

 **Wellman's Construction, Inc.**
OFFER TO PURCHASE AND CONTRACT

THIS OFFER TO PURCHASE AND CONTRACT is made and entered into this ____ day of _____, 20____, by and between WELLMAN'S CONSTRUCTION, INC. ("Seller") and the Buyer(s) identified in Paragraph 1(b).

WITNESSETH, that for valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, Buyer offers to purchase and Seller upon acceptance agrees to sell and convey the real property identified herein on the terms and conditions of this Offer to Purchase and Contract, and any addenda or modifications made and agreed to by the parties in writing (hereinafter collectively referred to as the "Contract.")

1. TERMS AND DEFINITIONS. The terms listed below shall have the respective meaning given them as set forth adjacent to each item:

a. "Seller": Wellman's Construction, Inc.

b. "Buyer(s)": _____

c. "Property": The Property shall include all that real estate described below together with all appurtenances thereto including the improvements located thereon and the fixtures and personal property listed in Paragraphs two (2) and three (3) below:

Street Address: _____
City: _____ Zip Code: _____
County: _____, North Carolina.

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

d. "Legal Description": [COMPLETE ALL APPLICABLE]
Plat Reference: Lot/Unit _____ Block/Section _____
As shown on Plat Book/Slide _____ Page(s) _____
PIN/PID _____
Some or all of the Property may be described in Deed Book: _____, Page _____.

e. "Purchase Price":
\$ _____ Paid in U.S. Dollars upon the following terms:
\$ 25,000.00 **NON-REFUNDABLE BUILDER DEPOSIT** made payable to Wellman's Construction, Inc. with this offer by
Cash Personal Check
official bank check Other _____
\$ _____ Earnest Money Deposit made payable to Escrow Agent named in Paragraph 1(g) by immediately available funds such as wire transfer or Certified Bank Check to be delivered to Escrow Agent no later than _____, **TIME BEING OF THE ESSENCE** with regard to said date.
\$ _____ BALANCE of the Purchase Price in cash at Settlement [some or all of which may be paid with loan proceeds].

Should Buyer fail to delivery any Builder Deposit by the Effective Date, or should any check or other funds paid by Buyer be dishonored, for any reason, by the institution upon which 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 unilateral right to terminate this Contract upon written notice to Buyer.

BUYER INITIALS

SELLER INITIALS

- f. “Builder Deposit”: The Builder Deposit is non-refundable and shall be promptly provided to Seller in lieu of a due diligence fee. The Builder Deposit shall be promptly paid directly to Seller (not Escrow Agent) and delivered to Seller along with Buyer(s) executed copy of this Contract. The Builder Deposit is not an Earnest Money Deposit and will be used by Seller to offset the initial construction costs of the Property. The Building Deposit shall be credited to the Purchase Price of the Property at the Property purchase settlement. The Builder Deposit shall be refundable only in the event of a material breach of Contract by Seller, or pursuant to the RISK OF LOSS clause contained herein; in such event, Seller shall promptly return the Builder Deposit to Buyer(s). Should Buyer fail to deliver the Builder Deposit or any other deposit required herein, Buyer shall have seven (7) days after written notice to from Seller, or Seller’s Agent, to deliver the Builder Deposit. In the event Buyer(s) do not timely deliver the Builder Deposit, Seller shall have the unilateral right to terminate this Contract upon written notice to Buyer.
- g. “Earnest Money Deposit”: The Earnest Money Deposit, and any additional earnest monies paid in connection with this transaction (collectively referred to as “Earnest Money Deposit” shall be deposited and held in escrow by the Escrow Agent until closing, at which time it will be credited to Buyer, or until this Contract is otherwise terminated. EARNEST MONEY SHALL BE NON-REFUNDABLE UNLESS: (i) this offer is not accepted; or (2) a material breach of this Contract by Seller. In the event of a material breach of this Contract by Seller, the Earnest Money Deposit shall be refunded to Buyer upon Buyer’s request, and such return shall constitute the sole and only remedy available to Buyer for such breach. In the event of breach of this Contract by Buyer, this Earnest Money Deposit shall be immediately paid to Seller upon Seller’s request, but such return shall not affect any other remedies available to seller for such breach. If legal proceedings are brought by Buyer or Seller against the other to recover the Earnest Money Deposit, the prevailing party in the proceeding shall be entitled to recover from the non-[prevailing party reasonable attorney fees and court costs incurred in connection with the proceeding.
- h. “Escrow Agent”: The Escrow Agent is Rizzo & Blackburn, PLLC, 115 Triton Lane, Surf City, NC, closings@rizzoblackburnlaw.com, (910) 329-1233

