



RESIDENTIAL REAL ESTATE PURCHASE AND SALE AGREEMENT

Instructions on the use of this form: Where there are boxes (☐) that allow selection of different terms in this Agreement, check the box which precedes the term chosen to apply. **Do not line out, interlineate or otherwise alter any of the pre-printed terms contained in this Agreement;** any changes to the standard, approved terms must be made by completing an Additional Terms Addendum which refers to the terms to be modified, and must be separately approved by Seller.

SPECIFIC TERMS

A. DATE. _____.

B. BUYER. _____ ☐ single person ☐ husband ☐ wife

_____ ☐ single person ☐ husband ☐ wife

C. SELLER. ☐ Soundbuilt Northwest, LLC. ☐ Sound Built Townhomes, LLC

D. PURCHASE PRICE. The Purchase Price is _____ Dollars (\$_____). The Total Purchase Price to be paid by Buyer is also described in the General Terms, Paragraphs 1 (Purchase Price), 2 (Financing) and 5 (Décor Selections). Seller agrees to apply at Closing a credit in the sum of \$_____ against the Total Purchase Price to reduce the Buyer's costs in this transaction. General Terms Paragraph 2B describes the terms on which a credit will be given by Seller to Buyer at Closing.

☐ If the box preceding this sub-paragraph is checked, this Agreement is contingent upon Buyer obtaining a ☐ Conventional ☐ VA ☐ FHA purchase loan (if none of these three boxes are checked, a conventional purchase loan). Buyer agrees to pay \$_____ down (if not filled in, 10% of the Total Purchase Price), including the Earnest Money Deposit, at Closing. General Terms Paragraph 2 describes the responsibilities of Buyer to obtain financing for this transaction.

E. EARNEST MONEY DEPOSIT. \$_____ (\$3,000.00 if not filled in). General Terms paragraph 3 (Earnest Money Deposit) also applies to the delivery, application and disposition of the Earnest Money Deposit.

F. PROPERTY DESCRIPTION. General Terms Paragraph 4 shall apply to the description of the property which is the subject of this Agreement ("Property"). The common address of the Property is: _____. The abbreviated legal description of the Property is described in the paragraph selected below:

☐ **Lot** _____, _____. Buyer has selected Plan _____, Model _____, Elevation _____ with a ☐ one car ☐ two car ☐ three car garage. If this paragraph is selected, the Property is a single-family detached home which will be constructed on its own lot, is not built on a condominium airspace lot, and the provisions of General Terms Warranty paragraph 6K -1 shall apply.

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- Town home Lot** ____, _____, _____. Buyer has selected Plan _____, Model _____, Elevation _____ with no a one car a two car garage. If this paragraph is selected, the Property is a town home that will be constructed on its own lot containing at least one exterior surface which adjoins another home and lot, is *not* a condominium, and the provisions of General Terms Warranty paragraph 6K -1 shall apply.
- Condominium Unit** No. _____, _____. Buyer has selected Plan _____, Model _____, Elevation _____ with no a one car a two car garage. If this paragraph is selected, the Property **is a condominium established pursuant to RCW 64.34**, shares exterior walls in common with other homes, or is constructed on an airspace condominium lot, and General Terms Warranty paragraph 6K-2 shall apply.

G. STATUS OF CONSTRUCTION AND CLOSING. The estimated completion date for construction of the home on the Property is _____, subject to change based upon General Terms Paragraph 6. The status of construction of the home on the Property is identified below. The Selling Licensee shall check the box describing the status of construction applicable to this home; if no box is checked, Buyer authorizes Seller to check the appropriate box, without further signature or agreement by Buyer. If the box for "Substantially Complete" is chosen, the Closing Date shall be set forth on the line marked "Closing Date." Otherwise, the Closing Date shall be determined pursuant to General Terms Paragraph 7, based upon the status of construction for this transaction.

- LOT CONTRACT, PRE-CLOSING
 CONSTRUCTION NOT YET COMMENCED
 UNDER CONSTRUCTION
 SUBSTANTIALLY COMPLETE; Closing Date is on or before _____.

H. RECEIPT OF DOCUMENTS. Buyer does or does not acknowledge delivery and receipt of the following documents, as indicated below by checking the applicable boxes:

- | | | |
|-----------------------------------|----------------------------------------|---------------------------------------------------------------------------------|
| <input type="checkbox"/> received | <input type="checkbox"/> not received: | Conditions, Covenants, and Restrictions ("Covenants")* |
| <input type="checkbox"/> received | <input type="checkbox"/> not received: | Public Offering Statement** |
| <input type="checkbox"/> received | <input type="checkbox"/> not received: | HBW 2-10 Warranty Booklet |
| <input type="checkbox"/> received | <input type="checkbox"/> not received: | Buyer's Guide and Homeowners' Manual |
| <input type="checkbox"/> received | <input type="checkbox"/> not received: | Real Property Transfer Disclosure Statement –
Environmental Disclosures Only |

* Applicable only if the property is described as a Lot or Townhome in Specific Term Paragraph F

**Applicable only if the property is described as a Condominium

If not received by Buyer, Seller or Listing Agent shall supply the missing document within ten (10) days of the date of this Agreement. The documents shall be deemed approved unless within seven (7) days of the date of their receipt Buyer gives Seller written notice of disapproval. Delivery of any of the documents described above to the Selling Licensee shall be deemed receipt by the Buyer.

I. ADDITIONAL TERMS TO THIS AGREEMENT. Seller and Buyer agree that the following additional documents, when executed by the parties, are or will be a part of this Agreement:

- | | |
|-----------------------------------------------------------------|----------------------------------------------------------|
| <input checked="" type="checkbox"/> Design Center Addendum | <input type="checkbox"/> Additional Terms Addendum |
| <input type="checkbox"/> Contingency – Sale of Buyer's Property | <input type="checkbox"/> Smoke Detector Certification*** |
| <input type="checkbox"/> Other _____ | ***Snohomish County Only |

INITIALS: BUYER _____ BUYER _____ SELLER _____

J. ACKNOWLEDGMENT OF LIMITATION UPON BUYER REMEDIES. Buyer acknowledges the limitations placed upon Buyer's remedies for Seller's default under this Agreement, described in General Terms Paragraph 12. Buyer has consulted, or waived the opportunity for consultation, with legal counsel to determine the effect of such limitations, and elects to proceed with this Agreement with the limitations upon Buyer's remedies against Seller provided herein.

BUYER _____ BUYER _____ DATE _____

K. OFFER. Buyer agrees to purchase the Property under the Specific and General Terms and conditions of this Agreement. Seller shall have until 5:00 p.m. on the Offer Expiration Date to accept this offer, unless sooner withdrawn. Acceptance shall not be effective until a copy signed by the Seller is actually received by Buyer, the Selling Licensee or the Selling Licensee's office. If this offer is not so accepted, it shall lapse and any Earnest Money Deposit shall be returned to Buyer. By signing below, Buyer acknowledges that Buyer has read and accepted the terms of this Agreement and its Addenda in their entirety. The Offer Expiration Date is: _____

Buyer: _____ Date: _____

Buyer: _____ Date: _____

Address for Notice _____ Phone: _____

E-Mail: _____

Selling Broker: _____ MLS No. _____

Address for Notice _____ Phone: _____

E-Mail: _____

Listing Broker: _____ MLS No. _____

Address for Notice _____ Phone: _____

E-Mail: _____

L. ACCEPTANCE OF BUYER'S OFFER BY SELLER. Seller agrees to sell the Property under the Specific and General Terms and conditions of this Agreement.

SELLER: **Soundbuilt Northwest LLC** **Sound Built Townhomes, LLC**

By _____ Date: _____

Gary J. Racca, Manager Kurt Wilson, Land Acquisition Manager

David Bolotin, Chief Financial Officer

Address for Notices: PO Box 73790, Puyallup, Washington, 98373

(Sound Built Homes is a trade name of Soundbuilt Northwest, LLC.)

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**THE FOLLOWING GENERAL TERMS AND CONDITIONS ARE A PART OF THIS AGREEMENT,
TOGETHER WITH THE SPECIFIC TERMS STATED ABOVE**

- 1. PURCHASE PRICE.** The Purchase Price to be paid by Buyer to Seller for the Property in cash at Closing, *not including* the sum to be paid by Buyer for upgrades, changes and décor selections described in the *Design Center Addendum*, has been included on the first page of this agreement. The additional cost of any upgrades, changes or décor selections is described in the *Design Center Addendum* executed by Seller and Buyer after Buyer's review of the *Option Guide*. If the Buyer elects to do so, and to the extent permitted by Buyer's lender, the cost of the upgrades, changes and décor selections made by Buyer in the *Design Center Addendum* may be added to the Purchase Price to establish the Total Purchase Price. The Buyer shall pay Seller in cash at the time of selection fifty percent (50%) of the cost of all upgrades, changes and décor selections as a non-refundable payment unless the Buyer's purchase is contingent upon the sale of Buyer's property; in such event, the full cost of such upgrades, changes and décor selections must be paid in full upon their selection. If not added to the Purchase Price, the cost of all such upgrades, changes and décor selections shall be paid by the Buyer to the Seller when selected. After Seller and Buyer agree upon the Buyer's selections for upgrades, changes or décor selections by mutual execution of a *Design Center Addendum*, the Total Purchase Price shall be incorporated in this Agreement without further signature by Buyer as the sum Buyer shall pay to Seller for the purchase of the Property. The Purchase Price (the price stated above *without* inclusion of the additional sums paid by Buyer for upgrades, changes and décor selections), shall be used as the basis for calculation of sales commissions. The commissions paid on this transaction shall not be based upon the upgrades, changes, décor selections, closing costs or any additional costs added into the sales price by Seller and Buyer to establish the Total Purchase Price.

It is not a requirement of this Agreement that the appraised value of the Property exceed the Total Purchase Price in order for the transaction to close. In the event the appraisal does not equal or exceed the Total Purchase Price, then Buyer agrees that the upgrades, changes, décor selections and closing costs will not become a part of the financed portion of the Total Purchase Price, and Buyer will pay for upgrades, changes, décor selections and closing costs in cash at Closing. Non-refundable cash payments for upgrades, changes or décor selections shall not be considered an additional Earnest Money Deposit, and shall be retained by Seller regardless of the termination of this Agreement and return of the Earnest Money Deposit, except in the event of a Seller default as otherwise provided in this Agreement. Buyer agrees to pay all financing and purchase costs incurred by Buyer.

2. FINANCING.

- A. BUYER APPLICATION.** Buyer shall make written application and pay all application fees required for obtaining a purchase money loan for the balance of the Total Purchase Price within five (5) days of Seller's execution of this Agreement, or if this Agreement is conditioned upon the sale of Buyer's property, within five (5) days after Buyer satisfies or removes the condition ("Waiver"). If Buyer has not waived this financing contingency and is unable in a period of 15 days to obtain financing after making timely application and engaging in a good faith effort to obtain such financing, then (a) on Buyer's notice to Seller, or (b) on Seller's notice to Buyer, this Agreement shall terminate. Buyer may not change the type of loan or the lender without Seller's prior written consent after the agreed upon time to apply for financing has expired. For the purposes of this paragraph, "lender" means the party funding the loan applied for by the Buyer within the period in which Buyer must make the application for financing.

