# OPTION AGREEMENT

between

**TPG AG EHC III (SDH) MULTI STATE 3, LLC,**
a Delaware limited liability company
"**Owner**"

and

**SDH RALEIGH LLC,**
a Georgia limited liability company
"**Builder**"

For the community referred to as Cedar Pointe
Located in Harnett County, North Carolina

# TABLE OF CONTENTS

# LIST OF SCHEDULES AND EXHIBITS

# OPTION AGREEMENT

*(Cedar Pointe, Harnett County, North Carolina)*

In consideration of the agreements, covenants and promises contained in this Option Agreement (the "**Agreement**") and other good and valuable consideration, the receipt, sufficiency and validity of which are hereby acknowledged, Owner and Builder agree as follows:

Defined terms appear in this Agreement with the first letter of each word in the term capitalized. In addition to other defined terms set forth elsewhere in this Agreement and in Schedule 1, the following terms and information (the "**Fundamental Terms**") are, or may be, used as defined terms in this Agreement. These Fundamental Terms are incorporated herein and made a part of this Agreement to the same extent as if set forth in the Agreement in their entirety, and each reference in this Agreement to any of the Fundamental Terms shall be construed to incorporate all of the Fundamental Terms. In the event of any conflict between any Fundamental Terms and the balance of the Agreement, the balance of this Agreement shall control. Defined terms used without definition in this Agreement have the meanings that are given to them in Schedule 1.

Schedule 4 attached hereto contains additional terms and conditions specifically related to the Property and Builder. In the event of any conflict between the provisions of Schedule 4 and the main body of this Agreement or any Exhibits attached hereto, or any other Schedules attached hereto, the provisions of Schedule 4 shall control.

*[Remainder of Page Blank]*

FUNDAMENTAL TERMS

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| **Agreement Date** | September 18, 2024 |
| **Owner** | TPG AG EHC III (SDH) Multi State 3, LLC, a Delaware limited liability company |
| **Builder** | SDH Raleigh LLC, a Georgia limited liability company |
| **Contractor** | SDH Raleigh LLC, a Georgia limited liability company |
| **Property Name** | Cedar Pointe |
| **Property Location: City, State** | N/A, North Carolina |
| **Property Location: County** | Harnett |
| **Property Acquisition Cost** | $2,160,000 |
| **Option Period Expiration Date for the First Takedown** | October 25, 2024 |
| **Final Expiration Date** | July 25, 2025 |
| **Number of Option Periods** | 10 |
| **Last Calendar Day of each Option Period** | 25 |
| **Option Fee** | $226,085 |
| **Property Bulk Purchase Price** | $2,034,760 |

1. **EFFECTIVENESS OF AGREEMENT; MEMORANDUM**.

1.1 **Effectiveness of Agreement**. This Agreement and the Option shall become effective only upon Owner's acquisition of the Property.

1.2 **Memorandum of Option**. The escrow agent administering the conveyance of the Property to Owner shall concurrently with Owner's acquisition of the Property record the Memorandum of Option against the Property and provide Owner and Builder a copy thereof.

2. **THE OPTION**.

2.1 **Grant of Option**. In consideration of the (a) delivery to Owner of the Option Fee and Parent's delivery to Owner of the Option Termination Fee Agreement, (b) payment and performance by Builder of its obligations under this Agreement, and (c) payment and performance by Contractor of its obligations under the Construction Agreement, Owner hereby grants to Builder the Option.

2.2 **Option Fee Nonrefundable**. The Option Fee paid to Owner constitutes option consideration for the grant of the Option to Builder under this Agreement and is non-refundable.

2.3 **Option Term**. The Option shall commence upon the Effective Date and, unless sooner terminated as provided elsewhere in this Agreement, the Option shall automatically expire at 5:00 p.m. (local time where the Property is located) on the Final Expiration Date. Except as otherwise expressly provided in this Agreement, after expiration or earlier termination of the Option, Builder

shall have no right to acquire the Property or any of the Lots. Nothing contained in this Agreement shall extend the Final Expiration Date, which may only be extended pursuant to an amendment to this Agreement executed by Owner and Builder.

2.4 **Structure of the Option**.

2.4.1 Right to Purchase.

(a) Property. Subject to compliance with the provisions of this Agreement, from and after the Effective Date, Builder may purchase the Property in a single bulk Closing.

(b) Lots. Subject to compliance with the provisions of this Agreement, from and after the Effective Date, and provided that the Option Termination Fee Agreement remains in full force and effect, Builder may from time to time purchase the Lots as described in Section 2.5 below. Builder may only purchase the Lots if such Lots are shown on a recorded Final Plat. Notwithstanding anything to the contrary set forth in this Agreement, until all of the Final Plats are recorded all references in this Agreement to Unpurchased Lots shall, with respect to portions of the Property that have not yet been platted, be deemed to also refer to the portion of the Property not yet platted. Owner and Builder shall have no right to waive the condition requiring recordation of the Final Plat prior to the conveyance of any Lot (as opposed to the conveyance of the entire Property in a single bulk Closing, for which recording of the Final Plat(s) is not a condition or relevant).

2.4.2 Hiatus of Acquisitions. Subject to the limitations outlined below, Builder may elect to defer acquisition of Unpurchased Lots (the "**Hiatus Option**") for a period of one (1) month at a time by timely paying Owner the applicable Hiatus Fee calculated as described in Section 2.4.2(b) below and otherwise satisfying the terms and conditions of this Section 2.4.2.

(a) Conditions on Exercise. To be eligible to exercise the Hiatus Option, Builder must satisfy the following conditions:

(1) Final Plat Recorded. The Final Plat creating all of the Lots for each Lot Type that Builder desires to defer acquisition of has been recorded;

(2) Notice of Exercise of Hiatus Option. Builder shall have given Owner notice ("**Hiatus Notice**") of Builder's exercise of the Hiatus Option no less than five (5) days prior to the expiration of the Option Period for which a Hiatus Option is being requested (the Option Period for which a Hiatus Option is being requested is hereinafter referred to as the "**Hiatus Period**"). The Hiatus Notice must specifically identify the number of Lot(s) for each Lot Type to be deferred and the specific Lot(s) of each Lot Type that Builder intends to purchase ("**Non-Deferred Lots**");

(3) Maximum Deferred Lot Count. The number of Unpurchased Lots for each Lot Type being deferred may not at any time

exceed the Maximum Deferred Lot Count for such Lot Type as listed on Exhibit B;

(4) No Default. Builder is not in Default under this Agreement and no event exists or has occurred that with the giving of notice, the passage of time or both would constitute a Default by Builder under this Agreement;

(5) Pay Hiatus Fees. Builder must have paid the applicable Hiatus Fee to Owner prior to the expiration of the Hiatus Period;

(6) Purchase Non-Deferred Lots. Simultaneously with the payment of the Hiatus Fees, Builder must purchase the Non-Deferred Lots, if any, prior to the expiration of the Hiatus Period; and

(7) Hiatus Termination Date. Builder may not exercise any Hiatus Option on or after the date that is three (3) months prior to the Final Expiration Date (the "**Hiatus Termination Date**"), it being understood that to maintain the Option, Builder must purchase a number of Lots equal to or greater than the cumulative amounts for each applicable Lot Type set forth on the Acquisition Schedule for each period on and after the Hiatus Termination Date.

(b) Hiatus Fees. The Hiatus Fee payable by Builder on account of Builder's exercise of the Hiatus Option for an Option Period shall be equal to the sum of the Per Lot Hiatus Fee for the applicable Lot Type as listed on Exhibit B multiplied by the respective number of Lot(s) of each Lot Type that Builder defers acquisition. In no event shall any Hiatus Fees paid to Owner be considered as a reduction of Unreturned Owner Costs.

(c) Failure to Deliver Notice of Hiatus Option. If Builder fails to timely deliver notice of Builder's intention to exercise the Hiatus Option to Owner as required by Section 2.4.2(a)(2) above, or fails to timely pay the requisite Hiatus Fee to Owner prior to the expiration of the Hiatus Period, Builder shall have no right to exercise the Hiatus Option for the applicable Option Period.

(d) Option Agreement Revisions. Notwithstanding anything in this Agreement to the contrary, prior to the Hiatus Termination Date (1) any reference in this Agreement to Builder having paid to Owner the applicable Purchase Price shall be deemed to mean that Builder has either paid to Owner the applicable Purchase Price or the applicable Hiatus Fees pursuant to a duly exercised Hiatus Option satisfying all of the conditions in Section 2.4.2(a) above, or both, and (2) any reference in this Agreement to Builder having acquired the requisite number of Lots shall be deemed to mean that Builder has either acquired the requisite number of Lots or paid to Owner the applicable Hiatus Fees pursuant to a duly exercised Hiatus Option satisfying all of the conditions in Section 2.4.2(a) above, or both.

2.4.3 Pause. If a Market Condition exists with respect to the Unpurchased Lots, then in such event, Builder and Owner may mutually agree to designate a "**Pause Period**" of six (6)

months, during which time all purchase and construction deadlines shall be extended. During a Pause Period, Builder shall, as a condition to the continuation of the Pause Period, pay a monthly cash fee equal to the Unreturned Owner Costs multiplied by the Pause Rate. Following expiration of a Pause Period, an additional Pause Period may be elected during the Option Term subject to the existence of a Market Condition at such time. A Pause Period may not be elected more than four (4) times during the term of this Agreement for a total maximum Pause Period of up to two (2) years. Each six-month Pause Period must be mutually agreed upon by both Builder and Owner.

2.4.4 Bulk Purchase Notice. At any time, Builder may exercise the Option to purchase all Unpurchased Lots in a single bulk transaction for the Property Bulk Purchase Price (reduced by the amount of (a) the then Unfunded Costs, (b) all Lot Purchase Prices, if any, previously paid to Owner, (c) the Total Premium Balance, if any, as of the date such bulk transaction is consummated, and (d) the applicable Lot Purchase Prices of all Excluded Lots which Builder has renounced its right to acquire pursuant to the terms of Section 5.4). Builder may give notice of such election described in the immediately preceding sentence ("**Builder's 2.4.4 Notice**") at any time before expiration or earlier termination of the Option, including during or after the occurrence of any event which, with the giving of notice or the passage of time, or both, could become a Default by Builder. Notwithstanding anything to the contrary contained in this Agreement, (i) Builder shall have under all circumstances thirty (30) days following the date of the delivery of Builder's 2.4.4 Notice to consummate such bulk transaction, and (ii) no notice of default or opportunity to cure need be given to Builder if it fails to timely consummate the bulk transaction. If Builder fails to consummate the bulk transaction by the end of such thirty (30) day period, this Agreement shall automatically terminate. Notwithstanding anything to the contrary contained herein, if Builder delivers a Builder's 2.4.4 Notice at any time prior to the expiration or earlier termination of the Option or prior to the expiration of all notice and cure periods which could become a Default by Builder, Builder shall nevertheless be entitled to consummate such bulk purchase in accordance with the terms hereof notwithstanding (i) any contrary provision of this Agreement or (ii) any subsequent termination of the Option or expiration of all notice and cure periods which could become a Default by Builder within said thirty (30) day period, and with respect to any such subsequent termination of the Option prior to the end of such thirty (30) day period, the provisions of Section 7 hereof shall not become effective until such thirty (30) day period has expired.

2.4.5 Out of Sequence; Phasing Schedule. If allowed per the Phasing Schedule and if the applicable Out of Sequence Premium is paid, Builder may acquire Lots Out of Sequence. The amount of the Out of Sequence Premium required to be paid to acquire Lots Out of Sequence shall be determined in accordance with the Phasing Schedule. If any Out of Sequence Premium is paid, Builder may subsequently be entitled to a reduction of the amount payable by Builder to acquire Lot(s) as provided in Section 3.2. If as of the Effective Date the parties have not agreed upon a Phasing Schedule and attached same to this Agreement as Exhibit C, then promptly following the Agreement Date, Owner and Builder shall in good faith attempt to agree on a Phasing Schedule; however, until the parties agree on a Phasing Schedule for a Lot Type, Builder shall have no right to acquire any Lots of such Lot Type; however, Builder acknowledges that it has sufficient time to accomplish same and as such the Acquisition Schedule shall not be modified. Owner and Builder may from time to time mutually agree in writing to modify the Phasing Schedule without the need to amend this Agreement.

2.4.6 Payment of Amounts Due. Except as otherwise provided in Sections 2.4.2 and 2.4.3 above, the continued effectiveness of the Option is conditioned upon Builder complying in all material respects with its obligations under this Agreement and paying, at the end of each Option Period, all amounts due pursuant to Section 3.1.1 and purchasing a number of Lots of each Lot Type equal to or greater than the applicable Minimum Cumulative Lot Purchases set forth on the Acquisition Schedule for each Option Period indicated until all Lots have been acquired by Builder.

2.4.7 No Obligation to Purchase. This Agreement shall constitute an option and not an agreement obligating Builder to purchase the Property or all or any number of the Lots, and Builder may at any time elect to terminate the Option by notice to Owner. Failure to exercise the Option by Builder shall not constitute a Default hereunder, and Owner shall have no cause of action (including no right to pursue specific performance, other than to enforce Builder's obligation to buy all Unpurchased Lots pursuant to the provisions in Sections 5.6 and 7.10 below or to purchase Unpurchased Lots as and when required pursuant to Section 2.7 below) against Builder as a result of Builder failing to exercise the Option or electing to terminate the Option.

2.5 **Acquisition Process**.

2.5.1 Notice to Owner of Exercise of Option. Builder shall give Owner notice no less than five (5) business days prior to the expiration of each Option Period indicating either: (i) Builder's election to exercise the Option and purchase Lots or Builder's election to defer acquisition of Unpurchased Lots pursuant to Section 2.4.2 and pay a Hiatus Fee, or a combination thereof, or (ii) that one or more Final Plats have not been recorded creating a sufficient number of Lots for Builder to acquire to comply with the applicable Minimum Cumulative Lot Purchases set forth on the Acquisition Schedule and thus Builder's or Contractor's election to pay the applicable Delayed Plat Fee contemplated by the Construction Agreement, or a combination thereof. Builder acknowledges that it assumes all risks associated with any delay experienced in recording a Final Plat, including, without limitation, the risk that the Option will terminate if Builder fails to pay (or cause Contractor to pay) the applicable Delayed Plat Fee. If such notice indicates that Builder desires to purchase Lots, then such notice shall specify (i) the Closing Date and (ii) the exact Lot(s) to be acquired. Builder has been advised that all Lot purchases are being managed by Owner's agent, Essential Housing Asset Management LLC, utilizing a cloud-based lot purchase and reporting system (the "**Homesite Selection System**"). Builder shall use the Homesite Selection System to provide Owner the notice of its intentions as contemplated above; however, if such system is for any reason unavailable, Builder may instead provide such notice as contemplated by Section 8.7 below.

2.5.2 Closings. Builder may acquire one or more Lots shown on a recorded Final Plat at each Closing. There may be more than one Closing during each Option Period. If as reflected on Exhibit B, Lots must be acquired in Groups, then notwithstanding anything to the contrary contained in this Agreement, (i) Builder may only purchase Lots if it simultaneously acquires all Lots in a Group and (ii) Owner shall have no obligation to convey to Builder any Lots that do not comprise an entire Group.

2.5.3 Escrow; Closing Matters. Each Closing shall be consummated through an Escrow established with Escrow Agent or with such other escrow agent mutually acceptable to

Owner and Builder as may be reasonably designated by Builder. Title to the Unpurchased Lots being acquired shall be conveyed to Builder subject only to the Permitted Exceptions as evidenced by a Deed duly executed and acknowledged by Owner and delivered and recorded at the Closing. Builder shall be entitled to obtain title insurance policies for the Property or each of the Lots, provided that the acquisition of such insurance shall be at Builder's sole expense and shall not condition any obligations under this Agreement, nor extend or delay any Closing, nor affect the dates set forth on the Acquisition Schedule. At each Closing, the parties shall execute and deliver such documents and perform such acts as are provided for herein, or as are necessary, to consummate such Closing. At each Closing, Owner shall also execute and deliver to Builder a Non-Foreign Affidavit and Builder and Owner shall each execute and deliver such documents and perform such acts as are provided for herein, or as are necessary, to consummate the sale of the applicable Lots. In no event shall Owner be required to provide any Owner's Affidavit, Title Affidavit or similar assurances to the title insurer in connection with the issuance of title insurance to Builder. Owner shall provide Escrow Agent evidence of Owner being in existence and verification of the person signing all conveyance documents being duly authorized by Owner to execute such documents on behalf of Owner. If Owner acquired land other than just the Lots, and Owner has not previously conveyed such other land, then upon the conveyance of the last Unpurchased Lots that results in Builder having acquired all of the Lots, Owner may convey to Builder via quit claim deed, for no additional consideration, all of the Property using the legal description used in the deed transferring same to Owner, or such other legal description acceptable to Owner and Builder, and Builder shall accept such conveyance.

2.6 **Operational Matters**.

2.6.1 Sales and Property Reporting. Commencing on the Sales Reporting Commencement Date, and on or before the fifth (5th) business day of every month thereafter (for the immediately prior month), Builder shall deliver to Owner Builder's standard form marketing report developed for the Property in a form reasonably acceptable to Builder and Owner, setting forth the sales, cancellations and buyer traffic, and shall also provide to Owner other information reasonably requested by Owner pertaining to Builder's or any affiliate of Builder's marketing of the Lots. On or before the Sales Reporting Commencement Date, Builder shall designate and provide Owner with the name(s) and contact information of one or more individuals who will be responsible for providing the marketing reports to Owner. Additionally, such individual(s) shall be responsible to coordinate monthly status updates with Owner and appropriate Builder representatives to update Owner with respect to such matters pertaining to the Property as Owner may reasonably request. Builder shall not be in Default under this Agreement as a result of its failure to deliver such marketing report(s) unless such failure is not cured within thirty (30) days after delivery to Builder of notice of such failure.

2.6.2 Secured Debt. Builder acknowledges that Owner may obtain a loan from an institutional lender ("**Lender**") to finance a portion of the purchase price paid by Owner to acquire the Property or to finance amounts required to be advanced by Owner under the Construction Agreement (the "**Loan**"), or both. In such case, the following provisions shall apply. Owner shall be solely responsible for obtaining any Loan, and it is expressly acknowledged that obtaining such Loan is not a condition precedent to any of Owner's obligations under this Agreement or the Construction Agreement. Notwithstanding anything to the contrary contained in this Agreement, Builder shall have no liability or obligation with respect to any costs, fees, or expenses incurred

by Owner in connection with any Loan(s) or other financing obtained by Owner (at inception, in connection with any Closing, or otherwise) and no such amount(s) shall constitute Owner Costs. Owner agrees to indemnify, defend, and hold Builder harmless from and against any and all Claims arising from or in any way relating to a Secured Loan.

(a) Conditions on Loans. Any such Loan shall have a loan to value not to exceed 70% and may be secured by a mortgage or deed of trust (the "**Mortgage**") encumbering the Property provided the applicable lenders execute an SNDA (as defined below). Any Loan secured by a Mortgage shall hereinafter be referred to as a "**Secured Loan**" and any Lender of a Secured Loan shall hereinafter be referred to as a "**Secured Lender**." Builder further acknowledges that Owner may refinance the Secured Loan and thereafter record subsequent Mortgages that evidence any refinancings by Owner.

(b) SNDA. If requested by any Secured Lender or Builder, Secured Lender and Builder shall enter into a subordination, nondisturbance and attornment agreement ("**SNDA**") in such form as reasonably requested by Secured Lender and reasonably agreed to by Builder, which includes the following: (i) the Memorandum of Option and Builder's rights hereunder will be subordinate to the lien of the Mortgage; *provided* that Secured Lender or its successors in interest agree to honor this Agreement, the Construction Agreement and Builder's rights under this Agreement and Contractor's rights under the Construction Agreement; (ii) Secured Lender irrevocably agrees to release from the lien of the Mortgage the Lots purchased by Builder upon its exercise of its Option and payment of the applicable Lot Purchase Price and any Out of Sequence Premium therefor (reduced by any amounts to be credited in accordance with this Agreement); (iii) Secured Lender irrevocably agrees to recognize and not disturb Builder's rights under this Agreement and Contractor's rights under the Construction Agreement, including, without limitation Builder's right to acquire Lots consistent with the Acquisition Schedule and the terms and conditions of this Agreement; (iv) Builder shall give Secured Lender at least thirty (30) days' notice of any default by Owner hereunder prior to terminating this Agreement due to an Owner default hereunder; (v) Secured Lender shall give Builder notice of any default by Owner under the Mortgage at the same time such notice is given to Owner and shall grant to Builder the right to purchase the Secured Loan upon payment of all amounts due and owing by Owner under such Secured Loan, before Secured Lender exercises its foreclosure remedies under the Mortgage; and (vi) if requested by Builder and for no consideration due to Secured Lender, Secured Lender shall (A) execute any Owner Development Documents that are to be signed by Owner as well, (B) release from the lien of the Mortgage any Common Areas or streets created or dedicated in connection with the development of the Property, and (C) subordinate the lien of the Mortgage to any easements granted in connection with the development of the Property.