[NOTE: In the event of a dispute between Seller and Buyer over the disposition of the Earnest Money Deposit held in trust by the Escrow Agent, the funds must be held in trust until such time as the Escrow Agent receives a written release executed by the parties. Notwithstanding the foregoing, if the parties hereto are unable to reach a resolution regarding the disposition of the Earnest Money Deposit; then in such event, pursuant to N.C. Gen. Stat. §93a-12, the Escrow Agent must deposit the funds with the Clerk of Court in the County where the Property is located, where the parties may petition the court to make a ruling on the disposition of the disputed funds.]

- i. “Effective Date”: The date that: (i) the last one of the Buyer and Seller has signed or initialed this offer or the final counteroffer, if any, and (ii) such signing or initializing is communicated to the party making the offer or counteroffer, as the case may be.
- j. “Settlement”: The proper execution and delivery to the settlement agent of all documents necessary to complete the transaction contemplated by this Contract, including the deed, settlement statement, deed of trust, and other loan or conveyancing documents, and the settlement agent’s receipt of all funds necessary to complete such transaction.
- k. “Settlement Date”: The parties agree that Settlement will take place ten (10) days after the receipt of the Certificate of Occupancy (the “Settlement Date”), unless otherwise agreed to in writing, at the Escrow Agent’s Office listed above in paragraph 1(h).
- l. “Closing”: The legal process which results in the transfer of title to the Property from Seller to Buyer. Closing includes the following steps: (i) the Settlement (defined above); (ii) the completion of a satisfactory title update to the Property following the Settlement; (iii) the settlement agent’s receipt of authorization to disburse all necessary funds; and (iv) recordation in the appropriate

county registry of the deed(s) and Deed(s) of trust, if any, which shall take place as soon as is reasonably possible for the settlement agent after Settlement. Upon such recordation of the deed(s) and Deed(s) of trust, if any, closing shall be deemed completed and the proceeds of the sale shall be disbursed by the settlement agent in accordance with the settlement statement and the provisions of NC Gen. Stat. Chapter 45A. If the title update should reveal unexpected liens, encumbrances or other title defects, or if the settlement agent is not authorized to disburse all necessary funds, then Closing shall be suspended and the Settlement deemed delayed under Paragraph 10 below.

- m. "Special Assessments": A charge against the Property by a governmental authority in addition to ad valorem taxes or by an owners' association in addition to any regular assessment (dues), either of which may be a lien against the Property. A Special Assessment may be either proposed or confirmed.
 - i. "Proposed Special Assessment": A Special Assessment that is under formal consideration but which has not been approved prior to settlement.
 - ii. "Confirmed Special Assessment": A Special Assessment that has been approved prior to Settlement whether or not it is fully payable at time of Settlement.

2. PROPERTY CONSTRUCTION.

- a. Construction Completion: Seller shall complete or cause to be completed the construction of the residence on the Property in accordance with the plans and specifications agreed to by Seller 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.
- b. Changes/Substitutions: Seller reserves the right to make any changes or substitutions as Seller deems necessary or desirable on the plans and specifications, construction, materials, fixtures, and other integrals which are of substantially equal quality and utility and which meet the approval of the lender, the VA/FHA, and the appropriate local governmental authorities having jurisdiction. Seller covenants that all work to be performed shall comply with all local requirements for building permits, inspections, and zoning.
- c. Purchase Price: The Purchase Price set forth above includes the purchase price of the lot, house, and all options as provided by the attached Standard Features attached hereto as Addendum A.
- d. Price Escalation: The Contract purchase price specified herein for this residential construction project has been calculated based on current material and labor prices, and availability. Notwithstanding the purchase price specified herein, or any other provision contained in this Contract, the market for building materials is volatile, and sudden price increases could occur. The Seller/Builder agrees to use his best efforts to obtain the lowest possible prices from available building material suppliers, but should there be an increase in labor or material prices after execution of this Contract, the Buyer hereby agrees to pay the cost increase to the Seller/Builder. Any claim by the Seller/Builder for payment of a cost increase, as provided above, shall require written notice delivered by the Seller/Builder to the Buyer stating the increased cost, the building material or materials in question, and the source of supply, supported by invoices or bills of sale. Should Buyer be unwilling or unable to pay the increase in labor or material costs; then in such event, Buyer or Seller/Builder may terminate this Contract by providing written notice within _____ business days. Should the Contract terminate for the reasons contained in this Price Escalation provision, _____, shall be returned to Buyer.