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As a condition of the return to Buyer of the Earnest Money Deposit, Buyer shall deliver to Seller, along with any request for return of the Earnest Money Deposit, a copy of such documentation which (a) establishes the date upon which Buyer's application for financing was made, (b) the terms of the loan applied for, (c) the reasons why the lenders to which application was made failed to approve the purchase money loan, and (d) verifies Buyer's possession of sufficient funds to close the transaction. In the event that Buyer's application was untimely, or failed to comply with the terms of this Agreement, Seller may retain the Earnest Money Deposit.

- B. SELLER'S CREDIT FOR CLOSING COSTS.** If Seller has agreed to apply a credit in the against the Total Purchase Price to reduce the Buyer's costs in this transaction, at Closing, **any Closing Cost credit offered to Buyer must be used on the Closing Date for the transaction.** No credit or payment for any unused portions of any closing cost credit will be given to Buyer after closing of this transaction. To the extent permitted by applicable law and regulations, Buyer agrees that a portion of any negotiated closing cost credit to be provided by Seller shall be applied to fees assessed by appraisers conducting a "442" or re-inspection of the new home prior to the Closing Date, to ensure all features of the home have been completed. For FHA and VA loans, the credit shall be applied first to that portion of Buyer's loan and settlement costs that the lender is prohibited from collecting from the Buyer under FHA or VA regulations. If there remains any unused credit after application of the agreed credit to Buyer's loan and settlement costs, any balance may then be applied to Buyer's loan discount, loan fee, interest buy down and/or financing and closing costs (to the extent allowable by FHA or VA regulations, if an FHA or VA loan has been obtained by Buyer), but only to the extent that Buyer's loan amount is not reduced by the credits offered by Seller.
- C. FINANCING INFORMATION PROVIDED TO SELLER – WAIVER OF CONTINGENCY.** Unless Buyer has given notice waiving the financing contingency, no later than 15 days after (a) mutual acceptance of this Agreement, or (b) Waiver, if selected in paragraph 9A, Buyer shall provide to Seller a letter of loan commitment from Buyer's lender which states the date of the loan application, the loan application's current status, and any conditions that remain for loan approval. A letter from a lender generated or dated at or prior to the time of mutual acceptance of this Agreement shall not constitute a letter of loan commitment that complies with this paragraph. Within three (3) days after the earlier of Seller's receipt of the Buyer's letter of loan commitment, or the date such letter was due, Seller may give Buyer notice of Seller's election to terminate this Agreement. If, within five (5) days after Seller's notice of termination, Buyer does not waive this financing contingency by written notice to Seller, this Agreement shall terminate automatically, without default by Buyer. If Seller does not terminate this Agreement, Seller may request, in Seller's sole discretion, updated letters of loan commitment from Buyer, which shall be supplied to Seller within five (5) days of Seller's request. Upon submission of such an update or passage of the date for submission of an update, Seller may exercise the right of termination described in this paragraph, and Buyer may avoid termination by Waiver of the financing contingency.
- D. APPRAISAL LESS THAN SALE PRICE.** If Buyer's lender's appraisal of the value of the Property is less than the Purchase Price (as adjusted for the purposes of this paragraph only, described below), Buyer may, with three (3) days' notice to Seller and providing to Seller a copy of the appraisal, elect to terminate this Agreement unless Seller, within ten (10) days after receipt of such notice and the appraisal, delivers to Buyer either:

- (1) (a) If this Agreement is contingent on FHA financing, a reappraisal by the same appraiser in an amount not less than the Purchase Price or, (b) if this Agreement is

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contingent upon non-FHA financing, reappraisal by the same appraiser or another appraiser acceptable to the lending institution in an amount not less than the Purchase Price; or

(2) Written consent to reduce the Purchase Price to an amount not more than the amount specified in the appraisal or reappraisal, whichever is higher. *(Not applicable if this Agreement is conditioned on FHA financing. FHA does not permit the Buyer to be obligated to buy if the Seller reduces the sale price to the appraisal value. The Buyer, however, has the option to buy at the reduced price if such option is agreed to by the Seller.)* If such reappraisal or consent to reduction of the Purchase Price is not so delivered, this Agreement shall terminate.

For the purpose of the prior two sub-paragraphs, the Purchase Price shall not include any sums added to the Purchase Price for upgrades, changes or closing costs Buyer agrees that upgrades, changes or closing costs which, when added to the Purchase Price make the Total Purchase Price exceed the appraised value of the property, shall not be considered when applying the terms of this paragraph.

If this Agreement is conditioned on Buyer obtaining VA or FHA financing, it is expressly agreed that notwithstanding any other provisions of this Agreement, Buyer shall not be obligated to complete the purchase of the Property or incur any penalty by forfeiture of Earnest Money or otherwise unless Buyer has been given in accordance with HUD/FHA or VA requirements a written statement issued by the Federal Housing Commissioner or a Direct Endorsement Lender/Department of Veterans Affairs or the LAPP underwriter setting forth the appraised value of the Property (excluding closing costs) in a sum not less than the Total Purchase Price. The Buyer shall have the privilege and option of proceeding with consummation of this Agreement without regard to the appraised value. The appraised valuation is arrived at to determine the maximum mortgage the Department of Housing and Urban Development/Department of Veteran's Affairs will insure/guaranty. HUD/Department of Veteran's Affairs and the mortgagee do not warrant the value nor the condition of the Property. The Buyer should satisfy himself/herself that the price and condition of the Property are acceptable. An FHA/VA loan may be processed under FHA Direct Endorsement Underwriting or VA Automatic Underwriting. In the event that such underwriting is utilized, the Seller acknowledges that an underwriting fee may be charged to the Seller by the lender, in which event the Seller agrees to pay such underwriting fee. The Seller and Borrower and agents involved in this transaction certify, by executing this Agreement, that (a) the terms of the Agreement are true to the best of our knowledge, and (b) all agreements entered into by any of the parties to this Agreement are fully disclosed and either stated herein or included by attachment or reference.

NOTE TO PARTIES EXECUTING THIS AGREEMENT: It is a crime to knowingly make false statements to the United States in seeking a FHA or VA insured loan. Penalties upon conviction can include a fine and imprisonment. For details see: Title 18 U.S. Code Section 1001 and Section 1010.

E. SELLER'S PRIOR APPROVAL OF FINANCING COSTS REQUIRED. Seller shall pay no fees to any lender, including but not limited to document preparation fees, underwriting fees, courier fees, computer fees, facsimile fees and express mail fees, without Seller's written consent, which consent must be obtained from Seller at the time of the submission of the Buyer's loan application.

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- F. CHANGES IN LENDER AND LOAN LIMITED.** Once the Financing Contingency has been removed by satisfaction of the contingency or waiver, and Buyer's Lender has given preliminary approval of a purchase money loan to Buyer, Buyer may not utilize any modified, additional or new loan for the purchase of the Property which is materially different in its terms, or is made available from any different lender or other source of financing ("New Loan") without first obtaining Seller's written approval of such change in terms or lender. Seller will not withhold such approval unreasonably, but Buyer agrees that Seller is not obligated to grant such approval if, in Seller's sole, subjective discretion, the grant of approval could delay the Closing of the transaction. Buyer's unauthorized application or procurement of a New Loan shall not extend the Closing Date, shall be deemed a default by Buyer, and shall entitle Seller, in Seller's sole, subjective discretion, to terminate this Agreement. If Buyer is authorized in writing by Seller to utilize a New Loan for closing the transaction, and Buyer fails to qualify for the New Loan, Closing shall not be delayed, and Buyer shall be obligated to close the transaction using the loan and terms offered by the original lender at the time the financing contingency was removed by Buyer.
- G. PREFERRED LENDER-AGREEMENT FOR RELEASE OF INFORMATION.** Buyer may select the mortgage company of Buyer's choice to provide financing for this transaction; however, to qualify for (1) Seller's payment of any portion of the Buyer's loan or closing costs, or (2) a Seller's Credit (as described in Paragraphs 9B, if any has been negotiated in this Agreement), Buyer shall make application for a loan through one of Seller's preferred lenders, Sterling Savings Bank (253) 988-0425 or (253) 858-1000 (Dawn & Peter James) OR Alaska USA Mortgager Company (253) 380-4648 (Bud Perry). Buyer understands and agrees that Seller may release information to Sterling Savings Bank and/or Alaska USA Mortgage Company related to this sale, which may be used to offer to the Buyer the products and services provided by Sterling Savings Bank and/or Alaska USA Mortgage Company. Buyers consent to receiving contact from Sterling Savings Bank and/or Alaska USA Mortgage Company regarding its products and services, even though Buyer may have registered with a "do not call" list for business solicitations.
3. **EARNEST MONEY DEPOSIT.** The Earnest Money Deposit to be paid by Buyer shall be in the form of a check, Seller-approved promissory note, money order, or wire of funds, made payable to the Closing Agent. The Earnest Money Deposit is in addition to and separate from the sum due from Buyer for any upgrades, changes or décor selections agreed upon by Buyer and Seller. The Earnest Money Deposit shall be applied by the Closing Agent to the Purchase Price at Closing, unless such deposit is applied by Seller to Seller's damages incurred as a result of Buyer's breach of this Agreement.

Buyer agrees to deliver the Earnest Money Deposit to the Closing Agent for deposit into the Closing Agent's trust account upon Seller's execution of this Agreement. The Earnest Money Deposit shall be deposited into the IOLTA Trust account of the Closing Agent, if such a trust account is maintained, or any other trust account maintained by the Closing Agent in compliance with State law if no IOLTA account is maintained by the Closing Agent, and the Closing Agent or the Listing Agent shall provide a copy of the record of such deposit to the Seller. Interest earned on a non-IOLTA trust account, if any, after deduction of bank charges and fees, will be credited to Buyer. Until Buyer delivers to the Closing Agent the Earnest Money Deposit, and the Closing Agent confirms receipt of such Deposit, Seller may elect to terminate this transaction, in Seller's discretion. If all or part of the Earnest Money Deposit is to be refunded to Buyer and any such costs related to the escrow of the transaction remain unpaid, the Closing Agent may deduct and pay the escrow costs from the Earnest Money Deposit.

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The Earnest Money Deposit shall be released by the Closing Agent to Seller, without further consent of the Buyer on or before earlier of Fifteen (15) days after execution of this Agreement by the Seller, or upon removal of contingencies triggering Buyer's obligation to purchase. Upon its release to Seller, the status of the Earnest Money Deposit shall be changed to be non-refundable, except in the even of Seller's breach of this Agreement. Buyer hereby authorizes the Closing Agent holding the Earnest Money Deposit to release such funds to Seller as provide herein. The parties instruct the Closing Agent to (a) provide written verification of receipt of the Earnest Money Deposit and notice of dishonor of any check to the parties and licensees at the post office addresses or fax numbers provided herein; (b) commence an interpleader action in the Superior Court of the county where the property is located within thirty (30) days of a party's demand for release of the Earnest Money Deposit, if such release is not agreed to by the other party or not authorized by a term of this Agreement which permits release without the agreement of the parties, and (c) to deduct from the Earnest Money Deposit to be interplead the actual cost, up to \$500, of such interpleader, unless the parties otherwise agree in writing to have the Closing Agent hold or transfer the Earnest Money Deposit as they direct.