(c) Rights of Secured Lenders. If Secured Lender and Builder do not enter into an SNDA, then the Option and the Memorandum of Option shall be senior to any Mortgage entered into or recorded on or after the Effective Date. Upon Builder's receipt of notice from Secured Lender or any party who succeeds to Owner's interest in the Property, Builder agrees to continue to honor the terms of this Agreement and to cause Contractor to honor the terms of the Construction Agreement and to make any payments and perform any obligations due under each such agreement as such Secured Lender or other successor to Owner's interest shall direct. Secured Lender or other successor to Owner's interest shall be entitled to enforce this Agreement and the Construction Agreement and all rights and remedies of Owner hereunder and thereunder against Builder and

Contractor, as applicable. Owner and Builder agree (and the SNDA shall so provide) that Secured Lender and its successors or assignees shall not be liable for any act or omission of Owner; provided however, that Builder shall retain all rights and remedies available against Owner under Section 7.1 below on account of any Default of Owner.

2.6.3 No Obligation to Entitle, Engineer, Plat or Improve the Property. Owner shall have no obligation to entitle, engineer, plat, map, construct, install or, except as otherwise provided in the Construction Agreement, pay for (nor post any bonds or other financial assurances for) any entitlements, engineering plans, plats, maps, nor any on-site or off-site improvements to, or for the benefit of, the Property.

2.6.4 Common Areas. If upon or subsequent to the recordation of a Final Plat Builder requires that all or a portion of the Common Areas reflected on such Final Plat be conveyed to the Association, a Financing District or any other Approving Authority, as applicable, then Owner shall, at its option, convey such Common Areas directly to the Association, Financing District or other Approving Authority, or convey such areas to Builder by quitclaim deed and Builder shall accept such conveyance; provided that, if conveyed to Builder, Builder causes to be recorded concurrently with, but immediately after without any intervening instruments, the quitclaim deed from Owner to Builder, an applicable Deed conveying such Common Areas to the Association, the Financing District or other Approving Authority, as applicable, free and clear of any liens or encumbrances that would otherwise attach at the time such Common Areas are acquired by Builder, which Builder hereby agrees to do upon request by Owner.

2.6.5 Use. Subject to the limitations contained in, and in compliance with, all Ancillary Agreements, during the Option Term, in addition to the rights granted to Builder pursuant to Section 2.7 below, Builder shall have a license to use a reasonable number of each Lot Type requested by Builder before Builder's purchase thereof for the following uses and no other purposes:

(a) Marketing purposes including subdivision identification and directional signage. Builder shall comply with all applicable requirements of any Approving Authorities in connection with the placement of such signage.

(b) Construction and sales operations, including use of a construction trailer, sales trailer and wash-out pit.

(c) Parking purposes (i.e., parking of motor vehicles that may be driven by Builder's customers and other business visitors, and for providing a walkway to Builder's model home complex).

2.6.6 Report of Clear Title to Unpurchased Lots. To enable Owner to confirm that Unpurchased Lots have not been subjected to any liens or encumbrances in violation of the Construction Agreement or this Agreement, if requested in writing by Owner (but in no event more frequently than once per quarter), Escrow Agent shall provide to Owner, at Builder's cost, a report pertaining to the Unpurchased Lots generated by Escrow Agent (or another qualified company acceptable to Owner) reflecting that no such liens have been recorded against the Unpurchased Lots or any Common Areas retained by Owner.

2.6.7 Maintenance. During the Option Term Builder shall cause all Lots not sold to retail homebuyers to be maintained in good condition and repair and in compliance with all Ancillary Agreements. During the Option Term, neither Builder nor any Builder-Related Person will cause any violation(s) of any applicable laws or permits pertaining to the Property in connection with the activity of Builder or any Builder-Related Person.

2.6.8 Information. During the Option Term Builder shall cause copies of notices of breach or default delivered to Builder under any Ancillary Agreement to be promptly delivered to Owner. Owner shall cause copies of notices of breach or default delivered to Owner under any Ancillary Agreement to be promptly delivered to Builder.

2.7 **Construction on Unpurchased Lots**. Owner hereby grants to Builder (and Builder's agents, employees, contractors and subcontractors) a non-exclusive right and license (the "**License**") during the Option Term to enter upon the Unpurchased Lots for the limited purpose of constructing houses and other related improvements thereon, but only subject to the terms and conditions set forth in this Section 2.7.

2.7.1 Commencement. "**Commences**" or "**Commenced**" means that Builder has proceeded with installation of slab, stem walls, or vertical improvements on an Unpurchased Lot (or on an Unpurchased Building Envelope, if applicable).

2.7.2 Limitation on Right to Commence. Builder may only utilize Unpurchased Lots (or Unpurchased Building Envelopes, if applicable) for the uses contemplated by this Section 2.7 to the extent Builder complies with the acquisition sequencing described on the Acquisition Schedule; accordingly, without the prior written consent of Owner, Builder may not Commence construction of a house (or building within a Group) on any Unpurchased Lot or Unpurchased Building Envelope, if, at the time, Builder either (i) would be prohibited under the terms of this Agreement from acquiring such Unpurchased Lot or Unpurchased Building Envelope (as applicable), or (ii) could only acquire that Unpurchased Lot or Unpurchased Building Envelope upon payment of an Out of Sequence Premium.

2.7.3 Committed Lots.

(a) Determination of Committed Lots. Notwithstanding anything to the contrary contained in this Agreement, (a) once Builder Commences construction on an Unpurchased Lot not in a Group, Builder shall be deemed to have exercised the Option and agreed to acquire that Unpurchased Lot, and (b) once Builder Commences construction on an Unpurchased Lot in a Group or on an Unpurchased Building Envelope, Builder shall be deemed to have exercised the Option and agreed to acquire all Unpurchased Lots in that Group or Building Envelope, with each acquisition to be consummated no later than the first to occur of (i) the date by which Builder must acquire Lots as needed to enable Builder to comply with the Acquisition Schedule, or (ii) the date that is thirty (30) days after termination of the Option.

(b) Purchase After Termination. Notwithstanding anything to the contrary contained in this Agreement or this Section 2.7, within thirty (30) days following termination of the Option, Builder shall have the right and obligation to purchase all Unpurchased Lots which it has previously become obligated to purchase on account of the deemed exercise of its Option as

provided in Section 2.7.3(a) above (the "**Committed Lots**"). Such purchase shall be subject to all of the same terms and conditions (price, closing costs, title insurance, AS-IS condition, etc.) as would be applicable to such purchase if Builder had acquired the Lot(s) during the Term of the Option, and Builder shall deliver to Owner a notice to identify all of the Committed Lots to be acquired and the proposed closing date for such acquisition and, at such Closing, Builder shall deliver all documents and instruments required to be provided by Builder as contemplated by Section 2.5.3 above. Builder may only purchase all (and not some) of such Committed Lots. Owner may enforce its right to require Builder to acquire all such Committed Lots by an action for specific performance and any other recourse or remedy available to it at law, by statute, or in equity, including, without limitation, a suit for damages against either Builder or Parent, or both.

2.7.4 Builder Representations. Upon commencing any grading, site preparation or construction on any Unpurchased Lots, Builder shall be deemed to represent and warrant to Owner that: (i) all insurance to be maintained in compliance with the insurance requirements of the Construction Agreement is in place; and (ii) Builder has obtained all necessary agreements, licenses, permits and approvals from all applicable Approving Authorities.

2.7.5 Following Commencement.

(a) Once a house has been Commenced on an Unpurchased Lot, Builder shall, by the fifteenth (15th) of the following calendar month, and continuing on a monthly basis thereafter, indicate in the Homesite Selection System each of the Unpurchased Lots upon which a house has been Commenced and deliver a written report to Owner (in a form reasonably acceptable to Owner and Builder) advising Owner of the status of construction and marketing activities and confirming that Builder is in compliance with the provisions of this Section 2.7 along with such other information as Owner may reasonably request pertaining to Builder's utilization of any Unpurchased Lots.

(b) Prior to marketing any of the Lots for sale to the public, Builder shall obtain an appropriate public report and post all bonds required in connection therewith and otherwise comply with all applicable subdivision laws and regulations.

2.7.6 General Terms.

(a) Except as otherwise provided in the Construction Agreement, all costs of any work and activity on the Unpurchased Lots shall be borne solely by Builder and in no event shall Builder have any right to recover such costs from Owner.

(b) Builder shall, at its expense, comply with all applicable existing and future laws, codes, ordinances, orders, declarations, rules, regulations and requirements of all Approving Authorities pertaining to the Lots and Builder's activities relating thereto, including any and all environmental laws.

(c) Builder agrees that Owner shall have no obligation to perform Builder's obligations, nor recognize any buyer's rights, under any retail sales contract entered into by Builder with respect to any Unpurchased Lot.

(d) Builder shall keep, or shall cause Contractor to keep, the Unpurchased Lots free and clear of all liens and encumbrances incurred by or resulting from the acts of Builder and its agents, employees, contractors and representatives, or otherwise in connection with the grading and construction of the improvements.

(e) Under no circumstances shall Builder at any time create an unsafe condition upon the Unpurchased Lots or any portion of the Property.

2.7.7 Termination of License. The License shall terminate upon the earliest of: (i) the Option Termination Date, (ii) purchase of all Unpurchased Lots by Builder pursuant to this Agreement (and the License and Builder's obligations under this Section 2.7 shall terminate with respect to a particular Unpurchased Lot upon purchase of such Lot), or (iii) the failure by Builder to cure any default by Builder under this Section 2.7 within ten (10) days after Builder's receipt of notice of such failure (it being understood that such cure period shall not be in addition to any cure period set forth in Section 5 below or any other provisions of this Agreement, nor otherwise extend any cure periods set forth in this Agreement). After termination of the License and, upon receipt of written request from Owner, Builder shall execute, acknowledge and deliver to Owner an instrument in sufficient form for recording which shall give notice that the License created hereunder has terminated. Notwithstanding the termination of the License, Builder shall be provided access to the Property as reasonably needed to comply with its obligations to achieve Completion.

2.7.8 Unexpected Events.

(a) If Builder at any time creates an unsafe condition upon the Unpurchased Lots or any portion of the Property, as determined by Owner in its reasonable discretion, then Owner may (but shall not be obligated to), and in addition to exercising Owner's other rights and remedies arising from Builder's Default, put the Unpurchased Lots or portion of the Property in a safe condition (and notify Builder thereof), whereupon Owner shall have the right to recover from Builder all of Owner's actual out-of-pocket costs and expenses incurred to reasonably rectify the unsafe condition, together with interest thereon from the date paid by Owner until the date paid at the Default Rate. Upon the termination of this Agreement for any reason, Builder shall leave the Unpurchased Lots, and any sidewalk, street or land adjacent thereto, in a safe condition and cause the removal of any liens against the Unpurchased Lots, and any sidewalk, street or land adjacent thereto, which were recorded against the Unpurchased Lots, and any sidewalk, street or land adjacent thereto, as a result of Builder's activities thereon.

(b) Within ten (10) days following the recordation of any mechanic lien or similar encumbrance on any Unpurchased Lots, Builder shall cause any such lien or encumbrance to be immediately discharged or bonded over in a manner satisfactory to Owner in its sole discretion and in such fashion so as to enable a title insurer licensed in the State to insure title to the Unpurchased Lot(s) without reference thereto. Builder shall indemnify, defend and hold harmless Owner for, from and against any such liens or encumbrances.

2.7.9 Building Envelope. For purposes of this Section 2.7, if any portion of the Property is subdivided as a condominium, then all references to Unpurchased Lots with respect to that portion of the Property shall refer to portions of the Property, creating certain common

elements and limited common elements and creating residential building envelopes (each, a "**Building Envelope**" and, collectively, the "**Building Envelopes**") upon which a condominium building containing multiple condominium units (i.e., Lots) will be constructed. All Lots in a Building Envelope are deemed a Group and all Lots in a Group must be purchased concurrently. Any Building Envelope not yet acquired by Builder shall be deemed an "**Unpurchased Building Envelope**."

2.7.10 Survival. The provisions of this Section 2.7 shall survive termination or expiration of the Option and shall be continuing obligations of Builder and Parent.

3. **FINANCIAL TERMS**.

3.1 **Amounts Payable to Acquire Lots**.

3.1.1 Lot Purchase Price and Out of Sequence Premiums. At any bulk Closing where Builder is acquiring the Property or all Unpurchased Lots, Builder shall pay to Owner the Property Bulk Purchase Price (reduced by the amount of the then Unfunded Costs and all Lot Purchase Prices, if any, previously paid to Owner and any Premium Excess). From and after recordation of a Final Plat, Builder shall pay to Owner through Escrow the applicable Lot Purchase Price for each Unpurchased Lot to be purchased based on the applicable Lot Type and the respective Lot Purchase Price for that Lot Type listed on Exhibit B and shall pay any applicable Out of Sequence Premium required to be paid in accordance with the Phasing Schedule. All sums shall be paid in cash at the Closing.

3.1.2 Adjustment if Change in Number of Lots. If all Final Plats reflect that the Property has been subdivided into more or less than the total number of each Lot Type listed on Exhibit B, then the Lot Purchase Price for each applicable Lot Type shall be recalculated by Owner to appropriately reallocate Owner Costs and return for such Lot Types in the same fashion originally allocated to create the Lot Purchase Price of each Lot Type set forth in the Fundamental Terms. If the total number and type of Lots reflected on all Final Plats approved by Owner is more or less than the number and type of Lots set forth in the Fundamental Terms, as applicable, then the number of each Lot Type to be purchased each time period set forth on the Acquisition Schedule shall be modified by Owner accordingly with such adjustment being reflected in a revision to the number of Lots to be purchased in the last applicable time period unless otherwise agreed by Owner.

3.2 **Application of Premium Excess**. Simultaneously with the acquisition of any Lot(s), if any Premium Excess exists, such amount shall be applied to reduce the amount payable by Builder to acquire such Lot(s).

3.3 **Final Closing Adjustments**.

3.3.1 Credit for Unfunded Costs. At the Final Closing, Builder shall receive a credit equal to the amount of the then Unfunded Costs, and if the amount of the Unfunded Costs exceeds the aggregate Lot Purchase Prices of the last Unpurchased Lots to be acquired, Owner shall pay to Builder the excess concurrently with such Closing.

3.4 **Other Costs and Fees**.

3.4.1 Unanticipated Owner Costs. At the time of any Closing, and prior to the expiration of any Option Period, Builder must pay to Owner any Unanticipated Owner Costs that have not been paid or reimbursed to Owner, and any other amounts then payable by Builder pursuant to this Agreement or by Contractor pursuant to the Construction Agreement, including, without limitation, amounts due under Sections 4.1, 4.2, and 7.4 of this Agreement; otherwise Owner shall have no obligation to convey the Property or any Lots to Builder and Builder's failure to acquire the Property or Lots may result in a termination of the Option.

3.4.2 Attorney Fees. At each Closing, and as a condition to Owner's obligation to convey the Property and any Lots, Builder shall pay to Owner attorney fees reasonably incurred by Owner in connection with each Closing. Builder shall also promptly pay to Owner all other attorneys' fees and costs reasonably incurred by Owner, or pay same directly to Owner's legal counsel as billed directly to Builder, with respect to, among other things, fees incurred to review documents required to be approved or signed by Owner, including, without limitation Owner Development Documents (as defined in the Construction Agreement), but this provision shall not pertain to attorney fees and costs incurred in a legal action or proceeding described in Section 7.4 below. Absent prior notice from Owner to Builder of unique legal issues related to a purchase of Lots, such fees incurred in connection with any single Closing shall not exceed $1,000.

3.4.3 Other Builder Costs. Other costs required to be paid by Builder under this Agreement include: (a) all third-party closing costs, including title premiums, escrow fees and charges, documentary fees, excise tax stamps (deed stamps), transfer or other taxes (other than income taxes) and recording costs associated with each Closing (but excluding any costs related to a Secured Loan); (b) any out-of-pocket third-party due diligence costs incurred by Owner in connection with the Property, provided that the amount of any legal fees included in such due diligence costs shall not exceed $25,000 without Builder's prior written request; (c) all third-party costs associated with the transfer of the Common Areas, including, without limitation, all title insurance premiums and any applicable transfer or other similar taxes; or (d) any other amounts that are payable to Owner under this Agreement or pursuant to the Construction Agreement.

## 4. ADDITIONAL BUILDER COVENANTS AND OBLIGATIONS DURING OPTION TERM.

4.1 **Payment of Various Expenses**. Other than as explicitly set forth in the Construction Agreement, during the Option Term Owner shall not be required to incur any expenses or other charges applicable to the Property. Accordingly, as and when due and owing, Builder shall pay all such amounts. The expenses Builder must pay, include, but are not limited to: all taxes, assessments, impositions, insurance premiums, utility expenses, construction and improvement costs (including but not limited to any construction and improvement costs arising from the obligations of the "Buyer" under the Purchase Agreement or the owner of the Property under any Ancillary Agreement) existing, incurred, accruing or becoming due prior to or during the period commencing on the Effective Date and continuing through the Option Termination Date, and all other Property related costs and expenses (but excluding income taxes) of whatsoever character or kind, general or special, ordinary or extraordinary, foreseen or unforeseen, and of every kind and nature whatsoever, existing, incurred, accruing or becoming due prior to and during the period commencing on the Effective Date and continuing through the Option Termination Date. Owner shall not voluntarily incur costs relating to the condition or development of the Lots (other than

those reasonably necessary to protect Owner's interest in the Lots, including, without limitation, to keep same maintained) for which Builder shall be responsible without Builder's written consent. Without limiting the provisions of this Section 4.1, Builder shall: (a) pay prior to delinquency all taxes, assessments and other charges in any way relating to the Property, roadway, water, wastewater, impact or other fees payable to the City, County or any other Approving Authority attributable to the Property (other than income taxes), other costs payable or to be paid by the "Buyer" under the Purchase Agreement or the owner of the Property under an Ancillary Agreement, and other costs payable by Owner and attributable to the Property which accrue or become due prior to Option Termination Date (regardless of whether such taxes, assessments, or charges relate to periods prior to the Effective Date); (b) maintain through the Option Termination Date, at its expense, the Property in good order, condition and repair (except for maintenance or repairs required as a result of the acts of Owner or any Owner-Related Person); (c) pay prior to delinquency all charges for water, electricity, telephone service, trash removal and all other services or utilities used for the Property through the Option Termination Date; (d) perform at its expense all insurance and other covenants and obligations of Builder contained in this Agreement, the Purchase Agreement, and the Nomination Agreement to be performed through the Option Termination Date; (e) pay and perform at its expense all obligations of Builder or Owner (regardless of whether the obligation of Owner is as a named party or as the fee owner of the Property) to be performed through the Option Termination Date under any Ancillary Agreement; and (f) satisfy any monetary and other obligations of any nature arising through the Option Termination Date under the Purchase Agreement and the Nomination Agreement other than the amounts Owner is specifically obligated to pay hereunder. The covenants of this Section 4.1 shall survive the Option Termination Date and any termination or expiration of the Option; provided, however, that notwithstanding anything to the contrary, under no circumstances shall Builder have any obligations under this Section with respect to any amounts described herein (other than late charges or penalties) that accrue, are incurred, or are allocable to the period from and after the Option Termination Date.

4.2 **Other Taxes and Assessments**. Notwithstanding anything to the contrary contained in this Agreement, Builder shall pay prior to delinquency all of the various taxes, assessment and other charges relating to the Property which have accrued or are incurred or are allocable to periods prior to the Option Termination Date, including but not limited to, the following: (a) all property taxes attributable to any portion of the Property owned by Owner; (b) all homeowner association dues attributable to any portion of the Property owned by Owner payable to the Association or any other property association; (c) all obligations to pay shortfalls, reserves or other amounts expressly provided in any declaration or as required by law or otherwise to be paid by the Declarant (if Owner or Builder is in control of the Declarant) under any declaration or attributable to any portion of the Property owned by Owner; (d) charges attributable to any portion of the Property owned by Owner pertaining to any repair (other than if necessitated by the acts of Owner or any Owner-Related Persons) and maintenance expenses; and (e) any and all assessments against all or any portion of the Property. Following request of Owner, Builder will provide Owner its analysis of the potential to contest either the validity or the amount of personal or real property taxes, timely recommend the advisability of contesting either the validity or the amount of personal and real property taxes and implement any such plans as approved by Owner, such approval not to be unreasonably conditioned, withheld or delayed. The covenants of this Section 4.2 shall survive the expiration or earlier termination of the Option; provided, however, that notwithstanding anything to the contrary, under no circumstances shall Builder have any obligations under this paragraph

with respect to any amounts described herein (other than late charges or penalties attributable to amounts payable by Builder) that accrue, are incurred, or are allocable to the period from and after the Option Termination Date.

4.3 **Performance Under Construction Agreement**. Builder shall cause Contractor to perform all of its obligations under the Construction Agreement.

4.4 **Performance Under Ancillary Agreements**. Builder may have continuing obligations under the Purchase Agreement and under other Ancillary Agreements. Builder shall timely pay and perform all continuing obligations of the buyer or purchaser under the Purchase Agreement and all obligations of Builder and the owner, subdivider or developer of the Property under any Ancillary Agreements to the extent to be performed prior to and through the Option Termination Date.

4.5 **Negative Covenants**.

4.5.1 Covenants. Without Owner's prior written approval, which shall not be withheld, conditioned or delayed unreasonably, neither Builder, Parent nor any affiliate of Builder or affiliate of Parent shall have the right to (i) record any covenants, conditions or restrictions against the Property, (ii) amend or terminate the Declaration or de-annex the Lots from, or agree to amend or terminate the Declaration or agree to de-annex the Lots from, the Declaration, or (iii) record any other instrument, agreement, document or memorandum against the Property. Until Builder has acquired all of the Lots, or until Owner no longer owns any Unpurchased Lots, without Owner's prior written approval, which shall not be withheld, conditioned or delayed unreasonably, neither Builder, Parent nor any affiliate of Builder or affiliate of Parent shall:

(a) Exercise any of the "**Declarant**" or similar rights under a Declaration in any manner which will have a material or adverse impact on any Unpurchased Lots or Owner in its capacity as the owner of the Unpurchased Lots.

