



## OFFER TO PURCHASE AND CONTRACT

For valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Buyer offers to purchase and Seller upon acceptance agrees to sell and convey the Property on the terms and conditions of this Offer to Purchase and Contract and any addenda or modification made in accordance with its terms (together the "Agreement"). Buyer and Seller hereby agree as follows:

### 1. PARTIES

\_\_\_\_\_, hereinafter called "Buyer",  
SEVENTY WEST BUILDERS, INC., and/or assigns, hereinafter called "General Contractor" and "Builder" and "Seller".

### 2. PROPERTY

Builder agrees to sell and Buyer agrees to purchase from Builder, together with the improvements thereon or to be built thereon pursuant to this agreement ("the Property"):

House Plan/Exterior Elevation: \_\_\_\_\_

Lot No. \_\_\_\_\_, Phase \_\_\_\_\_ of \_\_\_\_\_ Subdivision

Map Book \_\_\_\_\_, Page \_\_\_\_\_, \_\_\_\_\_ County Registry

Physical Address \_\_\_\_\_

**NOTE:** Governmental authority over taxes, zoning, school districts, utilities, municipal services and mail delivery may differ from address shown.

Prior to signing this Agreement, Buyer is advised to review restrictive covenants, if any, which may limit the use of the Property, and to read the declarations, by-laws, articles of incorporation, rules and regulations and other governing documents of the owners' association and/or the subdivision, if applicable.

### 3. PURCHASE PRICE AND PAYMENT

The Total Purchase Price for the above-described Property being purchased hereunder shall be \$\_\_\_\_\_ which amount is exclusive of any closing costs described herein.

Buyer Initials \_\_\_\_\_

Seller Initials \_\_\_\_\_

Buyer shall make the following payments:

Payment	Due Date (Time is of the Essence)	Amount Due
Due Diligence Deposit (check, money order or wire)	Upon signing of this Agreement	\$ _____ .00
Option Deposit(s) (check, money order or wire)	Due: _____	\$ _____ .00
	Due: _____	\$ _____ .00
Balance of the Purchase Price in cash at Settlement (some or all of which may be paid with proceeds of a new loan)	Due: _____	\$ _____ .00

**THE BALANCE OF THE PURCHASE PRICE LESS ALL DEPOSITS IS DUE BY CASHIER'S CHECK OR FEDERAL WIRE ONLY IN U.S. FUNDS FROM A FINANCIAL INSTITUTION LOCATED IN THE UNITED STATES (BANK CHECK OR OFFICIAL CHECK WILL NOT BE ACCEPTED) AT CLOSING.**

\*\*\*If Agreement is not executed by all parties within fifteen (15) days, the pricing for the Property shall expire. Should Buyer fail to deliver any Due Diligence Deposit by the Effective Date, or should any check to other funds paid by the Buyer be dishonored, for any reason, by the institution upon which the payment is drawn, Buyer shall have one (1) banking day after written notice to deliver good funds to the payee. In the event Buyer does not timely deliver good funds, Seller shall have the right to terminate this Agreement upon written notice to Buyer.\*\*\*

The due diligence deposit ("**Due Diligence**") is payable to \_\_\_\_\_ escrow agent or settlement agent ("**Settlement Agent**"). The Due Diligence shall be paid by personal check or wire from a US bank. Due Diligence Deposit shall be retained until closing at which time it will be credited to the Purchase Price, or until this Agreement is otherwise terminated and the Due Diligence is disbursed in accordance with the terms herein. The amount of the Due Diligence Deposit shall be determined by the Seller in its sole discretion. DUE DILIGENCE SHALL NOT BE REFUNDABLE UNLESS (1) this offer is not accepted; or (2) a material breach of this Agreement by Seller.

The option deposit(s) ("**Option Deposit(s)**") shall be paid by Buyer to Builder by personal check or wire from a US Bank and shall be deposited in the general account of Builder. All **Option Deposit(s) are non-refundable.**

The Option Deposit(s) and the Due Diligence Deposit are refundable if Builder defaults in its obligations under this Agreement, as Buyer's sole remedy and Buyer shall have no further rights, remedies, or causes of action for Builder's default, except as may otherwise be set forth in this Agreement. Buyer acknowledges and agrees that Builder shall have the right to use Option Deposit(s) funds and such Option Deposit(s) funds will not be segregated or set apart in any manner. Buyer recognizes and accepts this risk of depositing the Option Deposit(s) with Builder. Time is of the essence for all deposits required to be made under this Agreement.

If this Agreement is NOT subject to or contingent upon Buyer securing financing for the acquisition of the Property, the balance of the purchase price shall be paid in "**ALL CASH**" at closing. No portion of the Purchase Price will be paid by promissory note or assumption of an existing loan.

**4. CONDITIONS**

(a) **Loan Requirement:**  (check if a loan is required)

If this condition is checked, then the purchase is subject to the Buyer securing a firm commitment ("**Loan Commitment**") for a loan ("Loan") as follows:

Buyer Initials \_\_\_\_\_

Seller Initials \_\_\_\_\_

Buyer shall provide Builder with a pre-qualification letter ("**Pre-Qualification Letter**") simultaneously with the Buyer's executed Agreement. Buyer shall apply for the Loan within five (5) business days of the Agreement Date. The "Agreement Date" is the date the last party to this Agreement executes the Agreement whereby all parties have fully executed the Agreement. Buyer shall secure the Loan Commitment from the lender within thirty (30) business days of the Agreement Date and shall promptly provide Builder a copy of the Loan Commitment. The Loan Commitment must state all conditions of the Loan, including whether Buyer must sell another property to close the Loan. If Buyer must sell and/or close another property as a condition to closing the Loan, then Builder shall have the option of either terminating this Agreement or requiring Buyer to sign a Contingent Sale Addendum. Buyer shall promptly perform all acts necessary to obtain the Loan and Buyer shall not perform any act or omit any act that may interfere with Loan approval. Failure of Buyer to completely and promptly and in good faith perform Buyer's responsibilities under this paragraph or the entire Agreement shall constitute a material breach of this Agreement by Buyer.

(b) **Financial Commitment:** Buyer shall provide evidence reasonably satisfactory to Builder that Buyer has the funds available to pay for the Property ("**Financial Commitment**".) Failure of the Buyer to provide the Financial Commitment shall give the Builder the right to terminate this Agreement. If Paragraph 4(a), above, is applicable to this Agreement, then the deadline for providing the Financial Commitment is the Loan Commitment Deadline. If Paragraph 4(a) is not applicable to this Agreement, then the deadline for providing the Financial Commitment is five (5) business days from the Agreement Date. Time is of the essence with regard to these dates.

(c) **Deed, Excise Taxes:** The deed is to be made to: \_\_\_\_\_. All taxes assessed for any prior calendar year and remaining unpaid shall be paid by Builder. At the closing between Buyer and Builder, Builder will pay a credit to Buyer for property taxes not yet due and payable for the current calendar year in which closing is to occur. Such credit shall be based on the most recent tax bill available by the county tax department. Buyer understands that the most recent tax bill available will be the land value unless tax bills for the current closing year have been issued as of the closing date. Buyer assumes and agrees to pay all installments of real property taxes due and payable after the closing date.