4. **PROPERTY DESCRIPTION.** The legal description of the Property is or will be attached to this Agreement, and upon attachment is incorporated into this Paragraph. If no legal description is attached, or the legal description is incomplete or inaccurate, Buyer and Seller authorize Closing Agent to insert, attach or correct the description of the Property without their further approval or signatures. If a corrected or completed legal description is added to this Agreement after it is signed by the parties, then for the purpose of computing time, mutual acceptance shall be deemed to be on the date on which Seller signs this Agreement, rather than on the date the legal description is added, completed or revised.

The Buyer's review and acceptance of a preliminary commitment for title insurance containing an accurate legal description of the Property shall be deemed an acceptance of the legal description contained in the preliminary commitment, and incorporation of such legal description by reference into this Agreement.

Buyer is familiar with, has reviewed and accepted the Standard Features List applicable to the community where the Property is located, describing specifications and improvements applicable to the home to be built or already built on the Property, and acknowledges that Buyer is fully informed regarding the specific improvements that are included in the Purchase Price for the Property. If Buyer and Seller have agreed to any changes or upgrades to the Standard Features for the home, such changes or upgrades are described in the *Design Center Addendum* executed by Buyer and agreed to by Seller at Seller's Design Center, chosen from the Seller's *Option Guide* applicable to the model of home being built on the Property. The *Option Guide* will be made available to the Buyer for review at the Seller's Design Center. Depending upon the stage of construction at the property, Buyer may be permitted to select certain finish colors and décor treatments in the home, subject to Seller's agreement, as described in the *Option Guide*, in Seller's discretion.

5. **DÉCOR SELECTIONS, UPGRADES AND CHANGES.**

- A. **SELECTION AND PAYMENT.** All décor selections, upgrades or changes of Seller's standard features will be made only after (a) execution of the *Design Center Addendum*, and (b) either (i) Buyer's delivery to Seller of a non-refundable cash payment for upgrades, changes and décor selections, or (ii) Seller's acceptance of an adjustment in the Purchase Price, which adjustment shall increase the Purchase Price to be paid by Buyer, together with Buyer's non-refundable payment at the Design Center meeting of fifty percent (50%) of the cost of such

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upgrades, changes and décor selections, or if the Buyer's purchase is contingent upon the sale of Buyer's property, the full cost of such upgrades, changes and décor selections. The *Design Center Addendum* shall become a part of this Agreement upon Seller's acceptance of payment (and adjustment of the Purchase Price, if permitted by Seller) and execution of the *Design Center Addendum* by both Buyer and Seller. The Seller reserves the right to refuse to make any upgrade, change or décor selection, in Seller's sole, subjective discretion, and such refusal shall not be a basis for termination of this Agreement by Buyer. **No oral representations or discussions concerning upgrades, changes or décor selections will become a part of this Agreement; all upgrades, changes and décor selections must be described in writing on the *Design Center Addendum*, signed by both Seller and Buyer, and the required non-refundable payment made by Buyer to Seller, before upgrades, changes or décor selections shall become a part of this Agreement.** The selections are not deemed to be made, and included in this Agreement, until the Seller has collected the funds paid by the Buyer; checks are not completed payment if returned to Seller for insufficient funds by the Buyer's bank. If funds cannot be collected by the Seller, and the construction of the home has progressed to preclude a upgrade, change or décor selection as a result in the delay of payment, the upgrade, change or décor selection made by the Buyer may be cancelled by Seller, without terminating this Agreement.

- B. TIME FOR MAKING DÉCOR SELECTIONS, UPGRADES AND CHANGES.** Décor selections, upgrades and changes must be completed and arrangements for payment made within the time described in the *Option Guide*. Some décor selections, upgrades and changes usually offered by Seller may not be available, due to the status of construction or characteristics of the Property and the home planned for the Property. The Seller's Design Center personnel shall determine the availability of any upgrade, change or décor selection, based upon the stage of construction, and the determination of availability of an upgrade, change or décor selection shall be made by the Seller, in the Seller's discretion. For each upgrade, change or décor selection requested after the selection period (if Seller permits the upgrade, change or décor selection), the change fee described in Paragraph 6E and in the *Option Guide* shall be due and payable as a condition of making any change to the home. Upgrades, changes and décor selections must be requested, agreed upon and arrangements for payment made, whether a change fee is imposed or not, before the commencement of the stage of construction in which the upgrade, change or décor selection is scheduled to be made. Buyer's selections are made subject to Seller's approval, which Seller may withhold in Seller's sole discretion.
- C. DESIGN CENTER MEETING.** Buyer agrees to attend a Design Center meeting, whether Buyer chooses to make upgrades, changes and décor selections, or not, as a part of this Agreement. Buyer must execute a Design Center Addendum, even if the Buyer makes no upgrades, changes or décor selections, to confirm that Buyer and Seller have completed their process of choosing the manner in which the home will be completed by Seller.

Normally within two (2) business days of the mutual execution of this Agreement, the Seller's Design Center staff will contact the Buyer to schedule a meeting at Seller's Design Center (12815 Canyon Road East, Puyallup, Washington) to determine upgrades, changes and décor selections, and payment due Seller. This meeting will normally be scheduled for a business day which is no later than ten (10) business days after mutual acceptance of this Agreement. The length of the meeting needed to complete the selections will usually be determined based upon on the stage of construction for the home being purchased; Stages 1 through 3 will usually require a three (3) hour meeting, Stage 4 a two (2) hour meeting. If the Buyer fails to attend a Design Center meeting, or make and pay for upgrades, changes and décor

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selections within ten (10) business days of the date of this Agreement, Seller may, in Seller's sole discretion, chose standard décor selections applicable to the home on Buyer's behalf, and such selections shall be binding upon Buyer. *Note: If this transaction concerns property located outside the Puget Sound area, the Seller shall instruct the Buyer regarding the manner in which upgrades, changes and décor selections will be made by the Buyer, with the assistance of Seller's suppliers and subcontractors. The Design Center provisions shall be modified by such Seller instructions to the extent that the instructions vary from the procedures described in this Paragraph 6.*

- D. BUYER'S SUBMISSION OF LOAN QUALIFICATION INFORMATION - PAYMENT.** If Buyer seeks to pay a portion of the cost of upgrades, changes and décor selections from the proceeds of the Buyer's purchase loan, Buyer shall provide to Seller at the Design Center meeting Buyer's written evidence from Buyer's lender of the maximum loan for which Buyer qualifies. Buyer shall pay a minimum of fifty percent (50%) of the cost of upgrades, changes and décor selections at the Design Center meeting, and shall pay an additional percentage of the cost of the upgrades, changes and décor selections based upon the Buyer's loan qualifications. If (a) the Total Purchase Price resulting from the Buyer's décor selections, upgrades and changes, exceeds the Buyer's cash payment at Closing (as stated in Paragraph 9A, increased by the payment for upgrades, changes and décor selections) when added to the maximum loan amount contained in Buyer's written evidence of loan qualification, Buyer agrees to pay the excess in full at the conclusion of the Design Center meeting. If Buyer fails to provide such written evidence of loan qualification at the time of the Design Center meeting, then Buyer agrees to pay for all upgrades, changes and décor selections in full at the conclusion of the Design Center meeting.

If this Agreement is contingent upon Buyer's sale of another property, and regardless of any Closing Cost Credit that Buyer may be entitled to receive at Closing, Buyer shall pay to the Seller at the Design Center meeting a non-refundable payment equal to the entire cost of the décor selections, upgrades and changes, regardless of Buyer's success in completing the sale of Buyer's property. Hard surface selections made by Buyer shall be restricted to a neutral palette, in Seller's discretion.

All payments for changes, upgrades and décor selections are non-refundable, except as provided in Paragraph 17A (in the event of a default by Seller). All upgrades, changes and décor selections made by Buyer at the Design Center meeting, if paid for (or if the required deposit is made) shall be final and may not be changed by Buyer unless a Change Request form is submitted by Buyer to Seller, accepted by Seller, and the change order fee is paid by Buyer to Seller.

Payment may be made by Buyer in the form of a personal check, money order or cashier's check. At Closing, this non-refundable payment will be credited toward the Total Purchase Price.

- E. CHANGES IN SELECTIONS.** In the event Buyer elects to make a change to the upgrades, changes or décor selections previously approved by Seller and paid for by Buyer, Buyer shall submit a *Change Request* form to Seller. The *Change Request* form must be accompanied by a non-refundable \$400 payment to Seller for each *Change Request* form submitted. The *Change Request* form and the payment will be reviewed by Seller, and Seller will notify Buyer of Seller's acceptance, partial acceptance or rejection of the proposed change, in Seller's sole discretion. If Seller accepts all or part of the change requested by Buyer, Buyer shall pay to Seller such additional non-refundable payment required by Seller to make the changes

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accepted by Seller, such payment to be made by Buyer to Seller within two (2) business days of the Seller's written notification by Seller of the payment due. If payment is not made within such time as required by Seller, Seller may revoke Seller's acceptance of partial acceptance of the changes, and make no change to this Agreement.

- F. **DELIVERY OF INFORMATION BY BUYER TO BUYER'S LENDER.** If Buyer elects to pay for a portion of the cost of upgrades, changes or décor selections from the proceeds of the purchase loan, Buyer shall supply a copy of *Design Center Addendum* to Buyer's lender promptly upon completion of the Design Center meeting. Buyer shall be responsible for any modification of Buyer's loan application required to include the cost of the payment for upgrades, changes or décor selections in the Buyer's purchase loan. If Buyer, with Seller's approval, chooses a different lender to finance this transaction, Buyer shall supply the Design Center staff with written confirmation of the substituted lender's agreement to finance the upgrades, changes and décor selections requested by Buyer, in the same or a greater amount than Buyer's initial lender.

