funds which comply with all applicable Colorado laws, which include cash, electronic transfer funds,  
114 certified check, savings and loan teller's check and cashier's check (Good Funds).

115 5. **FINANCING CONDITIONS AND OBLIGATIONS.**

116 a. **Loan Application.** If Buyer is to pay all or part of the Purchase Price by obtaining a new loan, or if an  
117 existing loan is not to be released at Closing, Buyer, if required by such lender, shall make written application by **Loan**  
118 **Application Deadline** (§ 2c). Buyer shall cooperate with Seller and lender to obtain loan approval, diligently and timely  
119 pursue same in good faith, execute all documents and furnish all information and documents required by lender, and, subject  
120 to § 4, timely pay the costs of obtaining such loan or lender consent. Buyer agrees to satisfy the reasonable requirements of  
121 lender, and shall not withdraw the loan or assumption application, nor intentionally cause any change in circumstances which  
122 would prejudice lender's approval of the loan application or funding of the loan.

123 b. **Loan Commitment.** If Buyer is to pay all or part of the Purchase Price by obtaining a new loan as  
124 specified in § 4b, this contract is conditional upon Buyer obtaining a written loan commitment including, if required by  
125 lender, (1) lender verification of employment, (2) lender approval of Buyer's credit-worthiness, (3) lender verification that  
126 Buyer has sufficient funds to close, and (4) specification of any remaining requirements for funding said loan. This condition  
127 shall be deemed waived unless Seller receives from Buyer, no later than **Loan Commitment Deadline** (§ 2c), written notice



of Buyer's inability to obtain such loan commitment. If Buyer so notifies Seller, this contract shall terminate. **IF BUYER WAIVES THIS CONDITION BUT DOES NOT CLOSE, BUYER SHALL BE IN DEFAULT.**

c. **Credit Information.** If Buyer is to pay all or part of the Purchase Price by executing a promissory note in favor of Seller or if an existing loan is not to be released at Closing, this contract is conditional upon Seller's approval of Buyer's financial ability and creditworthiness, which approval shall be at Seller's sole and absolute discretion. In such case: (1) Buyer shall supply to Seller by **Buyer's Credit Information Deadline** (§ 2c), at Buyer's expense, information and documents concerning Buyer's financial, employment and credit condition; (2) Buyer consents that Seller may verify Buyer's financial ability and creditworthiness (including obtaining a current credit report); (3) any such information and documents received by Seller shall be held by Seller in confidence, and not released to others except to protect Seller's interest in this transaction; (4) if Seller does not provide written notice of Seller's disapproval to Buyer by **Disapproval of Buyer's Credit Deadline** (§ 2c), then Seller waives this condition. If Seller does provide written notice of disapproval to Buyer on or before said date, this contract shall terminate.

d. **Existing Loan Review.** If an existing loan is not to be released at Closing, Seller shall provide copies of the loan documents (including note, deed of trust, and any modifications) to Buyer by **Existing Loan Documents Deadline** (§ 2c). This contract is conditional upon Buyer's review and approval of the provisions of such loan documents. If written notice of objection to such loan documents, signed by Buyer, is not received by Seller by the **Objection to Existing Loan Documents Deadline** (§ 2c), Buyer accepts the terms and conditions of the documents. If the lender's approval of a transfer of the Property is required, this contract is conditional upon Buyer's obtaining such approval without change in the terms of such loan, except as set forth in § 4c. If lender's approval is not obtained by **Approval of Loan Transfer Deadline** (§ 2c), this contract shall terminate on such date. If Seller is to be released from liability under such existing loan or if Seller's VA eligibility is to be reinstated and Buyer does not obtain such compliance as set forth in § 4c, this contract may be terminated at Seller's option.

6. **APPRAISAL PROVISIONS**

a. **Appraisal Condition.**

☐ (1) **No Appraisal Condition.** This subsection a. shall not apply.

☐ (2) **FHA.** It is expressly agreed that notwithstanding any other provisions of this contract, the Purchaser (Buyer) shall not be obligated to complete the purchase of the Property described herein or to incur any penalty by forfeiture of earnest money deposits or otherwise unless the Purchaser (Buyer) has been given in accordance with HUD/FHA or VA requirements a written statement by the Federal Housing Commissioner, Veterans Administration, or a Direct Endorsement lender setting forth the appraised value of the Property of not less than \$\_\_\_\_\_. The Purchaser (Buyer) shall have the privilege and option of proceeding with consummation of the contract without regard to the amount of the appraised valuation. The appraised valuation is arrived at to determine the maximum mortgage the Department of Housing and Urban Development will insure. HUD does not warrant the value nor the condition of the Property. The Purchaser (Buyer) should satisfy himself/herself that the price and condition of the Property are acceptable.