(d) **Builder's Right to Terminate:** Builder has the right to terminate this Agreement if the Buyer fails to provide the Pre-Qualification Letter, Loan Commitment or Financial Commitment by the dates set forth above, Buyer acts in bad faith or with unfair dealing that results in damages incurred by Builder and/or delays in the start of construction or fails to close on the Property as provided herein. If Buyer has materially breached this Agreement as provided herein and Builder does not terminate the Agreement, Buyer understands that the start of construction, completion of the home on the Property and closing may be delayed as a result of Buyer's material breach of the conditions of the Agreement. Time is of the essence with regard to these dates.

(e) **Pre-Closing Dispute:** In the event of a dispute or disagreement between Builder and Buyer prior to or at closing, Builder reserves the right to terminate this Agreement upon written notice to Buyer and return all deposits paid by Buyer, plus pay such Buyer liquidated damages of \$350.00, an amount which the parties agree to be a reasonable and foreseeable estimate of any actual and consequential damages incurred by Buyer incident to the termination of this Agreement as Buyer's sole remedy and Buyer shall have no further rights, remedies, or causes of action arising out of or relating to this Agreement.

(f) **Residential Use:** Buyer intends to use the Property for residential purposes. There shall be no private restriction or governmental regulation that prohibits such reasonable residential use of the Property.

(g) **Title Insurance:** An owner's title insurance policy and binder will be furnished at closing subject to the lien of current taxes, restrictions, covenants, rights-of-way or easements of record. The cost of the title search and the premium shall be paid by Buyer.

## 5. SETTLEMENT/CLOSING

Buyer understands that the closing date will be set only after the home reaches the drywall stage in the construction process. The anticipated closing date shall be on or before \_\_\_\_\_, but the parties recognize that adverse weather, unavailability of material, strikes, delays with sub-contractors, vendors or government entities and other conditions beyond the reasonable control of Builder may delay completion and it is therefore agreed by the parties that in the event, and only in the event, that the Property is not substantially completed in accordance with

the VA, FHA, or Conventional plans and specifications, minor punch list items excluded, within sixty (60) days after the anticipated date of completion, as set by the Builder, Buyer shall have the right to declare this Agreement null and void and thereupon Builder shall return to Buyer the sums paid under paragraph 3(a) hereof and Buyer's and Builder's rights shall cease and terminate without further liability on the part of either party. Closing shall be defined as the date and time of recording of the deed. Closing shall constitute acceptance of the Property in its then existing condition unless otherwise provided for in writing.

## 6. ZONING

Builder warrants that there are no restrictions, zoning, easement or other governmental regulations that would prevent the reasonable use of the Property for residential purposes.

## 7. STANDARD PROVISIONS AND CONDITIONS

Additional provisions and conditions of this Agreement are incorporated herein by Exhibit and/or Addendum attached hereto.

## 8. CONSTRUCTION OF PROPERTY

(a) Builder shall complete the Property in accordance with the plans and specifications (collectively the "**Plans**") agreed to by Builder and Buyer in compliance with all laws, regulations, codes and ordinances applicable to the construction of the Property, and in a good and workmanlike manner with new, good quality materials and components. For a variety of reasons, including, for example, unavailability or discontinuance of certain materials, processing delays and inspections, weather conditions and the availability of materials and qualified trade contractors and other factors outside of Builder's control, we may modify some aspects of your home. Builder specifically retains the right to substitute selected materials with materials of a comparable pattern, design and quality, to the extent reasonably necessary and available.

(b) Notwithstanding anything in this Agreement to the contrary, Builder does, however, agree to complete construction of the home upon the Property within a period of two (2) years from the date Buyer executes this Agreement (the "**Required Completion Date**"), subject only to time extensions caused by any event recognized by the law of the state of NC as a defense to a contract action for non-performance or a delay in performance. If construction is delayed by events recognized by the law of the state NC as a defense to a contract action for non-performance or a delay in performance, then the Required Completion Date shall be extended by the delay period. No notice of default or cure period otherwise required or provided by this Agreement shall extend the time period within which Builder must complete construction of the home. The issuance of a temporary or permanent certificate of occupancy or use from the proper governmental agency authorizing use of the home for the purposes for which it was sold shall be conclusive evidence of the completion of the home. It is the express intent of the parties that the parties' rights and obligations under this Agreement be construed in the manner necessary for Builder's obligation to complete the home within two (2) years to be sufficiently unconditional in nature so as to exempt the transaction from the Interstate Land Sales Full Disclosure Act (15 U.S.C. 1701, et seq.) pursuant to the statutory Improved Lot Exemption, 15 U.S.C. 1702(a)(2). If Builder fails to complete the home by the Required Completion Date (plus any delay-period extension), Buyer shall be entitled to pursue against Builder any and all remedies available to Buyer at law or in equity.

(c) **WITHOUT LIMITING THE BUILDER'S OBLIGATION TO COMPLETE THE HOME BY THE REQUIRED COMPLETION DATE, IT IS A CONDITION THAT CLOSING WILL NOT OCCUR UNTIL THE CITY OR COUNTY ISSUES ITS OCCUPANCY CLEARANCE AND ALL SUBDIVISION IMPROVEMENTS ARE COMPLETE OR THERE IS OTHERWISE COMPLIANCE WITH APPLICABLE LAW.**

(d) **Any model home:** is displayed for illustrative purposes only, inclusive of all options displayed, and such display shall not constitute an agreement or commitment on the part of the Seller to deliver the Property purchased in exact accordance with any model home. None of the furnishings shown in any model home site are included in this Agreement unless Seller specifically agrees in writing to deliver same as part of the Purchase Price.

(e) **Marketing Materials:** All inquiries regarding the house and related improvements to be constructed on the subject property must be directed to Listing Agency/Agent (including contracts, floor plans, etc.). Any information

received from other sources, including but not limited to site workers, internet or others, WILL NOT be acknowledged by or binding upon Seller or Listing Agency/Agent. Floor plans may vary in regards to square footage and details. Photos, drawings and floor plans used in marketing materials are artist renderings of similar homes and are not to be considered fully accurate representations of actual constructed homes. Items depicted in said marketing materials may not be standard items for Buyer's new home.

(f) **Force Majeure:** Neither Party will be deemed in default of this Agreement to the extent that performance of its obligations or attempts to cure any material breach are delayed or prevented by reason of any act of God, fire, natural disaster, accident, act of government, terrorism, strikes or other labor disturbances, shortages of material, supplies or utilities ("Force Majeure"), provided that such Party gives the other Party written notice thereof promptly and, in any event, within fifteen (15) days of discovery thereof and uses good-faith efforts to so perform or cure. In the event of such an event of Force Majeure, the time for performance or cure will be extended for a period equal to the duration of the event but if the Force Majeure continues for more than thirty (30) days, the other Party shall have the right to terminate this Agreement upon written notice to the Party relying on such an event of Force Majeure.

## 9. PURCHASE PRICE, SELECTIONS AND UPGRADES

(a) The Purchase Price set forth in paragraph three of this Agreement includes the Purchase Price of the lot, house and all features standard to the neighborhood.