6. **CONSTRUCTION OF HOME ON THE PROPERTY.**

A. **STATUS OF CONSTRUCTION.** The definitions stated below describe the Status of Construction referred to in Specific Term G. *The Selling Licensee shall check the box on Page 1 of this agreement describing the status of construction applicable to this home; if no box is checked, Buyer authorizes Seller to check the appropriate box, without further signature or agreement by Buyer.*

- **LOT CONTRACT, PRE-CLOSING.** Subject to (a) completion of the recording of a final plat creating the Property as a subdivided lot in the community; and (b) Seller's closing of the purchase of the Property; (c) Seller's successful acquisition of construction financing, (d) Seller's successful acquisition of permits which enable Seller to build a home consistent with the architectural standards established by Seller for the community, and (e) availability of supplies needed to complete construction, Seller intends to construct a home on the Property, according to the Plan, Model, Elevation, and with the specifications described in Paragraph 4 above, as they may be modified by Seller to account for topography, governmental regulations, Seller's choice of placement of the home on the lot, and Seller's choice of materials, with Buyer's upgrades, changes and décor selections as approved by Seller. Seller may delay application for permits and commencement of construction, in Seller's sole discretion, until Buyer removes all contingencies related to Buyer's performance of this Agreement, including, but not limited to, the sale of Buyer's home. If the box for this subparagraph is checked, (a) the provisions delaying the effective date of this Agreement contained in Paragraph 10C shall apply, and this Agreement shall become binding upon the parties only if Seller acquires the Property and financing needed to build the home in the time required by Paragraph 10C; and (b) if the Seller acquires a permit to build a Plan, Model and/or Elevation of home on the Property different than the one specified in Paragraph 4, the Buyer shall be entitled to the rights described in Paragraph 17A.
- **CONSTRUCTION NOT YET COMMENCED.** Subject to (a) Seller's successful acquisition of permits; and (b) availability of supplies needed to complete construction, and (c) Seller's successful acquisition of construction financing, Seller intends to construct a home on the Property, according to the Plan, Model, Elevation, and with the specifications described in Paragraph 4 above, as they may be modified by Seller to account for topography, governmental regulations, Seller's choice of placement of the home on the lot, and Seller's choice of materials, with Buyer's upgrades, changes and décor selections as approved by

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Seller. Seller may delay application for permits and commencement of construction, in Seller's sole discretion, until Buyer removes all contingencies related to Buyer's performance of this Agreement, including, but not limited to, the sale of Buyer's home. If the box for this subparagraph is checked: (x) the provisions delaying the effective date of this Agreement contained in Paragraph 10C shall apply, and this Agreement shall become binding upon the parties only if Seller acquires financing to build the home in the time required by Paragraph 6BC; and (y) if the Seller acquires a permit to build a different plan, model and/or elevation of home on the Property, the Buyer shall be entitled to the rights described in Paragraph 12A.

- **UNDER CONSTRUCTION.** Seller has commenced construction of a home, using Seller's construction drawings prepared for the site. Buyer acknowledges and agrees that minor modifications to the design of the residence may be made by Seller during construction if topographical conditions make such changes appropriate, or the applicable building code requires changes. To the extent available based upon the community in which the Property is located and the status of construction, Buyer shall make upgrades, changes and décor selections from the *Option Guide* (for *Stages Three and Four* of construction) at the Design Center meeting with Seller's representatives after mutual acceptance of this Agreement, unless such selections have already been made by the Seller, in its discretion.
 - **SUBSTANTIALLY COMPLETE.** Seller has substantially completed construction of a home on the property. Buyer may not make any upgrade, change or décor selections at the Design Center meeting except those available for *Stage Four* of construction as such is described in *Option Guide*, unless such selections have already been made by the Seller, in its discretion.
- B. **COMPLETION OF HOME. THE COMPLETION DATE IS NOT THE CLOSING DATE FOR THE TRANSACTION – SEE PARAGRAPH 7B FOR THE DETERMINATION OF THE CLOSING DATE FOR THIS TRANSACTION.** The estimated completion date for this home, if applicable, is described in Specific Term G of this Agreement (*If not filled in at the time of Buyer's execution of this Agreement, Buyer authorizes the Listing agent or Seller to fill in the date based upon the Seller's estimate, and the date selected by Seller shall become a part of this Agreement*).

THIS COMPLETION DATE IS AN ESTIMATE ONLY AND IS NOT A GUARANTY OF THE EXACT DATE WHEN THE NEW HOME WILL BE COMPLETED. SHOULD CONSTRUCTION BE DELAYED FOR ANY REASON, IT IS THE SELLER'S SOLE OPTION, WITHOUT FURTHER CONSENT BY THE BUYER, TO EXTEND THE COMPLETION DATE FOR UP TO NINETY (90) DAYS BEYOND THE ESTIMATED COMPLETION DATE. SELLER'S ELECTION TO EXTEND THE COMPLETION DATE SHALL NOT BE DEEMED A DEFAULT BY SELLER. SELLER IS NOT RESPONSIBLE FOR THE EXPIRATION OF BUYER'S LOAN COMMITMENT, PENALTIES, LOAN OR OTHER FEES OR LOSSES DUE TO THE ESTIMATED COMPLETION DATE NOT BEING MET. BUYER IS RESPONSIBLE FOR ENSURING THAT BUYER'S LENDER AND ANY OTHER INTERESTED PARTY IS MADE AWARE OF THE TERMS OF THIS AGREEMENT. BUYER HAS READ AND ACCEPTS THE LIMITATIONS UPON SELLER'S LIABILITY FOR DELAYS, AS DESCRIBED IN THIS PARAGRAPH AND IN PARAGRAPH 12A.

The Seller may experience delays because of weather, strikes, material or labor shortages, or other conditions beyond the reasonable control of the Seller. The parties agree that the Seller may change the estimated completion date as is necessary to reflect delays experienced by the Seller, and the Seller shall not be liable to the Buyer for Seller's failure to complete construction by the estimated completion date.

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Notwithstanding any other provision of this Agreement, if Seller has failed to complete the construction of the home on or before the second anniversary of the date on which Buyer signs this Agreement, Seller shall be in default of Seller's performance of the Agreement. This default by Seller shall not occur if this Agreement has already terminated (a) at the election of Buyer in accordance with a right of termination set forth in this Agreement, or (b) at the election of Seller in accordance with a right of termination set forth in this Agreement, or because of a failure by Buyer to perform any of its obligations in this Agreement. The second-anniversary deadline shall be subject to extension by one day for each day of delay attributable to any of the unanticipated conditions set forth above in this paragraph, but only if the condition is beyond the reasonable control of Seller.

The issuance of a certificate of occupancy, or final inspection approval by the applicable government agency, shall be conclusive evidence of the completion of construction by the Seller. The existence of any incomplete work items or the needs for repairs, contained in a list prepared during the orientation tour provided for in Paragraph 8J, shall not delay completion of construction. Notwithstanding any other provisions in this Agreement, Closing shall not take place prior to completion of construction and orientation of the Buyer to the home.

- C. **SITE CONSIDERATIONS.** Seller shall have sole responsibility to locate the home on the Property, considering permit requirements, curb appeal, drive location, drainage considerations, existing trees, utilities, and topography. The area within the clearing limits of the Property shall be graded for adequate drainage to an approximate finished grade, using materials available on the Property. When clearing the Property, trees will be removed based upon their proximity to the home, their grade relationships to the home, or their interference with construction of the home. Seller shall be the sole judge in the grading of the Property and removal of trees. Seller is not responsible for connection of telephone or cable television utilities between their location in an easement or public right of way and the home, and Buyer agrees to obtain such connections at Buyer's sole cost after Closing.
- D. **PLAN VARIATIONS.** Seller reserves the right to modify the plan, model and specifications for the home as may be reasonably necessary to comply with governmental regulation, site the home on the lot, adjust to changes in material or product availability or price, and change subcontractors providing services or products for construction of the home. Variations in plans, specifications, materials or products from this home to other homes, or this project to other projects of the Seller, shall not be deemed material defects in the home. Buyer understands and agrees that Standard Features and builder specifications vary from project to project, and it is the responsibility of the Buyer to determine the differences in features and specifications for the project in which the home to be constructed by Seller is located, compared to other projects of the Seller. The size of garages may vary from home to home, depending upon topography and minor modifications to designs; the description of a garage as a "2" or "3" car size in any marketing or sales information applicable to the plan/model of the home is not a representation or warranty by Seller that the garage as built will accommodate the number of cars described.
- E. **SUBSTITUTION OF MATERIALS.** Seller reserves the right to substitute materials and products of comparable quality and utility used in the construction of the home, without prior notice to Buyer. All materials and products used by the Seller in construction are subject to availability and Seller's determination of reasonable prices for their purchase. Special materials or products selected by Buyer for use in construction shall not be used if their use may delay construction, in Seller's sole, subjective discretion. If such a delay may occur by

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reason of the Seller's use of a Buyer-selected material or product, Seller may substitute other material or products that will minimize such delays.

F. **PLANS PROPERTY OF SELLER.** Plans, drawings, specifications and design materials shall remain the sole property of the Seller, and will not be made available to the Buyer.

G. **INSULATION.** Wall Insulation: Type: Batt Thickness, 5 ½" R Value: R-19
Ceiling Insulation: Type: Batt/Blown Thickness, 9" R Value: R-30
Other insulation data: Insulation installation specifications meets or exceeds Washington State requirements

H. **LANDSCAPING - FENCING.** The Purchase Price includes only such landscaping that is described in the Standard Features List applicable to the community in which the Property is located. Any upgrades or changes to the landscaping described in the Standard Features List for the community shall be described in *Design Center Addendum* executed at the Design Center meeting, and installed at a price to be agreed upon by Seller and Buyer in the *Design Center Addendum*. If landscaping is included, Seller agrees to landscape the Property in a manner consistent with the general appearance of the neighborhood and the home. Buyer acknowledges that when landscaping, Seller will design and install the landscaping in order to meet engineering requirements, such as grading and water drainage. The health and maintenance of trees and plants are not guaranteed by Seller. In some jurisdictions, "Street Trees" required by the jurisdiction may be placed on the Property by Seller or the developer of the Property before or after closing, and such Street Trees shall be maintained according to the covenants or plat conditions applicable to the Property.

The Purchase Price does not include fencing. Any fencing installed, whether by Seller as agreed in the *Design Center Addendum*, or by an independent contractor chosen by Buyer, shall be installed after Closing, and shall be of a style and color as approved by Seller or the Homeowners' Association for the neighborhood. If an executed *Design Center Addendum* includes fencing as an item to be supplied by Seller, Seller shall install such fencing within thirty (30) business days of Closing. Buyer acknowledges that matters of landscaping and fence style, color and placement have been delegated to Seller's sole discretion.

I. **ACCESS DURING CONSTRUCTION FOR BUYER AND BUYER'S AGENTS.** The Property will continue to be owned solely by the Seller until this transaction is closed by Seller and Buyer. Buyer agrees that the direction and supervision of the workers constructing the home, including the subcontractors, rests exclusively with the Seller. Buyer agrees not to issue to any subcontractors directions to perform work on the home, except with the written permission of the Seller, or after closing and at Buyer's sole cost. Buyer may not make any additions or alterations of the home, its systems or appearance, until after Closing of the transaction.

Buyer agrees Buyer shall not enter the Property prior to closing, unless the visit has been scheduled with the Selling Agent and the Listing Agent. Buyer agrees that Buyer must be accompanied by the Selling Agent or Listing Agent on every occasion when the Buyer enters the Property before possession of the Property is transferred to Buyer. Agents of Buyer, including any inspector representing Buyer or Buyer's lender, may only enter the Property after permission for such entry is obtained from the Listing Agent. During every visit to the Property, Buyer will be not be accompanied by children, will wear safe clothing and footwear, and will wear a safety hard hat, if required. All questions and other communications regarding the status of construction of the home shall be submitted to Seller in writing through the Listing Agent, and only written communications will receive responses from Seller.

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If Buyer, Buyer's family, guests, or agents enter the Property, with or without the permission of the Seller prior to completion of construction, Buyer assumes the risks of such entry and agrees to indemnify and hold Seller harmless from any and all damages or claims made against Seller for any personal injuries suffered by Buyer, Buyer's family, guests, or agents while on the Property, unless such personal injury is the result of the sole negligence of Seller. Buyer also agrees to pay to Seller the cost of the repair all damages to improvements on the Property resulting from the entry on the Property of Buyer, Buyer's family, guests, or agents, including but not limited repair or refinishing or surfaces marred during such entry, and whether or not the damage is the result of negligent conduct.

