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THE STATE OF SOUTH CAROLINA
In the South Carolina Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas for the Thirteenth Judicial Circuit

The Honorable Charles B. Simmons, Jr. Master-in-Equity

Civil Action Case Nos.: 2019-CP-23-05954 & 2020-CP-23-04351
Appellate Case No.: 2022-000897

Crescent Homes SC, LLC,

Appellant,

v.

CJN, LLC,

Respondent.

RECORD ON APPEAL

Volume 1 of 2

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INDEX

ORDERS

Order dated April 20, 2021	3
Order dated October 22, 2021	6
Order dated May 27, 2022	9
Order dated June 10, 2022	19

PLEADINGS

Crescent's Complaint filed October 11, 2019	21
CJN's Answer and Counterclaim filed October 9, 2020	77
Crescent's Reply to Answer and Counterclaim filed November 6, 2020	123
CJN's Complaint filed September 18, 2020	132
CJN's Amended Complaint filed October 19, 2021	192
Crescent's Answer to Amended Complaint filed November 16, 2021	278
Affidavit of Ted Terry	289
CJN's Motion for Partial Summary Judgment filed March 19, 2021	293
Crescent's Motion to Alter or Amend filed June 10, 2022	295
Notice of Excerpts of the Deposition of Nicholas Franchina to be Offered at Trial Pursuant to Rule 32(a)(5), SCRCP filed May 3, 2022	301

TRANSCRIPTS

Transcript of May 4, 2022 Trial	323

EXHIBITS

CJN's Exhibits

2	509
3	510
4	511
5	514
6	540
7	553

8.....	560
9.....	571
10.....	591
11.....	594
Crescent's Exhibits	
4.....	597
5.....	611
6.....	615
7.....	618
10.....	620
12.....	624
Certificate of Counsel	634

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE THIRTEENTH JUDICIAL
COUNTY OF GREENVILLE	)	CIRCUIT

CJN, LLC,	)	
	)	Case No.: 2020-CP-23-04351
Plaintiff,	)	
	)	
vs.	)	ORDER DENYING
	)	PLAINTIFF'S MOTION FOR
CRESCENT HOMES SC, LLC,	)	PARTIAL SUMMARY JUDGMENT
	)	
Defendant.	)	
	)	
	)	

This matter comes before the Court on a Motion for Partial Summary Judgment that was filed by Plaintiff CJN, LLC ("CJN") pursuant Rule 56(c) of the South Carolina Rules of Civil Procedure. An in-person hearing on the Motion was held on Wednesday, April 14, 2021. CJN was represented by F. James Warmoth, Esq. Defendant Crescent Homes SC, LLC ("Crescent Homes") was represented during the hearing by Ellis R. Lesemann, Esq. In addition to the Motion, the Court has reviewed legal memoranda from both sides along with the relatively limited record that has been presented to the Court, including the Affidavit of Edward M. Terry. The Court is informed that no discovery has yet been conducted in this case.

This action relates to a dispute over a "right of first refusal" to purchase certain real property owned by CJN located in Greenville County, South Carolina. Through the Motion, CJN has asked that the Court declare that the Right of First Refusal is either: (1) void and unenforceable on various legal grounds; or (2) not applicable to the sale of the undeveloped property.

Summary judgment is proper only when it is clear that "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *Rule 56(c)*,

SCRCP. “In order to withstand a motion for summary judgment in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence.” *Turner v. Milliman*, 392 S.C. 116, 122, 708 S.E.2d 766, 769 (2011). “[B]ecause summary judgment is a drastic remedy, it should be cautiously invoked to ensure a litigant is not improperly deprived of a trial on disputed factual issues.” *Huffman v. Sunshine Recycling, LLC*, 417 S.C. 514, 523, 790 S.E.2d 401, 406 (Ct. App. 2016). Additionally, “[s]ummary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law.” *Englert, Inc. v. LeafGuard USA, Inc.*, 377 S.C. 129, 134, 659 S.E.2d 496, 498 (2008), *see also Beckham v. Short*, 294 S.C. 415, 420, 365 S.E.2d 42, 45 (Ct. App. 1988), *aff’d*, 298 S.C. 348, 380 S.E.2d 826 (1989).

Based on the current posture of this case, the limited record before the Court, and the presence of apparent factual disputes and novel issues that call for further inquiry into the facts of the case “to clarify the application of the law,” the Court finds that granting partial summary judgment to CJN would not be appropriate. Therefore, it is hereby ordered that Plaintiff’s Motion for Partial Summary Judgment is **DENIED**.

IT IS SO ORDERED.

JUDGE’S SIGNATURE PAGE TO FOLLOW



Greenville Common Pleas

Case Caption: Cjn Llc vs. Crescent Homes Sc Llc

Case Number: 2020CP2304351

Type: Master/Order/Other

And It Is So Ordered!

s/ Judge Charles B. Simmons, Jr. (3023)

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	C.A. NO. 2019-CP-23-05954
CRESCENT HOMES SC, LLC	)	
Plaintiff,	)	
v.	)	
CJN, LLC,	)	
Defendant.	)	

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	C.A. NO. 2020-CP-23-04351
CJN, LLC	)	
Plaintiff,	)	
v.	)	
CRESCENT HOMES SC, LLC	)	
Defendants.	)	

ORDER

This cause came on to be heard upon Crescent Homes SC, LLC's Motion to Consolidate and Merge Cases 2019-CP-23-05954 and 2020-CP-23-04351.

The Court finds that Cases 2019-CP-23-05954 and 2020-CP-23-04351 should be consolidated. The Court further finds that the right of first refusal issues raised in Case No. 2020-CP-23-0435 should be bifurcated for trial, with the trial of such issues to be scheduled for January 2022.

It is therefore Ordered as follows:

1. The Motion is granted;

2. Case 2019-CP-23-05954 and 2020-CP-23-04351 are hereby ordered consolidated and shall continue under Case 2019-CP-23-05954.
3. The right of first refusal issues raised in Case No. 2020-CP-23-04351 will be bifurcated for trial, with the trial of such issues to be scheduled for January 2022.

AND IT IS SO ORDERED

[JUDGE'S SIGNATURE PAGE TO FOLLOW]



Greenville Common Pleas

Case Caption: Cjn Llc vs. Crescent Homes Sc Llc

Case Number: 2020CP2304351

Type: Order/Consolidate

And It Is So Ordered!

s/ Judge Charles B. Simmons, Jr. (3023)

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	C.A. NO. 2019-CP-23-05954
CRESCENT HOMES SC, LLC	)	
Plaintiff,	)	
v.	)	
CJN, LLC,	)	
Defendant.	)	

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	C.A. NO. 2020-CP-23-04351
CJN, LLC	)	
Plaintiff,	)	
v.	)	
CRESCENT HOMES SC, LLC	)	
Defendant.	)	

ORDER

A bifurcated portion of the above-captioned consolidated matter was before the Court for a non-jury trial on May 4, 2022. Appearing as counsel were F. James Warmoth for CJN, LLC ("CJN") and Ellis R. Lesemann for Crescent Homes SC, LLC ("Crescent"). Representatives of each party testified as witnesses.

PROCEDURAL BACKGROUND

The above cases were referred to the undersigned Master in Equity by consent of the parties. The Court consolidated the two matters upon the motion of Crescent and then bifurcated this limited issue for the current trial upon the motion of CJN.

The bifurcated issue for the current trial relates to the enforceability a right of first refusal. In October of 2018, CJN and Crescent entered an agreement related to the development of "Phase 1" of the River Springs subdivision. This agreement contains right of first refusal at issue, which purports to give Crescent a right of first refusal on "lots" in the "Future Phase" (also sometimes referred to as "Phase 2") using the following language:

19. Right of First Refusal: At the Initial Closing, Seller will grant to Purchaser a right of first refusal with respect to the lots cross-hatched and shown on Exhibit "A-2" as "Future Phase" and any additional lots that may from time to time may be annexed or otherwise included in the Subdivision. A memorandum of such right of first refusal in a form reasonable acceptable to the Parties will be recorded in the public records of Greenville County at the Initial Closing.

The Future Phase parcel is adjacent to Phase 1, is owned by CJN, and, to date, remains as a single parcel of undeveloped land. The dispute regarding the right of first refusal first arose in June of 2020 when CJN entered a contract to sell the entirety of the Future Phase. Shortly thereafter, Crescent filed a lis pendens to prevent the sale, contending that the proposed sale violated its right of first refusal. CJN then filed this action, in relevant part to the bifurcated issue, seeking a declaration from the Court that the right of first refusal is unenforceable and that Crescent has no enforceable rights related to the sale or development of the Future Phase.

CJN presented multiple theories in support of this claim,¹ including that the right of first refusal creates an unreasonable restraint on alienation of interest in land because it lacks specificity as to duration of the right, the property subject to the right, the purchase price, and the procedures for exercising the right, among other things. Crescent disputes that CJN is entitled to such a declaration, arguing first that the present litigation does not present an active case for controversy and that it is not ready or ripe for resolution by the Court. Alternatively, Crescent argues that the right of first refusal created a binding promise for CJN to develop lots in the Future Phase (and to then give Crescent a right of first refusal on such lots) such that CJN is not

entitled to sell the Future Phase as a single undeveloped parcel. Additionally, Crescent argues that that the right of first refusal is enforceable because it was specifically bargained for by sophisticated commercial entities who were represented by counsel. The parties extensively briefed the above legal theories in memoranda submitted in connection with CJN's Motion for Partial Summary Judgment filed on March 19, 2021.

For the reasons discussed hereinbelow, the Court finds that the right of first refusal is an unreasonable restraint on alienation of interest in land and is therefore unenforceable. Because this conclusion is dispositive, the Court need not address in detail the various additional contentions and theories presented.

FINDINGS OF FACT

CJN and Crescent are both sophisticated entities with extensive real estate experience. Moreover, the parties have had multiple dealings with each other over the years relating to development and sale of both undeveloped real estate and ready to build on lots in Greenville County. In April of 2017, the parties signed a Letter of Intent generally setting forth an intent to buy/sell lots in River Springs, with the Letter of Intent including both "Phase 1" and "Phase 2" (also referred to as the "Future Phase"). However, CJN ultimately decided not to develop Phase 2, despite including Phase 2 in the Letter of Intent and Crescent's continuing desire for CJN to develop buildable lots in Phase 2 (in addition to Phase 1), based on concerns regarding the cost of development of Phase 2.

In October of 2018, the parties then entered into an "Agreement for Purchase and Sale of Developed Lots" (the "Agreement"). This is a lengthy written agreement for the buy/sell of "developed lots" in Phase 1. Aside from the right of first refusal, the Agreement contains no terms related to Phase 2, no obligations for CJN to develop lots in Phase 2 and no obligation for Crescent to purchase any such buildable lots. Crescent concedes there are no such terms but

contends that CJN verbally agreed it would eventually develop Phase 2 in discussions prior to execution of the Agreement. CJN denies that it verbally agreed to develop Phase 2. The Court does not make any finding regarding the existence of a possible verbal agreement. Instead, the Court finds that the written Agreement is the complete and final expression of the parties' agreement and the parties are bound by its terms. The parties are sophisticated entities with extensive real estate experience. Further, the Agreement itself states that it contains all of the terms and conditions agreed to between the parties and there are no oral agreements relating to the transaction.

Subsequent to the execution of the Agreement, there were multiple delays in moving ahead with the "Initial Closing", which was to be the first of several multi-lot closings specified in the Agreement to effectuate the buy/sell of lots in Phase 1. Responsibility for those delays, which were in part caused by CJN, is not at issue in this bifurcated portion of the trial except insofar as the Court finds that the parties did eventually proceed with the Initial Closing in August of 2020, and continued thereafter to transact the buy/sell of lots in Phase 1. For the most part, it appears that Phase 1 has been completed.

To date, Phase 2 remains raw, undeveloped land, and CJN has no current plan to develop lots in Phase 2. The dispute regarding the right of first refusal first arose in June of 2020, when CJN entered a contract to sell Phase 2, as an undeveloped parcel, to Mr. Clark, a neighboring property owner. Crescent filed a lis pendens on the property in response and otherwise contended that the proposed sale violated its rights under the right of first refusal. Likewise, in May of 2021, CJN entered a contract to sell Phase 2, as an undeveloped parcel, to Opus Petrus, LLC. Crescent filed a lis pendens on the property in response in response and otherwise contended that the proposed sale violated its rights under right of first refusal. As of the date of trial, there was no active contract for sale on the property, but CJN was actively marketing the

property for sale. While the parties have asserted claims related to the events surrounding these third party offers,² those claims will be not be addressed here because this Order is focused solely upon the issue of whether the right of first refusal is enforceable under South Carolina law.

As relates to the present issue, the critical and dispositive language in the Agreement is found in paragraph 19, Right of First Refusal, which provides as follows:

19. Right of First Refusal: At the Initial Closing, Seller will grant to Purchaser a right of first refusal with respect to the lots cross-hatched and shown on Exhibit "A-2" as "Future Phase" and any additional lots that may from time to time may be annexed or otherwise included in the Subdivision. A memorandum of such right of first refusal in a form reasonable acceptable to the Parties will be recorded in the public records of Greenville County at the Initial Closing.

Exhibit A-2 referenced in Paragraph 19 is attached to the Phase I Agreement and depicts a "Future Phase" with lots shown and crosshatching drawn over those lots.

The language in paragraph 19 is lacking in any number of specific and critical areas. This includes terms and conditions of purchase by Crescent, the time allowed for exercise of the Right of the First Refusal by Crescent, the procedures for exercising the right, the purchase price of the lots, how long the right exists, among other things.

Aside from these shortcomings, the parties also agreed that "a memorandum of such right of first refusal in a form reasonabl[y] acceptable to the Parties will be recorded in the public records of Greenville County at the Initial Closing." This Initial Closing occurred in August 2020, and while there were discussions between the parties about the terms and conditions of the memorandum, and disagreements about why the memorandum was not entered or recorded, it is undisputed that no memorandum was ever entered or recorded. Even as of the date of trial,

despite the Agreement being executed in October of 2018 and the Initial Closing occurring in August of 2020, no memorandum has been agreed upon or recorded.

ANALYSIS

As an initial matter, Crescent asserts that the present litigation does not present an active case for controversy and that it is not ready or ripe for resolution by the Court. Peoples Fed. Sav. and Ass'n of S.C. v Resources Planning Corp., 596 S.E.2d 51 (SC 2004). Crescent maintains that since there is no active pending sale or offer for sale, there are no issues to currently litigate relating to the right of first refusal.

Under the unique facts of this case, and under the broad language of paragraph 19, the Court finds that the issues are ripe and ready for resolution by the Court. Under the broad and open-ended language of paragraph 19, without a judicial resolution, Crescent would effectively be able to indefinitely have rights relative to CJN's ability to transfer, sell or otherwise develop the lots in the Future Phase. Further, paragraph 19 also relates to the present ability of CJN to sell the Future Phase tract as a whole or being limited to develop and sell the tract as lots only. And, even if CJN developed such lots, Crescent has no obligation to purchase them under the language of paragraph 19. As discussed hereinbelow, paragraph 19 creates an unreasonable restraint of alienation of interest in land, and that issue is ripe and ready for resolution by the Court. Further, the Court concludes that the rule set forth in Peoples Fed. is satisfied under the facts and circumstances of this case, including the prior contracts with Clark and Opus, Crescent's response to those contracts, and CJN's active and ongoing marketing of the property for sale.

A right of first refusal is a pre-emptive right. Webb v. Reames, 485 S.E.2d 384 (SC App 1997). Pre-emptive rights are subject to the rule against restraint of alienation of interest in land. 61 Am Jur 2d Perpetuities and Restraints on Alienation § 110 (2002); Restatement (Third) of

Property (Servitudes) § 3.4 cmt. f (2000). “Under South Carolina common law, any unreasonable limitation upon the power of alienation is against public policy and must be construed as having no force and effect.” *Wise v. Poston*, 316 S.E.2d 412, 415 (SC. App. 1984). “Whether a right of first refusal is valid depends on the legitimacy of the purpose, the price at which the holder may purchase the land, and the procedures for exercising the right.” Restatement (Third) of Property: Servitude § 3.4 cmt. (f) (2000).

The language of the right of first refusal in paragraph 19 is lacking in any number of specific and critical areas. This includes terms and conditions of purchase by Crescent, the time allowed for exercise of the Right of the First Refusal by Crescent, the procedures for exercising the right, the purchase price of the lots, how long the right exists,³ among other things. Under the broad and open-ended language of paragraph 19, without a judicial resolution, Crescent would effectively be able to indefinitely have rights relative to CJN’s ability to transfer, sell or otherwise develop lots in the Future Phase. Further, paragraph 19 also relates to the present ability of CJN to sell the Future Phase tract as a whole or being limited to develop and sell the tract as lots only. Finally, even if CJN developed such lots, Crescent has no obligation to purchase them under the language of paragraph 19. As a result, paragraph 19 creates an unreasonable restraint of alienation of interest in land.

In addition to these shortcomings, the parties specifically agreed to incorporate and agree upon all such critical terms and set forth the same in a memorandum of right of first refusal, with the memorandum to be “recorded in the public records of Greenville County at the Initial Closing.” This Initial Closing occurred in August of 2020, and while there were discussions between the parties about the terms and conditions of the memorandum, the parties have never been able to agree on terms and no memorandum was entered into and obviously no memorandum has been recorded.

It is well established that where an agreement is clear and capable of interpretation, the Court's function is to interpret its meaning and enforce the same. Ecclesiastes Prod. Ministries v. Outparcel Assocs., LLC 649 S.E.2d 494 (SC App 2007). However, based upon the language used in paragraph 19, the Court is unable to interpret and/or give meaning to the parties' agreement without substantially and significantly creating terms and conditions that the parties themselves could have and should have included. While there is authority for a court to determine the parties' intent from the scope and language used (*see, Barnacle Broadcasting, Inc. v. Baker Broadcasting, Inc.*, 538 S.E.2d 672 (SC App 2000)), the Court is unable to do so under the facts herein based upon the language of paragraph 19. Further, in that a right of first refusal is a restraint on alienation, it is to be narrowly construed.

The Court simply concludes that under the language and facts involved herein, the right of first refusal in paragraph 19 is not enforceable. The Court notes that its ruling in no way limits the parties' ability to ultimately reach a deal; both are still free to negotiate upon any terms and conditions that may be mutually agreeable.

The remaining issues between the parties shall move to trial as soon as possible.

AND IT IS SO ORDERED

[COURT'S SIGNATURE PAGE TO FOLLOW]

¹ In Paragraph 51 of its Amended Complaint, CJN asserted the following theories, which the Court lists herein solely for purposes of background relating to the procedural history:

- a. The ROFR does not apply to a sale of the undeveloped CJN Property by CJN, and CJN was and is free to sell the undeveloped CJN Property free and clear of any claim under the ROFR;
- b. Additionally or alternatively, the ROFR violates the rule against perpetuities and is therefore void because it is an interest that might not vest either within a life in being at the time of the creation of the interest or until later than 21 years thereafter;
- c. Additionally or alternatively, the ROFR is void as an unreasonable restraint on alienation because it lacks specificity as to duration of the right, the property subject to the right, the

-
- purchase price, and the procedures for exercising the right, among other things;
- d. Because the ROFR was void and/or did not apply to the CJN Property, any rights Crescent had to purchase the CJN Property arose from and were limited by the terms of CJN's tender of the Clark Offer on June 26, 2020, not the invalid ROFR itself, and all such rights were terminated and extinguished by Crescent's failure to make an equal or better offer for purchase on or before the July 15 closing deadline in the Clark Offer.
 - e. The Opus Offer was a bonified offer
 - f. Because the ROFR was void and/or did not apply to the CJN Property, any rights Crescent had to purchase the CJN Property arose from and were limited by the terms of CJN's tender of the Opus Offer on May 18, 2021, not the invalid ROFR itself, and all such rights were terminated and extinguished by Crescent's failure to make an equal or better offer for purchase on or before the June 7, 2021 tender response deadline.
 - g. Assuming the ROFR was valid and applied to the CJN Property, which are specifically denied, Crescent was given any and all rights it had under the ROFR when CJN tendered the Clark Offer on June 26, 2020, and all such rights were terminated and extinguished by Crescent's failure to make an equal or better offer for purchase on or before the July 15 closing deadline in the Clark Offer. CJN's tender of the Clark Offer on June 26, 2020 was valid despite being prior to Initial Closing because (1) the Initial Closing would have occurred prior to June 26, 2020 but for delays by Crescent (2) the timing of the tender was not prejudicial to Crescent and (3) Crescent asserted its rights to the CJN Property were ripe by filing *Lis Pendens* 1 prior to the Initial Closing, among other things, and Crescent should therefore be estopped from asserting those rights did not arise until after the Initial Closing.
 - h. Assuming the ROFR was valid and applied to the CJN Property, which are specifically denied, Crescent was given any and all rights it had under the ROFR when CJN tendered the Opus Offer on May 18, 2021, and all such rights were terminated and extinguished by Crescent's failure to make an equal or better offer for purchase on or before the June 7, 2021 tender response deadline.

² CJN contends that any rights Crescent had under the right of first refusal (assuming it was enforceable) were terminated and extinguished by Crescent's failure to make an equal or better offer for purchase and that Crescent improperly prevented these sales. Crescent contends this is not the case with respect to the Clark offer because the Initial Closing had not yet occurred at the time of that offer, and is not the case with respect to the Opus offer because Crescent disputes that the Opus offer was a bona fide offer.

³ With respect to indefinite existence of the Right of the First Refusal, the parties presented extensive arguments regarding applicability of the rule against perpetuities in memoranda submitted in connection with CJN's Motion for Partial Summary Judgment filed on March 19, 2021. The Court has found that the right of first refusal is an unreasonable restraint on alienation applying the indefinite existence of the right as one of many factors. Accordingly, the Court need not address whether or not the right of first refusal is separately unenforceable as in violation of the rule against perpetuities.



Greenville Common Pleas

Case Caption: Crescent Homes SC LLC vs. C J N Llc

Case Number: 2019CP2305954

Type: Master/Order/Other

And It Is So Ordered!

s/ Judge Charles B. Simmons, Jr. (3023)

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STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE) IN THE COURT OF COMMON PLEAS
C.A. No. 2019-CP-23-05954

Crescent Homes SC, LLC,)
))
Plaintiff,)
))
vs.)
))
CJN, LLC,)
))
Defendant(s).)
_____)

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE) IN THE COURT OF COMMON PLEAS
C.A. NO. 2020-CP-23-04351

CJN, LLC,)
))
Plaintiff,)
))
vs.)
))
Crescent Homes SC, LLC,)
))
Defendant.)
_____)

ORDER

The matter is before the Court pursuant to Crescent Homes SC, LLC's motion to alter or amend filed June 6, 2022.

The motion substantively sets forth Crescent Homes' arguments relative to the Order filed May 27, 2022.

The Court finds that the Order filed May 27, 2022 sufficiently and correctly addresses all issues raised in the motion to alter or amend. Accordingly, the same is denied.

And It Is So Ordered.

JUDGE'S SIGNATURE PAGE TO FOLLOW



Greenville Common Pleas

Case Caption: Crescent Homes SC LLC vs. C J N Llc

Case Number: 2019CP2305954

Type: Master/Order/Other

And It Is So Ordered!

s/ Judge Charles B. Simmons, Jr. (3023)

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
CRESCENT HOMES SC, LLC,	)	
	)	Case No.: 2019-CP-23-____
Plaintiff,	)	
	)	
vs.	)	SUMMONS
	)	
C J N, LLC,	)	
	)	
Defendant.	)	
	)	

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to this Complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to appear and defend this action by answering the Complaint, judgment by default will be rendered against you for the relief demanded in the Complaint.

Respectfully submitted,

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October 11, 2019
 Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
CRESCENT HOMES SC, LLC,	)	
	)	Case No.: 2019-CP-23-_____
Plaintiff,	)	
	)	
vs.	)	COMPLAINT
	)	
C J N, LLC,	)	
	)	
Defendant.	)	
	)	

COMES NOW Plaintiff Crescent Homes SC, LLC, and states its complaint against Defendant C J N, LLC, as follows:

PARTIES, JURISDICTION AND VENUE

1. This Complaint is an action for specific performance of a contract to purchase real property located in Greenville County, South Carolina, brought on behalf of Plaintiff Crescent Homes SC, LLC, the purchaser under the contract, and for declaratory judgment.

2. Plaintiff Crescent Homes SC, LLC ("Plaintiff"), a Delaware limited liability company, is the owner of real property located in Greenville County, South Carolina.

3. Defendant C J N, LLC ("Defendant") is a limited liability company organized and existing under the laws of the State of South Carolina and is the owner of real property located in Greenville County, South Carolina.

4. This Court has personal jurisdiction over the parties hereto and has subject matter jurisdiction over this action, as the real property at issue is located in Greenville County, South Carolina. Additionally, within their contract, the parties stipulated that any action for "enforcement of this Agreement shall be brought in the State of South Carolina." For these

reasons, both jurisdiction and venue are proper in this forum.

5. On October 8, 2018, Plaintiff and Defendant entered into an Agreement for Purchase and Sale of Developed Lots ("Agreement") for 32 single family located on Standing Springs Road, Greenville County, South Carolina, and designated Lots 1 – 32 located within the subdivision known as River Springs Subdivision (collectively, the "Lots"). A copy of the Agreement is attached as Exhibit A.

6. The un-subdivided Lots are identified with TMS No. 0584010102601 in the Greenville County, South Carolina tax records.

7. Pursuant to the Agreement and the Lot Pricing and Takedown Schedule (attached to the Agreement as Exhibit B), the Closing of at least ten (10) Lots (the "Initial Closing") shall be held on or before fifteen (15) days after the recording of the Subdivision Plat and each Closing after the Initial Closing (a "Subsequent Closing") shall be conducted in accordance with the Agreement and Takedown Schedule. *See Agreement*, ¶ 6.

8. Plaintiff and Defendant agreed that "[t]ime is of the essence with respect to this Agreement." *See Agreement*, ¶ 21(L).

9. As indicated in Section 10, entitled "Seller Representations and Warranties Regarding the Lots," Defendant covenants, represents and warrants to Plaintiff the following with respect to the Applicable Lots at each Closing: that "[c]onstruction access will be available to the Lots;" that "[e]ach Lot will be free of trash and debris." *See Agreement*, ¶ 10.

10. The Agreement states that "[t]his Agreement shall not be modified or amended except by an instrument in writing executed by or on behalf of the Parties." *See Agreement*, ¶ 21(V). Thereafter, on November 23, 2018, the parties entered into a First Amendment to the Agreement for Purchase and Sale ("First Amendment"), which amended the Agreement in

certain respects as specified therein. A copy of the First Amendment, which indicates the manner in which the parties would go about a modification of the terms of the Agreement, is attached as Exhibit B.

11. Section 18 of the Agreement, entitled "Lot Grading and Preparation Cost," as amended by the First Amendment, provides as follows:

18. Lot Grading and Preparation Cost. Purchaser will receive a credit against the Purchase Price for each Lot as shown on Exhibit B in the amount of Two Thousand and No/100 Dollars (\$2,000.00) at Closing (the "Lot Prep Credit") as compensation for certain cost incurred or to be incurred by Seller in connection with the development of the Lots."

12. Following the ratification of the Agreement, Plaintiff has pursued due diligence, but there are numerous deficiencies that must be addressed by Defendant before the parties can proceed to Closing.

13. On August 30, 2019, Engineering and Surveying Professionals ("EAS") conducted a site visit of the Lots and provided a summary of field observations. A copy of the Site Observations is attached as Exhibit C.

14. EAS observed seven (7) soil stockpiles within the Lots. The observed stockpiles contained small rocks and large boulders (12 inches and greater) and/or organic debris (mulch, roots, etc.).

15. Based on the observations at the August 30, 2019 site visit, EAS concluded that "these stockpiled soils are unusable as structure fill in their current condition." *See Site Observation*, p. 1.

16. In September 2019, Defendant indicated that Plaintiff needed to close on the Lots or walk away from the Agreement. However, Plaintiff was not obligated to close on the developed lots until Defendant is ready, willing and able to convey developed Lots that comply

with the relevant terms of the Agreement, as amended. Plaintiff presented a detailed notice of Defendant's breaches and defaults under the Agreement through a letter to Defendant dated September 5, 2019. A copy of the letter is attached as Exhibit D.

17. Specifically, Plaintiff responded that Plaintiff was prepared to move forward with closing on the Lots provided that Defendant resolved the seventeen (17) deficiencies and defaults that presently exist. One of most significant deficiencies involves the abandonment of numerous tons of dirt, rocks, and debris on the property, which violates the condition that the lots be developed lots and that "[e]ach Lot will be free of trash and debris."

18. Defendant then notified Plaintiff that, some months earlier, one of Plaintiff's employees (who lacked any authority to amend the Agreement) had purportedly given Defendant permission to abandon the rocks, dirt, and debris, even though Defendant remained obligated under the Agreement to deliver what was promised in the Agreement, i.e., developed lots that are free of trash and debris.

19. No additional amendment to the Agreement was ever prepared or signed, even though the parties had entered a formal amendment when they had previously intended to amend the Agreement. No consideration was provided and no language from the Agreement was stricken. Although the Agreement and the First Amendment were signed by Edward M. Terry, as President of Plaintiff, the walk-through document was not presented or signed by Mr. Terry. Furthermore, the employee whose signature appears on the walkthrough document never obtained any form of permission from Plaintiff to sign any amendment to the Agreement.

20. Even after learning that Plaintiff's employee lacked the necessary authority relating to the debris, Defendant refused to remove the debris from the Lots.

21. Furthermore, Defendant failed to provide notice that the terms of the Agreement

had been modified or amended to reflect any agreement that the dirt and rock would remain on the Lots in violation of the Notice provision, which provides that all notices, demands, consents, approvals, and other communications that are required or desired to be given by either Party to the other must be in writing and delivered in accordance with Section 14 of the Agreement. *See Agreement*, ¶ 14.

22. Although Plaintiff provided written notice to Defendant of the seventeen (17) items that constitute breaches of the representations and warranties set forth in Paragraph 10 of the Agreement, Defendant has failed and refused to cure all of the breaches and is in default of the Agreement.

23. As a result of Defendant's default under the terms of the Agreement, Plaintiff is entitled to seek specific performance of the Agreement, as well as any other remedies available at law or in equity. *See Agreement*, ¶ 13(B).

24. The Agreement also provides that Plaintiff is entitled to proceed with the purchase of the Lots and deduct the cost to cure from the Purchase Price as an alternative remedy.

25. Therefore, Plaintiff is entitled to seek specific performance or, as an alternative remedy, to seek an award of damages resulting from Defendant's conduct in breach of the Agreement.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract – Specific Performance)

26. Plaintiff restates and re-alleges each and every allegation above as if fully set forth herein.

27. Plaintiff and Defendant entered into the valid and enforceable Agreement.

28. Because of the unique nature of real property, Plaintiff cannot be fully compensated monetarily for the damage that has been and will be caused by Defendant's refusal

to proceed with the closing of the property.

29. Plaintiff has performed all conditions, covenants, and promises required on the part of Plaintiff to be performed in accordance with the terms and conditions of the Agreement.

30. The Agreement specifically provides that Plaintiff has the right to seek specific performance, which in this case would obligate Defendant to perform all obligations under the Agreement, including resolving all seventeen (17) deficiencies and defaults, so that Plaintiff could elect to proceed in accordance with the terms of the Agreement.

31. Plaintiff remains ready, willing, and able to perform its remaining obligations pursuant to the terms of the Agreement and has not breached the terms of the Agreement.

32. Accordingly, Plaintiff is entitled to an order of specific performance compelling Defendant to cure the deficiencies and defaults and to perform Defendant's duties under the Agreement.

FOR A SECOND CAUSE OF ACTION
(Declaratory Judgment)

33. Plaintiff restates and re-alleges each and every allegation above as if fully set forth herein.

34. Plaintiff is entitled to a declaration from this Court pursuant to the Uniform Declaratory Judgment Act, S.C. Code Ann. §15-53-10, *et seq.*, which provides in relevant part that "courts of record within their respective jurisdiction shall have the power to declare rights, status and other legal relations whether or not further relief is or could be claimed."

35. Plaintiff and Defendant are interested parties who have a genuine, substantial, and justiciable controversy that exists between them. All necessary parties are joined to this action.

36. Plaintiff is entitled to a declaration that the walk through notice is not an effective amendment to the Agreement.

37. The Agreement provides that the "Agreement shall not be modified or amended except by an instrument in writing executed by or on behalf of the Parties." *See Agreement*, ¶ 21(V).

38. The signature of Plaintiff's employee on the Post-Grading Walkthrough notice, which makes no reference to the Agreement, does not constitute an instrument executed on behalf of Plaintiff as required by the terms of the Agreement.

39. Plaintiff's employee lacked authority to bind Plaintiff to any such agreement, which purports to contradict the terms and conditions of the valid Agreement, as well as the fundamental purpose of the Agreement, which is the delivery of buildable, developed lots. The Post-Grading Walkthrough Notice was not based upon consideration and does not constitute a binding amendment under applicable law.

40. Accordingly, Plaintiff respectfully submits that the Court should enter a declaratory judgment that the walkthrough notice is not an effective modification or amendment to the Agreement, and that the Agreement remains as written, subject only to the separate First Amendment attached as Exhibit B, which both parties consider to be valid.

FOR A THIRD CAUSE OF ACTION (IN THE ALTERNATIVE)
(Breach of Contract/Breach of the Covenant of Good Faith and Fair Dealing)

41. Plaintiff restates and re-alleges each and every allegation above as if fully set forth herein.

42. Plaintiff and Defendant entered into a valid and enforceable contract for the development of the Lots in which the parties agreed that that "[t]ime is of the essence with respect to this Agreement." *See Agreement*, ¶ 21(L).

43. As confirmed by the summary of field observations made by EAS, the stockpiles on the Lots are unusable as structural fill in their current condition. Furthermore, there are sixteen

(16) other deficiencies and breaches that Defendant refuses to correct suggesting that Defendant's conduct is intentional and in bad faith.

44. As a result of Defendant's breaches of contract, Plaintiff is unable to purchase the developed Lots.

45. If the conditions are not satisfied at the time of Closing, Plaintiff cannot move forward with the purchase of the Lots in accordance with the terms and conditions of the Agreement.

46. If Defendant fails to cure the defaults at the time of Closing and the purchase and sale falls through, Plaintiff will suffer damages for the inability to purchase the developed Lots, including, but not limited to, actual, consequential and lost profit damages as a result of Defendant's failure to perform the terms of the Agreement.

47. Furthermore, in light of the stipulated language of the Agreement, Defendant's conduct is also a breach of the covenant of good faith and fair dealing inherent in all contracts, and specifically referenced in Section 21(E) of the Agreement.

48. As a direct and proximate cause of Defendant's conduct, Plaintiff has suffered and continues to suffer actual and consequential damages as a result of the delay in the Closing of the underlying transaction in an amount to be determined at trial.

WHEREFORE, on the basis of these claims against Defendant C J N, LLC, Plaintiff Crescent Homes SC, LLC, respectfully requests that the Court enter judgment in favor of Plaintiff and granting specific performance of the Agreement and ordering Defendant to honor and adhere to all relevant terms and conditions of the Agreement, including the removal of the rocks, dirt, and debris from the Lots, or in the alternative, an award of actual and consequential damages, along with such other and further relief as the Court deems just and proper.

Respectfully submitted,

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Attorneys for Plaintiff

October 11, 2019
Charleston, South Carolina

EXECUTION VERSION

**AGREEMENT FOR PURCHASE AND SALE
OF DEVELOPED LOTS**

(32 Single Family Lots/Multiple Closings)

THIS AGREEMENT FOR PURCHASE AND SALE OF DEVELOPED LOTS (this "Agreement") is made and entered into by and between **CRESCENT HOMES SC, LLC**, a Delaware series limited liability company ("Purchaser"), and **C J N, LLC**, a South Carolina limited liability company ("Seller"). The last date on which this Agreement is signed by either Purchaser or Seller (each, a "Party" and, collectively, the "Parties") and an executed copy thereof is delivered to the other will be the "Effective Date" of this Agreement.

1. Conveyance: In consideration of the mutual promises and agreements of the Parties and the sum of Sixteen Thousand and No/100 Dollars (\$16,000.00) as earnest money (the "Earnest Money") to be paid by Purchaser to Harvey & Vallini, LLC ("Escrow Agent"), Purchaser hereby agrees to purchase from Seller, and Seller hereby agrees to sell and convey to Purchaser, developed residential lots in that certain subdivision known as River Springs Subdivision (the "Subdivision"), being more particularly described as those certain parcels of land, including any improvements, fixtures, rights, privileges, easements, hereditaments and appurtenances thereto (collectively, the "Real Property"; sometimes referred to as the "Property"), situate, lying and being on Standing Springs Road, Greenville County, South Carolina, being shown and designated as Lots 1 - 32 (32 Lots total; each individually a "Lot", and collectively, the "Lots") shown on the Stakeout Plan prepared by Gray Engineering Consultants dated December 5, 2017 (the "Proposed Subdivision Plat"), a reduced copy of which is attached hereto as Exhibit "A-1" and incorporated herein.
2. Purchase Price and Earnest Money: The Purchase Price shall be paid as follows:
 - A. Price Schedule. The purchase price for each Lot (a "Lot Purchase Price" or "Purchase Price") is set forth on the Lot Pricing and Takedown Schedule attached hereto as Exhibit "B" and incorporated herein (the "Takedown Schedule").
 - B. Earnest Money. The Earnest Money will be deposited with Escrow Agent within five (5) business days after the Effective Date and held in a non-interest-bearing escrow account to be credited equally pro rata in the amount of Five Hundred and No/100 Dollars (\$500.00) per Lot. If the Earnest Money is forfeited by Purchaser pursuant to this Agreement, then the Escrow Agent shall pay the Earnest Money to Seller. If Purchaser terminates this Agreement prior to the expiration of the Due Diligence Period, as defined in subparagraph 4.B. below, or as may otherwise be expressly permitted herein, then the Escrow Agent shall return the Earnest Money to Purchaser.

**DISCLOSURE: PRINCIPALS OF PURCHASER AND SELLER ARE
LICENSED REAL ESTATE BROKERS.**

3. Subdivision and Lot Selection

- A. Subdivision. As of the Effective Date, the Lots have not been subdivided and are a portion of that certain tax parcel with TMS No. 0584010102601 in the Greenville County, South Carolina tax records (the "Parent Parcel"). Seller has caused to be prepared the Proposed Subdivision Plat reconfiguring the existing tax parcel into thirty-two (32) lots with associated common areas as more particularly shown thereon. Seller will not revise or amend the Proposed Subdivision Plat without the prior written consent of Purchaser, which consent will not be unreasonably withheld. Seller will provide a copy of any comments to or required revisions to the Proposed Subdivision Plat received from Greenville County and/or the applicable Planning Commission as soon as reasonably practicable after receipt thereof. If the comments and required revisions to the Proposed Subdivision Plat are, in the discretion of Purchaser, material, then Purchaser may terminate this Agreement by notice delivered to Seller, in which event the Earnest Money shall be returned to Purchaser and this Agreement shall terminate. The Proposed Subdivision Plat, as approved by Greenville County and recorded in the Register of Deeds, is referred to herein as the "Subdivision Plat".
- B. Lot Selection: Development of the Lots is subject to the Lot Disturbance Schedule attached hereto as Exhibit "C" and incorporated herein (the "Lot Disturbance Schedule"). Subject to the Takedown Schedule, Purchaser shall, in its sole discretion, select the Lots (the "Applicable Lots") for each Closing, as defined in Paragraph 6 below, by delivering written notice thereof to Seller at least ten (10) days prior to a Closing. Subject to the Lot Disturbance Schedule, Purchaser may from time to time elect to close more Lots than required by the Takedown Schedule for the applicable Closing. If Purchaser closes more Lots than required by the minimum shown on the Takedown Schedule, then the number of excess Lots closed shall be carried forward as a cumulative credit toward the next succeeding Required Minimum Lot Takedown or Takedowns.
- C. Optional Lot Removal. Purchaser may, in its discretion from time to time, remove any Lot from this Agreement: (i) in accordance with the provisions of Paragraph 4.F below; and/or (ii) with respect to Lots 15 through 18 on the Takedown Schedule, if Purchaser determines that such Lot or Lots are not suitable for its development. If Purchaser elects to remove a Lot or Lots from this Agreement, then Purchaser may provide written notice thereof to Seller and Escrow Agent, in which event such Lot shall be removed from this Agreement, and Escrow Agent will return Five Hundred Dollars (\$500.00) of the Earnest Money for each Lot to Purchaser. If a Lot or Lots are so removed from this Agreement, then the number of Lots referenced in Paragraph 9.U below will be deemed amended to reflect the total number of Lots subject to this Agreement.

4. Due Diligence, Access, and Materials:

- A. Due Diligence Materials. Within two (2) business days after the Effective Date, Seller shall deliver to Purchaser copies of all due diligence materials pertaining to all or any portion of the Property in its possession or control, including title commitments, policies, abstracts and opinions together with copies of all title exceptions and materials, including existing and proposed declarations,

covenants, conditions and restrictions and other similar instruments; drawings, plans, as-built plans and specifications, including civil plans and specifications for utilities, grading, drainage, lift stations and pumps, roads and other facilities serving all or any portion of the Property; boundary, topographical, tree and wetland surveys and subdivision plats (including any draft or preliminary plats); environmental assessments, geotechnical studies and cultural resource or threatened and endangered species assessments; zoning certificates, letters, minutes and related materials; site plan and subdivision approvals; annexation agreements; NPDES and other soil and erosion control permits and land disturbance permits; Department of the Army COE wetlands or other certifications or permits together with all materials and information related to or submitted for a jurisdictional determination letter; deposits; general intangibles; contracts and contract rights; guarantees and warranties; marketing and advertising materials, logos, trade names and related registrations; development agreements; development bonds (including maintenance and performance bonds); certificates as to electrical work, building, safety and health approvals; impact and tap fee credits; and all other licenses, certificates, permits, applications, approvals, development rights and entitlements; (collectively, the "Due Diligence Materials"). The "Due Diligence Delivery Date" is the later of: (i) the Effective Date, or (ii) the date on which Seller confirms delivery to Purchaser of all the Due Diligence Materials in its possession or control. Seller shall promptly provide Purchaser with (i) any document described above and coming into Seller's possession or produced by or for Seller after the initial delivery of the Due Diligence Materials, and (ii) upon request, information regarding the general and/or site work contractor performing development work in the Subdivision and regarding the scope of work performed or to be performed by such general and/or site work contractor.

- B. Due Diligence Period. Purchaser shall have forty-five (45) days after the Due Diligence Delivery Date, (the "Due Diligence Period"), in which to inspect the Property, including title, soil testing, surveys, feasibility studies, environmental studies and any other inspections, tests or studies that Purchaser may require. The results of such inspections shall be treated as confidential by Purchaser and not be disclosed to any third party or governmental entity except as may be necessary to obtain permits and approvals in the normal course of Purchaser's business or as may be required by law (provided, however, that such results may be disclosed to Purchaser's consultants, attorneys and lenders, who shall similarly treat such results as confidential). If Purchaser is not satisfied with its inspections of the Property for any reason or no reason, in Purchaser's sole discretion, then Purchaser may terminate this Agreement by notice delivered to Seller on or before the expiration of the Due Diligence Period, in which event the Earnest Money shall be returned to Purchaser and this Agreement shall terminate. If actions or inactions of Seller prevent Purchaser's access to property to complete surveys or other due diligence activities, the Due Diligence Period shall be extended on a day-to-day basis until such access is available to Purchaser without interference.
- C. Intentionally Omitted.
- D. Access. During the term of this Agreement, Purchaser, its agents, contractors and representatives shall, from time to time, have the right to enter upon the

Property to perform inspections and testing, provided Purchaser shall indemnify, defend and hold Seller harmless from and against any damages, liability, cost or expense, including attorney's fees incurred by Seller resulting from Purchaser's activities on the Property. This Indemnity shall survive the Closings or the termination of this Agreement.

- E. Conveyance of Personal Property. Upon request of Purchaser in connection with the Initial Closing and at any time thereafter, Seller shall convey to Purchaser its right, title and interest in and to all or any portion of the Due Diligence Materials pertaining to the Property at one or more Closings. Seller shall use its best efforts, without additional consideration (provided that Purchaser shall pay out-of-pocket costs, if any), to obtain written consents and approvals as necessary or desirable from design and engineering professionals and governmental authorities in connection with the assignment of Due Diligence Materials to Purchaser.
- F. Septic Permits. Seller will cause a septic field perc test and treatment system feasibility study to be performed for each Lot as necessary and will obtain SCDHEC septic permits for the installation of an Easy Flow Gravity Conventional System for a not less than 4-bedroom home on each Lot in a location on each Lot approved by Purchaser (each, a "Septic Permit" and collectively, the "Septic Permits"). Seller will deliver copies of such test results and other materials pertaining to the Septic Permits and the corresponding plans for system improvements as may be requested by Purchaser promptly after such materials are available. Seller will make application for the Septic Permits as soon as reasonably practicable after the Effective Date and shall deliver a copy of each Septic Permit to Purchaser upon issuance thereof.

5. Title:

- A. Seller Warranties. Seller represents and warrants to Purchaser that Seller has "good and marketable, fee simple title" to the Real Property, and that at each Closing, Seller shall convey "good and marketable, fee simple title" to the Applicable Lots to Purchaser, subject only to the following exceptions (the "Permitted Exceptions"):

- (1) The lien for ad valorem taxes which are not yet due and payable;
- (2) Easements shown on the Subdivision Plat;
- (3) The Declaration, as defined in Paragraph 15 below; and
- (4) General service lines and utility easements that serve only the Real Property.

"Good and marketable, fee simple title" shall be such title as is acceptable to and insurable by a nationally recognized title insurance company, chosen by Purchaser at standard rates on the American Land Title Association Owner's Policy 2006 Form, free and clear of all exceptions except the Permitted Exceptions (the "Title Policy").

EMT

3

- B. Title Defects. If Purchaser's examination of the title and a survey of the Real Property reveals matters other than the Permitted Exceptions (the "Title Defects") and notice of the Title Defects is given to Seller prior to the expiration of the Due Diligence Period, then Seller shall promptly cure the Title Defects, provided that if Seller does not promptly demonstrate to Purchaser's reasonable satisfaction that Seller will cure such Title Defects prior to Closing, then Purchaser may elect by written notice to Seller to extend the Due Diligence Period, or, if applicable, the Closing, until such time as such Title Defects are so cured. Notwithstanding the foregoing, Purchaser shall not be required to object to mortgages, deeds of trust and other liens and encumbrances, including judgment liens, affecting all of any portion of the Property that can be cured or removed with the payment of money (collectively "Monetary Encumbrances"), all of which shall be removed by Seller not later than the applicable Closing. Purchaser shall be entitled to cure Monetary Encumbrances at the applicable Closing with the proceeds payable to Seller at one or more Closings. Purchaser shall be entitled to examine title to the Real Property prior to each Closing and to object to all matters appearing of record or otherwise affecting the Real Property between the date on which Purchaser made its title examination pursuant hereto and the date of each Closing.
- C. Seller Easements. During the term of this Agreement, Seller will not grant any easements, permits, licenses, declarations, covenants or restrictions, or amend, revise or re-file the Subdivision Plat without the prior written approval of Purchaser which shall not be unreasonably withheld.
- D. Property Owners Assessments. Seller represents and warrants that no property owner or home owner assessments or capital contributions will accrue or be payable with respect to any Lot purchased by Purchaser until such time as the Lot is developed and sold to a bona fide third party.
6. Closings: Each Closing shall be consummated by Seller's delivery to Purchaser of a properly executed special warranty deed conveying the Applicable Lots to Purchaser upon receipt by Seller of the Lot Purchase Price for each Applicable Lot, subject to the contingencies set forth herein, at a location selected by Purchaser or by mail through Purchaser's title company, at a specific time and date selected by Purchaser. Seller shall deliver possession of the Applicable Lots to Purchaser at each Closing. Purchaser shall give Seller notice of the date of each Closing together with a list of Applicable Lots at least ten (10) days prior to the selected time and date. The date of such Closings shall be determined as follows:
- A. Initial Closing. Closing of at least ten (10) Lots (the "Initial Closing") shall be held on or before fifteen (15) days after the recording of the Subdivision Plat.
- B. Subsequent Closings. Each Closing after the Initial Closing (a "Subsequent Closing"; the Initial Closing and each Subsequent Closing are referred to singularly as a "Closing" and collectively as the "Closings") shall be conducted in accordance with the provisions of Paragraph 3 above and the Takedown Schedule.
- C. Taxes/Prorations. At each Closing, taxes applicable to any personal property and to the Applicable Lots for the current year shall be prorated between the

EMT 3

Parties as of the date of the applicable Closing. Seller shall be responsible for all assessments placed against the Property prior to the applicable Closing, irrespective of when payable. If the current year taxes for the Applicable Lots have not been determined by the date of the applicable Closing or the Applicable Lots are a portion of a larger tract, then the proration shall be based on the taxes for the previous year or such other information as may be reasonably available. If the current year taxes cannot be paid at the applicable Closing, then Seller's portion shall be credited to Purchaser, provided further if the Real Property is assessed as a part of a larger tract, Seller and Purchaser shall each deposit a sum sufficient to pay an estimate of its proportionate share of the entire tax bill with Escrow Agent. The Parties agree to adjust between themselves any difference in the estimated and actual prorations within thirty (30) days after the actual tax statements for the Applicable Lots are available. Any roll back taxes and special assessments shall be paid by Seller. If there are any potential roll back taxes that are not due and payable at the applicable Closing, Escrow Agent shall hold in escrow sufficient amounts of Seller's proceeds to pay the roll back taxes when the tax bills are issued.

- D. Closing Costs. Seller shall pay for preparation and recording of the Subdivision Plat, the Declaration, the special warranty deeds and any instruments necessary to cure Title Defects, all transfer taxes, deed stamps or documentary stamps and all other costs normally paid by a seller of real estate. Purchaser shall pay for the cost of its inspection and such other costs normally paid by a purchaser of real estate. Each Party shall be responsible for its own attorney's fees.

7. Closing Deliveries:

- A. Seller Documents. At each Closing, Seller shall execute and deliver the following documents to Purchaser, in addition to any other documents required herein:
- (1) Special warranty deed conveying the Applicable Lots subject only to the Permitted Exceptions;
 - (2) Lien and possession affidavit sufficient to induce the title company to issue the Title Policy without standard exceptions;
 - (3) Information required to complete a Substitute Form 1099;
 - (4) Certificate of non-foreign status in accordance with Section 1445 of the Internal Revenue Code of 1986, as amended;
 - (5) South Carolina tax compliance letter or transferor affidavit;
 - (6) Instruments necessary to cure Title Defects, if applicable;
 - (7) Settlement statement which will be prepared by Purchaser's attorney;
 - (8) Bill of sale, transfer and assignment of the Due Diligence Materials, as applicable, in accordance with subparagraph 4.E.;

- (9) Satisfactory evidence of Seller's due and proper authority and power to perform its obligations hereunder and to execute and deliver all documents required hereby;
- (10) Certification to Purchaser confirming that the warranties and representations contained in this Agreement are true and correct on the date of each Closing;
- (11) Such easements and rights-of-way over any adjoining land of Seller as may be required to construct single family residences on the Real Property; and
- (12) Such other documents as may be reasonably requested by Purchaser.

B. Purchaser Documents. Purchaser shall execute and deliver to Seller a counterpart of the settlement statement. Purchaser shall also provide satisfactory evidence of Purchaser's due and proper authority, power to perform its obligations hereunder, and power to execute and deliver all documents required hereby, together with such other documents as may be reasonably requested by Seller.

8. Casualty and Condemnation:

- A. Seller shall bear all risk of casualty to the Property and Seller's property located thereon until Closing and transfer of possession to Purchaser.
- B. Subject to the representation in subparagraph 9.C. below, Seller agrees to give Purchaser prompt written notice if it becomes aware of any action or proceeding for condemnation of any part of the Property by friendly acquisition or statutory proceeding that may result in the temporary or permanent taking of all or any part of the Property. Purchaser shall have the right, to be exercised within thirty (30) days after receipt of such notice setting forth the extent of the condemnation and the final offer of compensation therefor, to terminate this Agreement and receive a refund of the Earnest Money, and no Party shall have any further rights or obligations hereunder except for covenants, representations, warranties and indemnities stated herein to survive the termination of this Agreement. If Purchaser does not elect to terminate this Agreement, then Seller will credit Purchaser as applicable at Closing with any monies received by Seller by reason of such taking or Seller will assign to Purchaser at Closing all of Seller's interest in and to any unpaid condemnation award or offers payable to Seller relating to the Property. In the event that such notice of condemnation shall occur within thirty (30) days prior to Closing, Purchaser shall have the right to extend Closing so the same will occur no later than thirty (30) days after Purchaser's receipt of Seller's notice required pursuant to this subparagraph 8.B.

9. Seller's General Representations and Warranties: Seller covenants, represents and warrants to Purchaser the following:

- A. Seller has the authority and power to enter into this Agreement and to consummate the transaction provided for herein without the approval or consent

of any other party. The signatories to this Agreement for Seller are duly authorized to bind Seller.

- B. Entering Into this Agreement will not constitute or result in a violation or breach by Seller of any judgment, order, writ, injunction or decree issued against or imposed upon it nor result in a violation of any applicable law, order, rule or regulation of any governmental authority. There is no action, suit, proceeding or investigation pending in any court or before, or by, any federal, district, county or municipal department, commission, board, bureau, agency or other governmental authority, which could become a cloud on the title to the Property or any portion thereof or which could threaten the validity or enforceability of the transaction contemplated by this Agreement or any actions taken pursuant hereto.
- C. As of the Effective Date, no portion of the Property is subject to temporary requisition or use by any governmental authority or has been condemned or taken in any proceeding similar to a condemnation proceeding, nor is there now pending any condemnation, requisition or similar proceeding affecting the Property or any portion thereof. Seller has neither received notice nor has any knowledge that any such proceeding is contemplated.
- D. Seller neither not received any notice from any federal, state or municipal authority nor does Seller otherwise have any knowledge of any violation of any law, ordinance or regulation, including zoning ordinances, development, permit or subdivision requirements, or any other legal requirements with respect to the Property. Seller will promptly notify Purchaser if it receives any such notice or otherwise becomes aware of any actual or potential violation.
- E. Seller neither has knowledge of nor has Seller received notice of any default or breach under any covenant, condition, restriction, right-of-way or easement affecting the Property or any portion thereof and no such default or breach now exists.
- F. No special assessments have been levied, are threatened against, or are pending against all or any portion of the Property, and Seller has no knowledge of any intended assessments.
- G. No bankruptcy, insolvency, rearrangement or similar action or proceeding involving the Property or Seller is pending, threatened or contemplated by Seller.
- H. There are no leasehold or occupancy agreements encumbering the Property, no party has any possessory interest to or right in the Property, and no party has any right of first refusal, right of first offer or other contractual right to purchase or possess all or any portion of the Property.
- I. Seller will not sell, assign, convey or encumber any right, title or interest in or to the Property or any portion thereof, other than as provided in subparagraph 21.B. below. Seller will not create or permit any lien, encumbrance or charge thereon without promptly discharging the same.

EMT 3

- J. Seller will not take any action or omit to take any action, which action or omission would have the effect of violating or causing to be untrue any of the representations, warranties, covenants and agreements contained herein.
- K. Seller is not aware of any moratorium on the issuance of building permits or installation or activation of utilities or the approval of preliminary or final subdivision plats. If Seller becomes aware of such a moratorium, Seller will immediately notify Purchaser in writing. All dates, deadlines and time periods contained in this Agreement will be tolled until each such moratorium has been lifted.
- L. The Property is served by public water with sufficient capacity for development of the Lots for their intended use.
- M. No portion of any Lot is within a flood plain or wetland and, except for building setback lines and rights-of-way shown on the Subdivision Plat, no portion of any Lot is unsuitable for or restricted from constructing building improvements thereon.
- N. To the best of Seller's knowledge, the Property has neither been used in connection with, nor has there been any surface or subsurface contamination due to the use, storage, disposal or treatment of any materials, substances or hazardous wastes, as defined by any federal, state or local health or environmental laws, regulations or ordinances, and there are no such materials, substances or hazardous wastes present in, on, or about the Property.
- O. The Property is zoned for the construction of single family detached residences, and Seller and the Property are in compliance with all governmental ordinances including such zoning ordinances, regulations, laws, codes and development, permit and subdivision requirements that affect the Property. Seller has no knowledge of any pending change in the zoning classification of the Property.
- P. The Property and Seller are in and, subject to Purchaser's obligations set forth in subparagraph 11.D. below, will continue to be in compliance with the Federal Water Pollution Control Act and the National Pollution Discharge Elimination System (NPDES) permitting requirements together with all other applicable storm water and erosion control regulatory requirements. There are no outstanding fines against Seller or the Property with respect to the foregoing requirements.
- Q. Seller shall have completed and filed a Notice of Intent ("NOI") with the Environmental Protection Agency and any other applicable authorities and shall have provided (or made available to) Purchaser a copy of the Storm Water Pollution Prevention Plan and the NOI applicable to Seller's development activities.
- R. The Property has no special tax designation that requires any payment or penalty for change in use, and Seller has no knowledge of any special tax or assessment to be levied against all or any portion of the Property.
- S. If applicable, Seller shall post and maintain street, sedimentation, storm drainage and other forms of surety (performance) bonds as may be required by the

EMT 3

applicable governmental authorities for development of the Lots and the drainage facilities serving the Lots, whether such facilities are located on or off the Real Property.

- T. All trees, landscaping, central mail facilities (if applicable) and other improvements to the common areas that are the responsibility of Seller, or if not Seller, the applicable developer, have been installed as required by the applicable authority or association.
- U. Septic Permits for not less than thirty-two (32) 4-bedroom homes are or will be issued and in full force and effect for system improvements and in a location reasonably acceptable to Purchaser, and each Lot will accommodate the system improvements and location designated therefor in the applicable Septic Permit.

10. Seller Representations and Warranties Regarding the Lots: Seller covenants, represents and warrants to Purchaser the following with respect to the Applicable Lots at each Closing:

- A. The Subdivision Plat will be recorded in the plat records of Greenville County, South Carolina. All operational permits will be received so that a building permit and a certificate of occupancy can be obtained on each Lot.
- B. Domestic water lines are stubbed within the boundary of each Lot no more than six (6) feet below existing grade.
- C. Electricity, natural gas, telephone, and cable, including fiber optic, facilities will be installed in sufficient capacity to service the Lots for their intended use and will be available for connection either within the boundary of each Lot or in the public right-of-way adjacent thereto.
- D. All impact, capacity and similar fees have been paid in full, and Purchaser shall only be required to pay normal and customary tap or connection fees for each Lot at the time of issuance of a building permit therefor.
- E. The location of the utilities described in subparagraphs 9.L. and 10.B. above will be clearly marked on the ground and accurately shown on as-built utility plans delivered to Purchaser in accordance with subparagraph 4.A. above. All such utilities will be underground except for appurtenant facilities that are customarily above ground. Seller shall provide letters from the applicable authority stating that water taps are available for purchase for each Lot.
- F. Intentionally Omitted.
- G. All streets, roads, curbs and gutters and surface water management facilities serving the Lots and shown on the Subdivision Plat will be installed in accordance with applicable regulatory requirements and, subject to Purchaser's obligations set forth in subparagraphs 11.A. and 11.C. below, will be maintained by Seller at its expense in good condition and repair until dedication to and acceptance by the applicable governmental authority.
- H. Construction access will be available to the Lots.

EMT 3

- I. All street lights, fire hydrants and other common facilities serving the Lots will be installed in accordance with applicable governmental regulations and permitting requirements.
- J. Each Lot will be free of trash and debris, and iron pins will be on the ground at each corner.
- K. Each Lot will have a street address and tax parcel identification number.
- L. Seller shall have provided Purchaser with two (2) copies of the "as built" construction plans for the water system and storm drainage network, which plans will be sufficient to enable Purchaser to locate water taps on each Lot. Water taps for each Lot will be in accessible locations in the ground within the boundary of such Lot.
- M. Seller agrees to keep all lots owned by Seller maintained by keeping grass and weeds cut to six inches (6") or less and keeping the lots free of debris.
- N. Notwithstanding the requirements of the Lot Disturbance Schedule, Seller will cause Lots 1-14 and 19-32 to be developed in a manner that provides completed Lots for takedown in accordance with the Takedown Schedule.

If Seller breaches any of the representations and warranties set forth in this Paragraph 10 (a "Paragraph 10 Breach"), then Purchaser may give written notice thereof to Seller, which notice will require Seller to cure such breach within fourteen (14) days after delivery of notice thereof. If Seller fails to commence such cure within fourteen (14) days and to diligently pursue completion, then Purchaser may either:

- (1) Cure such breach, and Seller will reimburse Purchaser the actual and reasonable cost thereof plus ten percent (10%). Purchaser shall submit reasonable backup documentation with any request for reimbursement, and Seller shall remit such amount on the earlier of the next Closing or within thirty (30) days after request therefor. Notwithstanding the foregoing, if the cost to cure any such breach is less than One Thousand and 00/100 Dollars (\$1,000.00), Purchaser may cure such breach without prior written notice to Seller provided that Purchaser makes available photographs or other reasonable documentation evidencing such breach with its request for reimbursement. If Seller fails to reimburse Purchaser any amounts due pursuant to this Paragraph 10, Purchaser shall be entitled to a credit therefor against amounts due to Seller at the next Closing; or
- (2) Declare a default and pursue its remedies under subparagraph 13.B. below.

11. Purchaser Construction Obligations:

- A. Purchaser shall repair or cause to be repaired any damage beyond normal wear and tear caused by its employees, agents, contractors and subcontractors to the streets, roads, curbs, gutters, sidewalks, storm drainage, signs or other

EMT 3

improvements in connection with Purchaser's construction activities on, about or adjacent to the Property.

- B. Purchaser shall not cause or permit its employees, agents, contractors and subcontractors to dump or deposit building materials, trash or debris on any lots, rights-of-way or other property not then owned by Purchaser.
- C. Purchaser shall cause construction dirt and gravel generated by its construction activities to be periodically cleaned by a professional street cleaning service.
- D. Purchaser will comply with the Federal Water Pollution Control Act and the National Pollution Discharge Elimination System (NPDES) permitting requirements together with all other applicable storm water and erosion control regulatory requirements.
- E. Intentionally Omitted.
- F. Purchaser shall have the right to clean up or landscape any property owned by Seller to enhance the appeal of the Lots, provided Purchaser shall obtain Seller's prior approval thereof. Seller shall approve any such request or provide written objections to Purchaser within fourteen (14) days after request therefor, which approval will not be unreasonably withheld. Failure of Seller to approve any such request within said fourteen (14) day period shall be deemed approval thereof.
- G. Purchaser shall install trees and landscaping on each Lot in accordance with applicable regulatory requirements.

If Seller determines that Purchaser has failed to fulfill any of its obligations set forth in this Paragraph 11 (a "Paragraph 11 Breach"), then Seller may give written notice thereof to Purchaser, and Purchaser shall commence to cure such breach within fourteen (14) days after delivery of notice thereof. If Purchaser fails to commence such cure within fourteen (14) days and to diligently pursue completion, then Seller may elect to cure such breach, and Purchaser will reimburse Seller the actual and reasonable cost thereof plus ten percent (10%). Seller shall submit reasonable backup documentation with any request for reimbursement, and Purchaser shall remit such amount on the earlier of the next Closing or within thirty (30) days after request therefor. The sole remedy of Seller for a Paragraph 11 Breach is set forth in this Paragraph 11.

12. Service Areas:

- A. Seller shall permit Purchaser to install a temporary construction and/or sales trailer on property not then owned by Purchaser in a location mutually agreeable to the Parties. Purchaser shall maintain the temporary office in a good and neat condition in compliance with all applicable regulatory requirements. Purchaser shall remove all gravel, pavement, concrete and debris in the area immediately surrounding the location of the temporary office and cause it to be grassed within forty-five (45) days after the removal thereof.
- B. Seller shall provide a concrete wash out area on property not then owned by Purchaser. Purchaser shall periodically remove accumulated concrete material.

EMT 3

Purchaser's obligations under this Paragraph 12 are deemed additional Construction Obligations. If Purchaser fails to fulfill same, such failure shall be a Paragraph 11 Breach, and the sole remedy of Seller is set forth in Paragraph 11.

13. Remedies:

A. Purchaser's Default.

- (1) If Purchaser fails to close on the Applicable Lots within the time frames set forth in this Agreement because of Purchaser's breach of this Agreement, and such breach is not cured within thirty (30) days after receipt of notice thereof from Seller, then, as its sole remedy, Seller may terminate this Agreement and the Earnest Money shall be paid to Seller as full liquidated damages and not a penalty. The Parties recognize that it would be difficult to ascertain the actual damages suffered by Seller as a result of such failure of Purchaser to consummate the sales contemplated hereby, it being specifically acknowledged and agreed by the Parties that such liquidated damages are reasonable. Seller hereby waives any right to damages in excess of said liquidated damages for Purchaser's breach of this Agreement and relinquishes any and all right to pursue an action for specific performance against Purchaser in the event Purchaser defaults in any of its obligations hereunder.
- (2) If Purchaser fails to fulfill any obligation under this Agreement other than as set forth in Paragraph 11, Paragraph 12 or subparagraph 13.A.(1) above, then Seller may notify Purchaser of such default. If Purchaser has not cured such default within thirty (30) days after Purchaser's receipt of notice thereof, then Purchaser shall be deemed in default under this Agreement and Seller may as its sole remedy terminate this Agreement and retain the Earnest Money as liquidated damages. If such default cannot be reasonably cured within such thirty (30) day period, then Purchaser shall have such additional time (not to exceed an additional thirty (30) days) as is reasonably necessary to affect a cure so long as Purchaser is diligently working towards a cure. The Parties hereby acknowledge that the actual damages suffered by Seller on account of Purchaser's default would be difficult if not impossible to measure and that the liquidated damages set forth in this subparagraph 13.A.(2) are a reasonable estimate of the damages Seller may suffer on account of Purchaser's breach.

- B. Seller's Default. If Seller defaults under any provision of this Agreement, Purchaser may notify Seller of such default. If Seller has not cured such default within thirty (30) days after Seller's receipt of notice thereof, then Seller shall be deemed in default under this Agreement. If such default cannot be reasonably cured within such thirty (30) day period, then Seller shall have such additional time (not to exceed an additional thirty (30) days) as is reasonably necessary to affect a cure so long as Seller is diligently working towards a cure. If Seller fails to cure any default within the time frame set forth above, then Purchaser may as its sole and exclusive remedies either: (i) seek specific performance, injunctive relief or any other remedies available at law or in equity; (ii) proceed with the purchase of Lots and deduct the cost to cure from the Purchase Price; or

EMT 3

(iii) terminate this Agreement and receive a refund of the Earnest Money. If Purchaser engages legal counsel to enforce its rights hereunder, Seller shall be responsible for all legal fees and costs of enforcement incurred by Purchaser.

14. Notice: All notices, demands, consents, approvals, and other communications which are required or desired to be given by either Party to the other hereunder shall be in writing, which may be delivered via e-mail or may be delivered by either a personal delivery service with charges therefor billed to shipper or by a nationally recognized overnight delivery service with charges therefor billed to shipper (either of which shall be deemed given and received upon delivery). If sent by e-mail, a notice shall be deemed given when such e-mail is transmitted to the e-mail notice address specified below and shall be deemed received on that same day unless given after 6:00 p.m. in the receiving location, in which case such receipt shall be the next business day. Any notice not deliverable shall be deemed received on the first date of attempted delivery. Any notices under this Agreement may be given by or to the respective attorneys listed below.

Purchaser: Crescent Homes SC, LLC
572 Savannah Hwy
Charleston, South Carolina 29407
Attention: Edward M. Terry
Telephone: (843) 573-9635
Email: t.terry@crescenthomes.net

With a copy to: Harvey & Vallini, LLC
497 Bramson Court, Ste. 201
Mt. Pleasant, SC 29464
Attention: Steven E. Harvey, Esq.
Telephone: (843) 388-8883
Email: steveh@hvlawsc.com

And to: LevickRoth
999 Peachtree Street, NE
Suite 855
Atlanta, Georgia 30309
Attention: Suzan E. Roth, Esq.
Telephone: (404) 201-7841
Email: sroth@levickroth.com

Seller: C J N, LLC
c/o Access Realty, LLC
4113 E. North St.
Greenville, SC 29615
Attention: Nick Franchina
Telephone: (864) 630-0557
Email: nickfranchina@accessrealtysc.com

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With a copy to: Access Realty, LLC
 4113 E. North St.
 Greenville, SC 29615
 Attention: Nick Franchina
 Telephone: (864) 630-0557
 Email: nickfranchina@accessrealtysc.com

In the event of a change of address by a Party, such Party shall give written notice thereof in accordance with the foregoing. Rejection or failure to claim delivery of any such notice, or any refusal to accept any such notice, or the inability to deliver any such notice hereunder because of changed address or phone for which no notice was given, shall be deemed to be receipt of the notice sent as of the date of attempted delivery.

15. Restrictive Covenants and Plan Approval: Seller agrees to adopt Purchaser's standard form of Declaration of Covenants, Conditions and Restrictions or similar Instrument for the Subdivision as may be revised to reflect the particulars of the Subdivision (the "Declaration"). Seller will be the "Declarant" under the Declaration until such time as the development obligations of the Declarant thereunder have been satisfied and the remaining obligations assumed by the home owners' association, and so long as this Agreement is in effect, all matters pertaining to the ARB and plan approval will be determined by Purchaser in its sole discretion. The Declaration will be recorded at the Initial Closing, and Seller will bear any third-party costs incurred in the preparation and recording thereof.
16. Signs: As long as this Agreement is in effect, Purchaser shall have the right to erect a limited number of professionally-designed and constructed temporary signs on the Lots and at the entrance to the neighborhood for purposes of advertising the homes to be constructed on the Lots.
17. Entrance Feature Plans. If not previously delivered to Purchaser, within **thirty (30) days** after the beginning of the Due Diligence Period, Seller will deliver proposed plans for an appropriate entrance feature for the Subdivision to Purchaser for its review and approval, which approval will not be unreasonably withheld. Within ten (10) business days after receipt, Purchaser shall deliver written notice of approval or detailed written comments with suggested revisions to Seller. The Parties will work together in good faith to agree upon the plans for an appropriate entrance feature for the Subdivision prior to the expiration of the Due Diligence Period. Seller will cause the entrance feature for the Subdivision to be completed not later than sixty (60) days after the recording of the Subdivision Plat.
18. Lot Grading and Preparation Cost. If the cost to grade and prepare any Lot for development as a single-family home in accordance with Purchaser's criteria, including without limitation the recommendations of Purchaser's geotechnical engineer, exceeds Two Thousand Five Hundred and No/100 Dollars (\$2,500.00) (the "Lot Prep Cost Cap"), then Seller will reimburse Purchaser an amount equal to the actual cost in excess of the Lot Prep Cost Cap (the "Lot Prep Excess Cost"). Seller will reimburse Purchaser any Lot Prep Excess Cost within fourteen (14) days following request therefor accompanied by reasonable documentation thereof, provided Purchaser may, at its option, take a credit against the Purchase Price due at any Closing for the aggregate, unreimbursed Lot Prep Excess Cost incurred by Purchaser to date. Purchaser shall provide reasonable documentation of any Lot Prep Excess Cost not previously submitted to

SMT 3

Seller no later than three (3) business days prior to a Closing in which a Lot Prep Excess Cost credit will be taken.

19. Right of First Refusal: At the Initial Closing, Seller will grant to Purchaser a right of first refusal with respect to the lots cross-hatched and shown on Exhibit "A-2" as "Future Phase" and any additional lots that may from time to time may be annexed or otherwise included in the Subdivision. A memorandum of such right of first refusal in a form reasonable acceptable to the Parties will be recorded in the public records of Greenville County at the Initial Closing.
20. Commissions: The Parties covenant and agree, each to the other, to indemnify the other against any loss liability, cost, claims, demands, damages, actions, causes of action or suits based upon or arising out of the employment or use by the indemnifying Party of any real estate broker or agent in connection with the purchase and sale of the Property. Although not entitled to a commission in connection with the transaction contemplated herein, principals of Purchaser are licensed real estate brokers.
21. Miscellaneous:
 - A. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.
 - B. Assignment of Agreement by Seller. Seller shall have the right to assign this Agreement upon thirty (30) days prior written notice to Purchaser to a limited liability company in which Seller shall be a member or manager. Upon any such transfer, Seller shall be released of all liability under this Agreement so long as the entity to which Seller assigns this Agreement agrees to assume all of Seller's obligations hereunder.
 - C. Assignment of Agreement by Purchaser. Purchaser shall not assign this Agreement or its rights hereunder without Seller's prior written consent, which shall not be unreasonably withheld, conditioned or delayed, except that Purchaser may assign to a subsidiary or affiliate controlled by or under common control with Purchaser or Edward M. Terry (collectively, an "Assignee"). Principals of Purchaser are licensed real estate brokers or agents and may be principals in an Assignee. If such assignment is made, then the applicable sales contemplated by this Agreement shall be consummated in the name of and by the authorized officials of any such Assignee and Seller shall look solely to such Assignee for the performance and discharge of all the obligations and liabilities of Purchaser hereunder.
 - D. Undertakings. The Parties agree to execute and deliver such other and further instruments and documents as may be necessary to implement and effectuate the terms of this Agreement.
 - E. Good Faith. The Parties shall act in good faith in performing and discharging their respective duties and obligations hereunder.
 - F. Governing Law. This Agreement has been made in the State of South Carolina and shall be interpreted in accordance with South Carolina law and any enforcement of this Agreement shall be brought in the State of South Carolina.