(b) **Increase in Building Material Costs – “Cost Escalation”:**  (mark if applicable) The Purchase Price for this Agreement has been calculated based on the current prices for the component building materials, but is subject to change due to sudden price increases in such building materials. Buyer agrees to pay such price increases to the Builder. In the event there is a rise in the cost of any building materials that would result in an increase of the total Purchase Price of \_\_\_\_\_% or more at any time prior to completion of the drywall stage, the Builder will provide written notice to the Buyer expressing (i) the building materials subject to the increased cost, and (ii) the dollar amount of the increased cost to be incurred, prior to making any additional purchases of such building materials (Notice of “Cost Escalation”). Upon Notice of “Cost Escalation” the Buyer may, at its option and within five (5) business days of receipt of such Notice of “Cost Escalation”, terminate this Agreement by providing the Builder with written notice of the Buyer's election to terminate this Agreement (“Buyer's Notice of Termination”). In the event Buyer elects to terminate this Agreement, as provided hereinabove, the Builder shall return the Due Diligence Deposit and any Option Deposits paid by the Buyer under this Agreement within ten (10) business days of Builder's receipt of Buyer's Notice of Termination. In the event the Builder does not receive the Buyer's Notice of Termination within ten (10) business days of Buyer's receipt of a Notice of “Cost Escalation” and prior to completion of the drywall stage, the Builder shall be entitled to purchase such building materials at the increased cost, and the Buyer shall be required to pay the increased cost incurred for such materials, and the increased cost shall be added and included in the total Purchase Price at closing.

**Buyer hereby expressly acknowledges the above Cost Escalation provision applicable to this Agreement.**

**Buyer Initials:** \_\_\_\_\_

(c) **Options/Upgrades — “Cash Options”:** selected by Buyer shall be set forth on an Addendum for Options/Upgrades and shall be attached hereto and incorporated by reference herein. Any subsequent Options/Upgrades selected by Buyer and Seller shall be documented by an Addendum and Buyer agrees to join Seller in execution of any additional Change Order, Contract or Addendum as required by General Contractor. **Any Change Order listing options made after specific selection date deadlines shall require a \$500.00 non-refundable change order fee**, and such Change Order shall become part of this Agreement and shall state the method of payment for the options. All Upgrade Cash Options must be paid for and submitted to the Seller within fourteen (14) days of Contract execution or contingency removal. Any Upgrade Cash Options or additional work authorization not paid for within these fourteen (14) days will no longer be considered an available option. **Unless otherwise stated herein, all Upgrade Cash Options paid to Seller are non-refundable under any circumstance.** Buyer acknowledges that it has reviewed all available options offered on the model type they are purchasing.

(d) **Options/Upgrades — “Financed Options”:** that are normally “Upgrade Cash Options” may be financed,

with Seller's written approval, provided the loan limit is not exceeded and the appraisal provides the appropriate value. In the event the appraised value does not cover these "Upgrade Financed Options," Buyer agrees to pay the difference between the appraised value and the Purchase Price, in cash, upon completion of appraisal and all parties agree that Buyer may not void this Agreement if appraisal does not cover Upgrade Financed Options added to this Agreement Purchase Price. **In the event Seller takes a cash deposit from Buyer for any financed cash options, all parties agree that this deposit is nonrefundable, if Buyer does not close for any reason.**

(e) **Change Orders** – Buyer acknowledges that any request for changes or alterations to the home will result in a **\$500 change order fee. All monies paid for any upgrade, change order fee or the like will be non-refundable.** Any requested change order must be in writing and signed by Buyer and Builder. No agent, subcontractor, workman, or material man has authority to agree on or time to schedule the change orders into the normal building sequence. BUILDER HAS THE RIGHT TO REFUSE TO MAKE CHANGES/ALTERATIONS THAT ARE REQUESTED. BUYER AGREES TO PAY BUILDER UPON DEMAND FOR THE COSTS OF LABOR AND MATERIALS FOR WORK NECESSITATED BY AGREED CHANGE ORDERS AND FURTHER UNDERSTANDS THAT THERE WILL BE NO REFUNDS, UNDER ANY CIRCUMSTANCES, OF PAYMENT MADE BY BUYER FOR CHANGE ORDERS. Buyer further acknowledges that any work done on the home pursuant to change orders or additions may not increase the appraised value of the Property. Builder shall not be responsible if increases in the price of the Property due to change orders or additions are not reflected in the appraised value of (and resulting available loan for) the Property. Buyer acknowledges that change orders may delay the completion of the home upon the Property and the closing.

(f) The cost of all upgrades in Buyer's selections are to be paid by Buyer directly to the Builder; Builder requires a \_\_\_\_\_% non-refundable deposit ("**Deposit**") for all upgrades or changes to Builder's standard plan and features at the time selections are made, with the remainder due on or before the closing date. Deposits for upgrades/changes are non-refundable once the Builder has obtained a permit to start construction on the Property, except as otherwise provided herein.

(g) For new construction, Buyer shall schedule its design appointment within 48 hours of execution hereof and shall make all decorating and upgrade selections within 10 business days of the execution of this Agreement ("**Selection Deadline**") unless otherwise agreed to in writing by the Builder. Time is of the essence in making these selections.

(h) After the scheduled and allotted design appointment and selections, Buyer shall incur a charge of \$250.00 for each additional visit to the design center for changes in selections.

(i) Buyer shall be responsible for the difference in cost of any higher-level selection made by Buyer. If Buyer does not make the decorating selections by the Selection Deadline, the Builder may either make the selections for the Buyer or delay the schedule for completion of the Property and Closing, whichever the Builder chooses in the Builder's sole discretion. In the event a chosen product selected by Buyer is determined to be unavailable, Builder shall notify Buyer of such unavailability, at which time Buyer shall have five (5) days from receipt of such notice of unavailability from the Builder to make an alternate selection. In the event Buyer fails to make an alternate selection within five (5) days of such notice, Builder shall make the alternate selection for the Buyer. Any selections made by the Builder under the provisions of this paragraph are hereby deemed agreed to and accepted by the Buyer. If the schedule for completion of the Property and Closing is delayed due to Buyer's delay, the Builder will charge a daily fee of \$70 per day until Buyer selections have been approved, unless otherwise agreed upon herein.

(j) All structural options, as defined within this Agreement or in an Addendum attached hereto, shall be chosen by Buyer at the time of entering into this Agreement, and no structural options can be added or removed.

## 10. HOMEOWNER'S DUES

Buyer understands that the Community and the Property may be or are subject to one or more declarations of covenants, conditions, restrictions and one or more homeowner's associations and acknowledges receipt of a copy of the declaration of covenants and restrictions as amended, for the Property. Buyer acknowledges that there may be a one-time Capital Contribution to the homeowner's associations as disclosed in the governing documents which shall be collected at closing along with any administrative fee collected by the property manager at closing and the customary collections and/or prorations for dues which thereafter may be collected monthly, quarterly or annually. The dues may increase prior to closing pursuant to the Community's declarations of covenants, conditions and

restrictions as amended. The declaration of covenants, conditions, and restrictions may be amended at any time in accordance with the terms therein.

**Buyer hereby expressly acknowledges receipt of the covenants for the subdivision.**

**Buyer Initials:** \_\_\_\_\_

### 11. OIL AND GAS RIGHTS DISCLOSURE

Oil and gas rights can be severed from the title to real property by conveyance (deed) of the oil and gas rights from the owner or by reservation of the oil and gas rights by the owner (See attached Mineral and Oil Gas Rights Mandatory Disclosure Statement attached). If oil and gas rights are or will be severed from the Property, the owner of those rights may have the perpetual right to drill, mine, explore, and remove any of the subsurface oil or gas resources on or from the property either directly from the surface of the Property or from a nearby location. With regard to the severance of oil and gas rights, Builder makes the following disclosures: BUILDER DOES NOT, AS A CORPORATE PRACTICE, SEVER OIL AND GAS RIGHTS OR RETAIN OIL AND GAS (OR OTHER SUBSURFACE, MINERAL OR SUBSISTENCE RIGHTS) AT ANY POINT IN THE CONTRACTING PROCESS OR AT TRANSFER OF TITLE.