- e. Options/Upgrades: “Cash Options” selected by Buyer shall be set forth on the Contract Addendum for Options/Upgrades (“Addendum B”) attached. Any subsequent Options/Upgrades selected by Buyer and Seller shall be documented by a Contract Addendum and Buyer agrees to join Seller in the execution of any additional Change Orders, Contracts, or Addendums as required by the Seller/Builder. Any subsequent Change Order listing options shall become part of this Contract and shall state the mod 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. All Upgrade Cash Options paid to Seller are non-refundable under any circumstance. In executing this Contract, Buyer acknowledges that Buyer has reviewed all available options offered on the model type they are purchasing.
- f. 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 for the Property including, the lot, the improvements, and the upgrades. In the event the appraised value does not cover the additional upgrade options, Buyer agrees to pay the difference between the appraised value and the Purchase price, in cash, upon completion of the appraisal and all parties agree that the Buyer may not void this Contract if the appraisal does not cover the same when added to this Contract Purchase Price. In the event Seller takes a cash deposit from Buyer for any financial cash options all parties agree that this deposit is non-refundable, if Buyers do not close, for any reason.
- g. Appraisal Release: EXECUTION OF THIS OFFER TO PURCHASE AND CONTRACT BY BUYER(S) HEREBY AUTHROIZES BUYER(S)’ LENDER, AGENT AND/OR LLOAN OFFICER TO RELEASE TO SELLER A COPY OF THE BUYER(S)’ APPRAISAL UPON COMPLETION.
- h. Trees/Shrubs/Grading: Seller reserves the right in its discretion to leave or remove any trees required for the completion of the improvements on the Property. Seller disclaims any obligation to maintain, repair, or guarantee the life of existing trees, and/or any new trees or shrubbery that may be landscaped at the Property. Buyer agrees that the grade of the Property may be altered from the original grade in accordance with grading plans approved by the appropriate governmental authorities. Seller does not guarantee the germination of grass seed.
- i. Model Home: Any model home is displayed for illustrative purposes only, 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 Contract unless Seller specifically agrees in writing to deliver the same as part of the Purchase Price.
- j. Initial & Final Walk-Through: An Initial Walk-Through with the Seller’s representative is required prior to closing and must be scheduled twenty-four (24) hours in advance and held between the hours of 9:00 a.m. to 4:00 p.m., Tuesday through Friday. Any defects agreed upon by the Seller’s representative will be itemized on a Punch List and substantially corrected prior to Settlement. A Final Walk Through shall occur the day of or the day before Settlement and shall confirm completion of the Initial Walk-Through defects. Any defects agreed upon by the Seller’s representative will be corrected within thirty (30) days of closing, unless otherwise specified. Punch list items shall not delay the Closing. It is understood that any walk through is to be conducted between the Weller’s representative, the Buyer and the Buyer’s agent only.
- k. Construction/Purchase Disputes: In the event that Buyer and Seller are unable to reach a mutual agreement on the resolution of any issue related to the construction and/or purchase of the Property herein described or Buyer shall fail to materially comply with any reasonable request of the Seller

related to the construction and/or purchase of the Property; then, in such event, Seller, in his sole discretion, may declare this Contract null and void. If Seller chooses to invoke this clause Seller shall return to Buyer the Earnest money and cash option deposits less any expenses incurred by Seller related to the construction and/or purchase of the Property herein described. It is further agreed that in the event the Seller invokes his rights under this clause, the Seller shall pay the Buyer the sum of One Hundred and No/100 Dollars (\$100.00) which shall constitute the sole and total damages of any type to which Buyer is entitled.

- l. Color Selection: Depending on the construction status of the Property, the Buyer may have the opportunity to select colors from the Seller's selections. In such a circumstance, the Buyer (or Buyer's Agent) shall contact the Seller at Wellman's Construction Showroom for a color selection appointment. COLOR SELECTIONS SHALL BE COMPLETED WITHIN FIVE (5) DAYS OF THE EXECUTION OF THIS CONTRACT. FAILURE TO COMPLETE TIMELY COLOR SELECTIONS MAY RESULT IN COLORS BEING SELECTED AT SELLER'S DISCRETION.

