

RTN  
HAROLD EAGEN  
4286 CHEYENNE DR  
LARKSPUR, CO 80118

## AGREEMENT

THIS AGREEMENT is made and entered into this <sup>9</sup>23<sup>rd</sup> day of <sup>September</sup>August 2005 (the "Effective Date"), by and between NEXT MILLENNIUM PROPERTY COMPANY, LLC, a Colorado limited liability company ("Next Millennium"), and HOMESTEAD TOWNHOMES, INC., a Colorado corporation ("Homestead").

**1. Recitals.** Next Millennium owns certain undeveloped real property more particularly described as Lot 2, SPINNAKER SUBDIVISION, FILING NO. 2, City of Aurora, County of Arapahoe, State of Colorado (the "Vacant Land"). Homestead intends to develop a residential condominium project, and desires to acquire a portion of the Vacant Land to serve as the site for the condominium project. Next Millennium is willing to convey such portion to Homestead in return for construction of certain improvements to the remainder of the Vacant Land as provided below, in consideration of the mutual covenants contained herein, the receipt and sufficiency of which are hereby acknowledged.

**2. Property.** Next Millennium hereby agrees to sell and convey to Homestead, upon completion of the Construction (as defined in paragraph 4 below), the portion of the Vacant Land generally shown on the drawing attached hereto as Exhibit A (the "Transfer Parcel"). The remainder of the Vacant Land is referred to herein as the "Remaining Parcel." The legal description of the Transfer Parcel shall be determined by survey reasonably acceptable to Next Millennium, at Homestead's expense.

**3. Title Matters; Inspection.** Within ten (10) business days after the Effective Date, Next Millennium shall deliver to Homestead a commitment for an ALTA standard coverage form of owner's policy of title insurance (the "Title Policy") issued by First American Heritage Title Company (the "Title Company"), together with legible copies of all documents and exceptions referred to therein, covering title to the Property on or after the date hereof. Homestead shall be entitled to object to any matters shown in the Commitment or on the Survey by a written notice of objections delivered to Next Millennium, and Next Millennium may (but shall not be obligated to) take such action as Next Millennium deems necessary to satisfy such objections. In the event Homestead fails to deliver to Next Millennium a notice of objections within thirty days after the Effective Date (the "Objection Period"), then all matters appearing as exceptions to title on the Commitment to which Homestead did not object or Next Millennium did not agree to remove shall be deemed to be "Permitted Exceptions." Homestead may terminate this Agreement within the Objection Period for any reason by written notice of termination delivered to Next Millennium, in which event neither party shall have any further obligation to the other hereunder. If Homestead does not so terminate this Agreement within the Objection Period, however, any exceptions previously listed in a notice of exceptions to title hereunder and not removed or otherwise eliminated by Next Millennium shall also be deemed to be "Permitted Exceptions".

4. **Governmental Approvals.** If Homestead does not terminate this Agreement as permitted by paragraph 3 above, as consideration for conveyance of the Transfer Parcel, Homestead shall design, obtain governmental approval of, and construct a parking lot for 44 vehicles on the Remaining Parcel generally as shown on Exhibit B attached hereto (the "Parking Lot") at no expense to Next Millennium. Homestead shall obtain such approval of the Parking Lot, and of the necessary rezoning and/or replatting of the Transfer Parcel, in conjunction with approval of development of the Homestead Property. The Parking Lot shall be designed by a qualified licensed professional selected and engaged by Homestead. Next Millennium shall have the right to review and approve construction plans and product and material specifications for the Parking Lot (which approval shall not be unreasonably withheld) before they are submitted by Homestead for governmental approval and again prior to commencement of construction (if any substantial changes are made in the course of governmental approval). Prior to submission of construction plans to the City of Aurora Building Department, Homestead shall provide plans and specifications to Next Millennium for the building plan review and approval contemplated herein. Next Millennium shall allow Homestead reasonable access to the Vacant Land for the purpose of conducting physical inspections, such surveys as Homestead may consider necessary or appropriate and planning activities. Next Millennium shall cooperate (at no expense to Next Millennium) as reasonably requested by Homestead in regard to Homestead's discussions with the applicable governmental authorities which relate to Homestead's intention to develop the Homestead Property and construct the Parking Lot. In the event that Homestead is unable to obtain all necessary approvals for construction of the Parking Lot (including a building permit) and rezoning and replatting of the Transfer Parcel (the "Approvals") by **June 30, 2006**, this Agreement shall terminate and neither party shall have any further obligations to the other hereunder; provided, however, that in any event Homestead shall indemnify and defend Next Millennium against all loss, damage or monetary claims by third parties of every nature resulting from Homestead's inspection, testing and other activities relating to the Vacant Land.