**Buyer hereby expressly acknowledges receipt of the Mineral and Oil Gas Rights Mandatory Disclosure Statement.**

**Buyer Initials:** \_\_\_\_\_

### 12. INSULATION DISCLOSURE

Builder hereby discloses that prior to settlement and closing, Builder will hire an independent contractor to install insulation in the Property as follows:

	<b>Floor*</b>	<b>Ceiling (below attic areas)</b>	<b>Ceiling (vaulted)</b>	<b>Walls</b>
Type	BATT	Loose fill fiberglass	BATT	BATT
R-Factor	Per State Code or Better	Per State Code or Better	Per State Code or Better	Per State Code or Better
*Disclosure does not apply to dwellings constructed on slab.				

**Buyer hereby expressly acknowledges receipt of the Insulation Disclosure.**

**Buyer Initials:** \_\_\_\_\_

### 13. STREET DISCLOSURE/INVESTIGATION

For all subdivisions outside of Municipal Corporate Limits, Buyer shall have the opportunity to investigate the status of the street/road upon which the home fronts as well as any other street/road used to access the home, including: (1) whether any street(s)/road(s) are public or private, (2) whether any street(s)/road(s) designated as public are currently maintained by the State of North Carolina or any municipality where the home is located, and (3) the existence and terms of any agreement relating to the maintenance of any street(s)/road(s) which are private. The investigation period shall be fifteen (15) days from the date of this Agreement ("**Investigation Period**"). Prior to the end of the Investigation Period, TIME BEING OF THE ESSENCE, Buyer shall have the right to terminate this Agreement by delivering to Builder written notice of termination if Buyer, in Buyer's sole discretion, is not satisfied with the status of the street/road upon which the home fronts as well as any other street/road used to access the home. If Buyer has timely delivered such notice, this Agreement shall be terminated and all Deposits shall be refunded to Buyer. If Buyer fails to deliver such notice, then Buyer will be deemed to have waived this condition.

**THIS PROVISION OF THE AGREEMENT IS NOT APPLICABLE TO SUBDIVISIONS WITHIN MUNICIPAL CORPORATE LIMITS WHERE THERE IS NO INVESTIGATION PERIOD OR RIGHT OF TERMINATION BY**

**BUYER.**

**NOTE:** North Carolina General Statutes 136-102.6(f) (the "Statute") requires that under circumstances described in the Statute, a purchaser must be provided a subdivision streets disclosure statement prior to entering into an agreement to purchase subdivided property described in the Statute. If Buyer or Seller is uncertain whether the sale of the home described in this Agreement is subject to the Statute, consult a North Carolina real estate attorney.

**Buyer hereby expressly acknowledges receipt of the street disclosure.**

**Buyer Initials:** \_\_\_\_\_

**14. DUE DILIGENCE DEPOSIT**

Except as otherwise provided herein, in the event that any of the conditions in this Agreement are not satisfied, or in the event of a material breach of this Agreement by Builder, then the Due Diligence shall be returned to Buyer as Buyer's sole remedy for such failure or material breach, and this Agreement shall terminate and neither party shall have any further liability to the other party. Except as otherwise provided herein, in the event Buyer materially breaches this Agreement, then the Due Diligence, all other Deposits and the Option Deposit(s) shall be forfeited but such forfeiture shall not affect any other remedies available to Builder. The Settlement Agent/Escrow Agent shall retain said Due Diligence in trust until he has obtained a written release from the parties consenting to its disposition or until disbursement is ordered by a court of competent jurisdiction.

**NOTE:** In the event of a dispute between Seller and Buyer over the disposition of the Due Diligence held in escrow, a licensed real estate broker ("Broker") is required by state law (and Escrow Agent, if not a Broker, hereby agrees) to retain the Due Diligence Deposit in the Escrow Agent's trust or escrow account until Escrow Agent has obtained a written release from the parties consenting to its disposition or until disbursement is ordered by a court of competent jurisdiction. Alternatively, if a Broker is holding the Due Diligence Deposit, the Broker may deposit the disputed monies with the appropriate clerk of court in accordance with provisions of N.C.G.S. § 93a-12.

THE PARTIES AGREE THAT A REAL ESTATE BROKERAGE FIRM ACTING AS ESCROW AGENT MAY PLACE THE DUE DILIGENCE DEPOSIT IN AN INTEREST BEARING TRUST ACCOUNT AND THAT ANY INTEREST EARNED THEREON SHALL BE DISBURSED TO THE ESCROW AGENT MONTHLY IN CONSIDERATION OF THE EXPENSES INCURRED BY MAINTAINING SUCH ACCOUNT AND RECORDS ASSOCIATED THEREWITH.

**15. PRORATIONS AND ADJUSTMENTS**

Unless otherwise provided, the following items shall be prorated and either adjusted between the parties or paid at closing:

- (a) Ad valorem taxes on real property shall be prorated on a calendar year basis to the date of closing.
- (b) Ad valorem taxes on personal property for the entire year shall be paid by Builder.
- (c) All late listing penalties, if any, shall be paid by Builder.
- (d) Homeowner's association(s) dues shall be prorated to the date of closing.

**16. BUYER ACKNOWLEDGEMENTS:**

- (a) Buyer has received a copy of the subdivision Restrictive Covenants via hard copy or digital copy;
- (b) Buyer is responsible to confirm school assignment and/or educate himself/herself regarding any potential redistricting;
- (c) Buyer has received a copy of the recorded Plat for the property/lot or subdivision;
- (d) Buyer is aware that Wetlands, Buffers and Easements are part of every community and there are limiting effects on various home-sites within a project. Buyer has reviewed the Plat and site plan for any such conditions on the lot subject to this Agreement; and
- (e) Buyer is aware that there may be future phases added to the subdivision plans and that Builder makes no representations or warranties about the future or status of any property adjoining the subdivision.

**17. DEFAULT**

Buyer shall be in default of this Agreement if Buyer engages in specific acts or a course of dealing which disrupts Builder's standard and customary contract performance process including but not limited to the following actions or failure to act:

- (a) Failure to make choices or take actions required of Buyer within the indicated time frames;
- (b) Refusal to deal with the particular persons whom Builder has designated as its representatives to perform certain aspects of this Agreement, such as the designated field managers, salespersons, suppliers, vendors, contractors, closing attorney or other representatives of Builder designated for particular parts of Builder's contract performance;
- (c) Interfering with or attempting to direct or supervise the performance of Builder or Builder's contractors or material suppliers in the performance of this Agreement or any aspect of their work;
- (d) Refusal to acknowledge Buyer's acceptance or approval of work which complies with the plans and specifications and is otherwise performed in a good and workmanlike manner as would be customarily accepted in the applicable trade;
- (e) Other actions similar in nature to the foregoing which would have effect of delaying the construction schedule, increasing the Builder's cost of performance, modifying the plans and specifications or otherwise substantially impeding Builder's performance.

If Builder defaults under this Agreement before Closing, or fails or refuses to close, and Buyers are not in default, Buyer's only remedy under this Agreement shall be a refund of the Due Diligence Deposit. Buyer waives all other remedies including the right to recover money damages in excess of the Due Diligence Deposit.