- m. Construction Completion: The Property construction shall be deemed complete when (i) the Property has been completed substantially in accordance with the plans, minor punch list items excluded, and (ii) a final Certificate of Compliance allowing occupancy has been issued by the appropriate governmental authority having jurisdiction over the Property construction.

- n. 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 be 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 artistic renderings of similar homes and are not to be considered full accurate representations of the actual constructed homes. Items depicted in said marketing materials may not be standard items for Buyer's new home.

3. BUYER REPRESENTATIONS.

a. Buyer Contact Information:

Full Name: _____
Phone: _____
Email: _____
Address: _____

Full Name: _____
Phone: _____
Email: _____
Address: _____

For additional Buyers, provide the above information on an additional sheet attached to this Contract.

- b. Loan: Buyer does does not have to obtain a new loan 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 will be at a Fixed Rate Adjustable rate mortgage in the principal amount of \$ _____ plus any 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."

- i. If Buyer represents that Buyer does not have to obtain a new loan to purchase the Property, Buyer shall provide documentation to Seller which demonstrates that Buyer will be able to close on the Property without the necessity of obtaining a new loan.
- ii. If Buyer is to obtain a loan then Buyer must provide to Seller a Loan Commitment Letter within seven (7) business days of the full execution of this Contract. If Buyer shall fail to provide said Letter such failure shall constitute a material breach of this Contract. Unless Seller agrees to an extension in writing, then Seller may void this Contract and retain all Earnest Monies and Option/Upgrade funds collected as damages for Buyers breach.
- c. Other Property: Buyer does does not have to sell or lease other real property in order to qualify for a new loan or to complete the Property purchase. [NOTE: *If Buyer does have to sell, Buyer shall include a Contingent Sale Addendum with this Contract.*]
- d. Performance of Buyer's Financial Obligations: To the best of Buyer's knowledge, there are no other circumstances or conditions existing as of the date of this Contract that would prohibit Buyer from performing Buyer's financial obligations in accordance with this Contract, except as may be specifically set forth herein.
- e. Property Disclosure: Seller is not required to provide a N.C. Residential Property Disclosure State for this transaction because the Property is new construction which has never been inhabited.

4. BUYER OBLIGATIONS.

- a. Owners' Association Fees/Charges: Buyer shall pay any fees required for confirming account payment information on any owners' association dues or assessment payments or prorations and any charge made by the owners' association in connection with the disposition of the Property to Buyer, including, but not limited to, any owners' association transfer fees, association report fees, capital contribution fees, and/or any similar owner's association fees. Buyer shall not be responsible for fees incurred by Seller in completing any owners' association disclosures or addendums.
- b. Responsibility for Proposed/Special Assessments: Buyer shall take title to the Property subject to all Proposed Special Assessments disclosed by Seller herein, if any.
- c. Responsibility for Certain Costs: Buyer shall be responsible for all costs with respect to any loan obtained by Buyer, appraisal, title search, title insurance, recording the deed, any lender required escrow prepaid balances and for preparation and recording of all instruments required to secure the balance of the purchase price unpaid at Settlement.
- d. Site Visits: Buyer shall not visit the jobsite 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 construction 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. Buyers shall not perform any work on the home or lot while the home is under construction.
- e. Appraisal: If an appraisal is performed, Buyer shall provide to Seller a copy of said appraisal of the Property the earlier to occur of: (i) three (3) days of completion; or (ii) the Settlement date. Settlement shall not occur without the Seller's receipt of the appraisal.
- f. Community Covenants and Restrictions: Buyer acknowledges receipt of covenants and restrictions affecting the Property, if any.

5. SELLER REPRESENTATIONS.

- a. Ownership: Seller represents that Seller: has owned the Property for at least one (1) year; has owned the Property for less than one (1) year; or does not yet own the Property.
- b. Primary Residence: Seller represents that the Property is not Seller's primary residence.
- c. Proposed Assessments: To the best of Seller's knowledge, there are no Proposed Special Assessments except as follows: [Insert "None" or the identification of such assessments, if any]

- d. Confirmed Assessments: Seller warrants that as of the date of this Contract, Seller has received no notification of a Confirmed Special Assessment, except as follows: [Insert "None" or the identification of such assessments, if any]

- e. Owners' Association(s) and Dues: To the best of Seller's knowledge, ownership of the Property subjects does not subject Buyer to regulation by one (1) or more owners' association(s) and governing documents, which impose various mandatory covenants, conditions, and restrictions upon the Property and Buyer's enjoyment thereof, including, but not limited to obligations to pay regular assessments or dues and/or special assessments. If there is an owners' association, then an Owners' Association Disclosure and Addendum (Standard Form 2A12-T) shall be completed by Seller, at Seller's expense, and must be attached as an addendum to this Contract.