5. **Construction.**

(a) Upon receipt of the Approvals, Homestead shall commence and diligently complete construction of the Parking Lot through a reputable licensed contractor in accordance with the final plans approved by the City of Aurora (the "Final Plans") and in compliance with all applicable codes and regulations, all at Homestead's sole expense. The Final Plans shall include a separate meter for electric service and a separate check meter for water service. The Parking Lot shall be considered complete when Homestead's engineer provides an Engineer's Certificate to Next Millennium stating the parking lot has been built according to construction drawings approved by Next Millennium and Homestead, and the contractor delivers to Next Millennium a final lien waiver for all labor and materials provided to the **Parking Lot (aka "Remaining Parcel")** (together, the "Completion Documents"). Homestead shall cause its contractor to warrant the

Parking Lot against defects in construction or materials for a period of one (1) year after completion.

(b) In performing any work on the Vacant Land, Homestead shall indemnify and hold harmless Next Millennium and the Vacant Land from and against any and all loss, cost and expense, including reasonable attorneys' fees, incurred by Next Millennium as a result of any claim, action, suit or proceeding including, but not limited to, mechanics' lien claims, claims for personal injury and/or property damage arising out of, as a result or, or in connection with any work performed by, at the request of, or on behalf of Homestead, its agents, employees, contractors, subcontractors, materialmen and suppliers. In the event of the recording of any lien or claim of lien against the Vacant Land, Homestead shall obtain the release of the lien within thirty (30) days after the recording thereof, and in the event Homestead fails to obtain the release of the lien within thirty (30) days after the recording thereof, Next Millennium shall have the right, but not the obligation, to pay the lien claim without regard to the validity thereof; and upon making such payment, Next Millennium shall be entitled to immediate reimbursement from Homestead for all costs and expenses, including reasonable attorneys' fees incurred in obtaining the release of such lien.

~~(c) If required by Homestead's institutional construction lender, Next Millennium shall encumber its interest in the Transfer Parcel as security for repayment of the funds required by Homestead to construct the Parking Lot, on the condition that such lender issues to Next Millennium a letter of credit or other written assurance that such funds will be available to pay such costs in all events.~~

(d) Upon receipt of the Completion Documents, Next Millennium shall assume all responsibility for the operation and maintenance of the Parking Lot (subject to the contractor's warranty obligations, which Homestead shall be responsible for enforcing promptly after receipt of written notice from Next Millennium of the appearance of any defect).

(e) In consideration of Next Millennium entering into this Agreement, Homestead agrees to provide Next Millennium with a Guaranty of Performance ("Performance Guaranty"), and the provisions of said Performance Guaranty are attached hereto as Exhibit C.

(f) In exchange for the Performance Guaranty referenced above, Next Millennium agrees to place an executed Warranty Deed for the Transfer Parcel in Escrow with the Title Company upon commencement of Parking Lot construction.

## **6. Access Easement.**

(a) To the extent that the Final Plans require access to the Homestead Property across the Remaining Parcel, Next Millennium hereby agrees to grant to Homestead, its successors and assigns, in the deed conveying the Transfer Parcel, a

perpetual, non-exclusive easement (the "Access Easement") for the benefit of the Homestead Property over, across and upon the Parking Lot for access by public and private vehicles to the Homestead Property from South Fairplay Way. At the same time, Homestead shall grant to Next Millennium, its tenants, customers, successors and assigns a perpetual, non-exclusive easement for the benefit of Next Millennium's adjacent property (and existing easement owner) over, across and upon the driveways of the Homestead Property for vehicular access to and from South Fairplay Way.