**18. FIRE AND OTHER CASUALTY**

The risk of loss or damage by fire or other casualty to the Property prior to closing shall be upon the Builder.

**19. CONDITIONS**

- (a) All deeds of trust, liens and other charges against the Property must be paid and canceled by Builder prior to or at closing.
- (b) Title must be delivered at closing by General Warranty Deed and must be fee simple marketable title, free of all encumbrances except ad valorem taxes for the current year (prorated to the date of closing), utility easements, assessments for homeowner's dues, and unviolated restrictive covenants that do not materially affect the value of the Property and such other encumbrances as may be assumed or specifically approved by Buyer. (c) The Property must have legal access to a public right-of-way.

**20. LABOR AND MATERIAL**

Builder shall furnish at closing an affidavit and indemnification agreement in a form satisfactory to Buyer and Buyer's title insurance company showing that all labor and materials, if any, furnished to the property within 120 days prior to the date of closing have been paid for and agreeing to indemnify Buyer and Buyer's title insurance company against all loss from any cause or claim arising therefrom.

**21. NEW LOAN**

- (a) **Loan:** Buyer  does  does not have to obtain a new loan in order to purchase the Property.

If Buyer is obtaining a new loan, Buyer intends to obtain a loan as follows:  FHA  VA (attach FHA/VA Financing Addendum)  Conventional  Other: \_\_\_\_\_ Loan at a  Fixed Rate  Adjustable Rate in the principal amount of \$ \_\_\_\_\_ plus any financed VA Funding Fee or FHA MIP for a term of year(s), at an initial interest rate not to exceed \_\_\_\_\_% per annum all together known as the "Loan."

In the event the Buyer becomes aware that he no longer qualifies for a loan contemplated herein, Buyer must notify

Buyer Initials \_\_\_\_\_

Seller Initials \_\_\_\_\_

the Builder within \_\_\_\_\_ days.

Buyer shall be responsible for all costs with the respect to any new loan obtained by Buyer. Builder shall have no obligation to pay any closing cost, discount fee or other charges in connection therewith unless specifically set forth in this agreement.

## 22. WARRANTIES: Home Warranty

The Limited Warranty Agreement offered by Builder is the only warranty on the Home or the Property which Builder is providing, which Buyer will receive, or which will cover Buyer ("**Home Warranty**"). The Builder's Limited Home Warranty is included with this Agreement and incorporated herein by reference. THE BUILDER'S LIMITED HOME WARRANTY IS PROVIDED TO BUYER IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, BY LAW OR OTHERWISE AND IS PROVIDED IN LIEU OF ANY WARRANTY, EXPRESS OR IMPLIED, OF MERCHANTABILITY, HABITABILITY OR FITNESS FOR A PARTICULAR PURPOSE. EACH OF THOSE WARRANTIES IS NOT PROVIDED TO BUYER AND THE BENEFIT OF ANY SUCH WARRANTY IS EXPRESSLY WAIVED BY BUYER. **BUILDER'S LIMITED WARRANTY EXPLICITLY DOES NOT PROVIDE COVERAGE FOR ON SITE OR OFF SITE SEPTIC SYSTEMS. BUILDER'S LIMITED WARRANTY EXPLICITLY DOES NOT PROVIDE COVERAGE FOR DAMAGES THAT ARE A RESULT OF AN ACT OF GOD, OR WHICH MAY OTHERWISE BE COVERED BY BUYER'S PROPERTY INSURANCE.**

**Buyer acknowledges receipt of a Builders Limited Warranty Agreement.**

**Buyer Initials:** \_\_\_\_\_

## 23. DISCLAIMER OF IMPLIED WARRANTIES

The foregoing expressed warranties, disclaimers and waivers are accepted by the Buyer in lieu of all other warranties expressed and/or implied including but not limited to the applied warranty of workmanlike construction, implied warranty of fitness for a particular purpose, the implied warranty of habitability and including all warranties that could be construed to cover the presence of radon or their environmental pollutants. All other warranties expressed or implied are waived by reason of the promises and agreements herein contained. Buyer also waives the right to recover from Builder all consequential, incidental, punitive, exemplary, emotional distress, pain, suffering, loss of profits, depreciation or other statutory damages. The only warranties Builder provides to the Buyer are those contained in the limited warranty described above. Builder makes no warranties in connection with the exactness of the appropriate square footage of the home to be constructed. All of the information provided is only approximated and is believed to be accurate and is subject to verification by the Buyer through the receipt of an appraisal report which can be obtained by Buyer, at Buyer's expense, if Buyer so requests in writing, prior to the closing. Buyer recognizes that by accepting the express Builder warranties for the periods of time provided in the Agreement, Buyer is giving up and waiving the right to any claims or implied warranties that may be greater than the expressed warranties. Implied warranties are unwritten warranties provided by law relating to the reasonable expectations of a homebuyer with regard to the construction of a new home, as those reasonable expectations are defined by the courts on a case-by-case basis.

## 24. TERMITE GUARANTY

The Builder shall provide a new construction termite guarantee to Buyer at closing.

## 25. COMPLETION OF CONSTRUCTION

The construction of the Property shall be deemed completed when (a) the Property has been completed substantially in accordance with the plans and specifications, minor punch list items excluded, and (b) a final certificate of compliance allowing occupancy has been issued by the appropriate governmental authority having jurisdiction over the construction of the Property.

## 26. INSPECTIONS

Buyer or Buyer's designated representative may enter and inspect the Property at reasonable times and in such a manner so as not to interfere with the progress of construction for the limited purpose of determining whether the work performed or being performed conforms with the Plans and the terms of this Agreement. In the event that

during construction the Buyer shall reasonably determine that such construction is not proceeding in accordance with this Agreement, Buyer shall give written notice to Builder specifying the particular deviation, or omission, and the Builder shall forthwith correct such deviation, deficiency, or omission, unless otherwise agreed by the parties. Buyer's right under this paragraph shall not release Builder from any of Builder's obligations for the construction of the Property substantially in accordance with the Plans and this Agreement.

## 27. INQUIRIES/COMMUNICATING WITH THE BUILDER

All questions regarding the new home shall be submitted to the Builder through the Builders Representative. Only written responses by Builder, and agreed to in writing by both Buyer and Builder, shall be deemed binding.

## 28. VISITS/ACCESS TO THE PROPERTY

Buyer acknowledges that the Property belongs to Builder until closing. If Buyer chooses to visit and inspect the home under construction, Buyer agrees to limit the number of visits and the length of those visits to reasonable times during normal business hours. For all such visits, Buyer shall be escorted by Buyer's Realtor or Seller's Representative and Builder shall have prior notice of the visit. Buyer shall not visit the job site between 6:00 A.M. and 6:00 P.M. weekdays, **UNLESS** accompanied by the Buyer's Realtor or Seller's representative. Any visit to the job site after hours shall be at Buyer(s) **OWN RISK** and neither Seller, Seller's representatives nor agents shall be responsible for injuries or damages incurred and are hereby released from liability therefore. Buyer further agrees to avoid conversation with workmen or in any way hinder work on the home, and Buyer shall not perform any work on the house or lot while the home is under construction unless it has been requested that Buyer be there to assist in some phase of the construction.

