

**NORTH CAROLINA  
HARNETT COUNTY**

**PURCHASE AGREEMENT  
Griffon Pointe Subdivision**

**THIS PURCHASE AGREEMENT** (hereinafter referred to as this "Contract"), is made and entered into as of the "Effective Date" (as defined in Section 34 hereof), by and between **17 EAST DEVELOPMENT, LLC** a North Carolina limited liability company (hereinafter referred to as "Seller"); and **Herring Reality DBA Herring Homes, LLC**, a North Carolina limited liability company (hereinafter referred to as "Purchaser").

**RECITALS:**

A. Seller is or will be the owner of approximately 103.40 acres (Tax PIN #0640-00-7751.000) located in Harnett County which Seller intends to develop in multiple phases as shown on the attached Preliminary Plan for Griffon Pointe Subdivision labeled **Exhibit A** which is incorporated herein by reference hereto.

B. Seller has or intends to entitle a portion of the property for development of Phase I into twenty (20) residential lots suitable for the construction thereon of detached single-family dwellings in Griffon Pointe (the "Subdivision") (each a "Lot" and together such Lots being referred to as the "Property"). Seller has or intends to entitle the remainder of the development of the property for development of Phase II into seventy-three (73) residential lots suitable for development for the purpose of detached single-family dwellings in Griffon Pointe (the "Subdivision") (each a "Lot" and together such Lots being referred to as the "Property").

C. Seller desires to sell the Lots to Purchaser, and Purchaser desires to purchase the Lots from Seller upon the terms and conditions set forth below.

**NOW, THEREFORE**, in consideration of the foregoing, the promises and covenants of both parties set forth herein and the Earnest Money (as defined herein) paid by Purchaser to Escrow Agent (as defined herein), and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, Seller and Purchaser, intending to be legally bound, hereby agree as follows:

1. **Incorporation of Recitals.** The foregoing Recitals are incorporated by this reference as if fully set forth herein.
2. **Contract to Sell and Purchase; Intended Use.** Seller agrees to sell the Property to Purchaser, and Purchaser agrees to purchase the Property from Seller, all upon the terms and conditions set forth herein. Purchaser intends to construct residential single-family dwellings (each a "Dwelling"; collectively, the "Dwellings") on each Lot that will be developed on the Property.
3. **Deposits.** Buyer and Seller agree to the following terms and conditions regarding deposits:
  - a) **Earnest Money Deposit.** Within ten (10) business days after the Effective Date, Purchaser shall deposit Escrow Agent, the sum of TWO HUNDRED THOUSAND AND NO/100 DOLLARS (\$200,000) to be held by Escrow Agent pursuant to the terms of this Contract (the "Deposit").



- b) **First Release of Deposit.** If the Seller has acquired the Property and unless Purchaser terminates this Contract during the Investigation Period defined herein, ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00) of the Earnest Money Deposit shall become non-refundable and payable to the Seller upon expiration of the Investigation Period and upon request of the Seller to Escrow Agent.
- c) **Second Release of Deposit.** If the Seller has acquired the Property and unless Purchaser terminates this Contract during the Investigation Period defined herein, ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00) of the Earnest Money Deposit shall become non-refundable and payable to the Seller upon recordation of the Phase 1 Plat in the Harnett County Registry and upon request of the Seller to Escrow Agent.
- d) If not earlier disbursed in accordance with this Contract, all Deposits shall be credited to the Purchaser at the Closings as follows; TWENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$25,000) shall be credited to the Purchaser at the Initial Closing, TWENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$25,000) shall be credited to the Purchaser at the Second Closing, SEVENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$75,000) shall be credited to the Purchaser at the Third Closing, and SEVENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$25,000) shall be credited to the Purchaser at the Final Closing.
- e) In performing its duties as provided in this Agreement, Escrow Agent shall not incur any liability to anyone for any damages, losses or expenses, except for willful default or breach of trust, and it shall accordingly not incur any such liability with respect to any action taken or omitted in good faith upon advice of its counsel or to any action taken or omitted in reliance upon any instrument, including written notice or instruction provided for in this Agreement, not only as to its due execution and the validity and effectiveness of its provisions, but also as to the truth and accuracy of any information contained therein, which Escrow Agent shall in good faith believe to be genuine, to have been signed or presented by a proper person or persons, and to conform with the provisions of this Agreement.
4. **Purchase Price.** The "**Purchase Price**" for the Property purchased at Closing shall be **\$85,000.00** per Lot as shown on the plat or map most recently approved by the Harnett County Planning Department prior to the date of Closing. The Purchase Price shall be payable by Purchaser to Seller at Closing by wire transfer, a bank or certified check, or other immediately available United States funds acceptable to Seller. The "**Purchase Price**" for Property purchased at each subsequent Closing shall increase **\$1,500.00** from the previous closing.
5. **Additional Lot Purchase Price ("True-Up")**. At the closing of the sale by Builder of a Lot and a dwelling constructed thereon to a third-party purchaser (a "**Homebuyer**"), Builder may be required to pay to Seller an additional amount based on the "Final Sales Price" (defined below). The Additional Lot Purchase Price, if any, shall be the positive difference, if any, between (i) the amount equal to twenty percent (20%) of the Final Sale Price (defined below) paid by the Homebuyer, less (ii) the Purchase Price paid by Builder for such Lot. For purposes of this Section, the "**Final Sale Price**" shall mean the contract sales price paid by Homebuyer to Builder as set forth on Line 401 of the HUD-1 Settlement Statement or similar closing statement as executed by