EMT 7

- G. Construction. The extent to which any Party participated in the drafting of this document shall not determine how any provision hereof is to be construed, it is being recognized that both Parties have contributed substantially and materially in the preparation of this Agreement.
- H. Waiver. No provision, condition, or covenant of this Agreement shall be waived by either Party hereto except by a written instrument delivered to the other Party and executed by the Party consenting thereto, and no failure of either Party to exercise any power given hereunder or to insist upon strict compliance with any obligation specified herein, and no custom or practice at variance with the terms hereof, shall constitute a waiver of such Party's right to demand exact compliance with the terms hereof.
- I. Insurance. Purchaser agrees to maintain in full force and effect liability insurance covering damage to property and injuries to persons resulting from or connected with its construction and sales activities on and about the Real Property. Each Party agrees to indemnify, defend and hold the other Party harmless from any liability, loss or damage to persons or property, including reasonable attorneys' fees and related costs and expenses, caused by the indemnifying Party or by its agents or employees.
- J. Time Periods. Should the date upon which any act required to be performed under this Agreement fall on a Saturday, Sunday or holiday, the time for performance shall be extended to the next business day.
- K. Entire Agreement. This Agreement contains all of the terms and conditions agreed to between the Parties and supersedes all prior agreements, and there are no oral agreements relating to the transaction contemplated herein.
- L. Time of Essence. Time is of the essence with respect to this Agreement.
- M. Like Kind Exchange. Either Party may elect to sell or purchase the Real Property and qualify under the rules of a Section 1031, Tax Deferred Exchange. The Parties will cooperate with the other in effecting such exchange, providing it creates no expense or liability to the other Party.
- N. Sales and Marketing. Purchaser shall have the right to use the name "River Springs " in any signage, advertising and other marketing materials relating to its marketing of the Lots.
- O. Counterparts. This Agreement may be executed in more than one counterpart, each of which shall be deemed an original and all of which shall be deemed one and the same agreement. Counterparts delivered by e-mail delivery of a PDF or similar type format data file, shall have the same force and effect as if such counterpart were an original thereof.
- P. Headings. Captions contained in this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision herein.

EMT 3

- Q. Survival. Except as otherwise provided in this Agreement, all of the terms, provisions, representations, warranties and Indemnities of this Agreement shall not merge with any deed but shall survive each and every Closing. Termination of this Agreement for any reason after the Initial Closing shall be effective only with respect to such Lots for which closing has not occurred.
- R. Confidentiality. Except as specifically provided in this Agreement, and except for disclosures to their respective attorneys, agents and lenders or as required by law, the Parties agree to (i) keep this Agreement and its terms confidential, (ii) keep confidential any information that is provided by Purchaser or its consultants, (iii) not use any such confidential information for any purpose other than performance or enforcement of this Agreement, and (iv) not make any public announcement or press release about this Agreement without the other's prior written approval.
- S. Intentionally Omitted.
- T. Patriot Act. The Parties each hereby certify that: (i) they are not acting, directly or indirectly, for or on behalf of any person, group, entity or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person" or other banned or blocked person, entity, nation or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control; and (ii) they are not engaged in this transaction, directly or indirectly on behalf of, or instigating or facilitating this transaction directly or indirectly on behalf of, any such person, group, entity or nation. The Parties each hereby agree to defend, indemnify and hold harmless the other from and against any and all claims, damages, losses, risks, liabilities and expenses (including reasonable attorneys' fees and costs) arising from or related to any breach of the foregoing certification.
- U. Severability. This Agreement is intended to be performed in accordance with, and only to the extent permitted by all applicable laws, ordinances, rules and regulations. If any provision of this Agreement, or the application thereof to any person or circumstance, shall for any reason and to any extent be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, rather such provision shall be enforced to the greatest extent permitted by law.
- V. Amendment. This Agreement shall not be modified or amended except by an instrument in writing executed by or on behalf of the Parties.
- W. Including. The term "including" when used in this Agreement means "including but not limited to."
- X. Independent Consideration. If Purchaser terminates this Agreement pursuant to a right to do so granted to Purchaser hereunder, and if the Earnest Money is otherwise refundable to Purchaser and additional consideration is required for this Agreement to be enforceable under applicable law, then Purchaser and Seller hereby direct Escrow Agent to pay the sum of One Hundred Dollars (\$100.00) from the Earnest Money to Seller as consideration for entering into this Agreement.

EMT 3

22. Expiration: This Agreement has been executed first by Purchaser as a continuing offer to purchase the Property, which offer shall be open to acceptance by Seller until 5:00 p.m. on _____, **2018**, at which time the offer shall be deemed to be withdrawn by Purchaser if the same has not been accepted by Seller and a signed copy delivered to Purchaser.

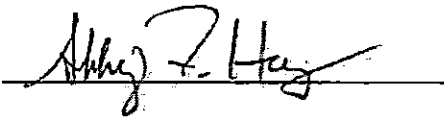
[Signatures begin on following page]

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[Purchaser's signature page for Agreement for Purchase and Sale of Developed Lots]

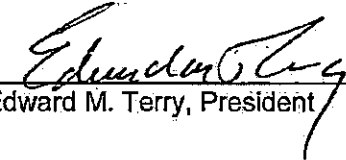
IN WITNESS WHEREOF, the Parties have executed this Agreement on the day and year shown below their signatures.

Witness:



PURCHASER:

CRESCENT HOMES SC, LLC, a Delaware
series limited liability company

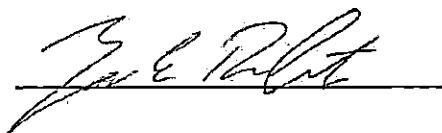
By: 
Edward M. Terry, President

Date: 10/8/18, 2018

[Signatures continue on next page]

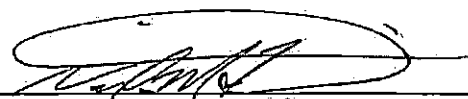
[Seller's signature page for Agreement for Purchase and Sale of Developed Lots]

Witness:



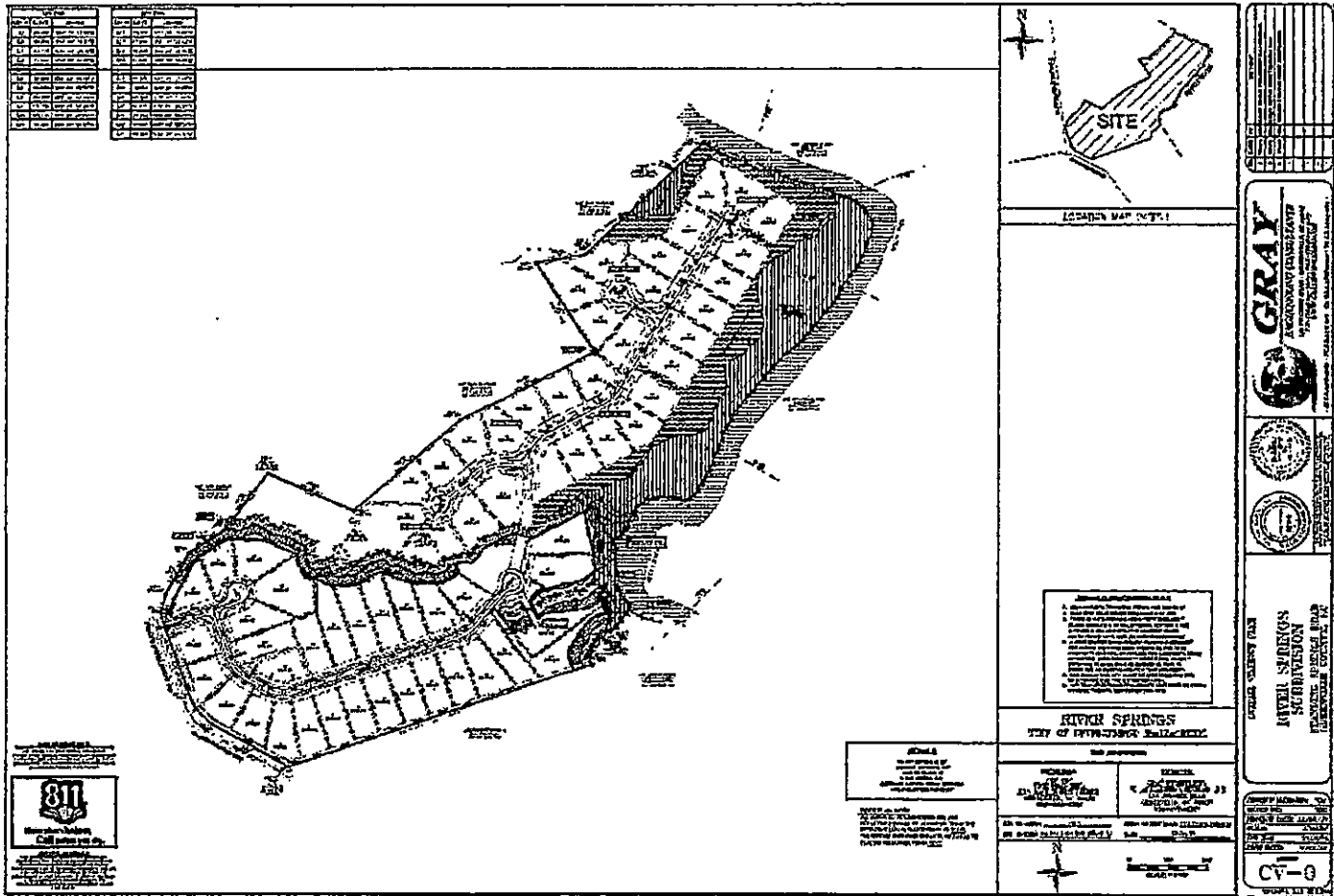
SELLER:

C J N, LLC, a South Carolina limited liability company

By: 
Print Name: Nick F. Farnsworth
Print Title: Managing Director

Date: 10-5-18, 2018

EXHIBIT "A-1"
Subdivision Plat

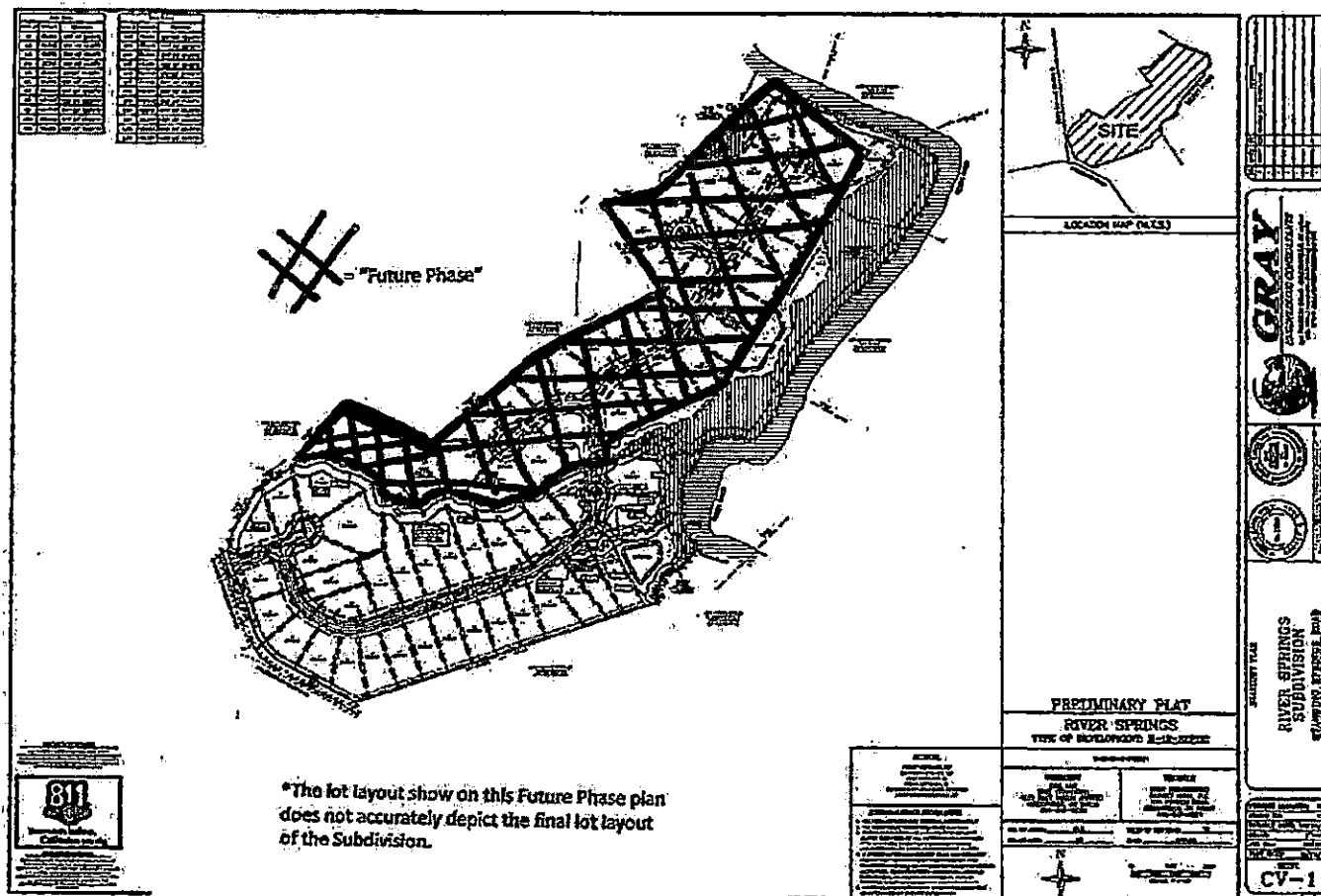


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A-1

Developed Lots (2/2018)
4812-2904-8691, v. 17

EXHIBIT "A-2"
Future Phase



A-2
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Developed Lots (2/2018)
 4812-2304-8691, v. 17

EXHIBIT "B"Lot Pricing and Takedown Schedule

Lot Takedowns (See subparagraph 3.B regarding Lot Selection):

<u>Takedown</u>	<u>Required Minimum Lot Takedown (Note 1)</u>
Initial Closing	10
2	6
3	8
4	8

Lots:

<u>Lots</u>	<u>Purchase Price</u>
1-14	\$66,500.00
15-18	\$86,500.00
	[Adjacent to Reedy River]
19-32	\$66,500.00

Notes:

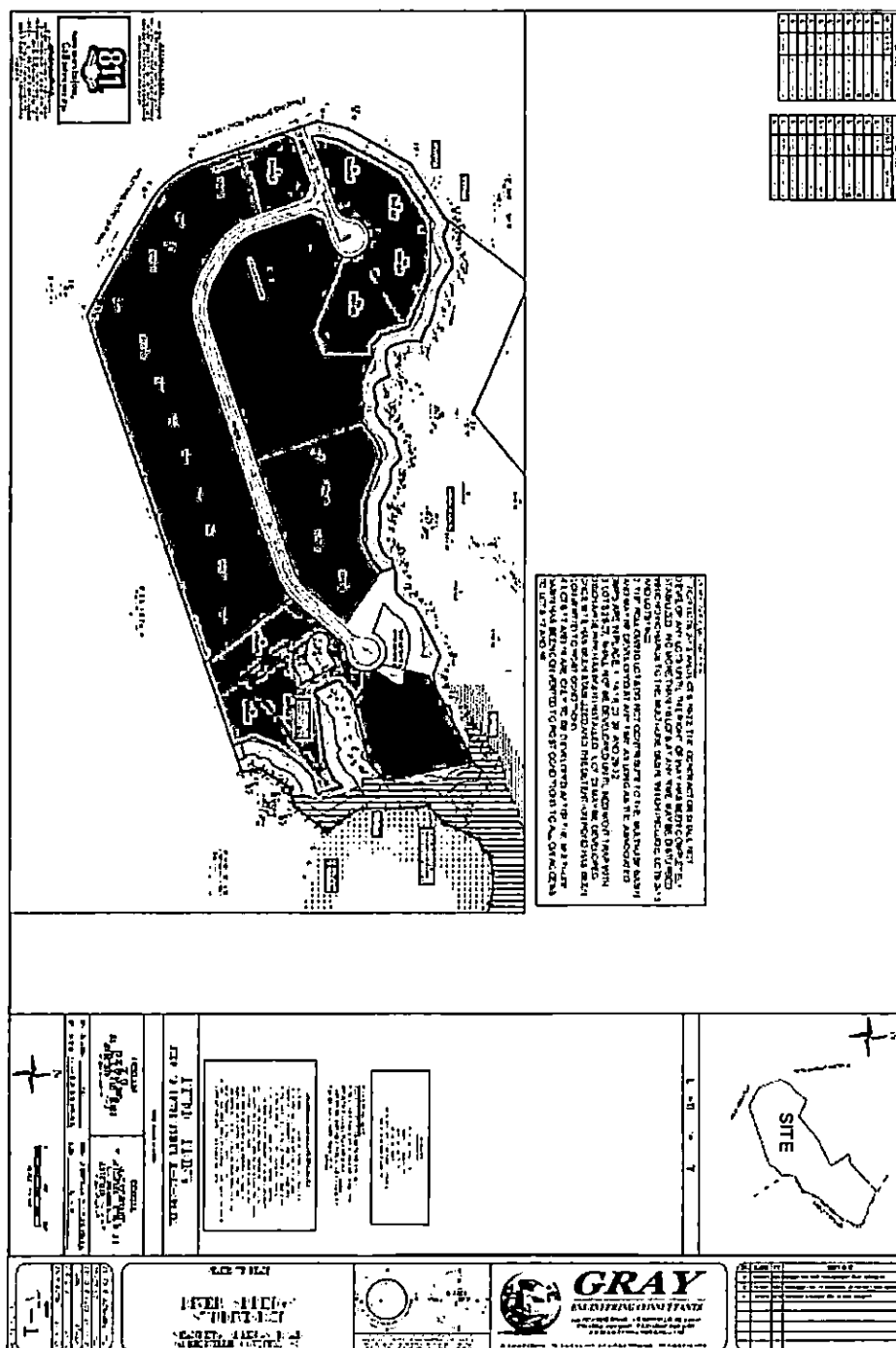
1. Pursuant to subparagraph 6.B. of the Agreement, each Subsequent Closing shall occur no later than one hundred eighty (180) days following the immediately preceding takedown.
2. Each Closing deadline runs from the prior Closing deadline of the previous Closing, not from the actual date of the prior Closing or Closings.
3. With respect to each Closing, Purchaser shall have the option to purchase Lots (which shall be some or all, of the Lots in a future takedown requirement) at a faster rate than provided in Paragraph 2 above, and, in such event, the Lots so purchased shall be credited to the next subsequent purchase obligation. Purchaser will be able to "skip" one subsequent takedown during the contract period at the Purchaser's discretion.
4. The last Required Minimum Lot Takedown will be adjusted to reflect any Lots removed from this Agreement in accordance with Paragraph 3.C. above.
5. In addition to the rights of Purchaser pursuant to Paragraph 10, if any Closing is delayed for any reason that is the fault of Seller, then Purchaser may require that the Required Minimum Lot Takedown cease until all such delays have been satisfied, at which time the Required Minimum Lot Takedown will continue from the point at which they were previously suspended.

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EXHIBIT "C"

Lot Disturbance Schedule



Developed Lots (2/2018)
4812-2904-8691, v. 17

C

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EXHIBIT "C"

Lot Disturbance Schedule, Cont.

VERY SPECIAL NOTES:
1. FOR LOTS 2-13, AND LOTS 18-22, THE CONTRACTOR SHALL NOT DEVELOP ANY LOTS UNTIL THE RIGHT OF WAY HAS BEEN COMPLETELY STABILIZED. NO MORE THAN 10 LOTS AT ANY TIME MAY BE DISTURBED, WHICH DISCHARGE TO THE MULTI-USE BASIN, WHICH INCLUDE LOTS 2-13, AND LOTS 18-22.
2. THE FOLLOWING LOTS DO NOT CONTRIBUTE TO THE MULTI-USE BASIN AND MAY BE DEVELOPED AT ANY TIME AS LONG AS THE ASSOCIATED BMPs ARE IN PLACE: 1, 14-16, 23-28, AND 29-32.
3. LOTS 25-27, SHALL NOT BE DEVELOPED UNTIL SEDIMENT TRAP WITH DISCHARGE PIPE HAS BEEN INSTALLED. LOT 23 MAY BE DEVELOPED ONCE SITE HAS BEEN STABILIZED AND THE DETENTION POND HAS BEEN CONVERTED TO POST CONDITIONS.
4. LOTS 17 AND 18 ARE ONLY TO BE DEVELOPED AFTER THE MULTI-USE BASIN HAS BEEN CONVERTED TO POST CONDITIONS TO ALLOW ACCESS TO LOTS 17 AND 18.

FIRST AMENDMENT TO AGREEMENT FOR PURCHASE AND SALE

This **FIRST AMENDMENT TO AGREEMENT FOR PURCHASE AND SALE** (this "First Amendment") is made and entered into as of November 23, 2018 by and between **CRESCENT HOMES SC, LLC**, a Delaware series limited liability company ("Purchaser"), and **C J N, LLC**, a South Carolina limited liability company ("Seller").

WHEREAS, Purchaser and Seller entered into that certain Agreement for Purchase and Sale of Developed Lots, having an Effective Date of October 8, 2018 (the "Agreement") regarding that certain tract or parcel of real estate identified as TMS No. 0584010102601, located in Greenville County, South Carolina (the "Real Property"); and

WHEREAS, Purchaser and Seller desire to extend the Due Diligence Period and amend certain other provisions in the Agreement.

NOW, THEREFORE, for and in consideration of the sum of Ten and 00/100 Dollars (\$10.00) cash in hand paid and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Purchaser and Seller amend the Agreement as follows:

1. Paragraph 4.B. of the Agreement entitled "Due Diligence Period" is amended by deleting from the first two lines thereof the phrase "forty-five (45) days after the Due Diligence Delivery Date" and substituting therefor the phrase "until February 15, 2019." All references in the Agreement to the Due Diligence Period and all dates and deadlines related or otherwise tied thereto shall be adjusted and amended accordingly.

2. Paragraph 18 of the Agreement entitled "Lot Grading and Preparation Cost" is hereby deleted in its entirety and the following is substituted therefor:

"18. Lot Grading and Preparation Cost. Purchaser will receive a credit against the Purchase Price for each Lot as shown on Exhibit B in the amount Two Thousand and No/100 Dollars (\$2,000.00) at Closing (the "Lot Prep Credit") as compensation for certain cost incurred or to be incurred by Seller in connection with the development of the Lots."

3. Capitalized terms used in this First Amendment not otherwise defined above shall have the same meaning as set forth in the Agreement.

4. The Agreement, as amended hereby, is hereby ratified, confirmed and remains in full force and effect.

5. This First Amendment may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Executed copies of this First Amendment may be delivered electronically, by facsimile or in PDF or similar format, and such copies shall be deemed originals for all purposes.

[Signatures Begin on Next Page]

[Purchaser's Signature to First Amendment to Agreement for Purchase and Sale]

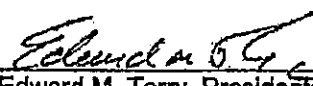
IN WITNESS WHEREOF, the parties hereto have executed this First Amendment as of the date first above written.

Witness:



PURCHASER:

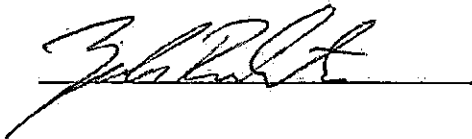
CRESCENT HOMES SC, LLC, a Delaware
limited liability company

By: 
Edward M. Terry, President

[Signatures Continue on Next Page]

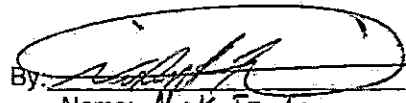
[Seller's Signature to First Amendment to Agreement for Purchase and Sale]

Witness:



SELLER:

C J N, LLC, a South Carolina limited liability company

By: 
Name: Nick Franchina
Title: Managing Member

Abby Hayes

From: Jason Bell
Sent: Tuesday, September 3, 2019 4:48 PM.
To: Ted Terry; Kelly McGuinn
Subject: FW: River Springs - Site Observations
Attachments: EAS-17-8285 River Springs Subdivision - Greenville, SC - Site Observations.pdf

This attachment from EAS states that the stockpiles are "unusable as structural fill" as based on visual observations. This needs to be combined with the earlier attachments.

Jason Bell

Division Operations Manager

Mobile: (864) 318-3912

Email: jason.bell@crescenthomes.net

Office: 1200 Woodruff Road, Suite C-12, Greenville, SC 29607

CRESCENT
 HOMES

From: Tom Sharp <tsharp@eas-pro.com>
Sent: Tuesday, September 3, 2019 4:23 PM
To: Jason Bell <jason.bell@crescenthomes.net>
Cc: Brad Fitzmorris <bfitzmorris@eas-pro.com>; Travis S. Hatfield <thatfield@eas-pro.com>; Matthew C. Christie <mchristie@eas-pro.com>
Subject: River Springs - Site Observations

Jason,

Please see the attached letter for the River Springs subdivision regarding the on-site soil stockpiles.

Thank you,

Tom Sharp, EIT, MSI
 Project Engineer
 Master of Special Inspection

EAS
 PROFESSIONALS

9 Pilgrim Road
 Greenville, SC 29607

Office (864) 234-7368
 Cell (864) 908-8579
www.eas-pro.com

GEOTECHNICAL AND ENVIRONMENTAL ENGINEERING
 CONSTRUCTION MATERIALS TESTING

**LAND SURVEYING
SPECIALTY SERVICES**

This message and its contents are confidential. If you received this message in error, please do not use or rely on it. Instead, please inform the sender and delete it. Thank you.



9 PILGRIM ROAD
GREENVILLE, SC 29607
PHONE (864) 234-7368
FAX (864) 234-7369

September 3, 2019:

Mr. Jason Bell
Crescent Homes
1200 Woodruff Road
Suite A3
Greenville, South Carolina 29607
jason.bell@crescenthomes.net

Reference: Site Observations
River Springs Subdivision
Greenville, South Carolina 29681
EAS Project No.: 17-8285

Mr. Bell:

This letter serves as a summary of field observations made by Engineering and Surveying Professionals (EAS) during our site visit on August 30, 2019. EAS was requested by Crescent Homes to verify if fill soils had been placed within the limits of the above referenced subdivision.

At the request of Crescent Homes, EAS was on-site to verify if fill soils had been placed within the above referenced subdivision. During our site visit on August 30, 2019, EAS observed seven (7) soil stockpiles within the above referenced subdivision (see the attached River Springs Dirt Pile Volumes for approximate locations). The observed stockpiles contained small rocks and large boulders (12 inches and greater) and/or organic debris (mulch, roots, etc.). Several stockpiles were covered in vegetation (grass, weeds, etc.) at the time of our site visit. Since it was not requested to gather bulk soils samples or to perform any testing, EAS is unaware of soil conditions within the stockpiles and cannot verify the suitability of fill soils not observed. If it is desired to evaluate the stockpiled soils further, EAS recommends that we be retained to evaluate/test the in-place condition and collect several bulk samples within each stockpile.

Based on our observations, these stockpiled soils are unusable as structural fill in their current condition. Strictly based on visual observations, in order to utilize the on-site stockpile soils as structural fill, the soils will likely require extensive processing. If the decision is made to proceed and use the stockpiled soil, EAS should be allowed to verify the soil properties for use as structural fill.

LIMITATIONS

This report has been prepared for the exclusive use of Crescent Homes, for specific application to the referenced property in accordance with generally accepted soil and foundation



engineering practices. No other warranty, expressed or implied, is made. The site observations provided for the above referenced subdivision does not reflect soil conditions at adjacent and/or nearby structures and may be less suitable. Our conclusions and recommendations are based on design information furnished to us; the data obtained from the previously described site observations and generally accepted geotechnical engineering practice.

It should be noted that a formal geotechnical evaluation of the site sub-surface conditions was not in our scope of services and that the condition of in-place soils not tested may be even less suitable. Utilities installed before, during, or after our visit should be installed, backfilled, and compacted in accordance with typical construction practices and local codes. Any topsoil or organic matter should be removed from the building footprint prior to monolithic slab construction. Our recommendations do not reflect variations in subsurface conditions that may exist at unexplored portions of the site or further depths. Should such variations become apparent during construction, the recommendations contained within this letter will not be considered valid unless EAS is given the opportunity to review such variations and revise or modify our recommendations accordingly. Exposure of the subgrade soils to moisture, excessive drying, or frost heave can weaken these soils at near surface elevations and may require rework/re-compaction prior to excavation or concrete placement.

EAS must be retained to test and document all structural fill soils placed within the limits of the site for the entire duration of the project. It is important to understand that EAS and/or any other 3rd party testing agency cannot certify the compaction of fill soils placed without full-time observation and testing. If another 3rd party testing firm is retained to verify our findings and/or compaction of the site soils, this letter should be provided to them along with any/all of our correspondence.

It should be noted that EAS was not retained to monitor site clearing, stripping and mass grading activities for the above referenced lots. EAS was not provided reporting of site clearing, stripping and mass grading within the above referenced lots and no density/compaction test results were provided. It is important to understand that there is a potential risk of settlement and/or subsidence in unsuitable and/or uncontrolled fill soils that have not been monitored and density tested on a continuous basis during mass grading activities. If the in-situ density/moisture is desired, we recommend EAS be retained to perform test pits to collect drive tube density test samples and adjacent bulk soil samples for testing in our soils laboratory.

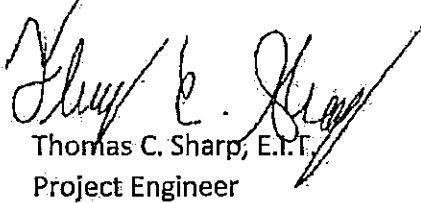
According to the International Residential Code 2015 (IRC 2015), Section R109.1, "inspection of the foundation shall be made after poles or piers are set or trenches or basement areas are excavated and any required forms erected and any required reinforcing steel is in place and supported prior to the placing of concrete. The foundation inspection shall include excavations for thickened slabs intended for the support of bearing walls, partitions, structural supports, or equipment and special requirements for wood foundations." Therefore, an inspection by EAS



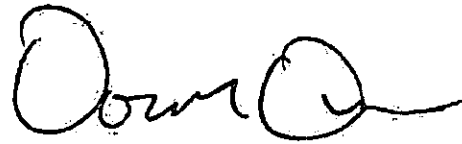
or the building official will be required after foundations are excavated and before concrete is placed.

Respectfully Submitted,

EAS PROFESSIONALS, INC.



Thomas C. Sharp, E.I.T.
Project Engineer

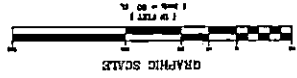


Douglas R. Dunko, P.E.
Senior Geotechnical Engineer

ATTACHMENTS

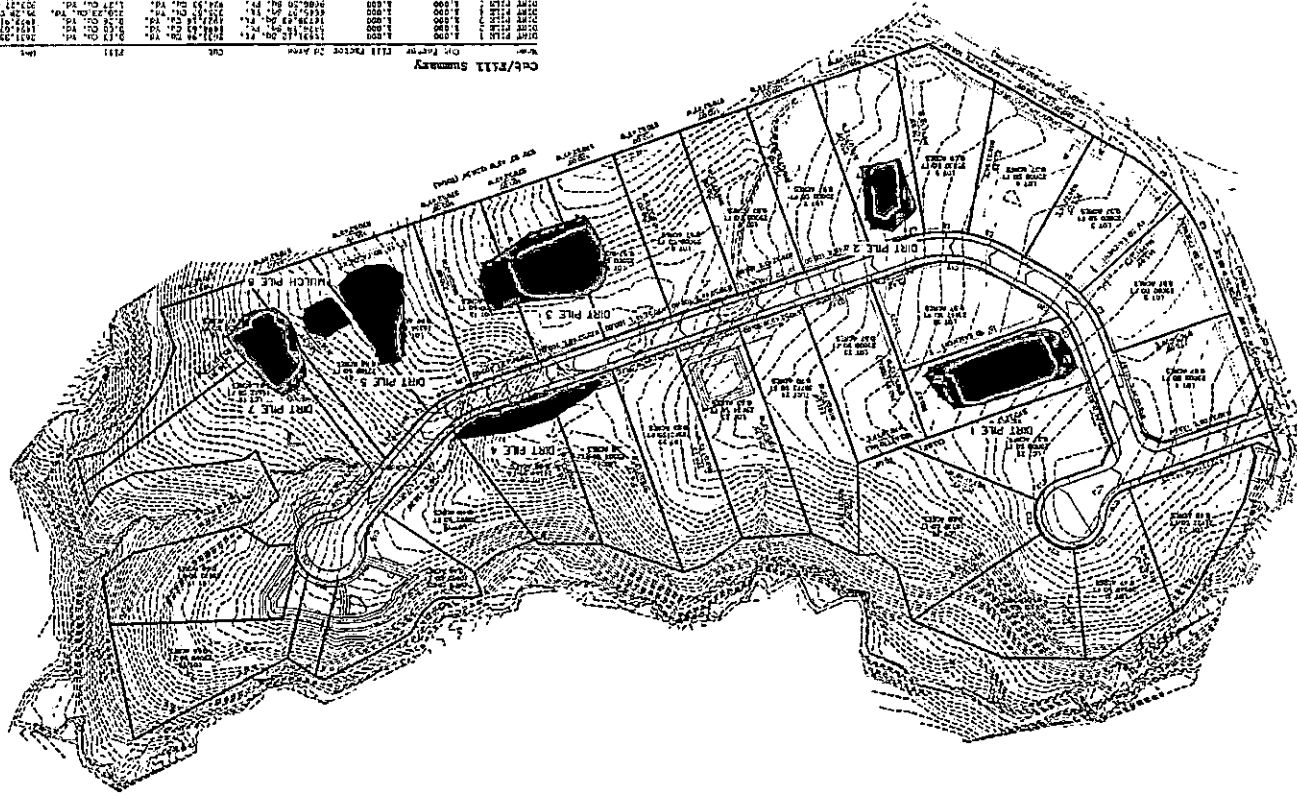
- Dirt Pile Volumes
- Cut/Fill Report

ELECTRONICALLY FILED - 2019 Oct 11 11:03 AM - GREENVILLE - COMMON PLEAS - CASE#2019CP2305954



Cut/Fill Summary

Station	Left Footing	Right Footing	2d Area
0+00	1.000	1.000	2.000
0+10	1.000	1.000	2.000
0+20	1.000	1.000	2.000
0+30	1.000	1.000	2.000
0+40	1.000	1.000	2.000
0+50	1.000	1.000	2.000
0+60	1.000	1.000	2.000
0+70	1.000	1.000	2.000
0+80	1.000	1.000	2.000
0+90	1.000	1.000	2.000
1+00	1.000	1.000	2.000
1+10	1.000	1.000	2.000
1+20	1.000	1.000	2.000
1+30	1.000	1.000	2.000
1+40	1.000	1.000	2.000
1+50	1.000	1.000	2.000
1+60	1.000	1.000	2.000
1+70	1.000	1.000	2.000
1+80	1.000	1.000	2.000
1+90	1.000	1.000	2.000
2+00	1.000	1.000	2.000
2+10	1.000	1.000	2.000
2+20	1.000	1.000	2.000
2+30	1.000	1.000	2.000
2+40	1.000	1.000	2.000
2+50	1.000	1.000	2.000
2+60	1.000	1.000	2.000
2+70	1.000	1.000	2.000
2+80	1.000	1.000	2.000
2+90	1.000	1.000	2.000
3+00	1.000	1.000	2.000
3+10	1.000	1.000	2.000
3+20	1.000	1.000	2.000
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9+60	1.000	1.000	2.000
9+70	1.000	1.000	2.000
9+80	1.000	1.000	2.000
9+90	1.000	1.000	2.000
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Cut/Fill Report

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By user: bfitzmorris

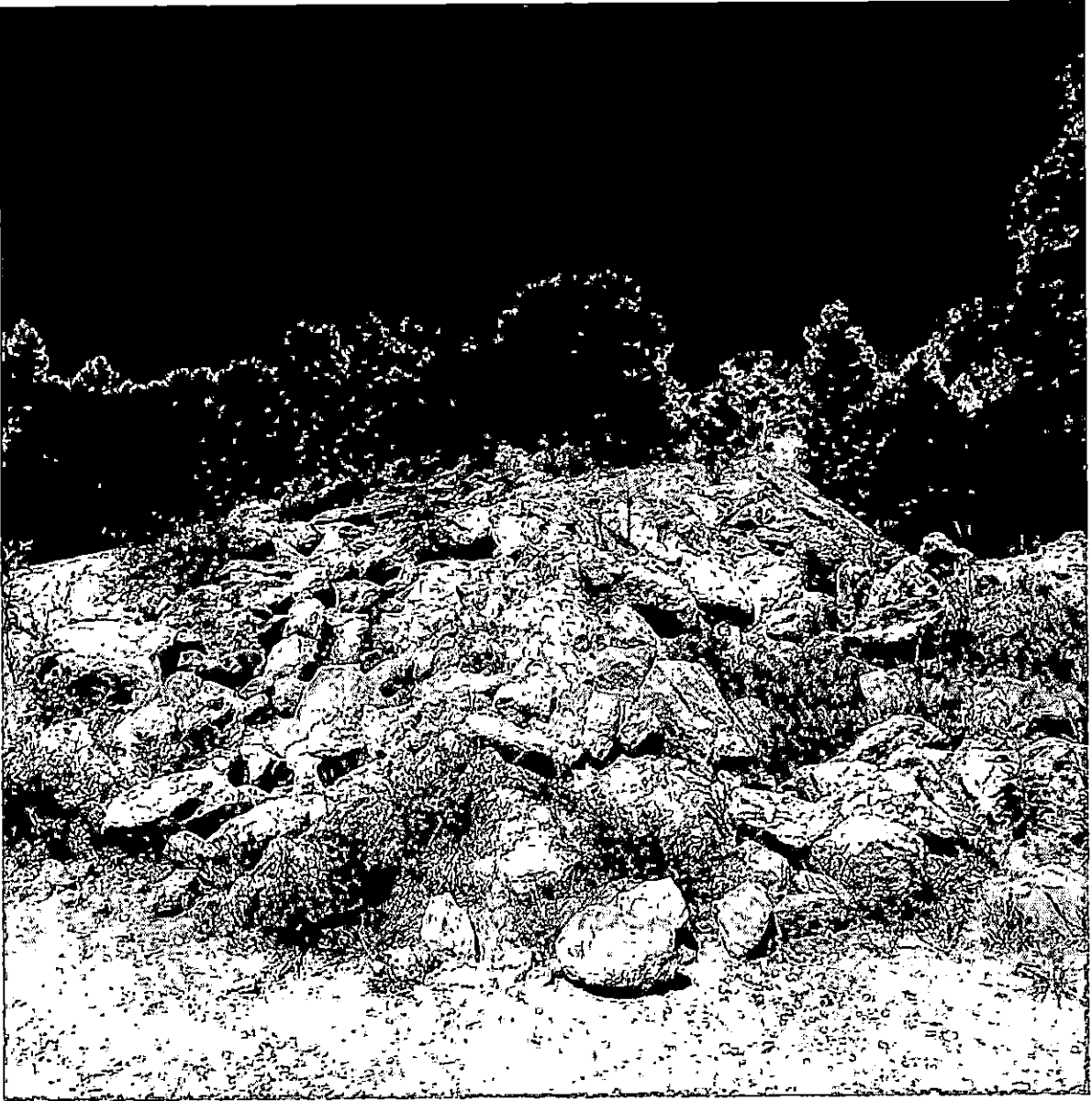
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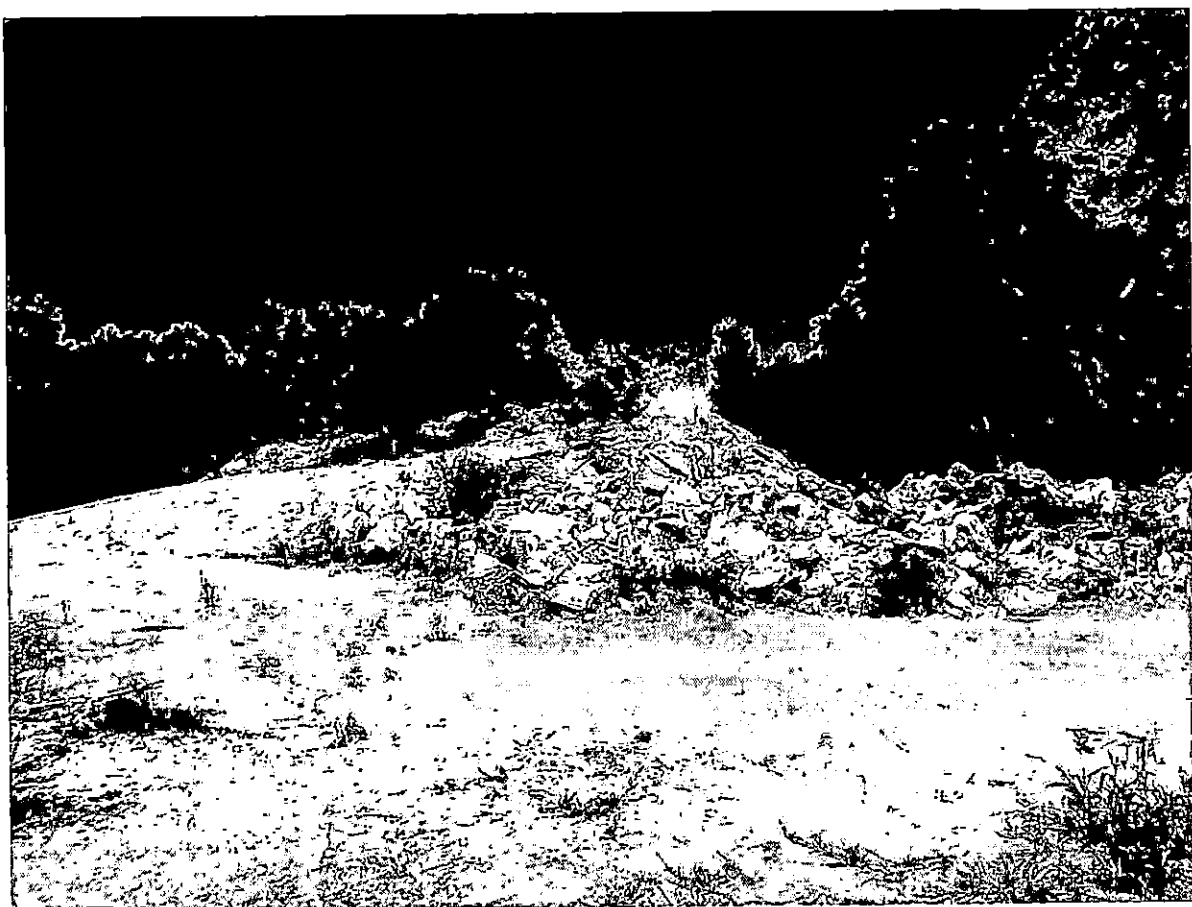
S:\EAS 2017 Projects\EAS-17-8285 (River Springs Subdivison, Greenville, SC)
Nick Franchina - CJN LLC\S\EAS 2017 Projects\EAS-17-8285 (River Springs
Subdivison, Greenville, SC) Nick Franchina - CJN LLC\17-8285 (River Springs
Subdivision) Nick Franchina Dirt Pile Volumes.dwg

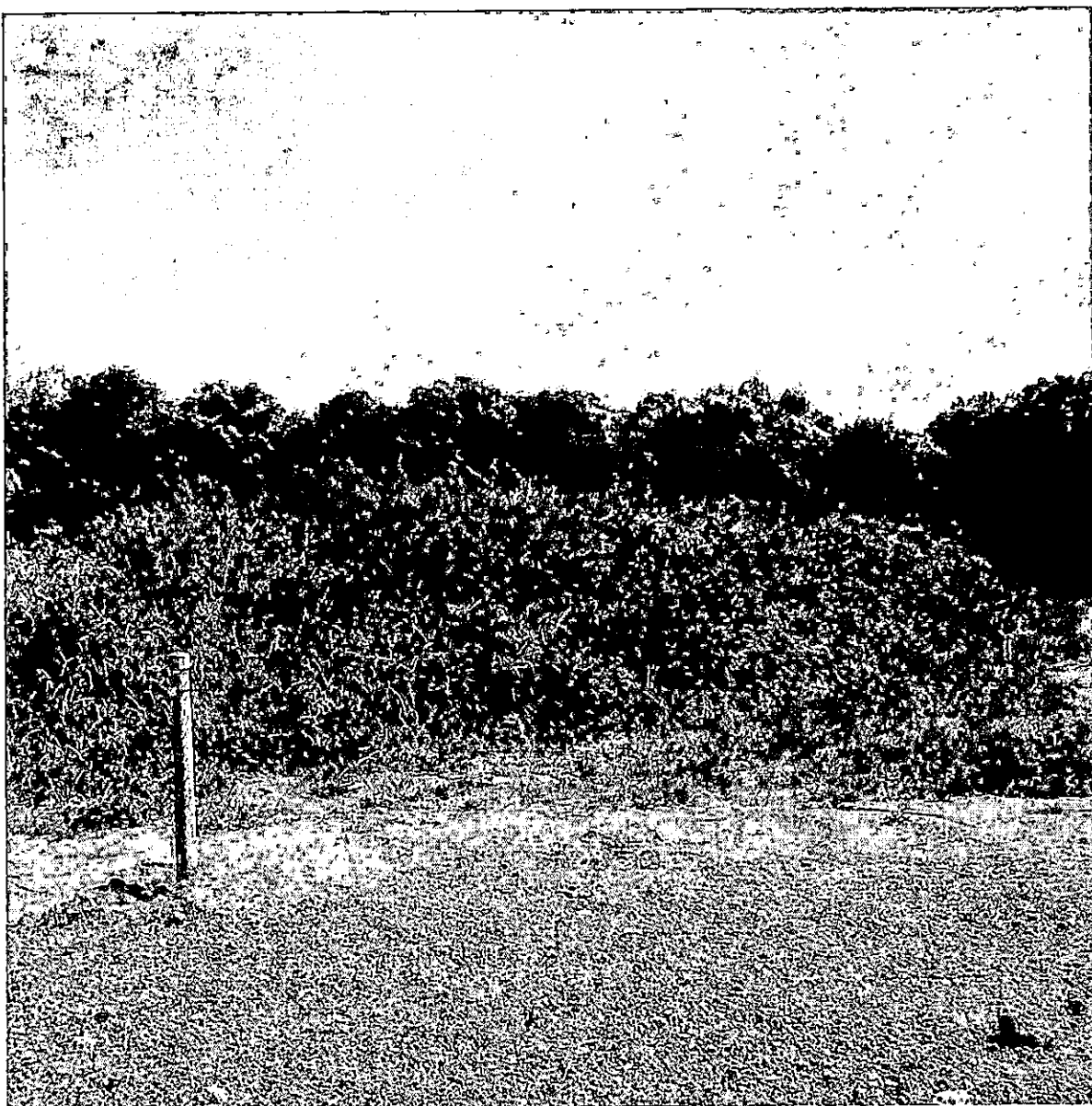
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DIRT PILE 1	full	1.000	1.000	14631.12	2631.98	0.63	2631.35<Cut>
DIRT PILE 2	full	1.000	1.000	5876.19	1494.63	0.00	1494.63<Cut>
DIRT PILE 3	full	1.000	1.000	16738.63	4923.16	0.26	4922.91<Cut>
DIRT PILE 4	full	1.000	1.000	6645.97	305.52	210.23	95.29<Cut>
DIRT PILE 5	full	1.000	1.000	9686.50	924.53	1.27	923.27<Cut>
MULCH PILE 6	full	1.000	1.000	2592.83	430.45	0.02	430.43<Cut>
DIRT PILE 7	full	1.000	1.000	9015.58	1170.38	0.12	1170.26<Cut>

Totals				
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Total	65186.82	11880.65	212.52	11668.13<Cut>

* Value adjusted by cut or fill factor other than 1.0















HARVEY & VALLINI, LLC
ATTORNEYS AND COUNSELORS AT LAW

STEVEN E. HARVEY

Partner

497 BRAMSON COURT, SUITE 201
MOUNT PLEASANT, SC 29464

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EXECUTIVE ASSISTANT
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christina@hvlawsc.com
(803) 409-1224

September 5, 2019

Via Email: (NickFranchina@accessrealtysc.com)

C J N, LLC

c/o Access Realty, LLC
4113 E. North St.
Greenville, SC 29615
ATTN: Nick Franchina

Re: Matter: River Springs – Agreement for Purchase and Sale of Developed Lots by Crescent Homes SC, LLC, as Purchaser, and C J N, LLC as Seller, together with the First Amendment to Agreement for Purchase and Sale (collectively the “Agreement”)
Client: Crescent Homes SC, LLC
Matter Number: 2079.063.001

Dear Mr. Franchina:

Please be advised this law firm represents Crescent Homes SC, LLC (the “Purchaser”). In such capacity we hereby notify you that your recent Notice of Default to Purchaser constitutes an anticipatory breach of and default under the Agreement. We hereby demand on behalf of Purchaser that you provide us with additional assurances that you will honor the terms of the Agreement including the correction and completion of the items noted below:

1. Complete berm and landscaping across lots 1, 2, 3, 4 & 5 per mutual satisfaction of Purchaser and Seller.
2. Ensure all utilities are in place including power, natural gas, water, cable/data (Spectrum and/or AT&T).
3. Water taps marked at curb with As-Builts sent to the Purchaser
4. Cut all grass areas to a maximum height of 6” / Complete stabilization of site
5. Install street lights
6. Re-pin all lot corners; utility contractors have removed many of them
7. Repair all curbs damaged by road paving and utility installation.

8. Deliver septic permits to Purchaser with a minimum capacity of a four-bedroom home. This should consist of an Easy Flow Gravity Conventional System per contract.
9. Bring development back to the grading plan that was approved by Greenville County
10. Issue final recorded subdivision plat, individual lot TMS numbers and individual lot addresses.
11. Remove dirt piles per schedule below. Approximately 11,668.13 cubic yards. Must Re-stabilize site after this.

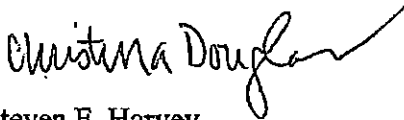
Volume Summary							
Name	Type	Cut Factor	Fill Factor	2d Area (Sq. Ft.)	Cut (Cu. Yd.)	Fill (Cu. Yd.)	Net (Cu. Yd.)
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Totals							
				2d Area (Sq. Ft.)	Cut (Cu. Yd.)	Fill (Cu. Yd.)	Net (Cu. Yd.)
Total				65186.82	11880.65	212.52	11668.13<Cut>

12. Deliver water PTOs – Operational Permits
13. Submit to Purchaser detailed entrance monument and landscape and irrigation plan and budget. Submit to Purchaser central mail facility detail and locations. The foregoing must be approved by Purchaser.
14. Central mail facilities must be installed prior to closing. Entrance monument and landscape and all irrigation must be installed prior to closing.
15. All BMPs must be installed per the approved SWPPP and civil plans.

16. Per the Lot Development Sequence Plan, the discharge sediment basin with discharge pipe must be installed. Provide Post Conditions plan and explanation regarding Seller action to render Lot 23 buildable.
17. Confirm that Multi-Use Basin has been installed and approved per plan. Provide Post Conditions plan and explanation regarding Seller action to render Lots 17 and 18 buildable.

Due to your indicated refusal to honor the terms of the Agreement, each of the foregoing items constitutes a breach of Section 10 of the Agreement and a general default of the same under Section 13B. Purchaser hereby demands that the aforementioned defaults be cured as required under 13B the Agreement.

With best regards,


for Steven E. Harvey

Enclosures:

cc: **Keable & Brown, PA** (Ryan@keablelaw.com)
109 Laurens Rd.
Building A, Suite A
Greenville, SC 29607
ATTN: Ryan Brown, Esq.

Access Realty, LLC (Nick Franchina, NickFranchina@accessrealtysc.com)
4113 E. North St.
Greenville, SC 29615
ATTN: Nick Franchina

Crescent Homes SC, LLC (T.Terry@crescenthomes.net)
572 Savannah Hwy
Charleston, SC 29407
ATTN: Edward M. Terry

LevickRoth (SRoth@levickroth.com)
999 Peachtree St NE, Suite 855
Atlanta, GA 30309
ATTN: Suzan E. Roth, Esq.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	CASE NO.: 2019-CP-23-05954
	)	
CRESCENT HOMES SC, LLC	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CJN, LLC'S ANSWER AND
	)	COUNTERCLAIM
	)	
C J N, LLC	)	
	)	
Defendant.	)	
	)	

TO: ELLIS R. LESEMAN, ESQ., ATTORNEY FOR PLAINTIFF:

Defendant, CJN, LLC (herein afterwards "CJN" or "Defendant"), by and through their undersigned attorneys, hereby answers the Complaint (the "Complaint") of Plaintiff Crescent Homes SC, LLC, ("Plaintiff") and asserts the counterclaims as stated herein.

FOR A FIRST DEFENSE
(Answer to Complaint)

1. Defendant admits the allegations of Paragraph 1.
2. Upon information and belief, Defendant admits the allegations of Paragraph 2.
3. Defendant admits the allegations of Paragraph 3.
4. Defendant admits the allegations of Paragraph 4.
5. Responding to Paragraph 5, Defendant admits it entered an Agreement with Plaintiff. The referenced agreement is a document which speaks for itself and any allegations inconsistent with the content of the document are expressly denied.
6. Responding to Paragraph 6, Defendant denies and aver that the referenced TMS number includes other property in addition to the un-subdivided Lots.
7. Responding to Paragraph 7, Defendant admits that it and Plaintiff entered an agreement. The referenced agreement is a document which speaks for itself and any allegations inconsistent with the content of the document are expressly denied.

8. Responding to Paragraph 8, Defendant admits that it and Plaintiff entered an agreement. The referenced agreement is a document which speaks for itself and any allegations inconsistent with the content of the document are expressly denied.
9. Responding to Paragraph 9, Defendant admits that it and Plaintiff entered an agreement. The referenced agreement is a document which speaks for itself and any allegations inconsistent with the content of the document are expressly denied.
10. Responding to Paragraph 10, Defendant admits it entered into the agreement and First Amendment. The referenced agreement and amendments are documents which speak for themselves and any allegation inconsistent with content of the documents are expressly denied.
11. Responding to Paragraph 11, Defendant admits that it and Plaintiff entered an agreement. The referenced agreement is a document which speaks for itself and any allegations inconsistent with the content of the document are expressly denied.
12. Defendant denies the allegations of Paragraph 12.
13. Responding to Paragraph 13, Defendant admits that EAS provided a site observations report. The referenced report is a document which speaks for itself and any allegations inconsistent with the content of the document are expressly denied.
14. Responding to Paragraph 14, the referenced report is a document which speaks for itself and any allegations inconsistent with the content of the document are expressly denied.
15. Responding to Paragraph 15, the referenced report is a document which speaks for itself and any allegations inconsistent with the content of the document are expressly denied.
16. Defendant admits so much of the allegations of Paragraph 16 as allege that Defendant demanded closing; Defendant denies the remaining allegations.
17. Defendant admits so much of the allegations of Paragraph 17 as allege that Plaintiff refused to close and claimed deficiencies; Defendant denies the remaining allegations.
18. Defendant denies Paragraph 18 as stated and alleges that Plaintiff and Defendant agreed in

writing that the “dirt/rock [stockpiles] would be left on site and used by Crescent Homes at a later date for lot grading and final landscaping.” Further, Defendant denies that it agreed that the material in the stockpiles was usable structural fill or otherwise met any specifications.

19. Defendant denies the allegations of Paragraph 19.
20. Defendant denies the allegations of Paragraph 20.
21. Defendant denies the allegations of Paragraph 21.
22. Defendant denies the allegations of Paragraph 22.
23. Paragraph 23 states a legal conclusion to which no response is required. To the extent a response is required, Defendant denies the same.
24. Paragraph 24 states a legal conclusion to which no response is required. To the extent a response is required, Defendant denies the same.
25. Paragraph 25 states a legal conclusion to which no response is required. To the extent a response is required, Defendant denies the same.
26. Paragraph 26 is an administrative paragraph to which no response is required. To the extent a response is required, Defendant denies the same.
27. Defendant admits the allegations of Paragraph 27.
28. Defendant denies the allegations of Paragraph 28.
29. Defendant denies the allegations of Paragraph 29.
30. Defendant denies the allegations of Paragraph 30.
31. Defendant denies the allegations of Paragraph 31.
32. Defendant denies the allegations of Paragraph 32.
33. Paragraph 33 is an administrative paragraph to which no response is required. To the extent a response is required, Defendant denies the same.
34. Paragraph 34 states a legal conclusion to which no response is required. To the extent a response is required, Defendant denies the same.

35. Paragraph 35 states a legal conclusion to which no response is required. To the extent a response is required, Defendant denies the same.
36. Defendant denies the allegations of Paragraph 36.
37. Responding to Paragraph 37, the agreement is a document which speaks for itself and any allegations inconsistent with the content of the document are expressly denied.
38. Defendant denies the allegations of Paragraph 38.
39. Defendant denies the allegations of Paragraph 39.
40. Defendant denies the allegations of Paragraph 40.
41. Paragraph 41 is an administrative paragraph to which no response is required. To the extent a response is required, Defendant denies the same.
42. Responding to Paragraph 42, Defendant admits that it and Plaintiff entered an agreement. The referenced agreement is a document which speaks for itself and any allegations inconsistent with the content of the document are expressly denied.
43. Defendant denies the allegations in Paragraph 43.
44. Defendant denies the allegations of Paragraph 44.
45. Defendant denies the allegations of Paragraph 45.
46. Defendant denies the allegations of Paragraph 46.
47. Defendant denies the allegations of Paragraph 47.
48. Defendant denies the allegations of Paragraph 48.
49. Responding to the unnumbered WHEREFORE paragraph, Defendant denies that Plaintiff is entitled to any relief sought by and through the Complaint.

FOR A SECOND DEFENSE
(Failure to state a claim or cause of action)

50. This Defendant alleges that Plaintiffs' Complaint fails to sufficiently constitute a cause of action against this answering Defendant or fails to state facts upon which a claim can be based.

FOR A THIRD DEFENSE
(Recovery reduced or eliminated by failure to mitigate)

51. This Defendant alleges that any recovery by Plaintiff is barred by its failure to mitigate damages, or that any recovery must be reduced by those damages that Plaintiffs failed to mitigate.

FOR A FOURTH DEFENSE
(Claim barred by unclean hands)

52. This Defendant alleges that Plaintiff's action is barred under the equitable doctrine of unclean hands.

FOR A FIFTH DEFENSE
(Recovery reduced by setoff)

53. This Defendant alleges that any recovery by Plaintiff must be set off or reduced, abated, or apportioned to the extent that any other party's actions caused or contributed to damages, if any, and must be set off or reduced, abated, or apportioned to the extent that the amount of any judgment against it is paid to Plaintiffs for the alleged defects by others (or the value of goods and services provided by others).

FOR A SIXTH DEFENSE
(Full performance by Defendant)

54. This Defendant alleges that it performed all of the actions required of it under the subject agreement and that the only additional action required to carry out the agreement was performance by others.

FOR A SEVENTH DEFENSE
(No facts supporting exemplary damages)

55. This Defendant alleges that the complaint fails to state a claim upon which exemplary damages may be awarded.

FOR AN EIGHTH DEFENSE
(Failure of condition precedent to Defendant's performance)

56. This Defendant alleges that, to the extent Plaintiff alleges this Defendant has any obligation

or duty as to which full performance has not been rendered or excused, not all conditions precedent to said obligations or duties occurred.

FOR A NINTH DEFENSE
(Defendant's obligations void or excused)

57. This Defendant alleges that, to the extent Plaintiff alleges this Defendant had any obligation as to which full performance has not been rendered or excused, that obligation did not exist or was based upon acts or omissions that were void or otherwise extinguished.

FOR A TENTH DEFENSE
(Breach of contract by Plaintiff)

58. This Defendant alleges that to the extent Plaintiff seeks recovery in contract, Plaintiff materially breached the terms and conditions of said agreement and is entitled to no relief thereon.

FOR AN ELEVENTH DEFENSE
(Plaintiff's bad faith)

59. This Defendant alleges that Plaintiff's bad faith bars its claims or that any damages must be reduced as a result of Plaintiff's comparative bad faith.

FOR A TWELFTH DEFENSE
(Failure of consideration)

60. This Defendant alleges that, to the extent Plaintiff alleges this Defendant has any obligation as to which full performance has not been rendered or excused, there has been a failure of consideration.

FOR A THIRTEENTH DEFENSE
(Estoppel)

61. This Defendant alleges that Plaintiff's conduct, including, but not limited to, its/his/her failure to notify this Defendant of the occurrences complained of, operated as estoppel and waiver of any rights to file the action herein.

**FOR A FOURTEENTH DEFENSE
(Claim barred by laches)**

62. This Defendant alleges that Plaintiff's action is barred under the equitable doctrine of laches.

**FOR A FIFTEENTH DEFENSE
(Right to add additional affirmative defenses)**

63. This Defendant alleges that because the complaint herein is couched in conclusionary terms, answering Defendant cannot fully anticipate all affirmative defenses that may be applicable to the within action. Accordingly, the right to assert additional affirmative defenses, if and to the extent that such affirmative defenses are applicable, is hereby reserved.

**FOR A SIXTEENTH DEFENSE
BY WAY OF COUNTERCLAIM**

64. NOW COMES Plaintiff CJN, LLC ("CJN"), by and through its counsel of record, and responds to Defendant Crescent Homes SC, LLC ("Crescent") Complaint as follows:
65. CJN is a limited liability company organized and existing under the laws of the State of South Carolina and is the owner of real property located in Greenville County, South Carolina.
66. Crescent is a Delaware limited liability company and conducts business in Greenville Count, South Carolina.
67. On October 8, 2018, CJN and Crescent entered into an Agreement for Purchase and Sale of Developed Lots ("Agreement") in relation to the development of the River Springs Subdivision on raw land owned by CJN and located on Standing Springs Road, Greenville County, South Carolina ("Property") and to be sold to Crescent as 32 subdivided lots for the construction of single family houses. A copy of the Agreement is attached as Exhibit A. The Property is a portion of TMS: P/0 054010102601 and is further defined in the Agreement.
68. Crescent was to purchase the 32 lots through a series of four closings as provided for in the "Takedown Schedule" incorporated as Exhibit B to the Agreement.

69. Pursuant to the Agreement and Takedown Schedule, an "Initial Closing" of lots was to be scheduled by Crescent and "held on or before fifteen (15) days after the recording of the Subdivision Plat." See Agreement, ¶6.
70. CJN recorded the Plat for the subdivision on August 16, 2019. A copy of the Plat is attached as Exhibit B. Therefore, Crescent was required to schedule the Initial Closing for no later than September 1, 2019.
71. Crescent failed to close by September 1, 2019 and thereby defaulted under the Agreement.
72. CJN gave notice of the default to Crescent.
73. Without proper justification, Crescent failed and refused to conduct the Initial Closing for months after September 1, 2019.
74. Since September 1, 2019, Crescent has engaged in a pattern of unilaterally altering the contractual closing schedule to its benefit. Crescent has done so by making false claims that CJN is in default under the Agreement, which, upon information and belief, has been in an effort by Crescent to delay the closing of lots until the lot had a prospective homebuyer. Crescent has allowed closing to proceed only if and when it has obtained purchase contracts from homebuyers for the lots to be closed.
75. This pattern began when Crescent responded to CJN's September demand for closing with a letter dated September 5, 2019, purporting to identify multiple items CJN was required to cure prior to Initial Closing. None of these items were a valid basis to postpone Initial Closing. Instead, each item Crescent identified was either already in compliance with the Agreement or was an item for which completion/compliance was not required as a precondition to Initial Closing (i.e. completion/compliance required at some time after the Initial Closing).
76. Pursuant to Agreement §9, CJN made various general representations and warranties. Pursuant to Agreement §10, CJN was required, at the time of each closing, to make lot-specific representations and warranties "with respect to Applicable Lots at each Closing."

Applicable Lots, as defined in the Agreement, means those Lots designated by Crescent for the closing at issue.

77. For example, Crescent demanded that CJN install streetlights prior to Initial Closing. Pursuant to Agreement §10.I, CJN represents and warrants at closing that streetlights “*will be*” installed, indicating that installation may occur after closing. This interpretation is confirmed by contrast to the various other subsections in §10 which require actions that “*are*” or “*have been*” completed. Therefore, Crescent was not entitled to postpone Initial Closing based on a lack of streetlights.
78. As an additional example, Crescent demanded that CJN “repair curbs damaged by road paving....”. Pursuant to Agreement §10.G, CJN represented that “streets, roads, [and] curbs” “*will be*” installed and “*will be*” maintained, indicating that installation and maintenance may occur after closing. Therefore, Crescent was not entitled to postpone Initial Closing based on damage to curbs.
79. Crescent also improperly demanded that CJN remove a stockpile of dirt at its own expense. On February 7, 2019, Crescent issued a change to the Agreement (“Stockpile Change Order”) stating that the “dirt/rock [stockpiles] would be left on site and used by Crescent Homes at a later date for lot grading and final landscaping.” A copy of the Stockpile Change Order is attached hereto as Exhibit C. At this time, CJN had a grading contractor and equipment on site and could have removed the stockpiles at minimal expense. The Stockpile Change Order contained no requirement that the material in the stockpiles would be usable structural fill or otherwise meet any specifications.
80. In addition to violating the Stockpile Change Order, the demand was also improper because
 - a. Removal of debris/stockpiles was not an item required prior to closing. Pursuant to Agreement §10.G, CJN represented that the Applicable Lots “*will be*” “free of trash and debris,” indicating that removal of such debris may occur after closing.
 - b. The stockpiles were not located on any of the lots that Crescent had identified for Initial Closing. Therefore, the stockpile did not violate Agreement §10.G because it was not located on any of the Applicable Lots (lots that Crescent had identified for

Initial Closing).

81. Despite Crescent's improper basis for delaying closings, CJN responded in good faith and attempted to resolve issues to Crescent's satisfaction, performing certain requested actions even though they were prematurely requested.
82. CJN additionally proceeded to remove the stockpile under protest pursuant to the terms of the Stockpile Change Order but in a good faith attempt to reach Initial Closing. As of January 29, 2020, CJN had completed removal of the stockpile and resumed its demands that Crescent proceed with the Initial Closing.
83. As of April 17, 2020, the Initial Closing had not occurred and Crescent again asserted invalid claims in order to delay closing, this time alleging that CJN's obtaining septic permits for lots 15 and 16 was a precondition to Initial Closing.
84. As of April 17, 2020, CJN had obtained septic permits for all lots identified for the Initial Closing, but had not obtained septic permits for some lots, including Lots 15 and 16.
85. Obtaining septic permits for lots 15 and 16 was not a valid precondition to Initial Closing because
 - a. Lots 15 and 16 were not Applicable Lots (among the lots identified for Initial Closing).
 - b. Pursuant to Agreement §9.U, CJN represented and warranted that septic permits "are or will be" issued for each lot, indicating that it was permissible to obtain septic permits after closing. Therefore, the lack of septic permits for Lots 15 and 16 was not a valid precondition to closing, and would not have been a valid precondition to closing even if Lots 15 and 16 had been identified for Initial Closing.
 - c. Further, the parties understood there would be various issues with lots 15-18 as configured by Crescent and that alternatives may be required with respect to the septic permits for those lots.
86. The Agreement calls for septic permits for an "Easy Flow Conventional System" on each lot, with Crescent to bear the cost of installing the system. CJN took several steps to address the septic needs on Lots 15 and 16.

- a. CJN first purchased additional property adjacent to Lots 15 and 16 in an attempt to increase the size of the lots to address permitting concerns. Even with this added property, Easy Flow Conventional Systems were not feasible for Lots 15 and 16.
- b. CJN then evaluated engineered septic systems, which are more costly, but which were determined to be feasible for Lots 15 and 16.
- c. CJN has now agreed to provide Crescent a credit for the additional cost of providing engineered septic systems on Lots 15 and 16, as set forth in the Second Amendment to Agreement For Purchase and Sale, a copy of which is attached hereto as Exhibit D.

FOR A FIRST CAUSE OF ACTION

(Breach of Contract/Breach of the Covenant of Good Faith and Fair Dealing)

- 87. CJN restates and re-alleges each and every allegation above as if fully set forth herein.
- 88. CJN and Crescent entered into a valid and enforceable contract for the development of the Lots in which the parties agreed that “[t]ime is of the essence with respect to this Agreement.” *See Agreement*, ¶ 21(L).
- 89. Pursuant to the Agreement and Takedown Schedule, an “Initial Closing” of lots was to be scheduled by Crescent and “held on or before fifteen (15) days after the recording of the Subdivision Plat.” *See Agreement*, ¶6.
- 90. CJN recorded the Plat for the subdivision on August 16, 2019. Therefore, Crescent was required to schedule the Initial Closing for no later than September 1, 2019.
- 91. Crescent failed to close by September 1, 2019 and thereby defaulted under the Agreement.
- 92. CJN gave notice of the default to Crescent.
- 93. Without proper justification, Crescent failed and refused to conduct the Initial Closing for months after September 1, 2019.
- 94. Further, Crescent issued the Stockpile Change Order requiring CJN to leave the stockpile in place and then required CJN to remove the stockpile at increased cost, but refused to compensate CJN for such costs.
- 95. Crescent conducted the Initial Closing on August 11, 2020, resulting in an improper delay

of approximately 11 months later than required by the Agreement.

96. The Agreement specifically provides for closings in accordance with the Takedown Schedule, which requires Crescent to close no later than 180 days after the prior closing deadline for all closings after the Initial Closing. Therefore, Crescent is obligated to close in accordance with the following schedule:

Takedown	Required Minimum Lots	Date trigger	Date Required	Status
Initial Closing	10	No later than 15 days after plat recorded	September 1, 2019	Delayed until August 11, 2020
2	6	No later than 180 days after prior closing deadline	February 27, 2020	Overdue
3	8	No later than 180 days after prior closing deadline	August 26, 2020	Overdue
4	8	No later than 180 days after prior closing deadline	February 22, 2021	Not yet due

97. Accordingly, Crescent has also improperly delayed the second and third closings.
98. CJN has incurred damages as a result of the improper closing delays, including, but not limited to, the additional costs associated with ownership of the property from the contractual closing deadline until actual closing occurs, lost investment returns from the contractual closing deadline until actual closing occurs, and other actual and consequential damages.
99. Further, CJN has incurred damages as a result of Crescent's violation of the Stockpile Change Order, including but not limited to, additional costs to CJN and other actual and consequential damages.
100. Further, Crescent's conduct is a breach of the covenant of good faith and fair dealing inherent in all contracts, and specifically referenced in Section 21(E) of the Agreement.
101. As a direct and proximate cause of Crescent's conduct, CJN has suffered and continues to suffer actual and consequential damages in an amount to be determined at trial.

FOR A SECOND CAUSE OF ACTION
(Quantum Meruit/Unjust Enrichment)

102. CJN restates and re-alleges each and every allegation above as if fully set forth herein.
103. CJN furnished additional value to the Property by furnishing materials, services, and/or property, including the stockpile removal and additional property for Lots 15 and 16, for the use and benefit of Crescent.
104. In the event that such additional value was not supplied and required to be paid for pursuant to the Agreement, CJN claims, in the alternative, that it should recover the value for such items in unjust enrichment.
105. The materials, services, and/or property were accepted, used, and enjoyed by Crescent. At the time that the materials, services, and/or property were delivered to Crescent, it was understood that CJN was to be paid for the materials; further, Crescent specifically requested the materials, services, and/or property. The acceptance of the materials, services, and/or property by Crescent created an implied agreement or contract between CJN and Crescent.
106. Upon information and belief, Crescent has received value for the materials, services, and/or property supplied to Crescent by CJN.
107. Such materials, services, and/or property were furnished under such circumstances that it was clear that CJN expected to be paid for those materials, services, and/or property. Crescent will be unjustly enriched if CJN is not paid for the materials, services, and/or property supplied by CJN to Crescent.
108. CJN hereby sues in quantum meruit or other equitable theory for the reasonable value of the materials, services, and/or property supplied in an amount to be determined at trial.

FOR A THIRD CAUSE OF ACTION
(Breach of Contract – Specific Performance)

109. CJN restates and re-alleges each and every allegation above as if fully set forth herein.
110. In its first cause of action for breach of contract, CJN seeks to recover for damages incurred to date by Crescent's breaches of the Agreement. Despite Crescent's prior breach of

contract, performance of the remainder of the Agreement remains possible. In this cause of action, CJN seeks an order directing Crescent to perform the remainder of the Agreement.

111. CJN and Crescent entered into the valid and enforceable Agreement.
112. Because of the unique nature of real property, CJN cannot be fully compensated monetarily for the damage that has been and will be caused by Crescent's refusal to proceed with the closing of the remaining lots.
113. CJN has performed all conditions, covenants, and promises required on the part of CJN to be performed in accordance with the terms and conditions of the Agreement.
114. The Agreement specifically provides that CJN has the right to closings in accordance with the Takedown Schedule, which requires Crescent to close no later than 180 days after the prior closing deadline for all closings after the Initial Closing. Therefore, Crescent is obligated to close in accordance with the following schedule:

Takedown	Required Minimum Lots	Date trigger	Date Required	Status
Initial Closing	10	No later than 15 days after plat recorded	September 1, 2019	Delayed until August 11, 2020
2	6	No later than 180 days after prior closing deadline	February 27, 2020	Overdue
3	8	No later than 180 days after prior closing deadline	August 26, 2020	Overdue
4	8	No later than 180 days after prior closing deadline	February 22, 2021	Not yet due

115. Because Closings 2 and 3 are Overdue, the Court should require Crescent to conduct them promptly.
116. CJN remains ready, willing, and able to perform its remaining obligations pursuant to the terms of the Agreement and has not breached the terms of the Agreement.
117. Accordingly, CJN is entitled to an order of specific performance compelling Crescent to perform its remaining duties under the Agreement, including Closing in accordance with the

above schedule.

WHEREFORE, C J N, LLC respectfully requests that the Court

- a. Dismiss the Complaint with prejudice, deny all relief sought therein, and tax the costs of this action against the Plaintiff
- b. On the First Cause of Action, award CJN actual and consequential damages in an amount to be determined at trial, together with interest at the pre-judgment rate per annum until date of judgment, interest thereafter at the post-judgment rate per annum until paid in full, reasonable attorney's fees and costs;
- c. On the Second Cause of Action, award CJN actual and consequential damages in an amount to be determined at trial, together with interest at the pre-judgment rate per annum until date of judgment, interest thereafter at the post-judgment rate per annum until paid in full, reasonable attorney's fees and costs
- d. On the Third Cause of Action, award judgment in favor of CJN granting specific performance of the Agreement ordering Crescent to honor and adhere to all relevant terms and conditions of the Agreement, including conducting remaining closings in accordance with the Agreement schedule.
- e. For attorneys' fees;
- f. For costs of this action; and
- g. For such other and further relief that this Court deems just and proper.