## 29. PLANS

Buyer hereby acknowledges and agrees that previously built dwellings, floor plans, different elevations of the same or similar floor plans, renderings, drawings, site plans, and the like which allege to depict the Property, or any portion thereof, are merely approximations, and may not necessarily reflect the actual as-built condition of the Property. Floor plans, cut-sheets and renderings may differ slightly from the actual completed home. Square footage and details may vary slightly. Due to Buyer's requests, options, specifications and change orders, the items viewed in other homes or models may not be standard or otherwise selected for Buyer's home construction.

## 30. PLACEMENT OF HOUSE

Builder has sole discretion regarding the placement of the home on the Property. Many factors and considerations (including but not limited to grading, site conditions, streetscape, etc.) dictate that the Builder has the sole responsibility and authority to make this decision.

## 31. SITE CONDITION AND LANDSCAPE

Once the home is positioned on the Property, a strong possibility exists that all trees within 15 feet of the home's foundation will be removed in order to position dirt from the excavation and also to permit heavy machinery to operate on the Property. In addition, any trees in the area of the driveway, sewer, water, electric or gas utility lines will be removed. Final clearing and grading for Property is determined solely by Builder. Builder is not required to clear or remove brush or debris from, seed, sod or otherwise landscape any wooded areas located on the Property. Existing vegetation on the Property may be damaged during grading and construction, and Builder has no responsibility or liability for survival of same. Builder does not warrant landscaping or vegetation, including trees, plants, lawns and shrubs, whether or not installed by Builder. Buyer acknowledges that Buyer will inspect the Property prior to closing and will accept the landscaping as it exists on the date of closing and further agrees to take full responsibility for the landscaping after closing. Buyer accepts full responsibility for watering and maintaining vegetation and for preventing erosion, settlement and other similar problems after taking possession of the Property. Buyer and Builder agree, however, that Builder shall be responsible for those landscape items reasonably identified in writing by Buyer at closing and accepted by Builder at closing.

## 32. CONTRACTORS AND/OR SUPPLIERS

All work and materials to be performed or supplied under this Agreement shall be performed and supplied by

Builder's own contractors, subcontractors, employees, agents, and suppliers. Buyer shall **NOT** have the right to have any work performed or supplies delivered to the Property at Buyer's own direction prior to closing unless agreed to in writing by Builder.

### 33. FHA/VA REASONABLE VALUE

If Buyer is purchasing using FHA or VA financing, Buyer understands that Builder Deposits are non-refundable due to the fact that they are for options or upgrades of the Buyer's choice. Builder is not obligated to return the Builder Deposit for any reason (other than Builder default as further described herein) if Buyer fails to close on the home constructed on the property.

### 34. NATURAL STONE

Granite and marble are natural stones and due to the nature of the stone the piece that is installed may look different than the sample the Buyer saw during the selection process. Darker or lighter tones may exist in the same piece and/or dull spots may appear on the surface that cannot be polished or buffed out. Spots or veins may occur that resemble cracks. Seams will be visible and can be up to 1/16" in width. To protect the granite, all tops are sealed during the installation process and covered with a special film that should only be removed by cleaning personnel. Buyer understands and agrees not to hold Builder or their granite vendor(s)/supplier(s) responsible for natural imperfections and/or problems associated with negligent care on the part of the Buyer.

### 35. HOMEOWNER ORIENTATION

Buyer agrees to attend a Home Orientation conducted by the Builder in order to introduce the fundamentals of the home, including mechanical systems, general maintenance, functionality of appliances, utilities, completion and finish of the home and the warranty process at a time scheduled by Builder. Any items needing repair or completion will be noted in a written report and will be completed or repaired according to Builder's published warranty procedures. If, on the closing date, a CO has been issued, closing shall proceed on the closing date even if there are incomplete items on the pre-closing written report and Builder will complete such items as soon as is practicable after closing. In no event may Buyer delay closing or refuse to close because an item on the pre-closing inspection report has not been completed and in no event shall Builder be required to escrow for any incomplete items.

The Homeowner Orientation is meant to be with the Buyer and the Builder and will be scheduled approximately two weeks prior to closing. All meetings will take place Monday through Friday between the hours of 9:00 am and 3:00 pm. If Buyer chooses to forego Builder's standard orientation procedures, Buyer waives the right to demand certain items be completed at the time of closing.

### 36. PAINT DISCLOSURE

The purpose of this information is to confirm that the Buyer is aware of and accepts the following facts and/or commitments with regard to the purchase of a home with selected interior paint colors. Unless noted in the final walk-through and punch list, all paint and/or cosmetic inspections must be completed, and Buyer must make Builder aware of any requested work relating to any such paint and/or cosmetic inspections in writing prior to closing. **In no event shall Builder be responsible for any work requested by Buyer and relating to paint and/or cosmetic issues following closing, except where Buyer has provided Builder written notice of the same prior to closing or such issues are noted in the final walk-through and punch list.**

### 37. WHOLE HOME INSPECTIONS

Buyer may, between the time of the Builder's quality walk of their new home and the Buyer's Home Orientation and walk-through, at Buyer's expense and at reasonable times during normal business hours, have the right to schedule a private home inspection and accompany said inspector to the Property for the purpose of making a diligent, prudent and competent inspection by examining and surveying the Property. Buyer agrees to assume all responsibility for the acts of himself and his private home inspector and agrees to hold Builder, Broker, and Broker's affiliated licensees harmless for any damages or injuries resulting therefrom. It is the Buyers responsibility to schedule the inspection with the Builder with at least a 72 hour notice unless otherwise agreed upon, and Buyer must provide a copy of the inspection report to the Builder within 72 hours of receipt.

Following the inspection and prior to closing, Buyer shall either (A) accept the Property in its present condition by written notice to Builder, or (B) furnish to Builder a copy of the Inspection Report with a proposed written amendment setting forth those items in the inspection report which have not been completed in material compliance with this Agreement. If Buyer does neither (A) or (B), this paragraph shall be deemed waived by the Buyer. If Buyer submits the written amendment, then the Builder shall correct and/or complete any work not performed in substantial and material compliance with the Agreement prior to the scheduled closing or provide documentation that the work is completed according to code and is in accordance with the Agreement.

### 38. MOLD/MILDEW

The Builder does not claim any expertise regarding the identification, remediation or possible health consequences of mold. THE HOUSE IS NEITHER CONSTRUCTED NOR WARRANTED TO BE FREE FROM MOLD AT THE TIME OF CLOSING OR AT ANY TIME THEREAFTER, AND NO EXPRESS OR IMPLIED WARRANTY IS MADE OR GIVEN AS TO THE ABSENCE OF MOLD. The Builder will not be responsible for any damage caused by mold or other agents that may be associated with the construction, including, but not limited to, property damage, adverse health effects, personal injury, loss of income, emotional distress, death, loss of use, or any other damage or adverse condition or effect. Whether or not the Buyer experiences mold growth depends largely on how the home is managed and maintained. Buyer is responsible for periodically inspecting the home for plumbing leaks, visible evidence of excessive moisture or mold growth and performing routine maintenance on the home in order to keep the home in good repair and condition. Buyer agrees to notify Builder if it appears that abnormal amounts of moisture are accumulating in the home, if a water leak is discovered or mold is found. If mold is found, Buyer should immediately consult with a qualified expert regarding mold remediation or other questions pertaining to mold.