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Homebuyer and Builder (the "Settlement Statement"). By way of example and not limitation, if the Final Sale Price of a Lot and dwelling thereon is \$420,000.00, the Additional Lot Purchase Price shall be calculated as follows:  $\$465,000.00 \times 20\% = \$93,000.00$ , *minus* \$85,000.00 (the price paid by Builder for the Phase I Lots) = \$8,000.00, which amount shall be paid to Seller as provided below. For example, due to potentially unforeseen market conditions, if the Final Sale Price is \$390,000.00, the calculation would be:  $\$390,000.00 \times 20\% = \$78,000.00$ ; however, since the Purchase Price paid by Builder was \$85,000.00 for Phase I Lots, the result is a negative difference of \$7,000.00, in which case there will be no adjustment to the Lot purchase price. The Builder, in conjunction with the designated Sales & Marketing Team, will use its best efforts to price homes commensurate current market conditions, to the initial lot price, and attempt to escalate the price throughout the Phase and/or future phases. The Additional Lot Purchase Price for each Lot, if any, shall be payable to Seller at the closing of the sale by Builder of the Lot and dwelling to a Homebuyer (the "Homebuyer Closing"), and Builder shall instruct the settlement agent handling the Homebuyer Closing to provide Seller a copy of the signed Settlement Statement and to pay the Additional Lot Purchase Price, if any, to Seller by wire transfer or check. In the event that the Additional Purchase Price is not received by Seller within five (5) business days after the applicable Homebuyer Closing, the Additional Purchase Price shall bear interest at the rate of fifteen percent (15%) per annum from the date of such Homebuyer Closing until paid in full, and such failure to timely pay the Additional Purchase Price shall constitute a default under the terms of this Contract.

6. **Investigation Period; Due Diligence Documents.** Purchaser shall have thirty (30) days after the Effective Date (the "Investigation Period") within which to conduct such feasibility and physical studies, tests and examinations of the Property and the Subdivision as Purchaser deems necessary to determine the suitability of the Property for Purchaser's use. In furtherance of these purposes, Purchaser shall have the right, during the Investigation Period and during the entire period that this Contract is in effect, through its employees and/or contractors and agents, to enter upon the Property for the purpose of examining, surveying and inspecting the Property, making excavations and test borings (to be refilled by Purchaser if this Contract is terminated for any reason other than Seller's default or Purchaser's closing the purchase of the Property), and such other physical, engineering and other tests and studies of the Property as Purchaser deems necessary.
- a) Within three (3) business days after the Effective Date, Seller shall provide to Purchaser copies of the following documents pertaining to the Property (hereinafter, the "Due Diligence Documents"), to the extent that same are in the possession of or reasonably available to Seller or its agents, contractors, or attorneys:
- i. all written communications to or from any governmental or quasi-governmental entity, department or agency regarding the use or development of the Property, the development of Lots thereon or the construction of homes thereon;
  - ii. all surveys and maps of the Property or any portion thereof;
  - iii. all reports, studies and tests of the Property including, without limitation, environmental and soils studies and reports, engineering data, designs, drawings, and plans;
  - iv. all drawings, approvals, permits, contracts, and other documents relating to the Property or the development thereof or the construction of homes thereon;



- v. All title insurance policies pertaining to the Property or any part thereof, together with legible copies of all documents which appear as exceptions to coverage under said policy that are not of public record (the "Title Documents").
- b) If Purchaser determines, in its sole discretion, that the Property is not suitable for Purchaser's use, Purchaser may, before the end of the Investigation Period, terminate this Contract by giving written notice to Seller and Escrow Agent at the addresses stated in this Contract, whereupon Escrow Agent shall return the Earnest Money Deposit to Purchaser and neither party shall have any further rights or obligations hereunder.
- c) Purchaser shall hold Seller harmless from and against any claim based upon injury to the Property or any person (except Seller, its members, managers or employees) that occurs on the Property and is a direct result of any entry, inspection or test made or performed by Purchaser's employees, agents or other person(s) or firm(s) acting at the request, and on behalf of, Purchaser. If, for any reason other than breach of this Contract by Seller, this transaction does not close, Purchaser shall repair any unreasonable damage to the Property caused by Purchaser's employees, agents or other person(s) or firm(s) acting at the request and on behalf of Purchaser.
- d) Purchaser shall promptly pay all bills for such investigations and shall keep the Property free of any claims of lien under N.C.G.S. Chapter 44A and shall hold Seller harmless from and against any claim of lien filed against the Property by any person or entity claiming through Purchaser.
- e) Purchaser shall not conduct any inspection hereunder that is in violation of any existing governmental permits or applications that have been previously disclosed to Purchaser by Seller.
7. **Closing.** Provided that all of the conditions precedent, including, without limitation, the requirements of Section 8, are met;
- a) Closing of the 20 Lots in Phase 1 will occur on or before the date that is thirty (30) calendar days after the date on which all of the conditions set forth herein have been satisfied (the "Initial Closing") and recordation of the Phase 1 Plat in the Harnett County Registry, whichever is later.
- b) Closing of the next 25 Lots in Phase 2 will occur on or before the date that is thirty (30) calendar days after the date on which all of the conditions set forth herein have been satisfied (the "Second Closing") and recordation of the Phase 1 Plat in the Harnett County Registry, or March 15, 2023, whichever is earlier.
- c) Closing of the remaining lots in Phase 2 (the "Third Closing") will occur on or before the date that is six (6) months after the date on the Second Closing occurs.
- d) Closing of all the lots in Phase 3 (the "Final Closing") will occur on or before the date that is six (6) months after the date on the Third Closing occurs.