☐ (3) **VA.** If Buyer is to pay the Purchase Price by obtaining a new VA-guaranteed loan, it is agreed that, notwithstanding any other provisions of this contract, Buyer shall not incur any penalty by forfeiture of earnest money or otherwise be obligated to complete the purchase of the Property described herein, if the contract Purchase Price or cost exceeds the reasonable value of the Property established by the Veterans Administration. Buyer shall, however, have the privilege and option of proceeding with the consummation of this contract without regard to the amount of the reasonable value established by the Veterans Administration.

☐ (4) **Other.** Buyer shall have the sole option and election to terminate this contract if the Purchase Price exceeds the Property's valuation determined by an appraiser engaged by \_\_\_\_\_. The contract shall terminate by Buyer giving Seller written notice of termination and either a copy of such appraisal or written notice from lender which confirms the Property's valuation is less than the Purchase Price, received on or before the **Appraisal Deadline** (§ 2c). If Seller does not receive such written notice of termination on or before the **Appraisal Deadline** (§ 2c), Buyer waives any right to terminate under this subsection.

b. **Cost of Appraisal.** Cost of any appraisal to be obtained after the date of this contract shall be timely paid by ☐ Buyer ☐ Seller.

7. **EVIDENCE OF TITLE**

a. **Evidence of Title; Survey.** On or before **Title Deadline** (§ 2c), Seller shall cause to be furnished to Buyer, at Seller's expense, a current commitment for owner's title insurance policy in an amount equal to the Purchase Price or if this box is checked, ☐ **An Abstract** of title certified to a current date. If a title insurance commitment is furnished, it ☐ **Shall** ☐ **Shall Not** commit to delete or insure over the standard exceptions which relate to:

- (1) parties in possession,
- (2) unrecorded easements,
- (3) survey matters,
- (4) any unrecorded mechanics' liens,
- (5) gap period (effective date of commitment to date deed is recorded), and
- (6) unpaid taxes, assessments and unredeemed tax sales prior to the year of Closing.

Any additional premium expense to obtain this additional coverage shall be paid by Seller. An amount not to exceed \$\_\_\_\_\_ for the cost of any improvement location certificate or survey shall be paid by ☐ Buyer ☐ Seller. If the cost exceeds this amount, Buyer shall pay the excess on or before Closing unless Buyer delivers to Seller or Listing Company, before the improvement location certificate or survey is ordered, Buyer's written notice allowing the exception for survey matters. The improvement location certificate or survey shall be received by Buyer on or before **Survey Deadline** (§ 2c). Seller shall cause the title insurance policy to be delivered to Buyer as soon as practicable at or after Closing.

b. **Copies of Exceptions.** On or before **Title Deadline** (§ 2c), Seller, at Seller's expense, shall furnish to Buyer, (1) a copy of any plats, declarations, covenants, conditions and restrictions burdening the Property, and (2) if a title insurance commitment is required to be furnished, and if this box is checked ☐ **Copies of any Other Documents** (or, if illegible, summaries of such documents) listed in the schedule of exceptions (Exceptions). Even if the box is not checked, Seller shall have the obligation to furnish these documents pursuant to this subsection if requested by Buyer any time on or before the **Document Request Deadline** (§ 2c). This requirement shall pertain only to documents as shown of record in the office of the clerk and recorder(s). The abstract or title insurance commitment, together with any copies or summaries of such documents furnished pursuant to this Section, constitute the title documents (Title Documents).

c. **Common Interest Community Governing Documents.**

☐ (1) **Not Applicable.** This subsection c. shall not apply.