6. SELLER OBLIATIONS.

- a. Evidence of Title: Seller agrees to use best efforts to deliver to Buyer as soon as reasonably possible after the Effective of this Contract, copies of all title information in the possession of Seller, including, but not limited to: title insurance policies; attorney's opinions on title, surveys, covenants, deeds, notes, deeds of trust, and any known easements on the Property.
- b. Property Access: Upon receipt of the Property Certificate of Occupancy, Seller shall provide Buyer or Buyer's agents, reasonable access to the Property (including working, existing utilities) through the earlier of Closing or possession by Buyer.
- c. Removal of Seller's Property: Seller shall remove, by the date possession is made available to Buyer, all personal property which is ot a part of the purchase and all garbage and debris from the Property.
- d. Affidavit and Indemnification Agreement: Seller shall furnish at Settlement an affidavit and indemnification agreement in form satisfactory to Buyer's title insurer, if any, executed by Seller and any personal or entity who has performed or furnished labor, services, materials, or rental equipment, as described in N.C. Gen. Stat. §44A-8 to the Property within One Hundred and Twenty Days (120) prior to the date of Settlement verifying that each such person or entity has been paid in full and agreeing to indemnify Buyer, Buyer's lender(s) and Buyer's title insurer against all loss from any cause or claim arising therefrom, unless the Seller has an agreement with a title insurer so that all or part of such lien waivers are not required.

- e. Payment and Satisfaction of Liens: All deeds of trust, liens, and other charges against the Property, not assumed by Buyer, must be paid and satisfied by Seller prior to or at Settlement such that cancellation may be promptly obtained following Closing. Seller shall remain obligated to obtain any such cancellations following Closing.
 - f. Title/Legal Access: Seller shall execute and deliver a GENERAL WARRANTY DEED for the Property at Settlement unless otherwise stated herein, which shall convey fee simple marketable and insurable title, free of all liens and encumbrances except: ad valorem taxes for the current year (prorated through the Settlement date); utility easements, 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 in writing. The Property must have legal access via a public or private right of way.
 - g. Deed, Excise Taxes: Seller shall pay for the preparation of the deed and all other documents necessary for Seller to perform Seller's obligations under this Contract, and for state and local excise taxes required by law. Title vesting on the deed shall be made to:

 - h. Seller Paid Closing Costs: Seller shall pay up to \$_____ towards Buyer's closing expenses, including any FHA/VA lender and inspection costs that Buyer is not permitted to pay, less any portion disapproved by Buyer's lender.
 - i. Loan Commitment Letter: Buyer shall provide a loan commitment letter from _____ ("Lender") within ____ days of the execution of this Contract. Buyer is not required to use said lender for the Property purchase.
 - j. Payment of Confirmed Special Assessments: Seller shall pay all Confirmed Special Assessments, if any, provided that the amount thereof can be reasonably determined or estimated.
 - k. Late Listing Penalties: All Property tax listing penalties through the Settlement date, if any, shall be paid by Seller.
 - l. Seller Failure to Comply or Breach: Should Seller fail to materially comply with Seller's obligations contained in Paragraph 6 *supra*, or Seller materially breaches this Contract; then in such event, Buyer may elect to terminate this Contract as a result of such failure or breach. In such event, the Earnest Money Deposit shall be returned to Buyer as its sole remedy for such breach, and this Contract shall be terminated.
 - m. Wood Infestation Report: At the time of closing, Seller shall provide Buyer with a letter or a termite treatment report from a pest control company licensed in the State where the Property is located stating that the main dwelling has been treated for subterranean termite infestation with a yearly renewable warranty.
 - n. Survey: The Seller DOES NOT provide to Buyer a survey of the Property.
7. PRORATIONS AND ADJUSTMENTS. Unless otherwise provided, the following items shall be prorated through the Settlement date and adjusted accordingly between the parties:
- a. Real Property Taxes: Ad valorem taxes on the Property shall be prorated on a calendar year basis;
 - b. Personal Property Taxes: Ad valorem taxes on personal property for the entire year shall be paid by Seller unless the personal property is conveyed to Buyer, in which case, the personal property taxes shall be prorated on a calendar year basis;