Closing shall be conducted at the offices of Purchasers selected closing attorney in Raleigh, North Carolina. Seller shall deliver to Purchaser full possession of each Lot purchased at Closing.

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8. **Condition to Closing.** In addition to the performance by Seller hereunder, the obligation of Purchaser to purchase the Property is subject to the satisfaction (as of the Closing date) of the following conditions, any of which may be waived by Purchaser, in writing, in whole or in part, at or prior to each Closing:
- a) Each Lot being purchased at the time is fully developed in compliance with **Exhibit C** attached hereto and incorporated herein.
  - b) Seller, at its sole cost and expense, shall remove and vacate any existing dwellings, personal property or other items from the Property on the date of the Initial Closing.
  - c) No portion of the Property shall be in a special flood hazard area or contain building flood line restrictions which reduce the buildable area of any lot below that which is needed for the construction and use of a single-family residence of a size and location contemplated by the parties and permitted by the applicable restrictive covenants and local building code.
  - d) Seller shall have successfully concluded efforts to fully entitle the subject portion of the Property for its Intended Use including, without limitation and to the extent required:
    - i. A site plan for the Subdivision conforming to **Exhibit A** shall be fully approved by Harnett County which provides for Purchaser's Intended Use (the "Site Plan Approval").
    - ii. The Property shall be approved by all applicable governmental authorities to allow for the Intended Use.
  - e) The Property shall be subject to:
    - i. The Permitted Exceptions (as defined herein below); and
    - ii. Restrictive covenants prepared by Purchaser and agreed to by Seller which shall provide, among other things, that Purchaser shall have full Architectural Approval and shall not, subject to the Permitted Exceptions, be obligated for any periodic assessments for maintenance of any Lot. Any Restrictive covenant contemplated by this Agreement shall comply with the Permitted Exceptions and all other restrictions on record and shall first be duly recorded prior to Closing.
  - f) In the event that Seller has filled any portion of the Property, Seller shall have delivered to Purchaser a copy of a certificate of compaction or other documentation satisfactory to Purchaser to evidence the buildability of the Lot.
  - g) If, following the Inspection Period, but prior to the respective Closing, a moratorium or limitation is imposed by any governmental entity pertaining to: development of the Property; provision of water service to the Property; or issuance of building permits or certificates of occupancy, all time periods set forth in this Contract shall be extended by a period equal to the length of the moratorium; provided, however, that if such moratorium shall extend beyond twelve (12) months, either party may terminate this Contract, in which event all unapplied Deposits shall be returned to Purchaser and both parties shall be released of all further liability or obligation hereunder.

h) Closing shall constitute acceptance of the Lots in their then existing condition.

9. **Closing Documents.** Seller and Purchaser shall each deposit with Purchaser's Attorney, as settlement agent, all of the following, which delivery shall be considered valid tender and delivery of the same.

a) **By Seller.** At Closing, Seller shall certify, execute, acknowledge, and deliver, and Purchaser's obligation to close shall be conditioned upon receipt of:

- i. A fully-executed general warranty deed conveying title as required by this Contract to Purchaser.
- ii. A certificate stating that the representations and warranties of Seller set forth in Section 13 herein are true and correct as of Closing, or, if any of such representations and warranties are no longer true, stating same.
- iii. An affidavit certifying that Seller is not a "foreign person" as that term is defined in Section 1445 of the Internal Revenue Code.
- iv. A settlement statement prepared by Purchaser's Attorney and approved by Seller, which shall reflect the credits and adjustments provided in this Contract.
- v. An affidavit sufficient to induce Purchaser's title company to insure that there are no parties in possession of the Property and to insure Purchaser and Purchaser's lender without exceptions for liens which may be filed under Chapter 44A of the North Carolina General Statutes.
- vi. A 1099-S certification.
- vii. Resolutions of Seller approving the sale of the Property and designating signing authority.
- viii. Such additional documents specifically set forth in this Contract or as may be necessary or customary to consummate the transactions contemplated herein.

b) **By Purchaser.** At Closing, Purchaser shall deliver, and Seller's obligation to close shall be conditioned thereupon.

- i. Payment of the purchase price, less all Deposits to be applied to Purchase Price.
- ii. A settlement statement prepared by Purchaser's Attorney and approved by Seller, which shall reflect the credits and adjustments provided in this Contract.
- iii. A certificate stating that the representations and warranties of Purchaser set forth in Section 14 are true and correct as of Closing, or, if any of such representations and warranties are no longer true, stating same.
- iv. Such additional documents specifically set forth in this Contract or as may be necessary or customary to consummate the transactions contemplated herein.

10. **Closing Adjustments.** Ad valorem real property taxes on the Property shall be prorated on a calendar year basis as of the date of closing, and Seller shall pay all past due property taxes. Any such proration based on an estimate shall, upon request of either Purchaser or Seller, be subsequently readjusted upon receipt of adequate evidence to establish the correctness of the amount so estimated. If the ad valorem tax bill for the Property is available at Closing, such taxes shall be prorated by the parties and paid at Closing. Seller shall be solely responsible for payment of pending or confirmed



governmental assessments against the Property, delinquent taxes and any "rollback" or other deferred taxes due in connection with a change in use of the Property.