☐ (2) **Conditional on Buyer's Review.** Seller shall cause to be furnished to Buyer, at Seller's expense, on or before **Title Deadline** (§ 2c) a current copy of the owner's association declarations, bylaws, rules and regulations, party wall agreements (herein collectively "Governing Documents"), most recent financial documents consisting of (a) annual balance

sheet, (b) annual income and expenditures statement, and (c) annual budget (herein collectively "Financial Documents"), if any. Written notice of any unsatisfactory provision(s) in any of these documents signed by Buyer, or on behalf of Buyer, and given to Seller on or before **Governing Documents Deadline**, [which is the same as **Title Objection Deadline** (§ 2c)], shall terminate this contract. If Seller does not receive written notice from Buyer within such time, Buyer accepts the terms of said documents, and Buyer's right to terminate this contract pursuant to this subsection is waived, notwithstanding the provisions of § 8d.

☐ (3) **Not Conditional on Review.** Buyer acknowledges that Seller has delivered a copy of the Governing Documents and Financial Documents. Buyer has reviewed them, agrees to accept the benefits, obligations and restrictions which they impose upon the Property and its owners and waives any right to terminate this contract due to such documents, notwithstanding the provisions of § 8d.

8. **TITLE**

a. **Title Review.** Buyer shall have the right to inspect the Title Documents. Written notice by Buyer of unmerchantability of title or of any other unsatisfactory title condition shown by the Title Documents shall be signed by or on behalf of Buyer and given to Seller on or before **Title Objection Deadline** (§ 2c), or within five (5) calendar days after receipt by Buyer of any Title Document(s) or endorsement(s) adding new Exception(s) to the title commitment together with a copy of the Title Document adding new Exception(s) to title. If Seller does not receive Buyer's notice by the date(s) specified above, Buyer accepts the condition of title as disclosed by the Title Documents as satisfactory.

b. **Matters not Shown by the Public Records.** Seller shall deliver to Buyer, on or before **Off-Record Matters Deadline** (§ 2c) true copies of all lease(s) and survey(s) in Seller's possession pertaining to the Property and shall disclose to Buyer all easements, liens or other title matters not shown by the public records of which Seller has actual knowledge. Buyer shall have the right to inspect the Property to determine if any third party(ies) has any right in the Property not shown by the public records (such as an unrecorded easement, unrecorded lease, or boundary line discrepancy). Written notice of any unsatisfactory condition(s) disclosed by Seller or revealed by such inspection shall be signed by or on behalf of Buyer and given to Seller on or before **Off-Record Matters Objection Deadline** (§ 2c). If Seller does not receive Buyer's notice by said date, Buyer accepts title subject to such rights, if any, of third parties of which Buyer has actual knowledge.

c. **Special Taxing Districts.** SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO GENERAL OBLIGATION INDEBTEDNESS THAT IS PAID BY REVENUES PRODUCED FROM ANNUAL TAX LEVIES ON THE TAXABLE PROPERTY WITHIN SUCH DISTRICTS. PROPERTY OWNERS IN SUCH DISTRICTS MAY BE PLACED AT RISK FOR INCREASED MILL LEVIES AND EXCESSIVE TAX BURDENS TO SUPPORT THE SERVICING OF SUCH DEBT WHERE CIRCUMSTANCES ARISE RESULTING IN THE INABILITY OF SUCH A DISTRICT TO DISCHARGE SUCH INDEBTEDNESS WITHOUT SUCH AN INCREASE IN MILL LEVIES. BUYER SHOULD INVESTIGATE THE DEBT FINANCING REQUIREMENTS OF THE AUTHORIZED GENERAL OBLIGATION INDEBTEDNESS OF SUCH DISTRICTS, EXISTING MILL LEVIES OF SUCH DISTRICT SERVICING SUCH INDEBTEDNESS, AND THE POTENTIAL FOR AN INCREASE IN SUCH MILL LEVIES.

In the event the Property is located within a special taxing district and Buyer desires to terminate this contract as a result, if written notice is received by Seller on or before **Off-Record Matters Objection Deadline** (§ 2c), this contract shall then terminate. If Seller does not receive Buyer's notice by such date, Buyer accepts the effect of the Property's inclusion in such special taxing district(s) and waives the right to so terminate.

d. **Right to Cure.** If Seller receives notice of unmerchantability of title or any other unsatisfactory title condition(s) or commitment terms as provided in § 8 a or b above, Seller shall use reasonable effort to correct said items and bear any nominal expense to correct the same prior to Closing. If such unsatisfactory title condition(s) are not corrected on or before Closing, this contract shall then terminate; provided, however, Buyer may, by written notice received by Seller, on or before Closing, waive objection to such items.