- c. Rents: Rents, if any, for the Property;
 - d. Dues: Owners' association dues;
8. WARRANTY. Seller hereby warrants for a period of one (1) year, as described below, to the Buyer that the dwelling to be constructed on the Property, together with all its fixtures will be:
- a. Constructed in substantial conformity with the plans and specifications (including any amendments thereof, or changes and variations therein) which will or have been approved by the Buyer; and
 - b. Constructed in a workmanlike manner free from substantial defects in workmanship and materials, and free from major structural defects.

At Seller's sole option, Seller may either: (i) make necessary repairs or corrections, (ii) replace any faulty or nonconforming item or condition, or (iii) pay the Buyer the reasonable costs of such repair, correction or replacement.

This Warranty shall apply to such instances of substantial nonconformity as to which the Buyer(s) shall have given written notice to the Seller at any time or times within the earlier to occur of: (i) one (1) year from the date of the original conveyance of title to such Buyer; or (ii) the date of initial occupancy. Provided further, however, that in the event (i) Buyer acquires title to the Property prior to the completion of construction of the dwelling thereon, such notice of nonconformity to the Seller/Builder may be given any time within one (1) year from the date of completion or initial occupancy of such dwelling, whichever first occurs. The term "dwelling" as used herein shall be deemed to include all improvements or appurtenances set forth in the plans and specifications.

- c. Exclusions of Warranties and Tort Liability; Indemnification: THE PARTIES AGREE THAT THE EXPRESS WARRANTY DESCRIBED ABOVE SHALL BE IN LIEU OF ANY OTHER WARRANTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF HABITABILITY OR OF WORKMANLIKE CONSTRUCTION. THE PARTIES FURTHER AGREE THAT THE SAID EXPRESS WARRANTY SHALL BE IN LIEU OF ANY LIABILITY OR DAMAGES IN TORT OR NEGLIGENCE FROM THE SELLER TO THE BUYER, AND THE BUYER HEREBY RELEASES AND FOREVER DISCHARGES THE SELLER, HIS AGENTS, AND SERVANTS, OF AND FROM ANY AND ALL ACTIONS, CLAIMS, DEMANDS, IN TORT OR NEGLIGENCE NOW EXISTING OR WHICH MAY HEREAFTER ARISE OUT OF THIS CONTRACT AND TRANSACTION, INCLUDING ANY AND ALL CONSEQUENCES THEREOF NOW EXISTING, OR WHICH MAY HEREAFTER BECOME KNOWN, WHETHER OR NOT SUCH CONSEQUENCES ARE KNOWN OR ANTICIPATED.

This is not a warranty as to cosmetic appearance beyond what has been agreed to by the parties in writing and does not include any cosmetic items not noted at the time of final inspection by the Buyer prior to occupancy. This warranty does not include a warranty against damages to the premises occurring after Closing as a result of Buyer's negligence, including, but not limited to, frozen pipes, frozen hose bibs, plant, tree, or other shrubbery damage due to the elements. In addition, cracks in concrete are specifically excluded from this warranty. The Seller may at Seller's option, elect to fix or repair any items cosmetic or otherwise. Such action by the Seller shall be at Seller's sole discretion and shall not constitute an acceptance or assumption of responsibility by the Seller for the repair of such items or similar items. Further Seller may elect to perform any repair after the one (1) year term of the warranty without such action extending the warranty beyond the initial term of one (1) year. All disputes and controversies of every kind and nature between the parties to this Warranty arising out of or in nonperformance, enforcement, operation, breach,

continuance or termination of this Warranty shall be submitted to arbitration. Any such arbitration shall be conducted pursuant to the rules and procedures of the American Arbitration Association. The arbitration costs and expenses of each party shall be borne by that party. The arbitration meeting shall be held in Raleigh, North Carolina, on thirty (3) days' notice to the parties. The law of evidence of the State of North Carolina survive closing and delivery of the deed. If this warranty agreement shall conflict with any other warranty regarding this dwelling and property, this Warranty agreement shall govern. Seller shall assign and deliver to Buyer at closing all guaranties and warranties of all components comprising the Property to the extent the same are assignable.