- 11. Costs and Prorations.** All confirmed assessments, whether or not payable in future installments, shall be paid in full by Seller, without proration, at or before closing. For purposes of this Section, the term "assessment" shall be interpreted to mean any charge or fee that is or will be due and payable to any public entity as reimbursement for improvements installed by or at the instance of such entity, regardless of whether such charge or fee is a lien or assessment against the Property or a fee or charge due from the owner of the Property, regardless of whether such fee or charge is due at the time of closing of this transaction or thereafter, and regardless of whether the fee or charge is due upon annexation of the Property by such entity.

At Closing:

- a) the Seller shall pay for the cost of deed preparation, the cost of preparation and recording of any necessary releases, excise tax (revenue stamps) required by law, all assessments for which Seller is responsible as provided herein, any deferred or "roll-back" taxes owed, all past-due homeowners association dues and assessments, and all other closing costs incurred by Seller.
- b) Purchaser shall pay for the cost of recording the deed, Purchaser's title examination expenses, premiums for Purchaser's title insurance, all costs and fees required to be paid by Purchaser under other provisions of this Contract, and all other Closing costs incurred by Purchaser.

- 12. Title.** Seller shall convey to Purchaser indefeasible fee simple title to the Property at Closing by general warranty deed, which title shall be free and clear of all liens, encumbrances and judgments, except for: (i) *ad valorem* real property taxes not yet due and payable; (ii) applicable zoning ordinances; (iii) rights-of-way of existing public roads and streets; (iv) general service line and utility easements, if any, which are recorded and non-specific in describing location of lines and facilities; and (v) such other easements and encumbrances as have been specifically approved and accepted in writing by Purchaser (hereinafter "Permitted Title Exceptions").

- a) If, at any time prior to Closing, Purchaser determines that there is a title defect which is not a Permitted Title Exception, Purchaser or Purchaser's Attorney shall notify Seller in writing. If Seller is unable to cure any such title defect within fifteen (15) business days after receipt of such notification, Purchaser may, at its option and within ten (10) business days after having received notice thereof from Seller: (i) notify Seller and Escrow Agent in writing of its election to extend the time period in which Seller may cure such defects, in which event the Investigation Period and/or Closing Date shall be delayed for a period of time equal to the additional time needed by Seller to cure such defect; or (ii) waive in writing any uncured defects and proceed with this transaction; or (iii) terminate this Contract, in which event Escrow Agent shall return the Deposit and Extension Fee, if any, to Purchaser, and neither party shall thereafter have any further rights or obligations hereunder; or (iv) terminate this Contract. Failure of Purchaser to make a written election within the 10-day period shall constitute an election to terminate this Contract.
- b) Seller agrees not to encumber the title to the Property after the date of execution of this Contract so as to materially affect the Purchaser's use of the Property as contemplated herein.



**13. Laborers' and Materialmen's Liens.** Seller represents and warrants to Purchaser that all contractors, subcontractors, laborers and materialmen performing work upon or furnishing labor and materials to improve or benefit the Property at Seller's request have been or will be paid in full by Seller prior to the time of Closing of the sale of the Property, or that prior to Closing, Seller will obtain from any such contractors, subcontractors, laborers and materialmen who have not been paid in full waivers, in a form reasonably acceptable to Purchaser's title insurance company, of all liens that any of the foregoing may have a legal right to file or assert against the Property being purchased, or provide Purchaser's title insurance company with such other assurances as may be reasonably requested to induce such title insurance company to issue an owner's policy of title insurance to Purchaser without any exception for unfiled laborers' or materialmen's liens.

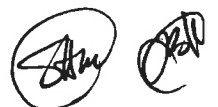
**14. Warranties, Representations and Covenants of Seller.** Seller hereby warrants and represents unto, and covenants with, Purchaser as follows:

- a) Seller is a limited liability company formed and existing under the laws of the State of North Carolina and is authorized to conduct its business in the State of North Carolina. Seller has the requisite right, power and authority to sell same to Purchaser under this Contract.
- b) Seller has full authority to enter into this Contract and to execute all documents contemplated hereby, and Seller's execution, delivery and performance of this Contract will not violate the provisions of any agreement to which Seller is a party or by which it is bound. The person signing this Contract on behalf of Seller is the only person whose signature is required to bind Seller, and such person has been duly authorized to sign this Contract on behalf of Seller. At closing, Seller shall deliver to Purchaser such evidence of its authority as may be reasonably requested by Purchaser.
- c) Seller has not filed for relief as a debtor under any state receivership laws or federal bankruptcy laws.
- d) There are no actions, suits or proceedings, pending or threatened, against Seller with respect to or affecting, directly or indirectly, the Property or the Subdivision or any rights with relation to the same, at law or in equity, before any federal, state, municipal or other governmental agency or instrumentality, nor is Seller aware of any facts which to its knowledge might result in any action, suit or proceeding or result in any Federal or State civil or criminal forfeiture of all or any part of the Property or the Subdivision. Seller is not in default with respect to any order or decree of any court or of any such governmental agency or instrumentality. There are no rights of possession outstanding in anyone except Seller. None of the Property is subject to a lease agreement, either oral or written, and the Property is not subject to a right of first refusal or other right which Seller or any predecessor in title may have granted to other persons or parties as to the Property, whether written or verbal. No notice, either oral or written, has been received by Seller that any governmental or quasi-government agency or authority intends to commence construction of any special or off-site improvements or impose any special or other assessment against the Property or the Subdivision or any part thereof.