e. **Right of First Refusal.** If the Governing Documents require written approval of the sale contemplated by this contract or waiver of any option or right of first refusal by the owners' association or any other owner in the owners' association, Seller shall timely submit this contract and request approval of the sale or waiver of any option or right of first refusal pursuant to such provisions. If no such approval or waiver is obtained on or before **Right Of First Refusal Deadline** (§ 2c), this contract shall terminate. Buyer agrees to cooperate with Seller in obtaining the approval and/or waiver if required by the applicable Governing Documents and shall make available such information as the owners' association may reasonably require.

f. **Title Advisory.** The Title Documents affect the title, ownership and use of the Property and should be reviewed carefully. Additionally, other matters not reflected in the Title Documents may affect the title, ownership and use of the Property, including without limitation boundary lines and encroachments, area, zoning, unrecorded easements and claims of easements, leases and other unrecorded agreements, and various laws and governmental regulations concerning land use, development and environmental matters. **THE SURFACE ESTATE MAY BE OWNED SEPARATELY FROM THE UNDERLYING MINERAL ESTATE, AND TRANSFER OF THE SURFACE ESTATE DOES NOT NECESSARILY INCLUDE TRANSFER OF THE MINERAL RIGHTS. THIRD PARTIES MAY HOLD INTERESTS IN OIL, GAS, OTHER MINERALS, GEOTHERMAL ENERGY OR WATER ON OR UNDER THE PROPERTY, WHICH INTERESTS MAY GIVE THEM RIGHTS TO ENTER AND USE THE PROPERTY.** Such matters may be excluded from the title insurance policy. Buyer is advised to timely consult legal counsel with respect to all such matters as there are strict time limits provided in this contract (e.g., **Title Objection Deadline** [§ 2c] and **Off-Record Matters Objection Deadline** [§ 2c]).

9. **LEAD-BASED PAINT.** Unless exempt, if the improvements on the Property include one or more residential dwelling(s) for which a building permit was issued prior to January 1, 1978, this contract shall be void unless a completed Lead-Based Paint Disclosure (Sales) form is signed by Seller and the required real estate licensee(s), which must occur prior to the parties signing this contract.

10. **PROPERTY DISCLOSURE AND INSPECTION.** On or before **Seller's Property Disclosure Deadline** (§ 2c), Seller agrees to provide Buyer with a Seller's Property Disclosure form completed by Seller to the best of Seller's current actual knowledge.

a. **Inspection Objection Deadline.** Buyer shall have the right to have inspection(s) of the physical condition of the Property and Inclusions, at Buyer's expense. If the physical condition of the Property or Inclusions is unsatisfactory in Buyer's subjective discretion, Buyer shall, on or before **Inspection Objection Deadline** (§ 2c):

(1) notify Seller in writing that this contract is terminated, or  
(2) provide Seller with a written description of any unsatisfactory physical condition which Buyer requires Seller to correct (Notice to Correct).

If written notice is not received by Seller on or before **Inspection Objection Deadline** (§ 2c), the physical condition of the Property and Inclusions shall be deemed to be satisfactory to Buyer.

b. **Resolution Deadline.** If a Notice to Correct is received by Seller and if Buyer and Seller have not agreed in writing to a settlement thereof on or before **Resolution Deadline** (§ 2c), this contract shall terminate one calendar day following the **Resolution Deadline** (§ 2c), unless before such termination Seller receives Buyer's written withdrawal of the Notice to Correct.

c. **Damage; Liens; Indemnity.** Buyer is responsible for payment for all inspections, surveys, engineering reports or for any other work performed at Buyer's request and shall pay for any damage which occurs to the Property and Inclusions as a result of such activities. Buyer shall not permit claims or liens of any kind against the Property for inspections, surveys, engineering reports and for any other work performed on the Property at Buyer's request. Buyer agrees to indemnify, protect and hold Seller harmless from and against any liability, damage, cost or expense incurred by Seller in connection with any such inspection, claim, or lien. This indemnity includes Seller's right to recover all costs and expenses incurred by Seller to enforce this subsection, including Seller's reasonable attorney fees. The provisions of this subsection shall survive the termination of this contract.

11. **CLOSING.** Delivery of deed(s) from Seller to Buyer shall be at Closing (Closing). Closing shall be on the date specified as the **Closing Date** (§ 2c) or by mutual agreement at an earlier date. The hour and place of Closing shall be as designated by \_\_\_\_\_.