Respectfully submitted,

KENISON, DUDLEY & CRAWFORD, LLC

s/ F. James Warmoth
 John T. Crawford, Jr., (SC Bar # 69682)
 F. James Warmoth (S.C. Bar No.: 101072)
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 Greenville, South Carolina 29601
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Counsel for Defendant C J N, LLC

October 9, 2020
 Greenville, South Carolina

EXECUTION VERSION

AGREEMENT FOR PURCHASE AND SALE
OF DEVELOPED LOTS

(32 Single Family Lots/Multiple Closings)

THIS AGREEMENT FOR PURCHASE AND SALE OF DEVELOPED LOTS (this "Agreement") is made and entered into by and between **CRESCENT HOMES SC, LLC**, a Delaware series limited liability company ("Purchaser"), and **G J N, LLC**, a South Carolina limited liability company ("Seller"). The last date on which this Agreement is signed by either Purchaser or Seller (each, a "Party" and, collectively, the "Parties") and an executed copy thereof is delivered to the other will be the "Effective Date" of this Agreement.

1. **Conveyance:** In consideration of the mutual promises and agreements of the Parties and the sum of Sixteen Thousand and No/100 Dollars (\$16,000.00) as earnest money (the "Earnest Money") to be paid by Purchaser to Harvey & Vallini, LLC ("Escrow Agent"), Purchaser hereby agrees to purchase from Seller, and Seller hereby agrees to sell and convey to Purchaser, developed residential lots in that certain subdivision known as River Springs Subdivision (the "Subdivision"), being more particularly described as those certain parcels of land, including any improvements, fixtures, rights, privileges, easements, hereditaments and appurtenances thereto (collectively, the "Real Property"; sometimes referred to as the "Property"), situate, lying and being on Standing Springs Road, Greenville County, South Carolina, being shown and designated as Lots 1 - 32 (32 Lots total; each individually a "Lot", and collectively, the "Lots") shown on the Stakeout Plan prepared by Gray Engineering Consultants dated December 6, 2017 (the "Proposed Subdivision Plat"), a reduced copy of which is attached hereto as **Exhibit "A-1"** and incorporated herein.
2. **Purchase Price and Earnest Money:** The Purchase Price shall be paid as follows:
 - A. **Price Schedule.** The purchase price for each Lot (a "Lot Purchase Price" or "Purchase Price") is set forth on the Lot Pricing and Takedown Schedule attached hereto as **Exhibit "B"** and incorporated herein (the "Takedown Schedule").
 - B. **Earnest Money.** The Earnest Money will be deposited with Escrow Agent within five (5) business days after the Effective Date and held in a non-interest-bearing escrow account to be credited equally pro rata in the amount of Five Hundred and No/100 Dollars (\$500.00) per Lot. If the Earnest Money is forfeited by Purchaser pursuant to this Agreement, then the Escrow Agent shall pay the Earnest Money to Seller. If Purchaser terminates this Agreement prior to the expiration of the Due Diligence Period, as defined in subparagraph 4.B. below, or as may otherwise be expressly permitted herein, then the Escrow Agent shall return the Earnest Money to Purchaser.

**DISCLOSURE: PRINCIPALS OF PURCHASER AND SELLER ARE
LICENSED REAL ESTATE BROKERS.**

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3. Subdivision and Lot Selection

- A. Subdivision. As of the Effective Date, the Lots have not been subdivided and are a portion of that certain tax parcel with TMS No. 0584010102601 in the Greenville County, South Carolina tax records (the "Parent Parcel"). Seller has caused to be prepared the Proposed Subdivision Plat reconfiguring the existing tax parcel into thirty-two (32) lots with associated common areas as more particularly shown thereon. Seller will not revise or amend the Proposed Subdivision Plat without the prior written consent of Purchaser, which consent will not be unreasonably withheld. Seller will provide a copy of any comments to or required revisions to the Proposed Subdivision Plat received from Greenville County and/or the applicable Planning Commission as soon as reasonably practicable after receipt thereof. If the comments and required revisions to the Proposed Subdivision Plat are, in the discretion of Purchaser, material, then Purchaser may terminate this Agreement by notice delivered to Seller, in which event the Earnest Money shall be returned to Purchaser and this Agreement shall terminate. The Proposed Subdivision Plat, as approved by Greenville County and recorded in the Register of Deeds, is referred to herein as the "Subdivision Plat".
- B. Lot Selection; Development of the Lots is subject to the Lot Disturbance Schedule attached hereto as Exhibit "C" and incorporated herein (the "Lot Disturbance Schedule"). Subject to the Takedown Schedule, Purchaser shall, in its sole discretion, select the Lots (the "Applicable Lots") for each Closing, as defined in Paragraph 6 below, by delivering written notice thereof to Seller at least ten (10) days prior to a Closing. Subject to the Lot Disturbance Schedule, Purchaser may from time to time elect to close more Lots than required by the Takedown Schedule for the applicable Closing. If Purchaser closes more Lots than required by the minimum shown on the Takedown Schedule, then the number of excess Lots closed shall be carried forward as a cumulative credit toward the next succeeding Required Minimum Lot Takedown or Takedowns.
- C. Optional Lot Removal. Purchaser may, in its discretion from time to time, remove any Lot from this Agreement: (i) in accordance with the provisions of Paragraph 4.F below; and/or (ii) with respect to Lots 16 through 18 on the Takedown Schedule, if Purchaser determines that such Lot or Lots are not suitable for its development. If Purchaser elects to remove a Lot or Lots from this Agreement, then Purchaser may provide written notice thereof to Seller and Escrow Agent, in which event such Lot shall be removed from this Agreement, and Escrow Agent will return Five Hundred Dollars (\$500.00) of the Earnest Money for each Lot to Purchaser. If a Lot or Lots are so removed from this Agreement, then the number of Lots referenced in Paragraph 9.U below will be deemed amended to reflect the total number of Lots subject to this Agreement.

4. Due Diligence, Access, and Materials:

- A. Due Diligence Materials. Within two (2) business days after the Effective Date, Seller shall deliver to Purchaser copies of all due diligence materials pertaining to all or any portion of the Property in its possession or control, including title commitments, polices, abstracts and opinions together with copies of all title exceptions and materials, including existing and proposed declarations,

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covenants, conditions and restrictions and other similar instruments; drawings, plans, as-built plans and specifications, including civil plans and specifications for utilities, grading, drainage, lift stations and pumps, roads and other facilities serving all or any portion of the Property; boundary, topographical, tree and wetland surveys and subdivision plats (including any draft or preliminary plats); environmental assessments, geotechnical studies and cultural resource or threatened and endangered species assessments; zoning certificates, letters, minutes and related materials; site plan and subdivision approvals; annexation agreements; NPDES and other soil and erosion control permits and land disturbance permits; Department of the Army COE wetlands or other certifications or permits together with all materials and information related to or submitted for a jurisdictional determination letter; deposits; general intangibles; contracts and contract rights; guarantees and warranties; marketing and advertising materials, logos, trade names and related registrations; development agreements; development bonds (including maintenance and performance bonds); certificates as to electrical work, building, safety and health approvals; impact and tap fee credits; and all other licenses, certificates, permits, applications, approvals, development rights and entitlements; (collectively, the "Due Diligence Materials"). The "Due Diligence Delivery Date" is the later of: (i) the Effective Date, or (ii) the date on which Seller confirms delivery to Purchaser of all the Due Diligence Materials in its possession or control. Seller shall promptly provide Purchaser with (i) any document described above and coming into Seller's possession or produced by or for Seller after the initial delivery of the Due Diligence Materials, and (ii) upon request, information regarding the general and/or site work contractor performing development work in the Subdivision and regarding the scope of work performed or to be performed by such general and/or site work contractor.

- B. Due Diligence Period. Purchaser shall have forty-five (45) days after the Due Diligence Delivery Date, (the "Due Diligence Period"), in which to inspect the Property, including title, soil testing, surveys, feasibility studies, environmental studies and any other inspections, tests or studies that Purchaser may require. The results of such inspections shall be treated as confidential by Purchaser and not be disclosed to any third party or governmental entity except as may be necessary to obtain permits and approvals in the normal course of Purchaser's business or as may be required by law (provided, however, that such results may be disclosed to Purchaser's consultants, attorneys and lenders, who shall similarly treat such results as confidential). If Purchaser is not satisfied with its inspections of the Property for any reason or no reason, in Purchaser's sole discretion, then Purchaser may terminate this Agreement by notice delivered to Seller on or before the expiration of the Due Diligence Period, in which event the Earnest Money shall be returned to Purchaser and this Agreement shall terminate. If actions or inactions of Seller prevent Purchaser's access to property to complete surveys or other due diligence activities, the Due Diligence Period shall be extended on a day-to-day basis until such access is available to Purchaser without interference.
- C. Intentionally Omitted.
- D. Access. During the term of this Agreement, Purchaser, its agents, contractors and representatives shall, from time to time, have the right to enter upon the

Property to perform inspections and testing, provided Purchaser shall indemnify, defend and hold Seller harmless from and against any damages, liability, cost or expense, including attorney's fees incurred by Seller resulting from Purchaser's activities on the Property. This indemnity shall survive the Closings or the termination of this Agreement.

- E. Conveyance of Personal Property. Upon request of Purchaser in connection with the Initial Closing and at any time thereafter, Seller shall convey to Purchaser its right, title and interest in and to all or any portion of the Due Diligence Materials pertaining to the Property at one or more Closings. Seller shall use its best efforts, without additional consideration (provided that Purchaser shall pay out-of-pocket costs, if any), to obtain written consents and approvals as necessary or desirable from design and engineering professionals and governmental authorities in connection with the assignment of Due Diligence Materials to Purchaser.
- F. Septic Permits. Seller will cause a septic field perc test and treatment system feasibility study to be performed for each Lot as necessary and will obtain SCDHEC septic permits for the installation of an Easy Flow Gravity Conventional System for a not less than 4-bedroom home on each Lot in a location on each Lot approved by Purchaser (each, a "Septic Permit" and collectively, the "Septic Permits"). Seller will deliver copies of such test results and other materials pertaining to the Septic Permits and the corresponding plans for system improvements as may be requested by Purchaser promptly after such materials are available. Seller will make application for the Septic Permits as soon as reasonably practicable after the Effective Date and shall deliver a copy of each Septic Permit to Purchaser upon issuance thereof.

5. Title:

- A. Seller Warranties. Seller represents and warrants to Purchaser that Seller has "good and marketable, fee simple title" to the Real Property, and that at each Closing, Seller shall convey "good and marketable, fee simple title" to the Applicable Lots to Purchaser, subject only to the following exceptions (the "Permitted Exceptions"):

- (1) The lien for ad valorem taxes which are not yet due and payable;
- (2) Easements shown on the Subdivision Plat;
- (3) The Declaration, as defined in Paragraph 15 below; and
- (4) General service lines and utility easements that serve only the Real Property.

"Good and marketable, fee simple title" shall be such title as is acceptable to and insurable by a nationally recognized title insurance company, chosen by Purchaser at standard rates on the American Land Title Association Owner's Policy 2006 Form, free and clear of all exceptions except the Permitted Exceptions (the "Title Policy").

EMT 3

- B. Title Defects. If Purchaser's examination of the title and a survey of the Real Property reveals matters other than the Permitted Exceptions (the "Title Defects") and notice of the Title Defects is given to Seller prior to the expiration of the Due Diligence Period, then Seller shall promptly cure the Title Defects, provided that if Seller does not promptly demonstrate to Purchaser's reasonable satisfaction that Seller will cure such Title Defects prior to Closing, then Purchaser may elect by written notice to Seller to extend the Due Diligence Period, or, if applicable, the Closing, until such time as such Title Defects are so cured. Notwithstanding the foregoing, Purchaser shall not be required to object to mortgages, deeds of trust and other liens and encumbrances, including judgment liens, affecting all of any portion of the Property that can be cured or removed with the payment of money (collectively "Monetary Encumbrances"), all of which shall be removed by Seller not later than the applicable Closing. Purchaser shall be entitled to cure Monetary Encumbrances at the applicable Closing with the proceeds payable to Seller at one or more Closings. Purchaser shall be entitled to examine title to the Real Property prior to each Closing and to object to all matters appearing of record or otherwise affecting the Real Property between the date on which Purchaser made its title examination pursuant hereto and the date of each Closing.
- C. Seller Easements. During the term of this Agreement, Seller will not grant any easements, permits, licenses, declarations, covenants or restrictions, or amend, revise or re-file the Subdivision Plat without the prior written approval of Purchaser which shall not be unreasonably withheld.
- D. Property Owners Assessments. Seller represents and warrants that no property owner or home owner assessments or capital contributions will accrue or be payable with respect to any Lot purchased by Purchaser until such time as the Lot is developed and sold to a bona fide third party.
6. Closings: Each Closing shall be consummated by Seller's delivery to Purchaser of a properly executed special warranty deed conveying the Applicable Lots to Purchaser upon receipt by Seller of the Lot Purchase Price for each Applicable Lot, subject to the contingencies set forth herein, at a location selected by Purchaser or by mail through Purchaser's title company, at a specific time and date selected by Purchaser. Seller shall deliver possession of the Applicable Lots to Purchaser at each Closing. Purchaser shall give Seller notice of the date of each Closing together with a list of Applicable Lots at least ten (10) days prior to the selected time and date. The date of such Closings shall be determined as follows:
- A. Initial Closing. Closing of at least ten (10) Lots (the "Initial Closing") shall be held on or before fifteen (15) days after the recording of the Subdivision Plat.
- B. Subsequent Closings. Each Closing after the Initial Closing (a "Subsequent Closing"; the Initial Closing and each Subsequent Closing are referred to singularly as a "Closing" and collectively as the "Closings") shall be conducted in accordance with the provisions of Paragraph 3 above and the Takedown Schedule.
- C. Taxes/Prorations. At each Closing, taxes applicable to any personal property and to the Applicable Lots for the current year shall be prorated between the

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3

Parties as of the date of the applicable Closing. Seller shall be responsible for all assessments placed against the Property prior to the applicable Closing, irrespective of when payable. If the current year taxes for the Applicable Lots have not been determined by the date of the applicable Closing or the Applicable Lots are a portion of a larger tract, then the proration shall be based on the taxes for the previous year or such other information as may be reasonably available. If the current year taxes cannot be paid at the applicable Closing, then Seller's portion shall be credited to Purchaser, provided further if the Real Property is assessed as a part of a larger tract, Seller and Purchaser shall each deposit a sum sufficient to pay an estimate of its proportionate share of the entire tax bill with Escrow Agent. The Parties agree to adjust between themselves any difference in the estimated and actual prorations within thirty (30) days after the actual tax statements for the Applicable Lots are available. Any roll back taxes and special assessments shall be paid by Seller. If there are any potential roll back taxes that are not due and payable at the applicable Closing, Escrow Agent shall hold in escrow sufficient amounts of Seller's proceeds to pay the roll back taxes when the tax bills are issued.

- D. Closing Costs. Seller shall pay for preparation and recording of the Subdivision Plat, the Declaration, the special warranty deeds and any Instruments necessary to cure Title Defects, all transfer taxes, deed stamps or documentary stamps and all other costs normally paid by a seller of real estate. Purchaser shall pay for the cost of its inspection and such other costs normally paid by a purchaser of real estate. Each Party shall be responsible for its own attorney's fees.

7. Closing Deliveries:

- A. Seller Documents. At each Closing, Seller shall execute and deliver the following documents to Purchaser, in addition to any other documents required herein:
- (1) Special warranty deed conveying the Applicable Lots subject only to the Permitted Exceptions;
 - (2) Lien and possession affidavit sufficient to induce the title company to issue the Title Policy without standard exceptions;
 - (3) Information required to complete a Substitute Form 1099;
 - (4) Certificate of non-foreign status in accordance with Section 1445 of the Internal Revenue Code of 1986, as amended;
 - (5) South Carolina tax compliance letter or transferor affidavit;
 - (6) Instruments necessary to cure Title Defects, if applicable;
 - (7) Settlement statement which will be prepared by Purchaser's attorney;
 - (8) Bill of sale, transfer and assignment of the Due Diligence Materials, as applicable, in accordance with subparagraph 4.E.;

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- (9) Satisfactory evidence of Seller's due and proper authority and power to perform its obligations hereunder and to execute and deliver all documents required hereby;
 - (10) Certification to Purchaser confirming that the warranties and representations contained in this Agreement are true and correct on the date of each Closing;
 - (11) Such easements and rights-of-way over any adjoining land of Seller as may be required to construct single family residences on the Real Property; and
 - (12) Such other documents as may be reasonably requested by Purchaser.
- B. Purchaser Documents. Purchaser shall execute and deliver to Seller a counterpart of the settlement statement. Purchaser shall also provide satisfactory evidence of Purchaser's due and proper authority, power to perform its obligations hereunder, and power to execute and deliver all documents required hereby, together with such other documents as may be reasonably requested by Seller.
8. Casualty and Condemnation:
- A. Seller shall bear all risk of casualty to the Property and Seller's property located thereon until Closing and transfer of possession to Purchaser.
 - B. Subject to the representation in subparagraph 9.C. below, Seller agrees to give Purchaser prompt written notice if it becomes aware of any action or proceeding for condemnation of any part of the Property by friendly acquisition or statutory proceeding that may result in the temporary or permanent taking of all or any part of the Property. Purchaser shall have the right, to be exercised within thirty (30) days after receipt of such notice setting forth the extent of the condemnation and the final offer of compensation therefor, to terminate this Agreement and receive a refund of the Earnest Money, and no Party shall have any further rights or obligations hereunder except for covenants, representations, warranties and indemnities stated herein to survive the termination of this Agreement. If Purchaser does not elect to terminate this Agreement, then Seller will credit Purchaser as applicable at Closing with any monies received by Seller by reason of such taking or Seller will assign to Purchaser at Closing all of Seller's interest in and to any unpaid condemnation award or offers payable to Seller relating to the Property. In the event that such notice of condemnation shall occur within thirty (30) days prior to Closing, Purchaser shall have the right to extend Closing so the same will occur no later than thirty (30) days after Purchaser's receipt of Seller's notice required pursuant to this subparagraph 8.B.
9. Seller's General Representations and Warranties: Seller covenants, represents and warrants to Purchaser the following:
- A. Seller has the authority and power to enter into this Agreement and to consummate the transaction provided for herein without the approval or consent

of any other party. The signatories to this Agreement for Seller are duly authorized to bind Seller.

- B. Entering into this Agreement will not constitute or result in a violation or breach by Seller of any judgment, order, writ, Injunction or decree issued against or imposed upon it nor result in a violation of any applicable law, order, rule or regulation of any governmental authority. There is no action, suit, proceeding or investigation pending in any court or before, or by, any federal, district, county or municipal department, commission, board, bureau, agency or other governmental authority, which could become a cloud on the title to the Property or any portion thereof or which could threaten the validity or enforceability of the transaction contemplated by this Agreement or any actions taken pursuant hereto.
- C. As of the Effective Date, no portion of the Property is subject to temporary requisition or use by any governmental authority or has been condemned or taken in any proceeding similar to a condemnation proceeding, nor is there now pending any condemnation, requisition or similar proceeding affecting the Property or any portion thereof. Seller has neither received notice nor has any knowledge that any such proceeding is contemplated.
- D. Seller neither not received any notice from any federal, state or municipal authority nor does Seller otherwise have any knowledge of any violation of any law, ordinance or regulation, including zoning ordinances, development, permit or subdivision requirements, or any other legal requirements with respect to the Property. Seller will promptly notify Purchaser if it receives any such notice or otherwise becomes aware of any actual or potential violation.
- E. Seller neither has knowledge of nor has Seller received notice of any default or breach under any covenant, condition, restriction, right-of-way or easement affecting the Property or any portion thereof and no such default or breach now exists.
- F. No special assessments have been levied, are threatened against, or are pending against all or any portion of the Property, and Seller has no knowledge of any intended assessments.
- G. No bankruptcy, insolvency, rearrangement or similar action or proceeding involving the Property or Seller is pending, threatened or contemplated by Seller.
- H. There are no leasehold or occupancy agreements encumbering the Property, no party has any possessory interest to or right in the Property, and no party has any right of first refusal, right of first offer or other contractual right to purchase or possess all or any portion of the Property.
- I. Seller will not sell, assign, convey or encumber any right, title or interest in or to the Property or any portion thereof, other than as provided in subparagraph 21.B. below. Seller will not create or permit any lien, encumbrance or charge thereon without promptly discharging the same.

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- J. Seller will not take any action or omit to take any action, which action or omission would have the effect of violating or causing to be untrue any of the representations, warranties, covenants and agreements contained herein.
- K. Seller is not aware of any moratorium on the issuance of building permits or installation or activation of utilities or the approval of preliminary or final subdivision plats. If Seller becomes aware of such a moratorium, Seller will immediately notify Purchaser in writing. All dates, deadlines and time periods contained in this Agreement will be tolled until each such moratorium has been lifted.
- L. The Property is served by public water with sufficient capacity for development of the Lots for their intended use.
- M. No portion of any Lot is within a flood plain or wetland and, except for building setback lines and rights-of-way shown on the Subdivision Plat, no portion of any Lot is unsuitable for or restricted from constructing building improvements thereon.
- N. To the best of Seller's knowledge, the Property has neither been used in connection with, nor has there been any surface or subsurface contamination due to the use, storage, disposal or treatment of any materials, substances or hazardous wastes, as defined by any federal, state or local health or environmental laws, regulations or ordinances, and there are no such materials, substances or hazardous wastes present in, on, or about the Property.
- O. The Property is zoned for the construction of single family detached residences, and Seller and the Property are in compliance with all governmental ordinances including such zoning ordinances, regulations, laws, codes and development, permit and subdivision requirements that affect the Property. Seller has no knowledge of any pending change in the zoning classification of the Property.
- P. The Property and Seller are in and, subject to Purchaser's obligations set forth in subparagraph 11.D. below, will continue to be in compliance with the Federal Water Pollution Control Act and the National Pollution Discharge Elimination System (NPDES) permitting requirements together with all other applicable storm water and erosion control regulatory requirements. There are no outstanding fines against Seller or the Property with respect to the foregoing requirements.
- Q. Seller shall have completed and filed a Notice of Intent ("NOI") with the Environmental Protection Agency and any other applicable authorities and shall have provided (or made available to) Purchaser a copy of the Storm Water Pollution Prevention Plan and the NOI applicable to Seller's development activities.
- R. The Property has no special tax designation that requires any payment or penalty for change in use, and Seller has no knowledge of any special tax or assessment to be levied against all or any portion of the Property.
- S. If applicable, Seller shall post and maintain street, sedimentation, storm drainage and other forms of surety (performance) bonds as may be required by the

EMX 3

applicable governmental authorities for development of the Lots and the drainage facilities serving the Lots, whether such facilities are located on or off the Real Property.

- T. All trees, landscaping, central mail facilities (if applicable) and other improvements to the common areas that are the responsibility of Seller, or if not Seller, the applicable developer, have been installed as required by the applicable authority or association.
 - U. Septic Permits for not less than thirty-two (32) 4-bedroom homes are or will be issued and in full force and effect for system improvements and in a location reasonably acceptable to Purchaser, and each Lot will accommodate the system improvements and location designated therefor in the applicable Septic Permit.
10. Seller Representations and Warranties Regarding the Lots: Seller covenants, represents and warrants to Purchaser the following with respect to the Applicable Lots at each Closing:
- A. The Subdivision Plat will be recorded in the plat records of Greenville County, South Carolina. All operational permits will be received so that a building permit and a certificate of occupancy can be obtained on each Lot.
 - B. Domestic water lines are stubbed within the boundary of each Lot no more than six (6) feet below existing grade.
 - C. Electricity, natural gas, telephone, and cable, including fiber optic, facilities will be installed in sufficient capacity to service the Lots for their intended use and will be available for connection either within the boundary of each Lot or in the public right-of-way adjacent thereto.
 - D. All impact, capacity and similar fees have been paid in full, and Purchaser shall only be required to pay normal and customary tap or connection fees for each Lot at the time of issuance of a building permit therefor.
 - E. The location of the utilities described in subparagraphs 9.L. and 10.B. above will be clearly marked on the ground and accurately shown on as-built utility plans delivered to Purchaser in accordance with subparagraph 4.A. above. All such utilities will be underground except for appurtenant facilities that are customarily above ground. Seller shall provide letters from the applicable authority stating that water taps are available for purchase for each Lot.
 - F. Intentionally Omitted.
 - G. All streets, roads, curbs and gutters and surface water management facilities serving the Lots and shown on the Subdivision Plat will be installed in accordance with applicable regulatory requirements and, subject to Purchaser's obligations set forth in subparagraphs 11.A. and 11.C. below, will be maintained by Seller at its expense in good condition and repair until dedication to and acceptance by the applicable governmental authority.
 - H. Construction access will be available to the Lots.

EMT 3

- I. All street lights, fire hydrants and other common facilities serving the Lots will be installed in accordance with applicable governmental regulations and permitting requirements.
- J. Each Lot will be free of trash and debris, and iron pins will be on the ground at each corner.
- K. Each Lot will have a street address and tax parcel identification number.
- L. Seller shall have provided Purchaser with two (2) copies of the "as built" construction plans for the water system and storm drainage network, which plans will be sufficient to enable Purchaser to locate water taps on each Lot. Water taps for each Lot will be in accessible locations in the ground within the boundary of such Lot.
- M. Seller agrees to keep all lots owned by Seller maintained by keeping grass and weeds cut to six inches (6") or less and keeping the lots free of debris.
- N. Notwithstanding the requirements of the Lot Disturbance Schedule, Seller will cause Lots 1-14 and 19-32 to be developed in a manner that provides completed Lots for takedown in accordance with the Takedown Schedule.

If Seller breaches any of the representations and warranties set forth in this Paragraph 10 (a "Paragraph 10 Breach"), then Purchaser may give written notice thereof to Seller, which notice will require Seller to cure such breach within fourteen (14) days after delivery of notice thereof. If Seller fails to commence such cure within fourteen (14) days and to diligently pursue completion, then Purchaser may either:

- (1) Cure such breach, and Seller will reimburse Purchaser the actual and reasonable cost thereof plus ten percent (10%). Purchaser shall submit reasonable backup documentation with any request for reimbursement, and Seller shall remit such amount on the earlier of the next Closing or within thirty (30) days after request therefor. Notwithstanding the foregoing, if the cost to cure any such breach is less than One Thousand and 00/100 Dollars (\$1,000.00), Purchaser may cure such breach without prior written notice to Seller provided that Purchaser makes available photographs or other reasonable documentation evidencing such breach with its request for reimbursement. If Seller fails to reimburse Purchaser any amounts due pursuant to this Paragraph 10, Purchaser shall be entitled to a credit therefor against amounts due to Seller at the next Closing; or
- (2) Declare a default and pursue its remedies under subparagraph 13.B. below.

11. Purchaser Construction Obligations:

- A. Purchaser shall repair or cause to be repaired any damage beyond normal wear and tear caused by its employees, agents, contractors and subcontractors to the streets, roads, curbs, gutters, sidewalks, storm drainage, signs or other

EMT 3

Improvements in connection with Purchaser's construction activities on, about or adjacent to the Property:

- B. Purchaser shall not cause or permit its employees, agents, contractors and subcontractors to dump or deposit building materials, trash or debris on any lots, rights-of-way or other property not then owned by Purchaser,
- C. Purchaser shall cause construction dirt and gravel generated by its construction activities to be periodically cleaned by a professional street cleaning service.
- D. Purchaser will comply with the Federal Water Pollution Control Act and the National Pollution Discharge Elimination System (NPDES) permitting requirements together with all other applicable storm water and erosion control regulatory requirements.
- E. Intentionally Omitted.
- F. Purchaser shall have the right to clean up or landscape any property owned by Seller to enhance the appeal of the Lots, provided Purchaser shall obtain Seller's prior approval thereof. Seller shall approve any such request or provide written objections to Purchaser within fourteen (14) days after request therefor, which approval will not be unreasonably withheld. Failure of Seller to approve any such request within said fourteen (14) day period shall be deemed approval thereof.
- G. Purchaser shall install trees and landscaping on each Lot in accordance with applicable regulatory requirements.

If Seller determines that Purchaser has failed to fulfill any of its obligations set forth in this Paragraph 11 (a "Paragraph 11 Breach"), then Seller may give written notice thereof to Purchaser, and Purchaser shall commence to cure such breach within fourteen (14) days after delivery of notice thereof. If Purchaser fails to commence such cure within fourteen (14) days and to diligently pursue completion, then Seller may elect to cure such breach, and Purchaser will reimburse Seller the actual and reasonable cost thereof plus ten percent (10%). Seller shall submit reasonable backup documentation with any request for reimbursement, and Purchaser shall remit such amount on the earlier of the next Closing or within thirty (30) days after request therefor. The sole remedy of Seller for a Paragraph 11 Breach is set forth in this Paragraph 11.

12. Service Areas:

- A. Seller shall permit Purchaser to install a temporary construction and/or sales trailer on property not then owned by Purchaser in a location mutually agreeable to the Parties. Purchaser shall maintain the temporary office in a good and neat condition in compliance with all applicable regulatory requirements. Purchaser shall remove all gravel, pavement, concrete and debris in the area immediately surrounding the location of the temporary office and cause it to be grassed within forty-five (45) days after the removal thereof.
- B. Seller shall provide a concrete wash out area on property not then owned by Purchaser. Purchaser shall periodically remove accumulated concrete material.

EMT 3

Purchaser's obligations under this Paragraph 12 are deemed additional Construction Obligations. If Purchaser fails to fulfill same, such failure shall be a Paragraph 11 Breach, and the sole remedy of Seller is set forth in Paragraph 11.

13. Remedies:

A. Purchaser's Default.

- (1) If Purchaser fails to close on the Applicable Lots within the time frames set forth in this Agreement because of Purchaser's breach of this Agreement, and such breach is not cured within thirty (30) days after receipt of notice thereof from Seller, then, as its sole remedy, Seller may terminate this Agreement and the Earnest Money shall be paid to Seller as full liquidated damages and not a penalty. The Parties recognize that it would be difficult to ascertain the actual damages suffered by Seller as a result of such failure of Purchaser to consummate the sales contemplated hereby, it being specifically acknowledged and agreed by the Parties that such liquidated damages are reasonable. Seller hereby waives any right to damages in excess of said liquidated damages for Purchaser's breach of this Agreement and relinquishes any and all right to pursue an action for specific performance against Purchaser in the event Purchaser defaults in any of its obligations hereunder.
- (2) If Purchaser fails to fulfill any obligation under this Agreement other than as set forth in Paragraph 11, Paragraph 12 or subparagraph 13.A.(1) above, then Seller may notify Purchaser of such default. If Purchaser has not cured such default within thirty (30) days after Purchaser's receipt of notice thereof, then Purchaser shall be deemed in default under this Agreement and Seller may as its sole remedy terminate this Agreement and retain the Earnest Money as liquidated damages. If such default cannot be reasonably cured within such thirty (30) day period, then Purchaser shall have such additional time (not to exceed an additional thirty (30) days) as is reasonably necessary to affect a cure so long as Purchaser is diligently working towards a cure. The Parties hereby acknowledge that the actual damages suffered by Seller on account of Purchaser's default would be difficult if not impossible to measure and that the liquidated damages set forth in this subparagraph 13.A.(2) are a reasonable estimate of the damages Seller may suffer on account of Purchaser's breach.

- B. Seller's Default. If Seller defaults under any provision of this Agreement, Purchaser may notify Seller of such default. If Seller has not cured such default within thirty (30) days after Seller's receipt of notice thereof, then Seller shall be deemed in default under this Agreement. If such default cannot be reasonably cured within such thirty (30) day period, then Seller shall have such additional time (not to exceed an additional thirty (30) days) as is reasonably necessary to affect a cure so long as Seller is diligently working towards a cure. If Seller fails to cure any default within the time frame set forth above, then Purchaser may as its sole and exclusive remedies either: (i) seek specific performance, injunctive relief or any other remedies available at law or in equity; (ii) proceed with the purchase of Lots and deduct the cost to cure from the Purchase Price; or

SMT 3

(iii) terminate this Agreement and receive a refund of the Earnest Money. If Purchaser engages legal counsel to enforce its rights hereunder, Seller shall be responsible for all legal fees and costs of enforcement incurred by Purchaser.

14. Notice: All notices, demands, consents, approvals, and other communications which are required or desired to be given by either Party to the other hereunder shall be in writing, which may be delivered via e-mail or may be delivered by either a personal delivery service with charges therefor billed to shipper or by a nationally recognized overnight delivery service with charges therefor billed to shipper (either of which shall be deemed given and received upon delivery). If sent by e-mail, a notice shall be deemed given when such e-mail is transmitted to the e-mail notice address specified below and shall be deemed received on that same day unless given after 6:00 p.m. In the receiving location, in which case such receipt shall be the next business day. Any notice not deliverable shall be deemed received on the first date of attempted delivery. Any notices under this Agreement may be given by or to the respective attorneys listed below.

Purchaser: Crescent Homes SC, LLC
572 Savannah Hwy
Charleston, South Carolina 29407
Attention: Edward M. Terry
Telephone: (843) 573-9835
Email: t.terry@crescenthomes.net

With a copy to: Harvey & Vallini, LLC
497 Bramson Court, Ste. 201
Mt. Pleasant, SC 29464
Attention: Steven E. Harvey, Esq.
Telephone: (843) 388-8883
Email: steveh@hvlawsc.com

And to: LevickRoth
999 Peachtree Street, NE
Suite 855
Atlanta, Georgia 30309
Attention: Suzan E. Roth, Esq.
Telephone: (404) 201-7841
Email: sroth@levickroth.com

Seller: C J N, LLC
c/o Access Realty, LLC
4113 E. North St.
Greenville, SC 29615
Attention: Nick Franchina
Telephone: (864) 630-0557
Email: nickfranchina@accessrealtysc.com

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With a copy to:

Access Realty, LLC
4113 E. North St.
Greenville, SC 29615
Attention: Nick Franchina
Telephone: (864) 630-0557
Email: nickfranchina@accessrealtysc.com

In the event of a change of address by a Party, such Party shall give written notice thereof in accordance with the foregoing. Rejection or failure to claim delivery of any such notice, or any refusal to accept any such notice, or the inability to deliver any such notice hereunder because of changed address or phone for which no notice was given, shall be deemed to be receipt of the notice sent as of the date of attempted delivery.

15. Restrictive Covenants and Plan Approval: Seller agrees to adopt Purchaser's standard form of Declaration of Covenants, Conditions and Restrictions or similar instrument for the Subdivision as may be revised to reflect the particulars of the Subdivision (the "Declaration"). Seller will be the "Declarant" under the Declaration until such time as the development obligations of the Declarant thereunder have been satisfied and the remaining obligations assumed by the home owners' association, and so long as this Agreement is in effect, all matters pertaining to the ARB and plan approval will be determined by Purchaser in its sole discretion. The Declaration will be recorded at the Initial Closing, and Seller will bear any third-party costs incurred in the preparation and recording thereof.
16. Signs: As long as this Agreement is in effect, Purchaser shall have the right to erect a limited number of professionally-designed and constructed temporary signs on the Lots and at the entrance to the neighborhood for purposes of advertising the homes to be constructed on the Lots.
17. Entrance Feature Plans. If not previously delivered to Purchaser, within **thirty (30) days** after the beginning of the Due Diligence Period, Seller will deliver proposed plans for an appropriate entrance feature for the Subdivision to Purchaser for its review and approval, which approval will not be unreasonably withheld. Within ten (10) business days after receipt, Purchaser shall deliver written notice of approval or detailed written comments with suggested revisions to Seller. The Parties will work together in good faith to agree upon the plans for an appropriate entrance feature for the Subdivision prior to the expiration of the Due Diligence Period. Seller will cause the entrance feature for the Subdivision to be completed not later than sixty (60) days after the recording of the Subdivision Plat.
18. Lot Grading and Preparation Cost. If the cost to grade and prepare any Lot for development as a single-family home in accordance with Purchaser's criteria, including without limitation the recommendations of Purchaser's geotechnical engineer, exceeds Two Thousand Five Hundred and No/100 Dollars (\$2,500.00) (the "Lot Prep Cost Cap"), then Seller will reimburse Purchaser an amount equal to the actual cost in excess of the Lot Prep Cost Cap (the "Lot Prep Excess Cost"). Seller will reimburse Purchaser any Lot Prep Excess Cost within fourteen (14) days following request therefor accompanied by reasonable documentation thereof, provided Purchaser may, at its option, take a credit against the Purchase Price due at any Closing for the aggregate, unreimbursed Lot Prep Excess Cost incurred by Purchaser to date. Purchaser shall provide reasonable documentation of any Lot Prep Excess Cost not previously submitted to

Seller no later than three (3) business days prior to a Closing in which a Lot Prep Excess Cost credit will be taken.

19. Right of First Refusal: At the Initial Closing, Seller will grant to Purchaser a right of first refusal with respect to the lots cross-hatched and shown on Exhibit "A-2" as "Future Phase" and any additional lots that may from time to time may be annexed or otherwise included in the Subdivision. A memorandum of such right of first refusal in a form reasonable acceptable to the Parties will be recorded in the public records of Greenville County at the Initial Closing.
20. Commissions: The Parties covenant and agree, each to the other, to indemnify the other against any loss liability, cost, claims, demands, damages, actions, causes of action or suits based upon or arising out of the employment or use by the Indemnifying Party of any real estate broker or agent in connection with the purchase and sale of the Property. Although not entitled to a commission in connection with the transaction contemplated herein, principals of Purchaser are licensed real estate brokers.
21. Miscellaneous:
 - A. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.
 - B. Assignment of Agreement by Seller. Seller shall have the right to assign this Agreement upon thirty (30) days prior written notice to Purchaser to a limited liability company in which Seller shall be a member or manager. Upon any such transfer, Seller shall be released of all liability under this Agreement so long as the entity to which Seller assigns this Agreement agrees to assume all of Seller's obligations hereunder.
 - C. Assignment of Agreement by Purchaser. Purchaser shall not assign this Agreement or its rights hereunder without Seller's prior written consent, which shall not be unreasonably withheld, conditioned or delayed, except that Purchaser may assign to a subsidiary or affiliate controlled by or under common control with Purchaser or Edward M. Terry (collectively, an "Assignee"). Principals of Purchaser are licensed real estate brokers or agents and may be principals in an Assignee. If such assignment is made, then the applicable sales contemplated by this Agreement shall be consummated in the name of and by the authorized officials of any such Assignee and Seller shall look solely to such Assignee for the performance and discharge of all the obligations and liabilities of Purchaser hereunder.
 - D. Undertakings. The Parties agree to execute and deliver such other and further instruments and documents as may be necessary to implement and effectuate the terms of this Agreement.
 - E. Good Faith. The Parties shall act in good faith in performing and discharging their respective duties and obligations hereunder.
 - F. Governing Law. This Agreement has been made in the State of South Carolina and shall be interpreted in accordance with South Carolina law and any enforcement of this Agreement shall be brought in the State of South Carolina.

EMT 7

- G. Construction. The extent to which any Party participated in the drafting of this document shall not determine how any provision hereof is to be construed, it is being recognized that both Parties have contributed substantially and materially in the preparation of this Agreement.
- H. Waiver. No provision, condition, or covenant of this Agreement shall be waived by either Party hereto except by a written instrument delivered to the other Party and executed by the Party consenting thereto, and no failure of either Party to exercise any power given hereunder or to insist upon strict compliance with any obligation specified herein, and no custom or practice at variance with the terms hereof, shall constitute a waiver of such Party's right to demand exact compliance with the terms hereof.
- I. Insurance. Purchaser agrees to maintain in full force and effect liability insurance covering damage to property and injuries to persons resulting from or connected with its construction and sales activities on and about the Real Property. Each Party agrees to indemnify, defend and hold the other Party harmless from any liability, loss or damage to persons or property, including reasonable attorneys' fees and related costs and expenses, caused by the indemnifying Party or by its agents or employees.
- J. Time Periods. Should the date upon which any act required to be performed under this Agreement fall on a Saturday, Sunday or holiday, the time for performance shall be extended to the next business day.
- K. Entire Agreement. This Agreement contains all of the terms and conditions agreed to between the Parties and supersedes all prior agreements, and there are no oral agreements relating to the transaction contemplated herein.
- L. Time of Essence. Time is of the essence with respect to this Agreement.
- M. Like Kind Exchange. Either Party may elect to sell or purchase the Real Property and qualify under the rules of a Section 1031, Tax Deferred Exchange. The Parties will cooperate with the other in effecting such exchange, providing it creates no expense or liability to the other Party.
- N. Sales and Marketing. Purchaser shall have the right to use the name "River Springs" in any signage, advertising and other marketing materials relating to its marketing of the Lots.
- O. Counterparts. This Agreement may be executed in more than one counterpart, each of which shall be deemed an original and all of which shall be deemed one and the same agreement. Counterparts delivered by e-mail delivery of a PDF or similar type format data file, shall have the same force and effect as if such counterpart were an original thereof.
- P. Headings. Captions contained in this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision herein.

EMT 3

- Q. Survival. Except as otherwise provided in this Agreement, all of the terms, provisions, representations, warranties and indemnities of this Agreement shall not merge with any deed but shall survive each and every Closing. Termination of this Agreement for any reason after the Initial Closing shall be effective only with respect to such Lots for which closing has not occurred.
- R. Confidentiality. Except as specifically provided in this Agreement, and except for disclosures to their respective attorneys, agents and lenders or as required by law, the Parties agree to (i) keep this Agreement and its terms confidential, (ii) keep confidential any information that is provided by Purchaser or its consultants, (iii) not use any such confidential information for any purpose other than performance or enforcement of this Agreement, and (iv) not make any public announcement or press release about this Agreement without the other's prior written approval.
- S. Intentionally Omitted.
- T. Patriot Act. The Parties each hereby certify that: (i) they are not acting, directly or indirectly, for or on behalf of any person, group, entity or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person" or other banned or blocked person, entity, nation or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control; and (ii) they are not engaged in this transaction, directly or indirectly on behalf of, or instigating or facilitating this transaction directly or indirectly on behalf of, any such person, group, entity or nation. The Parties each hereby agree to defend, indemnify and hold harmless the other from and against any and all claims, damages, losses, risks, liabilities and expenses (including reasonable attorneys' fees and costs) arising from or related to any breach of the foregoing certification.
- U. Severability. This Agreement is intended to be performed in accordance with, and only to the extent permitted by all applicable laws, ordinances, rules and regulations. If any provision of this Agreement, or the application thereof to any person or circumstance, shall for any reason and to any extent be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, rather such provision shall be enforced to the greatest extent permitted by law.
- V. Amendment. This Agreement shall not be modified or amended except by an instrument in writing executed by or on behalf of the Parties.
- W. Including. The term "including" when used in this Agreement means "including but not limited to."
- X. Independent Consideration. If Purchaser terminates this Agreement pursuant to a right to do so granted to Purchaser hereunder, and if the Earnest Money is otherwise refundable to Purchaser and additional consideration is required for this Agreement to be enforceable under applicable law, then Purchaser and Seller hereby direct Escrow Agent to pay the sum of One Hundred Dollars (\$100.00) from the Earnest Money to Seller as consideration for entering into this Agreement.

EMT 3

22. Expiration: This Agreement has been executed first by Purchaser as a continuing offer to purchase the Property, which offer shall be open to acceptance by Seller until 5:00 p.m. on _____, **2018**, at which time the offer shall be deemed to be withdrawn by Purchaser if the same has not been accepted by Seller and a signed copy delivered to Purchaser.

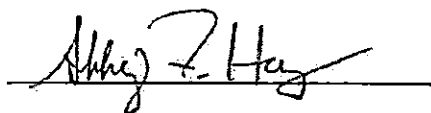
[Signatures begin on following page]

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[Purchaser's signature page for Agreement for Purchase and Sale of Developed Lots]

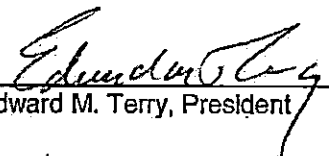
IN WITNESS WHEREOF, the Parties have executed this Agreement on the day and year shown below their signatures.

Witness:



PURCHASER:

CRESCENT HOMES SC, LLC, a Delaware
series limited liability company

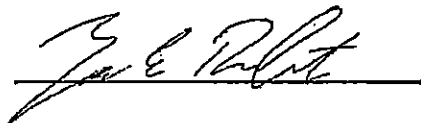
By: 
Edward M. Terry, President

Date: 10/8/18, 2018

[Signatures continue on next page]

[Seller's signature page for Agreement for Purchase and Sale of Developed Lots]

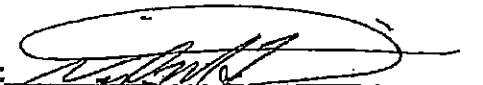
Witness:



SELLER:

C J N, LLC, a South Carolina limited liability company

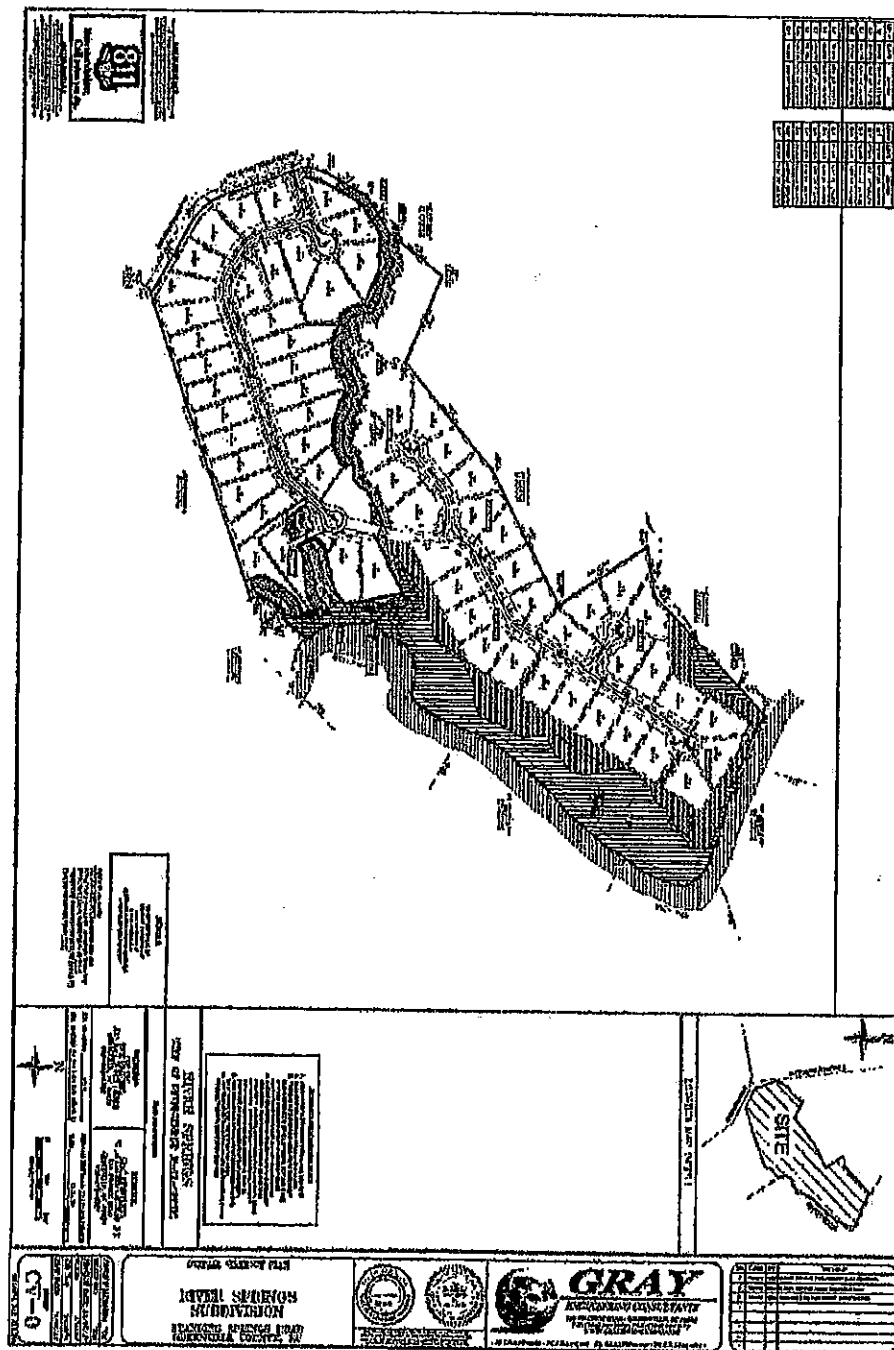
By:


Print Name: Wick Flanagan
Print Title: Managing Director

Date: 10-5-18, 2018

EXHIBIT "A-1"

Subdivision Plat

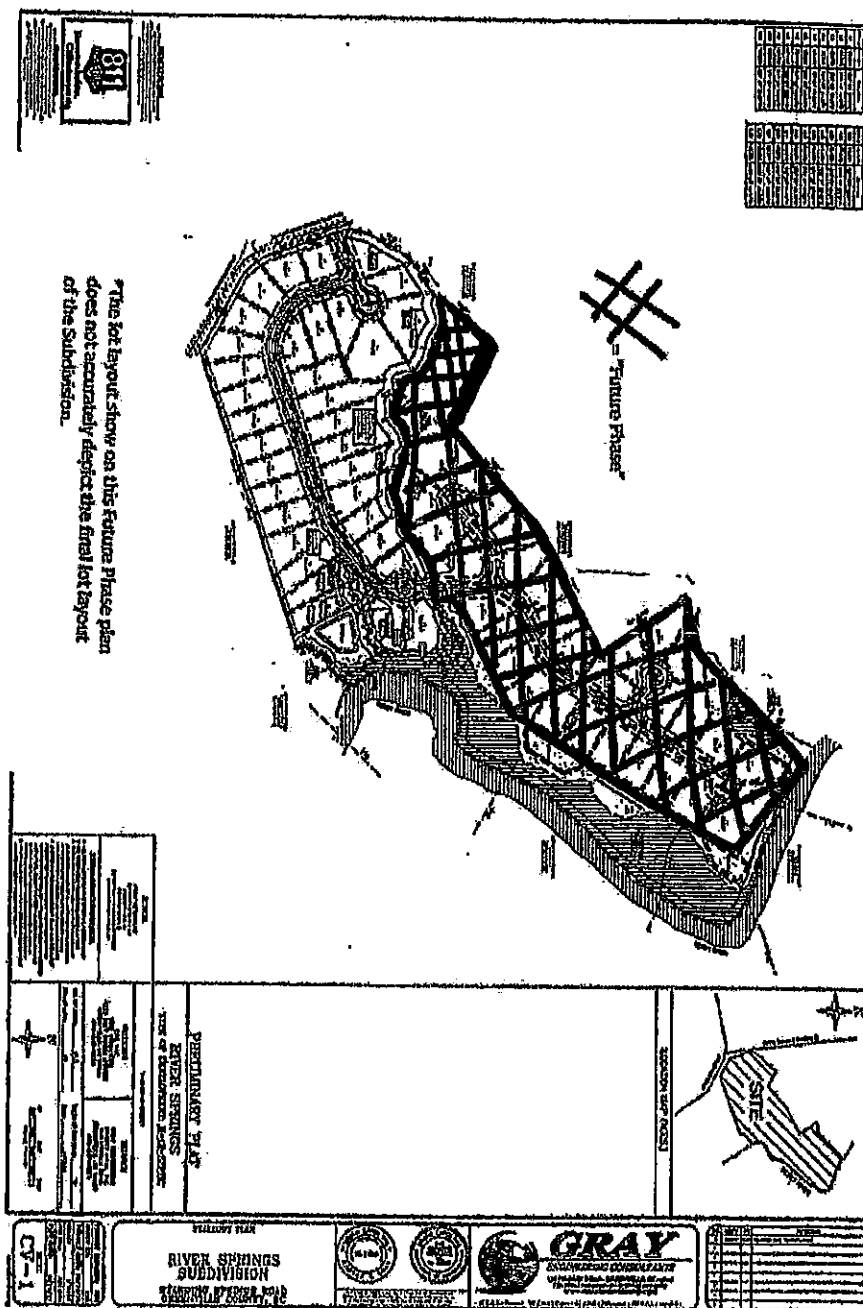


A-1

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EXHIBIT "A-2"

Future Phase



The lot layout shown on this Future Phase plan does not accurately depict the final lot layout of the Subdivision.

3

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EXHIBIT "B"**Lot Pricing and Takedown Schedule**

Lot Takedowns (See subparagraph 3.B regarding Lot Selection):

<u>Takedown</u>	<u>Required Minimum Lot Takedown (Note 1)</u>
Initial Closing	10
2	6
3	8
4	8

Lots:

<u>Lots</u>	<u>Purchase Price</u>
1-14	\$86,500.00
15-18	\$86,500.00
	[Adjacent to Reedy River]
19-32	\$86,500.00

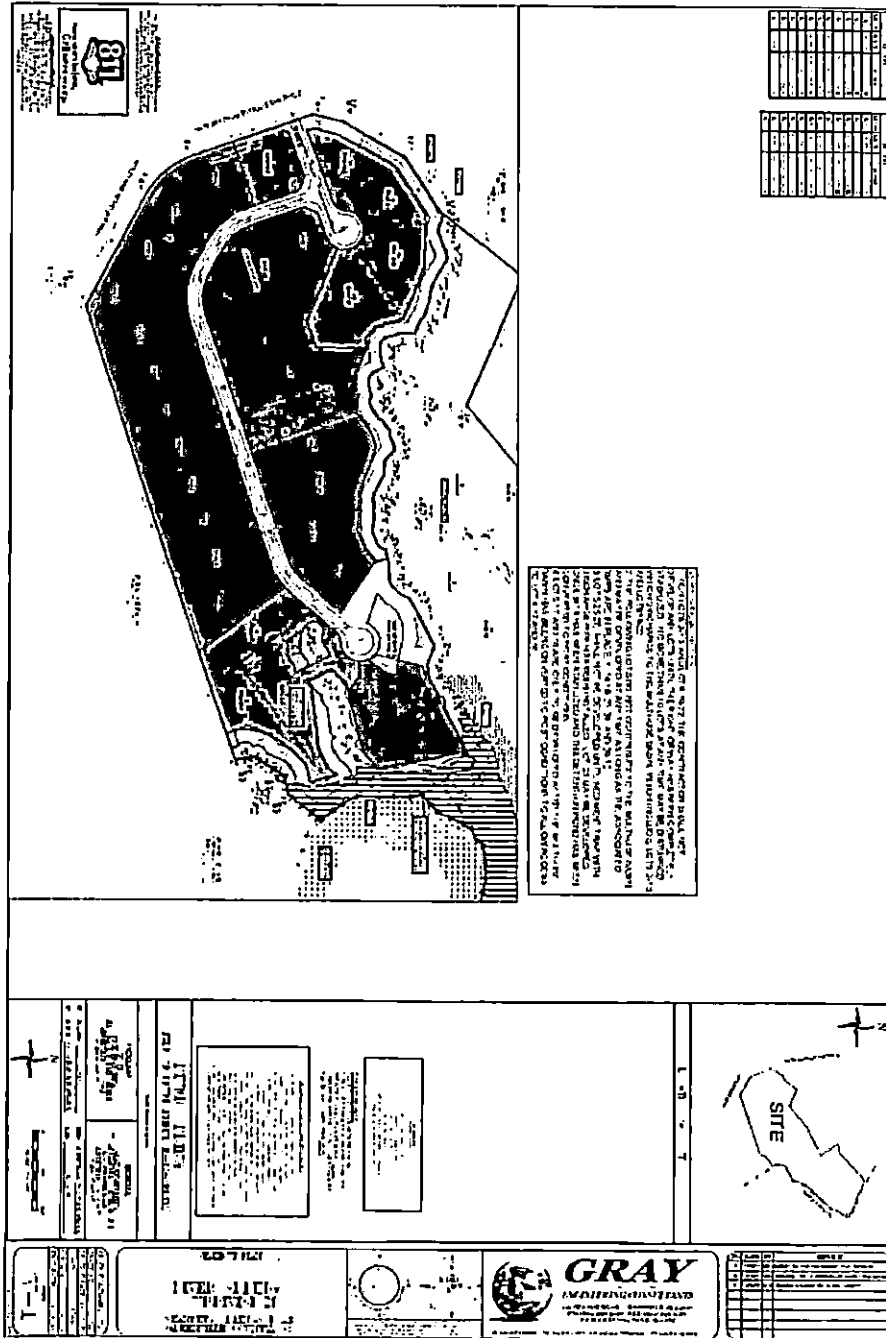
Notes:

1. Pursuant to subparagraph 6.B. of the Agreement, each Subsequent Closing shall occur no later than one hundred eighty (180) days following the immediately preceding takedown.
2. Each Closing deadline runs from the prior Closing deadline of the previous Closing, not from the actual date of the prior Closing or Closings.
3. With respect to each Closing, Purchaser shall have the option to purchase Lots (which shall be some or all, of the Lots in a future takedown requirement) at a faster rate than provided in Paragraph 2 above, and, in such event, the Lots so purchased shall be credited to the next subsequent purchase obligation. Purchaser will be able to "skip" one subsequent takedown during the contract period at the Purchaser's discretion.
4. The last Required Minimum Lot Takedown will be adjusted to reflect any Lots removed from this Agreement in accordance with Paragraph 3.C. above.
5. In addition to the rights of Purchaser pursuant to Paragraph 10, if any Closing is delayed for any reason that is the fault of Seller, then Purchaser may require that the Required Minimum Lot Takedown cease until all such delays have been satisfied, at which time the Required Minimum Lot Takedown will continue from the point at which they were previously suspended.

3
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EXHIBIT "C"

Lot Disturbance Schedule



3
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EXHIBIT "C"

Lot Disturbance Schedule, Cont.

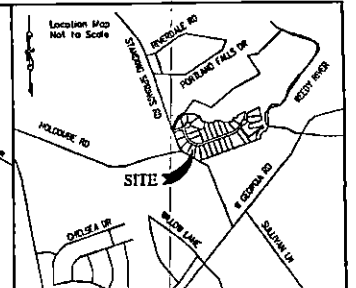
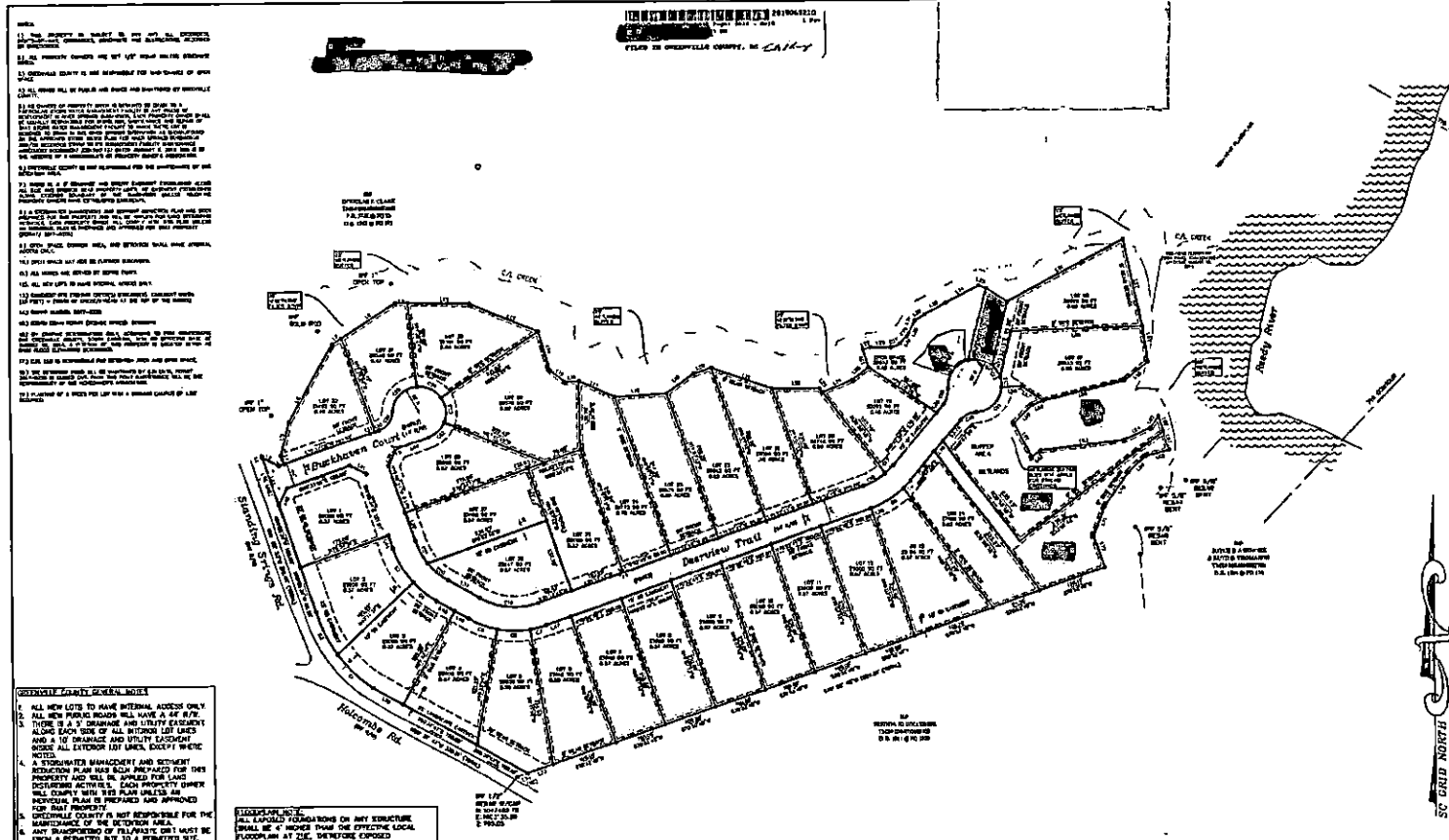
VERY SPECIAL NOTES:
1. FOR LOTS 2-13, AND LOTS 19-22, THE CONTRACTOR SHALL NOT DEVELOP ANY LOTS UNTIL THE RIGHT OF WAY HAS BEEN COMPLETELY STABILIZED. NO MORE THAN 10 LOTS AT ANY TIME MAY BE DISTURBED, WHICH DISCHARGE TO THE MULTI-USE BASIN, WHICH INCLUDE LOTS 2-13, AND LOTS 19-22.
2. THE FOLLOWING LOTS DO NOT CONTRIBUTE TO THE MULTI-USE BASIN AND MAY BE DEVELOPED AT ANY TIME AS LONG AS THE ASSOCIATED BMPs ARE IN PLACE: 1, 14-18, 23-28, AND 29-32.
3. LOTS 25-27, SHALL NOT BE DEVELOPED UNTIL SEDIMENT TRAP WITH DISCHARGE PIPE HAS BEEN INSTALLED. LOT 29 MAY BE DEVELOPED ONCE SITE HAS BEEN STABILIZED AND THE DETENTION POND HAS BEEN CONVERTED TO POST CONDITIONS.
4. LOTS 17 AND 18 ARE ONLY TO BE DEVELOPED AFTER THE MULTI-USE BASIN HAS BEEN CONVERTED TO POST CONDITIONS TO ALLOW ACCESS TO LOTS 17 AND 18.

Developed Lots (2/2018)
4812-2804-8691, v. 17

C

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2



FINAL PLAT

CERTIFICATE OF ACCURACY

I, the undersigned, being a duly qualified and licensed surveyor, do hereby certify that the foregoing plat is a true and correct representation of the facts and circumstances as shown by the survey and as the same appear on the ground.

[Signature]
JASON ELLIS, JR.
Surveyor



CERTIFICATE OF OWNERSHIP AND DEDICATION

The undersigned hereby certifies that the land shown on this plat is the property of the owner and that the owner has dedicated the same to the public for the use and enjoyment of the community.

[Signature]
JASON ELLIS, JR.
Surveyor

CERTIFICATE OF APPROVAL FOR RECORDING

I, the undersigned, being a duly qualified and licensed surveyor, do hereby certify that the foregoing plat is a true and correct representation of the facts and circumstances as shown by the survey and as the same appear on the ground.

[Signature]
JASON ELLIS, JR.
Surveyor

River Springs Phase I

ON, LLC
1111 S. 11TH ST.
GREENVILLE, NC 27601
OWNER

NO. OF ACRES: 61.2
NO. LOTS: 63 (32 PHASE I)

WILES OF NEW ROAD: 0.79 (0.37 PHASE I)
DATE: AUGUST 28, 2019
ZONED: R-12-SEPTIC

GRAPHIC SCALE: 1" = 100'

EXHIBIT

[Handwritten B]

- GENERAL NOTES:**
- ALL NEW LOTS TO HAVE INTERNAL ACCESS ONLY.
 - ALL NEW PUBLIC ROADS WILL HAVE A 40' R/W.
 - IF THERE IS A UTILITY EXISTING ALONG EACH SIDE OF ALL INTERIOR LOT LINES AND A UTILITY EXISTING ALONG EACH SIDE OF ALL INTERIOR LOT LINES, THE UTILITY SHALL BE PLACED IN THE CENTER OF THE ROAD.
 - A STORMWATER MANAGEMENT AND RETENTION SYSTEM SHALL BE PROVIDED FOR THIS PROJECT AND SHALL BE DESIGNED BY THE ENGINEER. THE SYSTEM SHALL BE DESIGNED TO MEET THE REQUIREMENTS OF THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION AND THE NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES.
 - THE ENGINEER SHALL BE RESPONSIBLE FOR THE MAINTENANCE OF THE RETENTION AREA.
 - ANY CHANGING OF THE PLAT MUST BE FROM A PERMITTED SITE TO A PERMITTED SITE.

LEGEND

1"	ONE INCH
2"	TWO INCHES
3"	THREE INCHES
4"	FOUR INCHES
5"	FIVE INCHES
6"	SIX INCHES
7"	SEVEN INCHES
8"	EIGHT INCHES
9"	NINE INCHES
10"	TEN INCHES
11"	ELEVEN INCHES
12"	TWELVE INCHES
13"	THIRTEEN INCHES
14"	FOURTEEN INCHES
15"	FIFTEEN INCHES
16"	SIXTEEN INCHES
17"	SEVENTEEN INCHES
18"	EIGHTEEN INCHES
19"	NINETEEN INCHES
20"	TWENTY INCHES
21"	TWENTY ONE INCHES
22"	TWENTY TWO INCHES
23"	TWENTY THREE INCHES
24"	TWENTY FOUR INCHES
25"	TWENTY FIVE INCHES
26"	TWENTY SIX INCHES
27"	TWENTY SEVEN INCHES
28"	TWENTY EIGHT INCHES
29"	TWENTY NINE INCHES
30"	THIRTY INCHES
31"	THIRTY ONE INCHES
32"	THIRTY TWO INCHES
33"	THIRTY THREE INCHES
34"	THIRTY FOUR INCHES
35"	THIRTY FIVE INCHES
36"	THIRTY SIX INCHES
37"	THIRTY SEVEN INCHES
38"	THIRTY EIGHT INCHES
39"	THIRTY NINE INCHES
40"	FOURTY INCHES
41"	FOURTY ONE INCHES
42"	FOURTY TWO INCHES
43"	FOURTY THREE INCHES
44"	FOURTY FOUR INCHES
45"	FOURTY FIVE INCHES
46"	FOURTY SIX INCHES
47"	FOURTY SEVEN INCHES
48"	FOURTY EIGHT INCHES
49"	FOURTY NINE INCHES
50"	FIFTY INCHES
51"	FIFTY ONE INCHES
52"	FIFTY TWO INCHES
53"	FIFTY THREE INCHES
54"	FIFTY FOUR INCHES
55"	FIFTY FIVE INCHES
56"	FIFTY SIX INCHES
57"	FIFTY SEVEN INCHES
58"	FIFTY EIGHT INCHES
59"	FIFTY NINE INCHES
60"	SIXTY INCHES
61"	SIXTY ONE INCHES
62"	SIXTY TWO INCHES
63"	SIXTY THREE INCHES
64"	SIXTY FOUR INCHES
65"	SIXTY FIVE INCHES
66"	SIXTY SIX INCHES
67"	SIXTY SEVEN INCHES
68"	SIXTY EIGHT INCHES
69"	SIXTY NINE INCHES
70"	SEVENTY INCHES
71"	SEVENTY ONE INCHES
72"	SEVENTY TWO INCHES
73"	SEVENTY THREE INCHES
74"	SEVENTY FOUR INCHES
75"	SEVENTY FIVE INCHES
76"	SEVENTY SIX INCHES
77"	SEVENTY SEVEN INCHES
78"	SEVENTY EIGHT INCHES
79"	SEVENTY NINE INCHES
80"	EIGHTY INCHES
81"	EIGHTY ONE INCHES
82"	EIGHTY TWO INCHES
83"	EIGHTY THREE INCHES
84"	EIGHTY FOUR INCHES
85"	EIGHTY FIVE INCHES
86"	EIGHTY SIX INCHES
87"	EIGHTY SEVEN INCHES
88"	EIGHTY EIGHT INCHES
89"	EIGHTY NINE INCHES
90"	NINETY INCHES
91"	NINETY ONE INCHES
92"	NINETY TWO INCHES
93"	NINETY THREE INCHES
94"	NINETY FOUR INCHES
95"	NINETY FIVE INCHES
96"	NINETY SIX INCHES
97"	NINETY SEVEN INCHES
98"	NINETY EIGHT INCHES
99"	NINETY NINE INCHES
100"	HUNDRED INCHES

TABLE

LINE #	BEARING	LENGTH	AREA
1	N 0° 0' 0" E	10.00	10.00
2	S 0° 0' 0" E	10.00	10.00
3	W 0° 0' 0" E	10.00	10.00
4	N 0° 0' 0" E	10.00	10.00
5	S 0° 0' 0" E	10.00	10.00
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12	W 0° 0' 0" E	10.00	10.00
13	N 0° 0' 0" E	10.00	10.00
14	S 0° 0' 0" E	10.00	10.00
15	W 0° 0' 0" E	10.00	10.00
16	N 0° 0' 0" E	10.00	10.00
17	S 0° 0' 0" E	10.00	10.00
18	W 0° 0' 0" E	10.00	10.00
19	N 0° 0' 0" E	10.00	10.00
20	S 0° 0' 0" E	10.00	10.00
21	W 0° 0' 0" E	10.00	10.00
22	N 0° 0' 0" E	10.00	10.00
23	S 0° 0' 0" E	10.00	10.00
24	W 0° 0' 0" E	10.00	10.00
25	N 0° 0' 0" E	10.00	10.00
26	S 0° 0' 0" E	10.00	10.00
27	W 0° 0' 0" E	10.00	10.00
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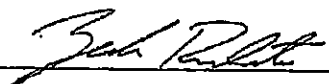
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35	S 0° 0' 0" E	10.00	10.00
36	W 0° 0' 0" E	10.00	10.00
37	N 0° 0' 0" E	10.00	10.00
38	S 0° 0' 0" E	10.00	10.00
39	W 0° 0' 0" E	10.00	10.00
40	N 0° 0' 0" E	10.00	10

RIVER SPRINGS

Post-Grading Walkthrough

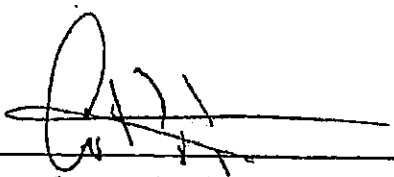
On February 7, 2019 Terry Wood (Wood Construction), Zach Roberts (CJN LLC), and Carter Barksdale (Crescent Homes) walked the site to review site conditions and look at stockpiled dirt/rock.

At the conclusion of the meeting it was agreed that the dirt/rock would be left on site and used by Crescent Homes at a later date for lot grading and final landscaping.



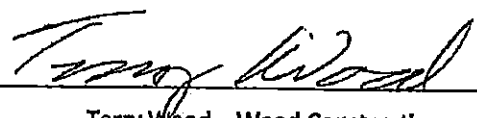
Zach Roberts - CJN LLC

2-7-19
Date



Carter Barksdale - Crescent Homes

2-7-19
Date



Terry Wood - Wood Construction

2/7/19
Date



SECOND AMENDMENT TO AGREEMENT FOR PURCHASE AND SALE

This **SECOND AMENDMENT TO AGREEMENT FOR PURCHASE AND SALE** ("Second Amendment") is made and entered into as of August 6, 2020, by and between **CRESCENT HOMES SC, LLC**, a Delaware series limited liability company ("Purchaser"), and **C J N, LLC**, a South Carolina limited liability company ("Seller"), Seller and Purchaser being collectively referred to as the "Parties."

WHEREAS, Purchaser and Seller entered into that certain Agreement for Purchase and Sale of Developed Lots, having an Effective Date of October 8, 2018 (the "Agreement") regarding that certain track or parcel of real estate identified as TMS No. 0584010102601, located in Greenville County, South Carolina (the "Property");

WHEREAS, the Parties have a dispute regarding the Real Property and various provisions of the Agreement (the "Dispute"); and

WHEREAS, the Parties wish to reserve all rights, claims, and defenses related to the Dispute while also facilitating the Initial Closing to proceed;

NOW, THEREFORE, for and in consideration of the sum of Ten and 00/100 Dollars (\$10.00) cash in hand paid and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Purchaser and Seller amend the Agreement as follows:

1. The Recitals set forth above are hereby incorporated into this Second Amendment and are hereby made a part hereof, as if fully set forth herein.
2. With regard to Lots 15 and 16, Purchaser will receive a credit from Seller against the Purchase Price of each of Lots 15 and 16 in the amount of Thirty-Three Thousand Dollars per Lot (\$33,000.00/Lot), for a total credit of Sixty-Six Thousand Dollars (\$66,000.00), as compensation for the necessity of installing engineered septic systems on Lots 15 and 16. The per Lot credit will be applied upon the closing of each Lot, as and when applicable.
3. The Parties confirm that the installation of the street lighting for the subdivision is underway. Upon the completion of installation of the street lighting, Seller, as Declarant under the Declaration of Covenants, Conditions, and Restrictions ("Declaration"), shall activate the street lights and keep the street lights on during appropriate hours, consistent with the general obligations of Declarant under Article VIII, *et seq.*, of the Declaration, until such time as this obligation is transferred to the homeowners' association.
4. Capitalized terms used in this Second Amendment not otherwise defined above shall have the same meaning as set forth in the Agreement.
5. The Agreement, as previously amended and as amended hereby, is hereby confirmed and remains in full force and effect as amended hereunder.