- e) Seller shall transfer the Property to Purchaser in its present condition, excepting those development requirements in Section 7 and excepting normal wear between the date hereof and closing.
- f) Seller has no knowledge of any violation of Environmental Laws related to the Property or the presence or release of Hazardous Materials on or from the Property. Seller has not manufactured, introduced, released or discharged any Hazardous Materials from or onto the Property, and Seller has not used the Property or any part thereof for the generation, treatment, storage, handling or disposal of any Hazardous Materials. Further, to Seller's knowledge no underground storage tanks are, or have in the past been, located at the Property other than an existing 500-gallon propane tank. The term "Environmental Laws" includes without limitation the Resource Conservation and Recovery Act and the Comprehensive Environmental Response Compensation and Liability Act and other federal laws governing the environment together with their implementing regulations and guidelines and all state, regional, county, municipal and other local laws, regulations and ordinances that are similar to such federal laws or that regulate Hazardous Materials. The term "Hazardous Materials" includes petroleum, including crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas or such synthetic gas), asbestos and asbestos containing materials and any substance, material waste, pollutant or contaminant listed or defined as hazardous or toxic under any Environmental Law.
- g) To the best of Seller's knowledge, all assessments now a lien against the Property are shown on the records of the Harnett County Revenue Department and no improvements have been installed by any public entity or Seller, the cost of which will or might be assessed against the Property in the future. Seller further warrants that Seller has not been notified orally or in writing of possible future improvements by any public entity, any part of the cost of which would or might be assessed against the Property or the Purchaser, nor does Seller have any reason to believe that such improvements might be forthcoming. For purposes of this Contract, the term "assessment" or "assessed" shall be interpreted to mean any charge or fee that is or will be due and payable to any public entity as reimbursement for improvements installed by or at the instance of such entity, regardless of whether such charge or fee is a lien or assessment against the Property or a fee or charge due from the owner of the Property, regardless of whether such fee is or charge is due at the time of closing of this transaction or thereafter.
- h) Neither Seller nor, to the best of Seller's knowledge, any of Seller's predecessors in title have made any commitment to or agreement with, nor is there any requirement of any governmental or private entity which would impose an obligation upon Purchaser to make any contribution or dedication of money or property or to construct, install or maintain any improvement of a public or private nature on or off the Property, other than any requirement that might be imposed in connection with approval of Purchaser's plan for construction of homes on the Lots to be developed on the Property.
- i) All representations and warranties of Seller contained in this Contract, whether under this Section or elsewhere, shall be true as at the date of closing as if those representations and warranties were made at such time and, if requested, Seller agrees to execute and deliver to

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Purchaser an affidavit at closing certifying that all of the representations and warranties are true as of the date of closing and shall survive for a period of six (6) months.

**15. Warranties, Representations and Covenants of Purchaser.** Purchaser hereby warrants and represents unto, and covenants with Seller as follows:

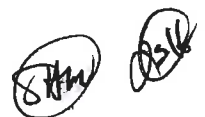
- a) Purchaser is a limited liability company formed and existing under the laws of the State of North Carolina and is authorized to conduct its business in the State of North Carolina. Purchaser has all requisite right, power and authority to execute, deliver and perform this Contract
- b) Purchaser has full authority to enter into this Contract and to execute all documents contemplated hereby, and Purchaser's execution, ratification, delivery and performance of this Contract will not violate the provisions of any agreement to which Purchaser is a party or by which it is bound. The persons signing this Contract on behalf of Purchaser are the only persons whose signature is required to bind Purchaser, and such persons have been duly authorized to sign this Contract on behalf of Purchaser. At closing, Purchaser shall deliver to Seller such evidence of its authority as may be reasonably requested by it.
- c) Neither the execution, delivery nor performance of this Contract by Purchaser will result in a breach or violation of, or constitute a default under, any legal requirement.
- d) There are no legal proceedings pending against or, to the knowledge of Purchaser, threatened against Purchaser which, if adversely determined, could prevent or impair Purchaser's ability to perform this Contract. Purchaser has not received any notice alleging it to be, or that with due notice or lapse of time or both it will be, in breach or default of any legal requirement which could materially adversely affect the ability of Purchaser to perform this Contract.
- e) All representations and warranties of Purchaser contained in this Contract, whether under this Section or elsewhere, shall be true as at the date of closing as if those representations and warranties were made at such time and, if requested, Purchaser agrees to execute and deliver to Seller an affidavit at closing certifying that all of the representations and warranties.

**16. Condemnation.** If, prior to Closing, any portion of the Property shall be condemned or taken pursuant to any governmental or other power of eminent domain, any written notice of taking or condemnation is issued, or any proceedings are instituted by any governmental authority having the power of eminent domain, and the taking or condemnation is of the entire Property or such portion of the Property as would result in a material adverse effect upon its use for development into twenty-two (22) single-family residential lots (a "Major Taking"), then the Purchaser shall have the right to refuse to purchase the Property by giving Seller written notice to that effect within fifteen (15) days after receiving written notice from Seller advising of the condemnation or taking or of Seller's receipt of notice of same or of the institution of any such proceedings. In such event, except as otherwise provided herein, both Seller and Purchaser shall be relieved of further rights, duties, obligations and liabilities with respect to the Property. If a taking or condemnation occurs which is not a Major Taking, or if a Major Taking occurs and Purchaser does not refuse to purchase the Property within the fifteen (15) day period, Purchaser shall proceed with the purchase of the



Property, with a reduction in the Purchase Price equal to the condemnation award paid to Seller for the portion of the Property already taken. If the condemned part of the Property to be purchased has not yet been taken and paid for by the condemning authority by the time of Closing, there shall be no reduction in the Purchase Price and Seller shall assign to Purchaser at Closing all of Seller's right to such unpaid condemnation award applicable to the Property, and Seller shall convey the Property to Purchaser.