9. RISK OF LOSS. The risk of loss or damage by fire or other casualty to the Property prior to Closing shall be upon Seller. If the improvements on the Property are destroyed or materially damaged prior to Closing, Buyer may terminate this Contract by written notice delivered to Seller, or Seller's agent and the Earnest Money Deposit shall be refunded to Buyer. Seller is advised not to cancel existing insurance on the Property until after confirming recordation of the deed.

10. DELAY IN SETTLEMENT/CLOSING.

a. Closing Date: This transaction is to be closed within ten (1) days after notification from Seller to Buyer that the construction of the home has been completed. The anticipated completion date and Settlement date shall be on or before Within 10 days of CO, but the parties recognize that adverse weather, unavailability of materials, strikes, and other conditions beyond the reasonable control of Seller 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, Buyer shall have the right to declare this Contract null and void and thereupon Seller shall return to Buyer the Earnest Money Deposit and Buyer's and Seller'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.

b. Closing Agent and Costs: The Closing shall be conducted by and at the offices of Rizzo & Blackburn, PLLC, 115 Triton Lane, Surf City, NC. Seller and Buyer hereby acknowledge and agree to pay their respective closing costs as customarily allocated in North Carolina real estate transactions. No settlement services company or title insurance company shall perform a paid closing in North Carolina.

11. POSSESSION: Possession, including all means of access to the Property, shall be delivered upon Closing unless otherwise provided below. In the event possession is NOT to be delivered upon Closing the parties shall execute a Buyer Possession Before Closing Agreement.

12. OTHER PROVISIONS AND CONDITIONS. CHECK ALL STANDARD ADDENDA THAT MAY BE A PART OF THIS CONTRACT, IF ANY, AND ATTACH HERETO. ITEMIZE ALL OTHER ADDENDA TO THIS CONTRACT, IF ANY, AND ATTACH HERETO. [**NOTE: Pursuant to North Carolina law, real estate brokers are not permitted to draft conditions or contingencies to this Contract.**]

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|---|---|
| <input type="checkbox"/> Additional Provisions Addendum | <input type="checkbox"/> Owners Association Disclosure Addendum |
| <input type="checkbox"/> Contingent Sale Addendum | <input type="checkbox"/> FHA/VA Financing Addendum |
| <input checked="" type="checkbox"/> Addendum A – Standard Features | <input checked="" type="checkbox"/> Addendum B – Options/Upgrade Addendum |
| <input checked="" type="checkbox"/> Addendum C – Mandatory Floor Plan | |
| <input type="checkbox"/> Other <u>Exhibit A Declaration of Common Area and Common Structure Maint Agreement</u> | |
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13. ASSIGNMENTS. This Contract may not be assigned without the express written consent of all parties hereto except in connection with a Tax-Deferred exchange, but if assigned by agreement, then this Contract shall be binding on the assignee and assignee's heirs, successors, and/or legal representatives.
14. TAX DEFERRED EXCHANGE. In the event Buyer or Seller desire to effect a tax-deferred exchange in connection with the conveyance of the Property, Buyer and Seller agree to cooperate in effecting such exchange; provided, however, that the exchanging party shall be responsible for all additional costs associated with such exchange, and provided further, that a non-exchanging party shall not assume any additional liability with respect to such tax-deferred exchange. Seller and Buyer shall execute such additional documents, including assignment of this Contract, in connection therewith, at no cost to the non-exchange party, as shall be required to give effect to this provision.
15. PARTIES. This Contract shall be binding upon and shall inure to the benefit of Buyer and Seller and their respective heirs, successors, and/or assigns. As used herein, words in the singular include the plural and the masculine includes the feminine and neuter genders, as appropriate.
16. SURVIVAL. If any provision herein contained which by its nature and effect is required to be observed, kept or performed after the Closing, it shall survive the Closing and remain binding upon and for the benefit of the parties hereto until fully observed, kept or performed.
17. ENTIRE AGREEMENT. This Contract contains the entire agreement of the parties and there are no representations, inducements, or other provisions other than those expressed herein. All charges, additions, or deletions hereto must be in writing and signed by all parties. Nothing contained herein shall alter any agreement between a Realtor or broker and Seller or Buyer as contained any listing agreement, Buyer agency agreement, or any other agency agreement between them.
18. NOTICE. Any notice or communication to be given to a party herein may be given to the party or such party's agent. Any written notice or communication in connection with the transaction contemplated by this Contract may be given to a party or a party's agent by sending or transmitting it to any mailing address, email address, or fax number set forth in the "Notice Address" section below. Seller and Buyer agree that the "Notice Information" and "Escrow Acknowledgment" section below shall not constitute a material part of this Contract, and that the addition or modification of any information therein shall not constitute a rejection of an offer or the creation of a counteroffer.
19. EXECUTION. This Contract may be signed in multiple originals or counterparts, all of which together constitute one and the same instrument and the parties adopt as their seals the word "SEAL" beside their signatures below.
20. COMPUTATION OF DAYS. Unless otherwise provided for purposes of this Contract, the term "days" shall mean consecutive calendar days, including Saturdays, Sundays, and holidays, whether federal, state, local, or religious. For the purpose 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 Contract was required to be performed or made.