6. This Second Amendment may be executed in multiple counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Executed copies of this Second Amendment may be delivered electronically, by facsimile or in PDF or similar format, and such copies shall be deemed originals for all purposes.

IN WITNESS WHEREOF, the Parties hereto have executed this Second Amendment as of the date first above written.

[Purchasers Signature to Second Amendment to Agreement for Purchase and Sale]

Witness:

PURCHASER:

CRESCENT HOMES SC, LLC, a
Delaware limited liability company

By: *Edward M. Terry*
Name: *Edward M. Terry*
Title: *President*
Date: *8/8/20*

[Signatures Continue on Next Page]

[Seller's Signature to Second Amendment to Agreement for Purchase and Sale]

Witness:

SELLER:
C J N, LLC, a South Carolina
limited liability company

By: _____
Name: _____
Title: _____
Date: _____

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

CRESCENT HOMES SC, LLC,)

Plaintiff,)

vs.)

C J N, LLC,)

Defendant.)

IN THE COURT OF COMMON PLEAS

THIRTEENTH JUDICIAL CIRCUIT

Case No.: 2019-CP-23-5954

**PLAINTIFF'S REPLY TO ANSWER AND
COUNTERCLAIMS**

COMES NOW Plaintiff Crescent Homes SC, LLC ("Plaintiff" or "Crescent"), by and through it undersigned counsel, and hereby replies to Defendant C J N, LLC's ("Defendant" or "CJN") Answer and Counterclaims as follows:

FOR A FIRST DEFENSE

Plaintiff hereby denies each and every allegation in Defendant's Answer and Counterclaims that is not expressly admitted herein.

FOR A SECOND DEFENSE

1. The allegations contained in Paragraphs 1 through 63 of Defendant's Answer and Counterclaims are in response to Plaintiff's Complaint and therefore, do not require further response from Plaintiff. However, to the extent any response is required, Plaintiff reasserts the allegations contained in the Complaint and deny the allegations set forth in Defendant's Answer and Counterclaims.

FOR A THIRD DEFENSE

2. In response to the allegations contained in Paragraph 64 of Defendant's Answer and Counterclaims, Plaintiff restates and realleges each and every response above as if fully set

forth herein.

3. Plaintiff admits the allegations contained in Paragraph 65 of Defendant's Answer and Counterclaims.

4. Plaintiff admits the allegations contained in Paragraph 66 of Defendant's Answer and Counterclaims.

5. In response to the allegations contained in Paragraph 67 of Defendant's Answer and Counterclaims, Plaintiff admits that it entered into the Agreement for Purchase and Sale of Developed Lots. Plaintiff denies the remaining allegations contained in Paragraph 67 and craves reference to the language of the Agreement.

6. In response to the allegations contained in Paragraph 68 of Defendant's Answer and Counterclaims, Plaintiff denies the allegations contained in Paragraph 68 and craves reference to the language of the Agreement and the Lot Pricing and Takedown Schedule.

7. In response to the allegations contained in Paragraph 69 of Defendant's Answer and Counterclaims, Plaintiff denies the allegations contained in Paragraph 69 and craves reference to the language of the Agreement and the Lot Pricing and Takedown Schedule. In further response, Plaintiff notes that Defendant's allegations are knowingly false, as the takedown schedule is subject to Defendant honoring its obligations under the Agreement, which Defendant knows that it failed to do. As a result, the Initial Closing was delayed.

8. In response to the allegations contained in Paragraph 70 of Defendant's Answer and Counterclaims, Plaintiff admits only that the plat was recorded. Plaintiff denies the remaining allegations contained in Paragraph 70 and craves reference to the language of the Agreement and the Lot Pricing and Takedown Schedule. In further response, Plaintiff notes that Defendant's allegations are knowingly false, as the takedown schedule is subject to Defendant

honoring its obligations under the Agreement, which Defendant knows that it failed to do. As a result, the Initial Closing was delayed.

9. Plaintiff denies the allegations contained in Paragraph 71 of Defendant's Answer and Counterclaims and states that Plaintiff was not obligated to close on the lots until Defendant was ready, willing, and able to convey lots that complied with the Agreement. In further response, Plaintiff notes that Defendant's allegations are knowingly false, as the takedown schedule is subject to Defendant honoring its obligations under the Agreement, which Defendant knows that it failed to do. As a result, the Initial Closing was delayed.

10. Plaintiff denies the allegations contained in Paragraph 72 of Defendant's Answer and Counterclaims.

11. In response to the allegations contained in Paragraph 73 of Defendant's Answer and Counterclaims, Plaintiff denies the allegations and states that Plaintiff presented a detailed notice to Defendant in which Plaintiff identified seventeen (17) deficiencies and defaults on the part of Defendant.

12. Plaintiff denies the allegations contained in Paragraph 74 of Defendant's Answer and Counterclaims.

13. In response to the allegations contained in Paragraph 75 of Defendant's Answer and Counterclaims, Plaintiff admits only that it notified Defendant of its breaches and defaults under the Agreement by letter dated September 5, 2019. Plaintiff denies the remaining allegations contained in Paragraph 75.

14. Plaintiff denies the allegations contained in Paragraph 76 of Defendant's Answer and Counterclaims and craves reference to the language of the Agreement.

15. Plaintiff denies the allegations contained in Paragraph 77 of Defendant's Answer

and Counterclaims and craves reference to the language of the Agreement.

16. Plaintiff denies the allegations contained in Paragraph 78 of Defendant's Answer and Counterclaims and craves reference to the language of the Agreement.

17. Plaintiff denies the allegations contained in Paragraph 79 of Defendant's Answer and Counterclaims.

18. Plaintiff denies the allegations contained in Paragraph 80 of Defendant's Answer and Counterclaims, including the allegations contained in subparagraphs a and b to Paragraph 80.

19. Plaintiff denies the allegations contained in Paragraph 81 of Defendant's Answer and Counterclaims.

20. Plaintiff denies the allegations contained in Paragraph 82 of Defendant's Answer and Counterclaims.

21. Plaintiff denies the allegations contained in Paragraph 83 of Defendant's Answer and Counterclaims.

22. Plaintiff denies the allegations contained in Paragraph 84 of Defendant's Answer and Counterclaims.

23. Plaintiff denies the allegations contained in Paragraph 85 of Defendant's Answer and Counterclaims, including the allegations contained in subparagraphs a through c to Paragraph 85.

24. In response to the allegations contained in Paragraph 86 of Defendant's Answer and Counterclaims, including the allegations contained in subparagraphs a through c to Paragraph 86, Plaintiff admits that the parties entered into the Second Amendment to Agreement for Purchase and Sale.

AS TO THE FIRST COUNTERCLAIM***(Breach of Contract/Breach of the Covenant of Good Faith and Fair Dealing)***

25. In response to the allegations contained in Paragraph 87 of Defendant's Answer and Counterclaims, Plaintiff restates and realleges each and every response above as if fully set forth herein.

26. Plaintiff admits the allegations contained in Paragraph 88 of Defendant's Answer and Counterclaims.

27. In response to the allegations contained in Paragraph 89 of Defendant's Answer and Counterclaims, Plaintiff denies the allegations contained in Paragraph 89 and craves reference to the language of the Agreement and the Lot Pricing and Takedown Schedule.

28. In response to the allegations contained in Paragraph 90 of Defendant's Answer and Counterclaims, Plaintiff admits only that the plat was recorded. Plaintiff denies the remaining allegations contained in Paragraph 90 and craves reference to the language of the Agreement and the Lot Pricing and Takedown Schedule.

29. Plaintiff denies the allegations contained in Paragraph 91 of Defendant's Answer and Counterclaims and states that Plaintiff was not obligated to close on the lots until Defendant was ready, willing, and able to convey lots that complied with the Agreement.

30. Plaintiff denies the allegations contained in Paragraph 92 of Defendant's Answer and Counterclaims.

31. In response to the allegations contained in Paragraph 93 of Defendant's Answer and Counterclaims, Plaintiff denies the allegations and states that Plaintiff presented a detailed notice to Defendant in which Plaintiff identified seventeen (17) deficiencies and defaults on the part of Defendant.

32. Plaintiff denies the allegations contained in Paragraph 94 of Defendant's Answer

and Counterclaims.

33. Plaintiff denies the allegations contained in Paragraph 95 of Defendant's Answer and Counterclaims and craves reference to the language of the Agreement.

34. In response to the allegations contained in Paragraph 96 of Defendant's Answer and Counterclaims, Plaintiff denies the allegations and states that Plaintiff was not obligated to close on the lots until Defendant was ready, willing, and able to convey lots that complied with the Agreement.

35. Plaintiff denies the allegations contained in Paragraph 97 of Defendant's Answer and Counterclaims.

36. Plaintiff denies the allegations contained in Paragraph 98 of Defendant's Answer and Counterclaims.

37. Plaintiff denies the allegations contained in Paragraph 99 of Defendant's Answer and Counterclaims.

38. Plaintiff denies the allegations contained in Paragraph 100 of Defendant's Answer and Counterclaims.

39. Plaintiff denies the allegations contained in Paragraph 101 of Defendant's Answer and Counterclaims and states that Defendant is not entitled to the relief requested in Paragraph 101 or otherwise.

AS TO THE SECOND COUNTERCLAIM
(Quantum Meruit/Unjust Enrichment)

40. In response to the allegations contained in Paragraph 102 of Defendant's Answer and Counterclaims, Plaintiff restates and realleges each and every response above as if fully set forth herein.

41. Plaintiff denies the allegations contained in Paragraph 103 of Defendant's Answer

and Counterclaims.

42. Plaintiff denies the allegations contained in Paragraph 103 of Defendant's Answer and Counterclaims.

43. Plaintiff denies the allegations contained in Paragraph 104 of Defendant's Answer and Counterclaims.

44. Plaintiff denies the allegations contained in Paragraph 105 of Defendant's Answer and Counterclaims.

45. Plaintiff denies the allegations contained in Paragraph 106 of Defendant's Answer and Counterclaims.

46. Plaintiff denies the allegations contained in Paragraph 107 of Defendant's Answer and Counterclaims.

47. Plaintiff denies the allegations contained in Paragraph 108 of Defendant's Answer and Counterclaims and states that Defendant is not entitled to the relief requested in Paragraph 108 or otherwise.

AS TO THE THIRD COUNTERCLAIM
(Breach of Contract – Specific Performance)

48. In response to the allegations contained in Paragraph 109 of Defendant's Answer and Counterclaims, Plaintiff restates and realleges each and every response above as if fully set forth herein.

49. In response to the allegations contained in Paragraph 110 of Defendant's Answer and Counterclaims, Plaintiff denies the allegations and states that Plaintiff performed all of the obligations required on the part of Plaintiff under the Agreement and was ready, willing, and able to perform the remaining obligations under the Agreement and that Defendant failed to perform its duties under the Agreement.

50. Plaintiff admits the allegations contained in Paragraph 111 of Defendant's Answer and Counterclaims.

51. Plaintiff denies the allegations contained in Paragraph 112 of Defendant's Answer and Counterclaims.

52. Plaintiff denies the allegations contained in Paragraph 113 of Defendant's Answer and Counterclaims.

53. In response to the allegations contained in Paragraph 114 of Defendant's Answer and Counterclaims, Plaintiff denies the allegations contained in Paragraph 114 and craves reference to the language of the Agreement and the Takedown Schedule.

54. Plaintiff denies the allegations contained in Paragraph 115 of Defendant's Answer and Counterclaims.

55. Plaintiff denies the allegations contained in Paragraph 116 of Defendant's Answer and Counterclaims.

56. Plaintiff denies the allegations contained in Paragraph 117 of Defendant's Answer and Counterclaims and states that Defendant is not entitled to relief requested in Paragraph 117 or otherwise.

57. Plaintiff denies the allegations contained in the "WHEREFORE" clause of Defendant's Answer and Counterclaims, including subparagraphs a through g, and states that Defendant is not entitled to the relief requested in the "WHEREFORE" clause or otherwise.

FOR A FOURTH DEFENSE
(Failure to State a Claim)

58. CJN's counterclaims fail to state a claim for which relief can be granted and therefore, should be dismissed under Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

WHEREFORE, having stated its Reply to Defendant CJN, LLC's Answer and Counterclaims, Plaintiff Crescent Homes SC, LLC, respectfully requests that the Court dismiss Defendant's counterclaims with prejudice and that Defendant recover nothing by reason of the Answer and Counterclaims, and award Plaintiff the relief requested in the Complaint along with such other and further relief as the Court deems just and proper.

Respectfully submitted,

By: s/Ellis R. Lesemann
Ellis R. Lesemann (S.C. Bar No. 15315)
erl@lalawsc.com
Michelle A. Matthews (S.C. Bar No. 100685)
mam@lalawsc.com
LESEMANN & ASSOCIATES LLC
418 King Street, Suite 301
Charleston, SC 29403
(843) 724-5155

Attorneys for Plaintiff

November 6, 2020
Charleston, South Carolina

STATE OF SOUTH CAROLINA-	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
CJN, LLC,	)	
	)	Case No.: 2020-CP-23-_____
Plaintiff,	)	
	)	
vs.	)	SUMMONS
	)	
CRESCENT HOMES SC, LLC	)	
	)	
Defendant.	)	
	)	

TO DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to this Complaint upon the subscribers at their office, 704 East McBee Avenue, Greenville, South Carolina 29601, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court and judgment by default will be rendered against you for the relief demanded in the Complaint.

Respectfully submitted,

KENISON, DUDLEY & CRAWFORD, LLC

/s/ F. James Warmoth
 John T. Crawford, Jr., (SC Bar # 69682)
 F. James Warmoth (SC Bar # 101072)
 704 E. McBee Avenue
 Greenville, SC 29601
 Telephone: (864) 242-4899
 Facsimile: (864) 242-4844
 Email: warmoth@conlaw.com

Counsel for Plaintiff

September 18, 2020
 Greenville, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
CJN, LLC,	)	
	)	Case No.: 2020-CP-23-____
Plaintiff,	)	
	)	
vs.	)	COMPLAINT
	)	
CRESCENT HOMES SC, LLC	)	
	)	
Defendant.	)	
	)	

COMES NOW Plaintiff CJN, LLC ("CJN"), complaining of Defendant Crescent Homes SC, LLC ("**Crescent**"), and states as follows:

1. CJN is a limited liability company organized and existing under the laws of the State of South Carolina and is the owner of real property located in Greenville County, South Carolina.
2. Crescent is a Delaware limited liability company and conducts business in Greenville County, South Carolina.
3. This Court has personal jurisdiction over the parties hereto and has subject matter jurisdiction over this action.
4. Venue is proper in this forum.
5. CJN is the owner of certain real property that is the subject of this dispute and is located at an unassigned address on Standing Springs Road in Greenville County, South Carolina and has been assigned TMS: P/O 0584010102601 (the "**CJN Property**"). The CJN Property is further described in the property description included in Exhibit A hereto.
6. On or about July 10, 2020, Crescent filed a lis pendens on the CJN Property in *Crescent Homes SC, LLC v. CJN, LLC*, Greenville County Case No. 2020-CP-2300343 ("**Lis**

Pendens 1”), giving notice of purported pending litigation related to the CJN Property. A copy of Lis Pendens 1 is attached hereto as Exhibit A.

7. On or about August 6, 2020, Crescent filed a lis pendens on the CJN Property in *Crescent Homes SC, LLC v. CJN, LLC*, Greenville County Case No. 2020-CP-2300373 (“**Lis Pendens 2**”), giving notice of purported pending litigation related to the CJN Property. A copy of Lis Pendens 2 is attached hereto as Exhibit B.
8. On or about August 27, 2020, Crescent filed a lis pendens on the CJN Property in *Crescent Homes SC, LLC v. CJN, LLC*, Greenville County Case No. 2020-CP-2300395 (“**Lis Pendens 3**”), giving notice of purported pending litigation related to the CJN Property. A copy of Lis Pendens 3 is attached hereto as Exhibit C.
9. On or about September 17, 2020, Crescent filed a lis pendens on the CJN Property in *Crescent Homes SC, LLC v. CJN, LLC*, Greenville County Case No. 2020-CP-2300415 (“**Lis Pendens 4**”), giving notice of purported pending litigation related to the CJN Property. A copy of Lis Pendens 4 is attached hereto as Exhibit D. Lis Pendens 1, Lis Pendens 2, Lis Pendens 3, and Lis Pendens 4 are collectively referred to hereinafter as the “**Lis Pendens Filings**.”
10. As of the date of this Complaint, Crescent has not filed suit in relation to the CJN Property or in relation to any of the Lis Pendens Filings, and therefore did not file suit within 20 days of filing Lis Pendens 1, Lis Pendens 2, or Lis Pendens 3.
11. As of the date of this Complaint, Crescent has not cancelled the Lis Pendens Filings, despite not filing suit in relation to the CJN Property or in relation to any of the Lis Pendens Filings.
12. Upon information and belief, the Lis Pendens Filings were filed for the purpose of preventing CJN from selling the CJN Property based on Crescent’s invalid claim that it has a right of first refusal on the CJN Property.
13. On October 8, 2018, CJN and Crescent entered into an Agreement for Purchase and Sale of

Developed Lots (“**Agreement**”) in relation to the development of the River Springs Subdivision on raw land owned by CJN and located on Standing Springs Road, Greenville County, South Carolina (“**River Springs Property**”) and to be sold to Crescent as subdivided lots for the construction of single family houses. A copy of the Agreement is attached as Exhibit E.

14. The CJN Property and River Springs Property are adjacent to one another but are separate and distinct properties.
15. The Agreement references a potential Future Phase of additional lots, which would be located on the CJN Property, but does not require that either party proceed with development of the “Future Phase” and therefore does not contain any obligation that CJN develop the CJN Property and/or sell the “lots” in the “Future Phase.”
16. Because the parties entered no binding agreement regarding development and sale of the Future Phase lots on the CJN Property, Crescent reserved the right to purchase those lots, in the event CJN elected to develop them, through a right of first refusal (“**ROFR**”) as follows:
 19. Right of First Refusal: At the Initial Closing, Seller will grant to Purchaser a right of first refusal with respect to the lots cross-hatched and shown on Exhibit "A-2" as "Future Phase" and any additional lots that may from time to time may be annexed or otherwise included in the Subdivision. A memorandum of such right of first refusal in a form reasonable acceptable to the Parties will be recorded in the public records of Greenville County at the Initial Closing.

See Agreement, ¶ 19.

17. The “lots cross-hatched and shown on Exhibit ‘A-2’ as ‘Future Phase’” are located within the CJN Property that has been encumbered with the Lis Pendens Filings.
18. The ROFR applies to the sale of lots in the Future Phase but does not apply to the sale of the undeveloped CJN Property as a whole.
19. Because the parties entered no binding agreement regarding development of the Future

Phase lots, CJN was free to elect not to proceed with development of the Future Phase and free to sell the undeveloped CJN Property free and clear of the ROFR.

20. The ROFR contains no time limitation within which it may be exercised.
21. The ROFR does not define the procedures and parameters under which it may be exercised such as the minimum time for due diligence to which Crescent would be entitled upon notice of a purchase offer.
22. Pursuant to the Agreement, an "Initial Closing" of lots was to be scheduled by Crescent and "held on or before fifteen (15) days after the recording of the Subdivision Plat." *See Agreement*, ¶ 6.
23. CJN recorded the Plat for the Subdivision on August 16, 2019. A copy of the Plat is attached as Exhibit F. Therefore, the Agreement required Crescent to schedule the Initial Closing for no later than September 1, 2019.
24. Despite repeated demands from CJN, Crescent continually failed to conduct the Initial Closing for months after September 1, 2019.
25. As of June 26, 2020, the date of the offer discussed hereinbelow, because of Crescent's wrongful delay, the Initial Closing had not occurred and the memorandum referenced in Agreement ¶19 had not been agreed to or recorded.
26. On or about June 26, 2020, CJN received a bonified offer for purchase of the CJN Property from Mr. Clark, a neighboring property owner, for \$775,000.00 ("**Clark Offer**"). A copy of the Clark Offer is attached as Exhibit G. The Clark Offer required a closing date of on or before July 15, 2020 in order for Mr. Clark to meet a tax deadline that would make the purchase feasible for Mr. Clark.
27. In response to the Clark Offer, CJN elected to not proceed with development of the Future Phase and instead elected to pursue sale of the undeveloped CJN Property pursuant to the Clark Offer.

28. CJN was not required to provide a right of first refusal to Crescent with respect to the undeveloped CJN Property because the ROFR was only to apply to the sale of Future Phase lots, assuming CJN elected to proceed with development of the Future Phase.
29. Nevertheless, on June 26, 2020, immediately after receiving the Clark Offer and 19 days prior to the July 15 closing deadline, CJN elected to provide a copy the Clark Offer to Crescent and asked if "Crescent would like to exercise a right of first refusal on the property on the terms in the attached offer, including but not limited to the price and closing schedule terms."
30. CJN made this tender of the Clark Offer in a good faith effort to give Crescent, its partner in the ongoing performance of the Agreement, the benefit of any doubt regarding Crescent's potential rights to the CJN Property and with the understanding that Crescent's only options for a good faith response were (1) to make a matching offer to purchase the CJN Property before the July 15 closing date or (2) to decline to make such an offer and thereby terminate any rights it may have claimed to the CJN Property upon the sale to Clark. Instead, Crescent used the tender to assert rights it did not have to prevent the sale to Clark. CJN did not make the tender (1) as an acknowledgement of the validity of the ROFR, (2) to extend or enlarge, beyond the terms of the tender itself, Crescent's rights to the CJN Property under the ROFR or otherwise, or (3) as a waiver of any defenses to the ROFR or Crescent's wrongful assertion of rights to the CJN Property under the ROFR or otherwise.
31. Crescent did not respond to CJN's tender of the Clark Offer. Instead, on July 10, 2020, Crescent filed Lis Pendens 1 to prevent the sale of the CJN Property. Crescent did not notify CJN that it had filed Lis Pendens 1.
32. On or about July 14, 2020, CJN discovered that Lis Pendens 1 had been filed and that Mr. Clark would not be able to close on the sale unless Lis Pendens 1 was cancelled.
33. On July 14, 2020, CJN issued written demand to Crescent giving notice that Crescent had

no valid claim to a right of first refusal and no basis to file Lis Pendens 1, demanding immediate cancellation, and giving notice of the damages CJN would incur as a result of the lis pendens.

34. Crescent failed and refused to cancel Lis Pendens 1 prior to the July 15, 2020 closing deadline, preventing the sale to Mr. Clark, and thereby damaging CJN.
35. Despite CJN's demands, as of the date of this Complaint, Crescent has not cancelled Lis Pendens 1, and has filed and not cancelled Lis Pendens 2, Lis Pendens 3, and Lis Pendens 4 despite not filing suit in relation to the CJN Property within 20 days of any of the Lis Pendens Filings.
36. Further, the CJN Property has been subject to the Lis Pendens Filings since July 10, 2020 and has been unmarketable as a result.
37. Crescent's filing of the Lis Pendens Filings was wrongful because Crescent has no valid interest in the CJN Property pursuant to the ROFR or otherwise because:
 - a. The ROFR does not apply to a sale of the undeveloped CJN Property by CJN, and CJN was and is free to sell the undeveloped CJN Property free and clear of any claim under the ROFR;
 - b. The ROFR violates the rule against perpetuities and is therefore void because it is an interest that might not vest either within a life in being at the time of the creation of the interest or until later than 21 years thereafter;
 - c. The ROFR is void as an unreasonable restraint on alienation because it lacks specificity as to duration of the right, the property subject to the right, the purchase price, and the procedures for exercising the right, among other things;
 - d. Because the ROFR was void and/or did not apply to the CJN Property, any rights Crescent had to purchase the CJN Property arose from and were limited by the terms of CJN's tender of the Clark Offer on June 26, 2020, not the invalid ROFR itself, and all such rights were terminated and extinguished by Crescent's failure to make an equal or better offer for purchase on or before the July 15 closing deadline in the Clark Offer.
 - e. Assuming the ROFR was valid and applied to the CJN Property, which are

specifically denied, Crescent was given any and all rights it had under the ROFR when CJN tendered the Clark Offer on June 26, 2020, and all such rights were terminated and extinguished by Crescent's failure to make an equal or better offer for purchase on or before the July 15 closing deadline in the Clark Offer. CJN's tender of the Clark Offer on June 26, 2020 was valid despite being prior to Initial Closing because (1) the Initial Closing would have occurred prior to June 26, 2020 but for delays by Crescent (2) the timing of the tender was not prejudicial to Crescent and (3) Crescent asserted its rights to the CJN Property were ripe by filing Lis Pendens 1 prior to the Initial Closing, among other things, and Crescent should therefore be estopped from asserting those rights did not arise until after the Initial Closing.

38. As a result of Crescent's wrongful Lis Pendens Filings and wrongful failure to cancel the Lis Pendens Filings, CJN has incurred damages, including, but not limited to, the lost sale price, lost investment opportunity, and holding costs, in an amount to be determined at trial.

FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment)

39. CJN restates and re-alleges each and every allegation above as if fully set forth herein.
40. CJN is entitled to a declaration from this Court pursuant to the Uniform Declaratory Judgment Act, S.C. Code Ann. §15-53-10, *et seq.*, which provides in relevant part that "courts of record within their respective jurisdiction shall have the power to declare rights, status and other legal relations whether or not further relief is or could be claimed."
41. CJN and Crescent are interested parties who have a genuine, substantial, and justiciable controversy that exists between them. All necessary parties are joined to this action.
42. CJN is entitled to a declaration that the ROFR is void and of no effect because:
 - a. The ROFR does not apply to a sale of the undeveloped CJN Property by CJN, and CJN was and is free to sell the undeveloped CJN Property free and clear of any claim under the ROFR;
 - b. Additionally or alternatively, the ROFR violates the rule against perpetuities and is therefore void because it is an interest that might not vest either within a life in being at the time of the creation of the interest or until later than 21 years

thereafter;

- c. Additionally or alternatively, the ROFR is void as an unreasonable restraint on alienation because it lacks specificity as to duration of the right, the property subject to the right, the purchase price, and the procedures for exercising the right, among other things;
 - d. Additionally or alternatively, because the ROFR was void and/or did not apply to the CJN Property, any rights Crescent had to purchase the CJN Property arose from and were limited by the terms of CJN's tender of the Clark Offer on June 26, 2020, not the invalid ROFR itself, and all such rights were terminated and extinguished by Crescent's failure to make an equal or better offer for purchase on or before the July 15 closing deadline in the Clark Offer.
 - e. Additionally or alternatively, assuming the ROFR was valid and applied to the CJN Property, which are specifically denied, Crescent was given any and all rights it had under the ROFR when CJN tendered the Clark Offer on June 26, 2020, and all such rights were terminated and extinguished by Crescent's failure to make an equal or better offer for purchase on or before the July 15 closing deadline in the Clark Offer. CJN's tender of the Clark Offer on June 26, 2020 was valid despite being prior to Initial Closing because (1) the Initial Closing would have occurred prior to June 26, 2020 but for delays by Crescent (2) the timing of the tender was not prejudicial to Crescent and (3) Crescent asserted its rights to the CJN Property were ripe by filing Lis Pendens 1 prior to the Initial Closing, among other things, and Crescent should therefore be estopped from asserting those rights did not arise until after the Initial Closing.
43. CJN is entitled to a declaration that Crescent has no interest in the CJN Property, under the ROFR or otherwise, and has no basis to file any Lis Pendens on the CJN Property.
44. Accordingly, CJN respectfully submits that the Court should enter a declaratory judgment as set forth hereinabove.

FOR A SECOND CAUSE OF ACTION
(Abuse of Legal Process)

45. CJN restates and re-alleges each and every allegation above as if fully set forth herein.
46. Crescent improperly used process and legal proceedings against CJN by filing Lis Pendens 1, Lis Pendens 2, and Lis Pendens 3 when it had no valid interest in the CJN Property and

there was no litigation related to the CJN Property pending at the time of the Lis Pendens Filings or within 20 days thereafter.

47. Crescent acted with an ulterior purpose, including to prevent CJN from selling the CJN Property to Mr. Clark and other third parties.
48. Crescent's actions are willful acts in the use of legal process not proper in the regular conduct of the proceeding.
49. As a direct and proximate result of Crescent's acts and omissions, CJN has been damaged.
50. CJN is therefore entitled to judgment against Crescent for actual and punitive damages including, but not limited to, the lost sale price, lost investment opportunity, and holding costs, in an amount to be determined at trial.

WHEREFORE, Plaintiff CJN, LLC prays for:

- a. a declaratory judgment declaring the respective rights of the parties with respect to the CJN Property;
- b. judgment against Defendant Crescent Homes SC, LLC for damages in an amount to be determined at trial;
- c. Attorneys' fees;
- d. Costs of this action; and
- e. Such other and further relief that this Court deems just and proper.

Respectfully submitted,

Kenison, Dudley & Crawford, LLC

/s/ F. James Warmoth

John T. Crawford, Jr., (SC Bar # 69682)
F. James Warmoth (SC Bar # 101072)
704 E. McBee Avenue
Greenville, SC 29601

Telephone: (864) 242-4899
Facsimile: (864) 242-4844
Email: war moth@conlaw.com

Counsel for Plaintiff

September 18, 2020
Greenville, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
 CRESCENT HOMES SC, LLC	)	 C.A. No.: 2020-LP-_____-_____
Plaintiff,	)	
vs.	)	LIS PENDENS
C J N, LLC,	)	
Defendant.	)	

NOTICE IS HEREBY GIVEN that an action will be commenced in the Court of Common Pleas for Greenville County, South Carolina, upon the Complaint of Plaintiff against Defendant for claims affecting title to real property, including but not limited to breach of contract and specific performance of the Agreement For Purchase and Sale of Developed Lots dated October 8, 2018, relating to the subject property. The real property affected and that is the subject of this Lis Pendens is specifically the real property described below:

All that certain piece, parcel, or tract of land, together with improvements thereon, situate, lying and being in the County of Greenville, State of South Carolina, being shown and designated as "AREA: 2,664,658.13 SQ. FT. 61.17 ACRES, on a plat entitled "BOUNDARY AND WETLAND SURVEY AT THE REQUEST OF: CJN LLC," prepared by Precision Land Surveying, Inc., dated March 2, 2017, and recorded in the Office of the Register of Deeds for Greenville County in Plat Book 1274 at Page 0001. Said parcel having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear.

Less and excepting:

All those certain pieces, parcels, or lots of land, situate, lying and being in the County of Greenville, State of South Carolina, being shown and designated Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, and 32 on that certain plat entitled "River Springs Phase I" prepared by EAS Professionals, Inc., dated August 8, 2019, and recorded in the



Office of the Register of Deeds for Greenville County-in-Plat Book 1345 at Page 0018. Said lots having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear.

TMS: P/O 0584010102601

Respectfully submitted,

s/ Ellis R. Lesemann

Ellis R. Lesemann, Esq., S.C. Bar # 15315

Email: erl@lalawsc.com

Michelle A. Matthews, Esq., S.C. Bar # 100685

Email: mam@lalawsc.com

LESEMANN & ASSOCIATES, LLC

418 King Street, Ste 301

Charleston, SC 29403

Phone: (843) 724-5155

Fax: (843) 720-2312

and

Steven E. Harvey, Esq., S.C. Bar # 13051

Email: steveh@hvlawsc.com

HARVEY & VALLINI, LLC

497 Bramson Court, Suite 201

Mount Pleasant, South Carolina 29464

Phone: (843) 388-8883

Fax: (843) 388-8884

***ATTORNEYS FOR PLAINTIFF
CRESCENT HOMES SC, LLC***

July 10, 2020
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
 CRESCENT HOMES SC, LLC	)	 C.A. No.: 2020-LP-____ - _____
Plaintiff,	)	
vs.	)	LIS PENDENS
C J N, LLC,	)	
Defendant.	)	

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Respectfully submitted,

s/ Ellis R. Lesemann

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Mount Pleasant, South Carolina 29464

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Fax: (843) 388-8884

**ATTORNEYS FOR PLAINTIFF
CRESCENT HOMES SC, LLC**

August 6, 2020
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
 CRESCENT HOMES SC, LLC	)	 C.A. No.: 2020-LP-____-
Plaintiff,	)	
vs.	)	LIS PENDENS
C J N, LLC,	)	
Defendant.	)	

NOTICE IS HEREBY GIVEN that an action will be commenced in the Court of Common Pleas for Greenville County, South Carolina, upon the Complaint of Plaintiff against Defendant for claims affecting title to real property, including but not limited to breach of contract and specific performance of the Agreement For Purchase and Sale of Developed Lots dated October 8, 2018, relating to the subject property. The real property affected and that is the subject of this Lis Pendens is specifically the real property described below:

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by reference to said plat more fully appear.

TMS: P/O 0584010102601

Respectfully submitted,

s/ Ellis R. Lesemann
Ellis R. Lesemann, Esq., S.C. Bar # 15315
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**ATTORNEYS FOR PLAINTIFF
CRESCENT HOMES SC, LLC**

August 27, 2020
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
 CRESCENT HOMES SC, LLC	)	 C.A. No.: 2020-LP-_____
Plaintiff,	)	
vs.	)	LIS PENDENS
C J N, LLC,	)	
Defendant.	)	

NOTICE IS HEREBY GIVEN that an action will be commenced in the Court of Common Pleas for Greenville County, South Carolina, upon the Complaint of Plaintiff against Defendant for claims affecting title to real property, including but not limited to breach of contract and specific performance of the Agreement For Purchase and Sale of Developed Lots dated October 8, 2018, relating to the subject property. The real property affected and that is the subject of this Lis Pendens is specifically the real property described below:

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TMS: P/O 0584010102601

Respectfully submitted,

s/ Ellis R. Lesemann

Ellis R. Lesemann, Esq., S.C. Bar # 15315

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Michelle A. Matthews, Esq., S.C. Bar # 100685

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Fax: (843) 388-8884

***ATTORNEYS FOR PLAINTIFF
CRESCENT HOMES SC, LLC***

September 17, 2020
Charleston, South Carolina

ELECTRONICALLY FILED - 2020 Sep 18 3:10 PM - GREENVILLE - COMMON PLEAS - CASE#2020CP2304351
ELECTRONICALLY FILED - 2020 Sep 17 1:06 PM - GREENVILLE - COMMON PLEAS - CASE#2020LP2300415

EXECUTION VERSION

AGREEMENT FOR PURCHASE AND SALE
OF DEVELOPED LOTS

(32 Single Family Lots/Multiple Closings)

THIS AGREEMENT FOR PURCHASE AND SALE OF DEVELOPED LOTS (this "Agreement") is made and entered into by and between CRESCENT HOMES SC, LLC, a Delaware series limited liability company ("Purchaser"), and C J N, LLC, a South Carolina limited liability company ("Seller"). The last date on which this Agreement is signed by either Purchaser or Seller (each, a "Party" and, collectively, the "Parties") and an executed copy thereof is delivered to the other will be the "Effective Date" of this Agreement.

1. **Conveyance:** In consideration of the mutual promises and agreements of the Parties and the sum of Sixteen Thousand and No/100 Dollars (\$16,000.00) as earnest money (the "Earnest Money") to be paid by Purchaser to Harvey & Vallini, LLC ("Escrow Agent"), Purchaser hereby agrees to purchase from Seller, and Seller hereby agrees to sell and convey to Purchaser, developed residential lots in that certain subdivision known as River Springs Subdivision (the "Subdivision"), being more particularly described as those certain parcels of land, including any improvements, fixtures, rights, privileges, easements, hereditaments and appurtenances thereto (collectively, the "Real Property"; sometimes referred to as the "Property"), situate, lying and being on Standing Springs Road, Greenville County, South Carolina, being shown and designated as Lots 1 - 32 (32 Lots total; each individually a "Lot", and collectively, the "Lots") shown on the Stakeout Plan prepared by Gray Engineering Consultants dated December 5, 2017 (the "Proposed Subdivision Plat"), a reduced copy of which is attached hereto as Exhibit "A-1" and incorporated herein.
2. **Purchase Price and Earnest Money:** The Purchase Price shall be paid as follows:
 - A. **Price Schedule.** The purchase price for each Lot (a "Lot Purchase Price" or "Purchase Price") is set forth on the Lot Pricing and Takedown Schedule attached hereto as Exhibit "B" and incorporated herein (the "Takedown Schedule").
 - B. **Earnest Money.** The Earnest Money will be deposited with Escrow Agent within five (5) business days after the Effective Date and held in a non-interest-bearing escrow account to be credited equally pro rata in the amount of Five Hundred and No/100 Dollars (\$500.00) per Lot. If the Earnest Money is forfeited by Purchaser pursuant to this Agreement, then the Escrow Agent shall pay the Earnest Money to Seller. If Purchaser terminates this Agreement prior to the expiration of the Due Diligence Period, as defined in subparagraph 4.B. below, or as may otherwise be expressly permitted herein, then the Escrow Agent shall return the Earnest Money to Purchaser.

**DISCLOSURE: PRINCIPALS OF PURCHASER AND SELLER ARE
LICENSED REAL ESTATE BROKERS.**

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3. Subdivision and Lot Selection

- A. Subdivision. As of the Effective Date, the Lots have not been subdivided and are a portion of that certain tax parcel with TMS No. 0584010102601 in the Greenville County, South Carolina tax records (the "Parent Parcel"). Seller has caused to be prepared the Proposed Subdivision Plat reconfiguring the existing tax parcel into thirty-two (32) lots with associated common areas as more particularly shown thereon. Seller will not revise or amend the Proposed Subdivision Plat without the prior written consent of Purchaser, which consent will not be unreasonably withheld. Seller will provide a copy of any comments to or required revisions to the Proposed Subdivision Plat received from Greenville County and/or the applicable Planning Commission as soon as reasonably practicable after receipt thereof. If the comments and required revisions to the Proposed Subdivision Plat are, in the discretion of Purchaser, material, then Purchaser may terminate this Agreement by notice delivered to Seller, in which event the Earnest Money shall be returned to Purchaser and this Agreement shall terminate. The Proposed Subdivision Plat, as approved by Greenville County and recorded in the Register of Deeds, is referred to herein as the "Subdivision Plat".
- B. Lot Selection: Development of the Lots is subject to the Lot Disturbance Schedule attached hereto as Exhibit "C" and incorporated herein (the "Lot Disturbance Schedule"). Subject to the Takedown Schedule, Purchaser shall, in its sole discretion, select the Lots (the "Applicable Lots") for each Closing, as defined in Paragraph 6 below, by delivering written notice thereof to Seller at least ten (10) days prior to a Closing. Subject to the Lot Disturbance Schedule, Purchaser may from time to time elect to close more Lots than required by the Takedown Schedule for the applicable Closing. If Purchaser closes more Lots than required by the minimum shown on the Takedown Schedule, then the number of excess Lots closed shall be carried forward as a cumulative credit toward the next succeeding Required Minimum Lot Takedown or Takedowns.
- C. Optional Lot Removal. Purchaser may, in its discretion from time to time, remove any Lot from this Agreement: (i) in accordance with the provisions of Paragraph 4.F below; and/or (ii) with respect to Lots 15 through 18 on the Takedown Schedule, if Purchaser determines that such Lot or Lots are not suitable for its development. If Purchaser elects to remove a Lot or Lots from this Agreement, then Purchaser may provide written notice thereof to Seller and Escrow Agent, in which event such Lot shall be removed from this Agreement, and Escrow Agent will return Five Hundred Dollars (\$500.00) of the Earnest Money for each Lot to Purchaser. If a Lot or Lots are so removed from this Agreement, then the number of Lots referenced in Paragraph 9.U below will be deemed amended to reflect the total number of Lots subject to this Agreement.

4. Due Diligence, Access, and Materials:

- A. Due Diligence Materials. Within two (2) business days after the Effective Date, Seller shall deliver to Purchaser copies of all due diligence materials pertaining to all or any portion of the Property in its possession or control, including title commitments, policies, abstracts and opinions together with copies of all title exceptions and materials, including existing and proposed declarations,

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covenants, conditions and restrictions and other similar instruments; drawings, plans, as-built plans and specifications, including civil plans and specifications for utilities, grading, drainage, lift stations and pumps, roads and other facilities serving all or any portion of the Property; boundary, topographical, tree and wetland surveys and subdivision plats (including any draft or preliminary plats); environmental assessments, geotechnical studies and cultural resource or threatened and endangered species assessments; zoning certificates, letters, minutes and related materials; site plan and subdivision approvals; annexation agreements; NPDES and other soil and erosion control permits and land disturbance permits; Department of the Army COE wetlands or other certifications or permits together with all materials and information related to or submitted for a jurisdictional determination letter; deposits; general intangibles; contracts and contract rights; guarantees and warranties; marketing and advertising materials, logos, trade names and related registrations; development agreements; development bonds (including maintenance and performance bonds); certificates as to electrical work, building, safety and health approvals; impact and tap fee credits; and all other licenses, certificates, permits, applications, approvals, development rights and entitlements; (collectively, the "Due Diligence Materials"). The "Due Diligence Delivery Date" is the later of: (i) the Effective Date, or (ii) the date on which Seller confirms delivery to Purchaser of all the Due Diligence Materials in its possession or control. Seller shall promptly provide Purchaser with (i) any document described above and coming into Seller's possession or produced by or for Seller after the initial delivery of the Due Diligence Materials, and (ii) upon request, information regarding the general and/or site work contractor performing development work in the Subdivision and regarding the scope of work performed or to be performed by such general and/or site work contractor.

- B. Due Diligence Period. Purchaser shall have forty-five (45) days after the Due Diligence Delivery Date, (the "Due Diligence Period"), in which to inspect the Property, including title, soil testing, surveys, feasibility studies, environmental studies and any other inspections, tests or studies that Purchaser may require. The results of such inspections shall be treated as confidential by Purchaser and not be disclosed to any third party or governmental entity except as may be necessary to obtain permits and approvals in the normal course of Purchaser's business or as may be required by law (provided, however, that such results may be disclosed to Purchaser's consultants, attorneys and lenders, who shall similarly treat such results as confidential). If Purchaser is not satisfied with its inspections of the Property for any reason or no reason, in Purchaser's sole discretion, then Purchaser may terminate this Agreement by notice delivered to Seller on or before the expiration of the Due Diligence Period, in which event the Earnest Money shall be returned to Purchaser and this Agreement shall terminate. If actions or inactions of Seller prevent Purchaser's access to property to complete surveys or other due diligence activities, the Due Diligence Period shall be extended on a day-to-day basis until such access is available to Purchaser without interference.
- C. Intentionally Omitted.
- D. Access. During the term of this Agreement, Purchaser, its agents, contractors and representatives shall, from time to time, have the right to enter upon the

Property to perform inspections and testing, provided Purchaser shall indemnify, defend and hold Seller harmless from and against any damages, liability, cost or expense, including attorney's fees incurred by Seller resulting from Purchaser's activities on the Property. This indemnity shall survive the Closings or the termination of this Agreement.

- E. Conveyance of Personal Property. Upon request of Purchaser in connection with the Initial Closing and at any time thereafter, Seller shall convey to Purchaser its right, title and interest in and to all or any portion of the Due Diligence Materials pertaining to the Property at one or more Closings. Seller shall use its best efforts, without additional consideration (provided that Purchaser shall pay out-of-pocket costs, if any), to obtain written consents and approvals as necessary or desirable from design and engineering professionals and governmental authorities in connection with the assignment of Due Diligence Materials to Purchaser.
- F. Septic Permits. Seller will cause a septic field perc test and treatment system feasibility study to be performed for each Lot as necessary and will obtain SCDHEC septic permits for the installation of an Easy Flow Gravity Conventional System for a not less than 4-bedroom home on each Lot in a location on each Lot approved by Purchaser (each, a "Septic Permit" and collectively, the "Septic Permits"). Seller will deliver copies of such test results and other materials pertaining to the Septic Permits and the corresponding plans for system improvements as may be requested by Purchaser promptly after such materials are available. Seller will make application for the Septic Permits as soon as reasonably practicable after the Effective Date and shall deliver a copy of each Septic Permit to Purchaser upon issuance thereof.

5. Title:

- A. Seller Warranties. Seller represents and warrants to Purchaser that Seller has "good and marketable, fee simple title" to the Real Property, and that at each Closing, Seller shall convey "good and marketable, fee simple title" to the Applicable Lots to Purchaser, subject only to the following exceptions (the "Permitted Exceptions"):

- (1) The lien for ad valorem taxes which are not yet due and payable;
- (2) Easements shown on the Subdivision Plat;
- (3) The Declaration, as defined in Paragraph 15 below; and
- (4) General service lines and utility easements that serve only the Real Property.

"Good and marketable, fee simple title" shall be such title as is acceptable to and insurable by a nationally recognized title insurance company, chosen by Purchaser at standard rates on the American Land Title Association Owner's Policy 2006 Form, free and clear of all exceptions except the Permitted Exceptions (the "Title Policy").

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- B. Title Defects. If Purchaser's examination of the title and a survey of the Real Property reveals matters other than the Permitted Exceptions (the "Title Defects") and notice of the Title Defects is given to Seller prior to the expiration of the Due Diligence Period, then Seller shall promptly cure the Title Defects, provided that if Seller does not promptly demonstrate to Purchaser's reasonable satisfaction that Seller will cure such Title Defects prior to Closing, then Purchaser may elect by written notice to Seller to extend the Due Diligence Period, or, if applicable, the Closing, until such time as such Title Defects are so cured. Notwithstanding the foregoing, Purchaser shall not be required to object to mortgages, deeds of trust and other liens and encumbrances, including judgment liens, affecting all of any portion of the Property that can be cured or removed with the payment of money (collectively "Monetary Encumbrances"), all of which shall be removed by Seller not later than the applicable Closing. Purchaser shall be entitled to cure Monetary Encumbrances at the applicable Closing with the proceeds payable to Seller at one or more Closings. Purchaser shall be entitled to examine title to the Real Property prior to each Closing and to object to all matters appearing of record or otherwise affecting the Real Property between the date on which Purchaser made its title examination pursuant hereto and the date of each Closing.
- C. Seller Easements. During the term of this Agreement, Seller will not grant any easements, permits, licenses, declarations, covenants or restrictions, or amend, revise or re-file the Subdivision Plat without the prior written approval of Purchaser which shall not be unreasonably withheld.
- D. Property Owners Assessments. Seller represents and warrants that no property owner or home owner assessments or capital contributions will accrue or be payable with respect to any Lot purchased by Purchaser until such time as the Lot is developed and sold to a bona fide third party.
6. Closings: Each Closing shall be consummated by Seller's delivery to Purchaser of a properly executed special warranty deed conveying the Applicable Lots to Purchaser upon receipt by Seller of the Lot Purchase Price for each Applicable Lot, subject to the contingencies set forth herein, at a location selected by Purchaser or by mail through Purchaser's title company, at a specific time and date selected by Purchaser. Seller shall deliver possession of the Applicable Lots to Purchaser at each Closing. Purchaser shall give Seller notice of the date of each Closing together with a list of Applicable Lots at least ten (10) days prior to the selected time and date. The date of such Closings shall be determined as follows:
- A. Initial Closing. Closing of at least ten (10) Lots (the "Initial Closing") shall be held on or before fifteen (15) days after the recording of the Subdivision Plat.
- B. Subsequent Closings. Each Closing after the Initial Closing (a "Subsequent Closing"; the Initial Closing and each Subsequent Closing are referred to singularly as a "Closing" and collectively as the "Closings") shall be conducted in accordance with the provisions of Paragraph 3 above and the Takedown Schedule.
- C. Taxes/Prorations. At each Closing, taxes applicable to any personal property and to the Applicable Lots for the current year shall be prorated between the

Parties as of the date of the applicable Closing. Seller shall be responsible for all assessments placed against the Property prior to the applicable Closing, irrespective of when payable. If the current year taxes for the Applicable Lots have not been determined by the date of the applicable Closing or the Applicable Lots are a portion of a larger tract, then the proration shall be based on the taxes for the previous year or such other information as may be reasonably available. If the current year taxes cannot be paid at the applicable Closing, then Seller's portion shall be credited to Purchaser, provided further if the Real Property is assessed as a part of a larger tract, Seller and Purchaser shall each deposit a sum sufficient to pay an estimate of its proportionate share of the entire tax bill with Escrow Agent. The Parties agree to adjust between themselves any difference in the estimated and actual prorations within thirty (30) days after the actual tax statements for the Applicable Lots are available. Any roll back taxes and special assessments shall be paid by Seller. If there are any potential roll back taxes that are not due and payable at the applicable Closing, Escrow Agent shall hold in escrow sufficient amounts of Seller's proceeds to pay the roll back taxes when the tax bills are issued.

- D. Closing Costs. Seller shall pay for preparation and recording of the Subdivision Plat, the Declaration, the special warranty deeds and any instruments necessary to cure Title Defects, all transfer taxes, deed stamps or documentary stamps and all other costs normally paid by a seller of real estate. Purchaser shall pay for the cost of its inspection and such other costs normally paid by a purchaser of real estate. Each Party shall be responsible for its own attorney's fees.

7. Closing Deliveries:

- A. Seller Documents. At each Closing, Seller shall execute and deliver the following documents to Purchaser, in addition to any other documents required herein:
- (1) Special warranty deed conveying the Applicable Lots subject only to the Permitted Exceptions;
 - (2) Lien and possession affidavit sufficient to induce the title company to issue the Title Policy without standard exceptions;
 - (3) Information required to complete a Substitute Form 1099;
 - (4) Certificate of non-foreign status in accordance with Section 1445 of the Internal Revenue Code of 1986, as amended;
 - (5) South Carolina tax compliance letter or transferor affidavit;
 - (6) Instruments necessary to cure Title Defects, if applicable;
 - (7) Settlement statement which will be prepared by Purchaser's attorney;
 - (8) Bill of sale, transfer and assignment of the Due Diligence Materials, as applicable, in accordance with subparagraph 4.E.;

- (9) Satisfactory evidence of Seller's due and proper authority and power to perform its obligations hereunder and to execute and deliver all documents required hereby;
- (10) Certification to Purchaser confirming that the warranties and representations contained in this Agreement are true and correct on the date of each Closing;
- (11) Such easements and rights-of-way over any adjoining land of Seller as may be required to construct single family residences on the Real Property; and
- (12) Such other documents as may be reasonably requested by Purchaser.

B. Purchaser Documents. Purchaser shall execute and deliver to Seller a counterpart of the settlement statement. Purchaser shall also provide satisfactory evidence of Purchaser's due and proper authority, power to perform its obligations hereunder, and power to execute and deliver all documents required hereby, together with such other documents as may be reasonably requested by Seller.

8. Casualty and Condemnation:

- A. Seller shall bear all risk of casualty to the Property and Seller's property located thereon until Closing and transfer of possession to Purchaser.
- B. Subject to the representation in subparagraph 9.C. below, Seller agrees to give Purchaser prompt written notice if it becomes aware of any action or proceeding for condemnation of any part of the Property by friendly acquisition or statutory proceeding that may result in the temporary or permanent taking of all or any part of the Property. Purchaser shall have the right, to be exercised within thirty (30) days after receipt of such notice setting forth the extent of the condemnation and the final offer of compensation therefor, to terminate this Agreement and receive a refund of the Earnest Money, and no Party shall have any further rights or obligations hereunder except for covenants, representations, warranties and indemnities stated herein to survive the termination of this Agreement. If Purchaser does not elect to terminate this Agreement, then Seller will credit Purchaser as applicable at Closing with any monies received by Seller by reason of such taking or Seller will assign to Purchaser at Closing all of Seller's interest in and to any unpaid condemnation award or offers payable to Seller relating to the Property. In the event that such notice of condemnation shall occur within thirty (30) days prior to Closing, Purchaser shall have the right to extend Closing so the same will occur no later than thirty (30) days after Purchaser's receipt of Seller's notice required pursuant to this subparagraph 8.B.

9. Seller's General Representations and Warranties: Seller covenants, represents and warrants to Purchaser the following:

- A. Seller has the authority and power to enter into this Agreement and to consummate the transaction provided for herein without the approval or consent

of any other party. The signatories to this Agreement for Seller are duly authorized to bind Seller.

- B. Entering into this Agreement will not constitute or result in a violation or breach by Seller of any judgment, order, writ, injunction or decree issued against or imposed upon it nor result in a violation of any applicable law, order, rule or regulation of any governmental authority. There is no action, suit, proceeding or investigation pending in any court or before, or by, any federal, district, county or municipal department, commission, board, bureau, agency or other governmental authority, which could become a cloud on the title to the Property or any portion thereof or which could threaten the validity or enforceability of the transaction contemplated by this Agreement or any actions taken pursuant hereto.
- C. As of the Effective Date, no portion of the Property is subject to temporary requisition or use by any governmental authority or has been condemned or taken in any proceeding similar to a condemnation proceeding, nor is there now pending any condemnation, requisition or similar proceeding affecting the Property or any portion thereof. Seller has neither received notice nor has any knowledge that any such proceeding is contemplated.
- D. Seller neither not received any notice from any federal, state or municipal authority nor does Seller otherwise have any knowledge of any violation of any law, ordinance or regulation, including zoning ordinances, development, permit or subdivision requirements, or any other legal requirements with respect to the Property. Seller will promptly notify Purchaser if it receives any such notice or otherwise becomes aware of any actual or potential violation.
- E. Seller neither has knowledge of nor has Seller received notice of any default or breach under any covenant, condition, restriction, right-of-way or easement affecting the Property or any portion thereof and no such default or breach now exists.
- F. No special assessments have been levied, are threatened against, or are pending against all or any portion of the Property, and Seller has no knowledge of any intended assessments.
- G. No bankruptcy, insolvency, rearrangement or similar action or proceeding involving the Property or Seller is pending, threatened or contemplated by Seller.
- H. There are no leasehold or occupancy agreements encumbering the Property, no party has any possessory interest to or right in the Property, and no party has any right of first refusal, right of first offer or other contractual right to purchase or possess all or any portion of the Property.
- I. Seller will not sell, assign, convey or encumber any right, title or interest in or to the Property or any portion thereof, other than as provided in subparagraph 21.B. below. Seller will not create or permit any lien, encumbrance or charge thereon without promptly discharging the same.

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- J. Seller will not take any action or omit to take any action, which action or omission would have the effect of violating or causing to be untrue any of the representations, warranties, covenants and agreements contained herein.
- K. Seller is not aware of any moratorium on the issuance of building permits or installation or activation of utilities or the approval of preliminary or final subdivision plats. If Seller becomes aware of such a moratorium, Seller will immediately notify Purchaser in writing. All dates, deadlines and time periods contained in this Agreement will be tolled until each such moratorium has been lifted.
- L. The Property is served by public water with sufficient capacity for development of the Lots for their intended use.
- M. No portion of any Lot is within a flood plain or wetland and, except for building setback lines and rights-of-way shown on the Subdivision Plat, no portion of any Lot is unsuitable for or restricted from constructing building improvements thereon.
- N. To the best of Seller's knowledge, the Property has neither been used in connection with, nor has there been any surface or subsurface contamination due to the use, storage, disposal or treatment of any materials, substances or hazardous wastes, as defined by any federal, state or local health or environmental laws, regulations or ordinances, and there are no such materials, substances or hazardous wastes present in, on, or about the Property.
- O. The Property is zoned for the construction of single family detached residences, and Seller and the Property are in compliance with all governmental ordinances including such zoning ordinances, regulations, laws, codes and development, permit and subdivision requirements that affect the Property. Seller has no knowledge of any pending change in the zoning classification of the Property.
- P. The Property and Seller are in and, subject to Purchaser's obligations set forth in subparagraph 11.D. below, will continue to be in compliance with the Federal Water Pollution Control Act and the National Pollution Discharge Elimination System (NPDES) permitting requirements together with all other applicable storm water and erosion control regulatory requirements. There are no outstanding fines against Seller or the Property with respect to the foregoing requirements.
- Q. Seller shall have completed and filed a Notice of Intent ("NOI") with the Environmental Protection Agency and any other applicable authorities and shall have provided (or made available to) Purchaser a copy of the Storm Water Pollution Prevention Plan and the NOI applicable to Seller's development activities.
- R. The Property has no special tax designation that requires any payment or penalty for change in use, and Seller has no knowledge of any special tax or assessment to be levied against all or any portion of the Property.
- S. If applicable, Seller shall post and maintain street, sedimentation, storm drainage and other forms of surety (performance) bonds as may be required by the

EMK 3

applicable governmental authorities for development of the Lots and the drainage facilities serving the Lots, whether such facilities are located on or off the Real Property.

- T. All trees, landscaping, central mail facilities (if applicable) and other improvements to the common areas that are the responsibility of Seller, or if not Seller, the applicable developer, have been installed as required by the applicable authority or association.
 - U. Septic Permits for not less than thirty-two (32) 4-bedroom homes are or will be issued and in full force and effect for system improvements and in a location reasonably acceptable to Purchaser, and each Lot will accommodate the system improvements and location designated therefor in the applicable Septic Permit.
10. Seller Representations and Warranties Regarding the Lots: Seller covenants, represents and warrants to Purchaser the following with respect to the Applicable Lots at each Closing:
- A. The Subdivision Plat will be recorded in the plat records of Greenville County, South Carolina. All operational permits will be received so that a building permit and a certificate of occupancy can be obtained on each Lot.
 - B. Domestic water lines are stubbed within the boundary of each Lot no more than six (6) feet below existing grade.
 - C. Electricity, natural gas, telephone, and cable, including fiber optic, facilities will be installed in sufficient capacity to service the Lots for their intended use and will be available for connection either within the boundary of each Lot or in the public right-of-way adjacent thereto.
 - D. All impact, capacity and similar fees have been paid in full, and Purchaser shall only be required to pay normal and customary tap or connection fees for each Lot at the time of issuance of a building permit therefor.
 - E. The location of the utilities described in subparagraphs 9.L. and 10.B. above will be clearly marked on the ground and accurately shown on as-built utility plans delivered to Purchaser in accordance with subparagraph 4.A. above. All such utilities will be underground except for appurtenant facilities that are customarily above ground. Seller shall provide letters from the applicable authority stating that water taps are available for purchase for each Lot.
 - F. Intentionally Omitted.
 - G. All streets, roads, curbs and gutters and surface water management facilities serving the Lots and shown on the Subdivision Plat will be installed in accordance with applicable regulatory requirements and, subject to Purchaser's obligations set forth in subparagraphs 11.A. and 11.C. below, will be maintained by Seller at its expense in good condition and repair until dedication to and acceptance by the applicable governmental authority.
 - H. Construction access will be available to the Lots.

EMT 3

- I. All street lights, fire hydrants and other common facilities serving the Lots will be installed in accordance with applicable governmental regulations and permitting requirements.
- J. Each Lot will be free of trash and debris, and iron pins will be on the ground at each corner.
- K. Each Lot will have a street address and tax parcel identification number.
- L. Seller shall have provided Purchaser with two (2) copies of the "as built" construction plans for the water system and storm drainage network, which plans will be sufficient to enable Purchaser to locate water taps on each Lot. Water taps for each Lot will be in accessible locations in the ground within the boundary of such Lot.
- M. Seller agrees to keep all lots owned by Seller maintained by keeping grass and weeds cut to six inches (6") or less and keeping the lots free of debris.
- N. Notwithstanding the requirements of the Lot Disturbance Schedule, Seller will cause Lots 1-14 and 19-32 to be developed in a manner that provides completed Lots for takedown in accordance with the Takedown Schedule.

If Seller breaches any of the representations and warranties set forth in this Paragraph 10 (a "Paragraph 10 Breach"), then Purchaser may give written notice thereof to Seller, which notice will require Seller to cure such breach within fourteen (14) days after delivery of notice thereof. If Seller fails to commence such cure within fourteen (14) days and to diligently pursue completion, then Purchaser may either:

- (1) Cure such breach, and Seller will reimburse Purchaser the actual and reasonable cost thereof plus ten percent (10%). Purchaser shall submit reasonable backup documentation with any request for reimbursement, and Seller shall remit such amount on the earlier of the next Closing or within thirty (30) days after request therefor. Notwithstanding the foregoing, if the cost to cure any such breach is less than One Thousand and 00/100 Dollars (\$1,000.00), Purchaser may cure such breach without prior written notice to Seller provided that Purchaser makes available photographs or other reasonable documentation evidencing such breach with its request for reimbursement. If Seller fails to reimburse Purchaser any amounts due pursuant to this Paragraph 10, Purchaser shall be entitled to a credit therefor against amounts due to Seller at the next Closing; or
- (2) Declare a default and pursue its remedies under subparagraph 13.B. below.

11. Purchaser Construction Obligations:

- A. Purchaser shall repair or cause to be repaired any damage beyond normal wear and tear caused by its employees, agents, contractors and subcontractors to the streets, roads, curbs, gutters, sidewalks, storm drainage, signs or other

EMT 3

Improvements in connection with Purchaser's construction activities on, about or adjacent to the Property.

- B. Purchaser shall not cause or permit its employees, agents, contractors and subcontractors to dump or deposit building materials, trash or debris on any lots, rights-of-way or other property not then owned by Purchaser.
- C. Purchaser shall cause construction dirt and gravel generated by its construction activities to be periodically cleaned by a professional street cleaning service.
- D. Purchaser will comply with the Federal Water Pollution Control Act and the National Pollution Discharge Elimination System (NPDES) permitting requirements together with all other applicable storm water and erosion control regulatory requirements.
- E. Intentionally Omitted.
- F. Purchaser shall have the right to clean up or landscape any property owned by Seller to enhance the appeal of the Lots, provided Purchaser shall obtain Seller's prior approval thereof. Seller shall approve any such request or provide written objections to Purchaser within fourteen (14) days after request therefor, which approval will not be unreasonably withheld. Failure of Seller to approve any such request within said fourteen (14) day period shall be deemed approval thereof.
- G. Purchaser shall install trees and landscaping on each Lot in accordance with applicable regulatory requirements.

If Seller determines that Purchaser has failed to fulfill any of its obligations set forth in this Paragraph 11 (a "Paragraph 11 Breach"), then Seller may give written notice thereof to Purchaser, and Purchaser shall commence to cure such breach within fourteen (14) days after delivery of notice thereof. If Purchaser fails to commence such cure within fourteen (14) days and to diligently pursue completion, then Seller may elect to cure such breach, and Purchaser will reimburse Seller the actual and reasonable cost thereof plus ten percent (10%). Seller shall submit reasonable backup documentation with any request for reimbursement, and Purchaser shall remit such amount on the earlier of the next Closing or within thirty (30) days after request therefor. The sole remedy of Seller for a Paragraph 11 Breach is set forth in this Paragraph 11.

12. Service Areas:

- A. Seller shall permit Purchaser to install a temporary construction and/or sales trailer on property not then owned by Purchaser in a location mutually agreeable to the Parties. Purchaser shall maintain the temporary office in a good and neat condition in compliance with all applicable regulatory requirements. Purchaser shall remove all gravel, pavement, concrete and debris in the area immediately surrounding the location of the temporary office and cause it to be grassed within forty-five (45) days after the removal thereof.
- B. Seller shall provide a concrete wash out area on property not then owned by Purchaser. Purchaser shall periodically remove accumulated concrete material.

EMT 2

Purchaser's obligations under this Paragraph 12 are deemed additional Construction Obligations. If Purchaser fails to fulfill same, such failure shall be a Paragraph 11 Breach, and the sole remedy of Seller is set forth in Paragraph 11.

13. Remedies:

A. Purchaser's Default.

- (1) If Purchaser fails to close on the Applicable Lots within the time frames set forth in this Agreement because of Purchaser's breach of this Agreement, and such breach is not cured within thirty (30) days after receipt of notice thereof from Seller, then, as its sole remedy, Seller may terminate this Agreement and the Earnest Money shall be paid to Seller as full liquidated damages and not a penalty. The Parties recognize that it would be difficult to ascertain the actual damages suffered by Seller as a result of such failure of Purchaser to consummate the sales contemplated hereby, it being specifically acknowledged and agreed by the Parties that such liquidated damages are reasonable. Seller hereby waives any right to damages in excess of said liquidated damages for Purchaser's breach of this Agreement and relinquishes any and all right to pursue an action for specific performance against Purchaser in the event Purchaser defaults in any of its obligations hereunder.
- (2) If Purchaser fails to fulfill any obligation under this Agreement other than as set forth in Paragraph 11, Paragraph 12 or subparagraph 13.A.(1) above, then Seller may notify Purchaser of such default. If Purchaser has not cured such default within thirty (30) days after Purchaser's receipt of notice thereof, then Purchaser shall be deemed in default under this Agreement and Seller may as its sole remedy terminate this Agreement and retain the Earnest Money as liquidated damages. If such default cannot be reasonably cured within such thirty (30) day period, then Purchaser shall have such additional time (not to exceed an additional thirty (30) days) as is reasonably necessary to affect a cure so long as Purchaser is diligently working towards a cure. The Parties hereby acknowledge that the actual damages suffered by Seller on account of Purchaser's default would be difficult if not impossible to measure and that the liquidated damages set forth in this subparagraph 13.A.(2) are a reasonable estimate of the damages Seller may suffer on account of Purchaser's breach.

- B. Seller's Default. If Seller defaults under any provision of this Agreement, Purchaser may notify Seller of such default. If Seller has not cured such default within thirty (30) days after Seller's receipt of notice thereof, then Seller shall be deemed in default under this Agreement. If such default cannot be reasonably cured within such thirty (30) day period, then Seller shall have such additional time (not to exceed an additional thirty (30) days) as is reasonably necessary to affect a cure so long as Seller is diligently working towards a cure. If Seller fails to cure any default within the time frame set forth above, then Purchaser may as its sole and exclusive remedies either: (i) seek specific performance, injunctive relief or any other remedies available at law or in equity; (ii) proceed with the purchase of Lots and deduct the cost to cure from the Purchase Price; or

EMT 3

(iii) terminate this Agreement and receive a refund of the Earnest Money. If Purchaser engages legal counsel to enforce its rights hereunder, Seller shall be responsible for all legal fees and costs of enforcement incurred by Purchaser.

14. Notice: All notices, demands, consents, approvals, and other communications which are required or desired to be given by either Party to the other hereunder shall be in writing, which may be delivered via e-mail or may be delivered by either a personal delivery service with charges therefor billed to shipper or by a nationally recognized overnight delivery service with charges therefor billed to shipper (either of which shall be deemed given and received upon delivery). If sent by e-mail, a notice shall be deemed given when such e-mail is transmitted to the e-mail notice address specified below and shall be deemed received on that same day unless given after 6:00 p.m. in the receiving location, in which case such receipt shall be the next business day. Any notice not deliverable shall be deemed received on the first date of attempted delivery. Any notices under this Agreement may be given by or to the respective attorneys listed below.

Purchaser: Crescent Homes SC, LLC
572 Savannah Hwy
Charleston, South Carolina 29407
Attention: Edward M. Terry
Telephone: (843) 573-9835
Email: t.terry@crescenthomes.net

With a copy to: Harvey & Vallini, LLC
497 Bramson Court, Ste. 201
Mt. Pleasant, SC 29464
Attention: Steven E. Harvey, Esq.
Telephone: (843) 388-8883
Email: steveh@hvlawsc.com

And to: LevickRoth
999 Peachtree Street, NE
Suite 855
Atlanta, Georgia 30309
Attention: Suzan E. Roth, Esq.
Telephone: (404) 201-7841
Email: sroth@levickroth.com

Seller: C J N, LLC
c/o Access Realty, LLC
4113 E. North St.
Greenville, SC 29615
Attention: Nick Franchina
Telephone: (864) 630-0557
Email: nickfranchina@accessrealtysc.com

With a copy to: Access Realty, LLC
 4113 E. North St.
 Greenville, SC 29615
 Attention: Nick Franchina
 Telephone: (864) 630-0557
 Email: nckfranchina@accessrealtyso.com

In the event of a change of address by a Party, such Party shall give written notice thereof in accordance with the foregoing. Rejection or failure to claim delivery of any such notice, or any refusal to accept any such notice, or the inability to deliver any such notice hereunder because of changed address or phone for which no notice was given, shall be deemed to be receipt of the notice sent as of the date of attempted delivery.

15. Restrictive Covenants and Plan Approval: Seller agrees to adopt Purchaser's standard form of Declaration of Covenants, Conditions and Restrictions or similar instrument for the Subdivision as may be revised to reflect the particulars of the Subdivision (the "Declaration"). Seller will be the "Declarant" under the Declaration until such time as the development obligations of the Declarant thereunder have been satisfied and the remaining obligations assumed by the home owners' association, and so long as this Agreement is in effect, all matters pertaining to the ARB and plan approval will be determined by Purchaser in its sole discretion. The Declaration will be recorded at the Initial Closing, and Seller will bear any third-party costs incurred in the preparation and recording thereof.
16. Signs: As long as this Agreement is in effect, Purchaser shall have the right to erect a limited number of professionally-designed and constructed temporary signs on the Lots and at the entrance to the neighborhood for purposes of advertising the homes to be constructed on the Lots.
17. Entrance Feature Plans. If not previously delivered to Purchaser, within **thirty (30) days** after the beginning of the Due Diligence Period, Seller will deliver proposed plans for an appropriate entrance feature for the Subdivision to Purchaser for its review and approval, which approval will not be unreasonably withheld. Within ten (10) business days after receipt, Purchaser shall deliver written notice of approval or detailed written comments with suggested revisions to Seller. The Parties will work together in good faith to agree upon the plans for an appropriate entrance feature for the Subdivision prior to the expiration of the Due Diligence Period. Seller will cause the entrance feature for the Subdivision to be completed not later than sixty (60) days after the recording of the Subdivision Plat.
18. Lot Grading and Preparation Cost. If the cost to grade and prepare any Lot for development as a single-family home in accordance with Purchaser's criteria, including without limitation the recommendations of Purchaser's geotechnical engineer, exceeds Two Thousand Five Hundred and No/100 Dollars (\$2,500.00) (the "Lot Prep Cost Cap"), then Seller will reimburse Purchaser an amount equal to the actual cost in excess of the Lot Prep Cost Cap (the "Lot Prep Excess Cost"). Seller will reimburse Purchaser any Lot Prep Excess Cost within fourteen (14) days following request therefor accompanied by reasonable documentation thereof, provided Purchaser may, at its option, take a credit against the Purchase Price due at any Closing for the aggregate, unreimbursed Lot Prep Excess Cost incurred by Purchaser to date. Purchaser shall provide reasonable documentation of any Lot Prep Excess Cost not previously submitted to

Seller no later than three (3) business days prior to a Closing in which a Lot Prep Excess Cost credit will be taken.

19. Right of First Refusal: At the Initial Closing, Seller will grant to Purchaser a right of first refusal with respect to the lots cross-hatched and shown on Exhibit "A-2" as "Future Phase" and any additional lots that may from time to time may be annexed or otherwise included in the Subdivision. A memorandum of such right of first refusal in a form reasonable acceptable to the Parties will be recorded in the public records of Greenville County at the Initial Closing.
20. Commissions: The Parties covenant and agree, each to the other, to indemnify the other against any loss liability, cost, claims, demands, damages, actions, causes of action or suits based upon or arising out of the employment or use by the Indemnifying Party of any real estate broker or agent in connection with the purchase and sale of the Property. Although not entitled to a commission in connection with the transaction contemplated herein, principals of Purchaser are licensed real estate brokers.
21. Miscellaneous:
 - A. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.
 - B. Assignment of Agreement by Seller. Seller shall have the right to assign this Agreement upon thirty (30) days prior written notice to Purchaser to a limited liability company in which Seller shall be a member or manager. Upon any such transfer, Seller shall be released of all liability under this Agreement so long as the entity to which Seller assigns this Agreement agrees to assume all of Seller's obligations hereunder.
 - C. Assignment of Agreement by Purchaser. Purchaser shall not assign this Agreement or its rights hereunder without Seller's prior written consent, which shall not be unreasonably withheld, conditioned or delayed, except that Purchaser may assign to a subsidiary or affiliate controlled by or under common control with Purchaser or Edward M. Terry (collectively, an "Assignee"). Principals of Purchaser are licensed real estate brokers or agents and may be principals in an Assignee. If such assignment is made, then the applicable sales contemplated by this Agreement shall be consummated in the name of and by the authorized officials of any such Assignee and Seller shall look solely to such Assignee for the performance and discharge of all the obligations and liabilities of Purchaser hereunder.
 - D. Undertakings. The Parties agree to execute and deliver such other and further instruments and documents as may be necessary to implement and effectuate the terms of this Agreement.
 - E. Good Faith. The Parties shall act in good faith in performing and discharging their respective duties and obligations hereunder.
 - F. Governing Law. This Agreement has been made in the State of South Carolina and shall be interpreted in accordance with South Carolina law and any enforcement of this Agreement shall be brought in the State of South Carolina.

EMT 7

- G. Construction. The extent to which any Party participated in the drafting of this document shall not determine how any provision hereof is to be construed, it is being recognized that both Parties have contributed substantially and materially in the preparation of this Agreement.
- H. Waiver. No provision, condition, or covenant of this Agreement shall be waived by either Party hereto except by a written instrument delivered to the other Party and executed by the Party consenting thereto, and no failure of either Party to exercise any power given hereunder or to insist upon strict compliance with any obligation specified herein, and no custom or practice at variance with the terms hereof, shall constitute a waiver of such Party's right to demand exact compliance with the terms hereof.
- I. Insurance. Purchaser agrees to maintain in full force and effect liability insurance covering damage to property and injuries to persons resulting from or connected with its construction and sales activities on and about the Real Property. Each Party agrees to indemnify, defend and hold the other Party harmless from any liability, loss or damage to persons or property, including reasonable attorneys' fees and related costs and expenses, caused by the indemnifying Party or by its agents or employees.
- J. Time Periods. Should the date upon which any act required to be performed under this Agreement fall on a Saturday, Sunday or holiday, the time for performance shall be extended to the next business day.
- K. Entire Agreement. This Agreement contains all of the terms and conditions agreed to between the Parties and supersedes all prior agreements, and there are no oral agreements relating to the transaction contemplated herein.
- L. Time of Essence. Time is of the essence with respect to this Agreement.
- M. Like Kind Exchange. Either Party may elect to sell or purchase the Real Property and qualify under the rules of a Section 1031, Tax Deferred Exchange. The Parties will cooperate with the other in effecting such exchange, providing it creates no expense or liability to the other Party.
- N. Sales and Marketing. Purchaser shall have the right to use the name "River Springs" in any signage, advertising and other marketing materials relating to its marketing of the Lots.
- O. Counterparts. This Agreement may be executed in more than one counterpart, each of which shall be deemed an original and all of which shall be deemed one and the same agreement. Counterparts delivered by e-mail delivery of a PDF or similar type format data file, shall have the same force and effect as if such counterpart were an original thereof.
- P. Headings. Captions contained in this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision herein.

