



The printed portions of this form, except differentiated additions, have been approved by the Colorado Real Estate Commission. (BC60-5-09) (Mandatory 7-09)

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

Compensation charged by brokerage firms is not set by law. Such charges are established by each real estate brokerage firm.

DIFFERENT BROKERAGE RELATIONSHIPS ARE AVAILABLE WHICH INCLUDE BUYER AGENCY, SELLER AGENCY OR TRANSACTION-BROKERAGE.

EXCLUSIVE RIGHT-TO-BUY LISTING CONTRACT

BUYER AGENCY TRANSACTION-BROKERAGE

Date: 10/7/2010

1. AGREEMENT.AGREEMENT. Buyer and Brokerage Firm enter into this exclusive, irrevocable contract contract (Buyer Listing Contract) as of the date set forth above.

2. BROKER AND BROKERAGE FIRM.

2.1. Multiple-Person Firm. If this box is checked, the individual designated by Brokerage Firm to serve as the broker of Buyer and to perform the services for Buyer required by this Buyer Listing Contract is called Broker. If more than one individual is so designated, then references in this Buyer Listing Contract to Broker shall include all persons so designated, including substitute or additional brokers. The brokerage relationship exists only with Broker and does not extend to the employing broker, Brokerage Firm or to any other brokers employed or engaged by Brokerage Firm who are not so designated.

2.2. One-Person Firm. If this box is checked, Broker is a real estate brokerage firm with only one licensed natural person. References in this Buyer Listing Contract to Broker or Brokerage Firm mean both the licensed natural person and brokerage firm, who serve as the broker of Buyer and perform the services for Buyer required by this Buyer Listing Contract.

3. DEFINED TERMS.

3.1. Buyer:

and any other person or entity on whose behalf the named party acts, directly or indirectly, to Purchase the Property.

3.2. Brokerage Firm: *Colorado Western Real Estate, LLC*

3.3. Broker: *Donna F. Phillips*

3.4. Property. Property means real estate that substantially meets the following requirements or similar real estate acceptable to Buyer:

3.5. Purchase.

3.5.1. Purchase means the acquisition of any interest in the Property or the creation of the right to acquire any interest in the Property (including a contract or lease). It also includes an agreement to acquire any ownership interest in an entity that owns the Property.

3.5.2. If this box is checked, Buyer authorizes Broker to negotiate a lease of the Property. Lease of the Property or Lease means any lease of an interest in the Property.

3.6. Term. The Term of this Buyer Listing Contract shall begin on _____, and shall continue

Buyer(s) Initials _____

85 through the earlier of (1) completion of the Purchase of the Property or (2) _____.
86 Broker shall continue to assist in the completion of any transaction for which compensation is payable to
87 Brokerage Firm under § 7 of this contract.
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90 **3.7. Applicability of Terms.** A check or similar mark in a box means that such provision is applicable. The
91 abbreviation "N/A" or the word "Deleted" means not applicable. The abbreviation "MEC" (mutual execution of this
92 contract) means the latest date upon which both parties have signed this Buyer Listing Contract.
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94 **3.8. Day; Computation of Period of Days, Deadline.**

95 **3.8.1. Day.** As used in this Buyer Listing Contract, the term "day" shall mean the entire day ending at
96 11:59 p.m., United States Mountain Time (Standard or Daylight Savings as applicable).
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98 **3.8.2. Computation of Period of Days, Deadline.** In computing a period of days, when the ending date
99 is not specified, the first day is excluded and the last day is included, e.g., three days after MEC. If any deadline
100 falls on a Saturday, Sunday or federal or Colorado state holiday (Holiday), such deadline **Shall** **Shall Not**
101 be extended to the next day not a Saturday, Sunday or Holiday. Should neither box be checked, the deadline shall
102 not be extended.
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106 **4. BROKERAGE RELATIONSHIP.**