(b) In the event of any damage to the Parking Lot as a result of use to obtain access to the Homestead Property, whether pursuant to the terms of this Agreement or in violation of the restrictions herein contained, Homestead (or its successors) shall promptly repair or restore the Parking Lot to the condition that existed immediately prior to such damage. In the event Homestead (or its successors) fails to repair or restore the Parking Lot, Next Millennium shall have the right, but not the obligation, to do so and shall be entitled to immediate reimbursement from Homestead (or its successors) for all costs and expenses incurred in making any necessary repairs.

**7. Parking Easement.** Homestead acknowledges and agrees that the deed conveying the Transfer Parcel to Homestead shall reserve a perpetual non-exclusive easement (the "Parking Easement") allowing Next Millennium, its successors and assigns the right of access to and parking of motor vehicles on seven (7) parking spaces to be located on the Transfer Parcel in an area shown and/or described in the deed.

**8. Closing.**

(a) Closing of the transaction contemplated herein shall occur at the offices of the Title Company on a date designated by Homestead and reasonably acceptable to Next Millennium (the "Closing Date") which is not less than five (5) business days after Next Millennium receives the Completion Documents, and not later than **September 29, 2006**.

(c) At closing, Next Millennium shall execute and deliver the following documents, any of which may be waived by Homestead at Homestead's option:

(1) a special warranty deed in recordable form satisfactory to Homestead pursuant to which Next Millennium shall transfer and assign to Homestead fee simple title to the Transfer Parcel (subject to no liens, exceptions or encumbrances other than the Permitted Exceptions) grant the Access Easement to Homestead and reserve the Parking Easement;

(2) such other instruments of transfer, certificates and additional documents as may be necessary, or as Homestead may reasonably request, to consummate the transaction contemplated hereby, all in form reasonably acceptable to both parties; and

(3) an affidavit of Next Millennium that Next Millennium is not a "foreign person" as defined in the Internal Revenue Code.

(c) At closing, Homestead shall execute and deliver such instruments of transfer, certificates and additional documents as may be necessary, or as Next Millennium may reasonably request, to consummate the transaction contemplated hereby, all in form reasonably acceptable to both parties.

**9. Building Lot Density Payment.** In addition to constructing the parking lot, Homestead agrees to pay Next Millennium \$8,000.00 for each building lot approved by the City of Aurora in excess of 10 building lots. Payment for the additional lots shall be made to Next Millennium in certified funds at Closing described in Paragraph 8 above.

**10. Pro-ration of Taxes.** General real estate taxes (based upon prior year property tax figure or most recent mill levy and assessments if available) and assessments, general or special, if any, for the year which the conveyance occurs shall be prorated between Next Millennium and Homestead to the date of closing based on Next Millennium's best estimate thereof and such pro-ration shall be deemed to be final.

**11. No Representations.** Homestead acknowledges that it is familiar with the condition of the Vacant Land; that it has conducted (or will conduct during the Objection Period) such inspections and other evaluation as it considers necessary or appropriate; and that Next Millennium makes no representations of any kind whatsoever, whether express or implied, concerning the physical condition, compliance with laws, legal entitlements or any other attribute or appurtenance of the Vacant Land, including the without limitation the presence or absence on or under the Vacant Land of expansive soils or hazardous materials.

**12. Remedies.** The parties shall have all rights and remedies available at law, in equity or otherwise (including without limitation injunction and specific performance) in the event of a breach of the agreements contained herein. All such rights and remedies shall be cumulative and shall not be deemed mutually exclusive, and any and all rights and remedies may be pursued, whether at the same time or otherwise. In the event any party hereto fails to perform any of its obligations under this Agreement, or a dispute arises concerning the meaning or interpretation of any provision of this Agreement, the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay for any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder, including court costs and reasonable attorney fees.

**13. Brokers.** The parties hereby acknowledge and affirm that there are no brokers or agents involved in this transaction. Each party hereby agrees to indemnify the other party against and hold it harmless from all costs, expenses and liabilities incurred in connection with any claim by any other real estate broker or any other person who claims to be entitled to any compensation in connection with this transaction based upon an agreement with the indemnifying party.