EMT 3

- Q. Survival. Except as otherwise provided in this Agreement, all of the terms, provisions, representations, warranties and indemnities of this Agreement shall not merge with any deed but shall survive each and every Closing. Termination of this Agreement for any reason after the Initial Closing shall be effective only with respect to such Lots for which closing has not occurred.
- R. Confidentiality. Except as specifically provided in this Agreement, and except for disclosures to their respective attorneys, agents and lenders or as required by law, the Parties agree to (i) keep this Agreement and its terms confidential, (ii) keep confidential any information that is provided by Purchaser or its consultants, (iii) not use any such confidential information for any purpose other than performance or enforcement of this Agreement, and (iv) not make any public announcement or press release about this Agreement without the other's prior written approval.
- S. Intentionally Omitted.
- T. Patriot Act. The Parties each hereby certify that: (i) they are not acting, directly or indirectly, for or on behalf of any person, group, entity or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person" or other banned or blocked person, entity, nation or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control; and (ii) they are not engaged in this transaction, directly or indirectly on behalf of, or instigating or facilitating this transaction directly or indirectly on behalf of, any such person, group, entity or nation. The Parties each hereby agree to defend, indemnify and hold harmless the other from and against any and all claims, damages, losses, risks, liabilities and expenses (including reasonable attorneys' fees and costs) arising from or related to any breach of the foregoing certification.
- U. Severability. This Agreement is intended to be performed in accordance with, and only to the extent permitted by all applicable laws, ordinances, rules and regulations. If any provision of this Agreement, or the application thereof to any person or circumstance, shall for any reason and to any extent be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, rather such provision shall be enforced to the greatest extent permitted by law.
- V. Amendment. This Agreement shall not be modified or amended except by an instrument in writing executed by or on behalf of the Parties.
- W. Including. The term "including" when used in this Agreement means "including but not limited to."
- X. Independent Consideration. If Purchaser terminates this Agreement pursuant to a right to do so granted to Purchaser hereunder, and if the Earnest Money is otherwise refundable to Purchaser and additional consideration is required for this Agreement to be enforceable under applicable law, then Purchaser and Seller hereby direct Escrow Agent to pay the sum of One Hundred Dollars (\$100.00) from the Earnest Money to Seller as consideration for entering into this Agreement.

EMT 3

22. Expiration: This Agreement has been executed first by Purchaser as a continuing offer to purchase the Property, which offer shall be open to acceptance by Seller until 5:00 p.m. on _____, 2018, at which time the offer shall be deemed to be withdrawn by Purchaser if the same has not been accepted by Seller and a signed copy delivered to Purchaser.

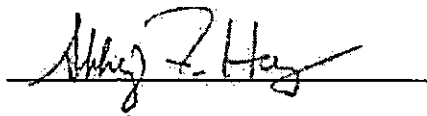
[Signatures begin on following page]

EMT 3

[Purchaser's signature page for Agreement for Purchase and Sale of Developed Lots]

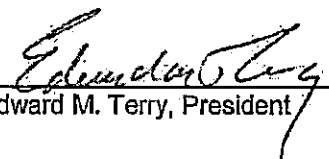
IN WITNESS WHEREOF, the Parties have executed this Agreement on the day and year shown below their signatures.

Witness:



PURCHASER:

CRESCENT HOMES SC, LLC, a Delaware
series limited liability company

By: 
Edward M. Terry, President

Date: 10/8/18, 2018

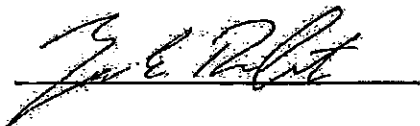
[Signatures continue on next page]

[Seller's signature page for Agreement for Purchase and Sale of Developed Lots]

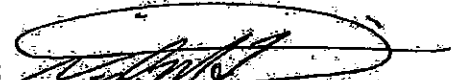
SELLER:

C-J N, LLC, a South Carolina limited liability company

Witness:



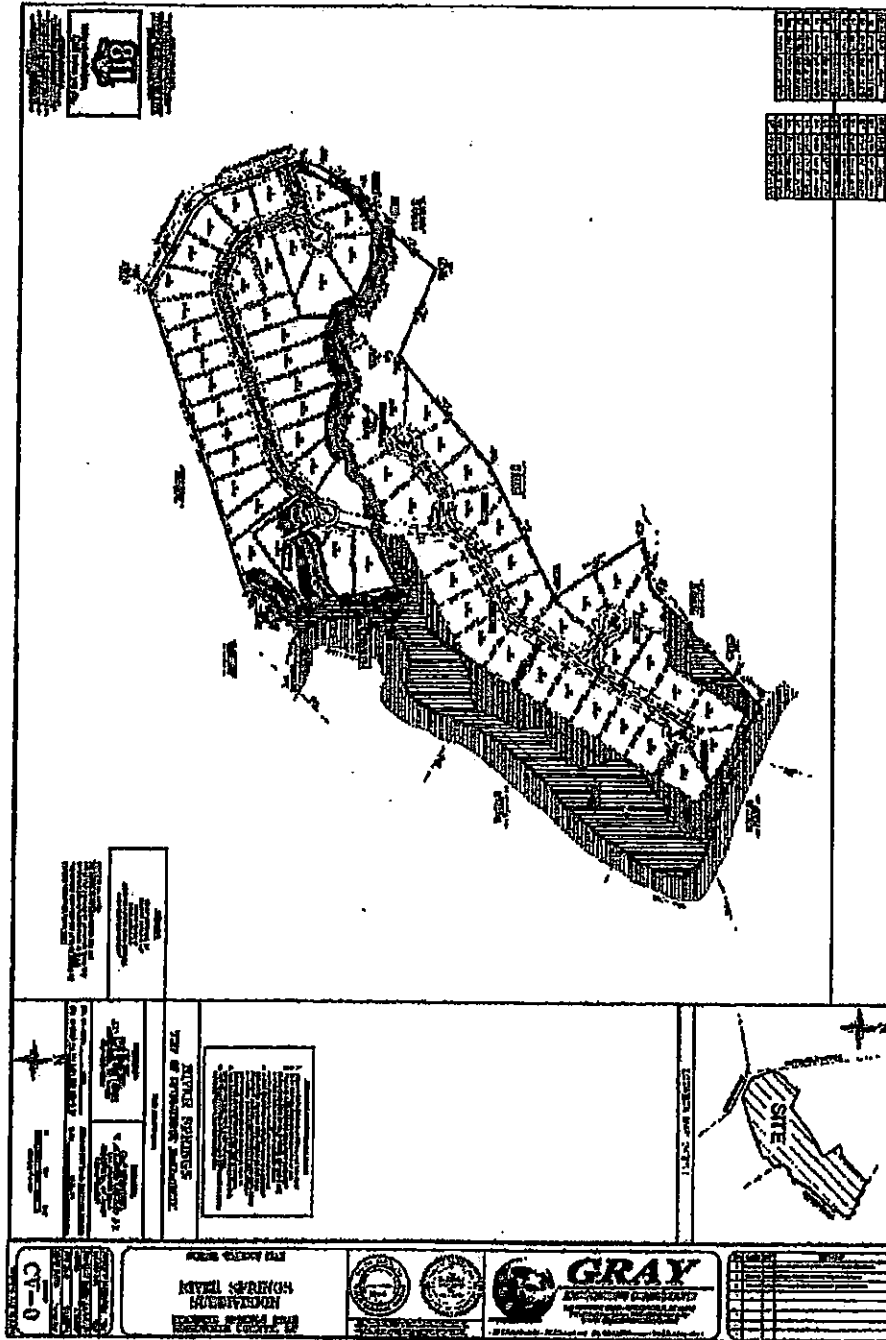
By:


Print Name: Wick Edgington
Print Title: Managing Director

Date: 10-5-18, 2018

EXHIBIT "A-1"

Subdivision Plat



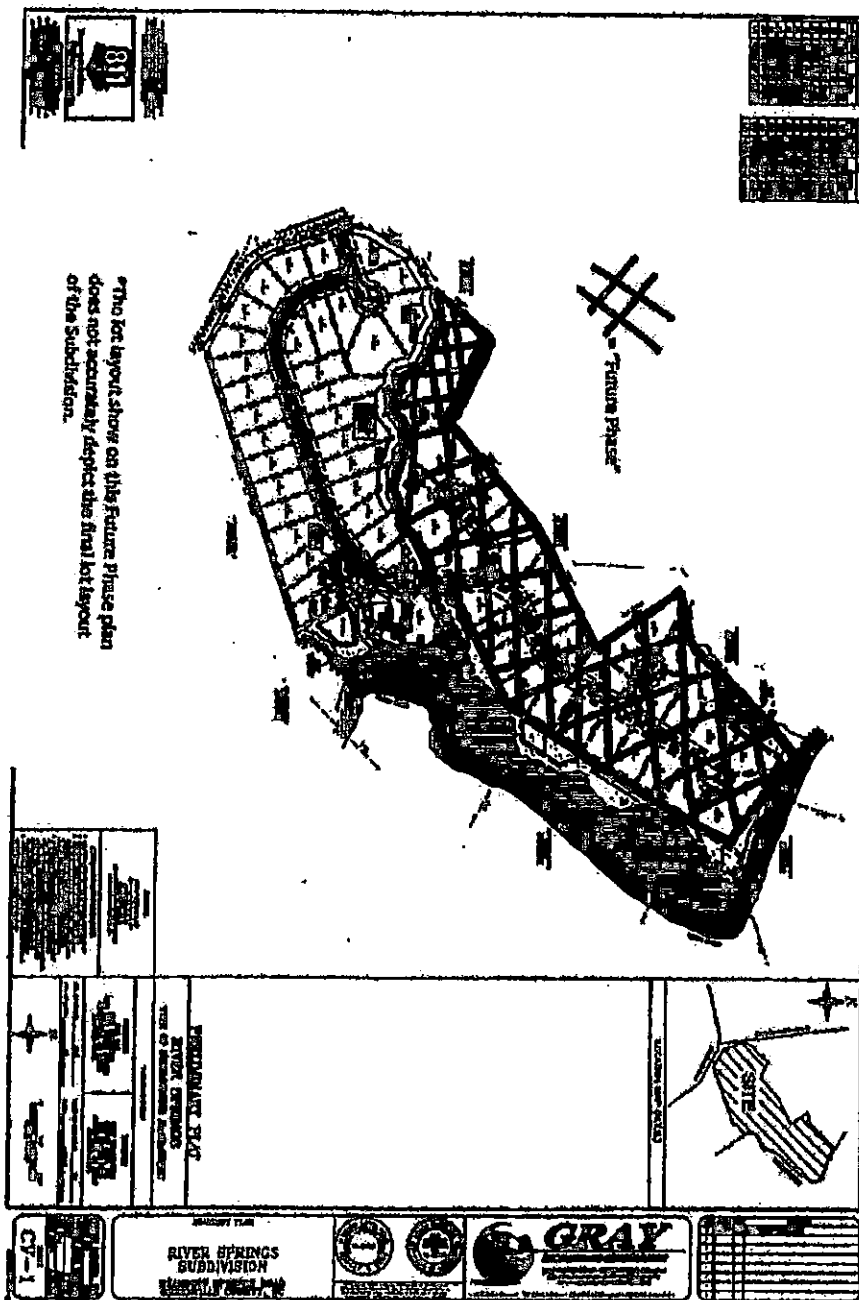
Developed Lots (2/2018)
4812-2904-8881, v. 17

A-1

3
EMT

EXHIBIT "A-2"

Future Phase



Developed Lots (2/2018)
4812-2904-8691, v. 17

A-2

J

SMT

EXHIBIT "B"**Lot Pricing and Takedown Schedule**

Lot Takedowns (See subparagraph 3.B regarding Lot Selection):

<u>Takedown</u>	<u>Required Minimum Lot Takedown (Note 1)</u>
Initial Closing	10
2	6
3	8
4	8

Lots:

<u>Lots</u>	<u>Purchase Price</u>
1-14	\$66,500.00
15-18	\$86,500.00
	[Adjacent to Reedy River]
19-32	\$66,500.00

Notes:

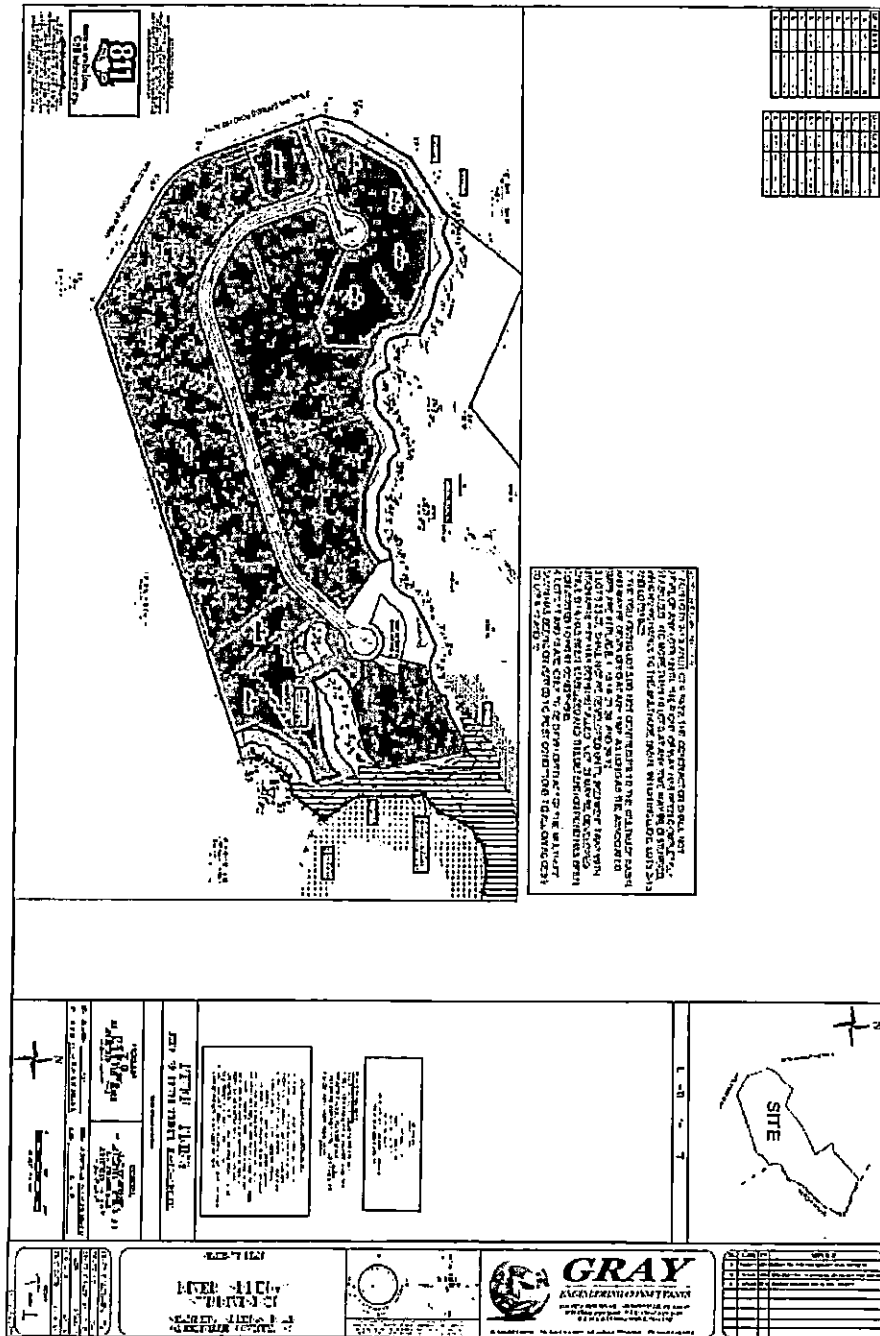
1. Pursuant to subparagraph 3.B. of the Agreement, each Subsequent Closing shall occur no later than one hundred eighty (180) days following the immediately preceding takedown.
2. Each Closing deadline runs from the prior Closing deadline of the previous Closing, not from the actual date of the prior Closing or Closings.
3. With respect to each Closing, Purchaser shall have the option to purchase Lots (which shall be some or all, of the Lots in a future takedown requirement) at a faster rate than provided in Paragraph 2 above, and, in such event, the Lots so purchased shall be credited to the next subsequent purchase obligation. Purchaser will be able to "skip" one subsequent takedown during the contract period at the Purchaser's discretion.
4. The last Required Minimum Lot Takedown will be adjusted to reflect any Lots removed from this Agreement in accordance with Paragraph 3.C. above.
5. In addition to the rights of Purchaser pursuant to Paragraph 10, if any Closing is delayed for any reason that is the fault of Seller, then Purchaser may require that the Required Minimum Lot Takedown cease until all such delays have been satisfied, at which time the Required Minimum Lot Takedown will continue from the point at which they were previously suspended.

B

3
ENT

EXHIBIT "C"

Lot Disturbance Schedule



3
LWS

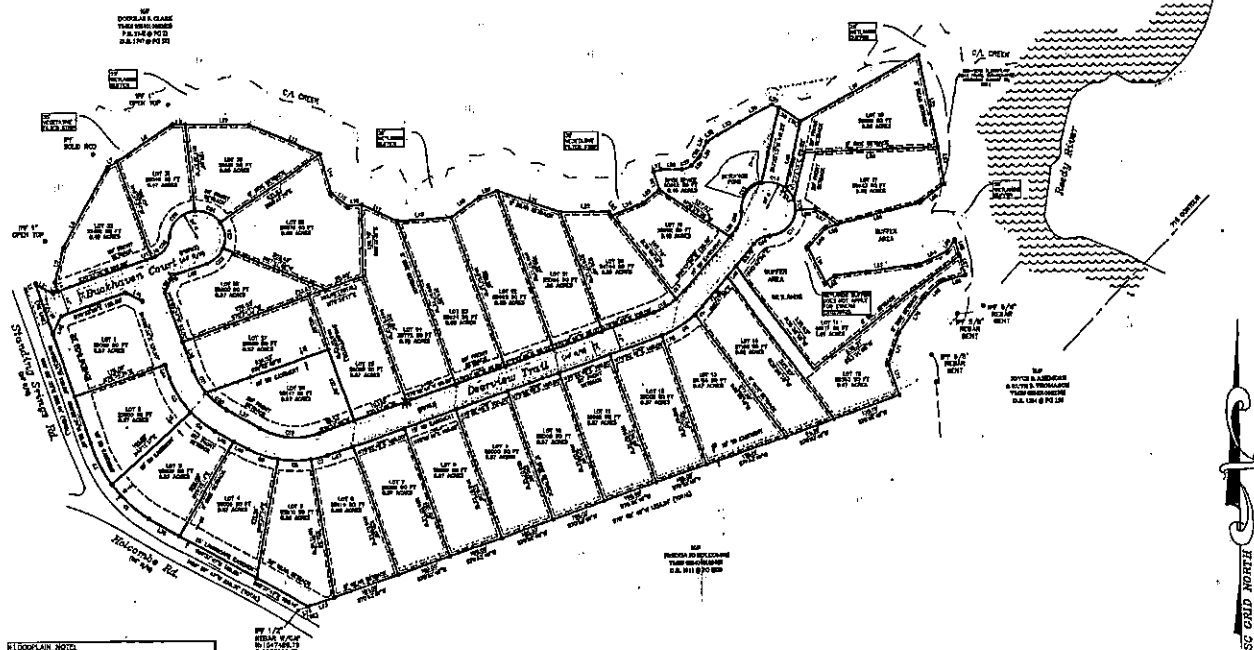
EXHIBIT "C"

Lot Disturbance Schedule, Cont.

VERY SPECIAL NOTES:
1. FOR LOTS 2-11, AND LOTS 10-22, THE CONTRACTOR SHALL NOT DEVELOP ANY LOTS UNTIL THE RIGHT OF WAY HAS BEEN COMPLETELY STABILIZED. NO MORE THAN 10 LOTS AT ANY TIME MAY BE DISTURBED WHICH DISCHARGE TO THE MULTI-USE BASIN, WHICH INCLUDE LOTS 2-11 AND LOTS 10-22.
2. THE FOLLOWING LOTS DO NOT CONTRIBUTE TO THE MULTI-USE BASIN AND MAY BE DEVELOPED AT ANY TIME AS LONG AS THE ASSOCIATED BMPs ARE IN PLACE: 1, 14-15, 23-24, AND 29-32.
3. LOTS 25-27, SHALL NOT BE DEVELOPED UNTIL SEDIMENT TRAP WITH DISCHARGE PIPE HAS BEEN INSTALLED. LOT 28 MAY BE DEVELOPED ONCE SITE HAS BEEN STABILIZED AND THE DETENTION POND HAS BEEN CONVERTED TO POST CONDITIONS.
4. LOTS 17 AND 18 ARE ONLY TO BE DEVELOPED AFTER THE MULTI-USE BASIN HAS BEEN CONVERTED TO POST CONDITIONS TO ALLOW ACCESS TO LOTS 17 AND 18.

1. The 1990 "Inventory and Bulletin" issued at the request of C.M. Ellis dated March 6, 1991, by Freedom Land Surveying, Inc. recorded in the

 2019063210
 MAY/14 Date: 06/13/15 Page: 014 - 018 1 of 1
 August 14, 2015 04:22:13 PM
 Fee: \$75.00
 FILED IN GREENVILLE COUNTY, SC *K. S. S. S.*

[illegible]

FLOODPLAIN NOTE:
ALL EXPOSED FOUNDATIONS ON ANY STRUCTURE
SHALL BE 4" HIGHER THAN THE EFFECTIVE LOCAL
FLOODPLAIN AT TLE. THEREFORE EXPOSED
STRUCTURES SHALL BE PLACED NO LOWER THAN 720'

SETBACKS:
FRONT: 20'
CORNER: 30'
SIDE: 0'
REAR: 0'
OFF STANDING SPRINGS AND
LYNN DRIVE ROAD: 20'

TREE DENSITY REQ'D: 10 UNITS/ACRES/ACRE
DISTURBED ACRES: 13.7 ACRES
TOTAL UNITS REQ'D: 137.0
TOTAL UNITS PROVIDED: 226.6

DENSITY UNIT CREDITS FOR
PRESERVED TREES

GREENVILLE COUNTY DENSITY TABLE (FOR THIS PHASE)

GROSS ACRES: 61.7 ACRES
PERMITTED DENSITY PER ACRE: 3.1 LOTS/ACRE
TOTAL # OF NEW LOTS: 32 (PHASE II)
ACTUAL SITE DENSITY: 1.8 LOTS/ACRE

SID DATA TABLE

PARCEL ID: 026601010260
ZONING: R-12-SFPR
TOTAL AREA: 61.1 ± ACRES
NUMBER OF UNITS: 1 SINGLE-FAMILY LOTS
PUBLIC ROADS: 1 PUBLIC
TOTAL DISTURBED AREA: 15.7 ± ACRES
IMPERVIOUS AREA: 8.74 ± ACRES
SITE EARTHWORK: NO IMPORT HOW EXPORT EXPECTED
RECEIVING STREAM: NEEDY RIVER
CLIMATE RECEIVING STREAM: NEEDY RIVER

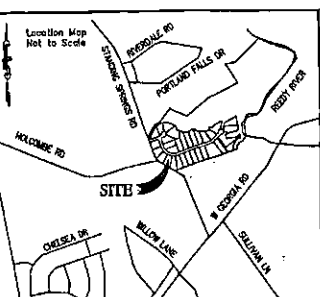
LINE #	CURVE TABLE			
	ANGLE	LENGTH	BEARING	STATION
01	146.02	27.28	N 146° 02' E	24.00
02	179.28	73.36	S 179° 28' E	97.28
03	177.28	73.36	S 177° 28' E	170.64
04	177.28	73.36	S 177° 28' E	244.00
05	177.28	73.36	S 177° 28' E	317.36
06	177.28	73.36	S 177° 28' E	390.72
07	179.28	73.36	N 179° 28' E	464.08
08	179.28	73.36	N 179° 28' E	537.44
09	179.28	73.36	N 179° 28' E	610.80
10	179.28	73.36	N 179° 28' E	684.16
11	179.28	73.36	N 179° 28' E	757.52
12	179.28	73.36	N 179° 28' E	830.88
13	179.28	73.36	N 179° 28' E	904.24
14	179.28	73.36	N 179° 28' E	977.60
15	179.28	73.36	N 179° 28' E	1050.96
16	179.28	73.36	N 179° 28' E	1124.32
17	179.28	73.36	N 179° 28' E	1197.68
18	179.28	73.36	N 179° 28' E	1271.04
19	179.28	73.36	N 179° 28' E	1344.40
20	179.28	73.36	N 179° 28' E	1417.76
21	179.28	73.36	N 179° 28' E	1491.12
22	179.28	73.36	N 179° 28' E	1564.48
23	179.28	73.36	N 179° 28' E	1637.84
24	179.28	73.36	N 179° 28' E	1711.20
25	179.28	73.36	N 179° 28' E	1784.56
26	179.28	73.36	N 179° 28' E	1857.92
27	179.28	73.36	N 179° 28' E	1931.28
28	179.28	73.36	N 179° 28' E	2004.64
29	179.28	73.36	N 179° 28' E	2078.00
30	179.28	73.36	N 179° 28' E	2151.36
31	179.28	73.36	N 179° 28' E	2224.72
32	179.28	73.36	N 179° 28' E	2298.08
33	179.28	73.36	N 179° 28' E	2371.44
34	179.28	73.36	N 179° 28' E	2444.80
35	179.28	73.36	N 179° 28' E	2518.16
36	179.28	73.36	N 179° 28' E	2591.52
37	179.28	73.36	N 179° 28' E	2664.88
38	179.28	73.36	N 179° 28' E	2738.24
39	179.28	73.36	N 179° 28' E	2811.60
40	179.28	73.36	N 179° 28' E	2884.96
41	179.28	73.36	N 179° 28' E	2958.32
42	179.28	73.36	N 179° 28' E	3031.68
43	179.28	73.36	N 179° 28' E	3105.04
44	179.28	73.36	N 179° 28' E	3178.40
45	179.28	73.36	N 179° 28' E	3251.76
46	179.28	73.36	N 179° 28' E	3325.12
47	179.28	73.36	N 179° 28' E	3398.48
48	179.28	73.36	N 179° 28' E	3471.84
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53	179.28	73.36	N 179° 28' E	3838.64
54	179.28	73.36	N 179° 28' E	3912.00
55	179.28	73.36	N 179° 28' E	3985.36
56	179.28	73.36	N 179° 28' E	4058.72
57	179.28	73.36	N 179° 28' E	4132.08
58	179.28	73.36	N 179° 28' E	4205.44
59	179.28	73.36	N 179° 28' E	4278.80
60	179.28	73.36	N 179° 28' E	4352.16
61	179.28	73.36	N 179° 28' E	4425.52
62	179.28	73.36	N 179° 28' E	4498.88
63	179.28	73.36	N 179° 28' E	4572.24
64	179.28	73.36	N 179° 28' E	4645.60
65	179.28	73.36	N 179° 28' E	4718.96
66	179.28	73.36	N 179° 28' E	4792.32
67	179.28	73.36	N 179° 28' E	4865.68
68	179.28	73.36	N 179° 28' E	4939.04
69	179.28	73.36	N 179° 28' E	5012.40
70	179.28	73.36	N 179° 28' E	5085.76
71	179.28	73.36	N 179° 28' E	5159.12
72	179.28	73.36	N 179° 28' E	5232.48
73	179.28	73.36	N 179° 28' E	5305.84
74	179.28	73.36	N 179° 28' E	5379.20
75	179.28	73.36	N 179° 28' E	5452.56
76	179.28	73.36	N 179° 28' E	5525.92
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78	179.28	73.36	N 179° 28' E	5672.64
79	179.28	73.36	N 179° 28' E	5746.00
80	179.28	73.36	N 179° 28' E	5819.36
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87	179.28	73.36	N 179° 28' E	6332.88
88	179.28	73.36	N 179° 28' E	6406.24
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91	179.28	73.36	N 179° 28' E	6626.32
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93	179.28	73.36	N 179° 28' E	6773.04
94	179.28	73.36	N 179° 28' E	6846.40
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146	179.28	73.36	N 179° 28' E	10661.32
147	179.28	73.36	N 179° 28' E	10734.80
148	179.28	73.36	N 179° 28' E	10808.28
149	179.28	73.36	N 179° 28' E	10881.76
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205	179.28	73.36	N 179° 28' E	14996.64
206	179.28	73.36	N 179° 28' E	15070.12
207				

LINE #	BACKUP	LENGTH	REMARKS	CHARGE
011	115.00	47.54	222 LF 87% ¹	47.54
012	30.00	42.11	240 LF 44% ¹	42.11
013	30.00	48.53	250 LF 10% ¹	48.53
014	30.00	73.54	320 LF 25% ¹	73.54
015	30.00	70.88	310 LF 10% ¹	65.77
016	40.00	47.24	120 LF 30% ¹	44.61
017	25.00	58.88	160 LF 0% ¹	16.38
018	20.00	7.08	40 LF 0% ¹	9.97

CASE TABLE			
CASE	SCENARIO	LENGTH	CASE #
1.1	100% OF 37.0	3.00	1.01
1.2	100% OF 17.0	2.00	1.02
1.3	170% OF 17.0	6.00	1.03
1.4	100% OF 27.0	17.00	1.04
1.5	100% OF 36.0	36.00	1.05
1.6	100% OF 17.0	100.00	1.06
1.7	100% OF 100.0	10.34	1.07
1.8	100% OF 100.0	125.00	1.08
1.9	100% OF 100.0	33.34	1.09
1.10	170% OF 17.0	6.00	1.10
1.11	100% OF 100.0	10.33	1.11
1.12	100% OF 100.0	17.00	1.12
1.13	100% OF 100.0	130.00	1.13
1.14	100% OF 100.0	75.00	1.14
1.15	100% OF 100.0	24.00	1.15
1.16	100% OF 100.0	24.00	1.16
1.17	100% OF 100.0	73.00	1.17
1.18	100% OF 100.0	20.00	1.18
1.19	100% OF 100.0	33.33	1.19
1.20	170% OF 100.0	23.00	1.20

TABLE		LAME TABLE		LAME TABLE	
TYPE	LENGTH	TYPE	LENGTH	TYPE	LENGTH
1	10	1	10	1	10
2	10	2	10	2	10
3	10	3	10	3	10
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31	10	31	10	31	10
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37	10	37	10	37	10
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95	10	95	10	95	10
96	10	96	10	96	10
97	10	97	10	97	10
98	10	98	10	98	10
99	10	99	10	99	10
100	10	100	10	100	10

LINE #	MEASURE	LENGTH
L01	HW 01' 47 1/2"	75.00'
L02	HW 01' 47 1/2"	80.00'
L03	HW 01' 47 1/2"	107.00'
L04	HW 01' 47 1/2"	84.00'
L05	HW 01' 47 1/2"	87.52'
L06	HW 01' 47 1/2"	9.00'
L07	HW 01' 47 1/2"	30.00'
L08	HW 01' 47 1/2"	30.00'
L09	HW 01' 47 1/2"	44.50'
L10	HW 01' 47 1/2"	76.00'
L11	HW 01' 47 1/2"	30.00'
L12	HW 01' 47 1/2"	80.65'
L13	HW 01' 47 1/2"	57.00'
L14	HW 01' 47 1/2"	30.00'
L15	HW 01' 47 1/2"	30.00'
L16	HW 01' 47 1/2"	6.57'



FINAL PLAT

CERTIFICATE OF ACCURACY

I request that, in the event of my knowledge, information, and belief, the Bureau receive copies and make it appropriate, and the substitution of the specially designated mailing and the processing of laws, business in order to comply with the intent of the Department of Justice to be able to protect its interests.

Q-R-19 *DMC*



CERTIFICATE OF OWNERSHIP AND DEDICATION

[illegible]

8 1 12 1 209

* CERTIFICATE OF APPROVAL FOR RECORDING

"I PERSONALLY HEARD THE DISCUSSION PLAY DOWN MURDER HAS BEEN PLANNED BY COMPLY WITH THE BUSINESS REGULATION FOR WHOLESALE INDUSTRY, THAT THE DISCUSSION OF SUCH INFORMATION, IF ANY, AS ARE KNOWN TO THE MEMBER OF THE CONFERENCE QUARTY PLANNING COMMITTEE OF WHOLESALE INDUSTRY, BEING AVOIDED, AND THAT IF HAS BEEN APPROVED FOR DISCUSSION IN THE OFFICE OF THE JOINT SECRETARY OF TRADE COOPERATION."

8.16.2019 . Adene Stokes
DATE SIGNED BY: _____
OFFICIAL PARTY PLACING SIGNATURE

River Springs Phase I

C&M, LLC ROCK TRANCHINA 4113 E MORTON ST GREENVILLE, NC 29615 OWNER	EAS PROFESSIONALS, INC 9 PLENUM ROAD GREENVILLE, NC 29607 (864) 234-7358 SURVEYOR

NO. OF ACRES: 61.2 MILES OF NEW ROAD: 0.70 (0.37 PHASE)

NO. LOTS: B3 (32 PHASE I) DATE: AUGUST 08, 2019

TOHTD- B-12-SEPTIC

GRAPHIC SCALE

EXHIBIT

EXHIBIT
F-77

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "Agreement") is made as of the Effective Date by and between CJN, LLC, a South Carolina limited liability company (collectively, "Seller") and Douglas F. Clark, his permitted successors and assigns ("Purchaser"). The "Effective Date" as used herein shall be the date this Agreement is signed by both parties and if both parties do not sign on the same date, it shall be the date on which the Agreement is signed by the last party to sign. If one of the parties fails to date its signature in the blank provided, the Effective Date shall be the date of the other party's signature.

ARTICLE 1
PURCHASE AND SALE

1.1 **Agreement of Purchase and Sale.** Subject to the terms and conditions set forth herein and for and in consideration of the mutual promises of the parties made herein and other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, Seller agrees to sell and convey and Purchaser agrees to purchase that certain tract of land containing approximately 34.11 acres located on Old Standing Springs Road, Simpsonville, SC 29681, Greenville County TMS# 0584010102601 as shown on plat of survey as set forth in Section 3.4 (the real property described in this clause (a) being herein referred to as the "Property");

1.2 **Permitted Exceptions.** The Property shall be conveyed, and Purchaser shall accept the Property, subject to the matters which are deemed to be Permitted Exceptions pursuant to ARTICLE 2 hereof (herein referred to collectively as the "Permitted Exceptions").

1.3 **Purchase Price.** Seller is to sell and Purchaser is to purchase the Property for a total purchase price of Seven Hundred Seventy Five Thousand and no/100 Dollars (\$775,000.00) ("Purchase Price"). The Purchase Price shall be payable as follows:

(a) Earnest Money - \$10,000.00; and

(b) The remainder payable in cash or other immediately available funds at Closing;

1.4 **Earnest Money.** Within five (5) days of the Effective Date, Purchaser shall deposit \$10,000.00 (the "Earnest Money") with Access Realty, LLC, 4113 E. North Street, Greenville, South Carolina 29615 ("Escrow Agent"). Escrow Agent shall deposit the Earnest Money in a federally regulated financial institution. If this transaction is fully consummated, the Earnest Money shall be applied against the cash portion of the Purchase Price. The parties understand and agree that Escrow Agent is authorized to deliver the Earnest Money to the Seller at Closing. However, if Closing does not occur, and Escrow Agent receives a notice requesting release of the Earnest Money from either party, Escrow Agent is authorized to release the Earnest Money to the requesting party, provided that: the notice sets forth the basis on which the Earnest Money is to be released; the notice is simultaneously sent to the other party; and the request is not refuted by the non-requesting party within ten (10) days after receipt of the notice. If the parties cannot agree as to the disposition of the Earnest Money, Escrow Agent is authorized to hold the Earnest Money until the parties reach agreement or until a court of competent jurisdiction establishes the rightful disposition. In any legal action involving the Escrow Agent, including any inter-pleader action initiated by the Escrow Agent, all legal expenses reasonably incurred by the Escrow Agent including all discovery and appeals expenses shall be advanced from the Earnest Money and then borne by the party against which final judgment is rendered or as otherwise ordered by the court. All fees and costs incurred, including reasonable attorneys' fees, shall be paid by the non-prevailing party. In consideration of Escrow Agent's services, the Seller and the Buyer agree to indemnify, defend and hold Escrow Agent harmless from and against all liabilities, damages, costs, expenses (including all attorneys' fees and expenses incurred by Escrow Agent or any of Escrow Agent's employees or agents), causes of action, suits, demands, judgments, and claims of any nature whatsoever that might arise at any time out of Escrow Agent's holding, investing, reinvesting, payment, or other disposition of the Earnest Money, except those which result from Escrow Agent's willful misconduct or gross negligence.



1.5 Contingencies. The obligation of the Seller to sell the Property is contingent upon Crescent Homes SC, LLC, a Delaware limited liability company, terminating any and all rights of first refusal for the Property pursuant to that Agreement for Purchase and Sale of Lots and Development with an effective date of October 8, 2018, and any amendments thereto (collectively, the "LPA").

ARTICLE 2 INSPECTION PERIOD

2.1 Right of Inspection. Purchaser shall have a period of fifteen (15) days from the Effective Date in which to perform due diligence and conduct and approve any investigations and studies Purchaser deems necessary (the "Inspection Period"). During the Inspection Period (as hereinafter defined), Purchaser shall have the right to make a physical inspection of the Property, and Purchaser, personally or through agents, employees or contractors, may go upon the Property during normal business hours or at other reasonable times, with no less than twenty four (24) hours' advance notice to Seller, to make boundary line or topographical surveys and to conduct such non-invasive studies, tests, samplings, investigations and analyses of any and all aspects of the Property as Purchaser deems desirable, including, without limitation, engineering, environmental, soil, and groundwater and other tests, samplings and studies of the Property. Purchaser shall indemnify and hold harmless Seller from and against all claims, demands, losses and expenses (including reasonable attorneys' fees) for injuries or death to persons or damage to the Property resulting from Purchaser's exercise of its inspection rights herein. The foregoing indemnification shall survive the Closing or the termination of this Agreement. This Section 2.1 shall survive the Closing or any termination of this Agreement.

2.2 Seller Deliveries. Seller hereby agrees to deliver to Purchaser within five (5) days following the Effective Date, copies of all materials described below to the extent in Seller's possession and by this reference made a part hereof (collectively, the "Property Documents"), to the extent Seller has not already done so:

- (a) Copies of all environmental reports related to the Property;
- (b) Copies of surveys and site plans related to the Property;
- (c) Copies of engineering reports related to the Property; and
- (d) Copies of all title insurance policies for the Property.

Seller does not warrant the accuracy or completeness of any information provided to the Purchaser or its attorneys, accountants, engineers or other representatives.

2.3 Right of Termination. At any time during the Inspection Period, Purchaser may terminate this Agreement and all Purchaser's obligations for any reason whatsoever, in its sole discretion. If Purchaser deems the Property unsatisfactory, Purchaser may terminate this Agreement by giving notice to Seller as provided in Paragraph 10.2 hereof prior to the expiration of the Inspection Period. Upon such termination by Purchaser prior to the expiration of the Inspection Period, the Escrow Agent shall promptly refund all Earnest Money to Purchaser and thereafter, neither party hereto shall have any further obligations hereunder to the other. All Earnest Money shall be non-refundable to the Purchaser upon the expiration of the Inspection Period, except in the event of default of Seller.

ARTICLE 3 TITLE AND SURVEY

3.1 Title Examination; Commitment for Title Insurance. Purchaser shall obtain from a nationally recognized Title Insurance Company (the "Title Company"), a commitment for an ALTA 2006 Owners Policy of Title Insurance (the "Title Commitment") within Seven (7) days of the Effective Date (the "Title Review Period").

3.2 Survey. ^{Seller} ~~Purchaser~~ will, at ^{Seller's} ~~Purchaser's~~ expense, employ a reputable surveyor or surveying firm,

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licensed by the State of South Carolina, to survey the Property and prepare and deliver to Purchaser and Seller during the Inspection Period a boundary survey and plat thereof (the "Survey") reflecting the total area of the Property calculated to the nearest 100th of an acre, and the location of all improvements, if any, to be approved by the Purchaser and Seller.

3.3 Title Objections; Cure of Title Objections. Purchaser shall have until three (3) days after the expiration of the Title Review Period to give written notice to Seller of objections to any exceptions disclosed in the Title Commitment and any amendments thereto. Any exception in the Title Commitment to which Purchaser does not object by timely written notice (the "Title Objections") shall be a "Permitted Exception." Time is of the essence with respect to the provisions of this Section 3.3. If Seller is able and willing to cure or remove such Title Objections (which removal shall be deemed to be effected by the issuance of title insurance eliminating or insuring over the effect of such Title Objection), but Seller fails or is unable to cure any such exception at or prior to Closing, Seller shall be entitled to one reasonable adjournment of the Closing of up to, but not beyond, the thirtieth (30th) day following the date for Closing set forth in Section 4.1 hereof to attempt such cure.

Seller may, but notwithstanding anything in this Agreement to the contrary, shall not be obligated under any circumstances, to remove, or cause to be removed or insured over, at its expense, any Title Objection. If Seller determines, within its discretion, not to remove, satisfy or otherwise cure any such title exceptions, Purchaser's sole remedy hereunder in such event shall be either: (i) to accept title to the Property subject to such exceptions without abatement of the Purchase Price or (ii) to terminate this Agreement by providing written notice to Seller pursuant to Section 10.2. Upon such termination, the Earnest Money shall be returned to Purchaser and neither party hereto shall have any further rights, obligations or liabilities hereunder except to the extent that any right, obligation or liability set forth herein expressly survives termination of this Agreement.

3.4 Conveyance of Title. At Closing, Seller shall convey and transfer to Purchaser, by recordable limited warranty deed, such title to the Property as will enable the Title Company to issue to Purchaser, at Purchaser's expense, an ALTA Owner's Policy of Title Insurance (the "Title Policy") covering the Property, in the full amount of the Purchase Price without exception other than Permitted Exceptions and reservation of a Right of First Refusal (as defined in Article 9 below). Notwithstanding anything contained herein to the contrary, the Property shall be conveyed subject to the following matters, which shall be deemed to be Permitted Exceptions:

- (a) The lien of all ad valorem real estate taxes and assessments not yet due and payable as of the date of Closing, subject to proration between the parties as herein provided;
- (b) local, state and federal laws, ordinances or governmental regulations, including but not limited to, building and zoning laws, ordinances and regulations, now or hereafter in effect relating to the Property;
- (c) easements for utilities and road rights of way serving the Property but which do not adversely affect intended development and use thereof; and
- (d) items which are, or become, Permitted Exceptions pursuant to Sections 3.3 or 3.5 hereof.

3.5 Amendments to Title Commitment. Purchaser shall have the right to object to any title exceptions first raised by the Title Company in any amendments to the Title Commitment for matters first occurring after the effective date of the initial Title Commitment by giving written notice of those exceptions to which Purchaser is objecting within one (1) day after Purchaser's receipt of any such amendment. If Purchaser does not object to any exception first raised in an amendment to the Title Commitment issued after Purchaser's receipt of the Title Commitment by giving timely written notice as herein provided, such exception shall be a Permitted Exception. In the event Purchaser gives timely written notice of objection to any exception as herein provided, the provisions of Section 3.3 shall apply with respect thereto as if set forth herein in full. Time is of the essence with respect to the provisions of this Section

ARTICLE 4 CLOSING

4.1 **Time and Place.** The consummation of the transaction contemplated hereby ("Closing") shall be held on or before July 15, 2020 through the office of the closing attorney selected by the Purchaser. At Closing, Seller and Purchaser shall each perform their respective obligations as set forth in this Agreement. The Closing may be held at such other place or such earlier time and date as Seller and Purchaser shall mutually approve in writing. The date on which the Closing is scheduled to occur hereunder (or, if earlier, or as the context requires, the date on which Closing actually occurs) is referred to herein as the "Closing Date".

4.2 **Seller's Obligations at Closing.** At or prior to Closing, Seller shall:

- (a) deliver a Limited Warranty Deed, in proper form for recording, conveying good, marketable and insurable fee simple title to the Property, free and clear of all liens, encumbrances, easements and restrictions except permitted exceptions;
- (b) deliver to the Title Company any standard affidavits as may be required by the Title Company;
- (c) deliver to the Title Company any standard Seller's affidavits as may be required by the Title Company;
- (d) deliver to Purchaser possession of the Property, subject only to the permitted exceptions;
- (e) deliver to Purchaser an affidavit duly executed by Seller stating that Seller is not a "foreign person" as defined in the Federal Foreign Investment in Real Property Tax Act of 1980 and the 1984 Tax Reform Act;
- (f) deliver to Purchaser a residency certification as required by South Carolina and federal laws; and
- (g) deliver such additional documents as shall be reasonably required to consummate the transaction contemplated by this Agreement.

4.3 **Purchaser's Obligations at Closing.** At Closing, Purchaser shall:

- (a) deliver to Escrow Agent the full amount of the Purchase Price, as increased or decreased by credits, prorations and adjustments as provided in Section 4.5 hereof, in immediately available federal funds wire transferred to Escrow Agent's Account pursuant to the terms of this Agreement, it being agreed that at Closing the Earnest Money shall be applied towards payment of the Purchase Price;
- (b) deliver to Seller such evidence as Seller's counsel and/or the Title Company may reasonably require as to the authority of the person or persons executing documents on behalf of Purchaser; and
- (c) deliver to the Title Company a duly executed closing statement; and
- (d) deliver such additional documents as shall be reasonably requested by the Title Company or required by this Agreement or by any applicable law to consummate the transaction contemplated by this Agreement, provided, however, that in no event shall Purchaser be required to undertake any other material liability not expressly contemplated in this Agreement, unless Purchaser elects to do so in its sole discretion.

4.4 **Closing Costs and Prorations.** Costs and payments related to the purchase and sale of the Property shall be paid at Closing as follows: Seller shall satisfy or pay (a) all mortgages and other liens with respect to the Property; (b) the cost of documentary stamps, statutory deed recording fees or transfer taxes assessed in connection

with the conveyance of the Property; (c) all of Seller's legal fees; and (d) the cost of preparing the deed. Purchaser shall pay for (a) title insurance premiums; (b) all of Purchaser's legal fees; (c) loan fees and costs, if any; (d) costs of all inspections; ~~(e) rollback taxes, if any, and (f) cost of new survey, if any.~~ All other costs of closing shall be paid by the party incurring such cost. *Ad valorem* property taxes, which are a lien, but not yet due and payable, shall be prorated as of the Closing date.

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4.5 **Conditions Precedent to Obligation of Purchaser.** The obligation of Purchaser to consummate the transaction hereunder shall be subject to the fulfillment on or before the Closing Date (or such earlier time as otherwise required hereby) of all of the following conditions, any or all of which may be waived by Purchaser in its sole discretion:

(a) All of the representations and warranties of Seller contained in this Agreement shall be true and correct in all material respects as of the Closing Date, as if made and updated as of the Closing Date;

(b) Seller shall have performed and observed, in all material respects, all covenants and agreements of this Agreement to be performed and observed by Seller as of the Closing Date; and

(c) All other conditions precedent to Purchaser's obligation to consummate the transaction hereunder (if any) which are set forth in this Agreement shall have been satisfied on or before the Closing Date.

In the event any of the foregoing conditions has not been satisfied by the Closing Date other than through Purchaser's default or failure of Purchaser to fully comply with its obligations under this Agreement, Purchaser shall not be obligated to consummate the transactions contemplated hereby until such conditions have been satisfied and until such conditions have been satisfied, Purchaser shall have the right to terminate this Agreement by written notice given to Seller, whereupon Escrow Agent shall refund the Earnest Money to Purchaser and the parties shall have no further rights, duties or obligations hereunder, other than those which are expressly provided herein to survive the termination of this Agreement.

Notwithstanding anything to the contrary in the foregoing, if any of the foregoing conditions in this Section 4.5 has not been satisfied due to a default or failure of performance by Purchaser or Seller hereunder, then Purchaser's and Seller's respective rights, remedies and obligations shall instead be determined in accordance with ARTICLE 6.

4.6 **Conditions Precedent to Obligation of Seller.** The obligation of Seller to consummate the transaction hereunder shall be subject to the fulfillment on or before the Closing Date of all of the following conditions, any or all of which may be waived by Seller in its sole discretion:

✓ (a) Crescent Homes SC, LLC, a Delaware limited liability company, terminating any and all rights of first refusal for the Property pursuant to the LPA (as set forth in Section 1.5 hereinabove);

(b) Seller shall have received the Purchase Price, as adjusted for prorations and net of the amount needed to satisfy any mortgage loan;

(c) All of the representations and warranties of Purchaser contained in this Agreement shall be true and correct in all material respects as of the Closing Date, as if made and updated as of the Closing Date;

(d) Purchaser shall have performed and observed, in all material respects, all covenants and agreements of this Agreement to be performed and observed by Purchaser as of the Closing Date; and

(e) All other conditions precedent to Seller's obligation to consummate the transaction hereunder (if any) which are set forth in this Agreement shall have been satisfied on or before the Closing Date.

In the event any of the foregoing conditions has not been satisfied by the Closing Date other than through Seller's default or failure of Seller to fully comply with its obligations under this Agreement, Seller shall have the right to terminate this Agreement by written notice given to Purchaser on the later of (i) the Closing Date or (ii) the

date that is five (5) days after Purchaser has received written notice from Seller stating that any of the above conditions have not been satisfied. If Seller terminates this Agreement pursuant to this Section, Escrow Agent shall pay the Earnest Money to Seller and the parties shall have no further rights, duties or obligations hereunder, other than those which are expressly provided herein to survive a termination of this Agreement, except in the event condition 4.6(a) is not satisfied in which event the Escrow Agent shall pay the Earnest Money to the Purchaser.

Notwithstanding anything to the contrary in the foregoing, if any of the foregoing conditions in this Section has not been satisfied due to a default or failure of performance by Purchaser or Seller hereunder, then Purchaser's and Seller's respective rights, remedies and obligations and the disposition of the Earnest Money as a result of such default shall instead be determined in accordance with ARTICLE 6.

ARTICLE 5 REPRESENTATIONS, WARRANTIES AND COVENANTS

5.1 **Representations and Warranties of Seller.** Seller hereby makes as of the Effective Date the following representations and warranties to Purchaser, which representations and warranties shall be true and correct in all material respects as of the Closing Date.

(a) **Authority.** Seller has the full right and authority to enter into this Agreement and to convey fee simple title to the Property pursuant hereto and to consummate or cause to be consummated the transactions contemplated herein. The person(s) signing this Agreement on behalf of Seller are authorized to do so. Neither the execution and delivery of this Agreement nor any other documents executed and delivered, or to be executed and delivered, by Seller in connection with the transactions described herein, will violate any provision of any agreements, regulations, or laws to or by which Seller is bound. This Agreement has been duly authorized, executed and delivered by Seller, is a valid and binding obligation of Seller and is enforceable against Seller in accordance with its terms subject to (i) applicable bankruptcy, insolvency, reorganization, moratorium, and other laws affecting the rights of creditors generally; and (ii) the exercise of judicial discretion in accordance with general principles of equity;

(b) **Pending Actions.** No action, suit, arbitration, administrative or judicial proceeding, or unsatisfied order or judgment is pending or, to Seller's knowledge, threatened against Seller which pertains directly to the Property or the transaction contemplated by this Agreement. In addition, there exists no other action, suit, arbitration, administrative or judicial proceeding, or unsatisfied order or judgment which is pending or, to Seller's knowledge, threatened against Seller which, if adversely determined, would have a Material Adverse Effect. (As used in this Agreement, the term "Material Adverse Effect" means, with respect to any fact or circumstance, that such fact or circumstance would individually or in the aggregate, have a material adverse effect on title to the Property or any portion thereof, or on Seller's ability to consummate the transaction contemplated herein, or on the physical condition, legal status, value or ability to develop or operate the Property in its condition as of the Effective Date or as related to the Intended Improvements).

(c) **Condemnation.** Seller has received no notice of, nor to the best of Seller's knowledge is there, any pending, threatened or contemplated action by any governmental authority or agency having the power of eminent domain, which might result in any part of the Property being taken by condemnation.

(d) **Conflicts.** There is no agreement to which Seller is a party, or binding on Seller, which is in conflict with this Agreement.

(e) **Financial Status.** Seller is solvent, has not made a general assignment for the benefit of its creditors, and has not admitted in writing its inability to pay its debts as they become due. Seller has neither filed, nor does it contemplate the filing of, any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings, or any other proceeding for the relief of debtors in general, nor has any such proceeding been instituted by or against Seller, nor, to Seller's knowledge, is any such proceeding threatened or contemplated. The sale of the Property will not render Seller insolvent.

5.2 **Survival of Seller's Representations and Warranties.** The representations and warranties of Seller set forth in Section 5.1 shall survive Closing for a period of six (6) months (the "Survival Period"), unless notice setting forth a specific claim under any such representation or warranty (a "Claim") shall be given to Seller within that period, in which case such representation or warranty shall survive until such claim is finally and fully resolved.

5.3 **Covenants of Seller.** Seller hereby covenants with Purchaser, from the Effective Date until the Closing or earlier termination of this Agreement, as follows:

(a) **Maintenance of Property.** Seller shall maintain the Property in a manner generally consistent with the manner in which Seller has maintained the Property prior to the Effective Date;

(b) **Execution of New Contracts.** Seller shall not, without Purchaser's prior written consent in each instance (which consent may be withheld in Purchaser's sole discretion), enter into any contract or agreement or lease that will be an obligation affecting the Property or binding on Purchaser after the Closing;

(c) **Disposition of the Property and Other Matters.** For so long as this Agreement remains in force, Seller shall not, without Purchaser's prior written consent in each instance (which consent may be withheld in Purchaser's sole discretion):

(1) sell, assign, rent, lease, convey (absolutely or as security), grant a security interest in, or otherwise encumber or dispose of, the Property (or any interest or estate therein), change or request a change in the zoning classification of the Property or any development restrictions applicable to the Property, or consent to or acquiesce in any of the foregoing;

(2) enter into any contract that will be an obligation affecting the Property subsequent to the Closing; or

(3) enter into any lease, license or occupancy agreement of all or any part of the Property which (i) cannot be terminated by Seller on thirty (30) days' written notice, and (ii) terminated by Purchaser as of or after the Closing Date without notice and at no cost or expense to Purchaser.

5.4 **Representations and Warranties of Purchaser.** Purchaser hereby makes the following representations and warranties to Seller as of the Effective Date:

(a) **Authority.** Purchaser has the full right and authority to enter into this Agreement and to purchase the Property pursuant hereto and to consummate or cause to be consummated the transactions contemplated herein. The person signing this Agreement on behalf of Purchaser is authorized to do so. Neither the execution and delivery of this Agreement nor any other documents executed and delivered, or to be executed and delivered, by Purchaser in connection with the transactions described herein, will violate any provision of any agreements, regulations, or laws to or by which Purchaser is bound. This Agreement has been duly authorized, executed and delivered by Purchaser, is a valid and binding obligation of Purchaser and is enforceable against Purchaser in accordance with its terms subject to (i) applicable bankruptcy, insolvency, reorganization, moratorium, and other laws affecting the rights of creditors generally; and (ii) the exercise of judicial discretion in accordance with general principles of equity;

(b) **Pending Actions.** There is no action, suit, arbitration, administrative or judicial administrative proceeding, or unsatisfied order or judgment pending or, to Purchaser's knowledge, threatened against Purchaser or the transaction contemplated by this Agreement, which, if adversely determined, could individually or in the aggregate have a material adverse effect on Purchaser's ability to consummate the transaction contemplated herein; and

(c) **Conflicts.** There is no agreement to which Purchaser is a party, or binding on Purchaser, which is in conflict with this Agreement.

5.5 **Survival of Purchaser's Representations and Warranties.** The representations and warranties of Purchaser set forth in Section 5.4 shall survive Closing.

ARTICLE 6 DEFAULT

6.1 **Default by Purchaser.** If the sale of the Property as contemplated hereunder is not consummated due to Purchaser's default hereunder, then Escrow Agent shall pay the Earnest Money to Seller, on demand, without prejudice to any other rights or remedies of Seller hereunder, at law or in equity. This Section 6.1 is subject to Section 6.4 hereof.

6.2 **Default by Seller.** If the sale of the Property as contemplated hereunder is not consummated due to Seller's default hereunder, then Escrow Agent shall refund the Earnest Money to Purchaser, on demand, and the Purchaser as its sole remedies hereunder, may (1) terminate this Agreement by notice to Seller; or (2) bring an action for specific performance. Notwithstanding the foregoing to the contrary, Purchaser shall not exercise any of its options under this Section unless, after making written demand upon Seller, Seller fails within ten (10) business days to cure such default or breach. This Section 6.2 is subject to Section 6.4 hereof. Notwithstanding any language contained herein to the contrary, the refusal of Crescent Homes SC, LLC to terminate any and all rights of first refusal for the Property pursuant to the LPA shall ~~not~~ constitute a Seller default hereunder.

6.3 **Notice of Default; Opportunity to Cure.** Neither Seller nor Purchaser shall be deemed to be in default hereunder until and unless such party has been given written notice of its failure to comply with the terms hereof and thereafter does not cure such failure within five (5) business days after receipt of such notice; provided, however, that this Section 6.3 shall not apply in case of (i) Purchaser's failure to deliver the Earnest Money or any portion thereof on the date required or (ii) a party's failure to make any deliveries required of such party on the Closing Date. Such failures under sub-sections (i) and (ii) shall not have the effect of extending the due date of any Earnest Money deposit (or portion thereof) or the Closing Date hereunder.

6.4 **Recoverable Damages.** Notwithstanding Sections 6.1 and 6.2 hereof, in no event shall the provisions of Sections 6.1 and 6.2 limit (i) either Purchaser's or Seller's obligation to indemnify the other party or the damages recoverable by the indemnified party against the indemnifying party due to a party's express obligation to indemnify the other party in accordance with this Agreement, or (ii) either party's obligation to pay costs, fees or expenses under this Agreement, including, without limitation, Section 4.6 hereof or the damages recoverable by either party against the other party due to a party's failure to pay such costs.

6.5 **Survival.** This ARTICLE 6 shall survive the rescission, cancellation, termination or consummation of this Agreement.

ARTICLE 7 RISK OF LOSS

7.1 **Risk of Loss.** Until the purchase of the Property has been consummated on the Closing Date, all risk of loss of, damage to, or destruction of, the Property (whether by fire, flood, tornado or other casualty, or by the exercise of the power of eminent domain, or otherwise) shall belong to and be borne by Seller. For purposes of this Agreement, any contamination of the Property with Hazardous Materials or release or discharge at the Property of Hazardous Materials, except for such contamination, release, or discharge caused by Purchaser or its agents, occurring on or after the Effective Date shall constitute a casualty.

7.2 **Casualty or Condemnation.** In the event of any damage to or destruction of any material portion of the Property or in the event of any taking or threat of taking by condemnation (or any conveyance in lieu thereof) of any material portion of the Property by anyone having the power of eminent domain, Purchaser shall, by written notice to Seller delivered within ten (10) business days of receiving written notice from Seller of such event, elect to: (a) terminate this Agreement and all of Purchaser's obligations under this Agreement, whereupon the Earnest Money shall be returned to Purchaser, this Agreement shall terminate and Purchaser and Seller shall have no further rights

and obligations hereunder except those which expressly survive termination of this Agreement; or (b) consummate the Closing subject to the terms and conditions of this Agreement. If Purchaser receives Seller's written notice within less than ten (10) business days of Closing, the Closing Date shall be extended as necessary in order for Purchaser to have ten (10) business days in which to make its election. If Purchaser does not elect to terminate this Agreement pursuant to clause (a) of this Section 7.2, then Seller shall on the Closing Date pay to Purchaser all insurance proceeds then received by Seller and all condemnation awards and compensation then received by Seller. In addition, Seller shall transfer and assign to Purchaser, in form reasonably satisfactory to Purchaser, all rights and claims of Seller with respect to payment for damages and compensation on account of such damage, destruction or taking.

7.3 Notice of Condemnation or Casualty. Seller shall notify Purchaser immediately upon Seller's receiving notice of the occurrence or existence of any damage, destruction, condemnation or threat of condemnation affecting the Property and, at the same time, shall provide Purchaser with such information with respect thereto as is in Seller's possession in order to aid Purchaser in making, on an informed basis, the election between the alternatives provided by clauses (a) and (b) in Section 7.2 above. Notwithstanding anything in this Agreement to the contrary, Purchaser shall have ten (10) business days after it receives such information from Seller within which to elect between such alternatives, and, accordingly, the Closing Date shall be postponed, if and to the extent necessary, to allow Purchaser such ten (10) business day period in which to make the election under Section 7.2 above.

ARTICLE 8 COMMISSIONS

8.1 Representation and Indemnity. Purchaser and Seller each hereby represents and warrants to the other that it has not disclosed this Agreement or the subject matter hereof to, and has not dealt with, any real estate broker, agent or salesman so as to create any legal right or claim in any such broker, agent or salesman for a real estate commission or similar fee or compensation with respect to the negotiation and/or consummation of this Agreement or the conveyance of the Property by Seller to Purchaser. Purchaser and Seller shall indemnify, hold harmless and defend each other from and against any and all claims and demands for a real estate brokerage commission or similar fee or compensation arising out of any claimed dealings with the indemnifying party and relating to this Agreement or the purchase and sale of the Property (including reasonable attorneys' fees and expenses and court costs incurred in defending any such claim or in enforcing this indemnity).

8.2 Survival. This ARTICLE 8 shall survive the rescission, cancellation, termination or consummation of this Agreement.

ARTICLE 9 RIGHT OF FIRST REFUSAL

9.1 Right of First Refusal. As additional inducement for Seller to sell the Property, Purchaser has agreed to Seller reserving a right of first refusal to repurchase the Property in the event Purchaser, his successors, heirs and assigns, should decide to sell and/or convey the Property for a period of ~~ten (10)~~ ^{2 years} years from the date of Closing. If Purchaser receives a bona fide offer to purchase the Property (the "Selected Property"), then Seller shall promptly notify Purchaser of said offer(s) evidenced by a copy of the offer. Seller shall have a right of first refusal to purchase the Property on the same terms as the bona fide offer received by Purchaser (the "Right of First Refusal"). Within fifteen (15) days of receipt of the terms of the bona fide purchase offer, Seller shall notify Purchaser in writing as to whether it desires to purchase the Property. If Seller does not provide Purchaser with written notice within said fifteen (15) day period, Seller will be deemed to have refused to purchase the Property and Purchaser shall be free to sell the Property to the other party on the terms of the bona fide purchase offer. If Seller elects to purchase the Property, the closing shall occur within sixty (60) days of Seller's election. If Seller elects not to exercise the Right of First Refusal as to the Property and the bona fide third party transaction is not consummated, Seller shall retain the right to exercise its Right of First Refusal for the Property.

ARTICLE 10 MISCELLANEOUS

10.1 **Assignment.** Purchaser may assign its rights under this Agreement to any entity controlled by or under common control of Purchaser or in which Purchaser has a majority interest without Seller's consent, and may otherwise assign its rights hereunder with the consent of Seller in Seller's sole discretion. No transfer or assignment by Seller or Purchaser shall release or relieve such assignor of its obligations hereunder without the express written consent of the non-assigning or non-transferring party. Each party will assist the other, if requested, in effectuating a tax-deferred exchange under Section 1031 of the Internal Revenue Code and related regulations; provided, however, that the Closing shall not be delayed and non-requesting party shall incur no greater expense or liability in connection with the transactions contemplated under this Agreement than they would have incurred without said exchange. The parties shall execute all documents reasonably requested by the requesting party or any Qualified Intermediary as that term is defined by Internal Revenue Service Regulations, Rev. Proc. 2000-12, 2000-4 I.R.B. 387, to effectuate said exchange (including an assignment of rights and obligations under this Agreement to the Qualified Intermediary).

10.2 **Notices.** All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given: (i) on the day of service if served personally on the party to whom notice is to be given; (ii) on the day of transmission if sent via facsimile transmission to the facsimile number given below if transmitted during regular business hours on a business day, and if not, then on the following business day; (iii) on the day of transmission if delivered by electronic mail during regular business hours on a business day and, if not, then on the following business day; (iv) one (1) business day after being sent by a nationally recognized overnight courier or United States mail; or (v) three (3) days after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. All notices shall be addressed as follows:

Seller:
CJN, LLC
Attn: Nicholas M. Franchina
4113 E. North Street
Greenville, SC 29615
Email: nickfranchina@yahoo.com
Phone: 864-630-0557

Purchaser:
Douglas F. Clark
2869 Old Standing Springs Road
Simpsonville, SC 29681

Email: _____

Phone: _____

With Copy to:
P. Ryan Brown
Keable & Brown, PA
109 Laurens Rd., Bldg. 2, Ste. A
Greenville, SC 29607
Email: ryan@keablelaw.com
Phone: 864-250-4000 Fax: 864-250-4004

If to Escrow Agent: Access Realty, LLC
4113 E. North Street
Greenville, SC 29615
Attn: Earlene Cassell
Telephone: 864 322-8282
Email: ecassell@accessrealtysc.com

10.3 **Modifications.** This Agreement cannot be changed orally, and no agreement shall be effective to waive, change, modify or discharge it in whole or in part unless such agreement is in writing and is signed by the parties against whom enforcement of any waiver, change, modification or discharge is sought. Except in the case of counterpart signature pages pursuant to Section 10.8, this Agreement shall not be altered, amended or modified by electronic means, including, without limitation, electronic mail or electronic record.

10.4 **Calculation of Time Periods.** Unless otherwise specified, in computing any period of time described in this Agreement, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday under the laws of the State in which the Property is located, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or legal holiday. The final day of any such period shall be deemed to end at 5:00 p.m., Eastern Standard Time. All references to "days" in this Agreement shall mean calendar days unless specifically set forth otherwise.

10.5 **Successors and Assigns.** Subject to Section 10.1 hereof, the terms and provisions of this Agreement are to apply to and bind the successors and permitted assigns of the parties hereto.

10.6 **Entire Agreement.** This Agreement, including the exhibits, contains the entire agreement between the parties pertaining to the subject matter hereof and fully supersedes all prior written or oral agreements and understandings between the parties pertaining to such subject matter.

10.7 **Further Assurances.** Each party agrees that it will, without further consideration, execute and deliver such other documents and take such other action, whether prior or subsequent to Closing, as may be reasonably requested by the other party to consummate more effectively the purposes or subject matter of this Agreement. Without limiting the generality of the foregoing, Purchaser shall, if requested by Seller, execute acknowledgments of receipt with respect to any materials delivered by Seller to Purchaser with respect to the Property. The provisions of this Section 10.7 shall survive Closing.

10.8 **Counterparts.** This Agreement may be executed in counterparts, and all such executed counterparts shall constitute and be part of the same agreement. Facsimile, DocuSign or electronically mailed copies of executed counterparts shall be deemed to be the same as originals. It shall be necessary to account for only one such counterpart in proving this Agreement.

10.9 **Severability.** If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall nonetheless remain in full force and effect.

10.10 **Applicable Law.** This Agreement is performable in the State of South Carolina and shall in all respects be governed by, and construed in accordance with, the substantive federal laws of the United States and the laws of South Carolina. Seller and Purchaser hereby irrevocably submit to the jurisdiction of any state or federal court sitting in the State of South Carolina and judicial district in which the Property is located in any action or proceeding arising out of or relating to this Agreement and hereby irrevocably agree that all claims in respect of such action or proceeding shall be heard and determined in a state or federal court sitting in the state and judicial district in which the Property is located. Purchaser and Seller agree that the provisions of this Section 10.10 shall survive the Closing of the transaction contemplated by this Agreement or any termination of this Agreement.

10.11 **No Third Party Beneficiary.** The provisions of this Agreement and of the documents to be executed and delivered at Closing are and will be for the benefit of Seller and Purchaser only and are not for the benefit of any third party, and accordingly, no third party shall have the right to enforce the provisions of this Agreement or of the documents to be executed and delivered at Closing.

10.12 **Attorneys' Fees.** In the event litigation is required by either party to enforce the terms of this Agreement, the prevailing party of such action shall, in addition to all other relief granted or awarded by the court, be entitled to judgment for reasonable attorneys' and/or paralegals fees and costs incurred by reason of such action and all

10.13 **Captions.** The section headings appearing in this Agreement are for convenience of reference only and are not intended, to any extent or for any purpose, to limit or define the text of any section or any subsection hereof.

10.14 Construction. The parties acknowledge that the parties and their counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

10.15 Termination of Agreement. It is understood and agreed that if either Purchaser or Seller terminates this Agreement pursuant to a right of termination granted hereunder, such termination shall operate to relieve Seller and Purchaser (in which event the defaulting party shall remain liable as provided in this Agreement) from all obligations under this Agreement, except for such obligations as are specifically stated herein to survive the termination of this Agreement.

10.16 Survival. All provisions of this Agreement, which are not fully performed as of Closing, shall survive Closing subject to the terms and provisions set forth in this Agreement.

10.17 Time of Essence. Time is of the essence with respect to this Agreement.

SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the Effective Date.

PURCHASER:

Douglas F. Clark
DOUGLAS F. CLARK

DATE: 6-26-2020

SELLER:

CJN, LLC,
A SOUTH CAROLINA LIMITED LIABILITY COMPANY

BY: *Nicholas M. Franching*
NICHOLAS M. FRANCHING, ITS MANAGER

DATE: 6-23-2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
CJN, LLC,	)	
	)	Case No.: 2020-CP-23-04351
Plaintiff,	)	
	)	
vs.	)	AMENDED COMPLAINT
	)	
CRESCENT HOMES SC, LLC	)	
	)	
Defendant.	)	
	)	

COMES NOW Plaintiff CJN, LLC (“**CJN**”), complaining of Defendant Crescent Homes SC, LLC (“**Crescent**”), and states as follows:

1. CJN is a limited liability company organized and existing under the laws of the State of South Carolina and is the owner of real property located in Greenville County, South Carolina.
2. Crescent is a Delaware limited liability company and conducts business in Greenville County, South Carolina.
3. This Court has personal jurisdiction over the parties hereto and has subject matter jurisdiction over this action.
4. Venue is proper in this forum.
5. CJN is the owner of certain real property that is the subject of this dispute and is located at an unassigned address on Standing Springs Road in Greenville County, South Carolina and has been assigned TMS: P/O 0584010102601 (the “**CJN Property**”). The CJN Property is further described in the property description included in Exhibit A hereto.
6. On or about July 10, 2020, Crescent filed a lis pendens on the CJN Property in *Crescent Homes SC, LLC v. CJN, LLC*, Greenville County Case No. 2020-LP-2300343 (“**Lis Pendens 1**”), giving notice of purported pending litigation related to the CJN Property. A copy of Lis

Pendens 1 is attached hereto as Exhibit A.

7. On or about August 6, 2020, Crescent filed a lis pendens on the CJN Property in *Crescent Homes SC, LLC v. CJN, LLC*, Greenville County Case No. 2020-LP-2300373 (“**Lis Pendens 2**”), giving notice of purported pending litigation related to the CJN Property. A copy of Lis Pendens 2 is attached hereto as Exhibit B.
8. On or about August 27, 2020, Crescent filed a lis pendens on the CJN Property in *Crescent Homes SC, LLC v. CJN, LLC*, Greenville County Case No. 2020-LP-2300395 (“**Lis Pendens 3**”), giving notice of purported pending litigation related to the CJN Property. A copy of Lis Pendens 3 is attached hereto as Exhibit C.
9. On or about September 17, 2020, Crescent filed a lis pendens on the CJN Property in *Crescent Homes SC, LLC v. CJN, LLC*, Greenville County Case No. 2020-LP-2300415 (“**Lis Pendens 4**”), giving notice of purported pending litigation related to the CJN Property. A copy of Lis Pendens 4 is attached hereto as Exhibit D. Lis Pendens 1, Lis Pendens 2, Lis Pendens 3, and Lis Pendens 4 are collectively referred to hereinafter as the “**Lis Pendens Filings**.” As of the date of this Complaint, Crescent has not filed suit in relation to the CJN Property or in relation to any of the Lis Pendens Filings, and therefore did not file suit within 20 days of filing Lis Pendens 1, Lis Pendens 2, or Lis Pendens 3.
10. As of the date of this Complaint, Crescent has not cancelled the Lis Pendens Filings, despite not filing suit in relation to the CJN Property or in relation to any of the Lis Pendens Filings.
11. Upon information and belief, the Lis Pendens Filings were filed for the purpose of preventing CJN from selling the CJN Property based on Crescent’s invalid claim that it has a right of first refusal on the CJN Property.
12. On October 8, 2018, CJN and Crescent entered into an Agreement for Purchase and Sale of Developed Lots (“**Agreement**”) in relation to the development of the River Springs Subdivision on raw land owned by CJN and located on Standing Springs Road, Greenville County, South Carolina (“**River Springs Property**”) and to be sold to Crescent as subdivided

lots for the construction of single family houses. A copy of the Agreement is attached as Exhibit E.

13. The CJN Property and River Springs Property are adjacent to one another but are separate and distinct properties.
14. The Agreement references a potential Future Phase of additional lots, which would be located on the CJN Property, but does not require that either party proceed with development of the "Future Phase" and therefore does not contain any obligation that CJN develop the CJN Property and/or sell the "lots" in the "Future Phase."
15. Because the parties entered no binding agreement regarding development and sale of the Future Phase lots on the CJN Property, Crescent reserved the right to purchase those lots, in the event CJN elected to develop them, through a right of first refusal ("ROFR") as follows:

19. Right of First Refusal: At the Initial Closing, Seller will grant to Purchaser a right of first refusal with respect to the lots cross-hatched and shown on Exhibit "A-2" as "Future Phase" and any additional lots that may from time to time may be annexed or otherwise included in the Subdivision. A memorandum of such right of first refusal in a form reasonable acceptable to the Parties will be recorded in the public records of Greenville County at the Initial Closing.