12. **TRANSFER OF TITLE.** Subject to tender or payment at Closing as required herein and compliance by Buyer with the other terms and provisions hereof, Seller shall execute and deliver a good and sufficient \_\_\_\_\_ deed to Buyer, at Closing, conveying the Property free and clear of all taxes except the general taxes for the year of Closing. Except as provided herein, title shall be conveyed free and clear of all liens, including any governmental liens for special improvements installed as of the date of Buyer's signature hereon, whether assessed or not. Title shall be conveyed subject to:

- those specific Exceptions described by reference to recorded documents as reflected in the Title Documents accepted by Buyer in accordance with § 8a [Title Review],
- distribution utility easements (including cable TV),
- those specifically described rights of third parties not shown by the public records of which Buyer has actual knowledge and which were accepted by Buyer in accordance with § 8b [Matters Not Shown by the Public Records], and
- inclusion of the Property within any special taxing district, and
- the benefits and burdens of any declaration and party wall agreements, if any, and
- other \_\_\_\_\_

13. **PAYMENT OF ENCUMBRANCES.** Any encumbrance required to be paid shall be paid at or before Closing from the proceeds of this transaction or from any other source.

14. **CLOSING COSTS; DOCUMENTS AND SERVICES.** Buyer and Seller shall pay, in Good Funds, their respective Closing costs and all other items required to be paid at Closing, except as otherwise provided herein. Buyer and Seller shall sign and complete all customary or reasonably required documents at or before Closing. Fees for real estate Closing services shall be paid at Closing by ☐ **One-Half by Buyer and One-Half by Seller** ☐ **Buyer** ☐ **Seller** ☐ **Other** \_\_\_\_\_.

Any fees incident to the transfer from Seller to Buyer assessed on or on behalf of the owners' association shall be paid by ☐ **Buyer** ☐ **Seller**.

The local transfer tax of \_\_\_\_\_% of the Purchase Price shall be paid at Closing by ☐ **Buyer** ☐ **Seller**. Any sales and use tax that may accrue because of this transaction shall be paid when due by ☐ **Buyer** ☐ **Seller**.

15. **PRORATIONS.** The following shall be prorated to **Closing Date** (§ 2c), except as otherwise provided:

- Taxes.** Personal property taxes, if any, and general real estate taxes for the year of Closing, based on ☐ **The Taxes for the Calendar Year Immediately Preceding Closing** ☐ **The Most Recent Mill Levy and Most Recent Assessment** ☐ **Other** \_\_\_\_\_;
- Rents.** Rents based on ☐ **Rents Actually Received** ☐ **Accrued**. Security deposits held by Seller shall be credited to Buyer. Seller shall assign all leases to Buyer and Buyer shall assume such leases.
- Association Assessments.** Current regular owners' association assessments and association dues. Owners' association assessments paid in advance shall be credited to Seller at Closing. Cash reserves held out of the regular owners' association assessments for deferred maintenance by the owners' association shall not be credited to Seller except as may be otherwise provided by the Governing Documents. Any special assessment by the owners' association for improvements that have been installed as of the date of Buyer's signature hereon shall be the obligation of Seller. Any other special assessment assessed prior to **Closing Date** (§ 2c) by the owners' association shall be the obligation of ☐ **Buyer** ☐ **Seller**. Seller represents that the amount of the regular owners' association assessment is currently payable at \$\_\_\_\_\_ per \_\_\_\_\_, and that there are no unpaid regular or special assessments against the Property except the current regular assessments and except \_\_\_\_\_.

Such assessments are subject to change as provided in the Governing Documents. Seller agrees to promptly request the owners' association to deliver to Buyer before **Closing Date** (§ 2c) a current statement of assessments against the Property. Any fees incident to the issuance of such statement of assessments shall be paid by ☐ **Buyer** ☐ **Seller**.

- Loan Assumption - Mortgage Insurance.** FHA or private mortgage insurance premium, if any, ☐ **Shall** ☐ **Shall Not** be apportioned to **Closing Date** (§ 2c). Any such amount shall be apportioned as follows: \_\_\_\_\_
- Other Prorations.** Water, sewer charges; and interest on continuing loan(s), if any; and \_\_\_\_\_
- Final Settlement.** Unless otherwise agreed in writing, these prorations shall be final.