IF A BUYER DOES NOT UNDERSTAND THIS CONTRACT, OR FEELS THAT IT DOES NOT PROVIDE FOR THE BUYER'S LEGAL NEEDS, THE BUYER SHOULD CONSULT WITH A NORTH CAROLINA REAL ESTATE ATTORNEY BEFORE SIGNING THIS CONTRACT.

In witness whereof we sign this Contract voluntarily, without undue duress, intending to be bound by the terms contained herein.

BUYER(S):

Buyer's Signature
Printed Name: _____

Buyer's Signature
Printed Name: _____

Date: _____

SELLER: Wellman's Construction, Inc.

By: _____
David Wellman, President
Date: _____

ACKNOWLEDGMENT OF RECEIPT OF MONIES

SELLER: Wellman's Construction, Inc.

BUYER: _____

PROPERTY ADDRESS: _____

LISTING AGENTACKNOWLEDGMENT OF RECEIPT OF NON-REFUNDABLE BUILDER DEPOSIT
Paragraph 1(f) of this Contract provides for the payment of a non-refundable Builder Deposit in the amount of \$25,000.00, receipt of which Listing Agent hereby acknowledges.

Date: _____ Firm: _____
By: _____
(Signature)
Printed Name: _____

SELLER AGENTACKNOWLEDGMENT OF RECEIPT OF NON-REFUNDABLE BUILDER DEPOSIT
Paragraph 1(f) of this Contract provides for the payment of a non-refundable Builder Deposit in the amount of \$25,000.00, receipt of which Seller hereby acknowledges.

Date: _____ WELLMAN'S CONSTRUCTION, INC.
By: _____
(Signature)
Printed Name: _____

ESCROW AGENTACKNOWLEDGMENT OF RECEIPT OF EARNEST MONEY DEPOSIT
Paragraph 1(g) of this Contract provides for the payment of an Earnest Money Deposit in the amount of \$ _____, receipt of which is hereby acknowledged by Escrow Agent.

Date: _____ RIZZO & BLACKBURN, PLLC
By: _____
(Signature)
Printed Name: _____

ESCROW AGENTACKNOWLEDGMENT OF RECEIPT OF ADDITIONAL EARNEST MONEY DEPOSIT
Paragraph 1(g) of this Contract provides for the payment of an Additional Earnest Money Deposit in the amount of \$ _____, receipt of which is hereby acknowledged by Escrow Agent.

Date: _____ RIZZO & BLACKBURN, PLLC
By: _____
(Signature)
Printed Name: _____

MANDATORY NOTICE INFORMATION

INSERT THE ADDRESS AND/OR ELECTRONIC DELIVERY ADDRESS OF EACH PARTY AND AGENT APPROVED FOR THE RECEIPT OF ANY NOTICE CONTEMPLATED OR REQUIRED BY THIS CONTRACT. INSERT "N/A" FOR ANY WHICH ARE NOT APPROVED.

BUYER NOTICE ADDRESS:

Mailing Address:

Buyer Contact Numbers:

Home Phone: _____

Mobile: _____

Other: _____

SELLING AGENT NOTICE ADDRESS:

Firm Name: _____

Acting as Agent for: Buyer Seller Dual Agent

Broker License No. _____

Fax No. _____

Agent Phone No. _____

Agent Email: _____

SELLER NOTICE ADDRESS:

Mailing Address:

Seller or Seller's Agent's Phone Number:

LISTING AGENT NOTICE ADDRESS:

Firm Name: _____

Acting as Agent for: Buyer Seller Dual Agent

Broker License No. _____

Fax No. _____

Agent Phone No. _____

Agent Email: _____