- J. **NEW HOME ORIENTATION – ADDITIONAL WORK AFTER CLOSING.** Prior to Closing, an authorized representative of Seller will accompany Buyer on an orientation tour to familiarize Buyer with the home's maintenance and operation of the home's appliances, heating and plumbing systems. **All new home orientations shall be scheduled by Seller with Buyer Monday through Friday approximately six (6) days prior to the Closing Date, and attendance at such orientations shall be limited to the Buyer and the Seller's representative only (no Buyer's agents, friends, family, children, associates or inspectors, unless otherwise approved by Seller in writing).** The correction or adjustment of any item noted during the orientation will occur as soon as possible before Closing. Any items noted and not corrected before the Closing Date will be corrected as soon as possible after the Closing Date, based upon the access granted by Buyer to Seller, availability of materials and labor. **Notwithstanding any other provisions of this Agreement, Seller may delay the closing of this transaction without default by Seller until the Buyer provides written acceptance of the successful resolution of all items noted on the orientation list by Seller, if Seller elects to complete of the orientation list work prior to the Closing Date.**

Any professional inspection obtained by Buyer must be conducted during the time period which is not more than five (5) days nor less than two (2) days prior to the scheduled new home orientation, by appointment arranged with the Seller's Customer Service representative. All professional inspectors retained by Buyer must provide to Seller a copy of the entire inspection report prepared by the inspector, and all corrections requested by the Buyer based upon the professional inspection must be included in the orientation list prepared by Seller and Buyer during the new home orientation, or the requested corrections will not become the obligation of Seller to correct. Further requests for corrections in construction methods or material usage from the inspection report must be accompanied by reference to the applicable building code or manufacturers' installation instructions demonstrating the inspection reports claimed deficiency.

The Closing of this transaction shall not be delayed by Buyer's claim of any deficiencies in the completed home, nor shall the election of the Seller to correct the disputed items after the Closing Date be a basis for Buyer to delay Closing or terminate this Agreement. Items that remain to be completed as a result of the orientation tour and are not completed to the Buyer's satisfaction after the Closing Date shall be subject to the arbitration provisions of Paragraph 19B, which is the sole remedy of Buyer for resolution of a dispute with Seller concerning completion of work remaining to be performed by Seller on the Property. After the Closing Date, Buyer shall provide Seller and its agents with convenient access to the Property during normal business hours for Seller to perform the adjustments and work. Failure to provide such access during normal business hours shall excuse Seller from performing the

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adjustments and the proposed work, and terminate Seller's responsibility to perform all future warranty work related to the Property.

K-1 WARRANTY – HOMES AND TOWN HOMES. Seller agrees to provide to Buyer the limited warranty ("Limited Warranty") described in the most recent edition of the HBW 2-10 Warranty Booklet, as published on the date of the execution of this Agreement. That Booklet has been made available to Buyer, and is incorporated by reference, and made a part of this Agreement. Buyer agrees to read and understand the Limited Warranty before the Closing Date. Validation of the Limited Warranty is not guaranteed, but is conditioned upon the satisfactory completion of any required inspections, upon Seller's compliance with all enrollment procedures, and upon Seller remaining in good standing in the HBW 2-10 program. **Buyer understands and agrees that if the Limited Warranty is validated, it is the sole warranty provided by Seller, and is provided in lieu of all other warranties, verbal agreements or representations, to the extent permitted by law. Seller makes no warranty, express or implied, as to the quality, fitness for a particular purpose, merchantability, habitability or otherwise of the home or Property, except as is expressly set forth in the Limited Warranty program or as required by law. Any other warranty or warranties, whether express or implied, are disclaimed by Seller and waived by Buyer, unless such disclaimer is otherwise prohibited by Washington state law. Buyer acknowledges and agrees that except for buyers of FHA or VA financed homes, all disputes between Buyer and Seller related to warranted items, and claims that result from warranted items, shall be arbitrated through the procedures described in the HBW Warranty.** Seller shall not be liable for any personal injury or other consequential or secondary damages and/or losses which may arise from any and all defects present in the home or on the Property. Buyer understands and agrees the warranties of all appliances and other consumer products installed in the home are those of the manufacturer or supplier and these warranties are assigned to Buyer, effective on the Closing Date.

K-2 WARRANTY – CONDOMINIUM. For condominiums only, Seller agrees to provide to Buyer the limited warranties described in (a) the most recent edition of the HBW 2-10 Warranty Booklet, as published on the date of the execution of this Agreement, and (b) the Condominium Limited Warranty from described in the Public Offering Statement ("Limited Warranties"). The 2-10 Warranty Booklet and the description of the Condominium Limited Warranty have been made available to Buyer, and are incorporated by reference, and made a part of this Agreement. Buyer agrees to read and understand the Limited Warranties before the Closing Date. Validation of the HBW 2-10 Limited Warranty is not guaranteed, but is conditioned upon the satisfactory completion of any required inspections, upon Seller's compliance with all enrollment procedures, and upon Seller remaining in good standing in the HBW 2-10 program. **Buyer understands and agrees that if the HBW 2-10 Limited Warranty is validated, the HBW and Condominium Limited Warranties are the sole warranties provided by Seller, and are provided in lieu of all other warranties, verbal agreements or representations, to the extent permitted by law. Seller makes no warranty, express or implied, as to the quality, fitness for a particular purpose, merchantability, habitability or otherwise of the home or Property, except as is expressly set forth in the Limited Warranty program or as required by law. Any other warranty or warranties, whether express or implied, are disclaimed by Seller and waived by Buyer, unless such disclaimer is otherwise prohibited by Washington state law. Buyer acknowledges and agrees that except for buyers of FHA or VA financed homes, all disputes between Buyer and Seller related to warranted items, and claims that result from warranted items, shall be arbitrated through the procedures described in the HBW Warranty and the Condominium Limited Warranty.** Seller shall not be liable

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for any personal injury or other consequential or secondary damages and/or losses which may arise from any and all defects present in the home or on the Property. Buyer understands and agrees the warranties of all appliances and other consumer products installed in the home are those of the manufacturer or supplier and these warranties are assigned to Buyer, effective on the Closing Date.

- L. **NO WARRANTIES REGARDING MOLD.** Buyer acknowledges that mold, mildew or similar conditions ("Mold") are naturally-occurring conditions in all climates. Seller makes no representation or warranty that the home on the Property is or shall remain free of Mold. Seller specifically disclaims all express or implied warranties with respect to Mold, and with respect to any damage to the home or problems with air quality in or about the home and Property. Buyer is solely responsible for maintaining the exterior of the home and interior ventilation systems, and using the interior ventilation systems in such a manner to prevent the growth of Mold, and Seller has no responsibility to take any action in this regard.
- M. **MAINTENANCE, REPAIR AND MODIFICATION OF CONNECTED HOMES.** Within the community where the Property is located, if an exterior wall of a homes is shared with or touches the exterior wall of a home located on an adjacent lot, or share a common exterior facing and roof, such homes are "Connected Homes," whose exterior maintenance, repair and modification may be governed by the Declaration of Covenants, Conditions and Restrictions for the community in which the Property is located ("Declaration") and may require the homeowners whose homes share common roofs or exteriors to cooperate in the maintenance, repair and modification of the shared roofs and exterior facings.

If this Agreement concerns the Buyer's purchase of a Connected Home, Buyer agrees that prior to the performance of any maintenance, repair or modification of roofs, exterior siding, exterior trims, exterior doors, exterior windows and exterior paint (collectively, "Exterior Elements") the Buyer shall confer with and reach agreement with the owner(s) of the other Connected Home(s) regarding the completion of the proposed activity and the allocation of its cost among the owners of the Connected Homes, in a manner consistent with the Declaration. All maintenance, repair or modifications of the Exterior Elements may only be undertaken with the approval of the Homeowners Association for the community if the type of maintenance, repair or modification requires such approval under the Declaration. The owners of Connected Homes shall engage in activities related to maintenance, repair or modification of the Exterior Elements and roofs only after agreement upon the performance of the maintenance, repair or modification and its payment is reached by the owners.

7. **CLOSING OF SALE.** This sale shall be closed by the Closing Agent on the Closing Date. If the Closing Date falls on a Saturday, Sunday or legal holiday as defined in RCW 1.16.050, the Closing Agent shall close the transaction on the next day that is not a Saturday, Sunday or legal holiday. "Closing" means the date on which all documents are recorded and the sale proceeds are available to Seller. If Buyer causes the Closing of the sale to be delayed beyond the date upon which Seller is ready and willing to close the transaction, Seller may require Buyer to pay to Seller, in addition to the sums otherwise due Seller at Closing, up to \$100.00 for each day Closing is delayed by Buyer. Seller and Buyer instruct the Closing Agent to add the delay fee imposed by the Seller to the Total Purchase Price, based upon Seller's notification to the Closing Agent of a Buyer delay of the Closing, without further written modification of this Agreement. Buyer, on Buyer's own behalf and for Buyer's lender, agrees that if weather and/or ground conditions delay completion of landscaping, final grading and/or flatwork, this will not be a reason to delay closing or require a holdback. If not completed before Closing, Seller agrees that when weather, ground conditions and scheduling permit, landscaping, final grading and/or flatwork will be completed.

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- A. **CLOSING AGENT.** The Closing Agent for this transaction shall be the company described below (based upon the location of the property), or the transaction may be closed at such other escrow agent approved by Seller in writing:

For most transactions in Western Washington, Pierce, Thurston and King County - First American Title Insurance Company, located at 4707 South 19th Street, Suite 101, Tacoma, WA., 98405, (253) 752-3600, facsimile (866) 875-6778;

For transactions in Western Washington, Snohomish County - First American Title Insurance Company, located at 2917 Pacific Avenue, Everett, WA 98201, ,(425) 551-4122, facsimile (866) 859-0436.

For transactions in Western Washington, Clark County – First American Title Insurance Company, located at 16701 South East McGillivray, Vancouver, WA., 98683, (360) 256-1709, facsimile (866) 731-5628

- B. **CLOSING DATE.**

CLOSING DATE FOR HOMES UNDER CONSTRUCTION. *This paragraph shall apply to transactions in which the home on the Property is to be constructed or under construction (as described in General Terms Paragraph 6A).* If this Agreement is not conditioned upon the sale of the Buyer's home, this sale shall be closed on a date chosen by Seller, in Seller's discretion, which is approximately seven (7) days after completion of construction, but not sooner than five (5) days after the date designated by Seller for conducting Buyer's orientation to the home; however, if Buyer's orientation meeting with Seller results in Seller's agreement to perform additional work, the Seller shall determine the Closing Date, in Seller's discretion, based upon Seller's election to perform the additional work before Closing. If this Agreement is conditioned upon the sale of Buyer's home, this sale shall be closed on the later of (1) seven (7) days after the closing of the sale of Buyer's home, or thirty (30) days after Buyer's waiver of the contingency, whichever event contingency removal event occurs first; or (2) a date which is within five (5) days of the completion date, as described in Specific Term G and conditioned General Term Paragraph 6B. In any event, closing shall take place no later than the date determined by the provisions of General Term Paragraph 6B for completion of the home, and any extension of such date; and if the sale does not close within this time, this agreement may be terminated at Seller's or Buyer's option, upon five (5) days written notice. **Notwithstanding any provision of this Agreement, Seller shall not be required to close this transaction prior to (1) the completion date, (2) orientation of the Buyer in the home, and (3) repair of orientation list items which Seller, in Seller's discretion, elects to repair prior to Closing.** The agreement of the parties to extend the completion date shall also extend the Closing Date by an equal number of days.

