

**ELM TERRACES  
PURCHASE AND SALE AGREEMENT**

**TOWNHOME NUMBER:** \_\_\_\_\_

**EFFECTIVE DATE:** \_\_\_\_\_, 2020 (see Paragraph 1 below)

**SELLER:**

HC Elm Terraces, LLC  
1616 Cleveland Ave.  
Charlotte, NC 28203  
Telephone: 704-805-4800  
Email: cmccullough@hoppercommunities.com

**PURCHASER:**

Name: \_\_\_\_\_  
\_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_

**PURCHASER AGENT:**

Firm: \_\_\_\_\_  
Agent: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_

**1. AGREEMENT AND SCHEDULES:**

“Agreement” means this Purchase and Sale Agreement and includes Schedule A, Schedule B, Schedule C and Schedule D which are attached hereto and incorporated into this Agreement by reference. Capitalized terms, unless otherwise defined herein, shall have the meanings ascribed to them in Schedule A attached hereto. Purchaser hereby acknowledges having read all sections and schedules of this Agreement and agrees to be bound by the terms hereof. The “Effective Date” of this Agreement shall be the date last set forth below the signatures of Purchaser and Seller on the execution page of this Agreement; the Effective Date shall be inserted into the space provided at the beginning of this Agreement.

**2. PURCHASE AND SALE:**

A. Seller hereby agrees to sell to Purchaser, and Purchaser hereby agrees to purchase from Seller, all of Townhome No.: \_\_\_\_\_ of Elm Terraces to be constructed by the licensed general contractor (the “Contractor”) with whom Seller will contract for the construction of the Elm Terraces located at Elm Lane, in the City of Charlotte, Mecklenburg County, North

Seller’s Initials: \_\_\_\_\_ Purchaser’s Initials: \_\_\_\_\_

Carolina and more specifically described on Schedule C attached hereto and incorporated herein by reference (the "Townhome") which shall be located in a planned unit development established pursuant to the covenants, conditions, easements and restrictions set forth in that certain "Declaration of Covenants, Conditions and Restrictions for Elm Terraces" (the "Declaration"), a proposed draft of which has been furnished to Buyer, and which shall be administered by Elm Terraces Townhome Association, Inc., a North Carolina non-profit corporation (the "Association"). The drawings attached hereto as Schedule C are approximate and subject to change based on field conditions, governmental requirements, and similar factors; however, no such changes shall diminish materially the accessibility, value, or size of the Townhome. Furthermore, the Declaration may be amended pursuant of the terms thereof.

- B. Seller may elect to collaterally assign the Agreement to any lender providing financing to Seller. No such assignment shall have any effect on the obligations of Purchaser under this Agreement.
- C. The Closing shall be established as provided in Section 1(A) of Schedule A.

**3. PURCHASE PRICE AND TERMS OF PAYMENT:**

The base purchase price for the Townhome shall be \$ \_\_\_\_\_ (the "Base Purchase Price"). Upon the selection of the Upgrades and approval of the Additional Costs (both as defined in Schedule A), the Base Purchase Price shall be increased by an amount equal to the Additional Costs (collectively, the "Purchase Price"), as more particularly described in Section 3 of Schedule A.

- A. The Purchase Price shall be paid in the following manner:
  - 1. A five percent (5.0%) deposit shall be paid to Seller concurrently with the execution of this Agreement by Purchaser, equal to \$ \_\_\_\_\_ (the "Deposit").
  - 2. An additional earnest money deposit ("Additional Deposit") shall be paid at the time the Additional Costs are approved by Purchaser (as described in Schedule A). The Additional Deposit shall be equal to fifty percent (50%) of the Additional Costs.
  - 3. The balance of the Purchase Price shall be paid at Closing as provided in Section 2 of Schedule A.
- B. The Deposit together with the Additional Deposit shall be referred to herein as the "Earnest Money Deposit". The Earnest Money Deposit shall be held in escrow by Chicago Title Insurance Company in accordance with the terms of this Agreement and in accordance with all applicable laws, statutes and regulations. EXCEPT AS OTHERWISE PROVIDED HEREIN, THE EARNEST MONEY DEPOSIT SHALL BECOME NON-REFUNDABLE TO PURCHASER WHEN PAID.
- C. Purchaser will also be required to pay the Association at Closing: (i) a portion of the monthly installment of the assessment for Common Expenses against the Townhome, prorated to the date of settlement, and (ii) an initial working capital contribution in an amount equal to twice the monthly installment of the assessment for Common Expenses against the Townhome. These amounts shall be non-refundable.