16. **POSSESSION.** Possession of the Property shall be delivered to Buyer on **Possession Date and Possession Time** (§ 2c), subject to the following lease(s) or tenancy(s): \_\_\_\_\_.

If Seller, after Closing, fails to deliver possession as specified, Seller shall be subject to eviction and shall be additionally liable to Buyer for payment of \$\_\_\_\_\_ per day from the **Possession Date** (§ 2c) until possession is delivered.

Buyer ☐ **Does** ☐ **Does Not** represent that Buyer will occupy the Property as Buyer's principal residence.

17. **NOT ASSIGNABLE:** This contract shall not be assignable by Buyer without Seller's prior written consent. Except as so restricted, this contract shall inure to the benefit of and be binding upon the heirs, personal representatives, successors and assigns of the parties.

18. **CONDITION OF, AND DAMAGE TO PROPERTY AND INCLUSIONS.** Except as otherwise provided in this contract, the Property, Inclusions or both shall be delivered in the condition existing as of the date of this contract, ordinary wear and tear excepted.

- Casualty; Insurance.** In the event the Property or Inclusions shall be damaged by fire or other casualty prior to Closing, in an amount of not more than ten percent of the total Purchase Price, Seller shall be obligated to repair the same before the **Closing Date** (§ 2c). In the event such damage is not repaired within said time or if the damages exceed such sum, this contract may be terminated at the option of Buyer by delivering to Seller written notice of termination. Should Buyer elect to carry out this contract despite such damage, Buyer shall be entitled to a credit, at Closing, for all the insurance proceeds resulting from such damage to the Property and Inclusions payable to Seller but not the owners' association, if any, plus the amount of any deductible provided for in such insurance policy, such credit not to exceed the total Purchase Price.

b. **Damage; Inclusions; Services.** Should any Inclusion(s) or service(s) (including systems and components of the Property, e.g. heating, plumbing, etc.) fail or be damaged between the date of this contract and Closing or possession, whichever shall be earlier, then Seller shall be liable for the repair or replacement of such Inclusion(s) or service(s) with a unit of similar size, age and quality, or an equivalent credit, but only to the extent that the maintenance or replacement of such Inclusion(s), service(s) or fixture(s) is not the responsibility of the owners' association, if any, less any insurance proceeds received by Buyer covering such repair or replacement. Seller and Buyer are aware of the existence of pre-owned home warranty programs which may be purchased and may cover the repair or replacement of some Inclusion(s).

c. **Walk-Through: Verification of Condition.** Buyer, upon reasonable notice, shall have the right to walk through the Property prior to Closing to verify that the physical condition of the Property and Inclusions complies with this contract.

19. **RECOMMENDATION OF LEGAL AND TAX COUNSEL.** By signing this document, Buyer and Seller acknowledge that the Selling Company or the Listing Company has advised that this document has important legal consequences and has recommended the examination of title and consultation with legal and tax or other counsel before signing this contract.

20. **TIME OF ESSENCE AND REMEDIES.** Time is of the essence hereof. If any note or check received as Earnest Money hereunder or any other payment due hereunder is not paid, honored or tendered when due, or if any other obligation hereunder is not performed or waived as herein provided, there shall be the following remedies:

a. **If Buyer is in Default:**

☐ (1) **Specific Performance.** Seller may elect to treat this contract as canceled, in which case all payments and things of value received hereunder shall be forfeited and retained on behalf of Seller, and Seller may recover such damages as may be proper, or Seller may elect to treat this contract as being in full force and effect and Seller shall have the right to specific performance or damages, or both.

☐ (2) **Liquidated Damages.** All payments and things of value received hereunder shall be forfeited by Buyer and retained on behalf of Seller and both parties shall thereafter be released from all obligations hereunder. It is agreed that such payments and things of value are LIQUIDATED DAMAGES and (except as provided in subsection c) are SELLER'S SOLE AND ONLY REMEDY for Buyer's failure to perform the obligations of this contract. Seller expressly waives the remedies of specific performance and additional damages.

b. **If Seller is in Default:** Buyer may elect to treat this contract as canceled, in which case all payments and things of value received hereunder shall be returned and Buyer may recover such damages as may be proper, or Buyer may elect to treat this contract as being in full force and effect and Buyer shall have the right to specific performance or damages, or both.

c. **Costs and Expenses.** In the event of any arbitration or litigation relating to this contract, the arbitrator or court shall award to the prevailing party all reasonable costs and expenses, including attorney fees.