CLOSING DATE FOR HOMES THAT ARE SUBSTANTIALLY COMPLETE. *This paragraph shall apply to transactions in which the home on the Property is substantially complete at the time this Agreement is signed.* If this Agreement is not conditioned upon the sale of the Buyer's home, this sale shall be closed on the Closing Date as described in Specific Term G of this Agreement, but not sooner than five (5) days after the date designated by Seller for conducting Buyer's orientation to the home; however, if Buyer's orientation meeting with Seller results in Seller's agreement to perform additional work, the Seller shall determine the Closing Date, in Seller's discretion, based upon Seller's election to perform the additional work before Closing. If this Agreement is conditioned upon the sale of Buyer's home, this sale shall be

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closed (1) seven (7) days after the closing of the sale of Buyer's home, or (2) thirty (30) days after Buyer's waiver of the contingency, whichever event occurs first. In any event, closing shall take place no later than a date sixty (60) days after the date of mutual acceptance of this agreement, and if the sale does not close within this time, this agreement may be terminated at Seller's option, upon five (5) days written notice from the Seller to the Buyer. Notwithstanding any provision of this Agreement, Seller shall not be required to close this transaction prior to (1) orientation of the Buyer in the home, and (2) repair of orientation list items which Seller, in Seller's discretion, elects to repair prior to Closing.

- C. SELLER'S FAILURE TO RECORD PLAT, ACQUIRE TITLE TO PROPERTY OR CONSTRUCTION FINANCING.** For transactions in which (1) the final plat of the community has not been recorded or (2) Seller has not acquired the Property on which the home shall be constructed as of the date of mutual acceptance of this Agreement (the first box in General Term Paragraph 6A has been checked) or has not secured construction financing needed to construct the home (the first or second box of Specific Term Paragraph G has been checked) the effective date of this transaction is hereby delayed until recordation of the plat, Seller's successful acquisition of the Property and required construction financing. Such acquisition or financing shall be completed by Seller on or before a date that is not more than ninety (90) days from the date of mutual acceptance of this Agreement. If the plat has not been recorded, or Seller has not acquired the property chosen by Buyer or obtained needed construction financing within the ninety (90) days following the mutual acceptance of this Agreement, Seller shall give Buyer written notice of the failure of Seller to acquire the Property or obtain construction financing, and resulting failure to consummate the formation of this Agreement. In such event, there shall not be a default by either party, and Buyer shall be entitled to a return of the Earnest Money and all sums paid for décor selections, upgrades and changes.
- D. CLOSING COSTS AND PRO-RATIONS.** Buyer shall pay one-half the scheduled escrow fee, unless otherwise required by applicable FHA or VA regulations. Seller may pay one-half the scheduled escrow fee, but shall be entitled to any builder's discount offered by the escrow agent or title insurer, which may result in Seller paying a lower escrow fee than Buyer. Taxes for the current year shall be prorated as of Closing. Seller shall pay all real estate excise taxes due upon transfer of title. Homeowner's Association deposits and assessments shall be collected from the Buyer consistent with General Term Paragraph 9. Buyer agrees to pay Buyer's loan costs, including credit report, appraisal charge and lender's title insurance. Seller agrees to pay any utility or special district installments due at the time of Closing. Seller agrees to make all utility payments outside of escrow. Seller and Buyer hereby waive their right under RCW 60.80 to have the Closing Agent administer the payment of such installments, or any other charges that may be due at Closing as described in RCW 60.80, and hereby waive any liability of the Closing Agent for collection.
- E. BUYER'S INSURANCE COVERAGE.** Buyer agrees to procure before the Closing Date a policy of homeowners' insurance that satisfies the requirements of Buyer's lender. The failure of Buyer to procure such a policy shall be a breach of this Agreement by Buyer. This sale is not contingent upon Buyer's ability to procure acceptable insurance coverage.
- F. BUYER'S POSSESSION OF PROPERTY.** Buyer shall be entitled to possession of the Property after 4:00 p.m. on the day of Closing, but only if Seller has received the funds due Seller from the Closing Agent; if Seller has not received the funds due Seller from the Closing Agent, possession by Buyer shall be delayed until Seller receives the funds. The Closing Agent shall inform the Buyer of the release of funds to Seller. Seller agrees to maintain the Property in its present condition, normal wear and tear excepted, until the Buyer is entitled to

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possession. Buyer may not occupy the Property prior to the Closing Date unless (i) a written Early Occupancy Agreement, in the form required by Seller, has been executed by Seller and Buyer, (ii) Buyer has obtained a renter's insurance policy for the Property naming Seller as an additional insured, in a form acceptable to Seller, and (iii) advance rent has been paid by Buyer to Seller.

8. TITLE AND TITLE INSURANCE.

A. **CONDITION OF TITLE.** Unless otherwise specified in this Agreement, title to the Property shall be marketable at Closing. The following shall not cause the title to be unmarketable: rights, reservations, covenants, conditions and restrictions, presently of record and general to the area; easements and encroachments, not materially affecting the value of or unduly interfering with Buyer's reasonable use of the Property; and reserved oil and/or mining rights ("Permitted Exceptions"). Monetary encumbrances or liens not assumed by Buyer shall be paid or discharged by Seller on or before Closing. Title shall be conveyed by a Statutory Warranty Deed. Buyer acknowledges that Seller, in the course of acquiring property for resale with completed homes, may delay the acquisition of title to the Property which is the subject of this transaction until a date which follows the execution of this Agreement, and the Property may be a part of a plat which has not yet been recorded. Therefore, Seller may not hold title to the Property as a subdivided lot at the time of the execution of this Agreement, but intends to acquire such title and complete platting of the community before Closing, to complete this transaction. Buyer's remedies are limited to the remedies described in Paragraph 12A, in the event Seller is for any reason unsuccessful in the acquisition of marketable title to the Property or recordation of the plat of the community prior to Closing.

B. **TITLE INSURANCE.** After mutual acceptance of this Agreement, Seller shall supply to Buyer a preliminary commitment for a current ALTA form Homeowner's Policy of Title Insurance, One to Four Family Residence, with homeowner's additional protection and inflation protection endorsements if available at no additional cost, from First American Title Insurance Company (*if the property is located in Western Washington*), or Cascade Title Insurance (*for property in Eastern Washington*) (the applicable title insurer is hereafter referred to as "Title Insurance Company"), unless Seller and Buyer agree, in writing, to obtain such coverage from another title insurer by written addendum to this Agreement. If Seller has previously received a preliminary commitment from a Title Insurance Company that Buyer declines to use, Buyer shall pay any cancellation fee incurred by Seller to the Title Insurance Company from which the Seller obtained a preliminary commitment concerning the Property. If extended title insurance coverage, homeowners' additional protection and inflation endorsements are available at an extra cost, Buyer may purchase the additional coverage or endorsements from the Title Insurance Company by placing an order for such extended coverage or additional endorsements not less than ten (10) days prior to Closing, and Buyer shall pay the additional premium incurred for issuance of the additional coverage or endorsements at Closing. The Title Insurance Company shall send a copy of the preliminary commitment for title insurance and all supplemental reports to Buyer, Seller, the Selling Licensee and the Listing Agent. The preliminary commitment, and the title policy to be issued, shall contain no exceptions other than the General Exclusions and Exceptions in standard form, and Special Exceptions consistent with the Condition of Title herein provided.

This Agreement is conditioned upon Buyer's review and approval of Special Exceptions contained in the preliminary commitment which are not Permitted Exceptions. The approval of Special Exceptions shall be at the Buyer's sole judgment and discretion. Such approval is deemed granted by Buyer unless Buyer, within 7 days of Buyer's receipt of the preliminary

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commitment, gives written notice to Seller or the Listing Agent of Buyer's disapproval, in which event this Agreement shall terminate.

C. BUYER'S REMEDIES FOR UNINSURABLE OR UNMARKETABLE TITLE. If Buyer disapproves of a Special Exception contained in the preliminary commitment which is not a Permitted Exception, or title cannot be made insurable or marketable prior to Closing, then Buyer may (1) terminate this transaction and obtain release of the Earnest Money Deposit and return of all payments made by Buyer to Seller for upgrades and changes; (2) elect specific performance of this Agreement as defined in Paragraph 12A, and purchase another home on a lot in another community owned by the Seller, comparable in size, design and listed price, chosen by Buyer, or (3) elect to waive such defects or encumbrances,. Buyer shall have no right to any other form of specific performance compelling the conveyance of the Property described herein, or damages for failure to convey the Property to Buyer, as a consequence of Seller's inability to provide insurable or marketable title to the Property.

D. SEWAGE TREATMENT CAPACITY AND DEVELOPMENT IMPACT CHARGES. A sewage treatment capacity or development impact charge, imposed by local government, may be applicable to this Property. This charge, if imposed, may not appear of public record, and is paid by the owner of the Property in addition to charges from the local sewer utility or government service agency. Buyer agrees to make Buyer's own investigation to learn of the existence and amount of any such charges that may be imposed upon Buyer related to Buyer's acquisition and ownership of the Property. Buyer's responsibility for payment of such charge shall commence as of the date of closing. The charge shall not be pro-rated to the date of closing, but shall be the sole responsibility of Buyer to make all payments of the charge not already made by Seller before Closing.

9. HOMEOWNERS ASSOCIATION. Seller, or the developer of the community in which the Property is located, may elect to administer the Homeowners Association to the extent permitted by the Declaration of Covenants or Condominium applicable to the Property for the time period permitted by the Declaration and state law. The rights and duties of the Buyer as a member of the Association are described in the Declaration. The Buyer, by executing this Agreement, accepts responsibility for learning the rights and duties of members of the Association, and for Buyer's full compliance with the terms of the Declaration.

If the Property is described as a "Lot" or "Townhome" in Specific Term Paragraph F - Buyer shall become a member of the Homeowners Association for the development in which the Property is located, upon Closing. The Association is a non-profit corporation organized to administer the neighborhood's Covenants, and maintain the Common Areas. The Association may require the collection of an assessment of upon each Buyer at Closing, which assessment may be paid in whole or in part to Seller directly to partially reimburse Seller for expenses and associated with certain improvements installed by the Seller on behalf of the Association. The Association will also make periodic assessments to administer the Association and maintain and improve the Common Areas. The sum due for assessments at Closing shall be determined by the Association, and may be collected in full for the entire year, or prorated to reflect the portion of the assessment period during which the Buyer owned the Property, as determined by the Association in its discretion. **The sums described above are estimates of the Seller; the Association may charge a different initial or periodic assessment. The sums due from the Buyer to the Association shall not be limited to the sums estimated by Seller, nor shall Seller be responsible for payment of the difference between the estimate and the sum actually collected by the Association from Buyer.** Buyer agrees to make Buyer's own investigation to

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learn of the existence and amount of all dues that may be imposed upon Buyer related to Buyer's acquisition and ownership of the Property.