**4. ADDITIONAL ITEMS:**

Purchaser also acknowledges having received, reviewed and understood each of the documents or items listed below (including all exhibits attached thereto); as evidence of its receipt of the following items, Purchaser has initialed on the line corresponding to each item:

- A. \_\_\_\_\_ Site Plan
- B. \_\_\_\_\_ Proposed drafts of Declaration of Covenants, Conditions and Restrictions for Elm Terraces

**5. CONDITIONS ON SELLER’S OBLIGATIONS:**

PURCHASER EXPRESSLY UNDERSTANDS AND AGREES THAT SELLER’S OBLIGATIONS UNDER THIS AGREEMENT ARE CONDITIONED ON THE SATISFACTION OF CERTAIN CONDITIONS, AS OUTLINED IN SECTION 20 OF SCHEDULE A. PURCHASER UNDERSTANDS THAT IF SELLER AT ANYTIME HEREAFTER REASONABLY DETERMINES THAT THOSE CONDITIONS CANNOT REASONABLY BE SATISFIED ON OR **BEFORE ONE HUNDRED EIGHTY (180) DAYS FOLLOWING THE EFFECTIVE DATE**, THEN SELLER SHALL HAVE THE RIGHT TO CANCEL THIS AGREEMENT BY DELIVERY OF WRITTEN NOTICE OF CANCELLATION TO PURCHASER. IF SELLER ELECTS TO CANCEL AS PROVIDED ABOVE, PURCHASER SHALL BE ENTITLED TO THE RETURN OF THE EARNEST MONEY DEPOSIT, AND THE PARTIES SHALL HAVE NO FURTHER RIGHTS AND LIABILITIES UNDER THIS AGREEMENT.

**6. CONSTRUCTION OF ELM TERRACES AND TOWNHOME:**

Seller shall construct and complete the Elm Terraces and Townhome substantially in accordance with final plans and specifications (the “Plans”) to be prepared by Seller based upon the preliminary drawings for the Townhome building (the “Building”) in which the twenty (20) residential Townhomes for Elm Terraces are located (collectively, the “Preliminary Plans”), copies of each which have been delivered to Purchaser. Purchaser acknowledges that the Preliminary Plans are not the final working drawings for the Building or the Townhome and that the Plans may vary from the Preliminary Plans in minor respects, including, but not limited to, changes to the exterior design of and materials used in the Building and changes in the design or configuration of the common areas. Purchaser also acknowledges that in the course of construction of the Townhome, certain minor changes, substitutions or modifications may be necessitated by governmental authorities having jurisdiction over the Building and the Townhome, job conditions, design changes by the contractor or architect, or availability of materials. All such changes, substitutions, and modifications are hereby authorized by Purchaser, provided that the changes do not materially affect the size or the value of the Townhome. Seller expressly reserves the right to make substitutions of materials or products in the construction of the Building and the Townhome, provided that such substitutions do not materially affect the value of the Townhome. Seller shall notify Purchaser of any such changes, substitutions, or modifications.

Seller’s Initials: \_\_\_\_\_ Purchaser’s Initials: \_\_\_\_\_

IN WITNESS WHEREOF, Seller and Purchaser have executed this Agreement as of the Effective Date.

**SELLER:**

**PURCHASER:**

**HC ELM TERRACES, LLC**

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

Title: \_\_\_\_\_

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

\_\_\_\_\_

\_\_\_\_\_

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

Seller's Initials:

Purchaser's Initials:

\_\_\_\_\_

\_\_\_\_\_

**SCHEDULE A**

**TERMS AND CONDITIONS**

**1. CLOSING:**

- A. The closing of the transaction contemplated under this Agreement (the “Closing”) shall take place on or before the date that is twenty (20) days following substantial completion of the Townhome (the “Closing Date”). Seller shall notify Purchaser, at least twenty (20) days prior to the Closing Date that the Townhome is substantially complete. The issuance of a certificate of occupancy or its equivalent by the appropriate governmental agency shall constitute irrefutable and conclusive evidence of substantial completion of the Townhome. The fact that the Townhome may require minor repairs, touch-ups or adjustments shall not constitute a valid reason for Purchaser to fail to close on the Closing Date.
- B. The Closing shall take place at Doyle & Wallace, PLLC in Charlotte, North Carolina.
- C. The Closing shall be deemed to have occurred on the date that Seller receives all funds due from Purchaser, as shown on the Closing statement prepared in accordance with this Agreement, and Purchaser has executed all necessary documents.
- D. Prior to the Closing Date, Purchaser shall, at its expense, make arrangements with the appropriate utility companies to have the accounts for utility services to the Townhome transferred into its name. If Purchaser fails to do so, then Purchaser shall pay to Seller on demand any utility charges for the Townhome pertaining to periods after the Closing Date, together with an administrative fee of Two Hundred Fifty Dollars (\$250.00).
- E. If Purchaser is unable or unwilling to close on the Closing Date provided for in Section 1(A), Purchaser shall be in default under this Agreement, and Seller shall have the option of exercising all of its rights and remedies as provided in this Agreement or by law for Purchaser’s default, or of postponing the Closing, in which event Purchaser agrees to pay a late charge at a rate of One Hundred Fifty Dollars (\$150.00) per day from the scheduled Closing Date until the actual Closing Date. The parties agree that such late charge constitutes a good faith estimate of the damages that will be incurred by Seller as a result of the delay. TIME IS OF THE ESSENCE with respect to the Closing Date, and also with respect to any other provision of this Agreement that requires performance by Purchaser within a specified time period.
- F. All payments at Closing shall be made by wire transfer or certified check, cashier’s check or attorney’s trust account check drawn on a bank located in the Charlotte, North Carolina area in United States currency.
- G. Seller does not represent and warrant to Purchaser that the Townhome will be completed by any particular date. As construction of the Townhome progresses, Seller may elect to update Purchaser periodically as to the estimated completion date for the Townhome, but such updates shall not be binding upon Seller, and the Scheduled Closing Date shall be established only in the manner provided in Section 1(A).

**2. EXPENSES OF CLOSING:**

- A. The additional costs to be paid by the Purchaser at the Closing include the following:
  - 1. All closing costs associated with any loan obtained by Purchaser, including the loan origination fee, prepaid items such as interest and escrows, loan discount points, Purchaser's legal fees, and any insurance premiums (including private mortgage insurance and homeowners' insurance);
  - 2. All title search costs and title insurance premiums;
  - 3. The cost of recording the deed and the deed of trust, if Purchaser obtains a loan;
  - 4. Purchaser's pro rata share of all real property taxes on the Townhome, which shall be prorated on a calendar year basis as of the Closing Date;
  - 5. Purchaser's pro rata share of the first monthly installment of the monthly maintenance and operational assessments to be paid to the Association for the Townhome, which assessments are set forth in the approved budget (the "Common Expenses"), prorated to the date of Closing; and
  - 6. An initial working capital contribution in an amount equal to twice the monthly installment of the assessment for Common Expenses against the Townhome. These amounts shall be forwarded to the Association, and shall not be refundable.
  
- B. The Seller agrees to pay the following amounts in connection with the Closing:
  - 1. The expense of preparation of the deed, the lien affidavit, a non-foreign affidavit and the Internal Revenue Service Form 1099; and
  - 2. The cost of revenue stamps on the deed, and the cost of recording any release documents.
  - 3. The deed is to be made to: \_\_\_\_\_.

**3. SELECTIONS AND UPGRADES:**

- A. Within thirty (30) days of the Effective Date, Seller and Purchaser will add as an addendum to this Agreement the final Selections/Upgrades Sheet (as defined below). Within ten (10) days of Seller's delivery of the final Selections/Upgrades Sheet to Purchaser (the "Selections/Upgrade Period", as the same may be extended by Seller in its sole discretion), Purchaser shall make selections among the various colors and options, floor coverings, countertops, cabinets and other features available to Purchaser, as set forth on the "Standard Selections" portion of the Selections/Upgrades Sheet delivered to Purchaser by Seller (the "Selections/Upgrades Sheet"). The Selections/Upgrades Sheet also reflects certain upgrades to the Standard Selections and the prototype floor-plans for the Townhome. The upgrades selected by Purchaser in its Selection/Upgrades Sheet shall be referred to herein as the "Upgrades".