(b) Amend any Declaration or Association Articles or Bylaws or vote in favor of any such amendment in any manner which will have a material or adverse impact on any Unpurchased Lots or Owner in its capacity as the owner of the Unpurchased Lots.

(c) Assign or pledge any of its rights under any Declaration if doing so affects the Unpurchased Lots or the owner thereof.

(d) Voluntarily terminate, assign, or pledge its declarant, developer, special declarant, special developer or similar rights under any Declaration or relinquish or convert voting rights or rights to appoint members of the Board of Directors (or so-called Class B rights).

(e) De-annex any land from a Declaration which will result in a material or adverse impact on any Unpurchased Lots or Owner in its capacity as the owner of the Unpurchased Lots.

(f) Annex any Unpurchased Lots.

(g) To the extent within the control of Builder, Parent or any affiliate of Builder or Parent, appoint any person other than an employee of Builder or Owner to the Board of any Association or Financing District, or replace any such member with any person other than an employee of Builder or Owner.

(h) Assign (other than at the direction of Owner) or pledge any of its rights under any entitlement documents, permits, development agreements, line extension agreements, and similar agreements or documents pertaining to the Property, which grant Builder or the owner of the Property any development rights ("**Builder Development Documents**").

(i) Amend any Builder Development Documents (or vote in favor of doing so) in any manner which will have a material or adverse impact on any Unpurchased Lots or Owner in its capacity as the owner of the Unpurchased Lots.

(j) Exercise any rights under any Builder Development Documents in any manner which will have a material or adverse impact on Owner (or its affiliate) or any Unpurchased Lots.

(k) Amend any documents pertaining to a Financing District (or vote in favor of doing so) in any manner which will have a material or adverse impact on Owner (or its affiliate) or any Unpurchased Lots.

(l) Assign or pledge any of its rights with respect to any Financing District.

4.5.2 Exceptions. Notwithstanding anything to the contrary set forth above or in this Section 4.5, Builder may take any actions as are reasonably required to: (i) complete the construction and sale of homes to homebuyers; (ii) comply with any regulation, ordinance, or governmental requirement, or recorded covenant, condition or restriction relating to the use, development, construction, occupancy, condition, or sale of the Property; (iii) perform its obligations under the Declaration, Builder Development Documents or other agreements applicable to the use, occupancy, condition, or sale of homes; (iv) perform, or enable each of its affiliates to perform, its obligations under this Agreement, the Construction Agreement, the Master Agreement, or any other agreement between Owner (and its affiliates) and Builder (and its affiliates); and (v) annex Lots (other than Unpurchased Lots) and Common Areas. If and to the extent Owner has voting rights with respect to any Financing District by virtue of its ownership of the Unpurchased Lots, Owner agrees during the Option Term to exercise such ownership and voting rights to vote for (or appoint) the board members designated by Builder; provided however that in no event shall Owner or its representatives be required to serve as board members.

4.5.3 Survival. The covenant and obligations of Builder under this Section 4.5 shall survive the Option Term and shall survive for so long as Owner (or its affiliate) owns any Unpurchased Lots.

4.6 **Indemnity**.

4.6.1 Indemnification. To the fullest extent permitted by law, and except as otherwise set forth in this Section 4.6 below, Builder does and shall indemnify, defend and hold harmless and hereby releases and discharges, Owner and all Owner-Related Persons, for, from and against all

Claims, arising out of, resulting from or in connection with the following (it being expressly intended that, except as expressly set forth below, Builder shall be obligated to indemnify, hold harmless and defend Owner and all Owner-Related Persons for any acts or omissions of Owner or any Owner-Related Person, including the mere negligence of Owner and any Owner-Related Person): (a) Builder's use or occupancy of the Property, or any portion thereof; (b) any work, occurrence, conduct, act or omission (including, without limitation, any negligence) maintained, performed, permitted or suffered by Builder, any Builder-Related Person or any employee, agent, invitee or licensee of same, or any representative, subcontractor or supplier of Builder or any Builder-Related Person, on or about or pertaining to the Property or any portion thereof; (c) any Claim pertaining or relating to the Property arising at any time as a result of an act or omission occurring prior to the Term of the Option, specifically including, without limitation, any Claims arising as a result of the condition of the surface and sub-surface of the Property or any portion thereof existing or any improvements constructed thereon, created or arising prior to or during the Term of the Option, or the failure of the Property or any portion thereof to be properly graded and compacted as necessary to minimize all risks of subsidence and any other settlement, swell or movement of the soils, or any combination thereof; (d) any condition of or on the Property, or any portion thereof, or on any street, curb or sidewalk thereon or land adjacent thereto or any improvement constructed or to be constructed thereon existing, created or arising prior to or during the Term of the Option; (e) Builder's failure to perform Builder's material obligations, or Builder's breach of Builder's material obligations, representations or warranties, under this Agreement, the Purchase Agreement, or the Nomination Agreement (and any documents executed by Builder contemplated by the Purchase Agreement), and Seller's failure to perform Seller's material obligations, or Seller's breach of Seller's material obligations, representations or warranties, under the Purchase Agreement; (f) any act, omission, negligence or misconduct of Builder or any Builder-Related Person; (g) any accident, injury or damage whatsoever caused to any person, firm or corporation in or about the Property or any sidewalk, street or land adjacent thereto arising prior to or during the Term of the Option; (h) any Claim brought by Seller or any other party, or any party through Seller or any other party, under the Purchase Agreement, any Ancillary Agreement relating to the Property, or any other Claim relating in any way to the ownership or development of any portion of the Property by Owner or Builder, or both, on account of any act or failure to act prior to or during the Term of the Option; (i) any Claim brought by any third-party under any other agreement, easement or other instrument entered into by Builder, or delivered by Builder, in connection with all or any portion of the Property on account of any act or failure to act under any such agreement, easement or other instrument prior to or during the Term of the Option; (j) any claim made against Owner or any of the Property relating in any way to any Declaration, or any obligations expressly arising thereunder or implicitly by statute or common law, and relating to any impact fees or real property or other taxes or fees arising or payable, or both, with respect to the Property for any time periods during and before the Term of the Option; (k) any Claim made against Owner or the Property in any way relating to the platting, entitlements or governmental approvals and permits, or any combination thereof, of any of the Property other than arising from the acts or knowing omissions of Owner or any successor to Owner after the Term of the Option; (l) any lack of compliance with ordinances that regulate the division of land occurring or existing prior to or during the Term of the Option; (m) the lack of legal or adequate physical access to any portion of the Property (unless arising after the Term of the Option and not caused by an act or omission of Builder or any Builder-Related Person) and any interference with or inability to obtain all permits, easements and other rights or approvals from any Approving Authority and any other

third-party from whom such rights are needed to be obtained as a result of such lack of access; (n) any discrepancies, conflicts, or shortages in area or boundary lines, or any encroachments or protrusions, or any overlapping of improvements occurring or existing prior to or during the Term of the Option; (o) any encroachment, easement, adverse possession right, prescriptive easement right, access right, zoning status, flood zone status, boundary line dispute, failure of the legal description of the Property or any Lot to close, shortage in land area, or any other matter affecting title to any of the Property and arising or existing prior to or during the Term of the Option, including but not limited to any public utility easement(s) (including any blanket utility easements affecting any portion of the Property), drainage easement(s), access easement(s), lake maintenance easement(s), or utility easement(s), that are or would have been disclosed by a current accurate survey of the Property made in accordance with minimum standard detail requirements for ALTA/NSPS land title surveys jointly established and adopted by ALTA and NSPS in 2021, or its equivalent; (p) any Claim brought against Owner as a result of Builder's failure to perform Builder's obligations under any easement, declaration, covenant, instrument, agreement or other matter affecting title to the Property; (q) any Claim brought against Owner in any way relating to construction defects pertaining to any improvements installed on the Property or constructed pursuant to any Ancillary Agreement (other than with respect to improvements not constructed by Builder or any Builder-Related Person after the termination of the Option); (r) any Claim arising in any way in connection with any matters relating to the Common Areas and any improvements constructed thereon, or the conveyance of the Common Areas (other than with respect to improvements not constructed by Builder or any Builder-Related Person after the termination of the Option or events occurring after the termination of the Option); (s) loss sustained by reason of: (A) the existence as of the Effective Date of any violations (or alleged violations) on the Property of any enforceable covenants, conditions or restrictions, or at any time any existing improvements on the Property that violate any building setback lines shown on a parcel plat or a plat of subdivision recorded or filed in the public records; (B) any recorded instrument containing covenants, conditions or restrictions affecting the Property which, in addition, (1) establishes an easement on the land; (2) provides for an option to purchase, a right of first refusal or the prior approval of a future purchaser or occupant; or (3) provides a right of reentry, possibility of reverter or right of forfeiture because of violations on the land of any enforceable covenants, conditions or restrictions; (C) any encroachment of existing improvements located on the Property onto adjoining land, or any encroachment onto the Property of existing improvements located on adjoining land; (D) any encroachment of existing improvements located on the Property or improvements installed by Builder on the Property onto that portion of the Property subject to any easement; and (E) any notices of violation of covenants, conditions and restrictions relating to environmental protection recorded or filed in the public records; (t) any statutory or constitutional mechanic's, contractor's, or materialman's lien for labor or materials having its inception prior to or during the Term of the Option; (u) any titles or rights asserted by anyone in connection with the Property, including, but not limited to, persons, the public, corporations, governments or other entities: (A) to tidelands, or lands comprising the shores or beds of navigable or perennial rivers and streams, lakes, bays, gulfs or oceans, or (B) to lands beyond the line of the harbor or bulkhead lines as established or changed by any government, or (C) to filled-in lands, or artificial islands, or (D) to statutory water rights, including riparian rights, or (E) to the area extending from the line of mean low tide to the line of vegetation, or the rights of access to that area or easement along and across that area; (v) the violation, alleged violation or threatened violation of any Environmental Law prior to or during the Term of the Option or the existence of any Hazardous

Substance Activity prior to or during the Term of the Option; (w) any third party Claims arising out of or in any way related to Builder's marketing of Unpurchased Lots; (x) any exercise or attempted exercise of any right to extract oil, gas, minerals or other substances from or under the Property or any portion thereof; (y) any failure by Builder or any other party (other than Owner or any Owner-Related Persons) to perform or pay any of its obligations arising prior to or during the Term of the Option under any of the Ancillary Agreements; (z) any obligation to pay any transfer fee, assessment or other amounts however denominated payable under any Ancillary Agreement which become due and payable at the time the Lots are conveyed by Owner; and (aa) failure by Builder to fully perform and comply with any applicable Soil Management Plan implementation work and surface water and groundwater monitoring or any other monitoring requirements of any applicable Approving Authority. Notwithstanding anything to the contrary contained in the foregoing, Owner may not seek recourse against Builder under categories (m), (n) (o), (s), (t), (u) and (x) above without first seeking a claim against and defense from the title insurance company that issued the owner's policy of title insurance to Owner upon acquisition of the Property and Builder's ultimate liability under categories (m), (n) (o), (s), (t), (u) and (x) above shall be reduced to the extent such title insurance company defends and indemnifies Owner under such policy.

4.6.2 Exclusion From Indemnification Obligation. Notwithstanding the foregoing, or anything to the contrary in this Section 4.6, Builder does not release (and shall not be required to indemnify, defend and hold harmless) Owner and the Owner-Related Persons for or from any Claims to the extent arising from (a) the active negligence, gross negligence or willful misconduct of Owner or any Owner-Related Persons; (b) Owner's fraud; (c) any improvements installed, work performed, occurrence, conduct, act or omission after the Option Termination Date maintained, performed, permitted or suffered by Owner, any third-party (including a replacement builder or replacement contractor) ("**Third Party**"), or any representative, contractor, subcontractor or supplier of Owner, the Owner-Related Persons, or such Third Party (unless such improvements are installed, work performed, or occurrence, conduct, act or omission is by or through Builder or any Builder-Related Person in which case the indemnity and release provisions above shall apply); (d) any accident, injury or damage whatsoever caused to any person, firm or corporation on or in connection with the Unpurchased Lots or Common Areas after the Option Termination Date unless caused by or through Builder or any Builder-Related Person; (e) Owner's failure to comply with or perform its obligations under this Agreement with respect to the Unpurchased Lots after the Option Termination Date; or (f) Claims arising from failure to complete the Work or perform other obligations pursuant to the Construction Agreement after a termination under Section 16.1.2 or 16.2 of the Construction Agreement.

4.6.3 Indemnity Procedures. With respect to each and every provision of this Agreement or the Construction Agreement requiring a party to indemnify, defend and hold harmless another party or Person, the following provisions shall apply:

(a) The party seeking indemnification (the "**Indemnified Party**") shall give the other party (the "**Indemnifying Party**") notice of any Claim that is asserted against, resulting to, imposed upon or incurred by the Indemnified Party and which might give rise to liability on the part of the Indemnifying Party pursuant to this Agreement or the Construction Agreement, which notice (the "**Notice of Claim**") shall state (to the extent known or reasonably anticipated) the nature and basis of such Claim and the amount thereof; provided that the failure to give such Notice of Claim shall not affect the rights of the Indemnified Party hereunder except to the extent (a) that

the Indemnifying Party shall have suffered actual material damage by reason of such failure, or (b) such failure materially adversely affects the ability of the Indemnifying Party to defend, settle or compromise such Claim.

(b) If the Indemnifying Party, within ten (10) business days after receiving the Notice of Claim (or such shorter period of time as is reasonable if there is a deadline for responding to the Claim), expressly acknowledges and assumes responsibility to defend the same (including under reservation of rights), then the Indemnifying Party shall have the right to undertake, by counsel of its own choosing (which counsel shall have no conflicts with the Indemnified Party), the defense of such Claim at the Indemnifying Party's risk and expense.

(c) If the Indemnifying Party fails within ten (10) business days after receiving the Notice of Claim (or such shorter period of time as is reasonable if there is a deadline for responding to the Claim), to expressly acknowledge and assume responsibility for defending such Claim as described above, then the Indemnified Party shall have the right to undertake the defense, compromise or settlement of such Claim, by counsel of its own choosing, on behalf of and for the account and risk of the Indemnifying Party. If the Indemnified Party undertakes the defense of a Claim, the Indemnifying Party shall pay to the Indemnified Party, on a current basis, in addition to the other sums required to be paid hereunder, the reasonable costs and expenses incurred by the Indemnified Party in connection with such defense, compromise or settlement as and when such costs and expenses are so incurred.

(d) Anything herein to the contrary notwithstanding, (i) neither party shall, without the other party's written consent (which consent shall not be unreasonably withheld or delayed), settle or compromise such Claim or consent to entry of any judgment which does not include as an unconditional term thereof the giving by the claimant or the plaintiff to the Indemnified Party of a release from all liability in respect of such Claim in form and substance reasonably satisfactory to the Indemnified Party; (ii) if a party hereto undertakes defense of such Claim in accordance with this Agreement (the "**Defending Party**"), the other party shall cooperate with the Defending Party and its counsel and representatives in connection therewith; and (iii) the Defending Party shall have an obligation to keep the other parties reasonably informed of the status of the defense of such Claim and furnish the other parties with all non-privileged documents, instruments and information that the other parties shall reasonably request in connection therewith.

4.6.4 Survival. The covenants contained in this Section 4.6 shall survive any expiration or earlier termination of the Option and shall be continuing obligations of Builder for so long as same may be enforced within any applicable statute of limitations time periods.

4.7 **Insurance**. Builder shall, or shall cause Contractor to, procure and maintain all insurance coverages as required by the Construction Agreement.

4.8 **Repair of Damage; Violations**. If (i) any of the improvements to or constructed upon the Property, or (ii) improvements constructed off the Property for the benefit of the Property by or at the direction of Builder, or (iii) any Improvements as defined in the Construction Agreement, are damaged or destroyed prior to the Option Termination Date, Builder shall promptly repair and restore, or cause to be repaired and restored, such improvements to their respective condition as existed immediately prior to such damage and destruction. If Builder or any Builder-Related

Person causes any violation(s) of any applicable laws or permits pertaining to or affecting the Unpurchased Lots in connection with the activity of Builder or any Builder-Related Person, Builder shall at its sole cost and expense, immediately cause all such violations to cease and without delay shall take all steps necessary to remediate or rectify any condition created by such violation, and pay all applicable penalties, fines and fees imposed for any violations, caused by it or any other Builder-Related Person. Notwithstanding the foregoing or any provision of this Agreement, if Owner or any Owner-Related Persons enter the Property and through their acts cause physical damage to the Property, Owner shall, within twenty (20) days following receipt of an invoice therefor, reimburse Builder for all reasonable costs incurred by Builder to repair the damage created by the acts on the Property of Owner or any Owner-Related Persons. The provisions of Section 4.8 shall survive any termination or expiration of the Option or this Agreement.

## 5. **UNEXPECTED EVENTS**.

5.1 **Failure to Exercise Option**. Except as otherwise provided in Sections 2.4.2 and 2.4.3, if Builder does not timely exercise the Option pursuant to Section 2.5.1 to ensure Closings occur prior to the end of each Option Period in compliance with the Acquisition Schedule, and Builder fails within two (2) business days after notice to Builder of such failure to exercise the Option and identify (i) the Closing Date (which date may be no later than three (3) business days after the exercise of the Option) and (ii) the exact Lot(s) to be acquired at such Closing, then the Option shall terminate automatically without any additional notice and Owner may exercise its rights under Sections 6 and 7. If as of the Effective Date, all Final Plats have been recorded, then the remainder of this Section 5.1 shall be disregarded. If Final Plats have not been recorded by the end of any Option Period creating a sufficient number of Lots for Builder to acquire to comply with the applicable Minimum Cumulative Lot Purchases set forth on the Acquisition Schedule, and if Contractor or Builder has paid to Owner the Delayed Plat Fee as and when required by Section 1.1.4(d) of the Construction Agreement, then to maintain the Option, Builder shall not be required to exercise the Option and purchase a number of Lots of each Lot Type equal to or greater than the applicable Minimum Cumulative Lot Purchases set forth on the Acquisition Schedule for that first Option Period, and so long as Builder or Contractor continues to timely pay the Delayed Plat Fee as required by Section 1.1.4(d) of the Construction Agreement, Builder shall not be required to exercise the Option and to purchase a number of Lots of each Lot Type equal to or greater than the applicable Minimum Cumulative Lot Purchases set forth on the Acquisition Schedule for each successive Option Period until the applicable Final Plat records. When the applicable Final Plat records, to maintain the Option, Builder must exercise the Option and acquire the applicable Minimum Cumulative Lot Purchases set forth on the Acquisition Schedule prior to the expiration of the then current Option Period, e.g., if the current Option Period is the 3rd Option Period and the 3rd Option Period expires on April 1st and the applicable Final Plat is recorded on March 22, then, to maintain the Option, Builder must exercise the Option and acquire the applicable Minimum Cumulative Lot Purchases set forth on the Acquisition Schedule for the 3rd Option Period no later than April 1. Nothing contained in the foregoing shall, however, limit Owner's right to terminate the Option if Owner has the right to do so in the exercise of Owner's rights pursuant to Section 16.2 of the Construction Agreement if Contractor is in default under the Construction Agreement.

5.2 **Failure to Make Payments**. If (i) Builder does not pay amounts as and when due pursuant to any of the provisions of Section 3.1, or (ii) Builder fails to pay any other amounts due and payable by Builder under any of Sections 4.1 or 4.2 of this Agreement and Builder fails to cure such failure within five (5) business days after notice to Builder of such failure (it being understood that any cure period set out anywhere else in this Agreement does not additionally apply), then the Option shall terminate automatically without any additional notice and Owner may exercise its remedies under Section 7.2.

5.3 **Failure to Perform Other Obligations**. If at any time Builder fails to perform its other obligations and is in Default under this Agreement, Owner may exercise its remedies under Section 7.2.

5.4 **Excluded Lots**. Notwithstanding anything to the contrary contained in this Agreement, within ninety (90) days from Owner's receipt of notice from Builder describing any Lot subject to a Title Defect, Owner shall have the right, but not the obligation, to cure such Title Defect. Notwithstanding anything in the Phasing Schedule or this Agreement to the contrary, Builder need not purchase any Lot subject to a Title Defect in the order shown on the Phasing Schedule and it shall be excluded from computations in determining when an Out of Sequence Premium is payable or is available as a credit. Once the Title Defect has been cured within ninety (90) days from Owner's receipt of notice from Builder describing any Lot subject to a Title Defect, however, the Lot shall no longer be deemed an Excluded Lot and Builder must purchase the Lot as close as possible to the order shown on the Phasing Schedule to avoid the payment of an Out of Sequence Premium. If the Title Defect creating an Excluded Lot is not cured within ninety (90) days from Owner's receipt of notice from Builder describing any Lot subject to a Title Defect, Owner shall notify Builder of such non-cure, and Builder, within fifteen (15) days following receipt of such notice from Owner, shall elect either (a) to waive the Title Defect and acknowledge that the Lot is no longer an Excluded Lot, or (b) to renounce its right to acquire the Excluded Lot. If Builder fails either to waive the Title Defect or to renounce its right to acquire the Excluded Lot within such fifteen (15) day period, Builder shall be deemed to have elected to waive the Title Defect and accept the Excluded Lot and same shall no longer be an Excluded Lot. If Builder renounces, or is deemed to have renounced, its right to acquire an Excluded Lot pursuant to the terms of this Section 5.4, such Excluded Lot shall not be considered in determining whether Builder has acquired all the Lots and shall otherwise be excluded from any references to the "**Lots**" or "**Unpurchased Lots**." Also, notwithstanding anything to the contrary contained in this Agreement, if and when Builder renounces its right to acquire an Excluded Lot, the Unreturned Owner Costs shall be immediately reduced by an amount equal to an allocable share of the sums expended by Owner to purchase the Property and an appropriate allocable portion of the Contract Sum under the Construction Agreement.