107 **4.1.** If the Buyer Agency box at the top of page 1 is checked, Broker shall represent Buyer as a Buyer's
108 limited agent (Buyer's Agent). If the Transaction-Brokerage box at the top of page 1 is checked, Broker shall act
109 as a Transaction-Broker.
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111 **4.2. In-Company Transaction — Different Brokers.** When the seller and Buyer in a transaction are working
112 with different brokers, those brokers continue to conduct themselves consistent with the brokerage relationships
113 they have established. Buyer acknowledges that Brokerage Firm is allowed to offer and pay compensation to
114 brokers within Brokerage Firm working with a seller.
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116 **4.3. In-Company Transaction — One Broker.** If the seller and Buyer are both working with the same
117 Broker, Broker shall function as:
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119 **4.3.1. Buyer's Agent.** If the Buyer Agency box at the top of page 1 is checked, the parties agree the
120 following applies:
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122 **4.3.1.1. Buyer Agency Only.** Unless the box in § 4.3.1.2 (**Buyer Agency Unless Brokerage**
123 **Relationship with Both**) is checked, Broker shall represent Buyer as Buyer's Agent and shall treat the seller as
124 a customer. A customer is a party to a transaction with whom Broker has no brokerage relationship. Broker shall
125 disclose to such customer Broker's relationship with Buyer.
126

127 **4.3.1.2. Buyer Agency Unless Brokerage Relationship with Both.** If this box is checked,
128 Broker shall represent Buyer as Buyer's Agent and shall treat the seller as a customer, unless Broker currently
129 has or enters into an agency or Transaction-Brokerage relationship with the seller, in which case Broker shall act
130 as a Transaction-Broker.
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132 **4.3.2. Transaction-Broker.** If the Transaction-Brokerage box at the top of page 1 is checked, or in the event
133 neither box is checked, Broker shall work with Buyer as a Transaction-Broker. A Transaction-Broker shall perform
134 the duties described in § 5 and facilitate purchase transactions without being an advocate or agent for either party.
135 If the seller and Buyer are working with the same broker, Broker shall continue to function as a Transaction-
136 Broker.
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140 **5. BROKERAGE DUTIES.** Brokerage Firm, acting through Broker, as either a Transaction-Broker or a Buyer's
141 Agent, shall perform the following **Uniform Duties** when working with Buyer:
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143 **5.1.** Broker shall exercise reasonable skill and care for Buyer, including but not limited to the following:
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145 **5.1.1.** Performing the terms of any written or oral agreement with Buyer;

146 **5.1.2.** Presenting all offers to and from Buyer in a timely manner regardless of whether Buyer is already
147 a party to a contract to Purchase the Property;

148 **5.1.3.** Disclosing to Buyer adverse material facts actually known by Broker;

149 **5.1.4.** Advising Buyer regarding the transaction and advising Buyer to obtain expert advice as to material
150 matters about which Broker knows but the specifics of which are beyond the expertise of Broker;

151 **5.1.5.** Accounting in a timely manner for all money and property received; and
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153 **5.1.6.** Keeping Buyer fully informed regarding the transaction.
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155 **5.2.** Broker shall not disclose the following information without the informed consent of Buyer:
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157 **5.2.1.** That Buyer is willing to pay more than the purchase price offered for the Property;

158 **5.2.2.** What Buyer's motivating factors are;

159 **5.2.3.** That Buyer will agree to financing terms other than those offered;

160 **5.2.4.** Any material information about Buyer unless disclosure is required by law or failure to disclose
161 such information would constitute fraud or dishonest dealing; or
162

163 **5.2.5.** Any facts or suspicions regarding circumstances that could psychologically impact or stigmatize
164 the Property.
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166 **5.3.** Buyer consents to Broker's disclosure of Buyer's confidential information to the supervising broker or
167 designee for the purpose of proper supervision, provided such supervising broker or designee shall not further
168 disclose such information without consent of Buyer, or use such information to the detriment of Buyer.
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5.4. Broker may show properties in which the Buyer is interested to other prospective buyers without breaching any duty or obligation to such Buyer. Broker shall not be prohibited from showing competing buyers the same property and from assisting competing buyers in attempting to purchase a particular property.