Seller's Initials: \_\_\_\_\_ Purchaser's Initials: \_\_\_\_\_

- B. Purchaser shall deliver to Seller the Purchaser’s completed Selections/Upgrades Sheet prior to the end of the Selections/Upgrades Period. The completed Selections/Upgrades Sheet will include the cost of the Upgrades (the “Additional Costs”).
- C. The Plans for the Townhome will incorporate the Upgrades selected by Purchaser if and only if Additional Costs, if any, are accepted by Purchaser as described in Section 3(B) and Purchaser pays to Seller the Additional Costs for any Upgrades promptly upon approval thereof.
- D. The Base Purchase Price set forth in Section 3 of the Agreement shall automatically be increased to reflect the Additional Costs of the Upgrades selected by Purchaser and an Addendum to the Agreement reflecting such increase shall be delivered to Purchaser and Seller and attached to the Agreement (failure to attach such an Addendum, however, shall not invalidate the Agreement or the increase in the Purchase Price).
- E. Seller will contract with the Contractor to construct the Elm Terraces and Townhome (defined in Section 4 below) according to the Plans, and Contractor will agree to complete the Elm Terraces and the Townhome by a specified date. Except as otherwise provided in this Agreement, Purchaser shall have no rights to request any changes to the Plans.
- F. Seller will not be required to begin work (or continue work) on any Townhome until all contingencies set forth in this Agreement have been satisfied, and Purchaser has complied in all respects with each of the provisions of this Agreement.

**4. INSPECTIONS (HOME ORIENTATION):**

- A. After substantial completion of all of the work on Elm Terraces and the Townhome shown in the Plans and prior to Closing, Purchaser agrees that it shall inspect the Townhome with representatives of Seller or any contractor engaged by Seller, become thoroughly familiar with their condition, and complete an inspection list, noting any work required to be completed or corrected in order for the Townhome to conform to the Plans, including any visible surface defects which were present at the time of that inspection and such other defects as were apparent at inspection (the “Inspection List”).
- B. Purchaser will cooperate with Seller in selecting a mutually agreeable date for the inspection. If Purchaser fails to participate in the scheduled inspection, Purchaser shall designate an agent to conduct the inspection on Purchaser’s behalf. If Purchaser fails to participate in the inspection and fails to have Purchaser’s agent participate in the inspection, including the completion of the Inspection List within five (5) days following Seller’s first request for Purchaser to inspect the Townhome, Seller may either designate a qualified third party, not an agent or employee of Seller, to complete the inspection on Purchaser’s behalf, or at Seller’s election, Purchaser may waive its right to participate in the inspection, in writing, in which case Seller shall conduct the inspection together with the designated qualified third party (which may be a representative of the Seller), and in such event, the completed Inspection List shall be deemed to be accurate and complete. If Purchaser claims the existence of a visible defect noted by Purchaser after the Closing, and said defect is not noted on the Inspection List, Purchaser shall have the burden of overcoming a presumption in favor of the accuracy and completeness of the Inspection List in any arbitration or litigation, should Seller reject Purchaser’s claim.

Seller’s Initials: \_\_\_\_\_ Purchaser’s Initials: \_\_\_\_\_

- C. If Seller has not completed the repairs shown on the Inspection List prior to Closing, such failure shall not entitle Purchaser to delay the Closing or to hold back any portion of the Purchase Price, and Purchaser shall provide Seller or Contractor with access to the Townhome following the Closing for the purpose of making any such repairs.
- D. CONSTRUCTION SITES ARE INHERENTLY DANGEROUS. Purchaser acknowledges that neither the federal Occupational Safety and Health Act (“OSHA”) nor Seller’s insurance will allow Purchaser to make unaccompanied visits to the construction area. Purchaser agrees not to visit the construction area except for the scheduled visits with a representative of Seller provided for in this Section 4. Purchaser agrees to hold Seller harmless from and against any liability for personal injury or property damage resulting from visits to the construction area by Purchaser or Purchaser’s invitees, and releases Seller and Contractor from any liability resulting from an injury to Purchaser or Purchaser’s invitees while visiting the construction area.