5.5 **Condemned Lots**. Regardless of anything contained in the Acquisition Schedule to the contrary, after Owner delivers to Builder notice of a Condemnation together with an indication of the Condemned Lots affected thereby, Builder must acquire all of such Condemned Lots (or, if applicable, all Lots in the Group(s) in which such Condemned Lots are included) for the applicable Lot Purchase Price prior to Builder's acquisition of any other Lots. Any such Condemned Lots acquired by Builder shall not be deemed to have been acquired Out of Sequence and thus shall not be subject to payment of any Out of Sequence Premium. The foregoing shall not alter the number of Lots required to be purchased by Builder in any of the Option Periods to prevent a termination

of the Option. If Builder acquires Condemned Lots, Builder shall be entitled to all condemnation awards associated therewith other than with respect to any portion of such award attributable to, or awarded on account of, expenses (including reasonable attorneys' fees and costs) incurred by Owner in handling or contesting such condemnation and Owner shall assign the same to Builder at the applicable Closing.

5.6 **Adverse Development Risks**.

5.6.1 Development Strategy. The Construction Agreement, this Agreement and the third-party Market Study commissioned by Owner as part of Owner's due diligence (a copy of which has been provided to Builder) generally contain the description of the activities, approvals and development timelines Builder has deemed necessary to (1) complete the intended entitlement and development of the Property into Finished Lots and (2) complete the orderly build out of homes generally consistent with Builder's planned product offering (collectively, the "**Development Strategy**"). Builder and Parent have determined that, as of the date of this Agreement, no Adverse Development Risk (as that term is defined in Section 5.6.3 below) or other matters exist that have or are reasonably expected to have a material adverse impact on Builder's ability to execute the Development Strategy other than as set forth on Schedule 4 attached hereto. Owner agreed to acquire the Property in reliance on Builder's commitment to execute Builder's Development Strategy and Builder's representation that no Adverse Development Risk existed other than as might be set forth on Schedule 4 attached hereto. Builder and Parent agree that if the Property is at any time subject to any Adverse Development Risk (other than as set forth on Schedule 4 attached hereto) it would be very difficult or possibly impossible to sell to another homebuilder. As such, Builder agrees that if it is determined that the Property, or any portion thereof, is subject to any Adverse Development Risk not set forth on Schedule 4 attached hereto, or if Builder is unable to execute the Development Strategy, Builder shall acquire the Property as more fully set forth in this Section 5.6. Notwithstanding anything to the contrary contained in this Agreement, Owner may enforce its right to require Builder to acquire the Unpurchased Lots in accordance herewith by an action for specific performance it being understood and agreed that the Unpurchased Lots are unique and that the right of specific performance is a just and equitable remedy on account of the existence of an Adverse Development Risk and that Builder and Parent knowingly relinquish and waive any right to raise as a defense to any action for specific performance that Owner has an adequate remedy at law. Additionally, notwithstanding anything to the contrary in this Agreement, if Builder fails to acquire the Unpurchased Lots in accordance herewith, Owner may also seek any other recourse or remedy that may be available to it at law, by statute, or in equity, including, without limitation, a suit for actual damages against Builder and Parent.

5.6.2 Right to Require Purchase. Builder and Parent acknowledge that as an inducement and material consideration for Owner to purchase the Property and enter into the Construction Agreement and this Agreement, Builder and Parent agree that upon the occurrence or discovery of an Adverse Development Risk, prior to expiration of the ADR Bulk Purchase Period (as defined below) Owner shall have the right to require Builder to purchase all Unpurchased Lots on the terms and conditions set forth herein.

5.6.3 Definition. Builder, Parent and Owner agree that, except for the matters, if any, described in the Section of Schedule 4 attached hereto entitled "Existing Conditions that are

Exceptions to Adverse Development Risks," the following shall hereinafter collectively be referred to as "**Adverse Development Risks**" and each individually as an "**Adverse Development Risk**":

(a) delays in commencing or completing the Work (as defined in the Construction Agreement) which do, or will reasonably be expected to, result in the Work being delayed by more than six (6) months beyond time frames described in or contemplated by the Development Strategy (as the same may be modified by Builder or Contractor with the written consent of Owner which consent shall not be unreasonably withheld). Delays include the following to the extent related to and actually delaying the completion of the Work, and regardless of whether within Builder's or Contractor's control:

(1) delays in commencing or completing the Work as is necessary to ensure that a building permit for construction of a residence on each Lot to be acquired is available to be obtained from the applicable Approving Authority no later than the time contemplated for such Lots to be acquired by Builder in accordance with the Acquisition Schedule;

(2) delays resulting from the failure to have recorded one or more Final Plats creating a sufficient number of Lots to enable Builder to acquire the applicable Minimum Cumulative Lot Purchases set forth on the Acquisition Schedule attached to this Agreement on or before the dates necessary to enable Builder to comply with the Acquisition Schedule;

(3) delays in obtaining, or the failure to obtain, with respect to the Work development plans, entitlements, design review approvals, plan approvals, permits, easements, development rights, utility connections, and inspections;

(4) delays related to Builder or third-party non-performance under, or other failure to comply with, the terms and conditions of any Ancillary Agreement;

(5) delays resulting from threatened or pending litigation against Builder, the Property, any Approving Authority, or Owner in its capacity as the owner of the Property;

(6) delays resulting from the imposition of new conditions or requirements of any Approving Authority;

(7) delays of Approving Authorities in processing entitlements, plan reviews, issuance of permits or consents required by CC&Rs;

(8) delays caused by any Approving Authority (A) imposing (or commencing formal proceedings to impose) a moratorium or a suspension of the issuance of building or occupancy permits or

(B) taking (or publishing or announcing its intention to take) any other action that would delay the proposed development of the Property; and

(9) delays caused by the occurrence of a material violation of any applicable law, regulation, ordinance, or governmental requirement, or recorded covenant, condition or restriction relating to the use, occupancy or condition of the Property.

(b) material adverse changes to the physical condition of the Property or land adjacent to the Property (including any casualty to infrastructure improvements or project amenities) that have, or are reasonably expected to have, a material adverse impact on Builder's ability to execute the Development Strategy.

(c) newly discovered conditions on the Property or land adjacent to the Property (including newly discovered Hazardous Substances, artifacts, endangered species, soils conditions or other development conditions) that have, or are reasonably expected to have, a material adverse impact on Builder's ability to execute the Development Strategy.

(d) if, upon completion of the Work for all or a majority of the Unpurchased Lots, the owner of such Unpurchased Lots will be unable in the ordinary course of business to obtain building permits , certificates of occupancy or utility services to service any of such Unpurchased Lots.

(e) any condemnation action, proceeding or threatened governmental action, whether specific to the Property or surrounding area, which materially and adversely impacts ten percent (10%) or more of the Unpurchased Lots and has, or is reasonably expected to have, a material adverse impact on Builder's ability to execute the Development Strategy.

(f) pending or threatened litigation (including, without limitation, litigation seeking injunctive relief or cease and desist orders), or disputes with Approving Authorities (collectively, "**Adverse Disputes**") which challenges the enforceability or legitimacy of entitlements to the Property (e.g., a referendum) or adversely impacts or challenges the utilization or ability to develop the Property (including any planned amenities) where such Adverse Disputes have, or are reasonably expected to have, a material adverse impact on Builder's ability to execute the Development Strategy.

(g) discovery of any adverse title matters or third-party claims not described as exceptions to title in the Owner's Policy of title insurance issued to Owner as of the Effective Date adversely impacting title to the Unpurchased Lots where such claims or matters have, or are reasonably expected to have, a material adverse impact on Builder's ability to execute the Development Strategy.

(h) Builder's material modification of the development plans, housing plans or expected buildout timeframes from those contemplated by the Development Strategy without Owner's prior written consent.

(i) Contractor's abandonment of the Work under the Construction Agreement for more than sixty (60) consecutive days (other than as a result of Owner's Default under the Construction Agreement), or failure to Complete the Work within six (6) months following the first day of the month during which the Final Expiration Date occurs.

(j) After notice and expiration of any applicable cure period, Builder has failed to comply with its obligations under Section 6 below such that Owner's ability to market the Unpurchased Lots at the then current market value (determined as if Builder had performed its obligations under Section 6) is impaired.

(k) The specific items, if any, listed in the Section of Schedule 4 attached hereto entitled "**Additional Adverse Development Risks**."

For purposes of this Section 5.6, the parties agree that, without limiting the generality of the forgoing, if an Adverse Development Risk impacts ten percent (10%) or more of the Unpurchased Lots, the matter or event shall be deemed to have a material adverse impact on Builder's ability to execute the Development Strategy.

5.6.4 Occurrence of Adverse Development Risk. Should Builder, Contractor or Parent hereafter become aware of or identify the existence of an Adverse Development Risk relating to the Property (including matters communicated in writing by Owner to Builder) prior to the end of the ADR Bulk Purchase Period, Builder shall, without delay, provide notice to Owner of the existence of the Adverse Development Risk (an "**ADR Notice**") along with any relevant details it then has available with respect to the Adverse Development Risk contained in the ADR Notice. As used herein, the term "**ADR Bulk Purchase Period**" shall be the period commencing on the Effective Date and ending on the date that is the later of (i) three (3) months after expiration or earlier termination of the Option, or (ii) thirty (30) days after the date Builder demonstrates to Owner that the Unpurchased Lots are Finished Lots; provided, however in any event the ADR Bulk Purchase Period shall end no later than the date that is seven (7) months after the first day of the month during which the Final Expiration Date occurs.

5.6.5 Updated Plan. Within thirty (30) days following Builder's delivery to Owner of an ADR Notice, Builder shall update its Development Strategy taking into account the impact of the Adverse Development Risk(s) and provide to Owner a written copy of Builder's updated Development Strategy (the "**Updated Plan**") describing its intended plans for going forward with respect to development, build-out and marketing of the Property, including any requested modifications to the schedules or other terms of this Agreement or the Construction Agreement.

5.6.6 ADR Bulk Purchase Election. Within ten (10) business days after receipt of Builder's Updated Plan, or within ten (10) business days after Builder's failure to timely provide an Updated Plan (which ever first occurs the "**Election Period**"), and after any consultation with Builder deemed appropriate by Owner, if Owner is not satisfied with Builder's Updated Plan or has not entered into a mutually acceptable modification of the Construction Agreement or this Agreement, or both, Owner shall have the right, in addition to any other rights or remedy available to Owner under the Construction Agreement or this Agreement, and regardless of whether during a Pause Period, to elect, in its sole and absolute discretion, to deliver notice to Builder (the "**ADR Bulk Purchase Notice**") requiring Builder to purchase the Unpurchased Lots and Builder

acknowledges and agrees that Owner shall be entitled to the remedy of specific performance in connection with the enforcement of this Section 5.6. Upon receipt of any such ADR Bulk Purchase Notice, Builder shall purchase the Unpurchased Lots from Owner as provided below. Builder acknowledges that Owner's willingness to proceed with the purchase of the Property and to enter into the Construction Agreement and this Agreement is in reliance on Builder's promise to purchase the Unpurchased Lots from Owner as provided below following Owner's delivery of an ADR Bulk Purchase Notice. Owner shall give its ADR Bulk Purchase Notice no later the last day of the Election Period and its failure to do so shall be its waiver of: (a) the right to deliver a ADR Bulk Purchase Notice with respect to the specific Adverse Development Risk identified in the previously delivered ADR Notice; and (b) its right to require Builder to acquire the Unpurchased Lots pursuant to this Section 5.6 on account of the specific Adverse Development Risk identified in the previously delivered ADR Notice; however, such failure shall not preclude Owner from thereafter delivering an ADR Notice should any other Adverse Development Risk arise with respect to the Property.

5.6.7 ADR Bulk Closing. Accordingly, and notwithstanding anything to the contrary set forth in this Agreement, if Owner delivers an ADR Bulk Purchase Notice prior to the end of the Election Period, then notwithstanding anything to the contrary contained in this Agreement or the Construction Agreement:

(a) Builder shall acquire all of the Unpurchased Lots from Owner at a single closing on or before the date that is thirty (30) days after Builder's receipt of the ADR Bulk Purchase Notice;

(b) at such closing (the "**ADR Bulk Closing**") Builder shall pay to Owner an amount equal to the Unreturned Owner Costs, plus an additional amount necessary to generate to Owner the Target IRR on Owner's actual cash flows (including the payment of the Unreturned Owner Costs) through the date of the ADR Bulk Closing using the Excel IRR Formula (as such term is defined in the Master Agreement); and

(c) Owner shall convey all of the Unpurchased Lots to Builder at the ADR Bulk Closing via Deed, subject to and upon the terms and conditions set forth in Section 2.5 above as if Builder had exercised its Option.

5.6.8 Replacement Transaction. Provided that Builder and Parent have not breached the provisions of this Agreement and have timely purchased the Unpurchased Lots at the ADR Bulk Closing as and when contemplated above, Owner will use best efforts to originate a replacement transaction involving one or more projects owned or controlled by Builder (even if the ADR Bulk Closing is after expiration of Owner's origination period) that:

(a) is determined acceptable by Owner according to its underwriting criteria;

(b) is subject to a new option agreement and construction agreement (or separate agreements for each new project, if multiple projects) mutually agreeable to Owner, Builder and Parent;

(c) has a total estimated project cost (i.e., the sum of the estimated Property Acquisition Cost, estimated site improvement costs and estimated carry costs) approximately equal

to the Property Acquisition Cost plus the Unfunded Costs as of the date of the ADR Bulk Closing; and

(d) if the replacement transaction is originated after expiration of Owner's origination period, then the expected option term must expire no later than the Final Expiration Date set forth in the Fundamental Terms.

5.6.9 Survival. Builder's and Owner's rights and obligations under this Section 5.6 shall survive any termination of this Agreement. Builder and Parent acknowledge that the provisions of this Section 5.6 are a bargained for material consideration to Owner to enter into this Agreement and that Owner would not have agreed to enter into this Agreement without the commitment of Builder to acquire the Unpurchased Lots following the occurrence or discovery of an Adverse Development Risk prior to expiration of the ADR Bulk Purchase Period in accordance with the provisions of this Section 5.6. Notwithstanding anything to the contrary contained in this Agreement, Owner may enforce its right to require Builder to acquire the Unpurchased Lots in accordance herewith by an action for specific performance and any other recourse or remedy available to it at law, by statute, or in equity, including, without limitation, a suit for actual damages against Builder and Parent.

## 6. OBLIGATIONS AFTER OPTION TERMINATION.

6.1 **Cooperation**. Unless otherwise specifically identified as an exception on Schedule 4, upon any Early Termination, Builder and Parent shall fully cooperate with Owner as reasonably requested by Owner to, among other things, minimize Owner's controllable carry costs (e.g., take steps if allowed to ensure that the Unpurchased Lots are assessed for the benefit of Owner and any replacement builder under any Declaration, club plan or any other governance documents, if at all, at the lowest amount possible), and otherwise cooperate to assist Owner's efforts to market and convey the Unpurchased Lots and all desirable rights related thereto to another homebuilder who intends to build homes thereon and market and sell same to the public by promptly providing requested information to assist such homebuilder in its diligence efforts (excepting information that is confidential or proprietary to Builder) and by assigning and executing such documents as may reasonably be requested to enable Owner to convey the Unpurchased Lots and all desirable rights related thereto to another homebuilder (including, without limitation: (i) annexing Unpurchased Lots into the Declaration (or assigning the right to annex Unpurchased Lots), (ii) assigning development and entitlement rights and credits and cooperating with Owner and all Approving Authorities to obtain any necessary consents to such assignments, (iii) designating the replacement homebuilder as a "Builder" or any such similar designation under any Declaration to ensure that such homebuilder has the necessary rights to build and market homes as opposed to being a mere owner under the Declaration, (iv) waiving assessments, fees or other amounts due which might otherwise be payable upon a transfer to such replacement homebuilder or upon a transfer to a homebuyer, and (v) assigning certain declarant or developer rights which a homebuilder would customarily expect to have as a homebuilder building homes in a residential community where the Unpurchased Lots are located). Toward that end, upon any Early Termination, each of the following provisions shall become effective.

6.1.1 Assignment of Declarant Rights. If reasonably requested by Owner to ensure Owner's ability to minimize Owner's controllable carry costs (e.g., take steps if allowed to ensure

that the Unpurchased Lots (whether owned by Owner or a replacement builder) are not assessed or subject to payment of any fees or charges under the Declaration (including fees or charges payable upon the transfer of title to any affiliate or replacement builder), and if at all, at the lowest amount possible and in no event more than charged to Builder (as an owner of a vacant lot) or a homebuilder) and to market and convey the Unpurchased Lots to another homebuilder who may require declarant or any other rights or consents or waivers under the Declaration, and if Builder, or an affiliate or subsidiary of Builder or Parent, is the named declarant or developer (or similar term) under the Declaration, or otherwise has the ability to assign such rights (to the extent assignable) or grant such consents and waivers, Builder, at its expense, shall duly and validly assign such declarant or other rights (or cause same to be assigned) (to the extent assignable or transferrable) by recordable instrument and otherwise in accordance with the requirements of the Declaration, and, if applicable, grant (or cause same to be granted) such other rights and consents and waivers (e.g., consent to annexation of the Unpurchased Lots, or designate another homebuilder as a "Builder" or otherwise assure that homebuilder the right to any reduced or no assessments available to Declarant or a "Builder" under the Declaration, and assign such other rights typically reserved for or granted to homebuilders) within ten (10) business days following receipt of written request by Owner to do so and shall execute all other documents reasonably requested by Owner (or a replacement builder) to facilitate Owner's (and a replacement builder's) continued development and sale of the Unpurchased Lots, including, without limitation, as needed to ensure Owner (and a replacement builder) that it may without the need for any consent from Builder annex the Unpurchased Lots into the Declaration. If the Declaration includes provisions that address the joint exercise of Declarant rights to the reasonable satisfaction of Owner, then Builder need only non-exclusively assign the Declarant rights with respect to the Unpurchased Lots and Builder may retain the Declarant rights as to all Lots then owned by Builder. If the Declaration does not include provisions that address the joint exercise of Declarant rights to the reasonable satisfaction of Owner, then if Owner and Builder have sufficient votes or rights to unilaterally amend the Declaration, Owner and Builder, at Builder's expense, shall cooperate to amend the Declaration, as reasonably required to permit such a non-exclusive assignment and the joint exercise of Declarant rights. If applicable, on and after any such assignment, Owner shall cooperate with Builder and execute any documents reasonably requested by Builder to facilitate Builder's continued development and sale of the Lots acquired by Builder, including as needed to ensure Builder may annex the purchased Lots and Common Areas into the Declaration. Additionally, even if Builder, Parent, or an affiliate or subsidiary of Parent or Builder, is not the named declarant or developer (or similar term) under the Declaration, nor otherwise has the ability to assign such rights or grant such consents, Builder shall nonetheless cooperate with and assist Owner (at Builder's expense) in seeking such assignments, consents and waivers from the appropriate parties under the Declaration.

6.1.2 Convey Common Areas. If requested by Owner, Builder shall accept title to all or a portion of the Common Areas to be conveyed to the Association or a Financing District, as applicable, and Owner may convey such areas to Builder by quitclaim deed and Builder shall, immediately after recordation of such quitclaim deed without any intervening instruments, convey such Common Areas to the Association or the Financing District, as applicable, free and clear of any encumbrances. If requested by Owner, Builder shall from time to time upon request by Owner convey title to all or a portion of the Common Areas owned by Builder to Owner, the Association or a Financing District (as directed by Owner) if such conveyances are reasonably required to permit the development, use or sale of the Unpurchased Lots; provided, however, that Builder may

reserve such easements as are reasonably required to permit the development, use or sale of the Lots owned by Builder. In all cases, Owner and Builder shall convey to the Association or a Financing District, as applicable, any Common Areas reasonably required to permit both parties to develop, use or sell their respective lots.

6.1.3 Repair of Damage; Violations. If following the Option Termination Date and prior to Builder having conveyed all Lots purchased from Owner to retail buyers, Builder or any Builder-Related Person (i) damages any improvements to or for the benefit of the Unpurchased Lots (including, without limitation, all Common Area, pavement, curbs, gutters, sidewalks, streets, shoulders, utility lines and appurtenances, grade stakes, surveyor markers, landscaping, drainage facilities and hydrants benefiting the Unpurchased Lots), or (ii) causes any violation(s) of any applicable laws or permits pertaining to or affecting the Unpurchased Lots in connection with the activity of Builder or any Builder-Related Person, then Builder shall promptly repair, remediate or otherwise remedy at its sole cost and expense, and timely pay all applicable penalties, fines and fees imposed for any violations, caused by it or any other Builder-Related Person. Notwithstanding the foregoing or anything to the contrary in this Agreement, Builder shall not be obligated to repair any damage caused by the acts on the Property of Owner or any Owner-Related Persons or any replacement builders to whom Owner has conveyed Unpurchased Lots.