### 39. RADON INSPECTION

Buyer shall have the option, at Buyer's expense, to have the Property tested for radon prior to closing. The test result shall be deemed satisfactory to Buyer if it indicates a radon level of less than 4.0 pico curies per liter of air (as of January 1, 1997, EPA guidelines reflect an "acceptable" level as anything less than 4.0 pico curies per liter of air). If the test result exceeds the above-mentioned level, Builder shall remediate to bring the radon level within the satisfactory range. Upon the completion of remediation, Buyer may have a radon test performed at Builder's expense, and if the test result indicates a radon level less than 4.0 pico curies per liter of air, it shall be deemed satisfactory to Buyer.

### 40. NOTICE

Any notice or communication to be given to a party herein may be given to the party or to such party's agent. Any written notice or communication in connection with the transaction contemplated by this Agreement may be given to a party or a party's agent by sending or transmitting the notice to any mailing address, e-mail address or fax number set forth in the "Notice Information" section of this Agreement. Builder and Buyer agree that the "Notice Information" and "escrow acknowledgement" sections of this Agreement shall not constitute a material part of this Agreement, and that the addition or modification of any information therein shall not constitute a rejection of an offer or the creation of a counter offer.

### 41. DELAYS

Builder shall have no liability for any delays in construction caused by Buyer's change orders, upgrades, special orders or selection of materials. In the event of such delays, the closing date may be extended by the Builder. Buyer's failure to close by the stipulated closing date or any agreed upon extended closing date shall result in Buyer being responsible to pay a penalty, at Builder's discretion, at a cost of \$200.00 per day of any such delay.

### 42. APPRAISED VALUE

Buyer acknowledges that, due to variable appraisal practices, the full value of changes, upgrades, or closing costs added to the original Purchase Price may not be included in the appraised value of the home. **In the event an appraisal is less than the final Purchase Price, (including all options/upgrades/closing costs) Buyer shall be responsible for the difference required to make full payment of the final Purchase Price.** Buyer represents and warrants that Buyer has sufficient cash to cover the difference between the final Purchase Price and the appraised value, and to close the transaction. Failure of the home and the Property to appraise for the final Purchase

Price will not be grounds for termination by Buyer.

**43. HOUSEHOLD GOODS**

The movement of any household goods or other materials by Buyer into the home upon the Property will not be permitted until the home has been completed, the total Purchase Price has been paid in full and the deed has been recorded.

**44. SURVEY**

Builder has a preliminary plot plan only. If Buyer would like a final survey, Buyer may request one at Buyer's expense. Buyer should consult with their realtor or Settlement Agent well in advance of closing to order a survey if so desired.

**45. UTILITIES**

It is Buyer's responsibility to have all utilities transferred from Builder to Buyer's name on the day of closing. Utilities should be contacted at least two weeks prior to closing. If not transferred, Builder may disconnect utilities two (2) days after closing. Buyer will refund Builder any costs incurred by Builder for utilities after the date of closing.

**46. SEPTIC SYSTEM DISCLOSURE  (mark if applicable)**

Buyer hereby acknowledges and understands that the Property which he/she/they are purchasing is permitted by the \_\_\_\_\_ County Health Department for a septic system for \_\_\_\_\_ bedrooms and/or \_\_\_\_\_ occupants.

(mark if applicable) OFF-SITE SEPTIC SYSTEM: Buyer hereby acknowledges and understands that he/she/they are responsible for the maintenance of the property where the off-site septic system is located.

**BUILDER'S LIMITED WARRANTY EXPLICITLY DOES NOT PROVIDE COVERAGE FOR ON SITE OR OFF-SITE SEPTIC SYSTEMS.**

**Buyer acknowledges the above Septic System Disclosure.**

**Buyer Initials:** \_\_\_\_\_

**47. SETTLEMENT AGENT**

Unless otherwise negotiated between Buyer and Builder and set forth in an Addendum to this Agreement, the closing attorney shall be \_\_\_\_\_ ("**Settlement Agent**"). Settlement Agent shall represent both Buyer and Builder only in such case as the common representation can be managed in the best interest of both the Buyer and Builder. Settlement Agent shall, on behalf of the Buyer, render an opinion on title, prepare loan documents for Buyer, explain loan documents to Buyer and disburse loan proceeds. Buyer may independently employ separate counsel, however all additional and redundant costs shall be the sole obligation of the Buyer. If a conflict develops between Buyer and Builder, Settlement Agent must withdraw from the representation of both parties and will not represent either party in the transaction. If Buyer wants owner's title insurance and is taking out a mortgage loan, Buyer will pay the owner's title insurance premium. Buyer may use any title insurance company for lender required title insurance and Buyer will pay for the lender's title insurance premium.

**48. BINDING ARBITRATION**

Disputes arising out of Builder's acts, omissions or responsibilities or Buyer's acts, omissions or responsibilities in connection with the construction of the home or other improvements on the Property shall, at Builder's sole option, be resolved by arbitration in accordance with the operative sections of Article 45C of Chapter 1 of the North Carolina General Statutes and shall be engaged when either party delivers written notice of demand for arbitration to the other party. A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal

or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations. Notwithstanding any other provision of this Agreement, in any arbitration proceeding between the parties related to the construction of the home or any other improvements on the Property, either party shall have the right to include, by consolidation, joinder or in any other manner, any person or entity whom such party believes to be substantially involved in any common question of fact or law with respect to such arbitration proceeding. Buyer agrees that any dispute with Builder shall not interfere with Builder's ability to proceed with its construction and that Builder may, but is not obligated to, proceed with its work subject to the claim of Buyer. This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law. The award rendered by the arbitrators shall be final and judgment may be entered upon it in any court having jurisdiction thereof.

#### **49. SEVERABILITY**

The provisions of this Agreement are intended to be independent, and in the event any provision hereof shall be declared by a court of competent jurisdiction to be invalid, illegal, or unenforceable for any reason whatsoever; such legality, unenforceability, or invalidity shall not affect the remainder of the Agreement.

#### **50. ASSIGNMENTS**

This Agreement shall be binding on the parties hereto and their heirs, legal representatives and permitted assigns. Builder may assign this Agreement to any affiliate of Builder, to any successor of Builder by merger or consolidation, or to any purchaser of all or substantially all of Builder's assets. Buyer may not assign this Agreement without the prior written consent of Builder, which consent may be withheld in Builder's sole discretion.

#### **51. PARTIES**

This Agreement shall be binding upon and shall inure to the benefit of the parties and their heirs, successors and assigns. As used herein, words in the singular include the plural and the masculine includes the feminine and neuter genders, as appropriate.

#### **52. SURVIVAL**

If any provisions herein contained which by their nature and effect is required to be observed, kept or performed after the closing, they shall survive the closing and remain binding upon and for the benefit of the parties hereto until fully observed, kept or performed.

#### **53. ENTIRE AGREEMENT**

This Agreement contains the entire agreement of the parties and there are not representations, inducements or other provisions other than those expressed in writing and signed by Buyer and Builder. Nothing contained herein shall alter any agreement between a broker and Builder contained in any listing contract or other agreement between them.