**5. LIMITED WARRANTIES:**

- A. Purchaser acknowledges that the issuance of a Certificate of Occupancy for the Townhome by the Mecklenburg County Building Standards Department shall constitute conclusive evidence that the Seller has fulfilled all of its obligations with respect to the Townhome, subject to the completion of any unfinished items set forth on the Inspection List. Seller shall cause Contractor to warrant the construction of the Townhome to Purchaser for a period of one (1) year from the date of substantial completion of the Townhome in accordance with Contractor’s then-prevailing warranty standards.
- B. Seller shall furnish to Purchaser all manufacturers’ warranties relating to the appliances, personal property and equipment included within the Townhome, if any. Seller itself is not providing any warranties whatsoever, whether express, implied, or otherwise with regard to the appliances, personal property, equipment and heating and air conditioning system for the Townhome, and Purchaser agrees to look solely to the manufacturers with respect to any claims relating to those items.
- C. Seller makes no representations or warranties as to the condition or health of any of the common areas or limited common areas within the Elm Terraces, or any other areas in Elm Terraces that Seller doesn’t have sole control over.
- D. Purchaser acknowledges and agrees that notwithstanding anything herein to the contrary, no warranty is being made herein with respect to any “consumer product”, as that term is defined in the Magnuson-Moss Federal Trade Commission Improvement Act.
- E. No additional express or implied warranties with respect to the Elm Terraces or the Townhome are made by Seller, unless required by law.
- F. The provisions of this Section 5 shall survive the Closing.

**6. REAL ESTATE BROKER:** Seller and Purchaser acknowledge that this Agreement was procured without intervention of any broker except for the Seller’s Agent and the Purchaser’s Agent, if any, listed on the first page of this Agreement, which shall be entitled to a commission payable by Seller in accordance with the terms of a separate agreement with Seller if and only if the sale closes. Purchaser



shall indemnify Seller against the claims of any other broker, including any attorney's fees incurred as a result of such claim.

**7. DEFAULT:**

- A. If Seller fails to perform any of the covenants of this Agreement, then Purchaser shall send written notice thereof to Seller in accordance with Section 12 hereof and Seller shall have ten (10) days from its receipt of such notice within which to cure such default. If Seller shall fail, after written notice and the expiration of such ten (10) day cure period, to cure such default then the Earnest Money Deposit and other deposits, if any, paid by Purchaser to Seller pursuant to this Agreement shall be returned to Purchaser plus One Hundred Dollars (\$100.00), and thereafter the parties shall be relieved of further liability hereunder. Purchaser's legal and equitable remedies shall be limited to those contained in this Section 7.A and in no event shall Seller be liable for damages of any kind.
- B. If Purchaser fails to perform any of the covenants of this Agreement, then Seller shall send written notice thereof to Purchaser in accordance with Section 12 hereof and Purchaser shall have ten (10) days from its receipt of such notice within which to cure such default. If Purchaser shall fail, after written notice and the expiration of such ten (10) day cure period, to cure such default, the Seller shall have the right to terminate this Agreement and retain the Earnest Money Deposit and other deposits paid by Purchaser. In addition, Seller shall have the right to exercise any other right or remedy it may have as a result of Purchaser's default, including, but not limited to, an action for monetary damages or specific performance. In addition, the cost of any Upgrades to the Townhome shall be paid by Purchaser.

**8. CONVEYANCE:** Seller shall convey marketable title to the Townhome by Special Warranty Deed, subject to the following "Permitted Exceptions":

- A. All taxes and assessments not yet due and payable.
- B. Applicable zoning ordinances and all other restrictions and regulations by governmental authorities.
- C. All of the terms, conditions, provisions, rights, privileges, obligations, easements, and liens set forth and contained in any one or more of the Declaration, the Articles of Incorporation and the Bylaws for the Association, as now or hereafter amended. Purchaser expressly acknowledges, by execution of this Agreement, that the Townhome shall be subject to all of the terms, conditions, use restrictions, easements, assessments, architectural restrictions and other provisions contained in those documents and amendments thereto, including the obligation to pay monthly assessments to the Association.
- D. All other restrictions, agreements, and easements of record which affect the Townhome.

The acceptance of the deed by Purchaser shall be deemed to be full performance and discharge of every agreement and obligation on the part of Seller to perform pursuant to the provisions of this Agreement, except those which are specifically designated in this Agreement to survive the Closing or which survive the Closing by operation of law.