6.1.4 Assignment of Plans and Rights. Builder does hereby assign to Owner on a non-exclusive basis and to the extent assignable, as is and without any representation or warranty, Builder's rights in all plans, plats, engineering work, specifications, guarantees and warranties and all other items relating to subdivision improvements, any off-site improvements for the Property, and all governmental agreements, permits and service contracts pertaining to the Lots and all other rights reasonably requested by Owner to cooperate with Owner's efforts to defer amounts payable with respect to the Unpurchased Lots and Owner's marketing and conveyance of the Unpurchased Lots and all rights relating thereto to another homebuilder who may need such rights to develop and sell homes on the Unpurchased Lots. Builder shall cooperate with Owner to execute such assignment or consent documents as may be reasonably required to evidence such assignment and to effectuate an assignment to a replacement builder. Additionally, Builder shall cooperate with and assist Owner (at Builder's expense) in seeking all required third-party consents to any such assignments. The foregoing assignment specifically excludes any contracts and rights with subcontractors, consultants, or other parties covered by Builder's wrap insurance program. Additionally, if reasonably determined by Owner as needed to maintain consistency of home product to be constructed within the Property, promptly following the Option Termination Date, upon request from Owner, Builder shall cooperate with Owner to enable Owner and its successors or assigns, including, without limitation, any replacement builder to whom Owner sells any Unpurchased Lots, to obtain the right to use with respect to the Unpurchased Lots only the architectural plans and specifications for any homes offered for sale by Builder on the Lots. Such efforts shall include Builder using commercially reasonable efforts to obtain the consent of the architect who prepared the architectural plans for the home product being offered by Builder for sale on the Property to allow the use thereof on the Unpurchased Lots for a typical and reasonable market rate re-use fee. Additionally, Builder may require Owner and any replacement builder to execute a design license agreement on commercially reasonable terms pursuant to which Owner and any replacement builder, among other things will: (i) acknowledge and confirm Builder's ownership and proprietary rights in all architectural plans owned by Builder; (ii) agree to use the architectural plans only with respect to the Unpurchased Lots; and (iii) agree and confirm they will

not use the name "Smith Douglas Homes" (or derivatives thereof) or other trademarks or marketing names/concepts of Builder or Parent. Builder shall also retain rights in all of the rights assigned to Owner on a non-exclusive basis.

6.1.5 True-Up of Credits and Reimbursements. Upon any Early Termination, Owner, with Builder's cooperation and input, shall determine the amount if any due to Owner, or due to Builder, with respect to reimbursement rights or other rights or credits pertaining to the Unpurchased Lots in accordance with the provisions of this Section 6.1.5.

(a) Definitions. The following definitions shall apply in construing this Section 6.1.5:

(1) "**Credits**" shall mean rights pursuant to which the owner of any given Lot may directly reduce or offset all or any portion of an entitlement, development or residential construction expense or obligation payable to a third party arising from or in connection with (i) a payment to a third party, (ii) payment or performance, or both, of obligations necessary to achieve Finished Lots or to obtain building permits, or (iii) the acquisition of the Property, or any combination thereof.

(2) "**Gross Credit Amount**" shall mean, at the time of determination, the dollar amount of all Credits relating to the Lots, which shall include the amount of those Credits already utilized by Builder and the amount of all Credits remaining available to be utilized by the owner of any of the Lots.

(3) "**Gross Reimbursable Amounts**" shall mean the amount advanced by Owner as part of the Property Acquisition Cost attributable to Reimbursements PLUS the GREATER of (a) the amount of Reimbursable Costs identified in the Construction Agreement Budget, and (b) the total amounts included in those component(s) of the Contract Sum (as defined in the Construction Agreement), which are attributable to Reimbursements; provided, however, if the amount in clause (b) is greater than the amount in clause (a), then Builder shall be entitled to first apply such excess amount toward reduction of any cost overruns or other amounts incurred by Contractor in completing the Work to the extent not included in the Budget, and only any excess amounts remaining thereafter shall be considered part of the Gross Reimbursable Amounts under clause (b) above.

(4) "**Gross Unpurchased Lot Credit Amount**" shall mean, at the time of determination, the amount that is equal to Gross Credit Amount allocable to the Unpurchased Lots.

(5) "**Net Credit Amount**" shall mean the amount, at the time of determination, that is equal to the Gross Unpurchased Lot Credit Amount MINUS the Usable Unpurchased Lot Credit Amount.

(6) "**Net Reimbursement Amount**" shall mean the amount, at the time of determination, that is equal to the Gross Reimbursable Amounts advanced by Owner allocable to the Unpurchased Lots.

(7) "**Per Lot Gross Reimbursement Amount**" shall mean the amount of Gross Reimbursable Amounts allocated to each Lot.

(8) "**Reimbursements**" shall mean rights of Builder, Owner and/or any replacement builder that succeeds to title to the Unpurchased Lots to be reimbursed from any Property related Financing District, Approving Authority or other third party on account of costs expended in connection with creating Finished Lots.

(9) "**Useable Unpurchased Lot Credit Amount**" shall mean the amount, at the time of determination, of the portion of the Credits appurtenant to the Unpurchased Lots or duly assigned to Owner (as reasonably determined by Owner) and able to be transferred by Owner to a replacement builder and utilized by that replacement builder without the need to obtain any discretionary consent from any third party; provided, however, that if a third party consent is required, the Useable Unpurchased Lot Credit Amount shall include any amounts for which such consent is obtained within forty five (45) days of the Early Termination.

(b) Allocation Methodology. For purposes of this Section 6.1.5, whenever costs or credits are to be allocated to any Lots, the parties shall use the same cost allocation methodology used to establish the Lot Purchase Prices of Lots.

(c) Intent with respect to Reimbursements. Upon Early Termination, Owner and Builder shall determine, subject to and in accordance with the adjustments more fully described in this Section 6.1.5, if a settle up payment is due by one to the other to ensure that the Net Reimbursement Amount will be equal to zero. If the Net Reimbursement Amount is greater than zero, then Builder shall pay such excess to Owner, and alternatively, if the Net Reimbursement Amount is less than zero, then Owner shall pay the absolute value of such negative amount to Builder, and in either case the Contract Sum under the Construction Agreement shall be modified to reduce the Contract Sum by the sum of the portion of the Per Lot Gross Reimbursement Amounts attributable to the Unpurchased Lots not yet funded by Owner. In connection with such payments, Owner shall execute such assignments and instruments as are reasonably required to confirm that Builder is entitled to receive all Reimbursements.

(d) Intent with respect to Credits. Upon Early Termination, Owner and Builder shall determine, subject to and in accordance with the adjustments more fully described in this Section 6.1.5, if a settle up payment is due by one to the other to ensure that the Net Credit Amount will be equal to zero. If the Net Credit Amount is greater than zero, then Builder shall pay such excess to Owner, and alternatively, if the Net Credit Amount is less than zero, then Owner shall pay the absolute value of such negative amount to Builder. In connection with such payments, Owner and Builder shall execute such assignments and instruments as are reasonably required to confirm that that each party is entitled to its respective Credits. Notwithstanding the foregoing, if the reason the Net Credit Amount is greater than zero is a result of Builder utilizing Credits other than on an equitable basis so that the Lots purchased by Builder benefit inequitably from the benefit available to the Unpurchased Lots (e.g., a particular Credit was only available for use on 50% of all of the Lots, but Builder used such Credit on 100% of the Lots purchased by Builder) then, for purposes of establishing the Gross Credit Amount with respect to such Credits, if the Credit eliminated an expense (rather than being a dollar for dollar credit) the Gross Credit Amount shall include the greater of (i) the amount of the expense eliminated and (ii) the cost expended to generate the Credit. For example, if a $2,000 payment generated a Credit that would fully eliminate a $5,000 fee payable for an Unpurchased Lot, and Builder used all of the available Credits such that no Credits remained available for the Unpurchased Lots, the Gross Credit Amount with respect to each such Credit shall be based on $5,000 instead of $2,000. The previous two sentences shall not apply if such Credits were generated entirely with Builder funds and not acquired upon payment of the Property Acquisition Cost nor generated by amounts funded or to be funded as part of the Contract Sum under the Construction Agreement.

(e) Settle-Up. Upon Early Termination, Owner, with Builder's cooperation and input, reasonably and in good faith shall determine the amount (the "**Settle-Up Amount**") due to Owner or due to Builder in accordance with the foregoing taking into account the amounts determined above under Section 6.1.5(c) and (d). After completion of such determination and calculation Owner shall deliver to Builder Owner's calculation of the Settle-Up Amount.

(f) Payment of Settle-Up. Within ten (10) business days following Owner's delivery to Builder of the Settle-Up Amount calculation, Builder shall pay Owner the Settle-Up Amount if such amount is positive, or Owner shall pay Builder the absolute value of the Settle-Up Amount if the Settle-Up Amount is negative.

(g) Post Settle-Up Obligation. The parties acknowledge that after determination of the Settle-Up Amount, Builder may become entitled to and receive reimbursements for Gross Reimbursable Amounts advanced by Owner attributable to Unpurchased Lots which were not accounted for in the Settle-Up Amount ("**Unaccounted for Reimbursements**"). To the extent any such Unaccounted for Reimbursements are paid to Builder or any affiliate of Builder, Builder shall be entitled to first apply such amounts to any cost overruns or other amounts incurred by Builder or Contractor in completing the Work to the extent not reimbursed by the Budget. If thereafter there are any remaining Unaccounted for Reimbursements, Builder shall pay such sums to Owner within thirty (30) days following Builder's determination of the remaining Unaccounted for Reimbursements. Builder's obligation to pay such sums shall be a continuing obligation and shall survive termination of this Agreement.

6.1.6 Maintenance. After the Option Termination Date, Builder shall cause all Lots purchased from Owner and not sold to retail homebuyers to be maintained in good condition and repair and in compliance with all Ancillary Agreements. Upon the termination of the Option Builder shall deliver to Owner the Unpurchased Lots and any Common Areas retained by Owner in good condition and repair and shall cause all improvements constructed upon or for the benefit of the Property that have not been fully accepted by an Approving Authority for maintenance to be left in good condition and repair. Neither Builder nor any Builder-Related Person will cause any violation(s) of any applicable laws or permits pertaining to the Property in connection with the activity of Builder or any Builder-Related Person.

6.1.7 Information. Builder shall cause copies of notices of breach or default delivered to Builder under the Purchase Agreement and any other Ancillary Agreement to be promptly delivered to Owner. Owner shall cause copies of notices of breach or default delivered to Owner under the Purchase Agreement and any other Ancillary Agreement to be promptly delivered to Builder.

6.1.8 Survival. The covenants and obligations of Builder and Owner under this Section 6 shall be continuing obligations and shall survive the expiration or earlier termination of the Option or this Agreement. Notwithstanding the foregoing, if Builder has acquired all of the Lots and paid all amounts due to Owner then only the provisions of Section 6.1.2 shall apply.

## 7. **REMEDIES AND ENFORCEMENT ISSUES**.

7.1 **Builder's Remedies**. Subject to the following sentence, in the event of a Default hereunder by Owner, Builder shall be entitled to: (a) terminate this Agreement and, in accordance with the provisions below, deliver an Election Notice and bulk purchase all of the Unpurchased Lots at a price equal to the Unreturned Owner Costs; or (b) specifically enforce Owner's obligations hereunder, it being understood and agreed that the Unpurchased Lots are unique and that the right of specific performance is a just and equitable remedy on account of Owner's Default. Notwithstanding anything to the contrary in this Agreement, except as provided in Section 7.1.1 below, Builder agrees to look solely to Owner's interest in the Unpurchased Lots and the proceeds received by Owner from the sale thereof to any third-party after termination of the Option for the recovery of any judgment from Owner, it being agreed by Builder that, except as provided in Section 7.1.1 below, under no circumstances whatsoever shall any other assets of Owner or any Owner-Related Persons be personally liable for any judgment of Builder against Owner or for any debt or obligation of Owner to Builder, and in no event shall Builder be entitled to seek recovery of, nor recover, any indirect, consequential, exemplary, punitive or other monetary damages other than actual damages. If Builder is entitled to exercise its remedy to bulk purchase all of the Unpurchased Lots as provided above or pursuant to Section 16.1 of the Construction Agreement, then Builder may deliver to Owner an Election Notice and exercise its option to bulk purchase all Unpurchased Lots provided that the Election Notice is delivered to Owner no later than thirty (30) days after Owner has failed to cure after notice and thus is in Default hereunder or under the Construction Agreement. The consummation of such purchase of all Unpurchased Lots must be consummated no later than the date that is ten (10) days following the date of the Election Notice; otherwise Builder's right to so bulk purchase all Unpurchased Lots at a price equal to the Unreturned Owner Costs shall expire. If Builder exercises its rights pursuant to Section 7.1(a),

Owner shall be obligated to convey all of the Common Area retained by Owner, if any, in accordance with the provisions of Section 6.1.2 of this Agreement.

7.1.1 Full Recourse. Notwithstanding anything to the contrary set forth herein, if and to the extent Builder is entitled to exercise remedies under this Agreement, Builder shall (a) have full recourse to all assets of Owner to recover actual damages suffered by Builder if at the time Builder seeks such recourse the Unpurchased Lots are encumbered by a Secured Loan, or (b) have full recourse to all assets of Owner to recover actual damages suffered by Builder to the extent resulting from (i) Owner's failure to perform its obligations with respect to the Unpurchased Lots after the Option Termination Date, or (ii) Owner's failure to comply with its covenant contained in the last sentence of Section 8.5.3 below, or both.

7.2 **Owner's Rights Upon Default**. Upon a Default by Builder hereunder, Owner shall be entitled to terminate the Option and then exercise its rights and remedies under Section 7.7. Any material default by Builder that remains uncured after the applicable notice and cure period under any Ancillary Agreement or any other agreement pertaining to the Property to which Owner or an Owner-Related Person is a party shall be deemed to be a Default under this Agreement and as provided in the Construction Agreement, any default by Contractor that remains uncured after applicable notice and cure period under the specific paragraphs referenced in Section 16.2 of the Construction Agreement shall be deemed to be a Default by Builder under this Agreement.

7.3 **Conditions to Obligation to Convey**. Notwithstanding anything to the contrary contained in this Agreement, after (i) the occurrence of a Default by Builder, (ii) Builder's failure to timely pay amounts due pursuant to Section 3.1, (iii) failure to timely pay amounts due pursuant to Section 3.4 after expiration of the five (5) business day notice and cure period with respect thereto, or (iv) Builder's failure to acquire Unpurchased Lots as and when required by the Acquisition Schedule and the terms of this Agreement, Owner shall have no obligation to thereafter convey any Unpurchased Lots to Builder unless Builder is then concurrently acquiring all Unpurchased Lots then required to be purchased to then be in compliance with the Acquisition Schedule and pays to Owner, concurrently with the closing and payment of the Lot Purchase Prices of the Unpurchased Lot(s) to be conveyed, any unpaid amounts required to be paid to Owner. Notwithstanding the foregoing, nothing in this Section 7.3 shall excuse Owner from its obligation to convey all Unpurchased Lots to Builder upon Builder exercising its rights pursuant to Section 2.4.4 of this Agreement.

7.4 **Costs and Fees**. If there is any legal action or proceeding between the parties to enforce or interpret any provisions of this Agreement or to protect or establish any right or remedy of any of them hereunder, the unsuccessful party to such action or proceeding shall pay to the prevailing party all costs and expenses (including, but not limited to, reasonable attorneys' fees and costs) incurred by such prevailing party in such action or proceeding, including attorneys' fees and costs incurred on appeal or in a bankruptcy proceeding. If any party secures a judgment in any such action or proceeding, then any costs and expenses (including, but not limited to, reasonable attorneys' fees and costs) incurred by the prevailing party in enforcing such judgment, or any costs and expenses (including, but not limited to, reasonable attorneys' fees and costs) incurred by the prevailing party in any appeal from such judgment in connection with such appeal shall be recoverable separately from and in addition to any other amount included in such judgment. As used herein, the term "prevailing party" shall mean the party which obtains the principal relief it

has sought, whether by compromise, settlement or judgment. If the party which commenced or instituted the action, suit or proceeding shall dismiss or discontinue it without the concurrence of the other party, such other party shall be deemed the prevailing party. The preceding sentences are intended to be severable from the other provisions of this Agreement, and shall survive and not merge into any such judgment.

7.5 **Default Interest**. If any monies become payable by one party to the other pursuant to this Agreement and are not paid within ten (10) business days of written demand, including, without limitation, any Unanticipated Owner Costs not paid by Builder to Owner and any amounts outstanding under Sections 4.1 or 4.2 herein not paid by Builder to Owner, then all sums unpaid shall bear interest at the Default Rate from the date due (or if no date due is specified the date of demand) until such sums (and all interest accrued thereon) have been paid. Notwithstanding the foregoing, if the Default Rate exceeds the maximum permissible rate of interest allowed under applicable law, then the maximum rate of interest to be charged hereunder as default interest shall be the highest lawful contractual rate allowed by law.

7.6 **Waiver**. Excuse or waiver of the performance by the other party of any obligation under this Agreement shall only be effective if evidenced by a written statement signed by the party so excusing. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by Owner or Builder of the breach of any covenant of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this Agreement.

7.7 **Notice of Termination**. Upon a termination of this Agreement, Owner is hereby irrevocably authorized to automatically and without further direction, (1) attach to the Notice of Termination the appropriate legal description of the Unpurchased Lots and any other portion of the Property not previously conveyed, (2) insert the appropriate recording information of the Memorandum of Option and complete any other blanks, and (3) record the Notice of Termination, and Builder expressly and irrevocably releases Owner from liability for doing so. In addition, at the time of the termination of Builder's rights under this Agreement, at Owner's reasonable request, Builder shall also execute and record any other documents evidencing such termination. Owner hereby indemnifies and agrees to hold Builder harmless for, from and against any and all loss, cost, liability or expense suffered or incurred by Builder should the Notice of Termination be recorded prior to the termination of the Option, or the date upon which this Agreement terminates, whichever is the first to occur.

7.8 **Recovery of Unpaid Sums**. Upon a Default or upon termination of the Option, Owner shall have the right thereafter to pursue recovery from Builder of all unpaid amounts payable to Owner pursuant to the provisions of each of Subsections 3.4.1, 3.4.2 and 3.4.3, Section 6.1.5 and pursuant to any provisions of this Section 7.

7.9 **Enforce the Option Termination Fee Agreement**. Upon a termination of this Agreement, Owner shall have the right to take all action necessary to enforce the Option Termination Fee Agreement.

7.10 **Other Remedies**. Upon a Default by Builder hereunder, Owner shall have available to it all remedies available at law, by statute or in equity to enforce Builder's covenants and

obligations under this Agreement; provided that Owner's legal remedies shall be limited to recovery of actual damages, including but not limited to court costs and reasonable attorneys' fees and costs, but in no event shall Owner be entitled to seek recovery of, nor recover, any indirect, exemplary, punitive or consequential damages, and in no event shall Owner have the right to pursue specific performance as a remedy hereunder except to enforce Builder's indemnification and defense obligations, Builder's obligations under Section 8.21, Builder's obligations under this Section 7, Builder's obligation to buy all Unpurchased Lots pursuant to the provisions in Section 5.6 or to buy Unpurchased Lots as and when required in accordance with the provisions of Section 2.7 above, and any other non-monetary obligations of Builder for which no other adequate remedy exists at law or in equity. In no event, however, may Owner seek, pursue or enforce specific performance of Builder's obligation to acquire any portion of the Property other than to enforce Builder's obligation to buy all Unpurchased Lots pursuant to the provisions in Section 5.6 above or to buy Unpurchased Lots as and when required pursuant to Section 2.7 above.

7.11 **Not Exclusive**. Every right and remedy provided in this Agreement shall be cumulative of every other right and remedy of Owner, whether herein or by law or equity conferred, and may be enforced concurrently.

The covenants and obligations of Builder and Owner under this Section 7 shall be continuing obligations and shall survive the expiration or earlier termination of the Option. Notwithstanding the foregoing, if Builder has acquired all of the Lots and paid all amounts due to Owner then the provisions of Sections 7.7 and 7.9 shall not apply.

## 8. GENERAL CONDITIONS.

8.1 **Taxes and Charges**. Builder is acquiring the Property for resale. Builder hereby assumes the liability for and agrees to pay prior to delinquency: (a) all local, County and State reassessments, transfer taxes, excise stamp taxes (deed stamps), sales taxes, transaction privilege taxes and other or similar taxes or charges owing in connection with Owner's or Builder's acquisition of the Property and in connection with Builder's development and subsequent resale of such Property, (b) all charges in connection with fire protection, streets, sidewalks, road maintenance, refuse or other services provided to the Property by Approving Authorities (to the extent attributable to periods prior to or during the Option Term), and (c) any tax or excise on receipts, gross receipts tax, or other tax (but excluding income taxes), however described, which is levied or assessed by the United States of America or any local, County or State authority against Owner in respect to amounts paid by Builder under this Agreement or as a result of Owner's receipt of such amounts.

8.2 **Disclaimer and Release**.

8.2.1 Property Condition. Builder shall purchase the Property or any portion thereof strictly in an "**AS IS**" "**WHERE-IS**" condition, and Builder accepts and agrees to bear all risks regarding all attributes and conditions, latent or otherwise, of the Property. Builder has made or will make prior to each Closing its own inspection and investigation of the Property, including, without limitation, the subsurface, soil, engineering and other conditions and requirements, whether there are any eminent domain or other public or quasi-public takings of the Property contemplated, and all zoning, environmental and regulatory matters pertinent to the Property.