5.5. Broker shall not be obligated to seek other properties while Buyer is already a party to a contract to purchase property.

5.6. Broker has no duty to conduct an independent inspection of the Property for the benefit of Buyer and has no duty to independently verify the accuracy or completeness of statements made by a seller or independent inspectors. Broker has no duty to conduct an independent investigation of Buyer's financial condition or to verify the accuracy or completeness of any statement made by Buyer.

5.7. Broker shall disclose to any prospective seller all adverse material facts actually known by Broker, including but not limited to adverse material facts concerning Buyer's financial ability to perform the terms of the transaction and whether Buyer intends to occupy the Property as a principal residence.

5.8. Buyer understands that Buyer shall not be liable for Broker's acts or omissions that have not been approved, directed, or ratified by Buyer.

6. **ADDITIONAL DUTIES OF BUYER'S AGENT.** If the Buyer Agency box at the top of page 1 is checked, Broker is Buyer's Agent, with the following additional duties:

6.1. Promoting the interests of Buyer with the utmost good faith, loyalty and fidelity.

6.2. Seeking a price and terms that are acceptable to Buyer.

6.3. Counseling Buyer as to any material benefits or risks of a transaction that are actually known by Broker.

7. **COMPENSATION TO BROKERAGE FIRM.** In consideration of the services to be performed by Broker, Brokerage firm shall be paid as set forth in this section, with no discount or allowance for any efforts made by Buyer or any other person. Brokerage Firm shall be entitled to receive additional compensation, bonuses, and incentives paid by listing brokerage firm or seller. Broker shall inform Buyer of the fee to be paid to Brokerage Firm and, if there is a written agreement, Broker shall supply a copy to Buyer, upon written request of Buyer.

Check Compensation Arrangement:

7.1. Listing Brokerage Firm or Seller May Pay. Buyer IS Obligated to Pay. Broker is authorized and instructed to request payment of the Brokerage Firm's fee from the listing brokerage firm or seller. Buyer shall be obligated to pay any portion of Brokerage Firm's fee as described in § 7.2 which is not paid by the listing brokerage firm or seller.

7.2. Buyer Will Pay. Buyer shall be obligated to pay the Brokerage Firm's fee as described in § 7.2.1 (**Success Fee**) unless the box in § 7.3 (**Listing Brokerage Firm or Seller May Pay. Buyer is NOT Obligated to Pay**) is checked.

7.2.1. Success Fee. Brokerage Firm shall be paid by Buyer as follows:

7.2.1.1. Amount. A fee equal to _____% of the purchase price, but not less than \$ _____, except as provided in subsection § 7.2.1.2.

7.2.1.2. Adjusted Amount. **Section 18. Additional Provisions or**

Other _____

7.2.1.3. When Earned. The Success Fee is earned by the Brokerage Firm upon the Purchase of the Property and is payable upon closing of the transaction. If any transaction fails to close as a result of the seller's default, with no fault on the part of Buyer, the Success Fee shall be waived. If any transaction fails to close as a result of Buyer's default, in whole or in part, the Success Fee shall not be waived; such fee shall be payable upon Buyer's default, but in any event not later than the date that the closing of the transaction was to have occurred.

7.2.2. Hourly Fee. Brokerage Firm shall pay Brokerage Firm \$ _____ per hour for time spent by Broker pursuant to this Buyer Listing Contract, up to a maximum total fee of \$ _____. This hourly fee shall be paid to Brokerage Firm upon receipt of an invoice from Brokerage Firm.

7.2.3. Retainer Fee. Buyer shall pay Brokerage Firm a nonrefundable retainer fee of \$ _____ due and payable upon signing of this Buyer Listing Contract. This amount **Shall** **Shall Not** be credited against other fees payable to Brokerage Firm under this section.