17. **Risk of Loss and Waste.** Unless the loss or damage is caused by Purchaser or Purchaser's employees, agents or contractors, the risk of loss or damage by fire or other casualty with respect to the Property prior to Closing of the purchase of the Property shall be upon Seller, and the risk of loss following Closing shall be upon Purchaser. For purposes of determining when the risk of loss passes from Seller to Purchaser, Closing shall be deemed to have occurred when the deed has been recorded. Except as may be required (i) for Seller to fulfill Seller's obligations or requirements of this Contract, or (ii) by any governmental entity having jurisdiction over the Property, or (iii) to remove dead or diseased trees from the Property, or (iv) as otherwise may be reasonably required for Seller in the exercise of reasonable care to avoid civil liability, or (v) as otherwise allowed by this Contract for Seller to exercise any rights reserved to Seller under this Contract, Seller agrees not to commit or knowingly allow the commission of waste on the Property and to convey the Property to Purchaser in substantially the same condition as it is in on the Effective Date of this Contract, ordinary wear and tear excepted.
18. **Brokers Under This Contract.** Seller and Purchaser each represent and warrant to the other that no broker or real estate agent has been involved in this transaction except Seller's listing agreement with Howard, Perry, and Walston New Homes & Land. Seller and Purchaser each covenant and agree with the other that it shall indemnify and hold the other harmless from any and all loss, cost, or expense (including costs and reasonable attorney fees incurred in defending against same) arising from any claim made by any broker or other person for any fee, commission or other compensation allegedly due by reason of employment by or agreement with such indemnifying party in this transaction, regardless of whether or not such claim is meritorious.
19. **Default by Purchaser.** If Purchaser defaults in the performance of its obligations hereunder as to closing of the purchase of the Property, Seller may obtain the Earnest Money Deposit from Escrow Agent and retain the said Deposit paid as full and complete liquidated damages. In no event shall Seller have the right to collect damages or the right of specific performance of Purchaser's obligations under this Contract. Seller and Purchaser have negotiated with each other and hereby acknowledge and agree that the actual damages which Seller would suffer as a result of Purchaser's default are difficult to determine, and both parties agree that the Deposit constitutes a reasonable estimate of the actual damages Seller will suffer in the event of a default by Purchaser.
20. **Default by Seller.** Notwithstanding any other provision of this Contract, if Seller is unable, due to circumstances beyond Seller's reasonable control, to convey title as provided herein, Purchaser shall be entitled to immediate return of all Deposits, whereupon this Contract shall be terminated and neither party shall have any further liability or obligation to the other. If any representation or warranty made by Seller herein is materially untrue, or if Seller is able, but unwilling, to convey title as provided herein, or if Seller's inability to convey title as provided herein is the result of any act of Seller including, without limitation, granting any easement or encumbrance against the

Handwritten initials in circles, likely representing the signatures of the parties involved in the transaction.



Gwynn & Edwards PA  
5909 Falls of Neuse Rd.  
Raleigh, NC 27609  
E-mail: [jpardue@gwynn-edwards.com](mailto:jpardue@gwynn-edwards.com)

Any notice hand delivered or sent by courier service shall be deemed received upon actual receipt. Notice mailed as above provided shall be deemed given and received by the addressee on the third business day after the same is posted. Notices delivered via electronic mail shall be deemed sufficient notice for purposes of this Section.

24. **Right to Cure.** Neither party shall exercise hereunder, at law or in equity any remedy against the other, including any right to terminate this Contract, for any default hereunder unless the defaulting party has failed to cure the default within fifteen (15) business days after receipt of written notice thereof.
25. **Effect of Termination.** Except as otherwise specifically provided herein, if this Contract is terminated, except for breach thereof, the party exercising the right of termination shall give written notice of such termination to Escrow Agent and the other party, in which event Escrow Agent shall promptly return the Deposits to Purchaser, whereupon neither party shall have any further liability or obligation to the other hereunder.
26. **Assignment.** Purchaser may assign this Contract to any entity related to or under common control of Purchaser without Seller's consent, but Purchaser shall not be released of any liability hereunder as a result of such assignment, otherwise Purchaser shall not be permitted to assign this contract without the written agreement of Seller, such agreement to be granted in Seller's sole discretion. The terms of the Contract shall inure to the benefit of and be binding upon the respective successors and assigns of the parties hereto.
27. **Construction of Contract.** This Contract shall be construed and enforced in accordance with the laws of the State of North Carolina. Any reference herein to the singular shall include the plural, and any reference to any gender shall include the neuter and the other gender. Whenever a date specified herein shall fall on a weekend or legal holiday, the date shall be extended to the next business day. Captions contained herein are inserted only for the purpose of convenient reference, and in no way define, limit or describe the scope of this Contract or any part hereof. Notwithstanding the presumption of law whereby an ambiguity or conflict in provisions shall be construed against the drafter, the parties hereto hereby agree that although one party may have generated this Contract, both parties have been afforded the opportunity to consult with counsel of its own choosing and each has participated in the drafting of this Contract. Therefore, such presumption shall not be applied if any provision or term of this Contract requires judicial interpretation.
28. **No Merger.** All warranties, representations, and covenants contained herein shall not be deemed to be merged into or waived by the instruments of the Closing but shall expressly survive the closing of the purchase and sale of the Property.