21. **MEDIATION.** If a dispute arises relating to this contract, prior to or after Closing, and is not resolved, the parties shall first proceed in good faith to submit the matter to mediation. Mediation is a process in which the parties meet with an impartial person who helps to resolve the dispute informally and confidentially. Mediators cannot impose binding decisions. The parties to the dispute must agree before any settlement is binding. The parties will jointly appoint an acceptable mediator and will share equally in the cost of such mediation. The mediation, unless otherwise agreed, shall terminate in the event the entire dispute is not resolved 30 calendar days from the date written notice requesting mediation is sent by one party to the other(s). This Section shall not alter any date in this contract, unless otherwise agreed.

22. **EARNEST MONEY DISPUTE.** Notwithstanding any termination of this contract, Buyer and Seller agree that, in the event of any controversy regarding the Earnest Money and things of value held by broker or Closing Company (unless mutual written instructions are received by the holder of the Earnest Money and things of value), broker or Closing Company shall not be required to take any action but may await any proceeding, or at broker's or Closing Company's option and sole discretion, may interplead all parties and deposit any moneys or things of value into a court of competent jurisdiction and shall recover court costs and reasonable attorney fees.

23. **TERMINATION.** In the event this contract is terminated, all payments and things of value received hereunder shall be returned and the parties shall be relieved of all obligations hereunder, subject to §§ 10c, 21 and 22.

24. **ADDITIONAL PROVISIONS.** (The language of these additional provisions has not been approved by the Colorado Real Estate Commission.)

25. **ENTIRE AGREEMENT; SUBSEQUENT MODIFICATION; SURVIVAL.** This contract constitutes the entire contract between the parties relating to the subject hereof, and any prior agreements pertaining thereto, whether oral or written, have been merged and integrated into this contract. No subsequent modification of any of the terms of this contract shall be valid, binding upon the parties, or enforceable unless made in writing and signed by the parties. Any obligation in this contract which, by its terms, is intended to be performed after termination or Closing shall survive the same.

26. **FACSIMILE.** Signatures ☐ May ☐ May Not be evidenced by facsimile. Documents with original signatures shall be provided to the other party at Closing, or earlier upon request of any party.

27. **NOTICE.** Except for the notice requesting mediation described in § 21, any notice to Buyer shall be effective when received by Buyer or by Selling Company and any notice to Seller shall be effective when received by Seller or Listing Company.

28. **NOTICE OF ACCEPTANCE; COUNTERPARTS.** This proposal shall expire unless accepted in writing, by Buyer and Seller, as evidenced by their signatures below, and the offering party receives notice of acceptance pursuant to § 27 on or before **Acceptance Deadline Date** and **Acceptance Deadline Time** (§ 2c). If accepted, this document shall become a contract between Seller and Buyer. A copy of this document may be executed by each party, separately, and when each party has executed a copy thereof, such copies taken together shall be deemed to be a full and complete contract between the parties.

Buyer \_\_\_\_\_ Buyer \_\_\_\_\_  
Date of Buyer's Signature: \_\_\_\_\_ Date of Buyer's Signature: \_\_\_\_\_  
Buyer's Address: \_\_\_\_\_  
Buyer's Telephone No: \_\_\_\_\_ Buyer's Fax No: \_\_\_\_\_

[NOTE: If this offer is being countered or rejected, do not sign this document. Refer to § 29]