**9. COMPLETION OF DEVELOPMENT:**

- A. Purchaser acknowledges that construction activities at the Elm Terraces may occur subsequent to the Closing, and that such activity may cause some inconvenience to Purchaser. Purchaser agrees to make no claim against Seller, its employees, contractors or agents as a result of such activity and further acknowledges that if Purchaser or a member of Purchaser's family, or any invitee of Purchaser enters any construction site, the indemnities and waivers contained in Section 4 shall apply.
- B. The provisions of this Section 9 shall survive the Closing.

**10. POSSESSION:** Possession of the Townhome shall be delivered by Seller to Purchaser at Closing.

**11. PERFORMANCE DISRUPTION:** Notwithstanding anything to the contrary contained in this Agreement, Seller shall not be liable for delay in the performance of its obligations if such performance is prevented, hindered, delayed or affected by: workers' or subcontractors' labor strike, riots, acts of God (including but not limited to fire, windstorm, flood, tornadoes, earthquakes, lightning or other casualty), failure of Seller's suppliers of building materials to deliver requested building materials, terrorist actions or any other unusual act, event or catastrophe. If the Elm Terraces or the Townhome is substantially damaged or destroyed by fire or other casualty prior to Closing, then Seller may, at its option, either terminate this Agreement by delivery of written notice to Purchaser, in which event the Earnest Money Deposit and other deposits paid by Purchaser to Seller shall be returned to Purchaser and neither party shall have any further liability under this Agreement, or Seller may extend the Closing for a period of up to ninety (90) days from the date of the casualty in order to repair the damage.

**12. NOTICE:** The delivery of any item and the giving of notice in compliance with this Agreement shall be accomplished in writing by personal delivery or by certified mail addressed to the parties at the addresses set forth on the first page of this Agreement. Any notice given in accordance with the provisions of this Section 12 shall be deemed to be effective, if personally delivered, on the date of such delivery, or if mailed by registered or certified mail, on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as not deliverable, as the case may be. Each party may give notice to the other party of a change of its address for the purpose of giving notice under this Section 12.

**13. ASSIGNMENT:** This Agreement is personal to Purchaser and may not be assigned by Purchaser without the prior written consent of Seller, which consent may be withheld by Seller in its sole and absolute discretion. Any attempted assignment in violation of this provision shall be null and void. Seller shall have the right to assign its rights under this Agreement without the consent of Purchaser.

**14. BINDING EFFECT:** This Agreement shall be binding upon, and shall inure to the benefit of, the heirs, successors, executors, administrators, legal representatives and permitted assigns of the respective parties.

**15. EFFECTIVE DATE:** The Effective Date of this Agreement shall be the date on which the last one of Seller and Purchaser has signed this Agreement.

16. **AGREEMENT:** Purchaser acknowledges that Purchaser's Earnest Money Deposit is tendered with this Agreement subject to prior sale of the Townhome and that this Agreement is not binding upon Seller until executed by an authorized manager of Seller.
17. **PURCHASER:** If Purchaser is composed of more than one person, the choices, designations, and other decisions of one person shall bind all of the others, and all persons comprising Purchaser shall be jointly and severally liable for all obligations of Purchaser under this Agreement.
18. **MISCELLANEOUS:** References to Purchaser or Seller and other references contained herein shall be deemed to include the plural, neuter, feminine and masculine. If any provision of this Agreement is held invalid or unenforceable, the remainder of it shall not be affected thereby, and to this end the provisions hereof are declared severable.
19. **COMPLETE AGREEMENT:** This Agreement contains all agreements of Seller and Purchaser with respect to the Townhome, and supersedes any prior written or oral agreements between the parties. Neither party is relying on any statement or representation made by or on behalf of the other party that is not set forth in this Agreement. This Agreement may not be modified orally, but only by a written modification agreement executed by both Seller and Purchaser.
20. **CONDITIONS TO SELLER'S OBLIGATIONS:** Seller's obligations under this Agreement are expressly conditioned upon: (i) Seller's obtaining all necessary governmental permits and approvals to construct Elm Terraces, including, but not limited to, construction permits and occupancy permits (Seller agrees to apply for all such permits and approvals in a timely manner, and to use reasonable good faith efforts to obtain all such permits and approvals prior to the Closing Date); (ii) Seller's execution of a sufficient number of Purchase Agreements for Townhomes in Elm Terraces in such form and content acceptable to Seller and Seller's lender in their sole and absolute discretion; (iii) Seller's procurement of financing for the construction of Elm Terraces on terms and conditions acceptable to Seller in its sole discretion (Seller shall apply for such financing in a timely manner and use reasonable good faith efforts to obtain such financing, but discloses to Buyer that such financing may be contingent upon items outside of Seller's control); and (iv) the approval by Seller's lender of the form and content of the documents necessary to create the planned unit development of Elm Terraces.