Builder and its experts and consultants are familiar with the Property and, as of the date of this Agreement, have had the opportunity to make such independent investigations as Builder deemed necessary or appropriate concerning: the use, sale, development or suitability for development of the Property, including but not limited to, any desired investigations or analyses of present or future laws, statutes, rules, regulations, ordinances, limitations, restrictions or requirements concerning the use, density, location or suitability of the Property or any existing or proposed development or condition thereof (collectively, "**Regulations**"), including but not limited to zoning, subdivision, site development review, environmental or other such Regulations; the necessity or availability of any general or specific plan amendments, rezoning, zone variances, conditional use permits, development agreements, development permits, building permits, environmental impact reports, parcel or subdivision maps, all City or County approvals, or any other governmental permits, approvals or acts (collectively, "**Permits**"); the necessity or existence of any dedications, fees, charges, costs or assessments that may be imposed in connection with any Regulations or the obtaining of any required Permits, including school, park, and library fees and obligations; the effect of and limitations imposed by any City, County or governmental resolution; the economic value of the Property; the size, dimensions, location or topography of the Property; the availability, character, quality, composition, and adequacy of access to the Property, and the water, sewage, drainage, electricity, natural gas, telephone, cable television, cellular service, data service or any other utilities serving the Property; the presence or adequacy of infrastructure, subdrain or other improvements on, near or concerning the Property; the extent or condition of title to the Property; traffic conditions; market conditions and current levels of home pricing and sales activity; and all other matters concerning the condition, use, development or sale of the Property. Builder shall purchase the Property or any portion thereof upon Builder's own inspection and investigation and not in reliance on any statement, representation, inducement or agreement of Owner except as specifically provided herein. Builder agrees that neither Owner nor anyone acting on behalf of Owner has made any representation, guarantee or warranty whatsoever, either written or oral, concerning the Property except as specifically set forth herein. Except for adverse changes in the condition of the Property to the extent caused by the affirmative acts of Owner or any Owner-Related Person (Builder and any Builder-Related Person being expressly excluded from any of the foregoing), Owner shall have no responsibility, liability or obligation before or subsequent to each Closing with respect to any conditions, including, without limitation, environmental conditions, or as to any other matters whatsoever respecting in any way the Property, and Builder hereby fully and forever releases Owner and all Owner-Related Persons, with respect to such conditions.

8.2.2 Design. By purchasing the Property or any portion thereof in an "**AS IS**" "**WHERE-IS**" condition, Builder covenants to design and cause to be constructed all structures (and foundations and slabs thereto) upon the portions of the Property purchased by Builder based upon the condition thereof when purchased and based upon appropriate investigations and soil studies performed by Builder prior to the applicable Closing.

8.2.3 Release. To the fullest extent permitted by law, and except to the extent of any Claims arising from the active negligence, gross negligence or willful misconduct of Owner or any Owner-Related Persons, Builder hereby fully and forever releases and discharges Owner and all Owner-Related Persons from all Claims which Builder and any Builder-Related Person has, or may have, arising from or in any way related to or in connection with the condition of the Property (including, without limitation, any construction, grading, compaction or soils defects, errors or omissions in the design or construction of any improvements, or any natural hazard conditions),

and Builder shall not look to Owner or any Owner-Related Person for any redress or relief in connection with the condition of the Property. This release shall be given full force and effect according to each of its expressed terms and provisions, including those relating to unknown and unsuspected Claims, damages and causes of action.

8.3 **Commissions**. Each party represents and warrants to the other that it has not employed any broker or finder in connection with the transactions contemplated by this Agreement. Each party shall indemnify, defend and hold harmless the other for, from and against all liability and expense, including, without limitation, reasonable attorneys' fees and costs, arising from any Claim by any broker, agent or finder for commissions, finder's fees or similar charges, because of any act of such party.

8.4 **Regulatory Matters**.

8.4.1 Interstate Land Sales Full Disclosure Act. Owner and Builder believe and intend that the sales provided for herein are exempt from the Interstate Land Sales Full Disclosure Act by reason of being within one or more of the exemptions set forth therein or in the regulations promulgated pursuant thereto. In support of such exemption, Builder represents and warrants to Owner as follows, which representation and warranty shall be true and correct at all times during the Option Term and shall survive the Option Termination Date: Builder is regularly engaged in the business of constructing residential, commercial or industrial buildings or reselling or leasing lots to persons engaged in such business, is acquiring the Property in the ordinary course of that business and otherwise meets the exemption prerequisites set forth in 15 U.S.C. Section 1702(a)(7) and further defined in 24 C.F.R. Section 1710.14 and 24 C.F.R. Section 1710, Appendix A.

8.4.2 Subdivision Laws. Builder shall have the responsibility, at Builder's cost and expense, to do all things necessary to comply in all respects with all applicable subdivision laws and regulations to permit the sale of the Property and the Lots to Builder as contemplated under this Agreement. Owner shall cooperate with Builder as may be necessary or appropriate, at no cost or expense to Owner, in accomplishing the foregoing. Anything herein to the contrary notwithstanding, Owner shall have no obligation hereunder to convey the Property or any Lots to Builder in violation of applicable laws or regulations.

8.4.3 Environmental Laws. From the Effective Date and for so long as any governmental permits, including, without limitation, any NOI (as defined below), prepared by or issued to Builder or any Builder-Related Person remain in effect with respect to all Unpurchased Lots, Builder shall have the responsibility, at Builder's cost and expense, to comply with all such permits, including but not limited to (i) the obligation to prepare and submit to the U.S. Environmental Protection Agency or the state or local permitting agency, as appropriate, a Notice of Intent (NOI) for Storm Water Discharges under the National Pollutant Discharge Elimination System (NPDES) and to comply with all applicable pollution prevention, control, monitoring, reporting, inspection and permitting conditions and requirements related thereto and (ii) the obligation to comply with all dust control and prevention permitting conditions and requirements. Promptly following any Early Termination, Builder shall cause the Property to be stabilized for storm water compliance to the standards of the State Department of Environmental Quality or similar agency as determined by a qualified unaffiliated third-party consultant, and thereafter Builder may pursue transfer or termination of its stormwater permit and Owner shall concurrently

file or cause to be filed a new Notice of Intent with respect to the Unpurchased Lots. The covenants of this Section shall survive any expiration or early termination of the Option or this Agreement.

8.4.4 State and Property Specific Disclosures. In addition to the other matters set forth in this Agreement, the disclosures set forth on Schedule 3 specifically applicable to the State are incorporated herein.

8.5 **Representations, Warranties and Covenants of Owner**. Owner hereby makes the following representations and warranties and covenants to Builder as of the date of this Agreement, and shall be deemed to remake same as of the date of each Closing:

8.5.1 Authority. Owner has the full right, power and authority to sell and convey the Lots to Builder as provided in this Agreement and Owner will have throughout the Option Term the full right, power and authority to carry out its obligations hereunder. No additional approvals, authorizations or consents are required under Owner's formation documents for Owner to enter into this Agreement. This Agreement constitutes the legal, valid and binding obligation of Owner and is enforceable in accordance with its terms against Owner, subject only to applicable bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principals affecting or limiting the rights of contracting parties generally.

8.5.2 Individual Authority. The person executing this Agreement and all documents related thereto on behalf of Owner has and will have authority to do so.

8.5.3 No Liens. Except for any Mortgage obtained in compliance with Section 2.6.2, there are no judgments or other encumbrances against Owner that will attach to and become a lien against the Property. Except for any Mortgage obtained in compliance with Section 2.6.2, Owner will not grant any lien against the Property that would be prior to Builder's interests hereunder or that would continue beyond Builder's acquisition of the Property or any Lots except for any Ancillary Agreements or any Owner Development Documents or as is otherwise contemplated by this Agreement or the Construction Agreement.

8.5.4 Patriot Act Compliance. Neither Owner nor any person, group, entity or nation that Owner is acting, directly or indirectly for, or on behalf of, is named by any Executive Order (including the September 24, 2001, Executive Order blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit or Support Terrorism) or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person," or is otherwise a banned or blocked person, group, entity or nation pursuant to any Law that is enforced or administered by the Office of Foreign Assets Control, and Owner is not engaging in the Closing(s), directly or indirectly, on behalf of, or instigating or facilitating the transactions contemplated by this Agreement, directly or indirectly, on behalf of, any such person, group, entity or nation. Notwithstanding the foregoing, nothing herein shall be deemed a representation by Owner as to the direct or indirect holders of publicly traded stock.

8.6 **Representations, Warranties and Covenants of Builder**. Builder hereby makes the following representations and warranties and covenants to Owner as of the date of this Agreement, and shall be deemed to remake same as of the date of each Closing:

8.6.1 Authority. Builder has the full power and authority to enter into this Agreement and Builder will have throughout the Term of the Option the full right, power and authority to carry out its obligations hereunder.

8.6.2 Individual Authority. The person executing this Agreement and all documents related thereto on behalf of Builder has and will have authority to do so.

8.6.3 Due Diligence. Builder has conducted, prepared and performed such examinations of the Property and all improvements thereon as Builder deems necessary or appropriate for the intended use, including, but not limited to, the physical condition of the improvements, the availability of access, water, sewer and other utilities and services to the Property and the costs of securing same, the existence of hazardous or toxic substances or pollutants, and the zoning and applicable governmental regulations, statutes and ordinances pertaining to the Property; Builder has caused to be conducted, prepared and performed such surveys, appraisals, and hydrological, topographical, environmental, traffic, feasibility and other engineering tests, studies and reports as it deemed reasonable under the circumstances, and has examined such reports, surveys, studies, documents, approvals, drawings, plats, plans, specifications, filings or similar writings pertaining to drainage, soil, flood, hazardous or toxic substance or pollutants, archaeological or environmental conditions, or power or transmission lines on or adjacent to the Property, as well as all topographical surveys, "as-built" drawings, engineering drawings, plans and specifications for utilities or roadways, title reports, subdivision reports, and approvals received from any Approving Authority, as shall have been necessary or appropriate for Builder to enter into this Agreement, or as shall have been relevant to Builder's decision to enter into this Agreement and Owner has relied on Builder to do so and to fully satisfy itself regarding same. Owner has not done, and has had no responsibility to do, any of the foregoing and Builder has not relied on Owner to do any of the foregoing, and Builder hereby fully and forever releases Owner and all Owner-Related Persons with respect to such conditions.

8.6.4 Patriot Act Compliance. Neither Builder nor any person, group, entity or nation that Builder is acting, directly or indirectly for, or on behalf of, is named by any Executive Order (including the September 24, 2001, Executive Order blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit or Support Terrorism) or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person," or is otherwise a banned or blocked person, group, entity or nation pursuant to any Law that is enforced or administered by the Office of Foreign Assets Control, and Builder is not engaging in the Closing(s), directly or indirectly, on behalf of, or instigating or facilitating the transactions contemplated by this Agreement, directly or indirectly, on behalf of, any such person, group, entity or nation. Notwithstanding the foregoing, nothing herein shall be deemed a representation by Builder as to the direct or indirect holders of publicly traded stock.

8.6.5 Financial Condition. Each of Builder and Parent has the financial ability to perform its respective obligations hereunder. No insolvency proceeding or petition in bankruptcy or for the appointment of a receiver has been filed by or, to Builder's knowledge, against Builder or Parent (nor is Builder or Parent contemplating any such filing), neither Builder nor Parent has made a general assignment for the benefit of its creditors and neither Builder nor Parent has failed generally to pay its debts as they become due.

8.6.6 No Conflicts. The execution, performance and consummation of the transactions contemplated by this Agreement will not conflict with or, with or without notice or the passage of time (or both), result in a breach of any of the terms or provisions of, or constitute a default under, (A) the organizational documents (i.e., the Operating Agreement, Certificate of Formation or Articles of Incorporation, Bylaws or other comparable organizational documents) of Builder, and (B) any agreement, instrument or judicial decree to which Builder is a party.

8.6.7 No Adverse Development Risks. Builder is not aware that any of the following occurred, nor does Builder anticipate any of the following will occur, with respect to the Property: (i) delays in commencing or completing the development of the Lots which result, or will reasonably be expected to result in the development or sale of the Lots being delayed by more than six (6) months; (ii) material adverse changes to the physical condition of the Property or any land adjacent thereto (including any casualty to infrastructure improvements or project amenities) that have, or are expected to have, a material adverse impact on the development and sale of the Lots; (iii) conditions on the Lots or any adjacent land (including discovered Hazardous Substances, artifacts, endangered species, soils conditions or other development conditions) that have, or are expected to have, a material adverse impact on the development and sale of the Lots; (iv) following completion of the Work as contemplated by the Construction Agreement for any of the Lots would cause the owner of such Lots to be unable in the ordinary course of business to obtain building permits , certificates of occupancy or utility services to service such Lots; (v) any pending or threatened condemnation action, proceeding or threatened governmental action, whether specific to the Property or surrounding area that has, or is expected to have, a material adverse impact on the development and sale of the Lots; (vi) pending or threatened litigation (including, without limitation, litigation seeking injunctive relief or cease and desist orders), organized public protests or disputes with the City, the County, any Financing District, the Association, any applicable water management district and any and all other applicable governmental or quasi-governmental entities or agencies, property owners associations and utility providers having jurisdiction over, or providing utilities or other services to, the Property which challenges the enforceability or legitimacy of entitlements to the Lots (e.g., a referendum) or adversely impacts or challenges the utilization or ability to develop the Lots (including any planned amenities); (vii) any adverse title matters or third-party claims adversely impacting title to the Lots; or (viii) any existing or planned material modification of, the development plans, housing plans or expected buildout timeframes for the Lots.

8.7 **Notices**. No notice, consent, approval or other communication provided for herein or given in connection herewith shall be validly given, made, delivered or served unless it is in writing and delivered personally, sent by overnight courier, or sent by email, to the parties and Escrow Agent at the addresses set forth on Schedule 2 or to such other addresses as Escrow Agent or any party hereto may from time to time designate in writing and deliver in a like manner to the other party and Escrow Agent. Notices, consents, approvals, and communications shall be deemed given and received upon delivery to the respective addresses set forth on Schedule 2, if delivered personally or sent by overnight courier, or if given by email, upon the earlier of: (i) the date the recipient actually received the notice as evidenced by the recipient's (non-automatic) reply to such notice or other competent evidence of actual receipt, or (ii) the deemed given date of duplicate notice given by the sender by any mode of transmission allowed above other than email. The inability to deliver because of a changed address of which no notice was given, or any rejection or other refusal to accept any notice, shall be deemed to be the receipt of the notice as of the date of

such inability to deliver or rejection or refusal to accept. However, notwithstanding the foregoing, an inoperative or incorrect email address shall not have a deemed receipt effect. Any notice to be given by any party hereto may be given by legal counsel for such party.

8.8 **Interpretation**. The captions of the Sections of this Agreement are for convenience only and shall not govern or influence the interpretation hereof. Unless otherwise expressly provided, all references to Sections, Schedules and Exhibits shall refer to the Sections of this Agreement and the Schedules and Exhibits attached hereto. This Agreement is the result of negotiations between the parties and, accordingly, shall not be construed for or against either party regardless of which party drafted this Agreement or any portion thereof. When used herein, the terms "include(s)" means "include(s) without limitation," and the word "including" means "including, but not limited to".

8.9 **Successors and Assigns**. All of the provisions hereof shall inure to the benefit of and be binding upon successors and assigns of Owner and Builder. Owner may not assign its right, title, interest and obligations hereunder without first obtaining the prior written consent of Builder, which consent shall be not unreasonably withheld, conditioned or delayed, but no such consent shall be required to assign Owner's rights to an affiliate to whom Owner conveys the Property so long as such entity assumes in writing Owner's obligations hereunder and under the Construction Agreement. Builder shall have no right to assign its interest hereunder without the prior written consent of Owner, and any such assignment without Owner's consent shall be voidable at Owner's option; provided, however, Builder shall have the right to assign its interests hereunder in all events without Owner's consent to a Permitted Transferee. A "**Permitted Transferee**" shall be any entity controlling, controlled by, or under common control with, Builder. Unless otherwise agreed to in writing by Owner, it shall be a condition precedent to the effectiveness of any assignment to a Permitted Transferee that Parent deliver to Owner a written consent to such assignment, along with an acknowledgment that the Permitted Transferee is either a direct or indirect subsidiary of Parent and that Parent will benefit from the option granted to the Permitted Transferee and as such all of Parent's obligations under the Joinder attached hereto and the Option Termination Fee Agreement shall continue in full force and effect and shall apply to the obligations of the Permitted Transferee under this Agreement, jointly and severally with such Permitted Transferee, as if all such obligations were made by Parent directly to Owner. In addition, it shall be a condition to the effectiveness of any assignment to a Permitted Transferee that (i) Builder amend the Memorandum of Option to reflect such assignment and cause such Permitted Transferee to execute, acknowledge and deliver to Owner an original Notice of Termination, with such revisions as may reasonably be requested by Owner, to replace the Notice of Termination delivered to Owner by Builder, and any such other documents as Owner may reasonably request, and (ii) Builder assign to such Permitted Transferee, and such Permitted Transferee assume, any and all applicable Ancillary Agreements, licenses, and permits, including, without limitation, any NOI.

8.10 **No Partnership; Third Person**. It is intended by this Agreement to create an option arrangement and it is not intended to create another relationship, and in no event shall this Agreement create any partnership or joint venture or other arrangement between Owner and Builder. No term or provision of this Agreement is intended to, or shall, be for the benefit of any person, firm, corporation or other entity not a party hereto (including, without limitation, any broker), and no such party shall have any right or cause of action hereunder.

8.11 **Entire Agreement**. This Agreement, together with the Nomination Agreement, Construction Agreement, and Master Agreement constitutes the entire agreement between and the reasonable expectations of the parties pertaining to the subject matter hereof. All prior and contemporaneous agreements, representations and understandings of the parties, oral or written, are hereby superseded and merged herein. No change or addition is to be made to this Agreement except by a written agreement executed by all of the parties.

8.12 **Further Documents**. Builder and Owner shall execute and deliver all such documents and perform all such acts as reasonably requested by the other party from time to time, prior to and following each Closing, to carry out the matters contemplated by this Agreement, including, without limitation, a notice of termination of the Option in recordable form. The parties' respective obligations under this Section shall survive the expiration or termination of the Option.

8.13 **Incorporation of Exhibits and Schedules**. All Exhibits and Schedules attached to this Agreement are by this reference incorporated herein as if set forth in full. To the extent of any conflict between the provisions of this Agreement and the provisions of any Exhibit, the terms of the Exhibit shall control. To the extent of any conflict between the provisions of this Agreement and the provisions of any Schedule, the provisions of the Schedule shall control.

8.14 **Date of Performance and Time For Payment**. If the date of performance of any obligation or the last day of any time period provided for herein should fall on a Saturday, Sunday or legal holiday, then the obligation shall be due and owing, and the time period shall expire, on the first day thereafter which is not a Saturday, Sunday or legal holiday. Unless otherwise stated, all references in this Agreement to days shall refer to calendar days. Business days shall be defined to mean all days except Saturdays, Sundays and legal holidays. Except as may otherwise be set forth herein, any performance provided for herein shall be timely made if completed no later than 1:00 p.m., local time where the Property is located, on the day of performance. The funds required from Builder and all acts required of Builder in order to close the Escrows pursuant hereto shall be deposited with Escrow Agent and be performed no later than 1:00 p.m., local time where the Property is located, on each Closing Date. All funds to be deposited with Escrow Agent shall be good and sufficient funds available for immediate distribution to Owner.

8.15 **Builder's Interest**. Builder's interest in the Property shall be strictly limited to the option interests expressly described herein. Unless and until Builder exercises the Option and purchases the Property or the Lots, as applicable, Builder shall have no fee interest in the Property, equitable or otherwise; Owner shall be the sole owner of fee title to the Property.

8.16 **Survival**. Unless expressly provided to the contrary in this Agreement, it is agreed that all of Builder's obligations and indemnities contained in this Agreement shall survive each and every exercise of the Option, and the Closing of the sale of the Property or any portion thereof and the recordation of any Deed pursuant thereto, and, unless expressly provided to the contrary in this Agreement, all of Builder's obligations, disclaimers, releases and indemnities contained in this Agreement shall survive the expiration, cancellation or termination of the Option and this Agreement and shall be continuing obligations of Builder for so long as same may be enforced within any applicable statute of limitations time periods. To the extent required to be operative, the disclaimers contained herein are "conspicuous" disclaimers for purposes of any applicable law, statute, rule, regulation or order or applicable federal or state case law.

8.17 **Time of the Essence**. Time is of the essence of this Agreement.

8.18 **Governing Law**. This Agreement shall be governed by and construed in accordance with the laws of the State in which the Property is located.

8.19 **Counterparts**. This Agreement may be executed simultaneously or in counterparts and may be executed by facsimile or .pdf transmission, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. The parties agree that they may reflect and confirm their agreement to be bound hereby, and their execution and delivery of this Agreement, by transmitting a signed copy hereof, by way of DocuSign, facsimile or by emailing a Portable Document Format (PDF) file, to the other party hereto. Any of the parties hereto are authorized to remove the signature pages from duplicate identical counterpart versions of this Agreement and to attach such pages to a single version of this Agreement.