If the Property is a condominium - Buyer shall become a member of the Homeowners Association for the condominium of which the Property is a part, upon Closing. The Association is a non-profit corporation organized to administer the Declaration of Condominium, and maintain the Common Areas of the condominium. The assessments to be collected by the Association from the Buyer at Closing, and the estimated future assessments by the Association, are described in the Public Offering Statement provided to Buyer with this Agreement.

10. AGENCY. Both Seller and Buyer acknowledge that the Selling Licensee represents the Buyer exclusively, and not the Seller, and that the Listing Agent represents the Seller exclusively, and not the Buyer. The Selling Broker represents the same party that the Selling Licensee represents, and the Listing Broker represents the same party as the Listing Agent represents. If the Selling Licensee and the Listing Agent are different licensees affiliated with the same real estate Broker, then both Seller and Buyer confirm their consent to that Broker representing both parties as a dual agent. If the Selling Licensee and the Listing Agent are identified in this agreement as the same salesperson, then both Seller and Buyer confirm their consent to that salesperson and his or her broker representing the Seller exclusively, and the Buyer having no representation in this transaction. All parties acknowledge receipt of a copy of the pamphlet entitled "The Law of Real Estate Agency."

11. REPRESENTATIONS – DISCLAIMERS.

A. **SALES RESTRICTED.** Seller has an interest in maintaining the attractiveness and marketability of Seller's property, and establishing a residential community that maintains a high quality of livability consistent with Seller's established good reputation. The representations made by Buyer and the remedies afforded Seller in this Paragraph shall survive the Closing of this sale. The Seller's interest in other property owned by Seller located in the vicinity of the Property could be damaged by sales to persons who participate in programs that require governmental oversight and monitoring of daily activities. Therefore, Buyer further represents that (a) Buyer (or, if there is more than one Buyer, either Buyer) has not become or is not required to be a participant in any program described in RCW 9A.44.130 (registration of sex and kidnapping offenders); (b) Buyer (or, if there is more than one Buyer, either Buyer), does not provide and will not provide after closing a residence or employment at the Buyer's home to any person who has become or is required to be a participant in any program described in RCW 9A.44.130; and (c) Buyer has no knowledge of any complaint, information, indictment, or pending proceeding that could require Buyer (if there is more than one Buyer, either Buyer), or any person for whom Buyer provides or intends to provide a residence or employment at the Buyer's home to become a participant in any program described in RCW 9A.44.130 at a future date. Seller shall be entitled to rescind the transaction and seek incidental damages, or seek actual damages, in the event of a breach of this representation and warranty by Buyer

B. **SUFFICIENT FUNDS.** Buyer represents that Buyer has sufficient funds to close this sale in accordance with this Agreement, and is not relying on any contingent source of funds or gifts, except to the extent otherwise specified in this Agreement.

C. **PARTIAL WAIVER OF REAL PROPERTY TRANSFER DISCLOSURE STATEMENT.** Buyer hereby waives the right to receive from Seller all portions of the Real Property Transfer Disclosure Statement, described in RCW 64.06.020 ("Statement") except the portion of the

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Statement containing a description of environmental conditions which may exist on the Property or in the neighborhood in which the Property is located. The environmental disclosure portion of the Statement shall be supplied by Seller to Buyer, but shall not become a part of this Agreement.

- D. NO RELIANCE BY BUYER UPON REPRESENTATIONS BY SELLER AND AGENT.** Buyer acknowledges that that Buyer has not relied on any representations, opinions or statements, oral or implied, made by the Listing Agent, or its subagents and employees, or the Seller, Seller's agents and employees of the Seller, concerning (1) the property condition; (2) property boundaries; (3) noise; (4) property value, (5) work or material quality, (6) views; (7) grounds; (8) future improvements; (9) ownership; (10) natural buffers or greenbelts, (11) zoning and/or pending development of surrounding properties; (12) issues of personal and environmental concerns; (13) neighborhood security risks, including but not limited to the presence of persons under government supervision as a result of the conviction of crimes and subsequent parole; (14) encroachments; (15) school district boundaries; (16) square footage of lots or buildings; (17) road improvements; (18) the contents of county records; (19) fact or preview sheets provided by any agent; (20) the existence of any guaranties or warranties other than the written guaranties and warranties described in this Agreement, or (21) any other matter not contained in this Agreement. Buyer agrees to rely solely upon Buyer's own independent analysis, neighborhood investigations, inspections of the property, and written agreements between Seller and Buyer. The foregoing list is not exhaustive, but intends to illustrate Buyer's obligation and willingness to assure himself or herself of Buyer's satisfaction with all aspects of the property and its surrounding neighborhood. Buyer further acknowledges that only written agreements between Buyer and Seller shall be binding and enforceable under this Agreement. Buyer understands and acknowledges that any representations contained in listing agreements, marketing literature, flyers, advertisements, websites, e-mail or other written and electronic media communication are all subject to change, and therefore are not to be interpreted to expand or modify any of the terms or conditions contained in this Agreement. Buyer agrees to hold Seller's Agent and Seller, their subagents, principals, and employees harmless from any claims or damages related to the representations not made in writing and expressly incorporated within this Agreement.
- E. MODEL HOMES – MARKETING INFORMATION.** Any model homes constructed by Seller that are viewed by Buyer are presented as a general illustration only. The plans, specifications, details, decorations, furnishings, options, and color selections included in Seller's model homes and marketing information shall not be deemed to be an agreement or commitment by Seller to deliver the home being purchased by the Buyer in accordance with the features of any such model homes or marketing information, except such features that are described on Standard Features List applicable to the community in which the property is located. The specifications, details, decorations, furnishings, options, or color selections in or to any model home or marketing information (including but not limited to, brochures, flyers, handouts, site plans, web site information, and all other marketing information supplied by the Seller or its agent) are not included in or a part of this Agreement, unless Seller as a part of this Agreement agrees to in writing to include them as part of the Agreement.
- F. FUTURE DEVELOPMENT.** Buyer acknowledges and agrees that Seller hereby reserves the right to develop land and build additional homes in the vicinity of the Property according to plans which, in Seller's sole discretion, may change from time to time, including the construction of homes which may materially differ from the homes existing in the neighborhood at the time this Agreement is executed. Seller makes no representations regarding the type of future development or homes to be constructed in the neighborhood.

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12. REMEDIES FOR BREACH AND LIMITATIONS UPON REMEDIES.

- A. **BUYER'S REMEDIES – SPECIFIC PERFORMANCE DEFINED.** Buyer and Seller agree that the Property which is the subject of this Agreement is part of a larger platted community, in which numerous lots and homes have similar physical characteristics, notwithstanding their different locations in the community. Therefore, Buyer and Seller agree that although the community in which the Property is located is unique, the Property, a lot within the community, is not unique, and an alternative lot may be substituted by Seller for construction of the plan, model and elevation chosen by Buyer in this Agreement. Buyer and Seller agree that specific performance of this Agreement by Buyer may be satisfied by Seller's substitution of an alternate lot of similar size in the community, or in close proximity to the community in which the Property described in this Agreement is located if Seller (1) is unable to deliver marketable title to the Property, or (2) obtains a building permit to construct a home different than the plan, model or elevation chosen by Buyer and described in this Agreement. Seller may offer to Buyer in full satisfaction of Seller's obligation to specifically perform this Agreement a different lot on which the Buyer's chosen plan, model and/or elevation may be constructed at the same Total Purchase Price stated herein, or Buyer may elect to purchase the Property with the plan, model and/or elevation of home described in the permit issued for construction on the Property, at the same Total Purchase Price stated herein.
- B. **BUYER'S REMEDIES – DEFAULT OR MISREPRESENTATION.** Upon (1) any incidental or material default in performance of this Agreement by Seller, (other than the failure of Seller to construct on the property the plan, model and/or elevation of home described in this Agreement, the remedies for which are described in Paragraph 12A), or (2) the inaccuracy of any representation by Seller, Buyer's sole and exclusive legal and equitable remedy is agreed by Buyer and Seller to be Buyer's termination of this Agreement, and return to Buyer of the Earnest Money Deposit together with interest on such deposit at twelve percent (12%) per annum from the date the deposit was delivered to Seller until the deposit is returned to Buyer; and if the breach of this Agreement is the result of a delay by Seller, and provided that Buyer is not in breach of this Agreement in any manner at the time of Seller's breach, return by Seller to Buyer of non-refundable payments made by Buyer to Seller for décor selections, upgrades or changes described in *Design Center Addendum* together with interest on the payment made by Buyer at twelve percent (12%) per annum from the date the payment was delivered to Seller until the payment is returned to Buyer. ***Seller shall not be responsible for any damages claimed by Buyer resulting from delay in completing the construction described in this Agreement.***
- C. **BUYER'S RELEASE OF SELLER.** Buyer hereby releases Seller from any and all claims of Buyer, known or unknown, existing or occurring in the future, related to expiration of loan commitments, interest rates changes, additional loan costs, temporary housing or storage costs, or damages allegedly related to the sale of any other property by Buyer. In the event that Seller has failed to include a décor selection, upgrade or change in the home requested by Buyer, Buyer's sole remedy shall be refund of the sum paid by Buyer, including any change fee, related to the décor selection, upgrade or change which was not included in the home; Buyer hereby expressly waives any right to claim damages or seek specific performance for the completion of décor selections, upgrades or changes by the Seller. Buyer shall never be entitled to receive punitive or consequential damages from Seller, and Buyer waives any right to those damages.

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D. FAILURE TO COMPLETE CONSTRUCTION BY SECOND ANNIVERSARY. The limitations in Paragraphs 12B and 12C shall not apply to a failure by Seller to achieve Completion by the second anniversary of the date Buyer signs this Agreement, as described in Paragraph 8B. For that failure, Buyer shall have all remedies that are available under applicable law, including specific performance as described and defined in Paragraph 12A.

E. SELLER'S REMEDIES - LIMITATIONS. Upon any incidental or material default in performance of this Agreement by Buyer, or the inaccuracy of representations by Buyer, Seller's sole and exclusive legal and equitable remedy is agreed by Buyer and Seller to be Seller's termination of this Agreement, and retention by Seller of the Buyer's the Earnest Money Deposit and all other payments made by Buyer for décor selections, upgrades and changes, subject to the limitations described in RCW 64.04.005, if any such limitations apply. If the representations made by Buyer in paragraph 11A or B are false, Seller may elect to rescind the sale of the property and regain ownership and possession of the property from Buyer in the manner provided by law for the rescission of contracts, based upon Buyer's misrepresentation or concealment; the right of Seller to obtain rescission shall survive the closing of this transaction.