#### 14. Miscellaneous Provisions.

(a) Any notice or election required or permitted to be given or served by any party hereto upon any other shall be given in writing, and shall be effective for all purposes if delivered by hand, by United States mail or by expedited courier service, with proof of delivery or refused delivery, addressed to the respective parties as set forth below. A notice sent by United States mail shall be deemed given upon actual delivery, upon the first refused delivery or on the third day after deposit, whichever is earlier. A notice delivered by hand or by expedited courier service shall be deemed to have been given upon actual delivery, or upon the first refused delivery on a business day. Any party may change its address for notice purposes by notice to the other party or parties as provided herein.

If to Next Millennium:      Next Millennium Property Company, LLC  
Attn: Tom Roberts  
7500 E. Arapahoe Road  
Suite 333  
Englewood, CO 80112

If to Homestead:              Homestead Townhomes, Inc.  
18624 E. Tanforan Place  
Aurora CO 80015

(b) This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado in all respects.

(c) This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

(d) Time is of the essence of this Agreement. If the date or deadline on which any event is to occur under the provisions of this Agreement falls on a Saturday, a Sunday or a legal holiday, such event shall occur or be scheduled to occur on the next succeeding business day.

(e) This Agreement embodies the entire agreement between the parties and supersedes all prior understandings regarding the subject matter hereof. This Agreement may only be amended or supplemented by an instrument in writing signed by the party against whom enforcement is sought.

(f) If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable; this Agreement shall be construed and enforced as if the illegal, invalid or

EXHIBIT A (continued)

Legal Description of the Property

A PARCEL OF LAND BEING A PORTION OF LOT 2 OF SPINNAKER SUBDIVISION FILING NO. 2, LOCATED IN THE SOUTHEAST QUARTER OF SECTION 31, TOWNSHIP 4 SOUTH, RANGE 66 WEST OF THE 6<sup>TH</sup> P.M., CITY OF AURORA, COUNTY OF ARAPAHOE, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 2; THENCE S89°57'15"E, ALONG THE NORTH LINE OF SAID LOT 2, A DISTANCE OF 136.11 FEET TO A POINT ON THE WEST LINE OF LOT 1 OF SAID SPINNAKER SUBDIVISION;

THENCE S00°08'29"W, ALONG SAID WEST LINE, A DISTANCE OF 91.00 FEET TO A POINT ON THE SOUTH LINE OF SAID LOT 1;

THENCE S89°57'15"E, ALONG SAID SOUTH LINE, A DISTANCE OF 179.17 FEET TO A POINT ON THE EAST LINE OF SAID LOT 2 OF SPINNAKER SUBDIVISION;

THENCE S00°08'29"W, ALONG SAID EAST LINE, A DISTANCE OF 48.00 FEET TO A POINT;

THENCE RUNNING THROUGH SAID LOT 2, THE FOLLOWING FIVE (5) COURSES:

1. N89°57'15"W, A DISTANCE OF 19.08 FEET TO A POINT;
2. N00°02'45"E, A DISTANCE OF 19.67 FEET TO A POINT;
3. S90°00'00"W, A DISTANCE OF 136.00 FEET TO A POINT;
4. S00°02'45"W, A DISTANCE OF 19.60 FEET TO A POINT;
5. N89°56'23"W, A DISTANCE OF 139.20 FEET TO A POINT ON THE WEST LINE OF SAID LOT 2;

THENCE N00°08'29"E, ALONG SAID WEST LINE, A DISTANCE OF 239.00 FEET TO THE POINT OF BEGINNING.

FOR AND ON THE BEHALF OF ASPEN SURVEYING INC.

ROGER A. VERMAAS, PLS NO. 24968  
ASPEN SURVEYING, INC.  
2993 SOUTH PEORIA STREET, STE. 150  
AURORA, COLORADO 80014

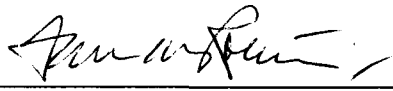




unenforceable provision had not been included herein, and the remaining provisions of this Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

NEXT MILLENIUM PROPERTY  
COMPANY, LLC,  
a Colorado limited liability company

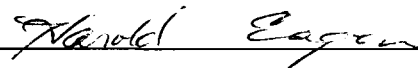
By: 

Name: THOMAS H. ROBERTS, III

Title: MANAGER

HOMESTEAD TOWNHOMES, INC.,  
a Colorado corporation

*Homestead Townhomes, Inc.*

By: 

Name: Harold Eagen

Title: President