8.20 **IRS Real Estate Sales Reporting**. Owner and Builder hereby appoint Escrow Agent as, and Escrow Agent agrees to act as, "the person responsible for closing" the transaction which is the subject of this Agreement pursuant to §6045(e) of the Internal Revenue Code. Escrow Agent shall prepare and file Treasury Form 1099-S and shall otherwise comply with the provisions of §6045(e) of the Internal Revenue Code. Escrow Agent shall indemnify, protect, hold harmless and defend Owner, Builder and their respective attorneys for, from and against any and all Claims arising out of or in connection with the failure of Escrow Agent to comply with the provisions of this Section.

8.21 **Confidentiality**. The terms and provisions of this Agreement, including all financial terms, shall remain confidential and shall not be disclosed by either party hereto without the written consent of the other except (1) to such party's directors, officers, members, partners, owners, managers, sub-managers, employees, legal counsel, accountants, financial advisors, investors and similar professionals and consultants to the extent such party deems it necessary or appropriate in connection with the transaction contemplated hereunder (and such party shall inform each of the foregoing parties of such party's obligations under this Section and shall secure the agreement of such parties to be bound by the terms hereof); or (2) as otherwise required by law or regulation. Notwithstanding the foregoing, upon an Early Termination, Owner shall have the right, without the written consent of Builder, to disclose the terms and conditions of this Agreement to any prospective purchaser of the Unpurchased Lots. Builder hereby expressly covenants and agrees that it has not delivered, and will not deliver without the prior written consent of Owner, copies of either this Agreement or the Construction Agreement to Seller, its members, manager, affiliates, employees, attorneys, representatives or consultants, or any of their respective members, manager, affiliates, employees, attorneys, representatives or consultants. The restrictions in this Section shall survive each Closing and any expiration or earlier termination of the Option or this Agreement.

8.22 **Waiver of Jury Trial**. If and to the extent enforceable, Owner and Builder each hereby waives and unconditionally relinquishes the right to seek or obtain a jury trial in any action or proceeding arising under or relating to this Agreement or the subject matter thereto. This Section 8.22 shall survive the expiration or termination of the Option or this Agreement.

8.23 **Intent**. It is recognized that Owner and Builder are sophisticated real estate entities with substantial experience in the residential home building industry and each party is advised by

experienced legal counsel. Owner and Builder intend that the transaction described in this Agreement be treated as an option on the part of Builder to acquire the Unpurchased Lots. Owner and Builder intend that the Construction Agreement be treated as a separate contract subject to all of the laws, statutes, rules and regulations applicable to such agreements. Accordingly, except to the extent expressly provided for in Section 16 of the Construction Agreement or otherwise herein or therein, the relationship of the parties in connection with this Agreement is independent of the relationship of the parties under the Construction Agreement, and all provisions of this Agreement shall be interpreted independent of the provisions of the Construction Agreement.

8.24 **Joinder**. For good and valuable consideration received, and to induce Owner to enter into this Agreement, Parent hereby agrees to be bound by all obligations of Builder, jointly and severally with Builder, as if all obligations of Builder were made by Parent directly to Owner, under this Agreement.

8.25 **Accounting Information**.

8.25.1 Information. Owner will timely respond to Builder's reasonable requests for non-confidential and non-proprietary financial information about Owner so long as such information is reasonably necessary for Builder to make accounting treatment determinations with respect to the transactions contemplated by this Agreement. If requested by Owner, Builder will (i) execute and deliver a confidentiality agreement with respect to such information in a form to be provided to Owner and (ii) reimburse Owner for its out-of-pocket costs incurred in determining the necessity and preparation of such information within ten (10) days following written demand from Owner.

8.25.2 Disclaimer; No Default. Neither Owner nor any Owner-Related Persons is qualified to provide accounting or legal advice; accordingly, any and all information provided to Builder pursuant to this Section 8.25 or otherwise shall be for information purposes only. Neither Owner, any Owner-Related Person, nor anyone acting on behalf of Owner or any Owner-Related Person, has made or will make any representation, guarantee or warranty whatsoever, either written or oral, concerning the accounting treatment of this Agreement, including as a result of any information provided pursuant to this Section 8.25. Neither Owner nor any Owner-Related Person shall be involved in making any accounting determinations for Builder, and Builder shall indemnify, defend and hold harmless Owner and all Owner-Related Persons for, from and against any and all Claims arising out of or in connection with the accounting treatment of this Agreement, including, without limitation, with respect to Builder's use of any information provided pursuant to this Section 8.25. Additionally, Owner is willing to provide Builder with the information contemplated by this Section 8.25 as an accommodation; accordingly, any failure on Owner's part to provide or cooperate in providing such information as provided for herein shall not constitute a Default by Owner under this Agreement.

8.26 **Financing Districts**. Builder has advised Owner that there are not and will not be any Financing Districts imposed upon the Property. Therefore, all references in this Agreement to Financing Districts shall not be applicable and shall be disregarded.

8.27 **Condominium**. Builder has advised Owner that there are not and will not be any condominium units the Property. Therefore, all references in this Agreement to condominium

units, Condominium Plans, Condominium Documents and similar condominium terms, shall not be applicable and shall be disregarded.

[Signatures on Next Page]

IN WITNESS WHEREOF the parties have entered into this Agreement to become effective as of the Effective Date.

**OWNER**:

TPG AG EHC III (SDH) MULTI STATE 3, LLC,
a Delaware limited liability company

By: Essential Housing Asset Management, LLC, an Arizona limited liability company, its Authorized Agent

By: DocuSigned by: Steve Benson 5267235E778A4E5...
Steven S. Benson, its Manager

**BUILDER**:

SDH RALEIGH LLC,
a Georgia limited liability company

By: Signed by: Nicholas K Isbell 6AAE58FB84FB423...
Nicholas K. Isbell, Land Finance Manager

**ESCROW AGENT ACCEPTANCE:**

The undersigned Escrow Agent accepts this Agreement as its escrow instructions and agrees to perform the acts applicable to Escrow Agent in accordance with the terms of this Agreement. Specifically, Escrow Agent understands, acknowledges and agrees to the provisions of Section 8.20 labeled "IRS Real Estate Sales Reporting." Escrow Agent acknowledges it has received a fully executed copy of this Agreement as of the date set forth underneath its signature below.

Maynard Nexsen

By: _____
Name: _____
Its: _____

Date: _____, 2024

## JOINDER OF PARENT

For good and valuable consideration received, and to induce Owner to enter into the Option Agreement to which this Joinder is attached, the undersigned, Smith Douglas Building Services LLC, a Georgia limited liability company ("**Parent**") as the sole, direct or indirect, owner of Builder and who will benefit from the execution, delivery and performance of the Option Agreement by Owner and Builder and the grant of the Option to Builder, hereby irrevocably, absolutely and unconditionally agrees for the benefit of Owner, its successors in interest and assigns, to be bound by and to promptly pay and promptly perform and observe all covenants and obligations of Builder, jointly and severally with Builder, as if all obligations were made by Parent directly to Owner, under the Option Agreement. The undersigned waives notice of default, notice of extension of time for payment or performance and all other suretyship defenses. The undersigned also waives contribution, indemnification, reimbursement or similar rights against Builder, whether such rights arise under an express or implied contract or by operation of law, it being the intention of Parent and Owner that Parent shall not be deemed to be a "creditor" (as defined in Section 101 of the U.S. Bankruptcy Code or any other applicable law) of Builder by reason of the existence of this Joinder if Builder becomes a debtor in any proceeding under the U.S. Bankruptcy Code or any other applicable law. Moreover, Parent agrees that its obligations shall not be affected by any circumstances which constitute a legal or equitable discharge of a guarantor or surety. Parent agrees to pay, or reimburse Owner for, all costs and expenses, including reasonable attorneys' fees and disbursements, of enforcing this Joinder. Parent subordinates to the rights of Owner any and all present or future debt or other obligation of Builder owed to Parent or any entity in which Parent is a principal, manager, shareholder or member. Any payment of monies by Builder to Parent in contravention of this Joinder shall be held by Parent in trust for Owner and paid over to Owner on account of all obligations of Builder to Owner, but without reducing the liability of Parent to Owner under this Joinder except to the extent of such payment. Parent shall not have any right to subrogation until all amounts and obligations due to Owner under the Option Agreement have been paid and performed in full and, until such time, Parent hereby waives any right to enforce any remedy which Parent now has or may hereafter have against Builder.

All default and demand notices sent to Builder pursuant to the Option Agreement shall also be forwarded to Parent at:

SDH Raleigh LLC
10 Village Trail, Suite 215
Woodstock, GA 30188
Attn: Nicholas K. Isbell

This Joinder shall be governed by the laws of the State in which the Property is located.

*[Signature on Next Page]*

The undersigned intending to be legally bound to the foregoing has executed this Joinder of Parent as of the Agreement Date.

**Parent:**

SMITH DOUGLAS BUILDING SERVICES LLC,
a Georgia limited liability company

By: Signed by: Nicholas K Isbell 6AAE58FB84FB423...

Nicholas K. Isbell, Land Finance Manager

Schedule 1
(*Cedar Pointe, Harnett County, North Carolina*)

**DEFINITIONS**

For the purposes of the Option Agreement to which this Schedule 1 is attached, the following terms shall have the meanings described below:

"**Acquisition Schedule**" shall mean Exhibit B attached to this Agreement.

"**Ancillary Agreement**" shall mean any agreement, easement or other instrument relating to or affecting the Property that is (i) executed by Builder or any Builder-Related Person, (ii) executed by Owner prior to the Option Termination Date at the written (including electronic mail) request of Builder or Contractor, (iii) contemplated by or required by either the Nomination Agreement or the Purchase Agreement, (iv) in effect at the time the Property is acquired, (v) recorded against title to the Property (or referenced in a document or instrument recorded against title) as of the Effective Date, (vi) was or later is imposed upon the Property by an Approving Authority in connection with the entitlement, platting, development or sale of the Property, or (vii) is required by an Approving Authority in connection with the entitlement, platting, development or sale of the Property, or any combination of the foregoing. It is agreed that, in addition to and without limiting the generality of the foregoing, and regardless of any duplication, the term Ancillary Agreements, includes the Purchase Agreement, the Nomination Agreement, the Declaration, and the specific Ancillary Agreements listed in Schedule 4.

"**Approving Authority**" or "**Approving Authorities**" shall mean the City, the County, any Financing District, the Association, any applicable water management district and any and all other applicable governmental or quasi-governmental entities or agencies, property owners associations and utility providers having jurisdiction over, or providing utilities or other services to, the Property.

"**Association**" shall refer to all applicable property owners associations or condominium associations having jurisdiction over all or any portion of the Property.

"**Builder-Related Persons**" shall refer collectively to Builder and any affiliate, subsidiary, employee, agent, representative, contractor, invitee or licensee of Builder or any other homebuilder to whom Builder, or Owner at Builder's request, conveys Lots, and any affiliate, subsidiary, employee, agent, representative, contractor, invitee or licensee of any such homebuilder, and any of their respective representatives, subcontractors, suppliers, employees, agents, invitees and licensees.

"**Builder**" shall have the meaning set forth in the Fundamental Terms.

"**City**" shall have the meaning set forth in the Fundamental Terms.

"**Claim**" shall refer to any action, suit, proceeding, third party claim, demand, order, judgment, lien, liability, loss, damage, injury to person, property or natural resources, penalty, fine, interest, cost or expense (including but not limited to court costs and reasonable attorney fees and costs) and collectively, hereinafter referred to as "**Claims**."

"**Closing**" shall mean the closing or consummation of the purchase and sale of specified Lots.

"**Closing Date**" shall mean the date upon which a Closing occurs.

"**Common Areas**" shall mean the areas within any platted portion of the Property, if any, not designated as Lots or publicly dedicated streets on any Final Plat.

"**Condemnation**" shall mean any existing or threatened legal proceeding that could result in the taking of all or any of the Lots or any portion thereof under the power of eminent domain.

"**Condemned Lots**" shall refer to any Lots affected by or subject to any written notice of a Condemnation.

"**Condo Building**" shall, if applicable, refer to the residential condominium building including all units and common elements and limited common elements contemplated to be included therein as reflected on the Final Plat approved by Owner.

"**Condominium Documents**" shall, if applicable, refer collectively to the declarations of covenants and conditions, articles of incorporation and bylaws for the condominium association(s) established to govern the condominium units on the Property, and all other documents and instruments necessary to impose upon the Property a condominium regime under the laws of the State.

"**Condominium Plan**" shall, if applicable, refer collectively to those certain condominium plans establishing condominium units on the Property by identifying the size and location of each condominium unit and common areas, whether approved, filed or otherwise recorded as of the date hereof or subsequent to the date hereof.

"**Condominium Map**" shall, if applicable, refer to a final subdivision tract map approved by the applicable governmental agencies for condominium purposes.

"**Construction Agreement**" refers to that certain Construction Agreement of even date herewith between Owner, as Owner, and Contractor, as Contractor.

"**Contractor**" shall have the meaning set forth in the Fundamental Terms.

"**Declaration**" shall mean any declaration of covenants, conditions, restrictions and easements, condominium declaration or other similar instrument, encumbering all or any of the Lots as same may be amended from time to time.

"**Deed**" shall mean a deed in the form of Exhibit D attached to the Option Agreement duly executed by Owner.

"**Default**" shall mean the failure of a party to either (a) perform any of its monetary obligations under this Agreement and such failure continues beyond the applicable notice and cure period, if any, expressly provided in the applicable agreement for such failure, or (b) perform its non-monetary covenants or representations as provided for in this Agreement, or is otherwise in

breach of such covenant or representation, and such failure either is not capable of being cured, or, if capable of being cured, such failure continues for a period of at least thirty (30) days after the delivery of notice thereof by the other party.

"**Default Rate**" means eighteen percent (18%) per annum, but if such rate exceeds the maximum permissible rate of interest allowed under applicable law, then the Default Rate shall be the highest lawful contractual rate allowed by law.

"**Early Termination**" shall refer to the expiration or termination of the Option prior to Builder's acquisition of all Unpurchased Lots.

"**Effective Date**" refers to the date Owner acquired the Property.

"**Election Notice**" means a notice to Owner of Builder's election to exercise its option to bulk purchase all of the Unpurchased Lots at a price equal to the Unreturned Owner Costs in accordance with the provisions of Section 7.1.

"**Environmental Law**" means both collectively and individually, any and all present and future federal, state and local statutes, laws, ordinances, rules, regulations, administrative rulings, policy or orders, permits, and other requirements of governmental agencies or authorities which pertains or is applicable to or governs: public health; the environment; the use, permitting or environmental condition of the Lots (including the subsurface thereof) and any property adjacent thereto; or to any Hazardous Substance or Hazardous Substance Activity, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (as amended by the Superfund Amendments and Reauthorization Act of 1986), 42 U.S.C. § 9601, et seq.; the Resource Conservation and Recovery Act (as amended by the Hazardous and Solid Waste Amendments of 1984), 42 U.S.C. § 6901, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801, et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601, et seq.; the Clean Air Act, 42 U.S.C. § 7401, et seq.; the Safe Drinking Water Act, 42 U.S.C. § 300h, et seq.; and the Clean Water Act, 33 U.S.C. § 1251, et seq.

"**Escrow**" means the escrow established with Escrow Agent through which each Closing is consummated.

"**Escrow Agent**" refers to the escrow agent whose name and address are shown in Schedule 2 attached to the Option Agreement or such other escrow agent mutually acceptable to Owner and Builder as may be reasonably designated by Owner.

"**Excluded Lo**t" means any Lot subject to a Title Defect, which Lot Builder renounces its right to acquire pursuant to Section 5.4. Once Builder renounces its right to acquire an Excluded Lot pursuant to the terms of Section 5.4, such Excluded Lot shall not be considered an Unpurchased Lot.

"**Final Closing**" means the Closing at which Builder acquires all remaining Unpurchased Lots that will result in Builder having acquired all of the Lots.

"**Final Expiration Date**" shall be the date of the expiration of the Option as listed in the Fundamental Terms, as same may be extended if reflected in an amendment to this Agreement executed by Owner and Builder.

"**Final Plat(s)**" shall mean (i) as to any Lots that have been subdivided by a final plat or map as of the Agreement Date, the recorded final plats or maps of the Property describing such Lots on Exhibit A; and (ii) as to any portion of the Property that has not been subdivided into Lots by a final plat or map as of the Agreement Date, the final plats or maps of such portion of the Property that are prepared consistently with the Preliminary Plat described on Schedule 4 and recorded in accordance with the provisions of the Construction Agreement.

"**Financing District**" shall refer to a special improvement district, assessment district, maintenance district, landscape and lighting district, community facilities district, community development district, metropolitan district, or other similar improvement, maintenance or financing district or other financing mechanism creating an additional tax or assessment burden on land affecting all or any of the Property.

"**Finished Lots"** shall mean that all components of the Work (as defined in the Construction Agreement), or as contemplated by the Purchase Agreement, have been completed to the extent needed to ensure that the owner of all Lots will not be precluded, as a result of any such Work not being properly completed, from obtaining from the City or County, as applicable, a building permit for construction of a residence on such Lot and, upon proper completion of each such residence, issuance of a certificate of occupancy therefor.

"**Group**" shall mean one or more Lots that are to contain separate residential dwelling units in a single building.

"**Hazardous Substance**" or "**Hazardous Substances**" shall mean, at any time, one or more of the following substances:

(i) Those substances included within the definitions of "hazardous substances," "pollutants," "contaminants," "hazardous materials," "acutely hazardous material", "restricted material", "hazardous waste", "extremely hazardous waste", "infectious waste", "toxic substances," "toxic pollutant" or "solid waste" or any other formulation intended to regulate, define, list, or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, or "EP toxicity" or "solid waste" in any of the Environmental Laws or described, controlled or regulated under any of the Environmental Laws;

(ii) Those substances listed by the Environmental Protection Agency (or any successor agency) as hazardous substances (40 CFR Part 302.4 and amendments thereto); and

(iii) Any material, waste or substance which is: (A) asbestos or which contains asbestos; (B) polychlorinated biphenyls or which contain the same, including transformers or other equipment containing dielectric fluid; (C) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, or listed pursuant to Section 307 of the Clean Water Act; (D) hydrocarbons, oil or petroleum, petroleum products, petroleum distillate or petroleum byproducts;

(E) explosives; (F) radioactive materials; (G) radon gas; or (H) formaldehyde, including urea formaldehyde foam insulation.

"**Hazardous Substance Activity**" means any actual, proposed or threatened storage, holding, existence, release, emission, discharge, generation, processing, abatement, removal, disposition, handling or transportation of any Hazardous Substance from, under, into or on the Property or surrounding property(ies).

"**Lots**" shall mean the residential lots and/or condominium units, as applicable, within the Property that have been, or as contemplated by the Construction Agreement will be, subdivided for the purpose of constructing residences thereon (each such lot or condominium unit shall be referred to individually, as a "**Lot**"), except for any portion of the Property referenced on Schedule 4 as excess, surplus or other lots which are not to be considered part of the Number of Lots by Lot Type listed on Exhibit B.

"**Lot Purchase Price**" shall mean the applicable amount for each Lot Type as set forth on Exhibit B.

"**Lot Type**" shall be the designation of Lots listed on Exhibit B.

"**Market Condition**" shall mean that: (a) the Burns Home Value Index for the applicable "metro" or "market" (hereafter a "**MSA**") in which the Property is located ("**MSA Index**") (or other mutually acceptable index if a Burns report is not available) shows a seasonally adjusted home sale pricing decline in the MSA of 10% or more (measured from the Effective Date); or (b) a pandemic or other similar event occurs (including restrictions imposed by emergency orders, rules or regulations) which materially and adversely impacts Builder's ability to construct, market or sell residences on the Property.

"**Master Agreement**" shall mean the letter agreement dated April 5, 2024, from TPG AG Essential Housing Company 3, L.P., a Delaware limited partnership, addressed to Parent, as same may be modified from time to time with the written consent of Parent.

"**Memorandum of Option**" shall be the Memorandum of Option Agreement executed by Owner and Builder concurrently with the execution of this Agreement in a form mutually acceptable to the parties.

"**Nomination Agreement**" shall mean the Nomination Agreement between Builder, as nominor, and Owner, as nominee, dated as of the Agreement Date.

"**Notice of Termination**" shall mean the Notice of Termination of Option and Quit Claim Deed executed by Builder and delivered to Owner concurrently with the execution hereof in a form mutually acceptable to the parties.

"**Option**" shall mean, prior to the recordation of a Final Plat, the exclusive right and option to purchase the Property in accordance with the terms of this Agreement. Conditioned upon the recordation of a Final Plat, and only at such time as a Final Plat is recorded, the term "Option" shall mean the exclusive right and option to purchase the Lots shown on such recorded Final Plat in accordance with the terms and conditions of this Agreement.

"**Option Fee**" shall be the amount listed in the Fundamental Terms.

"**Option Period**" shall be each time period reflected on the Acquisition Schedule.

"**Option Term**" or the "**Term of the Option**" shall refer to the period commencing on the Effective Date and continuing until the later to occur of (a) termination of the Option, and (b) the period between delivery of Builder's 2.4.4 Notice and the date thirty (30) days following the date of the delivery of Builder's 2.4.4 Notice, or such earlier date upon which Builder acquires all Unpurchased Lots, and (c) the date Builder purchases all Committed Lots pursuant to Section 2.7, if applicable, and (d) the date Parent pays to Owner the Option Termination Fee due pursuant to the Option Termination Fee Agreement.

"**Option Termination Date**" shall refer to the last day of the Option Term.

"**Option Termination Fee Agreement**" shall refer to the Option Termination Fee Agreement of even date herewith executed by Parent for the benefit of Owner.