Seller \_\_\_\_\_ Seller \_\_\_\_\_

451  
 452 Date of Seller's Signature: \_\_\_\_\_ Date of Seller's Signature: \_\_\_\_\_  
 453  
 454 Seller's Address: \_\_\_\_\_  
 455 Seller's Telephone No: \_\_\_\_\_ Seller's Fax No: \_\_\_\_\_  
 456  
 457 29. **COUNTER: REJECTION.** This offer is ☐ Countered ☐ Rejected.  
 458 Initials only of party (Buyer or Seller) who countered or rejected offer \_\_\_\_\_  
 459  
 460 **END OF CONTRACT**  
 461 **Note: Closing Instructions should be signed on or before Title Deadline.**  
 462  
 463  
 464 **BROKER ACKNOWLEDGMENTS.** The undersigned Broker(s) acknowledges receipt of the Earnest Money deposit  
 465 specified in § 4 and, while not a party to the contract, agrees to cooperate upon request with any mediation conducted under  
 466 § 21.  
 467 **Selling Company Brokerage Relationship.** The Selling Company and its licensees have been engaged in this  
 468 transaction as ☐ Buyer Agent ☐ Seller Agent/Subagent ☐ Dual Agent ☐ Transaction-Broker.  
 469 **Listing Company Brokerage Relationship.** The Listing Company and its licensees have been engaged in this  
 470 transaction as ☐ Seller Agent ☐ Dual Agent ☐ Transaction-Broker.  
 471  
 472 **BROKERS' COMPENSATION DISCLOSURE.**  
 473 Selling Company's compensation or commission is to be paid by: ☐ Buyer ☐ Seller ☐ Listing Company  
 474 ☐ Other \_\_\_\_\_  
 475 (To be completed by Listing Company) Listing Company's compensation or commission is to be paid by:  
 476 ☐ Buyer ☐ Seller ☐ Other \_\_\_\_\_  
 477  
 478  
 479 Selling Company: \_\_\_\_\_ (Name of Company)  
 480  
 481 By: \_\_\_\_\_  
 482 Signature \_\_\_\_\_ Date \_\_\_\_\_  
 483 Selling Company's Address: \_\_\_\_\_  
 484 Selling Company's Telephone No: \_\_\_\_\_ Selling Company's Fax No: \_\_\_\_\_  
 485 Listing Company: \_\_\_\_\_ (Name of Company)  
 486  
 487 By: \_\_\_\_\_  
 488 Signature \_\_\_\_\_ Date \_\_\_\_\_  
 489 Listing Company's Address: \_\_\_\_\_  
 490 Listing Company's Telephone No: \_\_\_\_\_ Listing Company's Fax No: \_\_\_\_\_  
 491

## Appendix B – Notice to Terminate Inspection Notice

The printed portions of this form have been approved by the Colorado Real Estate Commission. (NTC 43-9-99)

THIS FORM HAS IMPORTANT LEGAL CONSEQUENCES AND THE PARTIES SHOULD CONSULT LEGAL AND TAX OR OTHER COUNSEL BEFORE SIGNING.

### INSPECTION NOTICE

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

RE: Contract dated \_\_\_\_\_ between \_\_\_\_\_, (Buyer), and \_\_\_\_\_, (Seller) relating to the sale and purchase of the Property known as: \_\_\_\_\_; terms used herein shall have the same meaning as in the contract.

#### A. BUYER'S NOTIFICATION OF UNSATISFACTORY PHYSICAL CONDITION.

(Buyer to check only one box)

☐ 1. **Notice to Terminate.** Pursuant to § 10a(1) of the contract, Buyer notifies Seller that the Contract is terminated because the physical condition of the Property or Inclusions is unsatisfactory to Buyer.

☐ 2. **Notice to Correct.** Pursuant to § 10a(2) of the contract, Buyer notifies Seller that Buyer requires Seller, on or before \_\_\_\_\_, to correct or resolve the following unsatisfactory physical condition(s) of the Property or Inclusions:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If more space is required, attached is \_\_\_\_\_ additional page(s).

A copy of the inspection report ☐ Is ☐ Is Not attached.

Pursuant to § 10b of the contract, if Buyer and Seller have not agreed in writing to a settlement of the above matters on or before the Resolution Deadline, the contract will terminate unless Seller receives written notice from Buyer withdrawing this Notice to Correct no later than one calendar day following the Resolution Deadline.

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

Seller ☐ Agrees ☐ Refuses to correct all items in Part A-2.

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

#### B. SELLER'S ALTERNATIVE RESOLUTION:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Note: If the parties have not agreed to a written resolution of the Notice to Correct, the contract will terminate unless Seller receives written notice from Buyer withdrawing the Notice to Correct no later than one calendar day following the Resolution Deadline.)

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

Buyer accepts the proposed Alternative Resolution in Part B of this Notice.

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

C. **SURVIVAL** If any agreed upon correction requires action after Closing, the obligations agreed upon shall survive Closing.

#### D. BUYER'S WITHDRAWAL OF NOTICE TO CORRECT.

Buyer withdraws the Notice to Correct and elects to proceed with the contract.

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