See Agreement, ¶ 19.

16. The "lots cross-hatched and shown on Exhibit 'A-2' as 'Future Phase'" are located within the CJN Property that has been encumbered with the Lis Pendens Filings.
17. The ROFR applies to the sale of lots in the Future Phase but does not apply to the sale of the undeveloped CJN Property as a whole.
18. Because the parties entered no binding agreement regarding development of the Future Phase lots, CJN was free to elect not to proceed with development of the Future Phase and free to sell the undeveloped CJN Property free and clear of the ROFR.
19. The ROFR contains no time limitation within which it may be exercised.

20. The ROFR does not define the procedures and parameters under which it may be exercised such as the minimum time for due diligence to which Crescent would be entitled upon notice of a purchase offer.
21. Pursuant to the Agreement, an "Initial Closing" of lots was to be scheduled by Crescent and "held on or before fifteen (15) days after the recording of the Subdivision Plat." *See Agreement*, ¶ 6.
22. CJN recorded the Plat for the Subdivision on August 16, 2019. A copy of the Plat is attached as Exhibit F. Therefore, the Agreement required Crescent to schedule the Initial Closing for no later than September 1, 2019.
23. Despite repeated demands from CJN, Crescent continually failed to conduct the Initial Closing for months after September 1, 2019.
24. As of June 26, 2020, the date of the offer discussed hereinbelow, because of Crescent's wrongful delay, the Initial Closing had not occurred and the memorandum referenced in Agreement ¶19 had not been agreed to or recorded.
25. On or about June 26, 2020, CJN received a bonified offer for purchase of the CJN Property from Mr. Clark, a neighboring property owner, for \$775,000.00 ("**Clark Offer**"). A copy of the Clark Offer is attached as Exhibit G. The Clark Offer required a closing date of on or before July 15, 2020 in order for Mr. Clark to meet a tax deadline that would make the purchase feasible for Mr. Clark.
26. In response to the Clark Offer, CJN elected to not proceed with development of the Future Phase and instead elected to pursue sale of the undeveloped CJN Property pursuant to the Clark Offer.
27. CJN was not required to provide a right of first refusal to Crescent with respect to the undeveloped CJN Property because the ROFR was only to apply to the sale of Future Phase lots, assuming CJN elected to proceed with development of the Future Phase.

28. Nevertheless, on June 26, 2020, immediately after receiving the Clark Offer and 19 days prior to the July 15 closing deadline, CJN elected to provide a copy the Clark Offer to Crescent and asked if “Crescent would like to exercise a right of first refusal on the property on the terms in the attached offer, including but not limited to the price and closing schedule terms.”
29. CJN made this tender of the Clark Offer in a good faith effort to give Crescent, its partner in the ongoing performance of the Agreement, the benefit of any doubt regarding Crescent’s potential rights to the CJN Property and with the understanding that Crescent’s only options for a good faith response were (1) to make a matching offer to purchase the CJN Property before the July 15 closing date or (2) to decline to make such an offer and thereby terminate any rights it may have claimed to the CJN Property upon the sale to Clark. Instead, Crescent used the tender to assert rights it did not have to prevent the sale to Clark. CJN did not make the tender (1) as an acknowledgement of the validity of the ROFR, (2) to extend or enlarge, beyond the terms of the tender itself, Crescent’s rights to the CJN Property under the ROFR or otherwise, or (3) as a waiver of any defenses to the ROFR or Crescent’s wrongful assertion of rights to the CJN Property under the ROFR or otherwise.
30. Crescent did not respond to CJN’s tender of the Clark Offer. Instead, on July 10, 2020, Crescent filed Lis Pendens 1 to prevent the sale of the CJN Property. Crescent did not notify CJN that it had filed Lis Pendens 1.
31. On or about July 14, 2020, CJN discovered that Lis Pendens 1 had been filed and that Mr. Clark would not be able to close on the sale unless Lis Pendens 1 was cancelled.
32. On July 14, 2020, CJN issued written demand to Crescent giving notice that Crescent had no valid claim to a right of first refusal and no basis to file Lis Pendens 1, demanding immediate cancellation, and giving notice of the damages CJN would incur as a result of the lis pendens.
33. Crescent failed and refused to cancel Lis Pendens 1 prior to the July 15, 2020 closing deadline, preventing the sale to Mr. Clark, and thereby damaging CJN.
34. Despite CJN’s demands, as of the date of this Complaint, Crescent has not cancelled Lis

Pendens 1, and has filed and not cancelled Lis Pendens 2, Lis Pendens 3, and Lis Pendens 4 despite not filing suit in relation to the CJN Property within 20 days of any of the Lis Pendens Filings.

35. After this action was filed on September 18, 2020, Crescent continued to file several additional Lis Pendens ("Additional Lis Pendens Filings") to cloud the title to the CJN Property. These filings were improper and unnecessary because an action had already been filed by CJN in relation to the CJN Property.
36. Further, the CJN Property has been subject to the Lis Pendens Filings and Additional Lis Pendens Filings since July 10, 2020 and has been unmarketable as a result.
37. On July 26, 2020, CJN sent a proposed an amended ROFR and memorandum of right of first refusal which provided more clarity and specificity for the terms of the ROFR including proposed procedures for exercise and a proposed termination date for the ROFR.
38. In response, on July 31, 2020, Crescent proposed unreasonable terms that were well beyond the requirements of the ROFR, including requiring CJN to provide "a permissible and usable means of access for purposes of vehicular ingress and egress from the Future Phase" which would have required CJN to build a bridge on the CJN Property. As a result, CJN and Crescent did not come to terms on the amended ROFR.
39. On or about May 10, 2021, CJN received a bona fide offer for purchase of the CJN Property from Opus Petrus, LLC ("**Opus**") for \$1,250,000.00 ("**Opus Offer**"). A copy of the Opus Offer is attached as Exhibit H. The Opus Offer required a closing date of on or before September 15, 2021.
40. Although the ROFR did not apply to this transaction and/or was void, CJN tendered the offer to Crescent on May 18, 2021 and asked if Crescent would like to exercise the ROFR by "purchas[ing] the future phase on terms meeting or exceeding those set forth in the Opus Offer." The letter provided a twenty (20) day response deadline and stated that Crescent must

exercise the ROFR by June 7, 2021 or the ROFR would terminate automatically.

41. This tender was made in a good faith effort by CJN to resolve the dispute regarding Crescent's purported rights under the ROFR.
42. Crescent failed to accept or reject the Opus Offer terms on or before the June 7, 2021 deadline specified for response to the tender, resulting in a termination of any rights Crescent had under the ROFR.
43. On June 7, 2021, Crescent instead responded with a letter alleging that the Opus Offer was illegitimate and designed to force Crescent to pay an unfair price for the property and/or terminate its rights under the ROFR. Crescent's allegations in the response letter were baseless as the Opus Offer was a genuine offer by a third-party purchaser, made in good faith, without fraud or deceit, and able to be accepted by CJN.
44. Crescent took the following actions in an effort to interfere with the contract between Opus and CJN, prevent a legitimate sale of the CJN Property to Opus, and unfairly extract favorable sale terms for Crescent. These actions were also an abuse of process in that they were an improper use of process to unfairly extract favorable sale terms for Crescent.
 - a. On May 24, 2021, Crescent sent a subpoena to Opus, requesting correspondence between Opus and CJN related to the Opus Offer; all documents related to communications, transactions, meetings, and due diligence conducted by Opus concerning the Opus Offer; appraisals and related materials that were used in determining the purchase price; communications with CJN's counsel relating to the purchase of the CJN Property; communications with realtors concerning the purchase of the CJN Property; submittals to any government entities relating to the CJN Property; documents and proposals exchanged between Opus and CJN relating to seller financing; and documents related to any earnest money deposited in connection with the offer.
 - b. On June 7, 2021, Crescent sent the response letter referenced above falsely alleging the Opus offer was illegitimate.

- c. On June 8, 2021, Crescent sent Requests for Production to CJN seeking CJN's entire file related to CJN's contract with Opus among other things.
 - d. On June 14, 2021, Crescent served the escrow agent under the Opus Offer, Keable & Brown, P.A., with a subpoena requesting the firm's entire file related to CJN's contract with Opus among other things.
 - e. On August 11, 2021, Crescent moved the Court for leave to file an amended answer, counterclaims, and a third-party complaint against Opus. In the proposed third-party complaint, Crescent alleges that Opus tortiously interfered with Crescent's contractual relationship with CJN. Additionally, Crescent seeks to add the following counterclaims against CJN: petition for reformation, declaratory judgment, and breach of contract.
 - f. On August 20, 2021, Crescent issued a subpoena to Nicholas Franchina, member of CJN, seeking his communications related to CJN's contract with Opus among other things.
45. On September 8, 2021, Opus terminated the contract due to Crescent's clouding of the CJN Property's title and the litigation threatened by Crescent. A copy of the Opus termination letter is attached hereto as Exhibit I.
46. Crescent's actions were wrongful because Crescent has no valid interest in the CJN Property pursuant to the ROFR or otherwise because:
- a. The ROFR does not apply to a sale of the undeveloped CJN Property by CJN, and CJN was and is free to sell the undeveloped CJN Property free and clear of any claim under the ROFR;
 - b. The ROFR violates the rule against perpetuities and is therefore void because it is an interest that might not vest either within a life in being at the time of the creation of the interest or until later than 21 years thereafter;
 - c. The ROFR is void as an unreasonable restraint on alienation because it lacks specificity as to duration of the right, the property subject to the right, the purchase price, and the procedures for exercising the right, among other things;
 - d. Because the ROFR was void and/or did not apply to the CJN Property, any rights Crescent had to purchase the CJN Property arose from and were limited by the terms of CJN's tender of the Clark Offer on June 26, 2020, not the invalid ROFR

- itself, and all such rights were terminated and extinguished by Crescent's failure to make an equal or better offer for purchase on or before the July 15 closing deadline in the Clark Offer.
- e. The Opus Offer was a bonified offer.
 - f. Because the ROFR was void and/or did not apply to the CJN Property, any rights Crescent had to purchase the CJN Property arose from and were limited by the terms of CJN's tender of the Opus Offer on May 18, 2021, not the invalid ROFR itself, and all such rights were terminated and extinguished by Crescent's failure to make an equal or better offer for purchase on or before the June 7, 2021 tender response deadline.
 - g. Assuming the ROFR was valid and applied to the CJN Property, which are specifically denied, Crescent was given any and all rights it had under the ROFR when CJN tendered the Clark Offer on June 26, 2020, and all such rights were terminated and extinguished by Crescent's failure to make an equal or better offer for purchase on or before the July 15 closing deadline in the Clark Offer. CJN's tender of the Clark Offer on June 26, 2020 was valid despite being prior to Initial Closing because (1) the Initial Closing would have occurred prior to June 26, 2020 but for delays by Crescent (2) the timing of the tender was not prejudicial to Crescent and (3) Crescent asserted its rights to the CJN Property were ripe by filing Lis Pendens 1 prior to the Initial Closing, among other things, and Crescent should therefore be estopped from asserting those rights did not arise until after the Initial Closing.
 - h. Assuming the ROFR was valid and applied to the CJN Property, which are specifically denied, Crescent was given any and all rights it had under the ROFR when CJN tendered the Opus Offer on May 18, 2021, and all such rights were terminated and extinguished by Crescent's failure to make an equal or better offer for purchase on or before the June 7, 2021 deadline contained in the letter.
47. As a result of Crescent's wrongful actions, CJN has incurred damages, including, but not limited to, the lost sale price, lost investment opportunity, and holding costs, in an amount to be determined at trial.

FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment)

48. CJN restates and re-alleges each and every allegation above as if fully set forth herein.
49. CJN is entitled to a declaration from this Court pursuant to the Uniform Declaratory Judgment Act, S.C. Code Ann. §15-53-10, *et seq.*, which provides in relevant part that “courts of record within their respective jurisdiction shall have the power to declare rights, status and other legal relations whether or not further relief is or could be claimed.”
50. CJN and Crescent are interested parties who have a genuine, substantial, and justiciable controversy that exists between them. All necessary parties are joined to this action.
51. CJN is entitled to a declaration that the ROFR is void and of no effect because:
 - a. The ROFR does not apply to a sale of the undeveloped CJN Property by CJN, and CJN was and is free to sell the undeveloped CJN Property free and clear of any claim under the ROFR;
 - b. Additionally or alternatively, the ROFR violates the rule against perpetuities and is therefore void because it is an interest that might not vest either within a life in being at the time of the creation of the interest or until later than 21 years thereafter;
 - c. Additionally or alternatively, the ROFR is void as an unreasonable restraint on alienation because it lacks specificity as to duration of the right, the property subject to the right, the purchase price, and the procedures for exercising the right, among other things;
 - d. Because the ROFR was void and/or did not apply to the CJN Property, any rights Crescent had to purchase the CJN Property arose from and were limited by the terms of CJN’s tender of the Clark Offer on June 26, 2020, not the invalid ROFR itself, and all such rights were terminated and extinguished by Crescent’s failure to make an equal or better offer for purchase on or before the July 15 closing deadline in the Clark Offer.
 - e. The Opus Offer was a bonified offer
 - f. Because the ROFR was void and/or did not apply to the CJN Property, any rights Crescent had to purchase the CJN Property arose from and were limited by the terms of CJN’s tender of the Opus Offer on May 18, 2021, not the invalid ROFR

itself, and all such rights were terminated and extinguished by Crescent's failure to make an equal or better offer for purchase on or before the June 7, 2021 tender response deadline.

- g. Assuming the ROFR was valid and applied to the CJN Property, which are specifically denied, Crescent was given any and all rights it had under the ROFR when CJN tendered the Clark Offer on June 26, 2020, and all such rights were terminated and extinguished by Crescent's failure to make an equal or better offer for purchase on or before the July 15 closing deadline in the Clark Offer. CJN's tender of the Clark Offer on June 26, 2020 was valid despite being prior to Initial Closing because (1) the Initial Closing would have occurred prior to June 26, 2020 but for delays by Crescent (2) the timing of the tender was not prejudicial to Crescent and (3) Crescent asserted its rights to the CJN Property were ripe by filing Lis Pendens 1 prior to the Initial Closing, among other things, and Crescent should therefore be estopped from asserting those rights did not arise until after the Initial Closing.
 - h. Assuming the ROFR was valid and applied to the CJN Property, which are specifically denied, Crescent was given any and all rights it had under the ROFR when CJN tendered the Opus Offer on May 18, 2021, and all such rights were terminated and extinguished by Crescent's failure to make an equal or better offer for purchase on or before the June 7, 2021 tender response deadline.
52. CJN is entitled to a declaration that Crescent has no interest in the CJN Property, under the ROFR or otherwise, and has no basis to file any Lis Pendens or other claim on the CJN Property.
53. Accordingly, CJN respectfully submits that the Court should enter a declaratory judgment as set forth hereinabove.

FOR A SECOND CAUSE OF ACTION
(Abuse of Legal Process)

54. CJN restates and re-alleges each and every allegation above as if fully set forth herein.
55. Crescent improperly used process and legal proceedings against CJN by filing Lis Pendens 1, Lis Pendens 2, and Lis Pendens 3 when it had no valid interest in the CJN Property and

there was no litigation related to the CJN Property pending at the time of the Lis Pendens Filings or within 20 days thereafter.

56. Crescent improperly used process and legal proceedings against CJN by filing Additional Lis Pendens Filings after CJN instituted this action.
57. Crescent improperly used process and legal proceedings against CJN by, among other things, claiming the Opus offer was illegitimate, issuing subpoenas to Opus and various additional parties, and threatening to sue Opus in relation to the offer.
58. Crescent acted with an ulterior purpose, including to prevent CJN from selling the CJN Property to Mr. Clark, Opus and other third parties.
59. Crescent's actions are willful acts in the use of legal process not proper in the regular conduct of the proceeding.
60. As a direct and proximate result of Crescent's acts and omissions, CJN has been damaged.
61. CJN is therefore entitled to judgment against Crescent for actual and punitive damages including, but not limited to, the lost sale price, lost investment opportunity, and holding costs, in an amount to be determined at trial.

FOR A THIRD CAUSE OF ACTION
(Tortious Interference with Contractual Relationship)

62. CJN restates and re-alleges each and every allegation above as if fully set forth herein.
63. CJN and non-party Opus were parties to a valid real estate contract for the sale of property owned by CJN.
64. For the reasons set forth above, Crescent's ROFR contained in the Agreement does not apply to the transaction with Opus and/or the ROFR is void.
65. Despite this, in a good faith effort to resolve the dispute regarding Crescent's purported rights under the ROFR, CJN tendered the Opus Offer to Crescent and gave Crescent an opportunity to match or exceed the terms contained in the Opus Offer.

66. Crescent did not meet or exceed the terms of the Opus Offer by the deadline contained in the tender letter, which terminated any rights Crescent had under the ROFR.
67. Instead, Crescent has tortiously interfered with CJN's contract with Opus in the following ways, among others:
- a. Crescent filed the latest lis pendens on the CJN Property— lis pendens filed on June 8, 2021;
 - b. Crescent has moved this Court to add Opus as a party and seeks to bring claims of tortious interference against Opus;
 - c. Despite multiple requests by CJN, Crescent has not cancelled the lis pendens filings and has clouded the title for the CJN Property; and
 - d. Serving Opus with overbroad subpoenas related to the CJN's contract with Opus.
68. Crescent's interference with CJN's contract with Opus is intentional, without justification, and is not motivated by a legitimate business purpose.
69. Crescent procured a breach of the contract and Opus has terminated its agreement with CJN.
70. As a direct and proximate result of Crescent's actions, CJN has suffered actual and consequential damages. Moreover, CJN is entitled to an award of punitive damages as a result of Crescent's willful and unjustified interference.

FOR A FOURTH CAUSE OF ACTION
(Unfair and Deceptive Trade Practices)

71. The preceding paragraphs are realleged as if fully set forth herein verbatim.
72. Crescent's conduct constitutes unfair and deceptive trade practices and is a violation of the South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10, et seq. Furthermore, Crescent's conduct was willful.
73. Crescent's conduct is capable of repetition, and, upon information and belief, has been repeated.
74. Crescent's conduct affects the public interest.
75. Crescent knew or should have known that its actions constituted unfair and deceptive trade practices.

76. As a direct, foreseeable, and proximate result of Crescent's unfair and deceptive trade practices, CJN has suffered an ascertainable loss of money and property.
77. CJN is entitled to recover its actual damages, which amount should be trebled, together with interest and attorney's fees.

FOR A FIFTH CAUSE OF ACTION
(Punitive Damages)

78. CJN restates and re-alleges each and every allegation above as if fully set forth herein.
79. The actions of Defendant set forth above show willful misconduct, wantonness, or recklessness.
80. Plaintiff is entitled to an award of punitive damages to punish, penalize and deter Defendant.

WHEREFORE, Plaintiff CJN, LLC prays for:

- a. a declaratory judgment declaring the respective rights of the parties with respect to the CJN Property;
- b. judgment against Defendant Crescent Homes SC, LLC for damages, including punitive damages, in an amount to be determined at trial;
- c. Treble damages pursuant to S.C. Code Ann. § 39-5-10, et seq;
- d. Attorneys' fees;
- e. Costs of this action; and

Such other and further relief that this Court deems just and proper.

[signature page to follow]

Respectfully submitted,

Kenison, Dudley & Crawford, LLC

/s/ F. James Warmoth

John T. Crawford, Jr., (SC Bar # 69682)

F. James Warmoth (SC Bar # 101072)

704 E. McBee Avenue

Greenville, SC 29601

Telephone: (864) 242-4899

Facsimile: (864) 242-4844

Email: warmoth@conlaw.com

Counsel for Plaintiff

October 19, 2021
Greenville, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
CRESCENT HOMES SC, LLC	)	C.A. No.: 2020-LP-____-_____
	)	
Plaintiff,	)	
	)	
vs.	)	LIS PENDENS
	)	
C J N, LLC,	)	
	)	
Defendant.	)	
	)	
	)	

NOTICE IS HEREBY GIVEN that an action will be commenced in the Court of Common Pleas for Greenville County, South Carolina, upon the Complaint of Plaintiff against Defendant for claims affecting title to real property, including but not limited to breach of contract and specific performance of the Agreement For Purchase and Sale of Developed Lots dated October 8, 2018, relating to the subject property. The real property affected and that is the subject of this Lis Pendens is specifically the real property described below:

All that certain piece, parcel, or tract of land, together with improvements thereon, situate, lying and being in the County of Greenville, State of South Carolina, being shown and designated as "AREA: 2,664,658.13 SQ. FT. 61.17 ACRES, on a plat entitled "BOUNDARY AND WETLAND SURVEY AT THE REQUEST OF: CJN LLC," prepared by Precision Land Surveying, Inc., dated March 2, 2017, and recorded in the Office of the Register of Deeds for Greenville County in Plat Book 1274 at Page 0001. Said parcel having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear.

Less and excepting:

All those certain pieces, parcels, or lots of land, situate, lying and being in the County of Greenville, State of South Carolina, being shown and designated Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, and 32 on that certain plat entitled "River Springs Phase I" prepared by EAS Professionals, Inc., dated August 8, 2019, and recorded in the



Office of the Register of Deeds for Greenville County in Plat Book 1345 at Page 0018. Said lots having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear.

TMS: P/O 0584010102601

Respectfully submitted,

s/ Ellis R. Lesemann

Ellis R. Lesemann, Esq., S.C. Bar # 15315

Email: erl@lalawsc.com

Michelle A. Matthews, Esq., S.C. Bar # 100685

Email: mam@lalawsc.com

LESEMANN & ASSOCIATES, LLC

418 King Street, Ste 301

Charleston, SC 29403

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Fax: (843) 720-2312

and

Steven E. Harvey, Esq., S.C. Bar # 13051

Email: steveh@hvlawsc.com

HARVEY & VALLINI, LLC

497 Bramson Court, Suite 201

Mount Pleasant, South Carolina 29464

Phone: (843) 388-8883

Fax: (843) 388-8884

***ATTORNEYS FOR PLAINTIFF
CRESCENT HOMES SC, LLC***

July 10, 2020

Charleston, South Carolina

ELECTRONICALLY FILED - 2021 Oct 19 3:16 PM - GREENVILLE - COMMON PLEAS - CASE#2020CP2304351
ELECTRONICALLY FILED - 2020 Jul 10 2:34 PM - GREENVILLE - COMMON PLEAS - CASE#2020LP2300343

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
CRESCENT HOMES SC, LLC	)	C.A. No.: 2020-LP-____ - _____
	)	
Plaintiff,	)	
	)	
vs.	)	LIS PENDENS
	)	
C J N, LLC,	)	
	)	
Defendant.	)	
	)	

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TMS: P/O 0584010102601

Respectfully submitted,

s/ Ellis R. Lesemann

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Michelle A. Matthews, Esq., S.C. Bar # 100685

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and

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HARVEY & VALLINI, LLC

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Mount Pleasant, South Carolina 29464

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***ATTORNEYS FOR PLAINTIFF
CRESCENT HOMES SC, LLC***

August 6, 2020
Charleston, South Carolina

ELECTRONICALLY FILED - 2021 Oct 19 3:16 PM - GREENVILLE - COMMON PLEAS - CASE#2020CP2304351
ELECTRONICALLY FILED - 2020 Aug 06 12:19 PM - GREENVILLE - COMMON PLEAS - CASE#2020LP2300373

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
CRESCENT HOMES SC, LLC	)	C.A. No.: 2020-LP-____ - _____
	)	
Plaintiff,	)	
	)	
vs.	)	LIS PENDENS
	)	
C J N, LLC,	)	
	)	
Defendant.	)	
	)	

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TMS: P/O 0584010102601

Respectfully submitted,

s/ Ellis R. Lesemann
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Mount Pleasant, South Carolina 29464
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***ATTORNEYS FOR PLAINTIFF
CRESCENT HOMES SC, LLC***

August 27, 2020
Charleston, South Carolina

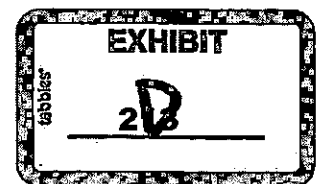
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
 CRESCENT HOMES SC, LLC	)	 C.A. No.: 2020-LP-_____-_____
Plaintiff,	)	
vs.	)	LIS PENDENS
C J N, LLC,	)	
Defendant.	)	

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Respectfully submitted,

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***ATTORNEYS FOR PLAINTIFF
CRESCENT HOMES SC, LLC***

September 17, 2020
Charleston, South Carolina

EXECUTION VERSION

AGREEMENT FOR PURCHASE AND SALE
OF DEVELOPED LOTS

(32 Single Family Lots/Multiple Closings)

THIS AGREEMENT FOR PURCHASE AND SALE OF DEVELOPED LOTS (this "Agreement") is made and entered into by and between **CRESCENT HOMES SC, LLC**, a Delaware series limited liability company ("Purchaser"), and **C J N, LLC**, a South Carolina limited liability company ("Seller"). The last date on which this Agreement is signed by either Purchaser or Seller (each, a "Party" and, collectively, the "Parties") and an executed copy thereof is delivered to the other will be the "Effective Date" of this Agreement.

1. **Conveyance:** In consideration of the mutual promises and agreements of the Parties and the sum of Sixteen Thousand and No/100 Dollars (\$16,000.00) as earnest money (the "Earnest Money") to be paid by Purchaser to Harvey & Vallini, LLC ("Escrow Agent"), Purchaser hereby agrees to purchase from Seller, and Seller hereby agrees to sell and convey to Purchaser, developed residential lots in that certain subdivision known as River Springs Subdivision (the "Subdivision"), being more particularly described as those certain parcels of land, including any improvements, fixtures, rights, privileges, easements, hereditaments and appurtenances thereto (collectively, the "Real Property"; sometimes referred to as the "Property"), situate, lying and being on Standing Springs Road, Greenville County, South Carolina, being shown and designated as Lots 1 - 32 (32 Lots total; each individually a "Lot", and collectively, the "Lots") shown on the Stakeout Plan prepared by Gray Engineering Consultants dated December 5, 2017 (the "Proposed Subdivision Plat"), a reduced copy of which is attached hereto as Exhibit "A-1" and incorporated herein.
2. **Purchase Price and Earnest Money:** The Purchase Price shall be paid as follows:
 - A. **Price Schedule.** The purchase price for each Lot (a "Lot Purchase Price" or "Purchase Price") is set forth on the Lot Pricing and Takedown Schedule attached hereto as Exhibit "B" and incorporated herein (the "Takedown Schedule").
 - B. **Earnest Money.** The Earnest Money will be deposited with Escrow Agent within five (5) business days after the Effective Date and held in a non-interest-bearing escrow account to be credited equally pro rata in the amount of Five Hundred and No/100 Dollars (\$500.00) per Lot. If the Earnest Money is forfeited by Purchaser pursuant to this Agreement, then the Escrow Agent shall pay the Earnest Money to Seller. If Purchaser terminates this Agreement prior to the expiration of the Due Diligence Period, as defined in subparagraph 4.B. below, or as may otherwise be expressly permitted herein, then the Escrow Agent shall return the Earnest Money to Purchaser.

**DISCLOSURE: PRINCIPALS OF PURCHASER AND SELLER ARE
LICENSED REAL ESTATE BROKERS.**

SMT



3. Subdivision and Lot Selection

- A. Subdivision. As of the Effective Date, the Lots have not been subdivided and are a portion of that certain tax parcel with TMS No. 0584010102601 in the Greenville County, South Carolina tax records (the "Parent Parcel"). Seller has caused to be prepared the Proposed Subdivision Plat reconfiguring the existing tax parcel into thirty-two (32) lots with associated common areas as more particularly shown thereon. Seller will not revise or amend the Proposed Subdivision Plat without the prior written consent of Purchaser, which consent will not be unreasonably withheld. Seller will provide a copy of any comments to or required revisions to the Proposed Subdivision Plat received from Greenville County and/or the applicable Planning Commission as soon as reasonably practicable after receipt thereof. If the comments and required revisions to the Proposed Subdivision Plat are, in the discretion of Purchaser, material, then Purchaser may terminate this Agreement by notice delivered to Seller, in which event the Earnest Money shall be returned to Purchaser and this Agreement shall terminate. The Proposed Subdivision Plat Subdivision Plat, as approved by Greenville County and recorded in the Register of Deeds, is referred to herein as the "Subdivision Plat".
- B. Lot Selection: Development of the Lots is subject to the Lot Disturbance Schedule attached hereto as Exhibit "C" and incorporated herein (the "Lot Disturbance Schedule"). Subject to the Takedown Schedule, Purchaser shall, in its sole discretion, select the Lots (the "Applicable Lots") for each Closing, as defined in Paragraph 6 below, by delivering written notice thereof to Seller at least ten (10) days prior to a Closing. Subject to the Lot Disturbance Schedule, Purchaser may from time to time elect to close more Lots than required by the Takedown Schedule for the applicable Closing. If Purchaser closes more Lots than required by the minimum shown on the Takedown Schedule, then the number of excess Lots closed shall be carried forward as a cumulative credit toward the next succeeding Required Minimum Lot Takedown or Takedowns.
- C. Optional Lot Removal. Purchaser may, in its discretion from time to time, remove any Lot from this Agreement: (i) in accordance with the provisions of Paragraph 4.F below; and/or (ii) with respect to Lots 15 through 18 on the Takedown Schedule, if Purchaser determines that such Lot or Lots are not suitable for its development. If Purchaser elects to remove a Lot or Lots from this Agreement, then Purchaser may provide written notice thereof to Seller and Escrow Agent, in which event such Lot shall be removed from this Agreement, and Escrow Agent will return Five Hundred Dollars (\$500.00) of the Earnest Money for each Lot to Purchaser. If a Lot or Lots are so removed from this Agreement, then the number of Lots referenced in Paragraph 9.U below will be deemed amended to reflect the total number of Lots subject to this Agreement.

4. Due Diligence, Access, and Materials:

- A. Due Diligence Materials. Within two (2) business days after the Effective Date, Seller shall deliver to Purchaser copies of all due diligence materials pertaining to all or any portion of the Property in its possession or control, including title commitments, policies, abstracts and opinions together with copies of all title exceptions and materials, including existing and proposed declarations,

EMT 3

covenants, conditions and restrictions and other similar instruments; drawings, plans, as-built plans and specifications, including civil plans and specifications for utilities, grading, drainage, lift stations and pumps, roads and other facilities serving all or any portion of the Property; boundary, topographical, tree and wetland surveys and subdivision plats (including any draft or preliminary plats); environmental assessments, geotechnical studies and cultural resource or threatened and endangered species assessments; zoning certificates, letters, minutes and related materials; site plan and subdivision approvals; annexation agreements; NPDES and other soil and erosion control permits and land disturbance permits; Department of the Army COE wetlands or other certifications or permits together with all materials and information related to or submitted for a jurisdictional determination letter; deposits; general intangibles; contracts and contract rights; guarantees and warranties; marketing and advertising materials, logos, trade names and related registrations; development agreements; development bonds (including maintenance and performance bonds); certificates as to electrical work, building, safety and health approvals; impact and tap fee credits; and all other licenses, certificates, permits, applications, approvals, development rights and entitlements; (collectively, the "Due Diligence Materials"). The "Due Diligence Delivery Date" is the later of: (i) the Effective Date, or (ii) the date on which Seller confirms delivery to Purchaser of all the Due Diligence Materials in its possession or control. Seller shall promptly provide Purchaser with (i) any document described above and coming into Seller's possession or produced by or for Seller after the initial delivery of the Due Diligence Materials, and (ii) upon request, information regarding the general and/or site work contractor performing development work in the Subdivision and regarding the scope of work performed or to be performed by such general and/or site work contractor.

- B. Due Diligence Period. Purchaser shall have forty-five (45) days after the Due Diligence Delivery Date, (the "Due Diligence Period"), in which to inspect the Property, including title, soil testing, surveys, feasibility studies, environmental studies and any other inspections, tests or studies that Purchaser may require. The results of such inspections shall be treated as confidential by Purchaser and not be disclosed to any third party or governmental entity except as may be necessary to obtain permits and approvals in the normal course of Purchaser's business or as may be required by law (provided, however, that such results may be disclosed to Purchaser's consultants, attorneys and lenders, who shall similarly treat such results as confidential). If Purchaser is not satisfied with its inspections of the Property for any reason or no reason, in Purchaser's sole discretion, then Purchaser may terminate this Agreement by notice delivered to Seller on or before the expiration of the Due Diligence Period, in which event the Earnest Money shall be returned to Purchaser and this Agreement shall terminate. If actions or inactions of Seller prevent Purchaser's access to property to complete surveys or other due diligence activities, the Due Diligence Period shall be extended on a day-to-day basis until such access is available to Purchaser without interference.
- C. Intentionally Omitted.
- D. Access. During the term of this Agreement, Purchaser, its agents, contractors and representatives shall, from time to time, have the right to enter upon the

EMT

3

Property to perform inspections and testing, provided Purchaser shall indemnify, defend and hold Seller harmless from and against any damages, liability, cost or expense, including attorney's fees incurred by Seller resulting from Purchaser's activities on the Property. This Indemnity shall survive the Closings or the termination of this Agreement.

- E. Conveyance of Personal Property. Upon request of Purchaser in connection with the Initial Closing and at any time thereafter, Seller shall convey to Purchaser its right, title and interest in and to all or any portion of the Due Diligence Materials pertaining to the Property at one or more Closings. Seller shall use its best efforts, without additional consideration (provided that Purchaser shall pay out-of-pocket costs, if any), to obtain written consents and approvals as necessary or desirable from design and engineering professionals and governmental authorities in connection with the assignment of Due Diligence Materials to Purchaser.
- F. Septic Permits. Seller will cause a septic field perc test and treatment system feasibility study to be performed for each Lot as necessary and will obtain SCDHEC septic permits for the installation of an Easy Flow Gravity Conventional System for a not less than 4-bedroom home on each Lot in a location on each Lot approved by Purchaser (each, a "Septic Permit" and collectively, the "Septic Permits"). Seller will deliver copies of such test results and other materials pertaining to the Septic Permits and the corresponding plans for system improvements as may be requested by Purchaser promptly after such materials are available. Seller will make application for the Septic Permits as soon as reasonably practicable after the Effective Date and shall deliver a copy of each Septic Permit to Purchaser upon issuance thereof.

5. Title:

- A. Seller Warranties. Seller represents and warrants to Purchaser that Seller has "good and marketable, fee simple title" to the Real Property, and that at each Closing, Seller shall convey "good and marketable, fee simple title" to the Applicable Lots to Purchaser, subject only to the following exceptions (the "Permitted Exceptions"):
 - (1) The lien for ad valorem taxes which are not yet due and payable;
 - (2) Easements shown on the Subdivision Plat;
 - (3) The Declaration, as defined in Paragraph 15 below; and
 - (4) General service lines and utility easements that serve only the Real Property.

"Good and marketable, fee simple title" shall be such title as is acceptable to and insurable by a nationally recognized title insurance company, chosen by Purchaser at standard rates on the American Land Title Association Owner's Policy 2006 Form, free and clear of all exceptions except the Permitted Exceptions (the "Title Policy").

EMT

3

- B. Title Defects. If Purchaser's examination of the title and a survey of the Real Property reveals matters other than the Permitted Exceptions (the "Title Defects") and notice of the Title Defects is given to Seller prior to the expiration of the Due Diligence Period, then Seller shall promptly cure the Title Defects, provided that if Seller does not promptly demonstrate to Purchaser's reasonable satisfaction that Seller will cure such Title Defects prior to Closing, then Purchaser may elect by written notice to Seller to extend the Due Diligence Period, or, if applicable, the Closing, until such time as such Title Defects are so cured. Notwithstanding the foregoing, Purchaser shall not be required to object to mortgages, deeds of trust and other liens and encumbrances, including judgment liens, affecting all of any portion of the Property that can be cured or removed with the payment of money (collectively "Monetary Encumbrances"), all of which shall be removed by Seller not later than the applicable Closing. Purchaser shall be entitled to cure Monetary Encumbrances at the applicable Closing with the proceeds payable to Seller at one or more Closings. Purchaser shall be entitled to examine title to the Real Property prior to each Closing and to object to all matters appearing of record or otherwise affecting the Real Property between the date on which Purchaser made its title examination pursuant hereto and the date of each Closing.
- C. Seller Easements. During the term of this Agreement, Seller will not grant any easements, permits, licenses, declarations, covenants or restrictions, or amend, revise or re-file the Subdivision Plat without the prior written approval of Purchaser which shall not be unreasonably withheld.
- D. Property Owners Assessments. Seller represents and warrants that no property owner or home owner assessments or capital contributions will accrue or be payable with respect to any Lot purchased by Purchaser until such time as the Lot is developed and sold to a bona fide third party.
6. Closings: Each Closing shall be consummated by Seller's delivery to Purchaser of a properly executed special warranty deed conveying the Applicable Lots to Purchaser upon receipt by Seller of the Lot Purchase Price for each Applicable Lot, subject to the contingencies set forth herein, at a location selected by Purchaser or by mail through Purchaser's title company, at a specific time and date selected by Purchaser. Seller shall deliver possession of the Applicable Lots to Purchaser at each Closing. Purchaser shall give Seller notice of the date of each Closing together with a list of Applicable Lots at least ten (10) days prior to the selected time and date. The date of such Closings shall be determined as follows:
- A. Initial Closing. Closing of at least ten (10) Lots (the "Initial Closing") shall be held on or before fifteen (15) days after the recording of the Subdivision Plat.
- B. Subsequent Closings. Each Closing after the Initial Closing (a "Subsequent Closing"; the Initial Closing and each Subsequent Closing are referred to singularly as a "Closing" and collectively as the "Closings") shall be conducted in accordance with the provisions of Paragraph 3 above and the Takedown Schedule.
- C. Taxes/Prorations. At each Closing, taxes applicable to any personal property and to the Applicable Lots for the current year shall be prorated between the

Parties as of the date of the applicable Closing. Seller shall be responsible for all assessments placed against the Property prior to the applicable Closing, irrespective of when payable. If the current year taxes for the Applicable Lots have not been determined by the date of the applicable Closing or the Applicable Lots are a portion of a larger tract, then the proration shall be based on the taxes for the previous year or such other information as may be reasonably available. If the current year taxes cannot be paid at the applicable Closing, then Seller's portion shall be credited to Purchaser, provided further if the Real Property is assessed as a part of a larger tract, Seller and Purchaser shall each deposit a sum sufficient to pay an estimate of its proportionate share of the entire tax bill with Escrow Agent. The Parties agree to adjust between themselves any difference in the estimated and actual prorations within thirty (30) days after the actual tax statements for the Applicable Lots are available. Any roll back taxes and special assessments shall be paid by Seller. If there are any potential roll back taxes that are not due and payable at the applicable Closing, Escrow Agent shall hold in escrow sufficient amounts of Seller's proceeds to pay the roll back taxes when the tax bills are issued.

- D. Closing Costs. Seller shall pay for preparation and recording of the Subdivision Plat, the Declaration, the special warranty deeds and any instruments necessary to cure Title Defects, all transfer taxes, deed stamps or documentary stamps and all other costs normally paid by a seller of real estate. Purchaser shall pay for the cost of its inspection and such other costs normally paid by a purchaser of real estate. Each Party shall be responsible for its own attorney's fees.

7. Closing Deliveries:

- A. Seller Documents. At each Closing, Seller shall execute and deliver the following documents to Purchaser, in addition to any other documents required herein:
- (1) Special warranty deed conveying the Applicable Lots subject only to the Permitted Exceptions;
 - (2) Lien and possession affidavit sufficient to induce the title company to issue the Title Policy without standard exceptions;
 - (3) Information required to complete a Substitute Form 1099;
 - (4) Certificate of non-foreign status in accordance with Section 1445 of the Internal Revenue Code of 1986, as amended;
 - (5) South Carolina tax compliance letter or transferor affidavit;
 - (6) Instruments necessary to cure Title Defects, if applicable;
 - (7) Settlement statement which will be prepared by Purchaser's attorney;
 - (8) Bill of sale, transfer and assignment of the Due Diligence Materials, as applicable, in accordance with subparagraph 4.E.;

- (9) Satisfactory evidence of Seller's due and proper authority and power to perform its obligations hereunder and to execute and deliver all documents required hereby;
- (10) Certification to Purchaser confirming that the warranties and representations contained in this Agreement are true and correct on the date of each Closing;
- (11) Such easements and rights-of-way over any adjoining land of Seller as may be required to construct single family residences on the Real Property; and
- (12) Such other documents as may be reasonably requested by Purchaser.

B. Purchaser Documents. Purchaser shall execute and deliver to Seller a counterpart of the settlement statement. Purchaser shall also provide satisfactory evidence of Purchaser's due and proper authority, power to perform its obligations hereunder, and power to execute and deliver all documents required hereby, together with such other documents as may be reasonably requested by Seller.

8. Casualty and Condemnation:

- A. Seller shall bear all risk of casualty to the Property and Seller's property located thereon until Closing and transfer of possession to Purchaser.
- B. Subject to the representation in subparagraph 9.C. below, Seller agrees to give Purchaser prompt written notice if it becomes aware of any action or proceeding for condemnation of any part of the Property by friendly acquisition or statutory proceeding that may result in the temporary or permanent taking of all or any part of the Property. Purchaser shall have the right, to be exercised within thirty (30) days after receipt of such notice setting forth the extent of the condemnation and the final offer of compensation therefor, to terminate this Agreement and receive a refund of the Earnest Money, and no Party shall have any further rights or obligations hereunder except for covenants, representations, warranties and indemnities stated herein to survive the termination of this Agreement. If Purchaser does not elect to terminate this Agreement, then Seller will credit Purchaser as applicable at Closing with any monies received by Seller by reason of such taking or Seller will assign to Purchaser at Closing all of Seller's Interest in and to any unpaid condemnation award or offers payable to Seller relating to the Property. In the event that such notice of condemnation shall occur within thirty (30) days prior to Closing, Purchaser shall have the right to extend Closing so the same will occur no later than thirty (30) days after Purchaser's receipt of Seller's notice required pursuant to this subparagraph 8.B.

9. Seller's General Representations and Warranties: Seller covenants, represents and warrants to Purchaser the following:

- A. Seller has the authority and power to enter into this Agreement and to consummate the transaction provided for herein without the approval or consent

of any other party. The signatories to this Agreement for Seller are duly authorized to bind Seller.

- B. Entering into this Agreement will not constitute or result in a violation or breach by Seller of any judgment, order, writ, injunction or decree issued against or imposed upon it nor result in a violation of any applicable law, order, rule or regulation of any governmental authority. There is no action, suit, proceeding or investigation pending in any court or before, or by, any federal, district, county or municipal department, commission, board, bureau, agency or other governmental authority, which could become a cloud on the title to the Property or any portion thereof or which could threaten the validity or enforceability of the transaction contemplated by this Agreement or any actions taken pursuant hereto.
- C. As of the Effective Date, no portion of the Property is subject to temporary requisition or use by any governmental authority or has been condemned or taken in any proceeding similar to a condemnation proceeding, nor is there now pending any condemnation, requisition or similar proceeding affecting the Property or any portion thereof. Seller has neither received notice nor has any knowledge that any such proceeding is contemplated.
- D. Seller neither not received any notice from any federal, state or municipal authority nor does Seller otherwise have any knowledge of any violation of any law, ordinance or regulation, including zoning ordinances, development, permit or subdivision requirements, or any other legal requirements with respect to the Property. Seller will promptly notify Purchaser if it receives any such notice or otherwise becomes aware of any actual or potential violation.
- E. Seller neither has knowledge of nor has Seller received notice of any default or breach under any covenant, condition, restriction, right-of-way or easement affecting the Property or any portion thereof and no such default or breach now exists.
- F. No special assessments have been levied, are threatened against, or are pending against all or any portion of the Property, and Seller has no knowledge of any intended assessments.
- G. No bankruptcy, insolvency, rearrangement or similar action or proceeding involving the Property or Seller is pending, threatened or contemplated by Seller.
- H. There are no leasehold or occupancy agreements encumbering the Property, no party has any possessory interest to or right in the Property, and no party has any right of first refusal, right of first offer or other contractual right to purchase or possess all or any portion of the Property.
- I. Seller will not sell, assign, convey or encumber any right, title or interest in or to the Property or any portion thereof, other than as provided in subparagraph 21.B. below. Seller will not create or permit any lien, encumbrance or charge thereon without promptly discharging the same.

EMT 3

- J. Seller will not take any action or omit to take any action, which action or omission would have the effect of violating or causing to be untrue any of the representations, warranties, covenants and agreements contained herein.
- K. Seller is not aware of any moratorium on the issuance of building permits or installation or activation of utilities or the approval of preliminary or final subdivision plats. If Seller becomes aware of such a moratorium, Seller will immediately notify Purchaser in writing. All dates, deadlines and time periods contained in this Agreement will be tolled until each such moratorium has been lifted.
- L. The Property is served by public water with sufficient capacity for development of the Lots for their intended use.
- M. No portion of any Lot is within a flood plain or wetland and, except for building setback lines and rights-of-way shown on the Subdivision Plat, no portion of any Lot is unsuitable for or restricted from constructing building improvements thereon.
- N. To the best of Seller's knowledge, the Property has neither been used in connection with, nor has there been any surface or subsurface contamination due to the use, storage, disposal or treatment of any materials, substances or hazardous wastes, as defined by any federal, state or local health or environmental laws, regulations or ordinances, and there are no such materials, substances or hazardous wastes present in, on, or about the Property.
- O. The Property is zoned for the construction of single family detached residences, and Seller and the Property are in compliance with all governmental ordinances including such zoning ordinances, regulations, laws, codes and development, permit and subdivision requirements that affect the Property. Seller has no knowledge of any pending change in the zoning classification of the Property.
- P. The Property and Seller are in and, subject to Purchaser's obligations set forth in subparagraph 11.D. below, will continue to be in compliance with the Federal Water Pollution Control Act and the National Pollution Discharge Elimination System (NPDES) permitting requirements together with all other applicable storm water and erosion control regulatory requirements. There are no outstanding fines against Seller or the Property with respect to the foregoing requirements.
- Q. Seller shall have completed and filed a Notice of Intent ("NOI") with the Environmental Protection Agency and any other applicable authorities and shall have provided (or made available to) Purchaser a copy of the Storm Water Pollution Prevention Plan and the NOI applicable to Seller's development activities.
- R. The Property has no special tax designation that requires any payment or penalty for change in use, and Seller has no knowledge of any special tax or assessment to be levied against all or any portion of the Property.
- S. If applicable, Seller shall post and maintain street, sedimentation, storm drainage and other forms of surety (performance) bonds as may be required by the

EMX 3

applicable governmental authorities for development of the Lots and the drainage facilities serving the Lots, whether such facilities are located on or off the Real Property.

- T. All trees, landscaping, central mail facilities (if applicable) and other improvements to the common areas that are the responsibility of Seller, or if not Seller, the applicable developer, have been installed as required by the applicable authority or association.
- U. Septic Permits for not less than thirty-two (32) 4-bedroom homes are or will be issued and in full force and effect for system improvements and in a location reasonably acceptable to Purchaser, and each Lot will accommodate the system improvements and location designated therefor in the applicable Septic Permit.

10. Seller Representations and Warranties Regarding the Lots: Seller covenants, represents and warrants to Purchaser the following with respect to the Applicable Lots at each Closing:

- A. The Subdivision Plat will be recorded in the plat records of Greenville County, South Carolina. All operational permits will be received so that a building permit and a certificate of occupancy can be obtained on each Lot.
- B. Domestic water lines are stubbed within the boundary of each Lot no more than six (6) feet below existing grade.
- C. Electricity, natural gas, telephone, and cable, including fiber optic, facilities will be installed in sufficient capacity to service the Lots for their intended use and will be available for connection either within the boundary of each Lot or in the public right-of-way adjacent thereto.
- D. All impact, capacity and similar fees have been paid in full, and Purchaser shall only be required to pay normal and customary tap or connection fees for each Lot at the time of issuance of a building permit therefor.
- E. The location of the utilities described in subparagraphs 9.L. and 10.B. above will be clearly marked on the ground and accurately shown on as-built utility plans delivered to Purchaser in accordance with subparagraph 4.A. above. All such utilities will be underground except for appurtenant facilities that are customarily above ground. Seller shall provide letters from the applicable authority stating that water taps are available for purchase for each Lot.
- F. Intentionally Omitted.
- G. All streets, roads, curbs and gutters and surface water management facilities serving the Lots and shown on the Subdivision Plat will be installed in accordance with applicable regulatory requirements and, subject to Purchaser's obligations set forth in subparagraphs 11.A. and 11.C. below, will be maintained by Seller at its expense in good condition and repair until dedication to and acceptance by the applicable governmental authority.
- H. Construction access will be available to the Lots.

EMT 3

- I. All street lights, fire hydrants and other common facilities serving the Lots will be installed in accordance with applicable governmental regulations and permitting requirements.
- J. Each Lot will be free of trash and debris, and Iron pins will be on the ground at each corner.
- K. Each Lot will have a street address and tax parcel identification number.
- L. Seller shall have provided Purchaser with two (2) copies of the "as built" construction plans for the water system and storm drainage network, which plans will be sufficient to enable Purchaser to locate water taps on each Lot. Water taps for each Lot will be in accessible locations in the ground within the boundary of such Lot.
- M. Seller agrees to keep all lots owned by Seller maintained by keeping grass and weeds cut to six inches (6") or less and keeping the lots free of debris.
- N. Notwithstanding the requirements of the Lot Disturbance Schedule, Seller will cause Lots 1-14 and 19-32 to be developed in a manner that provides completed Lots for takedown in accordance with the Takedown Schedule.

If Seller breaches any of the representations and warranties set forth in this Paragraph 10 (a "Paragraph 10 Breach"), then Purchaser may give written notice thereof to Seller, which notice will require Seller to cure such breach within fourteen (14) days after delivery of notice thereof. If Seller fails to commence such cure within fourteen (14) days and to diligently pursue completion, then Purchaser may either:

- (1) Cure such breach, and Seller will reimburse Purchaser the actual and reasonable cost thereof plus ten percent (10%). Purchaser shall submit reasonable backup documentation with any request for reimbursement, and Seller shall remit such amount on the earlier of the next Closing or within thirty (30) days after request therefor. Notwithstanding the foregoing, if the cost to cure any such breach is less than One Thousand and 00/100 Dollars (\$1,000.00), Purchaser may cure such breach without prior written notice to Seller provided that Purchaser makes available photographs or other reasonable documentation evidencing such breach with its request for reimbursement. If Seller fails to reimburse Purchaser any amounts due pursuant to this Paragraph 10, Purchaser shall be entitled to a credit therefor against amounts due to Seller at the next Closing; or
- (2) Declare a default and pursue its remedies under subparagraph 13.B. below.

11. Purchaser Construction Obligations:

- A. Purchaser shall repair or cause to be repaired any damage beyond normal wear and tear caused by its employees, agents, contractors and subcontractors to the streets, roads, curbs, gutters, sidewalks, storm drainage, signs or other

EMT 3

improvements in connection with Purchaser's construction activities on, about or adjacent to the Property.

- B. Purchaser shall not cause or permit its employees, agents, contractors and subcontractors to dump or deposit building materials, trash or debris on any lots, rights-of-way or other property not then owned by Purchaser.
- C. Purchaser shall cause construction dirt and gravel generated by its construction activities to be periodically cleaned by a professional street cleaning service.
- D. Purchaser will comply with the Federal Water Pollution Control Act and the National Pollution Discharge Elimination System (NPDES) permitting requirements together with all other applicable storm water and erosion control regulatory requirements.
- E. Intentionally Omitted,
- F. Purchaser shall have the right to clean up or landscape any property owned by Seller to enhance the appeal of the Lots, provided Purchaser shall obtain Seller's prior approval thereof. Seller shall approve any such request or provide written objections to Purchaser within fourteen (14) days after request therefor, which approval will not be unreasonably withheld. Failure of Seller to approve any such request within said fourteen (14) day period shall be deemed approval thereof.
- G. Purchaser shall install trees and landscaping on each Lot in accordance with applicable regulatory requirements.

If Seller determines that Purchaser has failed to fulfill any of its obligations set forth in this Paragraph 11 (a "Paragraph 11 Breach"), then Seller may give written notice thereof to Purchaser, and Purchaser shall commence to cure such breach within fourteen (14) days after delivery of notice thereof. If Purchaser fails to commence such cure within fourteen (14) days and to diligently pursue completion, then Seller may elect to cure such breach, and Purchaser will reimburse Seller the actual and reasonable cost thereof plus ten percent (10%). Seller shall submit reasonable backup documentation with any request for reimbursement, and Purchaser shall remit such amount on the earlier of the next Closing or within thirty (30) days after request therefor. The sole remedy of Seller for a Paragraph 11 Breach is set forth in this Paragraph 11.

12. Service Areas:

- A. Seller shall permit Purchaser to install a temporary construction and/or sales trailer on property not then owned by Purchaser in a location mutually agreeable to the Parties. Purchaser shall maintain the temporary office in a good and neat condition in compliance with all applicable regulatory requirements. Purchaser shall remove all gravel, pavement, concrete and debris in the area immediately surrounding the location of the temporary office and cause it to be grassed within forty-five (45) days after the removal thereof.
- B. Seller shall provide a concrete wash out area on property not then owned by Purchaser. Purchaser shall periodically remove accumulated concrete material.

Purchaser's obligations under this Paragraph 12 are deemed additional Construction Obligations. If Purchaser fails to fulfill same, such failure shall be a Paragraph 11 Breach, and the sole remedy of Seller is set forth in Paragraph 11.

13. Remedies:

A. Purchaser's Default.

- (1) If Purchaser fails to close on the Applicable Lots within the time frames set forth in this Agreement because of Purchaser's breach of this Agreement, and such breach is not cured within thirty (30) days after receipt of notice thereof from Seller, then, as its sole remedy, Seller may terminate this Agreement and the Earnest Money shall be paid to Seller as full liquidated damages and not a penalty. The Parties recognize that it would be difficult to ascertain the actual damages suffered by Seller as a result of such failure of Purchaser to consummate the sales contemplated hereby, it being specifically acknowledged and agreed by the Parties that such liquidated damages are reasonable. Seller hereby waives any right to damages in excess of said liquidated damages for Purchaser's breach of this Agreement and relinquishes any and all right to pursue an action for specific performance against Purchaser in the event Purchaser defaults in any of its obligations hereunder.
- (2) If Purchaser fails to fulfill any obligation under this Agreement other than as set forth in Paragraph 11, Paragraph 12 or subparagraph 13.A.(1) above, then Seller may notify Purchaser of such default. If Purchaser has not cured such default within thirty (30) days after Purchaser's receipt of notice thereof, then Purchaser shall be deemed in default under this Agreement and Seller may as its sole remedy terminate this Agreement and retain the Earnest Money as liquidated damages. If such default cannot be reasonably cured within such thirty (30) day period, then Purchaser shall have such additional time (not to exceed an additional thirty (30) days) as is reasonably necessary to affect a cure so long as Purchaser is diligently working towards a cure. The Parties hereby acknowledge that the actual damages suffered by Seller on account of Purchaser's default would be difficult if not impossible to measure and that the liquidated damages set forth in this subparagraph 13.A.(2) are a reasonable estimate of the damages Seller may suffer on account of Purchaser's breach.

- B. Seller's Default. If Seller defaults under any provision of this Agreement, Purchaser may notify Seller of such default. If Seller has not cured such default within thirty (30) days after Seller's receipt of notice thereof, then Seller shall be deemed in default under this Agreement. If such default cannot be reasonably cured within such thirty (30) day period, then Seller shall have such additional time (not to exceed an additional thirty (30) days) as is reasonably necessary to affect a cure so long as Seller is diligently working towards a cure. If Seller fails to cure any default within the time frame set forth above, then Purchaser may as its sole and exclusive remedies either: (i) seek specific performance, injunctive relief or any other remedies available at law or in equity; (ii) proceed with the purchase of Lots and deduct the cost to cure from the Purchase Price; or

EMT 3

(iii) terminate this Agreement and receive a refund of the Earnest Money. If Purchaser engages legal counsel to enforce its rights hereunder, Seller shall be responsible for all legal fees and costs of enforcement incurred by Purchaser.

14. **Notice:** All notices, demands, consents, approvals, and other communications which are required or desired to be given by either Party to the other hereunder shall be in writing, which may be delivered via e-mail or may be delivered by either a personal delivery service with charges therefor billed to shipper or by a nationally recognized overnight delivery service with charges therefor billed to shipper (either of which shall be deemed given and received upon delivery). If sent by e-mail, a notice shall be deemed given when such e-mail is transmitted to the e-mail notice address specified below and shall be deemed received on that same day unless given after 6:00 p.m. in the receiving location, in which case such receipt shall be the next business day. Any notice not deliverable shall be deemed received on the first date of attempted delivery. Any notices under this Agreement may be given by or to the respective attorneys listed below.

Purchaser: Crescent Homes SC, LLC
572 Savannah Hwy
Charleston, South Carolina 29407
Attention: Edward M. Terry
Telephone: (843) 573-9635
Email: t.terry@crescenthomes.net

With a copy to: Harvey & Vallini, LLC
497 Bramson Court, Ste. 201
Mt. Pleasant, SC 29464
Attention: Steven E. Harvey, Esq.
Telephone: (843) 388-8883
Email: steveh@hvlawsc.com

And to: LevickRoth
999 Peachtree Street, NE
Suite 855
Atlanta, Georgia 30309
Attention: Suzan E. Roth, Esq.
Telephone: (404) 201-7841
Email: sroth@levickroth.com

Seller: C J N, LLC
c/o Access Realty, LLC
4113 E. North St.
Greenville, SC 29615
Attention: Nick Franchina
Telephone: (864) 630-0657
Email: nickfranchina@accessrealtysc.com

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With a copy to:

Access Realty, LLC
4113 E. North St.
Greenville, SC 29615
Attention: Nick Franchina
Telephone: (864) 630-0557
Email: nickfranchina@accessrealtysc.com

In the event of a change of address by a Party, such Party shall give written notice thereof in accordance with the foregoing. Rejection or failure to claim delivery of any such notice, or any refusal to accept any such notice, or the inability to deliver any such notice hereunder because of changed address or phone for which no notice was given, shall be deemed to be receipt of the notice sent as of the date of attempted delivery.

15. Restrictive Covenants and Plan Approval: Seller agrees to adopt Purchaser's standard form of Declaration of Covenants, Conditions and Restrictions or similar Instrument for the Subdivision as may be revised to reflect the particulars of the Subdivision (the "Declaration"). Seller will be the "Declarant" under the Declaration until such time as the development obligations of the Declarant thereunder have been satisfied and the remaining obligations assumed by the home owners' association, and so long as this Agreement is in effect, all matters pertaining to the ARB and plan approval will be determined by Purchaser in its sole discretion. The Declaration will be recorded at the Initial Closing, and Seller will bear any third-party costs incurred in the preparation and recording thereof.
16. Signs: As long as this Agreement is in effect, Purchaser shall have the right to erect a limited number of professionally-designed and constructed temporary signs on the Lots and at the entrance to the neighborhood for purposes of advertising the homes to be constructed on the Lots.
17. Entrance Feature Plans. If not previously delivered to Purchaser, within **thirty (30) days** after the beginning of the Due Diligence Period, Seller will deliver proposed plans for an appropriate entrance feature for the Subdivision to Purchaser for its review and approval, which approval will not be unreasonably withheld. Within ten (10) business days after receipt, Purchaser shall deliver written notice of approval or detailed written comments with suggested revisions to Seller. The Parties will work together in good faith to agree upon the plans for an appropriate entrance feature for the Subdivision prior to the expiration of the Due Diligence Period. Seller will cause the entrance feature for the Subdivision to be completed not later than sixty (60) days after the recording of the Subdivision Plat.
18. Lot Grading and Preparation Cost. If the cost to grade and prepare any Lot for development as a single-family home in accordance with Purchaser's criteria, including without limitation the recommendations of Purchaser's geotechnical engineer, exceeds Two Thousand Five Hundred and No/100 Dollars (\$2,500.00) (the "Lot Prep Cost Cap"), then Seller will reimburse Purchaser an amount equal to the actual cost in excess of the Lot Prep Cost Cap (the "Lot Prep Excess Cost"). Seller will reimburse Purchaser any Lot Prep Excess Cost within fourteen (14) days following request therefor accompanied by reasonable documentation thereof, provided Purchaser may, at its option, take a credit against the Purchase Price due at any Closing for the aggregate, unreimbursed Lot Prep Excess Cost incurred by Purchaser to date. Purchaser shall provide reasonable documentation of any Lot Prep Excess Cost not previously submitted to

Seller no later than three (3) business days prior to a Closing in which a Lot Prep Excess Cost credit will be taken.

19. Right of First Refusal: At the Initial Closing, Seller will grant to Purchaser a right of first refusal with respect to the lots cross-hatched and shown on Exhibit "A-2" as "Future Phase" and any additional lots that may from time to time may be annexed or otherwise Included in the Subdivision. A memorandum of such right of first refusal in a form reasonable acceptable to the Parties will be recorded in the public records of Greenville County at the Initial Closing.
20. Commissions: The Parties covenant and agree, each to the other, to indemnify the other against any loss liability, cost, claims, demands, damages, actions, causes of action or suits based upon or arising out of the employment or use by the indemnifying Party of any real estate broker or agent in connection with the purchase and sale of the Property. Although not entitled to a commission in connection with the transaction contemplated herein, principals of Purchaser are licensed real estate brokers.
21. Miscellaneous:
 - A. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.
 - B. Assignment of Agreement by Seller. Seller shall have the right to assign this Agreement upon thirty (30) days prior written notice to Purchaser to a limited liability company in which Seller shall be a member or manager. Upon any such transfer, Seller shall be released of all liability under this Agreement so long as the entity to which Seller assigns this Agreement agrees to assume all of Seller's obligations hereunder.
 - C. Assignment of Agreement by Purchaser. Purchaser shall not assign this Agreement or its rights hereunder without Seller's prior written consent, which shall not be unreasonably withheld, conditioned or delayed, except that Purchaser may assign to a subsidiary or affiliate controlled by or under common control with Purchaser or Edward M. Terry (collectively, an "Assignee"). Principals of Purchaser are licensed real estate brokers or agents and may be principals in an Assignee. If such assignment is made, then the applicable sales contemplated by this Agreement shall be consummated in the name of and by the authorized officials of any such Assignee and Seller shall look solely to such Assignee for the performance and discharge of all the obligations and liabilities of Purchaser hereunder.
 - D. Undertakings. The Parties agree to execute and deliver such other and further instruments and documents as may be necessary to implement and effectuate the terms of this Agreement.
 - E. Good Faith. The Parties shall act in good faith in performing and discharging their respective duties and obligations hereunder.
 - F. Governing Law. This Agreement has been made in the State of South Carolina and shall be interpreted in accordance with South Carolina law and any enforcement of this Agreement shall be brought in the State of South Carolina.

EMT 7

- G. Construction. The extent to which any Party participated in the drafting of this document shall not determine how any provision hereof is to be construed, it is being recognized that both Parties have contributed substantially and materially in the preparation of this Agreement.
- H. Waiver. No provision, condition, or covenant of this Agreement shall be waived by either Party hereto except by a written instrument delivered to the other Party and executed by the Party consenting thereto, and no failure of either Party to exercise any power given hereunder or to insist upon strict compliance with any obligation specified herein, and no custom or practice at variance with the terms hereof, shall constitute a waiver of such Party's right to demand exact compliance with the terms hereof.
- I. Insurance. Purchaser agrees to maintain in full force and effect liability insurance covering damage to property and injuries to persons resulting from or connected with its construction and sales activities on and about the Real Property. Each Party agrees to indemnify, defend and hold the other Party harmless from any liability, loss or damage to persons or property, including reasonable attorneys' fees and related costs and expenses, caused by the indemnifying Party or by its agents or employees.
- J. Time Periods. Should the date upon which any act required to be performed under this Agreement fall on a Saturday, Sunday or holiday, the time for performance shall be extended to the next business day.
- K. Entire Agreement. This Agreement contains all of the terms and conditions agreed to between the Parties and supersedes all prior agreements, and there are no oral agreements relating to the transaction contemplated herein.
- L. Time of Essence. Time is of the essence with respect to this Agreement.
- M. Like Kind Exchange. Either Party may elect to sell or purchase the Real Property and qualify under the rules of a Section 1031, Tax Deferred Exchange. The Parties will cooperate with the other in effecting such exchange, providing it creates no expense or liability to the other Party.
- N. Sales and Marketing. Purchaser shall have the right to use the name "River Springs" in any signage, advertising and other marketing materials relating to its marketing of the Lots.
- O. Counterparts. This Agreement may be executed in more than one counterpart, each of which shall be deemed an original and all of which shall be deemed one and the same agreement. Counterparts delivered by e-mail delivery of a PDF or similar type format data file, shall have the same force and effect as if such counterpart were an original thereof.
- P. Headings. Captions contained in this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision herein.

EMT 3

- Q. Survival. Except as otherwise provided in this Agreement, all of the terms, provisions, representations, warranties and indemnities of this Agreement shall not merge with any deed but shall survive each and every Closing. Termination of this Agreement for any reason after the Initial Closing shall be effective only with respect to such Lots for which closing has not occurred.
- R. Confidentiality. Except as specifically provided in this Agreement, and except for disclosures to their respective attorneys, agents and lenders or as required by law, the Parties agree to (i) keep this Agreement and its terms confidential, (ii) keep confidential any information that is provided by Purchaser or its consultants, (iii) not use any such confidential information for any purpose other than performance or enforcement of this Agreement, and (iv) not make any public announcement or press release about this Agreement without the other's prior written approval.
- S. Intentionally Omitted.
- T. Patriot Act. The Parties each hereby certify that: (i) they are not acting, directly or indirectly, for or on behalf of any person, group, entity or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person" or other banned or blocked person, entity, nation or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control; and (ii) they are not engaged in this transaction, directly or indirectly on behalf of, or instigating or facilitating this transaction directly or indirectly on behalf of, any such person, group, entity or nation. The Parties each hereby agree to defend, indemnify and hold harmless the other from and against any and all claims, damages, losses, risks, liabilities and expenses (including reasonable attorneys' fees and costs) arising from or related to any breach of the foregoing certification.
- U. Severability. This Agreement is intended to be performed in accordance with, and only to the extent permitted by all applicable laws, ordinances, rules and regulations. If any provision of this Agreement, or the application thereof to any person or circumstance, shall for any reason and to any extent be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, rather such provision shall be enforced to the greatest extent permitted by law.
- V. Amendment. This Agreement shall not be modified or amended except by an instrument in writing executed by or on behalf of the Parties.
- W. Including. The term "including" when used in this Agreement means "including but not limited to."
- X. Independent Consideration. If Purchaser terminates this Agreement pursuant to a right to do so granted to Purchaser hereunder, and if the Earnest Money is otherwise refundable to Purchaser and additional consideration is required for this Agreement to be enforceable under applicable law, then Purchaser and Seller hereby direct Escrow Agent to pay the sum of One Hundred Dollars (\$100.00) from the Earnest Money to Seller as consideration for entering into this Agreement.

EMT 3

22. Expiration: This Agreement has been executed first by Purchaser as a continuing offer to purchase the Property, which offer shall be open to acceptance by Seller until 5:00 p.m. on _____, 2018, at which time the offer shall be deemed to be withdrawn by Purchaser if the same has not been accepted by Seller and a signed copy delivered to Purchaser.

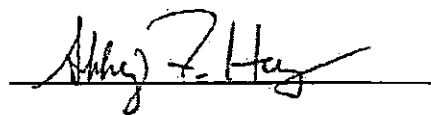
[Signatures begin on following page]

EMT 3

[Purchaser's signature page for Agreement for Purchase and Sale of Developed Lots]

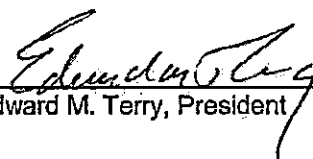
IN WITNESS WHEREOF, the Parties have executed this Agreement on the day and year shown below their signatures.