13. NOTICE REGARDING CONSTRUCTION DEFECT CLAIMS. Chapter 64.50 RCW contains important requirements you must follow before you may file a lawsuit for defective construction against the Seller or builder of your home. Forty-five days before you file your lawsuit, you must deliver to the Seller or builder a written notice of any construction conditions you allege are defective and provide your Seller or builder the opportunity to make an offer to repair or pay for the defects. You are not obligated to accept any offer made by the builder or Seller. There are strict deadlines and procedures under state law, and failure to follow them may affect your ability to file a lawsuit.

14. ARBITRATION AGREEMENTS. The Seller and Buyer agree to submit all disputes related to this Agreement to binding arbitration as described herein (except a claim by Seller to quiet title to the Property, which may, at Seller's election, be adjudicated in a court of competent jurisdiction). Any dispute concerning the interpretation or the enforceability of the Arbitration Agreements described in this paragraph, including, without limitation, revocability or voidability for any cause, the scope of arbitrable issues, and any defense based upon waiver or estoppel, shall be decided by the Arbitrator. The decision of the Arbitrator shall be final and binding and may be entered as a judgment in any court of competent jurisdiction. These Arbitration Agreements shall survive the closing of this transaction, and shall inure to the benefit of, and be enforceable by, any subcontractor, agent, vendor, supplier, design professional, insurer and any other person alleged to be liable to Buyer, and shall be binding upon all family members and tenants of the Buyer and any Homeowners Association. No participation of a party in a judicial proceeding involving a matter which is arbitrable under these Arbitration Agreements shall be deemed a waiver of the right of such party to enforce the Arbitration Agreements. If any provision of these Arbitration Agreements shall be determined by the Arbitrator or any court to be unenforceable or to have been waived, the remaining provisions shall be deemed to be severable therefrom and enforceable according to their terms. Any party shall be entitled to recover reasonable attorney's fees, litigation expenses and costs incurred in enforcing the Arbitration Agreements under Paragraph 20B herein.

A. ARBITRATION AGREEMENT FOR NON-WARRANTY CLAIMS. All parties to this Agreement agree that any claim arising from or related to this Agreement, to the sale of the Property or any common elements of a community or condominium, or to any defect in a home or the Property, or which is part of common elements, including without limitation any

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claim of breach of contract, negligent or intentional misrepresentation or nondisclosure in the inducement, execution or performance of any contract, including this Agreement, any alleged statutory violation, claim of bodily injury and any claim brought under the Washington State Consumer Protection Act, *but excluding any claims related to a defect in or to the home on the Property asserted by Buyer after Buyer closes the purchase of the Property (which claims shall be determined as provided below)* shall be determined by binding arbitration as described in this subparagraph.

The Arbitration shall be conducted by the American Arbitration Association, Construction Arbitrations Services, Inc., DeMars & Associates, Ltd., or another arbitration service selected by the parties in writing, pursuant to the arbitration service's applicable arbitration rules to the extent such rules are not inconsistent with this Arbitration Agreement. If the parties fail to agree on the selection of an arbitration service, the choice of arbitration service shall be that of the claimant. All administrative fees of the arbitration service and fees of the Arbitrator shall be borne equally by the parties to the arbitration, subject to the discretion of the Arbitrator to reallocate such fees in the interest of justice.

The Arbitrator shall take such steps as may be necessary to hold a hearing within ninety (90) days of the initial demand for arbitration and to conclude the hearing within three (3) days; and the Arbitrator's written decision shall be made not later than fourteen (14) calendar days after the hearing. The parties have included these time limits in order to expedite the proceeding, but they are not jurisdictional, and the Arbitrator may for good cause afford or permit reasonable extensions or delays, which shall not affect the validity of the award. The written decision shall contain a brief statement of the claim determined and the award made on each claim. In making the decision and award, the Arbitrator shall apply applicable substantive law. The Arbitrator may award injunctive relief or any other remedy available from a judge, including without limitation joinder of parties or consolidation of this arbitration with any other involving common issues of law or fact or which may promote judicial economy, but shall not have the power to award punitive or exemplary damages.

The parties expressly agree that this Arbitration Agreement and the underlying agreement of the parties related to the purchase of the Property involve and concern interstate commerce, and are governed by the Federal Arbitration Act (9 U.S.C. §1, et. seq.) to the exclusion of any different or inconsistent state or local law, ordinance or judicial rule; and to the extent that any state or local law, ordinance or judicial rule shall be inconsistent with any provision of the rules of the arbitration service under which the arbitration proceeding shall be conducted, the arbitration service rules shall govern the conduct of the proceeding.

B. ARBITRATION AGREEMENT FOR WARRANTY CLAIMS. All claims, disputes and controversies between Seller and Buyer arising from or related to alleged defects in the home or the Property which are asserted by Buyer after the Buyer's closing of the purchase of the Property shall be submitted to binding arbitration commenced and conducted in accordance with the arbitration provision of the most recent edition of the HBW 2-10 Warranty Booklet, as published on the date of the execution of this Agreement. The Warranty Booklet has been made available to the Buyer, is incorporated into and made of part of this Agreement by reference. Buyer acknowledges that the remedies described in the HBW 2-10 Warranty Booklet are the sole and exclusive remedies provided to Buyer after closing of this transaction for defects which Buyer claims are present in the home. Buyer agrees that Seller may specifically enforce the limitations upon Buyer's remedies recited therein, including but not limited to Seller's right to require that Seller repair any condition determined by the arbitrator to be deficient, in lieu of Seller's payment of monetary damages to Buyer.

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15. GENERAL PROVISIONS.

- A. **ASSIGNMENT.** Buyer may not assign this Agreement, or Buyer's rights hereunder, without Seller's prior written consent, which consent may be given or withheld by Seller in Seller's sole, subjective discretion.

- B. **ATTORNEY'S FEES, COSTS AND EXPENSES.** In the event that any suit or other proceeding is instituted by any person arising out of or pertaining to this Agreement, including but not limited to any arbitration proceeding, appeal or collateral action, the substantially prevailing party, as determined by the court or arbitrator, shall be entitled to recover reasonable attorneys' fees, costs and litigation expenses of any kind (including expert witness fees) incurred relative to such suit or proceeding from the substantially non-prevailing party, in addition to such other relief as may be awarded to the substantially prevailing party.

- C. **COMMISSION.** Seller and Buyer agree to pay a commission in accordance with any agency or commission agreement to which they are a party. The commission to be paid shall be based upon the Purchase Price stated in Specific Term Paragraph D, excluding all upgrades, changes, décor selections, closing costs or other costs added to or included in the Purchase Price to create the Total Purchase Price. The Listing Broker's commission shall be apportioned between the Listing Broker and the Selling Broker as specified in the agency or commission agreement. Seller and Buyer hereby consent to Listing Broker or Selling Broker receiving compensation from more than one party.

- D. **COMPUTATION OF TIME.** Unless otherwise specified in this Agreement, any period of time stated in this Agreement shall start on the day following the event commencing the period and shall expire at 9:00 p.m. of the last calendar day of the specified period of time, unless the last day is a Saturday, Sunday or legal holiday as defined in RCW 1.16.050, in which event the specified period of time shall expire on the next day that is not a Saturday, Sunday or legal holiday. Any specified period of 5 days or less shall not include Saturdays, Sundays or legal holidays. Time is of the essence in this Agreement.

- E. **COUNTEROFFER.** If Seller makes a counteroffer, Buyer shall have until 5:00 p.m. two (2) calendar days after the date upon which the counteroffer is delivered to the Buyer to accept the counteroffer, unless sooner withdrawn. Acceptance shall not be effective until a signed copy is actually received by Seller; receipt by the Listing Agent shall not be deemed sufficient delivery to the Seller. If the counteroffer is not so accepted, it shall lapse and any Earnest Money Deposit shall be returned to Buyer. If Buyer makes a counteroffer in response to Seller's counteroffer, the Buyer's counteroffer shall expire at 5:00 p.m. on the second day after the Buyer's counteroffer is delivered to the Seller, unless sooner withdrawn. Acceptance of a counteroffer shall be sufficient if the change made to this Agreement, or any additional addenda which are attached to this Agreement, are initialed by the parties who executed this Agreement; additional full signatures shall not be required on counteroffers.

- F. **FACSIMILE AND E-MAIL TRANSMISSIONS.** Facsimile transmission of any signed original document, and retransmission of any signed facsimile transmission, shall be the same as delivery of an original. At the request of either party, or the Closing Agent, the parties will confirm facsimile transmitted signatures by signing an original document. E-mail transmissions of any document or notice shall not be effective as delivery or receipt of a notice unless otherwise agreed by the parties in writing.

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G. **INTERPRETATION.** This Agreement constitutes the entire understanding between the parties and supersedes all prior or contemporaneous understandings and representations. There are no express or implied agreements, promises or representations except as set forth herein or in other written documents executed by Seller and Buyer. No modification of this Agreement shall be effective unless agreed in writing and signed by Buyer and Seller. Only handwritten or typed changes to this Agreement initialed by both Seller and Buyer shall be given effect.

H. **NOTICES – COMMUNICATIONS AMONG PARTIES TO THIS AGREEMENT.** Unless otherwise specified in this Agreement, any notice required or permitted in, or related to, this Agreement (including revocations of offers or counteroffers) must be in writing. Notices to Seller must be signed by all persons identified as a Buyer, and shall be deemed given only when the notice is received by Seller at Seller's address stated in this Agreement; notice to Seller's Listing Agent shall not be effective to provide notice to Seller. Notices to Buyer must be signed by Seller and shall be deemed given when the notice is received by Buyer or by the Selling Licensee at the address of either (1) Buyer, as stated in this Agreement or (2) the Selling Licensee.

The parties to this Agreement may communicate directly with one another, notwithstanding any agency relationships among the parties. The Listing Agent and Selling Licensee waive all restrictions imposed by law or by rules of any professional association or multiple listing service of which they are members, and permit direct communications between the Buyer and Seller, the Listing Agent and Buyer, and the Selling Licensee and Seller. If a party retains legal representation related to the performance of this Agreement, the party retaining such representation must notify the other parties in writing of any requirement to direct communications to their legal representative; until such written notification is received, the party retaining representation grants permission to the other parties for direct communication, notwithstanding the retention of such legal representation.

I. **SALE INFORMATION.** The Listing Agent or Selling Licensee is authorized to report this Agreement (including the price and all terms) to any Multiple Listing Service that published it and to the Services' members, financial institutions, appraisers, title insurance companies, and anyone else related to this sale. Buyer and Seller expressly authorize all lenders, financial institutions, appraisers, title insurance companies, and others related to this sale to furnish the Seller, Listing Agent, and/or Selling Licensee, on request, any and all information and copies of documents concerning the status, progress and disposition of financing, appraisal, Closing, title condition, and any other matter concerning this sale, including Buyer's credit report. In addition, Buyer shall provide any additional consent or authorization necessary to permit Buyer's lender or financing institution to provide to Seller the Listing Agent or the Selling Licensee information concerning the status, progress and final disposition of financing.

J. **SURVIVAL OF TERMS OF THIS AGREEMENT.** The terms of this Agreement shall survive Closing or termination of this Agreement, and shall not merge with the deed delivered by Seller to Buyer, except for Seller's warranties related to the conveyance of title to the Property, which warranties shall be limited to the warranties expressed in or incorporated by statute into the deed delivered to Buyer and recorded at Closing.

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