7.2.4. Other Compensation.

7.3. Listing Brokerage Firm or Seller May Pay. Buyer is NOT Obligated to Pay. Broker is authorized to obtain payment of the Brokerage Firm's fee from the listing brokerage firm or seller. Buyer shall not be obligated to pay Brokerage Firm's fee. If no box is checked above, then § 7.2 (**Buyer Will Pay**) shall apply.

7.4. Lease Fee. If the box in § 3.5.2 is checked and if Brokerage Firm is unable to obtain payment of Brokerage Firm's entire fee from listing brokerage firm or landlord, Buyer shall pay the Brokerage Firm a fee as follows, less any amounts paid by the listing brokerage firm or landlord:

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7.4.1. Amount. \$ _____ Per Square Foot per _____, up to a maximum of _____;
or _____% of the **Net** **Gross** amount of rent payable under the lease up to a maximum of _____.

7.4.2. Adjusted Amount. **See Section 18. Additional Provisions** or **Other**

7.4.3. Other.

7.4.4. When Earned. This lease fee is earned upon the execution of the Lease. One-half of this lease fee shall be paid upon mutual execution of the Lease and one-half upon possession of the premises by tenant or as follows: _____. If the Lease, executed after the date of this Buyer Listing Contract, contains an option to extend or renew, Brokerage Firm **Shall** **Shall Not** be paid a fee upon exercise of such extension or renewal option. If Brokerage Firm is to be paid a fee for such extension or renewal, the amount of such fee and its payment shall be as follows:

7.5. Holdover Period. Brokerage Firm's fee shall apply to Property contracted for [or leased if § 3.5.2 is checked] during the Term of this Buyer Listing Contract or any extensions and shall also apply to Property contracted for or leased within _____ calendar days after this Buyer Listing Contract expires or is terminated (Holdover Period) if the Property is one on which Broker negotiated and if Broker submitted its address or other description in writing to Buyer during the Term. However, if a commission is earned by another real estate brokerage firm acting pursuant to an exclusive agreement with Buyer entered into during the Holdover Period, Buyer **Shall** **Shall Not** owe the compensation to Broker under §§ 7.2.1, 7.2.2, 7.2.4 and 7.4 as indicated.

8. LIMITATION ON THIRD-PARTY COMPENSATION. Neither Broker nor Brokerage Firm, except as set forth in § 7, shall accept compensation from any other person or entity in connection with the Property without the written consent of Buyer. Additionally, neither Broker nor Brokerage Firm shall be permitted to assess and receive mark-ups or other compensation for services performed by any third party or affiliated business entity unless Buyer signs a separate written consent for such services.

9. BUYER'S OBLIGATIONS TO BROKER. Buyer agrees to conduct all negotiations for the Property only through Broker, and to refer to Broker all communications received in any form from real estate brokers, prospective sellers, or any other source during the Term of this Buyer Listing Contract. Buyer represents that Buyer **Is** **Is Not** currently a party to any agreement with any other broker to represent or assist Buyer in the location or purchase of property.

10. COST OF SERVICES OR PRODUCTS OBTAINED FROM OUTSIDE SOURCES. Broker will not obtain or order products or services from outside sources unless Buyer has agreed to pay for them promptly when due (examples: surveys, radon tests, soil tests, title reports, engineering studies, property inspections). Neither Broker nor Brokerage Firm shall be obligated to advance funds for Buyer. Buyer shall reimburse Brokerage Firm for payments made by Brokerage Firm for other products or services authorized by Buyer.

11. BROKERAGE SERVICES: SHOWING PREMISES.

11.1 Brokerage Services. The Broker shall provide brokerage services to Buyer. The following additional tasks shall be performed by Broker:

11.2 Showing Properties. Buyer acknowledges that Broker has explained the possible methods used by listing brokers and sellers to show properties, and the limitations (if any) on Buyer and Broker being able to access properties due to such methods. Broker's limitations on accessing premises are as follows:

_____. Broker, through Brokerage Firm, has access to the following multiple listing services and property information services:

12. DISCLOSURE OF BUYER'S IDENTITY. Broker **Does** **Does Not** have Buyer's permission to disclose Buyer's identity to third parties without prior written consent of Buyer.