Witness:



PURCHASER:

CRESCENT HOMES SC, LLC, a Delaware
series limited liability company

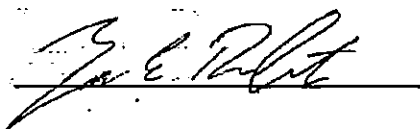
By: 
Edward M. Terry, President

Date: 10/8/18, 2018

[Signatures continue on next page]

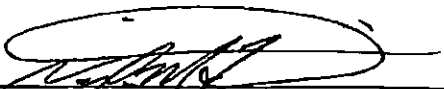
[Seller's signature page for Agreement for Purchase and Sale of Developed Lots]

Witness:



SELLER:

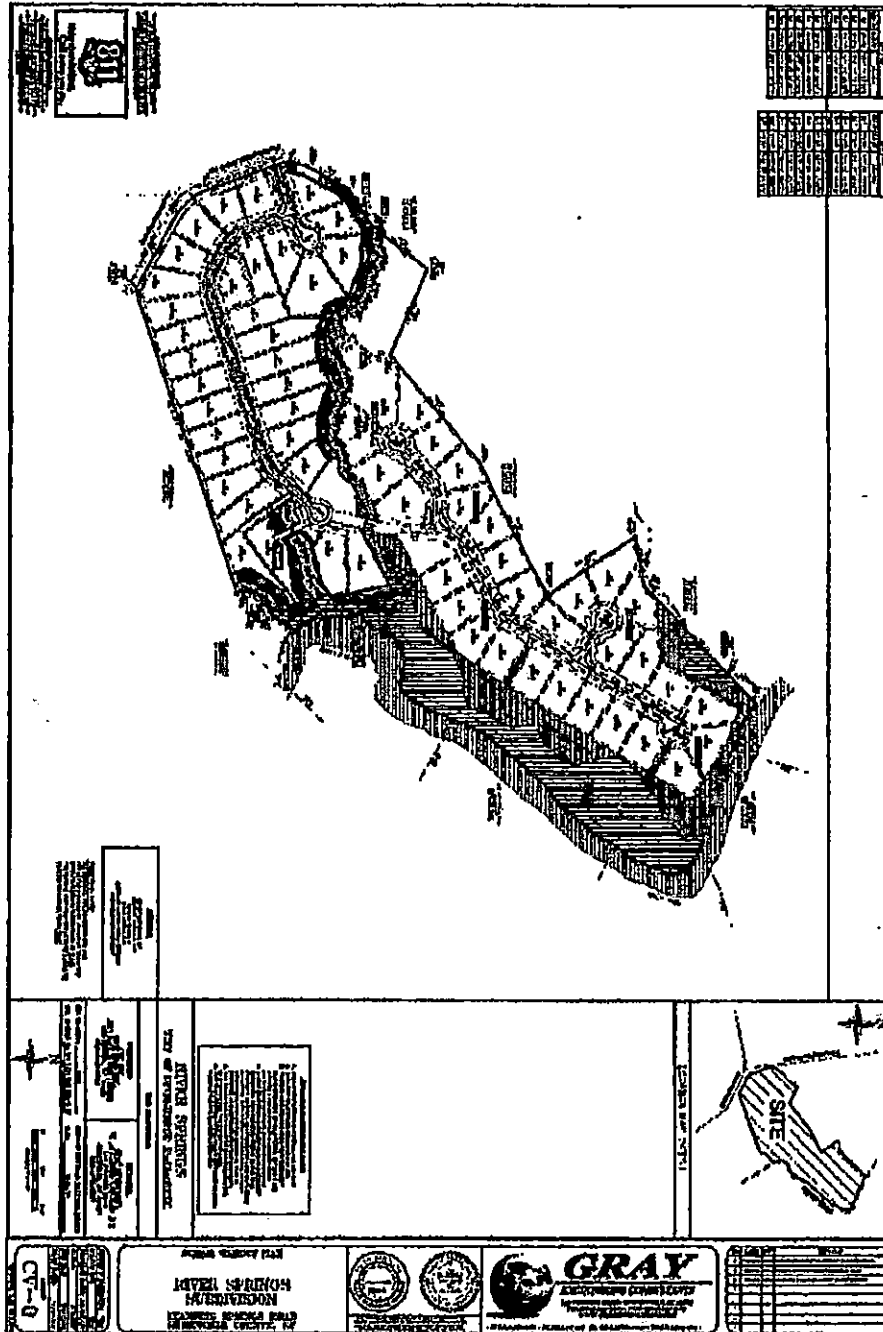
C J N, LLC, a South Carolina limited liability company

By: 
Print Name: Nick Edwards
Print Title: Manager

Date: 10-5-18, 2018

EXHIBIT "A-1"

Subdivision Plat



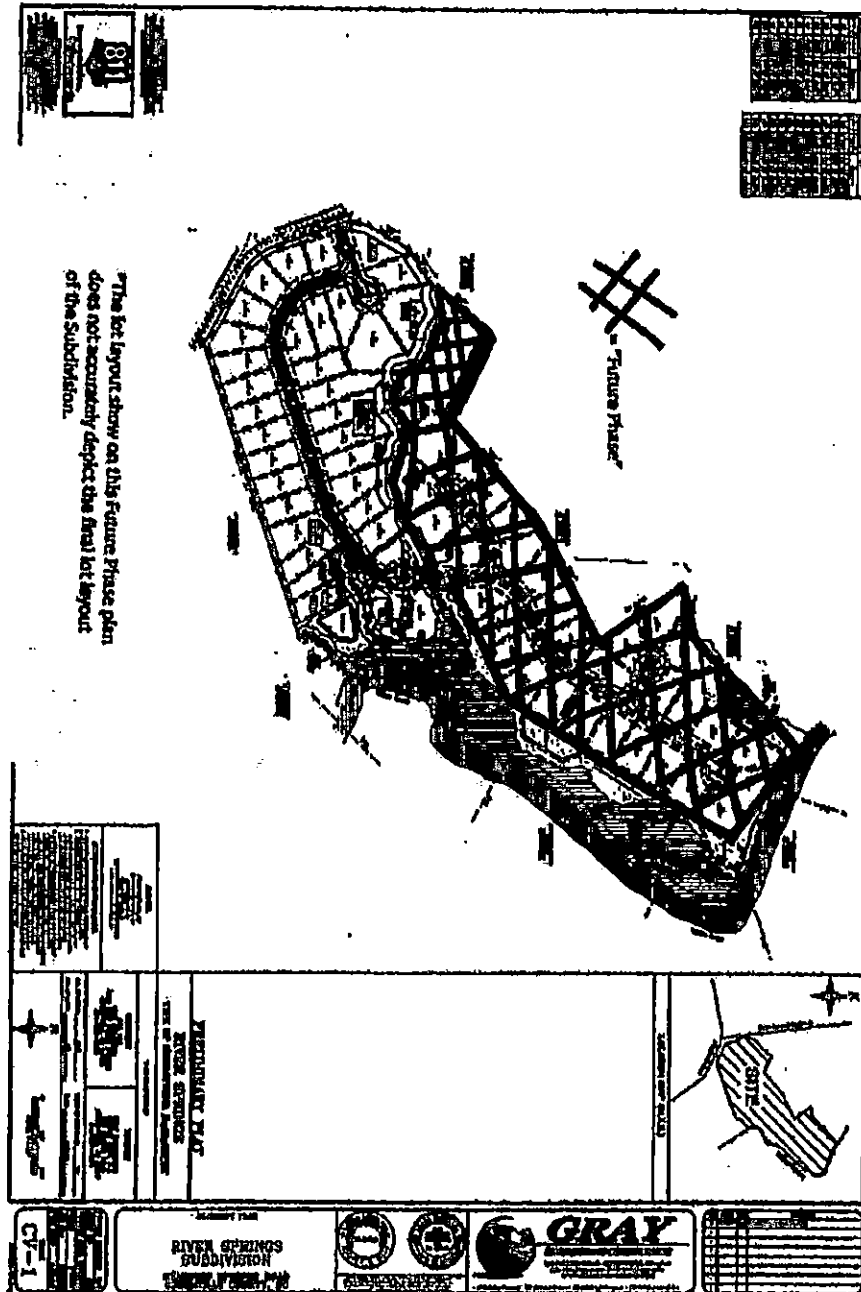
Developed Lots (2/2018)
4812-2904-8691, v. 17

A-1

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EXHIBIT "A-2"

Future Phase



Developed Lots (2/2018)
4812-2904-6691, v. 17

A-2

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EXHIBIT "B"**Lot Pricing and Takedown Schedule**

Lot Takedowns (See subparagraph 3.B regarding Lot Selection):

<u>Takedown</u>	<u>Required Minimum Lot Takedown (Note 1)</u>
Initial Closing	10
2	6
3	8
4	8

Lots:

<u>Lots</u>	<u>Purchase Price</u>
1-14	\$66,500.00
15-18	\$86,500.00
	[Adjacent to Reedy River]
19-32	\$66,500.00

Notes:

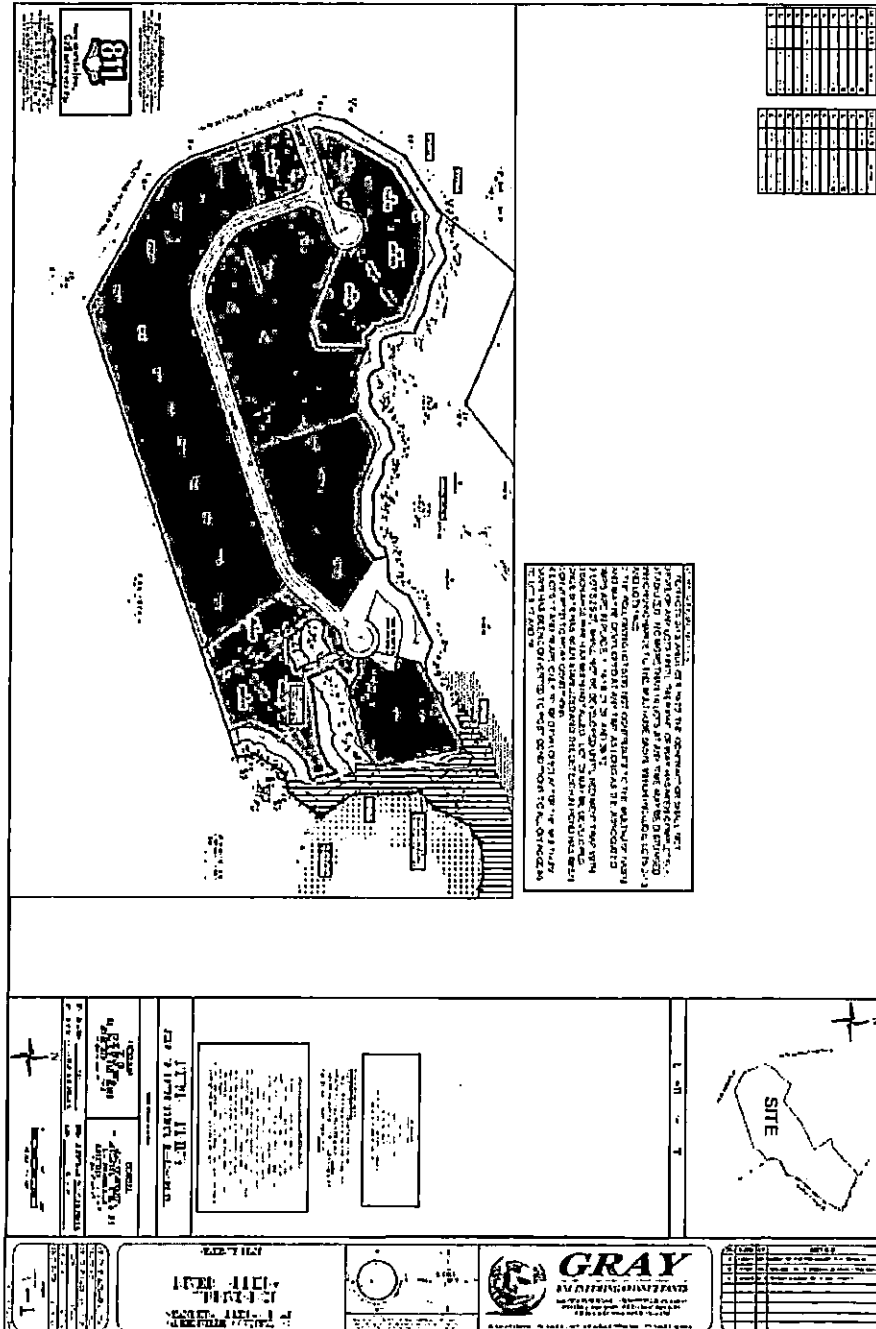
1. Pursuant to subparagraph 6.B. of the Agreement, each Subsequent Closing shall occur no later than one hundred eighty (180) days following the immediately preceding takedown.
2. Each Closing deadline runs from the prior Closing deadline of the previous Closing, not from the actual date of the prior Closing or Closings.
3. With respect to each Closing, Purchaser shall have the option to purchase Lots (which shall be some or all, of the Lots in a future takedown requirement) at a faster rate than provided in Paragraph 2 above, and, in such event, the Lots so purchased shall be credited to the next subsequent purchase obligation. Purchaser will be able to "skip" one subsequent takedown during the contract period at the Purchaser's discretion.
4. The last Required Minimum Lot Takedown will be adjusted to reflect any Lots removed from this Agreement in accordance with Paragraph 3.C. above.
5. In addition to the rights of Purchaser pursuant to Paragraph 10, if any Closing is delayed for any reason that is the fault of Seller, then Purchaser may require that the Required Minimum Lot Takedown cease until all such delays have been satisfied, at which time the Required Minimum Lot Takedown will continue from the point at which they were previously suspended.

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EXHIBIT "C"

Lot Disturbance Schedule



Developed Lots (2/2018)
4812-2904-8691, v. 17

EXHIBIT "C"

Lot Disturbance Schedule, Cont.

VERY SPECIAL NOTES:
1. FOR LOTS 2-13, AND LOTS 18-22, THE CONTRACTOR SHALL NOT DEVELOP ANY LOTS UNTIL THE RIGHT OF WAY HAS BEEN COMPLETELY STABILIZED. NO MORE THAN 10 LOTS AT ANY TIME MAY BE DISTURBED, WHICH DISCHARGE TO THE MULTI-USE BASIN, WHICH INCLUDE: LOTS 2-13, AND LOTS 18-22.
2. THE FOLLOWING LOTS DO NOT CONTRIBUTE TO THE MULTI-USE BASIN AND MAY BE DEVELOPED AT ANY TIME AS LONG AS THE ASSOCIATED BMPs ARE IN PLACE: 1, 14-16, 23-25, AND 26-32.
3. LOTS 26-27, SHALL NOT BE DEVELOPED UNTIL SEDIMENT TRAP WITH DISCHARGE PIPE HAS BEEN INSTALLED. LOT 28 MAY BE DEVELOPED ONCE SITE HAS BEEN STABILIZED AND THE DETENTION POND HAS BEEN CONVERTED TO POST CONDITIONS.
4. LOTS 17 AND 18 ARE ONLY TO BE DEVELOPED AFTER THE MULTI-USE BASIN HAS BEEN CONVERTED TO POST CONDITIONS TO ALLOW ACCESS TO LOTS 17 AND 18.



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PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "Agreement") is made as of the Effective Date by and between CJN, LLC, a South Carolina limited liability company (collectively, "Seller") and Douglas F. Clark, his permitted successors and assigns ("Purchaser"). The "Effective Date" as used herein shall be the date this Agreement is signed by both parties and if both parties do not sign on the same date, it shall be the date on which the Agreement is signed by the last party to sign. If one of the parties fails to date its signature in the blank provided, the Effective Date shall be the date of the other party's signature.

ARTICLE 1 PURCHASE AND SALE

1.1 Agreement of Purchase and Sale. Subject to the terms and conditions set forth herein and for and in consideration of the mutual promises of the parties made herein and other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, Seller agrees to sell and convey and Purchaser agrees to purchase that certain tract of land containing approximately 34.11 acres located on Old Standing Springs Road, Simpsonville, SC 29681, Greenville County TMS# 0584010102601 as shown on plat of survey as set forth in Section 3.4 (the real property described in this clause (a) being herein referred to as the "Property");

1.2 Permitted Exceptions. The Property shall be conveyed, and Purchaser shall accept the Property, subject to the matters which are deemed to be Permitted Exceptions pursuant to ARTICLE 2 hereof (herein referred to collectively as the "Permitted Exceptions").

1.3 Purchase Price. Seller is to sell and Purchaser is to purchase the Property for a total purchase price of Seven Hundred Seventy Five Thousand and no/100 Dollars (\$775,000.00) ("Purchase Price"). The Purchase Price shall be payable as follows:

(a) Earnest Money - \$10,000.00; and

(b) The remainder payable in cash or other immediately available funds at Closing;

1.4 Earnest Money. Within five (5) days of the Effective Date, Purchaser shall deposit \$10,000.00 (the "Earnest Money") with Access Realty, LLC, 4113 E. North Street, Greenville, South Carolina 29615 ("Escrow Agent"). Escrow Agent shall deposit the Earnest Money in a federally regulated financial institution. If this transaction is fully consummated, the Earnest Money shall be applied against the cash portion of the Purchase Price. The parties understand and agree that Escrow Agent is authorized to deliver the Earnest Money to the Seller at Closing. However, if Closing does not occur, and Escrow Agent receives a notice requesting release of the Earnest Money from either party, Escrow Agent is authorized to release the Earnest Money to the requesting party, provided that: the notice sets forth the basis on which the Earnest Money is to be released; the notice is simultaneously sent to the other party; and the request is not refuted by the non-requesting party within ten (10) days after receipt of the notice. If the parties cannot agree as to the disposition of the Earnest Money, Escrow Agent is authorized to hold the Earnest Money until the parties reach agreement or until a court of competent jurisdiction establishes the rightful disposition. In any legal action involving the Escrow Agent, including any inter-pleader action initiated by the Escrow Agent, all legal expenses reasonably incurred by the Escrow Agent including all discovery and appeals expenses shall be advanced from the Earnest Money and then borne by the party against which final judgment is rendered or as otherwise ordered by the court. All fees and costs incurred, including reasonable attorneys' fees, shall be paid by the non-prevailing party. In consideration of Escrow Agent's services, the Seller and the Buyer agree to indemnify, defend and hold Escrow Agent harmless from and against all liabilities, damages, costs, expenses (including all attorneys' fees and expenses incurred by Escrow Agent or any of Escrow Agent's employees or agents), causes of action, suits, demands, judgments, and claims of any nature whatsoever that might arise at any time out of Escrow Agent's holding, investing, reinvesting, payment, or other disposition of the Earnest Money, except those which result from Escrow Agent's willful misconduct or gross negligence.

EXHIBIT

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1.5 Contingencies. The obligation of the Seller to sell the Property is contingent upon Crescent Homes SC, LLC, a Delaware limited liability company, terminating any and all rights of first refusal for the Property pursuant to that Agreement for Purchase and Sale of Lots and Development with an effective date of October 8, 2018, and any amendments thereto (collectively, the "LPA").

ARTICLE 2 INSPECTION PERIOD

2.1 Right of Inspection. Purchaser shall have a period of fifteen (15) days from the Effective Date in which to perform due diligence and conduct and approve any investigations and studies Purchaser deems necessary (the "Inspection Period"). During the Inspection Period (as hereinafter defined), Purchaser shall have the right to make a physical inspection of the Property, and Purchaser, personally or through agents, employees or contractors, may go upon the Property during normal business hours or at other reasonable times, with no less than twenty four (24) hours' advance notice to Seller, to make boundary line or topographical surveys and to conduct such non-invasive studies, tests, samplings, investigations and analyses of any and all aspects of the Property as Purchaser deems desirable, including, without limitation, engineering, environmental, soil, and groundwater and other tests, samplings and studies of the Property. Purchaser shall indemnify and hold harmless Seller from and against all claims, demands, losses and expenses (including reasonable attorneys' fees) for injuries or death to persons or damage to the Property resulting from Purchaser's exercise of its inspection rights herein. The foregoing indemnification shall survive the Closing or the termination of this Agreement. This Section 2.1 shall survive the Closing or any termination of this Agreement.

2.2 Seller Deliveries. Seller hereby agrees to deliver to Purchaser within five (5) days following the Effective Date, copies of all materials described below to the extent in Seller's possession and by this reference made a part hereof (collectively, the "Property Documents"), to the extent Seller has not already done so:

- (a) Copies of all environmental reports related to the Property;
- (b) Copies of surveys and site plans related to the Property;
- (c) Copies of engineering reports related to the Property; and
- (d) Copies of all title insurance policies for the Property.

Seller does not warrant the accuracy or completeness of any information provided to the Purchaser or its attorneys, accountants, engineers or other representatives.

2.3 Right of Termination. At any time during the Inspection Period, Purchaser may terminate this Agreement and all Purchaser's obligations for any reason whatsoever, in its sole discretion. If Purchaser deems the Property unsatisfactory, Purchaser may terminate this Agreement by giving notice to Seller as provided in Paragraph 10.2 hereof prior to the expiration of the Inspection Period. Upon such termination by Purchaser prior to the expiration of the Inspection Period, the Escrow Agent shall promptly refund all Earnest Money to Purchaser and thereafter, neither party hereto shall have any further obligations hereunder to the other. All Earnest Money shall be non-refundable to the Purchaser upon the expiration of the Inspection Period, except in the event of default of Seller.

ARTICLE 3 TITLE AND SURVEY

3.1 Title Examination; Commitment for Title Insurance. Purchaser shall obtain from a nationally recognized Title Insurance Company (the "Title Company"), a commitment for an ALTA 2006 Owners Policy of Title Insurance (the "Title Commitment") within Seven (7) days of the Effective Date (the "Title Review Period").

3.2 Survey. ^{Seller} ~~Purchaser~~ will, at ^{Seller's} ~~Purchaser's~~ expense, employ a reputable surveyor or surveying firm,

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6-26-2020

licensed by the State of South Carolina, to survey the Property and prepare and deliver to Purchaser and Seller during the Inspection Period a boundary survey and plat thereof (the "Survey") reflecting the total area of the Property calculated to the nearest 100th of an acre, and the location of all improvements, if any, to be approved by the Purchaser and Seller.

3.3 Title Objections; Cure of Title Objections. Purchaser shall have until three (3) days after the expiration of the Title Review Period to give written notice to Seller of objections to any exceptions disclosed in the Title Commitment and any amendments thereto. Any exception in the Title Commitment to which Purchaser does not object by timely written notice (the "Title Objections") shall be a "Permitted Exception." Time is of the essence with respect to the provisions of this Section 3.3. If Seller is able and willing to cure or remove such Title Objections (which removal shall be deemed to be effected by the issuance of title insurance eliminating or insuring over the effect of such Title Objection), but Seller fails or is unable to cure any such exception at or prior to Closing, Seller shall be entitled to one reasonable adjournment of the Closing of up to, but not beyond, the thirtieth (30th) day following the date for Closing set forth in Section 4.1 hereof to attempt such cure.

Seller may, but notwithstanding anything in this Agreement to the contrary, shall not be obligated under any circumstances, to remove, or cause to be removed or insured over, at its expense, any Title Objection. If Seller determines, within its discretion, not to remove, satisfy or otherwise cure any such title exceptions, Purchaser's sole remedy hereunder in such event shall be either: (i) to accept title to the Property subject to such exceptions without abatement of the Purchase Price or (ii) to terminate this Agreement by providing written notice to Seller pursuant to Section 10.2. Upon such termination, the Earnest Money shall be returned to Purchaser and neither party hereto shall have any further rights, obligations or liabilities hereunder except to the extent that any right, obligation or liability set forth herein expressly survives termination of this Agreement.

3.4 Conveyance of Title. At Closing, Seller shall convey and transfer to Purchaser, by recordable limited warranty deed, such title to the Property as will enable the Title Company to issue to Purchaser, at Purchaser's expense, an ALTA Owner's Policy of Title Insurance (the "Title Policy") covering the Property, in the full amount of the Purchase Price without exception other than Permitted Exceptions and reservation of a Right of First Refusal (as defined in Article 9 below). Notwithstanding anything contained herein to the contrary, the Property shall be conveyed subject to the following matters, which shall be deemed to be Permitted Exceptions:

- (a) The lien of all ad valorem real estate taxes and assessments not yet due and payable as of the date of Closing, subject to proration between the parties as herein provided;
- (b) local, state and federal laws, ordinances or governmental regulations, including but not limited to, building and zoning laws, ordinances and regulations, now or hereafter in effect relating to the Property;
- (c) easements for utilities and road rights of way serving the Property but which do not adversely affect intended development and use thereof; and
- (d) items which are, or become, Permitted Exceptions pursuant to Sections 3.3 or 3.5 hereof.

3.5 Amendments to Title Commitment. Purchaser shall have the right to object to any title exceptions first raised by the Title Company in any amendments to the Title Commitment for matters first occurring after the effective date of the initial Title Commitment by giving written notice of those exceptions to which Purchaser is objecting within one (1) day after Purchaser's receipt of any such amendment. If Purchaser does not object to any exception first raised in an amendment to the Title Commitment issued after Purchaser's receipt of the Title Commitment by giving timely written notice as herein provided, such exception shall be a Permitted Exception. In the event Purchaser gives timely written notice of objection to any exception as herein provided, the provisions of Section 3.3 shall apply with respect thereto as if set forth herein in full. Time is of the essence with respect to the provisions of this Section

ARTICLE 4 CLOSING

4.1 Time and Place. The consummation of the transaction contemplated hereby ("Closing") shall be held on or before July 15, 2020 through the office of the closing attorney selected by the Purchaser. At Closing, Seller and Purchaser shall each perform their respective obligations as set forth in this Agreement. The Closing may be held at such other place or such earlier time and date as Seller and Purchaser shall mutually approve in writing. The date on which the Closing is scheduled to occur hereunder (or, if earlier, or as the context requires, the date on which Closing actually occurs) is referred to herein as the "Closing Date".

4.2 Seller's Obligations at Closing. At or prior to Closing, Seller shall:

(a) deliver a Limited Warranty Deed, in proper form for recording, conveying good, marketable and insurable fee simple title to the Property, free and clear of all liens, encumbrances, easements and restrictions except permitted exceptions;

(b) deliver to the Title Company any standard affidavits as may be required by the Title Company;

(c) deliver to the Title Company any standard Seller's affidavits as may be required by the Title Company;

(d) deliver to Purchaser possession of the Property, subject only to the permitted exceptions;

(e) deliver to Purchaser an affidavit duly executed by Seller stating that Seller is not a "foreign person" as defined in the Federal Foreign Investment in Real Property Tax Act of 1980 and the 1984 Tax Reform Act;

(f) deliver to Purchaser a residency certification as required by South Carolina and federal laws; and

(g) deliver such additional documents as shall be reasonably required to consummate the transaction contemplated by this Agreement.

4.3 Purchaser's Obligations at Closing. At Closing, Purchaser shall:

(a) deliver to Escrow Agent the full amount of the Purchase Price, as increased or decreased by credits, prorations and adjustments as provided in Section 4.5 hereof, in immediately available federal funds wire transferred to Escrow Agent's Account pursuant to the terms of this Agreement, it being agreed that at Closing the Earnest Money shall be applied towards payment of the Purchase Price;

(b) deliver to Seller such evidence as Seller's counsel and/or the Title Company may reasonably require as to the authority of the person or persons executing documents on behalf of Purchaser; and

(c) deliver to the Title Company a duly executed closing statement; and

(d) deliver such additional documents as shall be reasonably requested by the Title Company or required by this Agreement or by any applicable law to consummate the transaction contemplated by this Agreement, provided, however, that in no event shall Purchaser be required to undertake any other material liability not expressly contemplated in this Agreement, unless Purchaser elects to do so in its sole discretion.

4.4 Closing Costs and Prorations. Costs and payments related to the purchase and sale of the Property shall be paid at Closing as follows: Seller shall satisfy or pay (a) all mortgages and other liens with respect to the Property; (b) the cost of documentary stamps, statutory deed recording fees or transfer taxes assessed in connection

with the conveyance of the Property; (c) all of Seller's legal fees; and (d) the cost of preparing the deed. Purchaser shall pay for (a) title insurance premiums; (b) all of Purchaser's legal fees; (c) loan fees and costs, if any; (d) costs of all inspections; ~~(e) rollback taxes, if any; and (f) cost of new survey, if any.~~ All other costs of closing shall be paid by the party incurring such cost. *Ad valorem* property taxes, which are a lien, but not yet due and payable, shall be prorated as of the Closing date.

6/26/2020
JFC
3/6/26/2020

4.5 Conditions Precedent to Obligation of Purchaser. The obligation of Purchaser to consummate the transaction hereunder shall be subject to the fulfillment on or before the Closing Date (or such earlier time as otherwise required hereby) of all of the following conditions, any or all of which may be waived by Purchaser in its sole discretion:

(a) All of the representations and warranties of Seller contained in this Agreement shall be true and correct in all material respects as of the Closing Date, as if made and updated as of the Closing Date;

(b) Seller shall have performed and observed, in all material respects, all covenants and agreements of this Agreement to be performed and observed by Seller as of the Closing Date; and

(c) All other conditions precedent to Purchaser's obligation to consummate the transaction hereunder (if any) which are set forth in this Agreement shall have been satisfied on or before the Closing Date.

In the event any of the foregoing conditions has not been satisfied by the Closing Date other than through Purchaser's default or failure of Purchaser to fully comply with its obligations under this Agreement, Purchaser shall not be obligated to consummate the transactions contemplated hereby until such conditions have been satisfied and until such conditions have been satisfied, Purchaser shall have the right to terminate this Agreement by written notice given to Seller, whereupon Escrow Agent shall refund the Earnest Money to Purchaser and the parties shall have no further rights, duties or obligations hereunder, other than those which are expressly provided herein to survive the termination of this Agreement.

Notwithstanding anything to the contrary in the foregoing, if any of the foregoing conditions in this Section 4.5 has not been satisfied due to a default or failure of performance by Purchaser or Seller hereunder, then Purchaser's and Seller's respective rights, remedies and obligations shall instead be determined in accordance with ARTICLE 6.

4.6 Conditions Precedent to Obligation of Seller. The obligation of Seller to consummate the transaction hereunder shall be subject to the fulfillment on or before the Closing Date of all of the following conditions, any or all of which may be waived by Seller in its sole discretion:

✓ (a) Crescent Homes SC, LLC, a Delaware limited liability company, terminating any and all rights of first refusal for the Property pursuant to the LPA (as set forth in Section 1.5 hereinabove);

(b) Seller shall have received the Purchase Price, as adjusted for prorations and net of the amount needed to satisfy any mortgage loan;

(c) All of the representations and warranties of Purchaser contained in this Agreement shall be true and correct in all material respects as of the Closing Date, as if made and updated as of the Closing Date;

(d) Purchaser shall have performed and observed, in all material respects, all covenants and agreements of this Agreement to be performed and observed by Purchaser as of the Closing Date; and

(e) All other conditions precedent to Seller's obligation to consummate the transaction hereunder (if any) which are set forth in this Agreement shall have been satisfied on or before the Closing Date.

In the event any of the foregoing conditions has not been satisfied by the Closing Date other than through Seller's default or failure of Seller to fully comply with its obligations under this Agreement, Seller shall have the right to terminate this Agreement by written notice given to Purchaser on the later of (i) the Closing Date or (ii) the

date that is five (5) days after Purchaser has received written notice from Seller stating that any of the above conditions have not been satisfied. If Seller terminates this Agreement pursuant to this Section, Escrow Agent shall pay the Earnest Money to Seller and the parties shall have no further rights, duties or obligations hereunder, other than those which are expressly provided herein to survive a termination of this Agreement, except in the event condition 4.6(a) is not satisfied in which event the Escrow Agent shall pay the Earnest Money to the Purchaser.

Notwithstanding anything to the contrary in the foregoing, if any of the foregoing conditions in this Section has not been satisfied due to a default or failure of performance by Purchaser or Seller hereunder, then Purchaser's and Seller's respective rights, remedies and obligations and the disposition of the Earnest Money as a result of such default shall instead be determined in accordance with ARTICLE 6.

ARTICLE 5 REPRESENTATIONS, WARRANTIES AND COVENANTS

5.1 Representations and Warranties of Seller. Seller hereby makes as of the Effective Date the following representations and warranties to Purchaser, which representations and warranties shall be true and correct in all material respects as of the Closing Date.

(a) **Authority.** Seller has the full right and authority to enter into this Agreement and to convey fee simple title to the Property pursuant hereto and to consummate or cause to be consummated the transactions contemplated herein. The person(s) signing this Agreement on behalf of Seller are authorized to do so. Neither the execution and delivery of this Agreement nor any other documents executed and delivered, or to be executed and delivered, by Seller in connection with the transactions described herein, will violate any provision of any agreements, regulations, or laws to or by which Seller is bound. This Agreement has been duly authorized, executed and delivered by Seller, is a valid and binding obligation of Seller and is enforceable against Seller in accordance with its terms subject to (i) applicable bankruptcy, insolvency, reorganization, moratorium, and other laws affecting the rights of creditors generally; and (ii) the exercise of judicial discretion in accordance with general principles of equity;

(b) **Pending Actions.** No action, suit, arbitration, administrative or judicial proceeding, or unsatisfied order or judgment is pending or, to Seller's knowledge, threatened against Seller which pertains directly to the Property or the transaction contemplated by this Agreement. In addition, there exists no other action, suit, arbitration, administrative or judicial proceeding, or unsatisfied order or judgment which is pending or, to Seller's knowledge, threatened against Seller which, if adversely determined, would have a Material Adverse Effect. (As used in this Agreement, the term "Material Adverse Effect" means, with respect to any fact or circumstance, that such fact or circumstance would individually or in the aggregate, have a material adverse effect on title to the Property or any portion thereof, or on Seller's ability to consummate the transaction contemplated herein, or on the physical condition, legal status, value or ability to develop or operate the Property in its condition as of the Effective Date or as related to the Intended Improvements).

(c) **Condemnation.** Seller has received no notice of, nor to the best of Seller's knowledge is there, any pending, threatened or contemplated action by any governmental authority or agency having the power of eminent domain, which might result in any part of the Property being taken by condemnation.

(d) **Conflicts.** There is no agreement to which Seller is a party, or binding on Seller, which is in conflict with this Agreement.

(e) **Financial Status.** Seller is solvent, has not made a general assignment for the benefit of its creditors, and has not admitted in writing its inability to pay its debts as they become due. Seller has neither filed, nor does it contemplate the filing of, any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings, or any other proceeding for the relief of debtors in general, nor has any such proceeding been instituted by or against Seller, nor, to Seller's knowledge, is any such proceeding threatened or contemplated. The sale of the Property will not render Seller insolvent.

5.2 Survival of Seller's Representations and Warranties. The representations and warranties of Seller set forth in Section 5.1 shall survive Closing for a period of six (6) months (the "Survival Period"), unless notice setting forth a specific claim under any such representation or warranty (a "Claim") shall be given to Seller within that period, in which case such representation or warranty shall survive until such claim is finally and fully resolved.

5.3 Covenants of Seller. Seller hereby covenants with Purchaser, from the Effective Date until the Closing or earlier termination of this Agreement, as follows:

(a) Maintenance of Property. Seller shall maintain the Property in a manner generally consistent with the manner in which Seller has maintained the Property prior to the Effective Date;

(b) Execution of New Contracts. Seller shall not, without Purchaser's prior written consent in each instance (which consent may be withheld in Purchaser's sole discretion), enter into any contract or agreement or lease that will be an obligation affecting the Property or binding on Purchaser after the Closing;

(c) Disposition of the Property and Other Matters. For so long as this Agreement remains in force, Seller shall not, without Purchaser's prior written consent in each instance (which consent may be withheld in Purchaser's sole discretion):

(1) sell, assign, rent, lease, convey (absolutely or as security), grant a security interest in, or otherwise encumber or dispose of, the Property (or any interest or estate therein), change or request a change in the zoning classification of the Property or any development restrictions applicable to the Property, or consent to or acquiesce in any of the foregoing;

(2) enter into any contract that will be an obligation affecting the Property subsequent to the Closing; or

(3) enter into any lease, license or occupancy agreement of all or any part of the Property which (i) cannot be terminated by Seller on thirty (30) days' written notice; and (ii) terminated by Purchaser as of or after the Closing Date without notice and at no cost or expense to Purchaser.

5.4 Representations and Warranties of Purchaser. Purchaser hereby makes the following representations and warranties to Seller as of the Effective Date:

(a) Authority. Purchaser has the full right and authority to enter into this Agreement and to purchase the Property pursuant hereto and to consummate or cause to be consummated the transactions contemplated herein. The person signing this Agreement on behalf of Purchaser is authorized to do so. Neither the execution and delivery of this Agreement nor any other documents executed and delivered, or to be executed and delivered, by Purchaser in connection with the transactions described herein, will violate any provision of any agreements, regulations, or laws to or by which Purchaser is bound. This Agreement has been duly authorized, executed and delivered by Purchaser, is a valid and binding obligation of Purchaser and is enforceable against Purchaser in accordance with its terms subject to (i) applicable bankruptcy, insolvency, reorganization, moratorium, and other laws affecting the rights of creditors generally; and (ii) the exercise of judicial discretion in accordance with general principles of equity;

(b) Pending Actions. There is no action, suit, arbitration, administrative or judicial administrative proceeding, or unsatisfied order or judgment pending or, to Purchaser's knowledge, threatened against Purchaser or the transaction contemplated by this Agreement, which, if adversely determined, could individually or in the aggregate have a material adverse effect on Purchaser's ability to consummate the transaction contemplated herein; and

(c) Conflicts. There is no agreement to which Purchaser is a party, or binding on Purchaser, which is in conflict with this Agreement.

5.5 Survival of Purchaser's Representations and Warranties. The representations and warranties of Purchaser set forth in Section 5.4 shall survive Closing.

ARTICLE 6 DEFAULT

6.1 Default by Purchaser. If the sale of the Property as contemplated hereunder is not consummated due to Purchaser's default hereunder, then Escrow Agent shall pay the Earnest Money to Seller, on demand, without prejudice to any other rights or remedies of Seller hereunder, at law or in equity. This Section 6.1 is subject to Section 6.4 hereof.

6.2 Default by Seller. If the sale of the Property as contemplated hereunder is not consummated due to Seller's default hereunder, then Escrow Agent shall refund the Earnest Money to Purchaser, on demand, and the Purchaser as its sole remedies hereunder, may (1) terminate this Agreement by notice to Seller; or (2) bring an action for specific performance. Notwithstanding the foregoing to the contrary, Purchaser shall not exercise any of its options under this Section unless, after making written demand upon Seller, Seller fails within ten (10) business days to cure such default or breach. This Section 6.2 is subject to Section 6.4 hereof. Notwithstanding any language contained herein to the contrary, the refusal of Crescent Homes SC, LLC to terminate any and all rights of first refusal for the Property pursuant to the LPA shall ~~not~~ constitute a Seller default hereunder.

6-26-2020 6/26/2020
6.3 Notice of Default: Opportunity to Cure. Neither Seller nor Purchaser shall be deemed to be in default hereunder until and unless such party has been given written notice of its failure to comply with the terms hereof and thereafter does not cure such failure within five (5) business days after receipt of such notice; provided, however, that this Section 6.3 shall not apply in case of (i) Purchaser's failure to deliver the Earnest Money or any portion thereof on the date required or (ii) a party's failure to make any deliveries required of such party on the Closing Date. Such failures under sub-sections (i) and (ii) shall not have the effect of extending the due date of any Earnest Money deposit (or portion thereof) or the Closing Date hereunder.

6.4 Recoverable Damages. Notwithstanding Sections 6.1 and 6.2 hereof, in no event shall the provisions of Sections 6.1 and 6.2 limit (i) either Purchaser's or Seller's obligation to indemnify the other party or the damages recoverable by the indemnified party against the indemnifying party due to a party's express obligation to indemnify the other party in accordance with this Agreement, or (ii) either party's obligation to pay costs, fees or expenses under this Agreement, including, without limitation, Section 4.6 hereof or the damages recoverable by either party against the other party due to a party's failure to pay such costs.

6.5 Survival. This ARTICLE 6 shall survive the rescission, cancellation, termination or consummation of this Agreement.

ARTICLE 7 RISK OF LOSS

7.1 Risk of Loss. Until the purchase of the Property has been consummated on the Closing Date, all risk of loss of, damage to, or destruction of, the Property (whether by fire, flood, tornado or other casualty, or by the exercise of the power of eminent domain, or otherwise) shall belong to and be borne by Seller. For purposes of this Agreement, any contamination of the Property with Hazardous Materials or release or discharge at the Property of Hazardous Materials, except for such contamination, release, or discharge caused by Purchaser or its agents, occurring on or after the Effective Date shall constitute a casualty.

7.2 Casualty or Condemnation. In the event of any damage to or destruction of any material portion of the Property or in the event of any taking or threat of taking by condemnation (or any conveyance in lieu thereof) of any material portion of the Property by anyone having the power of eminent domain, Purchaser shall, by written notice to Seller delivered within ten (10) business days of receiving written notice from Seller of such event, elect to: (a) terminate this Agreement and all of Purchaser's obligations under this Agreement, whereupon the Earnest Money shall be returned to Purchaser, this Agreement shall terminate and Purchaser and Seller shall have no further rights

and obligations hereunder except those which expressly survive termination of this Agreement; or (b) consummate the Closing subject to the terms and conditions of this Agreement. If Purchaser receives Seller's written notice within less than ten (10) business days of Closing, the Closing Date shall be extended as necessary in order for Purchaser to have ten (10) business days in which to make its election. If Purchaser does not elect to terminate this Agreement pursuant to clause (a) of this Section 7.2, then Seller shall on the Closing Date pay to Purchaser all insurance proceeds then received by Seller and all condemnation awards and compensation then received by Seller. In addition, Seller shall transfer and assign to Purchaser, in form reasonably satisfactory to Purchaser, all rights and claims of Seller with respect to payment for damages and compensation on account of such damage, destruction or taking.

7.3 Notice of Condemnation or Casualty. Seller shall notify Purchaser immediately upon Seller's receiving notice of the occurrence or existence of any damage, destruction, condemnation or threat of condemnation affecting the Property and, at the same time, shall provide Purchaser with such information with respect thereto as is in Seller's possession in order to aid Purchaser in making, on an informed basis, the election between the alternatives provided by clauses (a) and (b) in Section 7.2 above. Notwithstanding anything in this Agreement to the contrary, Purchaser shall have ten (10) business days after it receives such information from Seller within which to elect between such alternatives, and, accordingly, the Closing Date shall be postponed, if and to the extent necessary, to allow Purchaser such ten (10) business day period in which to make the election under Section 7.2 above.

ARTICLE 8 COMMISSIONS

8.1 Representation and Indemnity. Purchaser and Seller each hereby represents and warrants to the other that it has not disclosed this Agreement or the subject matter hereof to, and has not dealt with, any real estate broker, agent or salesman so as to create any legal right or claim in any such broker, agent or salesman for a real estate commission or similar fee or compensation with respect to the negotiation and/or consummation of this Agreement or the conveyance of the Property by Seller to Purchaser. Purchaser and Seller shall indemnify, hold harmless and defend each other from and against any and all claims and demands for a real estate brokerage commission or similar fee or compensation arising out of any claimed dealings with the indemnifying party and relating to this Agreement or the purchase and sale of the Property (including reasonable attorneys' fees and expenses and court costs incurred in defending any such claim or in enforcing this indemnity).

8.2 Survival. This ARTICLE 8 shall survive the rescission, cancellation, termination or consummation of this Agreement.

ARTICLE 9 RIGHT OF FIRST REFUSAL

9.1 Right of First Refusal. As additional inducement for Seller to sell the Property, Purchaser has agreed to Seller reserving a right of first refusal to repurchase the Property in the event Purchaser, his successors, heirs and assigns, should decide to sell and/or convey the Property for a period of ~~ten (10)~~ ^{five (5)} years from the date of Closing. If Purchaser receives a bona fide offer to purchase the Property (the "Selected Property"), then Seller shall promptly notify Purchaser of said offer(s) evidenced by a copy of the offer. Seller shall have a right of first refusal to purchase the Property on the same terms as the bona fide offer received by Purchaser (the "Right of First Refusal"). Within fifteen (15) days of receipt of the terms of the bona fide purchase offer, Seller shall notify Purchaser in writing as to whether it desires to purchase the Property. If Seller does not provide Purchaser with written notice within said fifteen (15) day period, Seller will be deemed to have refused to purchase the Property and Purchaser shall be free to sell the Property to the other party on the terms of the bona fide purchase offer. If Seller elects to purchase the Property, the closing shall occur within sixty (60) days of Seller's election. If Seller elects not to exercise the Right of First Refusal as to the Property and the bona fide third party transaction is not consummated, Seller shall retain the right to exercise its Right of First Refusal for the Property.

ARTICLE 10 MISCELLANEOUS

10.1 Assignment. Purchaser may assign its rights under this Agreement to any entity controlled by or under common control of Purchaser or in which Purchaser has a majority interest without Seller's consent, and may otherwise assign its rights hereunder with the consent of Seller in Seller's sole discretion. No transfer or assignment by Seller or Purchaser shall release or relieve such assignor of its obligations hereunder without the express written consent of the non-assigning or non-transferring party. Each party will assist the other, if requested, in effectuating a tax-deferred exchange under Section 1031 of the Internal Revenue Code and related regulations; provided, however, that the Closing shall not be delayed and non-requesting party shall incur no greater expense or liability in connection with the transactions contemplated under this Agreement than they would have incurred without said exchange. The parties shall execute all documents reasonably requested by the requesting party or any Qualified Intermediary as that term is defined by Internal Revenue Service Regulations, Rev. Proc. 2000-12, 2000-4 I.R.B. 387, to effectuate said exchange (including an assignment of rights and obligations under this Agreement to the Qualified Intermediary).

10.2 Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given: (i) on the day of service if served personally on the party to whom notice is to be given; (ii) on the day of transmission if sent via facsimile transmission to the facsimile number given below if transmitted during regular business hours on a business day, and if not, then on the following business day; (iii) on the day of transmission if delivered by electronic mail during regular business hours on a business day and, if not, then on the following business day; (iv) one (1) business day after being sent by a nationally recognized overnight courier or United States mail; or (v) three (3) days after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. All notices shall be addressed as follows:

Seller:
CJN, LLC
Attn: Nicholas M. Franchina
4113 E. North Street
Greenville, SC 29615
Email: nickfranchina@yahoo.com
Phone: 864-630-0557

Purchaser:
Douglas F. Clark
2869 Old Standing Springs Road
Simpsonville, SC 29681

Email: _____

Phone: _____

With Copy to:
P. Ryan Brown
Keable & Brown, PA
109 Laurens Rd., Bldg. 2, Ste. A
Greenville, SC 29607
Email: ryan@keablelaw.com
Phone: 864-250-4000 Fax: 864-250-4004

If to Escrow Agent:
Access Realty, LLC
4113 E. North Street
Greenville, SC 29615
Attn: Earlene Cassell
Telephone: 864 322-8282
Email: ecassell@accessrealtysc.com

10.3 Modifications. This Agreement cannot be changed orally, and no agreement shall be effective to waive, change, modify or discharge it in whole or in part unless such agreement is in writing and is signed by the parties against whom enforcement of any waiver, change, modification or discharge is sought. Except in the case of counterpart signature pages pursuant to Section 10.8, this Agreement shall not be altered, amended or modified by electronic means, including, without limitation, electronic mail or electronic record.

10.4 Calculation of Time Periods. Unless otherwise specified, in computing any period of time described in this Agreement, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday under the laws of the State in which the Property is located, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or legal holiday. The final day of any such period shall be deemed to end at 5:00 p.m., Eastern Standard Time. All references to "days" in this Agreement shall mean calendar days unless specifically set forth otherwise.

10.5 Successors and Assigns. Subject to Section 10.1 hereof, the terms and provisions of this Agreement are to apply to and bind the successors and permitted assigns of the parties hereto.

10.6 Entire Agreement. This Agreement, including the exhibits, contains the entire agreement between the parties pertaining to the subject matter hereof and fully supersedes all prior written or oral agreements and understandings between the parties pertaining to such subject matter.

10.7 Further Assurances. Each party agrees that it will, without further consideration, execute and deliver such other documents and take such other action, whether prior or subsequent to Closing, as may be reasonably requested by the other party to consummate more effectively the purposes or subject matter of this Agreement. Without limiting the generality of the foregoing, Purchaser shall, if requested by Seller, execute acknowledgments of receipt with respect to any materials delivered by Seller to Purchaser with respect to the Property. The provisions of this Section 10.7 shall survive Closing.

10.8 Counterparts. This Agreement may be executed in counterparts, and all such executed counterparts shall constitute and be part of the same agreement. Facsimile, DocuSign or electronically mailed copies of executed counterparts shall be deemed to be the same as originals. It shall be necessary to account for only one such counterpart in proving this Agreement.

10.9 Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall nonetheless remain in full force and effect.

10.10 Applicable Law. This Agreement is performable in the State of South Carolina and shall in all respects be governed by, and construed in accordance with, the substantive federal laws of the United States and the laws of South Carolina. Seller and Purchaser hereby irrevocably submit to the jurisdiction of any state or federal court sitting in the State of South Carolina and judicial district in which the Property is located in any action or proceeding arising out of or relating to this Agreement and hereby irrevocably agree that all claims in respect of such action or proceeding shall be heard and determined in a state or federal court sitting in the state and judicial district in which the Property is located. Purchaser and Seller agree that the provisions of this Section 10.10 shall survive the Closing of the transaction contemplated by this Agreement or any termination of this Agreement.

10.11 No Third Party Beneficiary. The provisions of this Agreement and of the documents to be executed and delivered at Closing are and will be for the benefit of Seller and Purchaser only and are not for the benefit of any third party, and accordingly, no third party shall have the right to enforce the provisions of this Agreement or of the documents to be executed and delivered at Closing.

10.12 Attorneys' Fees. In the event litigation is required by either party to enforce the terms of this Agreement, the prevailing party of such action shall, in addition to all other relief granted or awarded by the court, be entitled to judgment for reasonable attorneys' and/or paralegals fees and costs incurred by reason of such action and all

10.13 Captions. The section headings appearing in this Agreement are for convenience of reference only and are not intended, to any extent or for any purpose, to limit or define the text of any section or any subsection hereof.

10.14 Construction. The parties acknowledge that the parties and their counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

10.15 Termination of Agreement. It is understood and agreed that if either Purchaser or Seller terminates this Agreement pursuant to a right of termination granted hereunder, such termination shall operate to relieve Seller and Purchaser (in which event the defaulting party shall remain liable as provided in this Agreement) from all obligations under this Agreement, except for such obligations as are specifically stated herein to survive the termination of this Agreement.

10.16 Survival. All provisions of this Agreement, which are not fully performed as of Closing, shall survive Closing subject to the terms and provisions set forth in this Agreement.

10.17 Time of Essence. Time is of the essence with respect to this Agreement.

SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the Effective Date.

PURCHASER:

Douglas F. Clark
DOUGLAS F. CLARK

DATE: 6-26-2020

SELLER:

CJN, LLC,
A SOUTH CAROLINA LIMITED LIABILITY COMPANY

BY: *Nicholas M. Franching*
NICHOLAS M. FRANCHING, ITS MANAGER

DATE: 6-23-2020



AGREEMENT/CONTRACT: TO BUY AND SELL REAL ESTATE (GENERAL USE AND LOTS/ACREAGE)

1. PARTIES: This legally binding Agreement ("Contract") To Buy and Sell Real Estate is entered into by:

Buyer(s), Opus Petrus, LLC

Seller(s), CJN, LLC

("Buyer"), and

("Seller").

(A) "Party" - defined as either Buyer or Seller, "Parties" defined as both Buyer and Seller.

(B) "Brokers" are licensed South Carolina brokers-in-charge, their associated real estate licensees, and their subagents.

(C) "Closing Attorney" - is the licensed South Carolina attorney selected by Buyer to coordinate the transaction and Closing.

TBD

(D) "Effective Date" - the final date upon which a Party to the negotiation places the final and required signatures and/or initials and date on this Contract and Delivers Notice to initially cause this primary Contract to be binding on all Parties.

(E) "Business Day" - a 24 hour period (Monday/Tuesday/Wednesday/Thursday/Friday) beginning at 10 AM and counted from 10 AM of the first Business Day following the appropriate date (Effective Date, Closing Date, stated date, Notice Delivery date). Business Days shall not begin, end, or include any Saturday, Sunday, or Federal legal holiday.

(F) "Good Funds" - is the transfer of the required amount of United States Dollars (USD) within any required timeframe.

(G) "Time" - all time stated shall be South Carolina local time. Time is of the essence with respect to all provisions of this Contract stipulating time, deadline, or performance periods.

4/19/2021

☐ BUYER ☒ SELLER IS A SOUTH CAROLINA REAL ESTATE LICENSEE

2. PURCHASE PRICE: \$ 1,250,000.00

One Million, Two Hundred Fifty Thousand

Payable by transfer of Good Funds via ☐ Finance or ☒ a combination of Finance and Cash USD or ☒ Cash USD.

Verification of Cash available for Closing is ☐ attached ☒ not attached ☐ to be Delivered before . This Contract ☐ is ☒ is not contingent upon the sale and closing of Buyer's real property and SCR504 ☐ is ☒ is not attached.

3. PROPERTY: Hereby acknowledging sufficient good Contract consideration (e.g. mutual promises herein), Seller will sell and convey and Buyer will buy for the Purchase Price any and all lot or parcel of land, appurtenant interests, improvements, landscape, systems, and fixtures if any thereon and further described below ("Property"). Seller agrees to maintain in operable condition the Property and any personal property conveying, including any landscaping, grounds and any agreed upon repairs or replacements, from the Effective Date through Closing subject to normal operable wear and tear. Buyer acknowledges opportunity to inquire about owners association issues, common area issues, condominium master deed issues, assigned parking/storage areas, memberships, lease issues and financed equipment prior to signing Contract. Leasing issues and items and financed equipment see Adjustments (e.g. tenants, leases, future vacation renters, SC vacation rental act reservations, rents, deposits, documents, solar panels, fuel tanks with fuel, alarm systems, satellite equipment, roll carts).

Address Standing Springs Rd

Unit #

City Simpsonville

State of South Carolina

Zip 29680

County of Greenville

Lot Block Section/Phase Subdivision

Other

Tax Map 0584010102601

Parties agree that no personal property will transfer as part of this sale, except described below and/or ☐ in attachment(s):

4. CONVEYANCE/CLOSING/POSSESSION: "Closing" occurs when Seller conveys Property to Buyer and occurs no later than 5 PM on or before September 15, 2021 ("Closing Date") with an automatic extension of 5 business days for an unsatisfied contingency through no fault of either party. Conveyance shall be fee simple made subject to all easements, reservations, rights of way, restrictive covenants of record (provided they do not make the title unmarketable or adversely affect the use/value of the Property in a material way) and to all government statutes, ordinances, rules, permits, and regulations. Seller agrees to convey marketable title with a properly recorded general warranty deed free of encumbrances and liens except as herein stated; and in name(s): TBD

[PSB] BUYER [] BUYER [] SELLER [] SELLER HAVE READ THIS PAGE

EXHIBIT

255

and ownership type determined by Buyer. The deed shall be delivered to the Closing Attorney's designated place on or before the Closing Date no later than 10 AM. Seller agrees to pay all statutory deed recording fees. Parties agree the Brokers shall have access to the closing and relevant documents; and the Brokers shall be given copies of the settlement statement prior to Closing for review. Parties agree to hire/use licensed Attorney(s). Seller shall convey possession of a vacant and reasonably clean Property, free of debris, along with all keys, codes, any remote controls, available documents (e.g. manuals, equipment warranties, service information) and similar ownership items to Buyer at Closing.

5. EARNEST MONEY: Total \$ 5,000.00 (USD) Earnest Money is paid as follows: \$ _____ accompanies this offer and \$ 5,000.00 will be paid within 2 Business Days after Effective Date and Earnest Money is in the form of ☒ check ☐ cash ☐ other (e.g. wire) to be a Credit to Buyer at Closing or disbursed only as Parties agree in writing or by court order or by Contract or as required for Closing by Closing Attorney. Buyer and seller authorize Keable & Brown as Escrow Agent to deposit and hold and disburse earnest money according to the terms of any separate escrow agreement, the law, and any regulations. Broker does not guarantee payment of a check or checks accepted as earnest money. Parties direct escrow agent to communicate reasonable information confirming receipt and status of earnest money upon a Broker request.

THE PARTIES UNDERSTAND AND AGREE THAT UNDER ALL CIRCUMSTANCES INCLUDING DEFAULT, ESCROW AGENT WILL NOT DISBURSE EARNEST MONEY DEPOSIT TO EITHER PARTY UNTIL BOTH PARTIES HAVE EXECUTED AN AGREEMENT AUTHORIZING THE DISBURSEMENT (e.g. SCR518, SCR517, mediation agreement) OR UNTIL A COURT OF COMPETENT JURISDICTION HAS DIRECTED A DISBURSEMENT. EARNEST MONEY WILL NOT BE DISBURSED UNTIL DETERMINED TO BE GOOD FUNDS. IF LEGAL ACTIONS OCCUR RELATED TO EARNEST MONEY, PARTY RECEIVING THE LEAST AMOUNT OF EARNEST MONEY IN THE COURT'S DISBURSEMENT ORDER AGREES TO INDEMNIFY ESCROW AGENT'S FEES, COURT COSTS AND ATTORNEY FEES. IF INTERPLEADER IS TO BE UTILIZED, PARTIES AGREE THAT \$ _____ SHALL BE PAID TO THE ESCROW AGENT BY THE PARTIES AS COMPENSATION BEFORE ESCROW AGENT INITIATES COURT OF COMPETENT JURISDICTION PROCEEDINGS ON EARNEST MONEY.

6. TRANSACTION COSTS: Buyer's transaction costs include all costs and closing costs resulting from selected financing, pre-paid recurring items, insurance (mortgage insurance, title insurance lender/owner, hazard) discount points, all costs to obtain information from or pertaining to any owners association (aka certificate of assessment), interest, non-recurring closing costs, title exam, FHA/VA allowable costs, fees and expenses of Buyer's attorney, contractually required real estate broker compensation, and the cost of any inspector, appraiser, or surveyor. Seller's transaction costs include deed preparation, deed recording costs, deed stamps/tax/recording costs calculated based on the value of the Property, all costs necessary to deliver marketable title and payoff, satisfactions of mortgages/lens and recording, property taxes pro-rated at Closing, contractually required real estate broker compensation, and fees and expenses of Seller's attorney.

At Closing, Seller will pay Buyer's transaction costs not to exceed \$ _____ OR _____ % of purchase price, whichever is higher, which includes non-allowable costs first and then allowable costs (FHA/VA). Buyer is responsible for any Buyer's transaction costs exceeding this amount. If the amount exceeds the actual amount of those costs or amount allowed by Lender, then any excess funds will revert to Seller. Seller will also provide or pay for all of Seller's transaction costs. If no Closing, Buyer is responsible for Buyer's transaction costs and Seller responsible for Seller's transaction costs.

Private/public transfer fees and any costs similar to transfer fees (ex. capital contributions, conservancy fees, estoppel fees, or otherwise named but similar fees paid to the owners association) are the ☐ Seller's or ☒ Buyer's transaction costs.

Unless otherwise agreed upon in writing, Buyer will pay Buyer's transaction costs and Seller pay Seller's transaction costs

7. FINANCE: Buyer's obligation under this Contract ☐ is ☒ is not contingent upon obtaining financing of a ☐ 30 year or ☐ 15 year or ☐ other _____ purchase money loan at reasonable prevailing market terms with loan(s) equal in amounts of minimum _____ % and maximum _____ % of the Purchase Price or Appraised Value whichever is lower. ("Financing Contingency"). Financing Contingency expires at Closing ("Financing Period"). Buyer must make timely good faith efforts to apply for and obtain financing while refraining from contrary actions ("Financing Effort"). In a timely manner, Buyer shall inform Seller and Brokers of pertinent financing issues and authorize Buyer's Lender to disclose pertinent loan information to Seller and Brokers ("Financing Disclosure"). Buyer shall apply for financing within _____ Business Days from the Effective Date and shall Deliver Notice to Seller of reasonable pre-final loan approval (e.g. pre-approval letter, initial approval letter) that contains no unreasonable credit, income, or asset conditions within _____ Business Days from the Effective Date (no repairs required prior to this Notice). Final loan approval occurs when Lender

[PSB] BUYER [] BUYER [] SELLER [] SELLER HAVE READ THIS PAGE

BCR Form 330 11/2017 PAGE 2 of 9

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under loan(s). If a Lender subsequently declines or fails to approve financing, the Buyer shall notify the Seller and Brokers as soon as possible. If the Seller and Brokers are notified of inability to obtain financing during the Financing Period, either Party may terminate this Contract by Notice.

Lender (may change): Seller Financing ☐ FHA ☐ VA ☐ Conventional ☐ Seller

Other Seller Financing ☐ An FHA VA Financing Addendum ☐ is ☐ is not attached. Additional financing terms ☐ are ☐ are not attached.

8. INSPECTION/REINSPECTION RIGHTS: Buyer and SC licensed and insured inspectors ("inspectors") reasonably perform any reasonable ultimately non-destructive examination and make reasonable record of the Property with reasonable Notice to Seller through Closing including investigations of off-site conditions and any issues related to the Property at Buyer Expense ("Inspections"). Buyer and persons they choose may make reasonable visual observations of Property.

Sellers will make the Property accessible for inspection and not unreasonably withhold access, unless otherwise agreed in writing by the Parties. Seller will keep all utilities operational through Closing unless otherwise agreed:

☒ Seller grants Buyer permission to connect utilities, pay for utilities, and hire professionals (e.g. electricians, plumbers) to safely connect and operate the utilities during the inspections

Other see attached. ☐

Buyer will hold harmless. Indemnify, pay damages and attorneys fees to Seller and Brokers for all claims, injuries, and damages arising out of the exercise of these rights. Seller will hold harmless. Indemnify, pay damages and attorneys fees to Brokers for all claims, injuries, and damages arising out of the exercise of these rights. Brokers recommend that Parties obtain all inspections as soon as possible. Brokers recommend that Parties and inspectors use insurance to manage risk.

9. APPRAISED VALUE:

☐ This Contract is contingent upon the Property being valued according to the Lender's appraisal or other appraisal as agreed upon by the Parties ("Appraised Value") for the Purchase Price or higher. If the Parties are made aware that the Appraised Value is less than the Purchase Price and the Seller Delivers Notice to the Buyer within 5 Business Days or Closing (whichever earliest) of an amendment to reduce the Purchase Price to the Appraised Value, the Parties agree to proceed to Closing under terms of this Contract with the Purchase Price amended to be the Appraised Value. If Seller is aware and refuses to reduce as stated above, Buyer may proceed to Closing or terminate this Contract by Delivering Notice of Termination to the Seller.

☒ This Contract is not contingent upon the Property being valued at an Appraised Value according to the Lender's appraisal or other appraisal as agreed upon by the Parties for the Purchase Price or more.

10. SURVEY, TITLE EXAMINATION, ELEVATION, INSURANCE: Brokers recommend Buyer have Property surveyed, title examined, elevation/wetlands/beachfront determined, and appropriate Insurance (e.g. flood, flood contents, hazard, liability, owner's title) effective at Closing. Unless otherwise agreed upon in writing by Parties, Buyer to obtain new Insurance policies by Closing and Seller may cancel existing Insurance after Closing. Flood Insurance, if required by Lender or at Buyer's option, shall be assigned to Buyer with permission of carrier and premium prorated to Closing. Buyers are solely responsible to investigate pricing, availability, coverage, and requirements of Insurance (e.g. flood, flood contents, hazard, liability) for the property prior to signing Contract.

11. SURVIVAL: If any provision herein contained which by its nature or effect is required to be observed, kept, or performed after Closing, it will survive the Closing and remain binding upon for the parties hereto until fully observed, kept or performed.

12. DUE DILIGENCE:

The DUE DILIGENCE PERIOD ends no later than 90 Business Days after Contract's original Primary Effective Date unless the Parties agree in writing to extend the Due Diligence Period.

During the Due Diligence Period, Buyer may take timely/prudent steps to help Buyer/inspectors, Seller/Estimators, and REALTORS® all have adequate time for: Buyer to coordinate inspections and Contract Renegotiations, Seller to obtain estimates, Buyer and Seller to negotiate Contract terms, and Buyer to potentially timely/proper Due Diligence terminate or buy.

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SCR Form 330 11/2017 PAGE 3 of 9

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During the Due Diligence Period, Seller agrees Buyer may rely on the following list of five items in accordance with Contract and laws. Buyer is solely responsible for inspections. Buyer is not required to inspect. Until Buyer timely/properly terminates the Contract or the Parties agree on an amended Contract, the Buyer can rely on #1, #2, #3, #4, and #5. TIME IS OF THE ESSENCE. Delivering a Repair Request does not extend the Due Diligence Period.

- (1) Conduct/obtain inspections [e.g. on site conditions, off site conditions]
- (2) Deliver Repairs Requests Notice to Seller [e.g. SCR525 with all repair requests, all/ portions of reports]
- (3) Proceed under amended Contract [e.g. SCR330 and SCR525, SCR390, SCR391]
- (4) Proceed under As Is Contract [e.g. Buyer desires to buy anyway, Buyer wants Property without Repair]
- (5) Terminate Contract by timely/properly Delivering "Notice of Termination" and "Termination Fee" to Seller within the Due Diligence Period, any remaining Earnest Money shall be returned to the Buyer.

TERMINATION: During the Due Diligence Period, Buyer may unilaterally terminate this Contract by Delivering to the Seller both Notice of Termination and a Termination Fee of \$ _____ USD Good Funds. **DURING THE DUE DILIGENCE PERIOD, SHOULD BUYER FAIL TO OBTAIN A NEW/AMENDED CONTRACT WITH THE SELLER OR BUYER FAIL TO TIMELY/PROPERLY DUE DILIGENCE TERMINATE THE CONTRACT DURING THE DUE DILIGENCE PERIOD:** The Buyer agrees to buy and Seller agrees to sell the Property AS IS. Parties agree "As Is" means Buyer buys the Property for the Purchase Price while Seller maintains the Property from the Effective Date through Closing subject to normal wear otherwise without repair or replacement and sells the Property for the Purchase price unless otherwise agreed upon in writing by the Parties in this Contract.

13. FIRE OR CASUALTY OR INJURY: In case the Property is damaged wholly or partially by fire or other casualty prior to Closing, Parties will have the right for 5 Business Days after Notice of damage to Deliver Notice of Termination to other Party. If Party does not Deliver Notice of Termination, the Parties proceed according to the Contract and Seller is to be responsible to (1) repair all damage, (2) remit to Buyer an amount for repairs, or (3) assign to Buyer the right to all proceeds of insurance and remit any deductible amount applicable to such casualty. If Buyer or inspections caused the damage, Buyer is responsible for indemnifying Seller for damages. Brokers and Parties should ensure that they are protected by appropriate risk management strategies such as insurance.

14. BUILDING PERMIT: This Contract ☐ is ☒ is not contingent upon Buyer's ability to acquire all required licenses and permits from the appropriate authorities to build on the Property. No later than _____ Business Days after the original Effective Date unless the Parties agree in writing to extend this Building Permit Period, Buyer may unilaterally terminate this Contract by Delivering to the Seller a Notice of Termination due to inability to acquire all required licenses and permits from the appropriate authorities to build on the Property. If Seller receives the Delivered Notice of Termination during the Building Permit Period, any remaining Earnest Money shall be returned to the Buyer. Should Buyer not Deliver Notice of Termination due to inability to acquire all required licenses and permits from the appropriate authorities to build on the Property to Seller during the Building Permit Period, Buyer agrees to purchase and Seller agrees to sell the Property in accordance with Contract.

15. REZONING: This Contract ☐ is ☒ is not contingent upon the Property being rezoned to _____ by full approval (without any appeal during the appeal period) by the appropriate authorities. No later than _____ Business Days after the original Effective Date unless the Parties agree in writing to extend this Rezoning Period, Buyer may unilaterally terminate this Contract by Delivering to the Seller a Notice of Termination due to inability to acquire rezoning from the appropriate authorities to build on the Property. If Seller receives the Delivered Notice of Termination during the Rezoning Period, any remaining Earnest Money shall be returned to the Buyer. Should Buyer not Deliver Notice of Termination due to inability to acquire rezoning from the appropriate authorities during the Rezoning Period, Buyer agrees to purchase and Seller agrees to sell the Property in accordance with Contract. The ☐ Buyer or ☐ Seller shall be responsible for pursuing rezoning and paying all associated costs. All rezoning applications shall be submitted to the Seller for Seller's approval prior to filing. Seller shall not unreasonably or untimely withhold approval. All Parties agree to cooperate, sign the necessary documentation, and make efforts to support the rezoning application.

16. WELL, SEPTIC, WATER LINE, SEWER AVAILABILITY: This Contract ☒ is ☐ is not contingent upon Buyer's ability to obtain from the South Carolina Department of Health and Environmental Control or other appropriate authorities all required permits for a well and septic system suitable for the Buyer's intended structure in the event a well or septic system is needed on the Property. No later than 60 Business Days after the original Effective Date unless the Parties agree in writing to extend this Well and Septic Permit Period, Buyer may unilaterally terminate this Contract by Delivering to the Seller a Notice of Termination due to inability to acquire all required permits from the appropriate authorities to install a conventional well and conventional septic system on the Property. If Seller receives the Delivered Notice of Termination

[PSB] BUYER [] BUYER [] SELLER [] SELLER HAVE READ THIS PAGE

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during the Well and Septic Period, any remaining Earnest Money shall be returned to the Buyer. Should Buyer not Deliver Notice of Termination due to inability to acquire all required permits from the appropriate authorities to install a well and septic system on the Property to Seller during the Well and Septic Period, Buyer agrees to purchase and Seller agrees to sell the Property in accordance with Contract. If the Property is connected or capable of being connected to a water and or sewer line maintained by a private or public utility for a customary tap fee not to exceed \$ _____, the Buyer agrees to waive any applicable portion of the Well and Septic Contingency. Seller represents the Property is connected to water system: ☐ county ☐ city ☐ private ☐ corporate ☐ community ☐ well ☐ other _____. Seller represents the Property is connected to water disposal system: ☐ septic ☐ sewer ☐ private ☐ corporate ☐ government ☐ other _____.

17. CONDITION OF PROPERTY: Seller shall not remove any timber, vegetation, dirt, minerals, or otherwise affect the condition of the property from the Effective Date through Closing. All timber, vegetation, dirt, minerals, or similar shall remain as part of the Property and be conveyed to the Buyer at Closing. The Seller shall not bring any trash, refuse, debris, dirt, fill, medical wastes, hazardous wastes, or other materials onto the Property. Seller shall Deliver Notice of any legal action or condemnation action to the Buyer as soon as possible. If Seller Delivers such Notice, Buyer may unilaterally terminate this Contract by Delivering to the Seller a Notice of Termination. If Seller receives this Delivered Notice of Termination at any time, remaining Earnest Money shall be returned to the Buyer. Should Buyer not Deliver this Notice of Termination, Buyer agrees to purchase and Seller agrees to sell the Property in accordance with Contract.

18. SC RESIDENTIAL PROPERTY CONDITION DISCLOSURE STATEMENT ("CDS") [check one]:

☐ Buyer and Seller agree that Seller has Delivered prior to this Contract, a CDS to Buyer, as required by SC Code of Laws Section 27-50-10 et seq. If after delivery, Seller discovers a CDS material inaccuracy or the CDS becomes materially inaccurate due to an occurrence or circumstance; the Seller shall promptly correct this inaccuracy (e.g. delivering a corrected CDS to the Buyer or making reasonable repairs prior to Closing). Buyer understands the CDS does not replace inspections. Buyer understands and agrees the CDS contains only statements made by the Seller. Parties agree the Brokers are not responsible nor liable for any information in the CDS and the Brokers have met requirements of SC Code 27-50-70. CDS is not a substitute for the Buyers and Inspectors inspecting the Property, Property Issues, and off site conditions for all needs.

☒ Buyer and Seller agree that Seller will **NOT** complete nor provide a CDS to Buyer in accordance with SC Code of Law, as amended, Section 27-50-30, Paragraph (13). Buyers have sole responsibility to inspect Property Issues for all their needs.

19. LEAD BASED PAINT/LEAD HAZARDS: If Property was built or contains items created prior to 1978, it may contain lead based hazards and Parties agree to sign "Disclosure of Information of Lead Based Paint and/or Lead Hazards" forms (e.g. SCR315) and give copies to Brokers. Parties acknowledge receiving and understanding the EPA pamphlet "Protect your Family From Lead in Your Home." For their protection, Buyers should conduct/obtain inspections of all Property Issues per their needs.

20. SEX OFFENDER/CRIMINAL INFORMATION: Parties agree that Brokers are not responsible for obtaining or disclosing information in the SC Sex Offender Registry and no course of action may be brought against any Brokers for failure to obtain or disclose sex offender or criminal information. Buyer and Seller agree that they have sole responsibility to obtain their own sex offender, death, psychological stigma, clandestine laboratory, and crime information from sources (e.g. law enforcement, P.I., web). The Buyer may obtain information about the Sex Offender Registry and persons registered with the Registry by contacting the local county Sheriff or other appropriate law enforcement officials.

21. TRUST ACCOUNT INTEREST/CHARITABLE CONTRIBUTION: According to the South Carolina Real Estate Commission regulations and South Carolina laws, any interest earned from deposit to Closing on Buyer's earnest money deposit belongs to Buyer. It is understood that Broker ☐ may ☒ may not place deposited earnest monies into an interest bearing trust account. If Buyer's earnest money deposit is deposited into an interest bearing trust account, Parties agree that Broker will retain all interest earned in said account and may contribute some or all to a charitable enterprise.

22. SC INCOME TAX ON NON-RESIDENT GAIN AND COMPLIANCE AND USA FEDERAL INCOME TAX: Seller and Buyer will comply with the provisions of the South Carolina laws [e.g. 12-8-580 (as amended)] regarding state income tax withholding requirements if the Seller is not a resident or has not filed South Carolina state income tax returns. Seller and Buyer will comply with United States of America federal income tax laws. Seller and Buyer should discuss tax laws and minimization actions with their qualified tax advisor. Parties will comply with all local, state, federal laws, and any rules.

23. ROLLBACK TAXES (IF ANY): The Parties agree that the ☐ Seller or ☒ Buyer shall pay any rollback taxes when rollback taxes are determined and billed.

FSB BUYER [_____] BUYER [_____] SELLER [_____] SELLER HAVE READ THIS PAGE
SCR Form 330 11/2017 PAGE 5 of 9

24. SPECIAL STUDIES AREA, WETLANDS, AND ENVIRONMENTAL MATTERS: All reports and certifications required by the Lender, Buyer, or any government concerning any special study area, wetlands, or environmental issues shall be ordered by Buyer and paid for by Buyer.

All of these reports or certifications shall be completed no later than 60 Business Days after the original Effective Date, unless the Parties agree in writing or extend this period ("Environmental Period"). In the event repairs are necessary to address environmental concerns (Repair Requests); the Seller shall be Delivered Notice in writing of the specific defects or deficiencies no later than 2 Business Days after the Environmental Period. If the Buyer fails to notify the Seller within this timeframe, Buyer shall have waived any and all rights under terms of this section. If Lender's commitment requires any additional inspections or certifications, these are to be provided by the Buyer.

Upon Delivered Notice of the Repair Requests, Seller has five Business Days to address the Buyer's Repair Requests. The costs of all repairs to address environmental concerns to be paid by Seller. If the Seller fails to agree to make these repairs within this timeframe, the Buyer shall have 2 Business Days to choose any of the following options (1) accept the Property in its present condition, (2) negotiate with the Seller for the payment of these repairs or (3) terminate this Contract and receive their Earnest Money. The repairs to any other items are the sole responsibility of the Buyer. The obligations of the Seller for repairs terminate upon Closing. If the Seller agrees to make the repairs, the Parties agree to proceed under Contract.

25. ENTIRE AND BINDING AGREEMENT (MERGER CLAUSE): Parties agree that this Contract expresses the entire agreement between the parties, that there is no other agreement, oral/otherwise, modifying the terms and this Contract is binding on Parties and principals, heirs, personal representatives, successors, and assigns. Illegal provisions are severable.

26. ADJUSTMENTS: Buyer and Seller agree to settle or prorate, annually or as appropriate; as of Closing Date: (A) utilities and waste fees issued after Closing which include service for time Property was owned/occupied by Seller (B) real estate taxes and owner association fees/assessments for the calendar year of Closing (C) any rents, deposits, fees associated with leasing (D) insurance, EMS service, fuel/consumables, and assessments. Closing Attorney shall make tax proration based on the available tax information deemed reliable by the Closing Attorney. Should the tax or tax estimate or proration later become inaccurate or change, Buyer and Seller shall make any financial adjustments between themselves once accurate tax information is available and Buyer takes timely reasonable steps to minimize taxes. This section survives Closing. Buyer is solely responsible for timely and reasonably minimizing the Buyer's taxes and obtaining tax minimization procedural information including related legal counsel and financial counsel. Special assessments approved prior to Closing shall be the responsibility of the Seller. Special Assessments approved after Closing shall be the responsibility of the Buyer.

27. DEFAULT/BREACH OF CONTRACT:

- (A) If Seller defaults in the performance of any of the Seller's obligations under this Contract ("Default"), Buyer may:
- (i) Deliver Notice of Default to Seller and terminate Contract and
 - (ii) Pursue any remedies available to Buyer at law or equity and
 - (iii) Recover attorneys' fees and all other direct costs of litigation if Seller found in default/breach of Contract.
- (B) If Buyer defaults in the performance of any of the Buyer's obligations under this Contract ("Default"), Seller may:
- (i) Deliver Notice of Default to Buyer and terminate Contract and
 - (ii) Pursue any remedies available to Seller at law or equity and
 - (iii) Recover attorneys' fees and all other direct costs of litigation if Buyer found in default/breach of Contract.
- (C) If either/both Parties default, Parties agree to sign an escrow deposit disbursement agreement or release agreement.
- (D) Parties may agree in writing to allow a Cure Period for a default. If within the Cure Period, either Party cures the Default and Delivers Notice, Parties shall proceed under the Contract.

28. MEDIATION: To potentially avoid expensive/lengthy/uncertain litigation, Parties may voluntarily/cooperatively decide which mediator to hire, how to pay the mediator, where to meet for mediation talks, and their own settlement agreement. Mediators do not decide settlement outcomes (Parties decide). Mediators merely facilitate the Parties reaching their own settlement and documenting settlement. Parties agree to attempt mediation for any dispute, claim, breach, representations made by any Party/Broker/other (e.g. concealment, misrepresentation, negligence, fraud) or service issues related to this Contract by using the National Association of REALTORS® Mediation Dispute Resolution System (803-772-6206 or www.NAR.REALTOR/policy/mediation or www.screaltors.org/mediation). Parties agree that the duty to attempt mediation survives closing and any signed mediation settlement agreement is binding. Parties agree some matters may proceed without mediation (e.g. foreclosure, action to enforce a mortgage or deed of trust or "rent to own" agreement, unlawful detainer action, file/enforce mechanic's lien, probate issues, interpleader action on earnest money). Parties agree some matters are not a waiver of mediation nor a breach of duty to attempt mediation (e.g. filing judicial action enabling recording notice of pending action, order for attachment/receivership/injunction or other provisional remedies).

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SCR Form 330 11/2017 PAGE 6 of 9

34. NOTICE AND DELIVERY: Notice is any unilateral communication (offers, counteroffers, acceptance, termination, unilateral requests for better terms, and associated addenda/amendments) from one Party to the other. Notice to/from a Broker representing a Party is deemed Notice to/from the Party. All Notice, consents, approvals, counterparts, and similar actions required under Contract must be in paper or electronic writing and will be effective as of delivery to the Notice address/email/fax written below and awareness of receipt by Broker ("Delivered") unless Parties agree otherwise in writing.