29. **Entire Agreement.** This Contract embodies the entire agreement between Seller and Purchaser concerning the Property and may not be modified, changed or altered in any respect, except in a writing executed in the same manner as this Contract by all parties hereto.
30. **Severability.** If any provision of this Contract is held by a court of competent jurisdiction to be invalid or void, such provision shall be deemed severable from the remaining provisions of the Contract and shall not be deemed to nullify or affect any other provision hereof. If any such provision is deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law. If any item, term or provision contained in this Contract is in conflict with any applicable federal, state or local laws, this Contract shall be affected only as to its application to such item, term or provision, and shall in all other respects remain in full force and effect.
31. **Waiver.** The failure of either party to insist in any one or more instances upon the strict and complete performance of any of the covenants, agreements and/or conditions of this Contract, or to exercise any right or privilege herein conferred, shall not be construed as a waiver of any such covenant or condition or a waiver the right of such party to require such performance or to exercise such right or privilege for the same or other breach in the future. No waiver of any of the provisions of this Contract shall be deemed, nor shall the same constitute, a waiver of any other provision, whether or not similar, nor shall any such waiver constitute a continuing waiver. No waiver shall be binding, unless executed, in writing, by the party making the waiver.
32. **Duty to Defend.** In connection with any obligation of a party under this Contract to indemnify, defend, protect or hold harmless the other party: (i) the indemnifying party shall employ legal counsel reasonably acceptable to the indemnified party; (ii) in the event that the indemnifying party fails or refuses to undertake the defense of the indemnified party, or fails or refuses to diligently and continuously conduct such defense or indemnity, the indemnified party may undertake its own defense without reducing the indemnifying party's obligations to indemnify, defend, protect or hold harmless the indemnified party as provided in this Contract, and the costs incurred by the indemnified party in undertaking its own defense including, but not limited to, its attorney fees, shall constitute a portion of such obligation of the indemnifying party as set forth in this Contract.
33. **Counterparts.** This Contract may be executed in one or more counterparts, each of which shall be an original, but all of such counterparts together shall constitute only one Contract. Facsimile or electronic signatures on this Agreement shall be binding upon the parties.
34. **Confidentiality.** All information obtained pursuant to this Contract by any party from another party hereto shall be and remain confidential, regardless of whether the Closing occurs, except for (i) information which is required to be disclosed by applicable law or the terms of this Contract; (ii) information whose disclosure is reasonably required to enforce the rights of either Seller or Purchaser under this Contract; and (iii) information which becomes a part of the public domain other than by a breach of this paragraph.

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**35. Effective Date.** This Contract shall become effective only upon execution by the Seller and Purchaser identified below. The Effective Date of this Contract shall be the last date upon which this Contract is signed by the Purchaser or Seller.

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

**17 East Development, LLC (Seller)**

By:  (SEAL)  
Name/Title: Sherri Montague, Member

Date: 2/3/22

**Herring Realty DBA Herring Homes, LLC (Purchaser)**

By:  (SEAL)  
Name/Title: Brian Herring, Manager

Date: 2/3/2022

**EXHIBIT A**  
**Preliminary Plan**

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**EXHIBIT B**  
**Intentionally Blank**

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## EXHIBIT C

### FULLY DEVELOPED LOT

For all purposes of this Agreement, a Lot shall be deemed to be a Fully Developed Lot only if it meets the following specifications to include the obligations described on the attached SELLER/BUYER RESPONSIBILITY SCHEDULE.

#### GENERAL REQUIREMENTS

(A.)(1.) A Lot shall be classified under the zoning classification contemplated by this Agreement and shall be in the same location and shall have the same dimensions and setback lines as depicted on the approved plat/subdivision plan and described in the contract, except for any changes agreed upon by Capitol City Homes and the Seller/developer.

(A.)(2.) A Lot shall be depicted on a plat for Closing, which shall have been approved by all applicable Governmental Authorities, and which shall have been recorded in the Plat Book Records maintained by the Register of Deeds for the applicable Governmental Authority.

(A.)(3.) A Lot shall meet all requirements and conditions specified by all applicable Governmental Authorities for the issuance of a building permit for the construction of a single-family residence on such Lot. All Lot and subdivision improvements must be such that upon completion of construction of a single-family residence on a Lot, their condition will not prevent or delay a certificate of occupancy being issued.

(A.)(4.) All improvements contained within the subdivision in which the Lot is located shall have been (a) completed in accordance with all laws, ordinances and governmental requirements, and (b) shall be approved and accepted so they may be dedicated to the applicable Governmental Authorities, and (c) all necessary bonds required by the Governmental Authorities for the continued maintenance thereof shall have been obtained to the satisfaction of the Governmental Authorities. Notwithstanding anything herein to the contrary, it shall be the responsibility of Purchaser to pay any amounts or obtain any bonds required for the maintenance of stormwater facilities now located or to be located on the Property, and Purchaser shall be responsible for the maintenance of any such facilities upon Initial Closing

#### UTILITIES, WATER, AND SEWER/SEPTIC

(B.)(1.) All necessary water facilities including a water service/connection from the water main shall have been installed on a Lot and approved by the specific Governmental Authorities and any off-site sewer and or water extensions and off-site connection fees shall have been paid in full or properly bonded. The permits to operate from the Governmental Authorities for water and the as-built plans and record drawings which clearly show and designate the locations of all taps, services, and laterals on the Lots shall be provided to Purchaser.