#### **54. BROKER DISCLAIMER**

Buyer(s) acknowledge that they have not relied upon any advice or representations of any real estate licensee involved in this sale relative to (i) the legal or tax consequences of this contract and the sale, purchase, or ownership of this property; (ii) the structural condition of the Property, including the roof and basement; (iii) construction materials; (iv) the nature and operating condition of the electrical, heating, air conditioning, plumbing and water systems and appliances; (v) the age and square footage of the improvements, and the size or area of the Property, (vi) the availability of utilities or sewer services; (vii) the character of the neighborhood; (viii) the investment or resale value of the Property; (ix) any other matter affecting their willingness to sell or purchase Property on the terms and price herein set forth. Buyer(s) acknowledge that if such matters are of concern to them in the decision to sell or purchase the Property, they have sought and obtained independent advice relative thereto.

#### **55. EFFECTIVE DATE**

The Effective Date shall be the date that: (1) the last one of Buyer and Builder has signed or initialed this offer or the final counteroffer, if any, and (2) such signing or initialing is communicated to the party making the offer or

counteroffer, as the case may be.

**56. BUYER'S OBLIGATION TO REPAIR DAMAGE**

Buyer shall, at Buyer's expense, promptly repair any damage to the Property resulting from any activities of Buyer and Buyer's agents and contractors. This repair obligation shall survive any termination of this Agreement.

**57. COMPUTATION OF DAYS**

Unless otherwise provided, for the purposes of this Agreement, the term "days" shall mean consecutive calendar days, including Saturdays, Sundays, and holidays, whether federal, state, local or religious. For the purposes of calculating days, the count of "days shall begin on the day following the day upon which any act or notice as provided in this Agreement was required to be performed or made.

**58. INDEMNITY**

Buyer will indemnify and hold Builder harmless from all loss, damage, claims, suits or costs which shall arise out of any contract, agreement, or injury to any person or property as a result of any activities of Buyer and Buyer's agents and contractors relating to the Property except for any loss, damage, claim, suit or cost arising out of pre- existing conditions of the Property and/or out of Builder's negligence or willful acts or omissions. This indemnity shall survive this Agreement and any termination hereof.

**59. AMENDMENTS/ADDENDUMS**

No Amendment or Addendum to this Agreement shall be effective unless it is made in writing and executed by all parties with the same formality as this Agreement.

**60. GOVERNING LAW AND JURISDICTION/SURVIVAL**

This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of North Carolina. The parties to this Agreement hereby agree to be subject to the exclusive personal jurisdiction of the State of North Carolina. The terms of this Agreement shall survive closing.

**61. EXECUTION**

This Agreement may be signed in multiple originals or counterparts, all of which together constitute one and the same instrument.

**62. COMMUNICATION**

After the Effective Date of this Agreement, Buyer understands that communication related to the construction of the home, the building process and the closing of the home are of utmost importance and time sensitive. Buyer gives the Builder and their representatives express permission, to be contacted directly for updates, and communication of all items pertaining to this Agreement, the construction and build process of the home closing, and warranty and service after closing.

BUYER / BORROWER \_\_\_\_\_ (SEAL) DATE OF OFFER \_\_\_\_\_

BUYER/ CO-BORROWER \_\_\_\_\_ (SEAL) DATE OF OFFER \_\_\_\_\_

SELLER: SEVENTY WEST BUILDERS, INC.

BY: \_\_\_\_\_, \_\_\_\_\_ (SEAL) DATE OF ACCEPTANCE \_\_\_\_\_

Buyer Initials \_\_\_\_\_

Seller Initials \_\_\_\_\_

**Plans / Specifications / Features  
(attached hereto)**

Buyer Initials \_\_\_\_\_

Seller Initials \_\_\_\_\_

# NOTICE OF INFORMATION

Until notice of changes of address is given to the other party in accordance with the provisions of this paragraph, notices shall be delivered, addressed or directed as follows:

BUYER(S):

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Email: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Email: \_\_\_\_\_

SELLER/BUILDER:     Seventy West Builders, Inc.  
                          P.O. Box 1070  
                          Hampstead, North Carolina 28443  
                          (910) 324-4447

## Confirmation of Agency / Notice Addresses

Buyer's Agent: \_\_\_\_\_ Listing Agent: \_\_\_\_\_

Agent Lic. #: \_\_\_\_\_ Agent Lic. #: \_\_\_\_\_

Firm: \_\_\_\_\_ Firm: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Firm Lic. #: \_\_\_\_\_ Firm Lic. #: \_\_\_\_\_

Phone: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_ Email: \_\_\_\_\_

Buyer Initials \_\_\_\_\_  
\_\_\_\_\_

Seller Initials

**Subdivision Street Disclosure**  
**NCGS 136-102.6(f)**

1. The status of the street which is presently named \_\_\_\_\_ upon which the Property fronts and from where the utilities to the Property lies is  **public** or  **private** (check one).

If applicable:

\_\_\_\_\_ It is the intention of the Developer/Declarant of the community that the streets and utilities be public and accepted into the state or municipal system for maintenance upon final completion.

2. Until such time as the street and utilities are accepted into a public street and utility system, **responsibility for installation and maintenance** shall remain with Developer /Declarant or with the appropriate Home Owners Association pursuant to the governing documents of the community.

3. Should the Developer/Declarant fail to construct the street or utilities or should a public entity fail to accept the street or utilities, **the sole remedy** of Buyer shall be against the Developer/Declarant.

5. This Disclosure is given in compliance with NCGS §136-102.6.

BUYER / BORROWER \_\_\_\_\_(SEAL) DATE OF OFFER \_\_\_\_\_

BUYER/ CO-BORROWER \_\_\_\_\_(SEAL) DATE OF OFFER \_\_\_\_\_

# OPTION DEPOSIT(S) RECEIPT(S) & ESCROW ACKNOWLEDGEMENT

Purchaser: \_\_\_\_\_

Subdivision: \_\_\_\_\_ Lot #: \_\_\_\_\_

If Buyer fails to obtain the financing specified in this Agreement, the Due Diligence Deposit shall be refunded to Buyer, however, the non-refundable Option Deposit(s) shall not be refunded to Buyer. All deposits will be applied to the Purchase Price at closing. The Due Diligence Deposit is refundable if Builder defaults in its obligations or as otherwise set forth in this Agreement. Buyer acknowledges and agrees that Builder shall have the right to use Option Deposit(s) funds and such Option Deposit(s) funds will not be segregated or set apart in any manner. Buyer recognizes and accepts this risk of depositing the Option Deposit(s) with Builder. Time is of the essence for all deposits required to be made under this Agreement

1. The undersigned hereby acknowledges receipt of the Option Deposit in the amount of \_\_\_\_\_ as of \_\_\_\_\_ (date).

Builder/Builder Representative Initials: \_\_\_\_\_

2. The undersigned hereby acknowledges receipt of the Option Deposit in the amount of \_\_\_\_\_ as of \_\_\_\_\_ (date).

Builder/Builder Representative Initials: \_\_\_\_\_

3. The undersigned hereby acknowledges receipt of the Option Deposit in the amount of \_\_\_\_\_ as of \_\_\_\_\_ (date).

Builder/Builder Representative Initials: \_\_\_\_\_

4. The undersigned hereby acknowledges receipt of the Option Deposit in the amount of \_\_\_\_\_ as of \_\_\_\_\_ (date).

Builder/Builder Representative Initials: \_\_\_\_\_

## **ESCROW ACKNOWLEDGEMENT**

The undersigned hereby acknowledges receipt of the Due Diligence set forth herein and agrees to hold said Due Diligence in accordance with the terms hereof.

Escrow Agent: \_\_\_\_\_

By: \_\_\_\_\_

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