If Seller, despite good faith efforts to do so, is unable to satisfy all of the foregoing conditions within **ONE HUNDRED AND EIGHTY (180)** days following the Effective Date, then Seller may terminate this Agreement by delivery of written notice to Purchaser within **TWO HUNDRED (200)** days after the Effective Date, and in that event Seller shall return to Purchaser the Earnest Money Deposit paid by Purchaser, and the parties shall be released from all further obligations under this Agreement.

21. **DISAGREEMENT:** If at any time before the Closing, there is a material disagreement between Purchaser and Seller as to quality, nature or character of the work, or any matter, fact or thing affecting the Selections/Upgrade Sheet or the Plans, Seller may, at its option, return the Earnest Money Deposit to Purchaser and cancel this Agreement, and Seller shall have no further duties or obligations to Purchaser.
22. **CERTAIN LITIGATION BETWEEN THE PARTIES:** In the event any action or proceeding in law or equity be instituted by Seller for an alleged breach of any obligation of Purchaser under this

Agreement, the prevailing party (by judgment or settlement) in such action or proceeding shall be entitled to recover as part of such action or proceeding such reasonable attorneys' fees, expert witness fees, and court costs as may be fixed by the court or jury, or arbitration panel, but this provision shall not apply to any cross complaint filed by anyone other than Seller in such action or proceeding.

**23. UNRECORDED PLAT:**

A. Preliminary Plat. Attached as Schedule D to this Agreement is an approved preliminary plat (the "Preliminary Plat") showing the Townhome Lot. A final subdivision plat (the "Final Subdivision Plat") showing the Townhome Lot has not yet been properly approved under the subdivision ordinance or recorded with the Register of Deeds of the county in which the Townhome Lot is located.

A FINAL SUBDIVISION PLAT HAS NOT BEEN APPROVED OR RECORDED ON THE DATE OF THE AGREEMENT. NO GOVERNMENTAL BODY WILL INCUR ANY OBLIGATION TO THE PURCHASER WITH RESPECT TO THE APPROVAL OF THE FINAL SUBDIVISION PLAT. CHANGES BETWEEN THE PRELIMINARY PLAT AND FINAL SUBDIVISION PLATS ARE POSSIBLE. THE AGREEMENT MAY BE TERMINATED WITHOUT BREACH BY THE PURCHASER IF THE RECORDED FINAL SUBDIVISION PLAT DIFFERS IN ANY MATERIAL RESPECT FROM THE PRELIMINARY PLAT.

B. Closing. Prior to Closing, Seller shall deliver to Purchaser a copy of the recorded Final Subdivision Plat. If the approved and recorded Final Subdivision Plat does not differ in any material respect from the Preliminary Plat, the Purchaser may not be required by Seller to close any earlier than five (5) days after the delivery of a copy of the recorded Final Subdivision Plat. If the approved and recorded Final Subdivision Plat differs in any material respect from the Preliminary Plat, the Purchaser may not be required by the Seller to close any earlier than fifteen (15) days after the delivery of the recorded Final Subdivision Plat, during which fifteen (15) day period the Purchaser may terminate the Agreement without breach or any further obligation and may receive a refund of all Earnest Money Deposits set forth in this Agreement.

**[End of Schedule A]**



**SCHEDULE C**  
**TOWNHOME PLAN**

Seller's Initials:

Purchaser's Initials:

\_\_\_\_\_

\_\_\_\_\_

**SCHEDULE D**

**SITE PLAN**

Seller's Initials:

Purchaser's Initials:

\_\_\_\_\_

\_\_\_\_\_