(B.)(2.) Seller has designed the project based on soil science reports such that each Lot will support an individual conventional septic system for a four (4) bedroom home. Purchaser shall be responsible for obtaining septic system permits for each Lot from Harnett County.

(B.)(3.) A Lot shall have all lines, pipes or conduits necessary for the provision of water, natural gas (if available) and underground electrical service required for the construction of a single-family residence, installed within easements properly dedicated to the applicable service provider or governmental authority. Water and underground electrical service shall be available and immediately usable and not subject to any limitation or moratoria. Seller



shall be responsible for the coordination of the timely installation of telephone, gas (if available), cable and high-speed internet service such that these services shall be available at the time of a certificate of occupancy being issued for any and all homes constructed by Purchaser on the Lots.

### **STORMWATER AND EROSION CONTROL**

(C.)(1.) A Lot shall be located in a subdivision in which all storm drainage systems which are required by applicable law to be contained within the subdivision shall have been completed and installed as depicted on the approved construction plans and approved by the applicable governmental authorities, and all off-site fees and charges in respect thereto shall have been paid in full or properly bonded. If temporary retention ponding has been installed, or is being used, any permanent ponds required later, or any later adjustments or modifications necessary to convert an area into a permanent drainage facility shall be the responsibility of the Seller.

(C.)(2.) The approved Site Plans will provide for and depict all necessary drainage systems on the Lots per the storm drainage design standards of Harnett County. If required, Lot drainage may be located in a dedicated easement that shall be maintained by the appropriate governmental authority or the HOA.

(C.)(3.) All sedimentation, retention, detention, water quality, and ecology controls within any part of the subdivision in which a Lot is located shall have been installed and all disturbed areas shall have been stabilized/grassed as shown on the approved construction plans, and all shall have been maintained before the Closing in the manner required by the Governmental Authority having jurisdiction of the same. All Federal, State, and Local Requirements of the Seller/developer's SWPPP shall be met, to include all infrastructure and Lot construction, in compliance with the plans previously approved by Purchaser, in order to allow Purchaser to become a Secondary or Applicable Permittee to the Seller/developer's Permit. The Seller/developer will also be required to provide a minimum of two (2) copies of the approved plans and a copy of the Seller/developer's approved SWPPP document. Following the Initial Closing, Purchaser shall be responsible for compliance with all SWPPP requirements.

### **TYPICAL LOT CONDITION**

(D.)(1.) All work, materials and improvements made to a Lot shall be of good and workmanlike quality, free of defects, and compliant with all applicable plans, and specifications, and shall be in accordance with and acceptable under the rules, regulations, laws and ordinances of the applicable governmental authorities.

(D.)(2.) All Lot pins shall be in place on a Lot and wood corner stakes with visible Lot numbers shall exist at the front corners of a Lot.

(D.)(3.) The setbacks on a Lot shall meet all governmental authority guidelines and the building envelope/footprint for each Lot shall be in accordance with the plans and specifications as pre-approved by Purchaser and Seller and such approval shall be given prior to closing on each lot.

(D.)(4.) Seller shall not clear the lots. Purchaser will clear and grade the lots for Purchaser's intended building envelope for the Lot after Closing.

(D.)(5.) The area of the building pad of a Lot shall not be subject to seepage from a below-ground spring or other water source, nor shall a Lot have any ponding so as to require removal of moisture, water or mud in order to begin construction of a single-family residence thereon. If, after the purchase of any Lot, subsequent tests show that the load-bearing characteristics of the soil as of the time of commencement of construction does not allow the construction of a single-family residential dwelling due to issues related to ground water, moisture, inferior or inconsistent soil conditions, or if a Lot shall contain any amount of rock, which shall cause additional and or unusual



excavation and/or require blasting for the construction of footers/foundations or for the installation of utility lines, then within three (3) business days after receipt of Purchaser's notice of such condition, Seller shall elect to either (i) repurchase the Lot at the same Purchase Price paid by Purchaser, together with Purchaser's reasonable closing costs and the Lot preparation costs incurred prior to the notice, (ii) pay to Purchaser the amount of additional expense over and above the first Five Hundred Dollars (\$500.00) to be incurred by Purchaser due to such subsurface conditions, or (iii) repair the Lot in a timely manner to alleviate such subsurface conditions.

### **MISCELLANEOUS CONDITIONS**

(E.)(1.) Seller will install a Subdivision entryway sign which is, at a minimum, 12' in width, 5' in height (not including any foundation or base), and 2' in depth. The sign will be designed with manufactured stone and the lettering will be approved by Buyer. Entryway signage must be completed by Seller prior to Closing.

(E.)(2.) Seller will design an easement for and install a commercial mail kiosk as required and approved by USPS, if applicable, on an area provided for mailboxes in the subdivision.

(E.)(3.) Purchaser shall have a first right and option to purchase future lots in future phases as depicted on Exhibit A which agreement shall be formalized and evidenced by a recordable Right of First Refusal document at Closing.

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