13. DISCLOSURE OF SETTLEMENT SERVICE COSTS. Buyer acknowledges that costs, quality, and extent of service vary between different settlement service providers (e.g., attorneys, lenders, inspectors and title companies).

14. NONDISCRIMINATION. The parties agree not to discriminate unlawfully against any prospective seller because of the race, creed, color, sex, sexual orientation, marital status, familial status, physical or mental disability, handicap, religion, national origin or ancestry of such person.

15. RECOMMENDATION OF LEGAL AND TAX COUNSEL. By signing this document, Buyer acknowledges that Broker has advised that this document has important legal consequences and has recommended consultation with legal and tax or other counsel, before signing this Buyer Listing Contract.

16. MEDIATION. If a dispute arises relating to this Buyer Listing Contract, prior to or after closing, and is not

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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, in writing, 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 within 30 calendar days of the date written notice requesting mediation is sent by one party to the other at the party's last known address.

17. ATTORNEY FEES. In the event of any arbitration or litigation relating to this Buyer Listing Contract, the arbitrator or court shall award to the prevailing party all reasonable costs and expenses, including attorney and legal fees.

18. ADDITIONAL PROVISIONS. (The following additional provisions have not been approved by the Colorado Real Estate Commission.)

19. ATTACHMENTS. The following are a part of this Buyer Listing Contract:

20. NOTICE, DELIVERY AND CHOICE OF LAW.

20.1. Physical Delivery. All notices must be in writing, except as provided in § 20.2. Any document, including a signed document or notice, delivered to the other party to this Buyer Listing Contract, is effective upon physical receipt. Delivery to Buyer shall be effective when physically received by Buyer, any signator on behalf of Buyer, any named individual of Buyer or representative of Buyer.

20.2. Electronic Delivery. As an alternative to physical delivery, any document, including any signed document or written notice may be delivered in electronic form only by the following indicated methods:

Facsimile **E-mail** **Internet** **No Electronic Delivery.** Documents with original signatures shall be provided upon request of any party.

20.3. Choice of Law. This Buyer Listing Contract and all disputes arising hereunder shall be governed by and construed in accordance with the laws of the State of Colorado that would be applicable to Colorado residents who sign a contract in this state for property located in Colorado.

21. MODIFICATION OF THIS CONTRACT. No subsequent modification of any of the terms of this Buyer Listing Contract shall be valid, binding upon the parties, or enforceable unless in writing and signed by the parties.

22. COUNTERPARTS. If more than one person is named as a Buyer herein, this Buyer Listing Contract may be executed by each Buyer, separately, and when so executed, such copies taken together with one executed by Broker on behalf of Brokerage Firm shall be deemed to be a full and complete contract between the parties.

23. ENTIRE AGREEMENT. This agreement constitutes the entire contract between the parties and any prior agreements, whether oral or written, have been merged and integrated into this Buyer Listing Contract.


24. COPY OF CONTRACT. Buyer acknowledges receipt of a copy of this Buyer Listing Contract signed by Broker, including all attachments.

25. MEGAN'S LAW. If the presence of a registered sex offender is a matter of concern to Buyer, Buyer understands that Buyer must contact local law enforcement officials regarding obtaining such information.

Brokerage Firm authorizes Broker to execute this Buyer Listing Contract on behalf of Brokerage Firm.

Buyer: _____ Date: _____

Address:
Phone: _____ Fax: _____
Email: _____



Date: 10/7/2010

Broker: **Donna F. Phillips**
Brokerage Firm's Name: **Colorado Western Real Estate, LLC**
Address: **601 36th Pueblo, CO 81006**

Buyer(s) Initials _____

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Buyer(s) Initials _____