"**Out of Sequence**" shall be as designated in Exhibit C attached to the Option Agreement.

"**Out of Sequence Premium**" shall be, as applicable, the amount of Plus 1 Out of Sequence Premium or the amount of Plus 2 Out of Sequence Premium for each Lot Type set forth on Exhibit B, as determined in accordance with the out of sequence rules set forth on Exhibit C.

"**Owner Costs**" shall be the sum of: (i) the Property Acquisition Cost; (ii) all amounts advanced by Owner under the Construction Agreement; and (iii) all Unanticipated Owner Costs.

"**Owner Development Documents**" shall have the meaning assigned to such term in the Construction Agreement.

"**Owner-Related Persons**" shall mean Owner's affiliates, wholly-owned subsidiaries, advisors, partners, members, the constituent owners and managers of Owner and Owner's affiliates, wholly-owned subsidiaries, advisors, and partners and members, and their respective owners, managers, employees, directors, officers, agents, affiliates, successors and assigns, but specifically excluding Builder, any Builder-Related Persons and any unaffiliated party to whom all or any portion of the Property is conveyed by Owner.

"**Pause Rate**" shall have the meaning given in the Master Agreement

"**Permitted Exceptions**" shall mean (a) real property taxes and assessments (general, special or other, including any rollback taxes) that are a lien but not yet delinquent and for subsequent assessments for prior years due to changes in the use or ownership, or both; (b) reservations in patents, water rights, claims or title to water and all easements, rights-of-way, encumbrances, liens, covenants, conditions, restrictions, obligations, liabilities, and all other matters of record as of the Effective Date and matters recorded after the Effective Date which are contemplated by any document of record as of the Effective Date or by this Agreement (exclusive, in any event, of any lien for financing obtained by Owner); (c) any Declaration; (d) any matters shown on any of the Final Plats, any other recorded final subdivision plat, or replat, or map of dedication pertaining to the Lots or other matter recorded at Builder's request; (e) any lien or

encumbrance relating to general or special assessments levied against the Lots by any federal, state or local governmental or quasi-governmental entity or agency from and after the Effective Date and not arising as a result of any act of Owner or any Owner-Related Persons; (f) any additional matters arising in connection with any action or request of Builder or any Builder-Related Persons and any other matter not caused by the act or knowing omission or authorization of Owner; (g) utility or other easements benefitting or not adversely affecting the Lots; (h) any matters relating to any threatened or pending condemnation or eminent domain proceedings; (i) all matters set forth in the owner's policy of title insurance issued to Builder when Builder acquired the Property (if Builder or any entity affiliated with Builder is the seller) and all matters set forth in the owner's policy of title insurance issued to Owner upon Owner's acquisition of title; (j) any matter or other document or instrument that is of record as of the Effective Date; (k) any additional matters that would be disclosed by an inspection or by a current, accurate ALTA/NSPS survey of the Property meeting the Minimum Standard Detail Requirements of an Urban Survey as adopted by the ALTA/NSPS in 2021 and containing all Table A items; (l) any Ancillary Agreements, memoranda thereof, or documents contemplated thereby, that are recorded against the Property or any portion thereof; (m) any mechanic or materialman's lien arising from any work benefiting the Property prior to the Effective Date or on account of any Work to be performed under the Construction Agreement; and (n) any parties in possession of all or a portion of the Property.

"**Person**" shall mean any corporation, partnership, limited liability company, individual, firm, trust, or association.

"**Phasing Schedule**" shall be Exhibit C attached to the Option Agreement.

"**Preliminary Plat**" shall have the meaning given in Schedule 4.

"**Premium Excess**" shall be, determined from time to time, and equal to the amount by which the Total Premium Balance existing as of the date of determination exceeds the Required Premium Balance existing as of the date of determination.

"**Property**" shall be the real property more particularly described on Exhibit A attached to the Option Agreement.

"**Property Acquisition Cost**" shall be the amount listed in the Fundamental Terms.

"**Property Bulk Purchase Price**" shall be the amount listed in the Fundamental Terms.

"**Purchase Agreement**" shall have the meaning given in Schedule 4.

"**Required Premium Balance**" shall be the dollar amount, determined from time to time and always assuming Builder has acquired all Lots for which Builder has exercised the Option, equal to the aggregate Out of Sequence Premiums Builder would be required to pay concurrently with the acquisition of all Lots then owned by Builder that were acquired Out of Sequence as contemplated by the Phasing Schedule. For example, if, after acquisition of all Lots for which Builder has exercised the Option, Builder will own 60% of the Lots in Phase 1, and 3 Lots in Phase 2, the Required Premium Balance would be equal to the sum of the Out of Sequence Premiums of the three Lots in Phase 2 depending on the Lot Types of such Lots, or if, after acquisition of all Lots for which Builder has exercised the Option, Builder will own 90% of the Lots in Phase 1,

80% of the Lots in Phase 2 and three Lots in Phase 3, the Required Premium Balance would be equal to the sum of the Out of Sequence Premiums of the three Lots in Phase 3 depending on the Lot Types of such Lots.

"**Sales Reporting Commencement Date**" shall be the fifth (5th) day (or first business day thereafter) of the first full month following the date Builder commences marketing activity with respect to the Lots, as evidenced by among other things the presence of one or more on-site sales representatives or a sales center/trailer or model homes pertaining to the Lots.

"**Seller**" shall have the meaning given in Schedule 4.

"**Straight Line Price**" shall mean the applicable amount for each Lot Type as set forth on Exhibit B.

"**Target IRR**" shall have the meaning given in the Master Agreement.

"**Title Defect**" shall mean a title matter affecting any Lot that is not a Permitted Exception.

"**Total Premium Balance**" shall be the sum of all Out of Sequence Premiums paid to Owner pursuant to this Agreement reduced by the amount of all Premium Excess applied toward payment of any Lot(s) acquired by Builder.

"**Unanticipated Owner Costs**" shall mean all amounts incurred or expended by Owner prior to the Option Termination Date, in Owner's reasonable discretion, (i) on account of any failure by Builder or Contractor to comply with its obligations under this Agreement or the Construction Agreement; (ii) to protect its interest in the portion of the Property not purchased by Builder; (iii) to pay for any costs relating to its ownership of the portion of the Property not purchased by Builder; (iv) in connection with the performance or administration of any Ancillary Agreement or on account of the failure of Builder, any Builder-Related Persons or Contractor to perform under any Ancillary Agreement; (v) in connection with the review and approval of any Owner Development Document; and (vi) in connection with any request by Builder or Contractor to modify or amend this Agreement or the Construction Agreement, regardless of whether any amendment is ever effectuated, including, without limitation, attorneys' fees, engineering fees, appraisal costs and market study fees (provided, costs under (vi) shall not exceed $3,000 without Builder's prior approval). Unanticipated Owner Costs shall not include any amounts incurred or expended due the gross negligence or willful misconduct of Owner or any Owner-Related Persons or due to Owner's Default.

"**Unfunded Costs**" shall mean the costs to be advanced under the Construction Agreement not yet funded by Owner.

"**Unpurchased Lots**" shall mean the Property unless and until a Final Plat for a portion of the Property is recorded after which the term shall mean those Lots shown on such recorded Final Plat not yet purchased by Builder pursuant to the terms of this Agreement and all unplatted portions of the Property, if any. If Builder renounces its right to acquire an Excluded Lot pursuant to the terms of Section 5.4 of the Option Agreement, such Excluded Lot shall not be considered in determining whether Builder has acquired all the Lots and shall otherwise be excluded from any references to the "Lots" or "Unpurchased Lots."

"**Unreturned Owner Costs**" shall mean the amount computed daily from and after the Effective Date equal to the Owner Costs minus the sum of (a) all cash payments paid by Builder to Owner to purchase any Lots (including the Total Premium Balance as of the date of determination), and (b) all amounts reimbursed to Owner for amounts expended by Owner for any Unanticipated Owner Costs, and (c) the Option Fee.

"**Work**" shall be as defined in the Construction Agreement.

Schedule 2
(*Cedar Pointe, Harnett County, North Carolina*)

**NOTICE INFORMATION**

| | |
|---|---|
| Owner at: | TPG AG EHC III (SDH) Multi State 3, LLC<br>c/o Essential Housing Asset Management, LLC<br>8585 East Hartford Drive, Suite 118<br>Scottsdale, AZ 85255<br>Attn: Steven Benson<br>Phone (602) 418-0443<br>Email: steve.benson@essentialhousingops.com |
| With a Copy to: | Quarles & Brady LLP<br>Two North Central Avenue<br>Phoenix, AZ 85004<br>Attn: Jason Wood<br>Phone: (602) 230-4624<br>Email: jason.wood@quarles.com |
| And, if a default notice, with copies to: | Angelo, Gordon & Co, L.P.<br>245 Park Avenue, 26th Floor<br>New York, NY 10167<br>Attn: Bryan Rush<br>Phone: (212) 692-2294<br>Email: brush@angelogordon.com |
| | Angelo, Gordon & CO, L.P.<br>245 Park Avenue, 26th Floor<br>New York, NY 10167<br>Attn: Legal Department |
| Builder at: | SDH Raleigh LLC<br>10 Village Trail, Suite 215<br>Woodstock, GA 30188<br>Attn: Nicholas K. Isbell |
| Escrow Agent at: | Maynard Nexsen<br>4141 Parklake Avenue, Suite 200<br>Raleigh, NC 27612<br>Attn: Erika Jefferson<br>Phone: (919) 653-7818<br>Email: ejefferson@maynardnexsen.com |

Schedule 3
(*Cedar Pointe, Harnett County, North Carolina*)

**STATE SPECIFIC DISCLOSURES**

NONE

Schedule 4
(*Cedar Pointe, Harnett County, North Carolina*)

**SCHEDULE OF PROPERTY SPECIFIC TERMS AND CONDITIONS**

The terms and conditions set forth in this Schedule 4 shall be interpreted as if included in the main body of the Agreement and the full terms and conditions set forth below are incorporated into the Agreement as if set forth in full. To the extent of any conflict between the provisions set forth below and the main body of the Agreement or any other Exhibits or Schedules, the provisions set forth below shall control.

**I. Additional Defined Terms**

In addition to the terms defined in Schedule 1 attached to the Agreement, the following terms shall have the meanings described below:

- The term "**Association**" shall mean the Cedar Pointe Homeowners Association, Inc., a North Carolina corporation;
- 
- The term "**Declaration**" shall include the Approved Declaration (as defined in the Purchase Agreement);

- The term "**Purchase Agreement**" shall mean Lot Purchase Agreement effective November 20, 2023, between Builder, as Purchaser, and Seller, as Seller, pertaining to the Property, as amended; and

- The term "**Seller**" shall mean Cedar Pointe LLC, a North Carolina limited liability company.

**I. Existing Conditions that are Exceptions to Adverse Development Risks**

None.

**II. Additional Adverse Development Risks**

None.

Exhibit A
(*Cedar Pointe, Harnett County, North Carolina*)

**LEGAL DESCRIPTION OF THE PROPERTY**

BEING all of Harnett County Tax Parcel #9574-11-5237.000 and being more particularly described as follows:

BEING all of Lots 4 through 39, inclusive, as shown on plat for Cedar Pointe Subdivision recorded in Map Book 2024, Pages 275-276, Harnett County Registry, as revised by plat entitled "A Replat of Lot 1 of PB: 2024 PG: 275 to Show Correct Rear Easement Width" recorded in Plat Book 2024, at Page 450, Harnett County Registry.

Exhibit B
(*Cedar Pointe, Harnett County, North Carolina*)

# ACQUISITION AND LOT INFORMATION SCHEDULE

**Required Minimum Cumulative Lot Purchases During Each Option Period**

| Option Period | Date Option Period Expires | Cumulative Lot Absorptions A Lots |
|---|---|---|
| 0 | 09/25/2024 | 0 |
| 1 | 10/25/2024 | 9 |
| 2 | 11/25/2024 | 9 |
| 3 | 12/25/2024 | 9 |
| 4 | 01/25/2025 | 18 |
| 5 | 02/25/2025 | 18 |
| 6 | 03/25/2025 | 18 |
| 7 | 04/25/2025 | 27 |
| 8 | 05/25/2025 | 27 |
| 9 | 06/25/2025 | 27 |
| 10 | 07/25/2025 | 36 |

**Lot Purchase Prices**

| Lot Type | From | To | Count | Lot Purchase Price |
|---|---|---|---|---|
| A Lots | 1 | 1 | 1 | $56,525 |
| A Lots | 2 | 36 | 35 | $56,521 |

**Lot Sizes**

| Lot Type | Average Lot Size(s) by Lot Type |
|---|---|
| A Lots | 80’ x 250’ |

**Lot Information**

| Lot Type | Lots Acquired in Groups | Number of Lots | Straight Line Price | Maximum Deferred Lot Count | Hiatus Fee | Out of Sequence Premium | |
|---|---|---|---|---|---|---|---|
| | | | | | | Phase 1 | Phase 2 |
| A Lots | FALSE | 36 | $62,801 | 9 | $530 | $8,478.00 | $28,261.00 |

Exhibit C
(*Cedar Pointe, Harnett County, North Carolina*)

**PHASING SCHEDULE**

I. SEQUENCE OF LOT ACQUISITIONS.

A. To establish an orderly sequencing of Lot acquisitions, Lots of the same Lot Type will be grouped in numbered phases (each a "**Phase**"). Builder may acquire any Lots within the same Phase in any order. Owner and Builder shall mutually agree on the Lot Type, Phase and Restricted Lot status ("**Lot Designations**") for all Lots (as confirmed by one or more emails). Owner will maintain a record of the agreed upon Lot Designations in the Homesite Selection System. Until the parties agree on Lot Designations for all Lots, Builder shall have no right to acquire any Lots; however, Builder acknowledges that it has sufficient time to accomplish same prior to the end of the first Option Period during which the first Lots are scheduled to be purchased and as such the Acquisition Schedule shall not be modified. Builder and Owner may from time to time mutually agree to change the Lot Designation of any Lot(s) and Owner shall reflect all such changes in the Homesite Selection System (as confirmed by one or more emails).

B. Any Lots Builder desires to acquire in a higher numbered Phase prior to the acquisition of all Lots in all lower numbered Phases will be considered "**Out of Sequence**." The "**Out of Sequence Rules**" set forth in Section IIB below identify whether Builder's desired acquisition is either (1) allowed with no Out of Sequence Premium, (2) allowed with the payment of an Out of Sequence Premium, or (3) not allowed. Builder's acquisition of any Lot and the payment of any Out of Sequence Premium is subject to such Out of Sequence Rules. Restricted Lots, if any, may not be acquired without the prior approval of Owner, which approval shall not be unreasonably withheld, unless Builder has acquired (i) all Lots in all Phases other than the highest numbered Phase and (ii) at least 75% of the Lots in the highest numbered Phase.

C. All references in this Exhibit C to a "Phase", or "all Phases", or "a prior Phase", or "a lower numbered Phase", or "a higher numbered Phase" or similar references shall be deemed only to refer to Phases containing Lots of the same Lot Type. For example, if determining if a particular B Lot (including a Restricted B Lot) can be purchased with or without payment of a Premium, only the Phases that have B Lots will be evaluated.

II. PREMIUM; OUT OF SEQUENCE.

A. Definitions. The following definitions shall apply in construing this Section:

1. "**Builder Designated Lot**" shall mean any Lot that has either (a) been acquired or (b) is either (i) an Unpurchased Lot not in a Group upon which either a slab or stem wall or other vertical improvements exist, or (ii) all Unpurchased Lots in a Group upon which a slab or stem wall or other vertical improvements exist on any Unpurchased Lot in that Group, and in either instance of (i) or (ii) identified by Builder in the Homesite Selection

System as an Unpurchased Lot upon which vertical construction has commenced.

2. "**Current-Phase**" shall mean the Phase in which (a) there are Lots that are not Builder Designated Lots and (b) all Lots in all prior Phases are Builder Designated Lots (or there is no prior Phase).

3. "**Current-Phase-Plus1**" shall mean the Phase immediately following the Current-Phase.

4. "**Current-Phase-Plus2**" shall mean the Phase immediately following Current-Phase-Plus1.

5. "**Current-Phase-Plus3**" shall mean any Phase following Current-Phase-Plus2.

6. "**Restricted Lot**" shall mean any Lot designated in the Homesite Selection System as a Restricted Lot.

7. "**Target-Lot**" shall mean the Lot Builder desires to purchase.

B. Out of Sequence Rules.

1. If the Target-Lot is in the Current-Phase, Builder may acquire the Target-Lot with no Out of Sequence Premium.

2. If the Target-Lot is in Current-Phase-Plus1 and less than 75% of the Lots in the Current-Phase are Builder Designated Lots, the Target-Lot purchase is allowed with an Out of Sequence Premium equal to the applicable Plus 1 Out of Sequence Premium for such Target Lot based on the Lot Type of the Target Lot as set forth on Exhibit B; if the Target-Lot is in Current-Phase-Plus1 and 75% or more of the Lots in the Current-Phase are Builder Designated Lots, the Target-Lot purchase is allowed with no Out of Sequence Premium.

3. If the Target-Lot is in Current-Phase-Plus2 and 75% or more of the Lots in the Current-Phase are Builder Designated Lots, the Target-Lot purchase is allowed with an Out of Sequence Premium equal to the applicable Plus 2 Out of Sequence Premium for such Target Lot based on the Lot Type of the Target Lot as set forth on Exhibit B; if the Target-Lot is in the current-Phase-Plus2 and less than 75% of the Lots in the Current Phase are Builder Designated Lots, the Target-Lot purchase is not allowed.

4. If the Target-Lot is in Current-Phase-Plus3, or any subsequent Phase, the Target-Lot purchase is not allowed.

If Builder elects to acquire any Lots permitted under this Phasing Schedule to be acquired Out of Sequence, then, in addition to the Lot Purchase Price payable by Builder for such Lots, Builder

shall pay to Owner the product of the applicable Out of Sequence Premium for a Lot Type multiplied by the number of such Lots of that Lot Type, which shall be paid in cash at the Closing of such Lots.

Exhibit D
(*Cedar Pointe, Harnett County, North Carolina*)

**FORM OF DEED**

Excise Tax:

Parcel Identifier No: See Exhibit A

Verified by Harnett County on this ___ day of _____, 202_

Mail/Box to: **Grantee**

This instrument was prepared by:

Brief description for the Index: **Cedar Pointe– Harnett County**

THIS DEED made this ____ day of _____, 202_, by and between

| GRANTOR | GRANTEE |
|---|---|
| **TPG AG EHC III (SDH) Multi State 3, LLC,** a Delaware limited liability company<br><br>Address:<br>c/o Essential Housing Asset Management, LLC<br>8585 E. Hartford Drive, Suite 118<br>Scottsdale, Arizona 85255 | [_____]<br><br>Address:<br><br>Address for Tax Notices: |

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH, that the Grantor, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee in fee simple, all that certain lot or parcel of land situated in Harnett County, North Carolina and more particularly described as follows:

SEE EXHIBIT A ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF

The property hereinabove described was acquired by Grantor by instrument recorded in Book ____ page ___.

TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges and appurtenances thereto belonging to the Grantee in fee simple.

And the Grantor covenants with the Grantee, that Grantor has done nothing to impair such title as Grantor received, and Grantor will warrant and defend the title against the lawful claims of all persons claiming by, under or through Grantor, other than the following exceptions:

Title to the Property is subject to: all general and special real property taxes and other assessments (including, without limitation, all subsequent assessments for prior years whether due to changes in the use or ownership, or both or otherwise), water, sewer, vault, public space and other public charges which are not yet due and payable, reservations in patents, water rights, claims or titles to water, any matters relating to any threatened or pending condemnation or eminent domain proceedings, all applicable laws (including zoning, building ordinances and land use regulations), all documents establishing or relating to the master-planned community of which the Lots are a portion, any matter shown on the plat of the Lots referenced above, any matter arising in connection with any action of Grantee or its employees, contractors, agents, or representatives, any other matter whether or not of record not caused by the act or authorization of Grantor in violation of the Option Agreement pursuant to which this instrument is delivered, any matter that would be disclosed by a current inspection or a current accurate ALTA/NSPS survey of the Lots, and all other easements, rights of way, encumbrances, liens, covenants, conditions, restrictions, obligations, liabilities and other matters as may appear of record.

Grantor makes no warranty or representation as to the condition of the property or any improvements thereon, including without limitation, any latent or environmental defects in the property or in any improvements thereon and the serviceability or fitness for a particular purpose of the property or any improvements thereon, and Grantee accepts the property and any improvements thereon "AS IS" without recourse against Grantor.

All or a portion of the Property herein conveyed does not include the primary residence of Grantor.

[*Signature on Next Page*]

EXECUTED this ___ day of _____, 202__.

**GRANTOR**:

**TPG AG EHC III (SDH) MULTI STATE 3, LLC**,
a Delaware limited liability company

By: Essential Housing Asset Management, LLC, an Arizona limited liability company
its Authorized Agent

By: _____
Steven S. Benson, its Manager

STATE OF ARIZONA )
)
COUNTY OF MARICOPA )

The foregoing instrument was acknowledged before me this __ day of _____, 202__, by Steven S. Benson, the manager of Essential Housing Asset Management, LLC, an Arizona limited liability company, the Authorized Agent of TPG AG EHC III (SDH) MULTI STATE 3, LLC, a Delaware limited liability company, for and on behalf thereof.

_____
Notary Public

(SEAL)