35. PARTIES ARE SOLELY RESPONSIBLE FOR OBTAINING LEGAL ADVICE PRIOR TO SIGNING THIS CONTRACT AND DURING THE TRANSACTION. REAL ESTATE LICENSEES RECOMMEND OBTAINING LEGAL COUNSEL. Due to potential criminal activity, parties are solely responsible to verify all wiring instructions with law firm/bank and understand that audio/visual surveillance may occur. Parties acknowledge receiving, reading, reviewing, and understanding: this Contract, the SC Disclosure of Real Estate Brokerage Relationships form, any agency agreements, and copies of these documents. Parties acknowledge having time and opportunity to review all documents and receive legal counsel from their attorneys prior to signing Contract.

36. EXPIRATION OF OFFER: When signed by a Party and intended as an offer or counter offer, this document represents an offer to the other Party that may be rescinded any time prior to or expires at 5 ☐ AM ☒ PM on May 3, 2021 unless accepted or counter-offered by the other Party in written form Delivered prior to such deadline: _____

IN WITNESS WHEREOF, this Contract has been duly executed by the Parties as true to the best of their knowledge/belief. If signee is not a Party, appropriate legal documents (e.g. Power of Attorney, Corporate Authorization) are ☐ attached or ☒ to be Delivered within 2 Business Days. Parties shall Initial and date all page and changes in this Contract.

BUYER: [Signature], sole member Date: 4/13/2021 Time: _____
Opus Petrus, LLC

BUYER: _____ Date: _____ Time: _____

NOTICE ADDRESS/EMAIL/FAX: _____

SELLER: [Signature] Date: 4-17-21 Time: 5:30 PM
CJN, LLC

SELLER: _____ Date: _____ Time: _____

NOTICE ADDRESS/EMAIL/FAX: _____

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TRANSACTIONAL INFORMATION ONLY (Attach SCR390 if space needed for contractual agreement terms):

ESCROW AGENT ACKNOWLEDGEMENT SIGNATURE: _____

ESCROW AGENT NAME (BROKER IN CHARGE/OTHER): Keable & Brown

DESCRIBE ESCROW AGENCY (BROKERAGE/LAW FIRM/OTHER): _____

ESCROW AGENT CONTACT INFO: Ryan Brown - ryan@keablelaw.com(864)250-4000109 Laurens Road

LICENSEE: _____ SC LICENSE # _____ EXPIRES _____

BROKER IN CHARGE: _____ SC LICENSE # _____ EXPIRES _____

BROKERAGE COMPANY NAME: _____

INVOLVED AS: ☐ BUYER AGENT ☐ SELLER SUBAGENT ☐ DUAL AGENT ☐ BUYER DESIGNATED AGENT*
☐ CUSTOMER FACILITATOR ☐ TRANSACTION BROKERAGE

MEMBERS OF _____ ASSOCIATION/BOARD OF REALTORS®

NOTICE ADDRESS: _____

NOTICE EMAIL/FAX: _____

MOBILE PHONE: _____ OFFICE PHONE: _____

OTHER: _____

LICENSEE: _____ SC LICENSE # _____ EXPIRES _____

BROKER IN CHARGE: _____ SC LICENSE # _____ EXPIRES _____

BROKERAGE COMPANY NAME: _____

INVOLVED AS: ☐ SELLER AGENT ☐ SELLER SUBAGENT ☐ DUAL AGENT ☐ SELLER DESIGNATED AGENT*
☐ CUSTOMER FACILITATOR ☐ TRANSACTION BROKERAGE

MEMBERS OF _____ ASSOCIATION/BOARD OF REALTORS®

NOTICE ADDRESS: _____

NOTICE EMAIL/FAX: _____

MOBILE PHONE: _____ OFFICE PHONE: _____

OTHER: _____

***DESIGNATED AGENCY - THE BROKER-IN-CHARGE AND ALL ASSOCIATED LICENSEES, EXCEPT THE DESIGNATED AGENTS, ARE DUAL AGENTS. NO AGENT IS NO CLIENT SERVICE, YES CUSTOMER SERVICE.**[BS] BUYER [_____] BUYER [3] SELLER [_____] SELLER HAVE READ THIS PAGE

SCR Form 330 11/2017 PAGE 9 of 9

September 8, 2021

Nicholas Franchina
CJN, LLC
4113 E. North St.
Greenville, SC 29615

RE: Notice of Termination: Agreement Regarding Sale of Real Property on Standing Springs Road in Simpsonville, South Carolina

Dear Nick:

Please allow this correspondence to serve as Opus Petrus, LLC's ("OP") Notice of Termination of the Agreement to Buy/Sell ("Contract") Real Property on Standing Springs Road in Simpsonville, South Carolina ("Property"), as executed in May of 2021 by CJN, LLC ("CJN") and OP. For ease of reference, a copy of the Contract is attached hereto, along with the latest amendment by the Parties. Unfortunately, OP cannot move forward with the contemplated purchase transaction at this time and is, therefore, furnishing notice to CJN of its termination of the Contract as allowed under its terms.

As you know, there has been a long-standing business relationship between our respective companies and, for that reason, OP's termination of the Contract was a difficult decision to reach. However, it is my hope that you can understand why we feel compelled to terminate the Contract at this time, as several factors make it impossible for OP to move forward.

First, due to CJN's ongoing dispute with Crescent Homes, SC, LLC ("Crescent"), OP has been unable to complete the due diligence it would pursue in a property transaction such as this one. Indeed, when the Parties (i.e., CJN and OP) first executed the Contract (back in May), it was my hope CJN's dispute with Crescent would soon end. At that time, the due diligence period appeared amply long enough for CJN to resolve its dispute with Crescent (whether through the Courts, by negotiated outcome, or by virtue of Crescent's exercise of its contractual rights (if any) regarding the Property), while still allowing OP sufficient time to finish the due diligence it needed to complete, assuming the Property remained available to purchase. Unfortunately, this did not occur and the lawsuit between Crescent and CJN remains ongoing. Of course, CJN and OP thereafter amended the Contract to extend the due diligence period for an even longer period but now even the extended deadline imminently looms.

As such and in my view, OP now unexpectedly finds itself in a "damned if you do" and "damned if you don't" due diligence scenario. On one hand, if OP pushes forward with its due diligence, it will incur out of pocket costs of approximately ten thousand dollars (\$10,000) (perhaps more) simply by completing the due diligence needed to move forward with buying the Property. But, in such an event, OP will still lack clarity as to whether it can move forward with its plans despite investing in its due diligence. This is true because: Crescent has clouded the Property's title (as I understand the underlying facts) and appears likely to continue doing so; and Crescent may, at some point, also purport to exercise its purported "contract" right of first refusal,



which admittedly appears unenforceable, but will nonetheless further cloud the Property's title for an unknown duration until ultimately resolved by the Courts. Either way, OP faces the undesirable prospect of sinking money into completing due diligence on the Property, which it thereafter cannot readily use or, according to Crescent, may never be able to acquire.

By contrast, if OP elects not to spend the money and, as a result, does not complete due diligence, then the date specified by the Contract's amendment will soon lapse (by month's end) and OP will be contractually obligated to buy the Property. In such event, OP will be contractually required to proceed with closing on the Property without the benefit of completing any due diligence, which no reasonably prudent investor would ever do. To make matters worse, the cloud on the Property's title—resulting from Crescent's conduct (as I understand the same)—will likewise persist. So, under scenario two, OP would acquire the Property blindly—having conducted no due diligence—only to find itself still in the untenable position of being unable to use the Property for an unknown time period or, according to Crescent, ever.

Second, and as referenced above, Crescent's ongoing lawsuit with CJN—along with my understanding of Crescent's efforts to cloud the Property's title—puts OP in an untenable position since it is unclear when OP will be able to sell, develop, or use the Property in a way that generates a return on its investment in the Property. As you know, OP is a small, relatively unsophisticated, limited liability company that I started in hopes of making investments capable of generating small returns that I hoped then to use toward my retirement. OP was never intended to have, nor does it possess, the ability to acquire real property (or similar investments) and sit on them for protracted, indefinite periods of time. As a result, the cloud over the Property's title, which appears likely to last for a protracted time-period—is a serious business problem that OP cannot overcome in moving forward with purchasing the Property from CJN.

Third, as you also know, Crescent is represented by Attorney Ellis Lesemann from the low country. Mr. Lesemann has made numerous threats/untrue statements against and about OP merely for trying to buy the Property from CJN. This is true even though OP remained, *at all times*, in the Contract's due diligence period and never even had the chance to move beyond the due diligence period because of the conduct of Crescent and Mr. Lesemann. While OP certainly understands that it possesses claims against Crescent, Mr. Lesemann, and his law firm for their collective efforts seeking to coerce and extort OP into terminating its Contract with CJN (thereby abandoning the opportunity to purchase the Property), it is, by a like token, extremely unattractive to OP to become embroiled in protracted litigation against Crescent, Mr. Lesemann, and his law firm.

As noted, OP was formed as a company that I hoped to use as a corporate vehicle to save monies toward my retirement. Spending money to fund a lawsuit is contrary to OP's purpose as a corporate entity and frankly would work an extreme hardship upon both myself and OP. As a result, OP feels compelled to terminate its Contract with CJN because it cannot afford to waste money on prosecuting lawsuits. Of course, if Crescent, Mr. Lesemann, and his law firm force the issue by virtue of their continued, baseless attacks on OP and myself, I may have no alternative but to press such claims in a courtroom. Otherwise, on behalf of OP and myself, we would rather simply terminate the Contract and pursue another investment opportunity when it comes along.

Last, in my view, OP's termination of the Contract with CJN is likely what Crescent and Mr. Lesemann had hoped all along would occur by: threatening OP, threatening to pursue a SLAP suit against OP, and otherwise making what I perceive as defamatory remarks against OP and myself. I am currently evaluating what recourse exists, in what venues, and with what regulatory authorities, should such misconduct fail to cease immediately. Nonetheless, I regret having to terminate the Contract with CJN under such extortionate and underhanded circumstances. Historically, both you and CJN have been good business partners over the years. I hope that does not change because of what, in my opinion, amounts to below-board conduct on the part of Mr. Lesemann and Crescent.

Should you have any questions or concerns, please feel free to contact me.

Sincerely,

Peter Bouharoun

Opus Petrus, LLC



AGREEMENT/CONTRACT: TO BUY AND SELL REAL ESTATE (GENERAL USE AND LOTS/ACREAGE)

1. **PARTIES:** This legally binding Agreement ("Contract") To Buy and Sell Real Estate is entered into by:

Buyer(s), Opus Petrus, LLC

Seller(s), CJN, LLC ("Buyer"), and

(A) "Party" - defined as either Buyer or Seller, "Parties" defined as both Buyer and Seller. ("Seller").

(B) "Brokers" are licensed South Carolina brokers-in-charge, their associated real estate licensees, and their subagents.

(C) "Closing Attorney" - is the licensed South Carolina attorney selected by Buyer to coordinate the transaction and Closing. TBD

(D) "Effective Date" - the final date upon which a Party to the negotiation places the final and required signatures and/or initials and date on this Contract and Delivers Notice to Initially cause this primary Contract to be binding on all Parties.

(E) "Business Day" - a 24 hour period (Monday/Tuesday/Wednesday/Thursday/Friday) beginning at 10 AM and counted from 10 AM of the first Business Day following the appropriate date (Effective Date, Closing Date, stated date, Notice Delivery date). Business Days shall not begin, end, or include any Saturday, Sunday, or Federal legal holiday.

(F) "Good Funds" - is the transfer of the required amount of United States Dollars (USD) within any required timeframe.

(G) "Time" - all time stated shall be South Carolina local time. Time is of the essence with respect to all provisions of this Contract stipulating time, deadline, or performance periods. 4/19/2021

☐ BUYER ☒ SELLER IS A SOUTH CAROLINA REAL ESTATE LICENSEE

2. **PURCHASE PRICE:** \$ 1,250,000.00

One Million, Two Hundred Fifty Thousand

Payable by transfer of Good Funds via ☐ Finance or ☒ a combination of Finance and Cash USD or ☒ Cash USD. Verification of Cash available for Closing is ☐ attached ☒ not attached ☐ to be Delivered before 4/19/2021. This Contract ☐ is ☒ is not contingent upon the sale and closing of Buyer's real property and SCR504 ☐ is ☒ is not attached.

3. **PROPERTY:** Hereby acknowledging sufficient good Contract consideration (e.g. mutual promises herein), Seller will sell and convey and Buyer will buy for the Purchase Price any and all lot or parcel of land, appurtenant interests, improvements, landscape, systems, and fixtures if any thereon and further described below ("Property"). Seller agrees to maintain in operable condition the Property and any personal property conveying, including any landscaping, grounds and any agreed upon repairs or replacements, from the Effective Date through Closing subject to normal operable wear and tear. Buyer acknowledges opportunity to inquire about owners association issues, common area issues, condominium master deed issues, assigned parking/storage areas, memberships, lease issues and financed equipment prior to signing Contract. Leasing issues and items and financed equipment see Adjustments (e.g. tenants, leases, future vacation renters, SC vacation rental act reservations, rents, deposits, documents, solar panels, fuel tanks with fuel, alarm systems, satellite equipment, roll carts).

Address Standing Springs Rd

Unit #

City Simpsonville

State of South Carolina

Zip 29680

County of Greenville

Lot Block Section/Phase Subdivision

Other

Tax Map 0584010102601

Parties agree that no personal property will transfer as part of this sale, except described below and/or ☐ in attachment(s):

4. **CONVEYANCE/CLOSING/POSSESSION:** "Closing" occurs when Seller conveys Property to Buyer and occurs no later than 5 PM on or before September 15, 2021 ("Closing Date") with an automatic extension of 5 business days for an unsatisfied contingency through no fault of either party. Conveyance shall be fee simple made subject to all easements, reservations, rights of way, restrictive covenants of record (provided they do not make the title unmarketable or adversely affect the use/value of the Property in a material way) and to all government statutes, ordinances, rules, permits, and regulations. Seller agrees to convey marketable title with a properly recorded general warranty deed free of encumbrances and liens except as herein stated; and in name(s): TBD

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Acacia Realty, LLC, 4163 East North Street Greenville, SC 29615
Zach Roberts

Produced with zipForm® by zipLoft® 18078 Fifteen Mile Road, Fraser, Michigan 48034 www.zipLoft.com

Phone: (866) 965-6816

Fax:

Standing Springs

SCR Form 330 11/2017 PAGE 1 of 9

PSB

and ownership type determined by Buyer. The deed shall be delivered to the Closing Attorney's designated place on or before the Closing Date no later than 10 AM. Seller agrees to pay all statutory deed recording fees. Parties agree the Brokers shall have access to the closing and relevant documents; and the Brokers shall be given copies of the settlement statement prior to Closing for review. Parties agree to hire/use licensed Attorney(s). Seller shall convey possession of a vacant and reasonably clean Property, free of debris, along with all keys, codes, any remote controls, available documents (e.g. manuals, equipment warranties, service information) and similar ownership items to Buyer at Closing.

5. EARNEST MONEY: Total \$ 5,000.00 (USD) Earnest Money is paid as follows: \$ _____ accompanies this offer and \$ 5,000.00 will be paid within 2 Business Days after Effective Date and Earnest Money is in the form of ☒ check ☐ cash ☐ other (e.g. wire) to be a Credit to Buyer at Closing or disbursed only as Parties agree in writing or by court order or by Contract or as required for Closing by Closing Attorney. Buyer and seller authorize Keable & Brown as Escrow Agent to deposit and hold and disburse earnest money according to the terms of any separate escrow agreement, the law, and any regulations. Broker does not guarantee payment of a check or checks accepted as earnest money. Parties direct escrow agent to communicate reasonable information confirming receipt and status of earnest money upon a Broker request.

THE PARTIES UNDERSTAND AND AGREE THAT UNDER ALL CIRCUMSTANCES INCLUDING DEFAULT, ESCROW AGENT WILL NOT DISBURSE EARNEST MONEY DEPOSIT TO EITHER PARTY UNTIL BOTH PARTIES HAVE EXECUTED AN AGREEMENT AUTHORIZING THE DISBURSEMENT (e.g. SCR518, SCR517, mediation agreement) OR UNTIL A COURT OF COMPETENT JURISDICTION HAS DIRECTED A DISBURSEMENT. EARNEST MONEY WILL NOT BE DISBURSED UNTIL DETERMINED TO BE GOOD FUNDS. IF LEGAL ACTIONS OCCUR RELATED TO EARNEST MONEY, PARTY RECEIVING THE LEAST AMOUNT OF EARNEST MONEY IN THE COURT'S DISBURSEMENT ORDER AGREES TO INDEMNIFY ESCROW AGENT'S FEES, COURT COSTS AND ATTORNEY FEES. IF INTERPLEADER IS TO BE UTILIZED, PARTIES AGREE THAT \$ _____ SHALL BE PAID TO THE ESCROW AGENT BY THE PARTIES AS COMPENSATION BEFORE ESCROW AGENT INITIATES COURT OF COMPETENT JURISDICTION PROCEEDINGS ON EARNEST MONEY.

6. TRANSACTION COSTS: Buyer's transaction costs include all costs and closing costs resulting from selected financing, pre-paid recurring items, insurance (mortgage insurance, title insurance lender/owner, hazard) discount points, all costs to obtain information from or pertaining to any owner's association (aka certificate of assessment), interest, non-recurring closing costs, title exam, FHA/VA allowable costs, fees and expenses of Buyer's attorney, contractually required real estate broker compensation, and the cost of any inspector, appraiser, or surveyor. Seller's transaction costs include deed preparation, deed recording costs, deed stamps/tax/recording costs calculated based on the value of the Property, all costs necessary to deliver marketable title and payoffs, satisfactions of mortgages/lens and recording, property taxes pro-rated at Closing, contractually required real estate broker compensation, and fees and expenses of Seller's attorney.

At Closing, Seller will pay Buyer's transaction costs not to exceed \$ _____ OR _____ % of purchase price, whichever is higher, which includes non-allowable costs first and then allowable costs (FHA/VA). Buyer is responsible for any Buyer's transaction costs exceeding this amount. If the amount exceeds the actual amount of those costs or amount allowed by Lender, then any excess funds will revert to Seller. Seller will also provide or pay for all of Seller's transaction costs. If no Closing, Buyer is responsible for Buyer's transaction costs and Seller responsible for Seller's transaction costs.

Private/public transfer fees and any costs similar to transfer fees (ex. capital contributions, conservancy fees, estoppel fees, or otherwise named but similar fees paid to the owners association) are the ☐ Seller's or ☒ Buyer's transaction costs.

Unless otherwise agreed upon in writing, Buyer will pay Buyer's transaction costs and Seller pay Seller's transaction costs

7. FINANCE: Buyer's obligation under this Contract ☐ is ☒ is not contingent upon obtaining financing of a ☐ 30 year or ☐ 15 year or ☐ other _____ purchase money loan at reasonable prevailing market terms with loan(s) equal in amounts of minimum _____ % and maximum _____ % of the Purchase Price or Appraised Value whichever is lower. ("Financing Contingency"). Financing Contingency expires at Closing ("Financing Period"). Buyer must make timely good faith efforts to apply for and obtain financing while refraining from contrary actions ("Financing Effort"). In a timely manner, Buyer shall inform Seller and Brokers of pertinent financing issues and authorize Buyer's Lender to disclose pertinent loan information to Seller and Brokers ("Financing Disclosure"). Buyer shall apply for financing within _____ Business Days from the Effective Date and shall Deliver Notice to Seller of reasonable pre-final loan approval (e.g. pre-approval letter, initial approval letter) that contains no unreasonable credit, income, or asset conditions within _____ Business Days from the Effective Date (no repairs required prior to this Notice). Final loan approval occurs when Lender

PSB BUYER [] BUYER [] SELLER [] SELLER HAVE READ THIS PAGE

SCR Form 330 11/2017 PAGE 2 of 9

PSB
 * 1/28/21
 * 5-10-21
 funds loan(s). If a Lender subsequently declines or fails to approve financing, the Buyer shall notify the Seller and Brokers as soon as possible. If the Seller and Brokers are notified of inability to obtain financing during the Financing Period, either Party may terminate this Contract by Notice.

Lender (may change): Seller Financing ☐ FHA ☐ VA ☐ Conventional ☐ Seller
 Other Seller Financing
 An FHA VA Financing Addendum ☐ is ☐ is not attached. Additional financing terms ☐ are ☐ are not attached.

8. **INSPECTION/REINSPECTION RIGHTS:** Buyer and SC licensed and insured inspectors ("inspectors") reasonably perform any reasonable ultimately non-destructive examination and make reasonable record of the Property with reasonable Notice to Seller through Closing including investigations of off-site conditions and any issues related to the Property at Buyer Expense ("Inspections"). Buyer and persons they choose may make reasonable visual observations of Property.

Sellers will make the Property accessible for inspection and not unreasonably withhold access, unless otherwise agreed in writing by the Parties. Seller will keep all utilities operational through Closing unless otherwise agreed:
☒ Seller grants Buyer permission to connect utilities, pay for utilities, and hire professionals (e.g. electricians, plumbers) to safely connect and operate the utilities during the inspections
 Other see attached.

Buyer will hold harmless, indemnify, pay damages and attorneys fees to Seller and Brokers for all claims, injuries, and damages arising out of the exercise of these rights. Seller will hold harmless, indemnify, pay damages and attorneys fees to Brokers for all claims, injuries, and damages arising out of the exercise of these rights. Brokers recommend that Parties obtain all inspections as soon as possible. Brokers recommend that Parties and inspectors use insurance to manage risk.

9. APPRAISED VALUE:

☐ This Contract is contingent upon the Property being valued according to the Lender's appraisal or other appraisal as agreed upon by the Parties ("Appraised Value") for the Purchase Price or higher. If the Parties are made aware that the Appraised Value is less than the Purchase Price and the Seller Delivers Notice to the Buyer within 5 Business Days or Closing (whichever earliest) of an amendment to reduce the Purchase Price to the Appraised Value, the Parties agree to proceed to Closing under terms of this Contract with the Purchase Price amended to be the Appraised Value. If Seller is aware and refuses to reduce as stated above, Buyer may proceed to Closing or terminate this Contract by Delivering Notice of Termination to the Seller.

☒ This Contract is not contingent upon the Property being valued at an Appraised Value according to the Lender's appraisal or other appraisal as agreed upon by the Parties for the Purchase Price or more.

10. **SURVEY, TITLE EXAMINATION, ELEVATION, INSURANCE:** Brokers recommend Buyer have Property surveyed, title examined, elevation/wetlands/beachfront determined, and appropriate insurance (e.g. flood, flood contents, hazard, liability, owner's title) effective at Closing. Unless otherwise agreed upon in writing by Parties, Buyer to obtain new insurance policies by Closing and Seller may cancel existing insurance after Closing. Flood insurance, if required by Lender or at Buyer's option, shall be assigned to Buyer with permission of carrier and premium prorated to Closing. Buyers are solely responsible to investigate pricing, availability, coverage, and requirements of insurance (e.g. flood, flood contents, hazard, liability) for the property prior to signing Contract.

11. **SURVIVAL:** If any provision herein contained which by its nature or effect is required to be observed, kept, or performed after Closing, it will survive the Closing and remain binding upon for the parties hereto until fully observed, kept or performed.

12. DUE DILIGENCE:

The DUE DILIGENCE PERIOD ends no later than 90 Business Days after Contract's original Primary Effective Date unless the Parties agree in writing to extend the Due Diligence Period.

During the Due Diligence Period, Buyer may take timely/prudent steps to help Buyer/Inspectors, Seller/Estimators, and REALTORS® all have adequate time for: Buyer to coordinate inspections and Contract Renegotiations, Seller to obtain estimates, Buyer and Seller to negotiate Contract terms, and Buyer to potentially timely/proper Due Diligence terminate or buy.

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 SCR Form 330 11/2017 PAGE 3 of 9

During the Due Diligence Period, Seller agrees Buyer may rely on the following list of five items in accordance with Contract and laws. Buyer is solely responsible for inspections. Buyer is not required to inspect. Until Buyer timely/properly terminates the Contract or the Parties agree on an amended Contract, the Buyer can rely on #1, #2, #3, #4, and #5. TIME IS OF THE ESSENCE. Delivering a Repair Request does not extend the Due Diligence Period.

- (1) Conduct/obtain inspections [e.g. on site conditions, off site conditions]
- (2) Deliver Repairs Requests Notice to Seller [e.g. SCR525 with all repair requests, all/ portions of reports]
- (3) Proceed under amended Contract [e.g. SCR330 and SCR525, SCR390, SCR391]
- (4) Proceed under As Is Contract [e.g. Buyer desires to buy anyway, Buyer wants Property without Repair]
- (5) Terminate Contract by timely/properly Delivering "Notice of Termination" and "Termination Fee" to Seller within the Due Diligence Period, any remaining Earnest Money shall be returned to the Buyer,

TERMINATION: During the Due Diligence Period, Buyer may unilaterally terminate this Contract by Delivering to the Seller both Notice of Termination and a Termination Fee of \$ _____ USD Good Funds. DURING THE DUE DILIGENCE PERIOD, SHOULD BUYER FAIL TO OBTAIN A NEW/AMENDED CONTRACT WITH THE SELLER OR BUYER FAIL TO TIMELY/PROPERLY DUE DILIGENCE TERMINATE THE CONTRACT DURING THE DUE DILIGENCE PERIOD: The Buyer agrees to buy and Seller agrees to sell the Property AS IS. Parties agree "As Is" means Buyer buys the Property for the Purchase Price while Seller maintains the Property from the Effective Date through Closing subject to normal wear otherwise without repair or replacement and sells the Property for the Purchase price unless otherwise agreed upon in writing by the Parties in this Contract.

13. FIRE OR CASUALTY OR INJURY: In case the Property is damaged wholly or partially by fire or other casualty prior to Closing, Parties will have the right for 5 Business Days after Notice of damage to Deliver Notice of Termination to other Party. If Party does not Deliver Notice of Termination, the Parties proceed according to the Contract and Seller is to be responsible to (1) repair all damage, (2) remit to Buyer an amount for repairs, or (3) assign to Buyer the right to all proceeds of insurance and remit any deductible amount applicable to such casualty. If Buyer or inspections caused the damage, Buyer is responsible for indemnifying Seller for damages. Brokers and Parties should ensure that they are protected by appropriate risk management strategies such as insurance.

14. BUILDING PERMIT: This Contract ☐ is ☒ is not contingent upon Buyer's ability to acquire all required licenses and permits from the appropriate authorities to build on the Property. No later than _____ Business Days after the original Effective Date unless the Parties agree in writing to extend this Building Permit Period, Buyer may unilaterally terminate this Contract by Delivering to the Seller a Notice of Termination due to inability to acquire all required licenses and permits from the appropriate authorities to build on the Property. If Seller receives the Delivered Notice of Termination during the Building Permit Period, any remaining Earnest Money shall be returned to the Buyer. Should Buyer not Deliver Notice of Termination due to inability to acquire all required licenses and permits from the appropriate authorities to build on the Property to Seller during the Building Permit Period, Buyer agrees to purchase and Seller agrees to sell the Property in accordance with Contract.

15. REZONING: This Contract ☐ is ☒ is not contingent upon the Property being rezoned to _____ by full approval (without any appeal during the appeal period) by the appropriate authorities. No later than _____ Business Days after the original Effective Date unless the Parties agree in writing to extend this Rezoning Period, Buyer may unilaterally terminate this Contract by Delivering to the Seller a Notice of Termination due to inability to acquire rezoning from the appropriate authorities to build on the Property. If Seller receives the Delivered Notice of Termination during the Rezoning Period, any remaining Earnest Money shall be returned to the Buyer. Should Buyer not Deliver Notice of Termination due to inability to acquire rezoning from the appropriate authorities during the Rezoning Period, Buyer agrees to purchase and Seller agrees to sell the Property in accordance with Contract. The ☐ Buyer or ☐ Seller shall be responsible for pursuing rezoning and paying all associated costs. All rezoning applications shall be submitted to the Seller for Seller's approval prior to filing. Seller shall not unreasonably or untimely withhold approval. All Parties agree to cooperate, sign the necessary documentation, and make efforts to support the rezoning application.

16. WELL, SEPTIC, WATER LINE, SEWER AVAILABILITY: This Contract ☒ is ☐ is not contingent upon Buyer's ability to obtain from the South Carolina Department of Health and Environmental Control or other appropriate authorities all required permits for a well and septic system suitable for the Buyer's intended structure in the event a well or septic system is needed on the Property. No later than _____ 60 Business Days after the original Effective Date unless the Parties agree in writing to extend this Well and Septic Permit Period, Buyer may unilaterally terminate this Contract by Delivering to the Seller a Notice of Termination due to inability to acquire all required permits from the appropriate authorities to install a conventional well and conventional septic system on the Property. If Seller receives the Delivered Notice of Termination

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SCR Form 330 11/2017 PAGE 4 of 9

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during the Well and Septic Period, any remaining Earnest Money shall be returned to the Buyer. Should Buyer not Deliver Notice of Termination due to inability to acquire all required permits from the appropriate authorities to install a well and septic system on the Property to Seller during the Well and Septic Period, Buyer agrees to purchase and Seller agrees to sell the Property in accordance with Contract. If the Property is connected or capable of being connected to a water and or sewer line maintained by a private or public utility for a customary tap fee not to exceed \$ _____, the Buyer agrees to waive any applicable portion of the Well and Septic Contingency. Seller represents the Property is connected to water system: ☐ county ☐ city ☐ private ☐ corporate ☐ community ☐ well ☐ other _____. Seller represents the Property is connected to water disposal system: ☐ septic ☐ sewer ☐ private ☐ corporate ☐ government ☐ other _____.

17. CONDITION OF PROPERTY: Seller shall not remove any timber, vegetation, dirt, minerals, or otherwise affect the condition of the property from the Effective Date through Closing. All timber, vegetation, dirt, minerals, or similar shall remain as part of the Property and be conveyed to the Buyer at Closing. The Seller shall not bring any trash, refuse, debris, dirt, fill, medical wastes, hazardous wastes, or other materials onto the Property. Seller shall Deliver Notice of any legal action or condemnation action to the Buyer as soon as possible. If Seller Delivers such Notice, Buyer may unilaterally terminate this Contract by Delivering to the Seller a Notice of Termination. If Seller receives this Delivered Notice of Termination at any time, remaining Earnest Money shall be returned to the Buyer. Should Buyer not Deliver this Notice of Termination, Buyer agrees to purchase and Seller agrees to sell the Property in accordance with Contract.

18. SC RESIDENTIAL PROPERTY CONDITION DISCLOSURE STATEMENT ("CDS") [check one]:

☐ Buyer and Seller agree that Seller has Delivered prior to this Contract, a CDS to Buyer, as required by SC Code of Laws Section 27-50-10 et seq. If after delivery, Seller discovers a CDS material inaccuracy or the CDS becomes materially inaccurate due to an occurrence or circumstance, the Seller shall promptly correct this inaccuracy (e.g. delivering a corrected CDS to the Buyer or making reasonable repairs prior to Closing). Buyer understands the CDS does not replace inspections. Buyer understands and agrees the CDS contains only statements made by the Seller. Parties agree the Brokers are not responsible nor liable for any information in the CDS and the Brokers have met requirements of SC Code 27-50-70. CDS is not a substitute for the Buyers and inspectors inspecting the Property, Property Issues, and off site conditions for all needs.

☒ Buyer and Seller agree that Seller will **NOT** complete nor provide a CDS to Buyer in accordance with SC Code of Law, as amended, Section 27-50-30, Paragraph (13). Buyers have sole responsibility to inspect Property Issues for all their needs.

19. LEAD BASED PAINT/LEAD HAZARDS: If Property was built or contains items created prior to 1978, it may contain lead based hazards and Parties agree to sign "Disclosure of Information of Lead Based Paint and/or Lead Hazards" forms (e.g. SCR316) and give copies to Brokers. Parties acknowledge receiving and understanding the EPA pamphlet "Protect your Family From Lead in Your Home." For their protection, Buyers should conduct/obtain inspections of all Property issues per their needs.

20. SEX OFFENDER/CRIMINAL INFORMATION: Parties agree that Brokers are not responsible for obtaining or disclosing information in the SC Sex Offender Registry and no course of action may be brought against any Brokers for failure to obtain or disclose sex offender or criminal information. Buyer and Seller agree that they have sole responsibility to obtain their own sex offender, death, psychological stigma, clandestine laboratory, and crime information from sources (e.g. law enforcement, P.I., web). The Buyer may obtain information about the Sex Offender Registry and persons registered with the Registry by contacting the local county Sheriff or other appropriate law enforcement officials.

21. TRUST ACCOUNT INTEREST/CHARITABLE CONTRIBUTION: According to the South Carolina Real Estate Commission regulations and South Carolina laws, any interest earned from deposit to Closing on Buyer's earnest money deposit belongs to Buyer. It is understood that Broker ☐ may ☒ may not place deposited earnest monies into an interest bearing trust account. If Buyer's earnest money deposit is deposited into an interest bearing trust account, Parties agree that Broker will retain all interest earned in said account and may contribute some or all to a charitable enterprise.

22. SC INCOME TAX ON NON-RESIDENT GAIN AND COMPLIANCE AND USA FEDERAL INCOME TAX: Seller and Buyer will comply with the provisions of the South Carolina laws [e.g. 12-9-580 (as amended)] regarding state income tax withholding requirements if the Seller is not a resident or has not filed South Carolina state income tax returns. Seller and Buyer will comply with United States of America federal income tax laws. Seller and Buyer should discuss tax laws and minimization actions with their qualified tax advisor. Parties will comply with all local, state, federal laws, and any rules.

23. ROLLBACK TAXES (IF ANY): The Parties agree that the ☐ Seller or ☒ Buyer shall pay any rollback taxes when rollback taxes are determined and billed.

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SCR Form 330 11/2017 PAGE 6 of 9

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24. SPECIAL STUDIES AREA, WETLANDS, AND ENVIRONMENTAL MATTERS: All reports and certifications required by the Lender, Buyer, or any government concerning any special study area, wetlands, or environmental issues shall be ordered by Buyer and paid for by Buyer.

All of these reports or certifications shall be completed no later than 60 Business Days after the original Effective Date, unless the Parties agree in writing to extend this period ("Environmental Period"). In the event repairs are necessary to address environmental concerns (Repair Requests); the Seller shall be Delivered Notice in writing of the specific defects or deficiencies no later than 2 Business Days after the Environmental Period. If the Buyer fails to notify the Seller within this timeframe, Buyer shall have waived any and all rights under terms of this section. If Lender's commitment requires any additional inspections or certifications, these are to be provided by the Buyer.

Upon Delivered Notice of the Repair Requests, Seller has five Business Days to address the Buyer's Repair Requests. The costs of all repairs to address environmental concerns to be paid by Seller. If the Seller fails to agree to make these repairs within this timeframe, the Buyer shall have 2 Business Days to choose any of the following options (1) accept the Property in its present condition, (2) negotiate with the Seller for the payment of these repairs or (3) terminate this Contract and receive their Earnest Money. The repairs to any other items are the sole responsibility of the Buyer. The obligations of the Seller for repairs terminate upon Closing. If the Seller agrees to make the repairs, the Parties agree to proceed under Contract.

25. ENTIRE AND BINDING AGREEMENT (MERGER CLAUSE): Parties agree that this Contract expresses the entire agreement between the parties, that there is no other agreement, oral/otherwise, modifying the terms and this Contract is binding on Parties and principals, heirs, personal representatives, successors, and assigns. Illegal provisions are severable.

26. ADJUSTMENTS: Buyer and Seller agree to settle or prorate, annually or as appropriate; as of Closing Date: (A) utilities and waste fees issued after Closing which include service for time Property was owned/occupied by Seller (B) real estate taxes and owner association fees/assessments for the calendar year of Closing (C) any rents, deposits, fees associated with leasing (D) insurance, EMS service, fuel/consumables, and assessments. Closing Attorney shall make tax proration based on the available tax information deemed reliable by the Closing Attorney. Should the tax or tax estimate or proration later become inaccurate or change, Buyer and Seller shall make any financial adjustments between themselves once accurate tax information is available and Buyer takes timely reasonable steps to minimize taxes. This section survives Closing. Buyer is solely responsible for timely and reasonably minimizing the Buyer's taxes and obtaining tax minimization procedural information including related legal counsel and financial counsel. Special assessments approved prior to Closing shall be the responsibility of the Seller. Special Assessments approved after Closing shall be the responsibility of the Buyer.

27. DEFAULT/BREACH OF CONTRACT:

- (A) If Seller defaults in the performance of any of the Seller's obligations under this Contract ("Default"), Buyer may:
 - (i) Deliver Notice of Default to Seller and terminate Contract and
 - (ii) Pursue any remedies available to Buyer at law or equity and
 - (iii) Recover attorneys' fees and all other direct costs of litigation if Seller found in default/breach of Contract.
- (B) If Buyer defaults in the performance of any of the Buyer's obligations under this Contract ("Default"), Seller may:
 - (i) Deliver Notice of Default to Buyer and terminate Contract and
 - (ii) Pursue any remedies available to Seller at law or equity and
 - (iii) Recover attorneys' fees and all other direct costs of litigation if Buyer found in default/breach of Contract.
- (C) If either/both Parties default, Parties agree to sign an escrow deposit disbursement agreement or release agreement.
- (D) Parties may agree in writing to allow a Cure Period for a default. If within the Cure Period, either Party cures the Default and Delivers Notice, Parties shall proceed under the Contract.

28. MEDIATION: To potentially avoid expensive/lengthy/uncertain litigation, Parties may voluntarily/cooperatively decide which mediator to hire, how to pay the mediator, where to meet for mediation talks, and their own settlement agreement. Mediators do not decide settlement outcomes (Parties decide). Mediators merely facilitate the Parties reaching their own settlement and documenting settlement. Parties agree to attempt mediation for any dispute, claim, breach, representations made by any Party/Broker/other (e.g. concealment, misrepresentation, negligence, fraud) or service issues related to this Contract by using the National Association of REALTORS® Mediation Dispute Resolution System (803-772-5208 or www.NAR.REALTOR/policy/mediation or www.screaltors.org/mediation). Parties agree that the duty to attempt mediation survives closing and any signed mediation settlement agreement is binding. Parties agree some matters may proceed without mediation (e.g. foreclosure, action to enforce a mortgage or deed of trust or "rent to own" agreement, unlawful detainer action, file/enforce mechanic's lien, probate issues, interpleader action on earnest money). Parties agree some matters are not a waiver of mediation nor a breach of duty to attempt mediation (e.g. filing judicial action enabling recording notice of pending action, order for attachment/receivership/injunction or other provisional remedies).

[PSB] BUYER [] BUYER [] SELLER [] SELLER HAVE READ THIS PAGE

SCR Form 330 11/2017 PAGE 6 of 9

29. NON-RELIANCE CLAUSE (NOT A MERGER CLAUSE NOR EXTENSION OF A MERGER CLAUSE): Parties execute this Contract freely and voluntarily without reliance upon any statements, representations, inducements, promises, or agreements by Brokers or Parties except as expressly stipulated or set forth in this Contract. If not contained herein, such statements, representations, inducements, promises, or agreements shall be of no force or effect. Parties acknowledge that Brokers are being retained solely as licensed real estate agents and not as any attorney, tax/financial advisor, appraiser, surveyor, engineer, mold or air quality expert, home inspector, or other professional service provider.

30. BROKER DISCLAIMER: Parties acknowledge that Brokers give no warranties or representations of any kind, expressed or implied as to: (1) condition of the Property, including but not limited to termites, radon, mold, asbestos, moisture, environmental issues, water, waste, air quality, HVAC, utilities, plumbing, electrical or structure, etc. (2) condition of the Property, survey or legal matters, square footage (3) off site conditions (4) schools (5) title including but not limited to easements, encroachments, projections, encumbrances, restrictions, covenants, setbacks, and the like (6) fitness for a particular purpose of the Property or the improvements (7) zoning ordinances and restrictions (7) projected income, value, marketability, taxes, insurance, or other possible benefits to Buyer. Parties consent that their Brokers may communicate with them via any means; and use or disclose information not made confidential by written instruction of Parties.

31. BROKERS COMPENSATION: Parties direct Closing Attorney to use settlement funds to collect and disburse Brokers Compensation to Brokers in accordance with agreements and document compensation on the settlement statement. If a Party disputes Brokers Compensation, that Party agrees to retain a South Carolina law firm to escrow only the disputed amount of Brokerage Compensation until the dispute is resolved by a written agreement signed by that Party and the Affected Broker, arbitration award, or court order. Party requesting the escrow shall pay all costs for escrow. If the dispute is not resolved within 180 days of Closing, the escrow shall be disbursed to the Broker. Parties agree that Brokers are third party beneficiaries to this Contract and have standing to seek remedies at law and equity. Parties represent that their only enforceable agency agreements are with the Brokers disclosed in this Contract. Parties consent to Brokers possibly receiving compensation from the HWC and/or others if compensation is paid by in accordance with laws and REALTOR® ethics. **NOTICE: THIS IS TO GIVE YOU NOTICE THAT BROKERS HAVE/WILL/MAY RECEIVE COMPENSATION FROM HWC/OTHERS FOR REFERRAL/PROCESSING. YOU ARE NOT REQUIRED TO PURCHASE A HWC OR SIMILAR RESIDENTIAL SERVICE CONTRACT AND IF YOU CHOOSE TO PURCHASE SUCH COVERAGE YOU ARE FREE TO PURCHASE IT FROM ANOTHER PROVIDER.**

32. BROKER LIABILITY LIMITATION: Parties agree Brokers provided Parties with benefits, services, assistance, and value in bringing about this Contract. In consideration and recognition of the risks, rewards, compensation and benefits arising from this transaction to Brokers, Parties each agree that they shall pay Brokers' attorneys fees and that Brokers shall not be liable to either Party or both, either jointly, severally or individually, in an amount exceeding that Broker's Compensation by reason of any act or omission, including negligence, misrepresentation, errors and omissions, or breach of undertaking, except for intentional or willful acts. This limitation shall apply regardless of the cause of action or legal theory asserted against either Broker, unless the claim is for an intentional or willful act. This limitation of liability shall apply to all claims, losses, costs, damages or claimed expenses of any nature from any cause(s), except intentional or willful acts, so that the total liability of either Broker shall not exceed the amount set forth herein. Parties will indemnify and hold harmless and pay attorneys fees for Brokers from breach of contract, any negligent or intentional acts or omissions by any Parties, Inspectors, Professionals, Service Providers, Contractors, etc. including any introduced or recommended by Brokers. Parties each agree that there is valid and sufficient consideration for this limitation of liability and that Brokers are the intended third-party beneficiaries of this provision.

33. ATTACHMENTS, OTHER CONTINGENCIES, TERMS, AND/OR STIPULATIONS: There may be attachments to this Contract. The most recent changes, amendments, attachments, contingencies, stipulations, addendum, additions, exhibits, or writings, agreed to by the Parties; is evidence of the Parties' intent and agreement and shall control any Contract language conflicts. Parties shall initial and date Contract changes. If any documents are attached as addenda, amendments, attachments, or exhibits considered part of this Agreement, they are further identified or described here (e.g. SCR 380, 391, 311, 503, 504, 315, 320, 393, 370, 375, 518, 610): Roller shall finance to Buyer under the following main terms: \$200,000 down, 10% interest rate, 1st year payments are interest only. A note and mortgage executed by both parties and recorded at Greener.

Handwritten: PURCHASE, AFTER CLOSING, 4-23-21, PSB
4/23/2021

[PSB] BUYER [] BUYER [] SELLER [] SELLER HAVE READ THIS PAGE

Handwritten: PSB

34. NOTICE AND DELIVERY: Notice is any unilateral communication (offers, counteroffers, acceptance, termination, unilateral requests for better terms, and associated addenda/amendments) from one Party to the other. Notice to/from a Broker representing a Party is deemed Notice to/from the Party. All Notice, consents, approvals, counterparts, and similar actions required under Contract must be in paper or electronic writing and will be effective as of delivery to the Notice address/email/fax written below and awareness of receipt by Broker ("Delivered") unless Parties agree otherwise in writing.

35. PARTIES ARE SOLELY RESPONSIBLE FOR OBTAINING LEGAL ADVICE PRIOR TO SIGNING THIS CONTRACT AND DURING THE TRANSACTION. REAL ESTATE LICENSEES RECOMMEND OBTAINING LEGAL COUNSEL. Due to potential criminal activity, parties are solely responsible to verify all wiring instructions with law firm/bank and understand that audio/visual surveillance may occur. Parties acknowledge receiving, reading, reviewing, and understanding this Contract, the SC Disclosure of Real Estate Brokerage Relationships form, any agency agreements, and copies of these documents. Parties acknowledge having time and opportunity to review all documents and receive legal counsel from their attorneys prior to signing Contract.

36. EXPIRATION OF OFFER: When signed by a Party and intended as an offer or counter offer, this document represents an offer to the other Party that may be rescinded any time prior to or expires at 5 ☐ AM ☒ PM on May 3, 2021, unless accepted or counter-offered by the other Party in written form Delivered prior to such deadline:

IN WITNESS WHEREOF, this Contract has been duly executed by the Parties as true to the best of their knowledge/belief. If signer is not a Party, appropriate legal documents (e.g. Power of Attorney, Corporate Authorization) are ☐ attached or ☒ to be Delivered within 2 Business Days. Parties shall initial and date all page and changes in this Contract.

BUYER: [Signature], SOLE MEMBER Date: 4/13/2021 Time: _____
Opus Petrus, LLC

BUYER: _____ Date: _____ Time: _____

NOTICE ADDRESS/EMAIL/FAX: _____

SELLER: [Signature] Date: 4-12-21 Time: 5:30 PM
CJN, LLC

SELLER: _____ Date: _____ Time: _____

NOTICE ADDRESS/EMAIL/FAX: _____

REALTOR® is the registered collective membership mark which may be used only by those real estate licensees who are members of the NATIONAL ASSOCIATION OF REALTORS® and who subscribe to its strict professional Code of Ethics. The South Carolina Association of REALTORS® (SCAR) owns copyright to the content of this form and expressly prohibits the display, distribution, duplication, transmission, alteration, or reproduction of any part of SCAR copyright content as well as the use of the name "South Carolina Association of REALTORS®" in connection with any written or electronic format without the prior written consent of SCAR. SCAR makes no representation as to the legal adequacy of this form or the information added for a specific transaction and recommends that Parties consult a SO attorney prior to signing to ensure the completed form meets your legal need.

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TRANSACTIONAL INFORMATION ONLY (Attach SCR390 if space needed for contractual agreement terms):

ESCROW AGENT ACKNOWLEDGEMENT SIGNATURE: _____

ESCROW AGENT NAME (BROKER IN CHARGE/OTHER): Keable & Brown

DESCRIBE ESCROW AGENCY (BROKERAGE/LAW FIRM/OTHER): _____

ESCROW AGENT CONTACT INFO: Ryan Brown - ryan@keablelaw.com

(864)250-4000

109 Laurens Road

LICENSEE: _____ SC LICENSE # _____ EXPIRES _____

BROKER IN CHARGE: _____ SC LICENSE # _____ EXPIRES _____

BROKERAGE COMPANY NAME: _____

INVOLVED AS: ☐ BUYER AGENT ☐ SELLER SUBAGENT ☐ DUAL AGENT ☐ BUYER DESIGNATED AGENT*
☐ CUSTOMER FACILITATOR ☐ TRANSACTION BROKERAGE

MEMBERS OF _____ ASSOCIATION/BOARD OF REALTORS®

NOTICE ADDRESS: _____

NOTICE EMAIL/FAX: _____

MOBILE PHONE: _____ OFFICE PHONE: _____

OTHER: _____

LICENSEE: _____ SC LICENSE # _____ EXPIRES _____

BROKER IN CHARGE: _____ SC LICENSE # _____ EXPIRES _____

BROKERAGE COMPANY NAME: _____

INVOLVED AS: ☐ SELLER AGENT ☐ SELLER SUBAGENT ☐ DUAL AGENT ☐ SELLER DESIGNATED AGENT*
☐ CUSTOMER FACILITATOR ☐ TRANSACTION BROKERAGE

MEMBERS OF _____ ASSOCIATION/BOARD OF REALTORS®

NOTICE ADDRESS: _____

NOTICE EMAIL/FAX: _____

MOBILE PHONE: _____ OFFICE PHONE: _____

OTHER: _____

***DESIGNATED AGENCY - THE BROKER-IN-CHARGE AND ALL ASSOCIATED LICENSEES, EXCEPT THE DESIGNATED AGENTS, ARE DUAL AGENTS. NO AGENT IS NO CLIENT SERVICE, YES CUSTOMER SERVICE.**

[BB] BUYER [_____] BUYER [3] SELLER [_____] SELLER HAVE READ THIS PAGE
 SCR Form 330 11/2017 PAGE 9 of 9



ADDENDUM/AMENDMENT TO

☒ AGREEMENT/CONTRACT TO BUY AND SELL REAL ESTATE [☐ OFFER OR ☐ COUNTEROFFER] OR
☐ RESIDENTIAL RENTAL AGREEMENT OR ☐ OTHER: _____

COVERING THE ☐ REAL PROPERTY ☐ PREMISES ☐ BUSINESS ☐ OTHER: _____

Further described or commonly known as: _____

Address _____ Standing Springs Rd _____ Unit # _____
City _____ Simpsonville _____ State of South Carolina
Other _____ TMS 0584010102601

The undersigned Parties hereby agree as follows: Purchaser hereby acknowledges that Crescent Homes claims a 1st right on the above referenced property, should Crescent Homes choose to exercise their right the contract between CJN, LLC and Opus Petrus, LLC will become Null and Void. Contract between CJN, LLC and Opus Petrus, LLC executed on 5/10/2021, notice was given to Crescent Homes attorney on 5/18/2021 given them 20 days to exercise their right or decline (deadline is June 7th, 2021). All other terms and conditions shall remain the same.

EXPIRATION OF OFFER: When signed by a Party and intended as an offer or counter-offer, this document represents an offer to the other Party that may be rescinded any time prior to or expires at _____ AM _____ PM on _____ unless accepted or counter-offered by the other Party in written form Delivered prior to such deadline.

Parties are solely responsible for obtaining legal advice prior to entering into this Contract and counsel as required.

IN WITNESS WHEREOF, this Agreement has been duly executed by the Parties.

BUYER: [Signature]
Opus Petrus, LLC

Date: 5/25/21 Time: 3:15 pm

BUYER: _____

Date: _____ Time: _____

Date: _____ Time: _____

Date: _____ Time: _____

SELLER: [Signature]
CJN, LLC

Date: 5-25-21 Time: 2:46 PM

SELLER: _____

Date: _____ Time: _____

Date: _____ Time: _____

Date: _____ Time: _____

REALTOR® is the registered collective membership mark which may be used only by those real estate licensees who are members of the NATIONAL ASSOCIATION OF REALTORS® and who subscribe to its strict professional Code of Ethics. The South Carolina Association of REALTORS® (SCA) owns copyright to the content of this form and expressly prohibits the display, distribution, duplication, transmission, alteration, or reproduction of any part of SCA copyright content as well as the use of the name "South Carolina Association of REALTORS®" in connection with any written or electronic format without the prior written consent of SCA. SCA makes no representation as to the legal adequacy of this form or the information added for a specific transaction and recommends that Parties consult a SC attorney prior to signing to ensure the completed form meets your legal need.

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FORM 390 PAGE 1 of 1



ADDENDUM/AMENDMENT TO

☐ AGREEMENT/CONTRACT TO BUY AND SELL REAL ESTATE [☐ OFFER OR ☐ COUNTEROFFER] OR
☐ RESIDENTIAL RENTAL AGREEMENT OR ☒ OTHER: LAND CONTRACT
 COVERING THE ☒ REAL PROPERTY ☐ PREMISES ☐ BUSINESS ☐ OTHER: _____

Further described or commonly known as:

Address STANDING SPRINGS ROAD Unit # _____
 City SIMPSONVILLE State of South Carolina
 Other _____ TMS 0584010102601

The undersigned Parties hereby agree as follows: In reference to the original contract dated 4/19/2021, All Parties agree to extend the Due Diligence period until 10/1/2021 with a closing date of 10/15/2021. All other terms and conditions shall remain the same.

EXPIRATION OF OFFER: When signed by a Party and intended as an offer or counter-offer, this document represents an offer to the other Party that may be rescinded any time prior to or expires at 5 ☐ AM ☒ PM on August 25 2021 unless accepted or counter-offered by the other Party in written form Delivered prior to such deadline.

Parties are solely responsible for obtaining legal advice prior to entering into this Contract and counsel as required.

IN WITNESS WHEREOF, this Agreement has been duly executed by the Parties.

BUYER: [Signature]
OPUS PETRUS, LLC

Date: 8/25/21 Time: 4:46

BUYER: _____

Date: _____ Time: _____

Date: _____ Time: _____

Date: _____ Time: _____

SELLER: [Signature]
CJN, LLC

Date: 8-25-21 Time: 4:48

SELLER: _____

Date: _____ Time: _____

Date: _____ Time: _____

Date: _____ Time: _____

REALTOR® is the registered collective membership mark which may be used only by those real estate licensees who are members of the NATIONAL ASSOCIATION OF REALTORS® and who subscribe to its strict professional Code of Ethics. The South Carolina Association of REALTORS® (SCR) owns copyright to the content of this form and expressly prohibits the display, distribution, duplication, transmission, alteration, or reproduction of any part of SCR copyright content as well as the use of the name "South Carolina Association of REALTORS®" in connection with any written or electronic format without the prior written consent of SCR. SCR makes no representation as to the legal adequacy of this form or the information added for a specific transaction and recommends that Parties consult a SC attorney prior to signing to ensure the completed form meets your legal need.

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FORM 390 PAGE 1 of 1

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL
CIRCUIT

CJN, LLC,

Plaintiff,

vs.

CRESCENT HOMES SC, LLC,

Defendant.

Case No.: 2020-CP-23-4351

**ANSWER
TO
AMENDED COMPLAINT**

COMES NOW Defendant Crescent Homes SC, LLC ("Defendant" or "Crescent"), by and through its undersigned counsel, and hereby answers the Amended Complaint of Plaintiff CJN, LLC ("Plaintiff" or "CJN") as follows:

FOR A FIRST DEFENSE

Crescent hereby denies each and every allegation in the Amended Complaint that is not expressly admitted herein.

FOR A SECOND DEFENSE

1. Crescent admits the allegations contained in Paragraph 1 of the Amended Complaint.
2. Crescent admits the allegations contained in Paragraph 2 of the Amended Complaint.
3. Crescent admits the allegations contained in Paragraph 3 of the Amended Complaint.

4. Crescent admits the allegations contained in Paragraph 4 of the Amended Complaint.

5. Crescent admits the allegations contained in Paragraph 5 of the Amended Complaint.

6. In response to the allegations contained in Paragraph 6 of the Amended Complaint, Crescent admits that it filed a Lis Pendens in Greenville County, Case No.: 2020-LP-23-0343. Crescent denies the remaining allegations contained in Paragraph 6.

7. In response to the allegations contained in Paragraph 7 of the Amended Complaint, Crescent admits that it filed a Lis Pendens in Greenville County, Case No.: 2020-LP-23-0373. Crescent denies the remaining allegations contained in Paragraph 7.

8. In response to the allegations contained in Paragraph 8 of the Amended Complaint, Crescent admits that it filed a Lis Pendens in Greenville County, Case No.: 2020-LP-23-0395. Crescent denies the remaining allegations contained in Paragraph 8.

9. In response to the allegations contained in Paragraph 9 of the Amended Complaint, Crescent admits that it filed a Lis Pendens in Greenville County, Case No.: 2020-LP-23-0415. Crescent denies the remaining allegations contained in Paragraph 9.

10. In response to the allegations contained in Paragraph 10 of the Amended Complaint, Crescent admits that it has not cancelled the Lis Pendens filings but denies the remaining allegations contained in Paragraph 10.

11. Crescent denies the allegations contained in Paragraph 11 of the Amended Complaint.

12. In response to the allegations contained in Paragraph 12 of the Amended Complaint, Crescent admits that it entered into the Agreement for Purchase and Sale of Developed

12. Crescent denies the remaining allegations contained in Paragraph 12 and craves reference to the language of the Agreement.

13. Crescent denies the allegations contained in Paragraph 13 of the Amended Complaint.

14. Crescent denies the allegations contained in Paragraph 14 of the Amended Complaint and craves reference to the language of the Agreement.

15. Crescent denies the allegations contained in Paragraph 15 of the Amended Complaint and craves reference to the language of the Agreement.

16. Crescent denies the allegations contained in Paragraph 16 of the Amended Complaint and craves reference to the language of the Agreement.

17. Crescent denies the allegations contained in Paragraph 17 of the Amended Complaint and craves reference to the language of the Agreement.

18. Crescent denies the allegations contained in Paragraph 18 of the Amended Complaint and craves reference to the language of the Agreement.

19. Crescent denies the allegations contained in Paragraph 19 of the Amended Complaint and craves reference to the language of the Agreement.

20. Crescent denies the allegations contained in Paragraph 20 of the Amended Complaint and craves reference to the language of the Agreement.

21. Crescent denies the allegations contained in Paragraph 21 of the Amended Complaint and craves reference to the language of the Agreement.

22. Crescent denies the allegations contained in Paragraph 22 of the Amended Complaint and craves reference to the language of the Agreement.

23. Crescent denies the allegations contained in Paragraph 23 of the Amended Complaint.

24. Crescent denies the allegations contained in Paragraph 24 of the Amended Complaint and craves reference to the language of the Agreement.

25. Crescent denies the allegations contained in Paragraph 25 of the Amended Complaint.

26. Crescent denies the allegations contained in Paragraph 26 of the Amended Complaint.

27. Crescent denies the allegations contained in Paragraph 27 of the Amended Complaint.

28. Crescent denies the allegations contained in Paragraph 28 of the Amended Complaint.

29. Crescent denies the allegations contained in Paragraph 29 of the Amended Complaint.

30. Crescent denies the allegations contained in Paragraph 30 of the Amended Complaint.

31. Crescent denies the allegations contained in Paragraph 31 of the Amended Complaint.

32. Crescent denies the allegations contained in Paragraph 32 of the Amended Complaint.

33. In response to the allegations contained in Paragraph 33 and Paragraph 34 of the Amended Complaint, Crescent admits that the Lis Pendens have not been cancelled. Crescent denies the remaining allegations contained in Paragraph 33 and Paragraph 34.

34. Crescent denies the allegations contained in Paragraph 35 of the Amended Complaint.

35. Crescent denies the allegations contained in Paragraph 36 of the Amended Complaint.

36. Crescent denies the allegations contained in Paragraph 37 of the Amended Complaint.

37. Crescent denies the allegations contained in Paragraph 38 of the Amended Complaint.

38. Crescent denies the allegations contained in Paragraph 39 of the Amended Complaint.

39. Crescent denies the allegations contained in Paragraph 40 of the Amended Complaint.

40. Crescent denies the allegations contained in Paragraph 41 of the Amended Complaint.

41. Crescent denies the allegations contained in Paragraph 42 of the Amended Complaint.

42. Crescent denies the allegations contained in Paragraph 43 of the Amended Complaint.

43. Crescent denies, as written, the allegations contained in Paragraph 44 of the Amended Complaint, including the allegations contained in subparagraphs a through f.

44. Crescent denies the allegations contained in Paragraph 45 of the Amended Complaint.

45. Crescent denies the allegations contained in Paragraph 46 of the Amended Complaint, including the allegations contained in subparagraphs a through h, and craves reference to the language of the Agreement.

46. Crescent denies the allegations contained in Paragraph 47 of the Amended Complaint.

AS TO THE FIRST CAUSE OF ACTION
(Declaratory Judgment)

47. In response to the allegations contained in Paragraph 48 of the Amended Complaint, Crescent restates and re-alleges each of its prior responses as if fully set forth herein.

48. Crescent denies the allegations contained in Paragraph 49 of the Amended Complaint.

49. Crescent denies the allegations contained in Paragraph 50 of the Amended Complaint.

50. Crescent denies the allegations contained in Paragraph 51 of the Amended Complaint, including the allegations contained in subparagraphs a through h, and craves reference to the language of the Agreement.

51. Crescent denies the allegations contained in Paragraph 52 of the Amended Complaint and states that CJN is not entitled to the relief requested in Paragraph 52 or otherwise.

52. Crescent denies the allegations contained in Paragraph 53 of the Amended Complaint.

AS TO THE SECOND CAUSE OF ACTION
(Abuse of Legal Process)

53. In response to the allegations contained in Paragraph 54 of the Amended Complaint, Crescent restates and re-alleges each of its prior responses as if fully set forth herein.

54. Crescent denies the allegations contained in Paragraph 55 of the Amended Complaint.

55. Crescent denies the allegations contained in Paragraph 56 of the Amended Complaint.

56. Crescent denies the allegations contained in Paragraph 57 of the Amended Complaint.

57. Crescent denies the allegations contained in Paragraph 58 of the Amended Complaint.

58. Crescent denies the allegations contained in Paragraph 59 of the Amended Complaint.

59. Crescent denies the allegations contained in Paragraph 60 of the Amended Complaint.

60. Crescent denies the allegations contained in Paragraph 61 of the Amended Complaint and states that CJN is not entitled to the relief requested in Paragraph 61 or otherwise.

AS TO THE THIRD CAUSE OF ACTION
(Tortious Interference with Contractual Relationship)

61. In response to the allegations contained in Paragraph 62 of the Amended Complaint, Crescent restates and re-alleges each of its prior response as if fully set forth herein.

62. Crescent denies the allegations contained in Paragraph 63 of the Amended Complaint.

63. Crescent denies the allegations contained in Paragraph 64 of the Amended Complaint.

64. Crescent denies the allegations contained in Paragraph 65 of the Amended Complaint.

65. Crescent denies the allegations contained in Paragraph 66 of the Amended Complaint.

66. Crescent denies the allegations contained in Paragraph 67 of the Amended Complaint, including subparts a through d.

67. Crescent denies the allegations contained in Paragraph 68 of the Amended Complaint.

68. Crescent denies the allegations contained in Paragraph 69 of the Amended Complaint.

69. Crescent denies the allegations contained in Paragraph 70 of the Amended Complaint and states that CJN is not entitled to the relief requested in Paragraph 70 of the Amended Complaint or otherwise.

AS TO THE FOURTH CAUSE OF ACTION
(Unfair and Deceptive Trade Practices)

70. In response to the allegations contained in Paragraph 71 of the Amended Complaint, Crescent restates and re-alleges each of its prior responses as if fully set forth herein.

71. Crescent denies the allegations contained in Paragraph 72 of the Amended Complaint.

72. Crescent denies the allegations contained in Paragraph 73 of the Amended Complaint.

73. Crescent denies the allegations contained in Paragraph 74 of the Amended Complaint.

74. Crescent denies the allegations contained in Paragraph 75 of the Amended Complaint.

-- 75. Crescent denies the allegations contained in Paragraph 76 of the Amended Complaint.

76. Crescent denies the allegations contained in Paragraph 77 of the Amended Complaint and states that CJN is not entitled to the relief requested in Paragraph 77 of the Amended Complaint or otherwise.

AS TO THE FIFTH CAUSE OF ACTION
(Punitive Damages)

77. In response to the allegations contained in Paragraph 78 of the Amended Complaint, Crescent restates and re-alleges reach of its prior responses as if fully set forth herein.

78. Crescent denies the allegations contained in Paragraph 79 of the Amended Complaint.

79. Crescent denies the allegations contained in Paragraph 80 of the Amended Complaint and states that CJN is not entitled to the relief requested in Paragraph 80 of the Amended Complaint or otherwise.

80. Crescent denies the allegations contained in the "WHEREFORE" clause of the Amended Complaint, including subparagraphs a through e, and states that CJN is not entitled to the relief requested in the "WHEREFORE" clause or otherwise.

FOR A THIRD DEFENSE
(Failure to State a Claim)

81. The Amended Complaint fails to state claims for which relief can be granted and therefore, should be dismissed pursuant to Rule 12(b)(6), SCRCP.

FOR A FOURTH DEFENSE
(Another Pending Action)

82. The Amended Complaint should be dismissed pursuant to Rule 12(b)(8), SCRCP, on the basis that there is another action pending between the same parties for the same claim.

FOR A FIFTH DEFENSE

(Estoppel)

83. Plaintiff's claims are barred by estoppel.

FOR A SIXTH DEFENSE

(Waiver)

84. Plaintiff's claims are barred by waiver.

FOR A SEVENTH DEFENSE

(Laches)

85. Plaintiff's claims are barred by the doctrine of laches.

FOR AN EIGHTH DEFENSE

(Unclean Hands)

86. Plaintiff's claims are barred by the equitable doctrine of unclean hands and *in pari delicto*.

FOR A NINTH DEFENSE

(Failure to Join Necessary Parties)

87. Plaintiff's Amended Complaint is barred and should be dismissed pursuant to Rule 12(b)(7) and Rule 19 of the South Carolina Rules of Civil Procedure by Plaintiff's failure to join as a party to this action a party or parties in whose absence complete relief cannot be accorded among those already parties, thereby subjecting Defendant to a substantial risk of incurring double, multiple, or otherwise inconsistent allegations.

FOR A TENTH DEFENSE

(S.C. Code Ann. §15-32-530)

88. Plaintiff's claims are barred or otherwise limited by S.C. Code Ann. §15-32-530.

FOR AN ELEVENTH DEFENSE

(Unconstitutionality of Punitive Damages)

89. Plaintiff's claim for punitive damages violates the Fifth, Sixth, Seventh, and Fourteenth Amendments of the Constitution of the United States

FOR A TWELFTH DEFENSE
(Reservation of Additional Defenses)

90. Defendant reserves the right to assert all additional affirmative defenses that may be revealed during the course of discovery in this action.

WHEREFORE, having fully answered Plaintiff CJN, LLC's Amended Complaint, Defendant Crescent Homes SC, LLC respectfully requests that the Court dismiss the Amended Complaint with prejudice and grant such other and further relief to Defendant as the Court deems just and proper.

Respectfully submitted,

By: s/Ellis R. Lesemann
Ellis R. Lesemann (S.C. Bar No. 15315)
erl@lalawsc.com
Michelle A. Matthews (S.C. Bar No. 100685)
mam@lalawsc.com
LESEMANN & ASSOCIATES LLC
418 King Street, Suite 301
Charleston, SC 29403
(843) 724-5155

Attorneys for Defendant

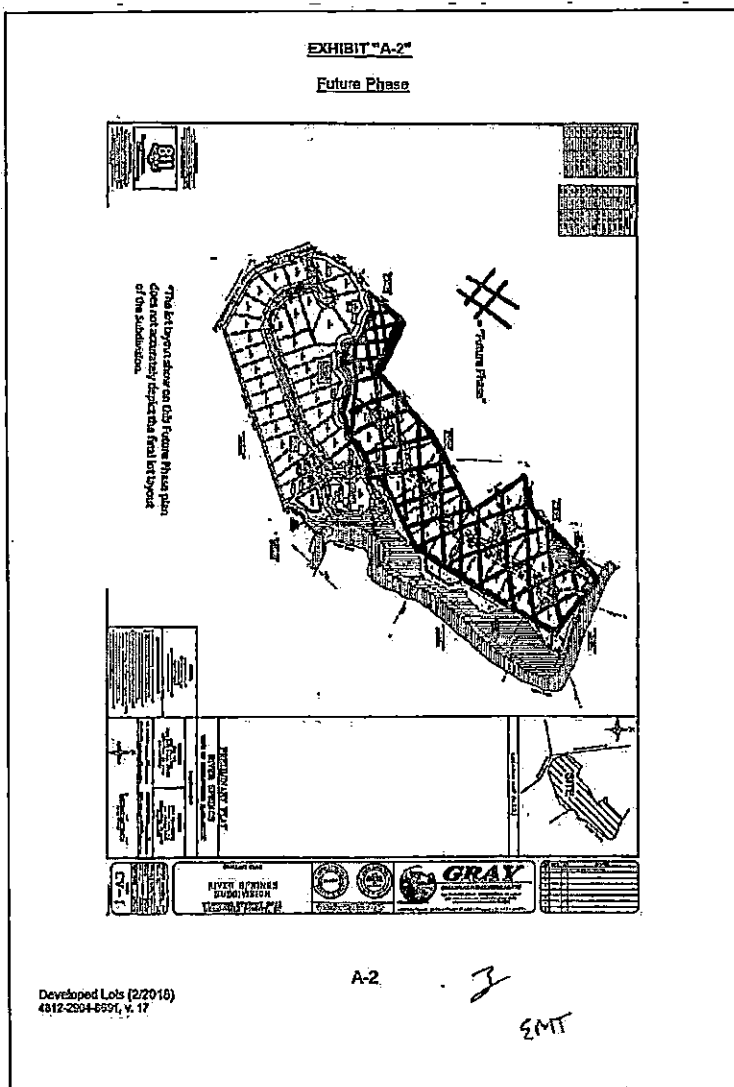
November 16, 2021
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE THIRTEENTH JUDICIAL
COUNTY OF GREENVILLE	)	CIRCUIT

CJN, LLC,	)	
	)	Case No.: 2020-CP-23-4351
Plaintiff,	)	
	)	
vs.	)	
	)	AFFIDVIT OF
CRESCENT HOMES SC, LLC,	)	EDWARD M. TERRY
	)	
Defendant.	)	
	)	
	)	

PERSONALLY APPEARED before me, Edward M. Terry, who, being first duly sworn, deposes and says as follows:

1. My name is Edward M. Terry. I am authorized to execute this Affidavit on behalf of Crescent Homes SC, LLC ("Purchaser") as its President.
2. The Plaintiff CJN, LLC ("Seller") and Purchaser are parties to a valid real estate contract, an Agreement for Purchase and Sale of Developed Lots ("Agreement") for a single-family residential subdivision development, which I executed on behalf of Purchaser.
3. In addition to the First Phase, the Agreement also provides for a Future Phase, for which Seller promised to provide Purchaser a Right of First Refusal. The Right of First Refusal is not vague. It specifically identified the Property to which it related and uses the term "Right of First Refusal," which is widely used and understood in the industry of residential development. The Parties initialed the exhibit to the Agreement that specifically and graphically identified the Future Phase property:



4. Contrary to Seller's arguments, the Initial Phase and the Future Phase are related, as they were mutually intended to be successive phases of a single development that is known as "River Springs."

5. Both Seller and Purchaser are sophisticated commercial parties who regularly enter into contracts and engage in land transactions. Both sides were represented by counsel. From Purchaser's perspective, neither side requested or needed further detail about the Right of First Refusal in order to understand their rights and obligations. I do not believe that there is any legitimate confusion on the part of Seller, who agreed to the Right of First Refusal and has

acknowledged the existence of the Right of First Refusal, even while Seller has tried to violate or circumvent it to Purchaser's specific detriment.

6. Purchaser specifically relied upon Seller's contractual promises relating to the Future Phase in deciding to enter into the Agreement and served as part of the consideration being provided by Seller in exchange for the Agreement. The wording of the Right of First Refusal is mandatory. Seller is required to extend this right to Purchaser but has attempted to violate and circumvent this obligation.

7. The Right of First Refusal was to arise as of the Initial Closing. This was intentional. The "Future Phase" is to occur after the Initial Phase. There are a number of reasons for this. This is necessary as the roads and related infrastructure would need to be installed in the Initial Phase first, and then installed in the Future Phase. The timing of the Right of First Refusal and the potential purchase of the Future Phase is something that was specifically bargained for between Seller and Purchaser. Purchaser considers it a binding promise of Seller to honor the rights set out in the Agreement, and further considers Seller's conduct to be inconsistent with good faith and fair dealing.

8. Unfortunately, Seller has engaged in continual breaches of contract, which have caused substantial delay and damages to Purchaser. Over time, Seller has addressed its defaults of the Agreement, but has not paid damages to Purchaser that resulted from the undue delay in the project. Those claims for damages are the result of a separate proceeding. I note that Seller has alleged in this case that Purchaser is responsible for the delays in the Initial Closing. I categorically dispute Seller's allegations, which are false.

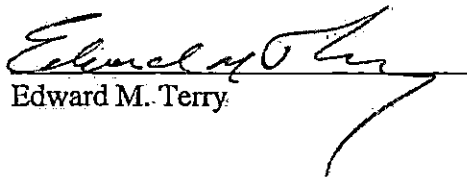
9. On June 26, 2020, Seller presented a third-party contract for the Future Phase Property to Purchaser, which has expired. However, the First Closing had not yet occurred. Seller

has claimed that the expired contract was "bona fide," but no discovery has been conducted to determine if that it is even the case. However, I am aware that that the Right of First Refusal was specifically noted in the expired contract. I believe that this presents evidence that Seller was aware of its obligations to Purchaser and was not confused by them.

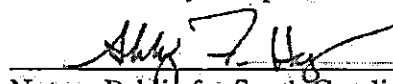
10. A lis pendens was filed as this is the acknowledged, lawful manner in which the holder of contract rights to property can protect its rights when a seller / owner is attempting to violate or circumvent those rights. Our legal counsel sent a detailed letter to counsel for Seller on July 14, 2020, setting forth Purchaser's position. Both before and after that, there were regular communications among counsel on this issue. Purchaser believes that it has a valid Right of First Refusal, which was bargained for between the parties. There was no "ulterior motive." What happened is that Purchaser took action to protect its rights when faced with yet another breach by Seller.

11. At this time, Purchaser has not been presented with any evidence of: (i) a pending sale or offer for sale of the Future Phase; (ii) a pending purchase or offer to purchase the Future Phase; or (3) a presence of any third-party challenging Purchaser's Right of First Refusal for the Future Phase. On this basis, Purchaser does consider the parties to have a present dispute on the Right of First Refusal.

FURTHER AFFIANT SAYETH NOT.


Edward M. Terry

SUBSCRIBED AND SWORN TO BEFORE ME
on this 12th day of April, 2021


Notary Public for South Carolina
My Commission Expires: October 19, 2026

Abby F. Hayes
Notary Public, State of South Carolina
My Commission expires Oct. 19, 2026

Abby F. Hayes
Notary Public, State of South Carolina
My Commission expires Oct. 19, 2026

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
CJN, LLC)
Plaintiff,)
v.)
Crescent Homes SC, LLC)
Defendant)

MASTER-IN-EQUITY
C. A. No. 2020-CP-23-04351

**MOTION FOR PARTIAL
SUMMARY JUDGMENT**

**TO: ELLIS R. LESEMAN & MICHELLE A. MATTHEWS, ATTORNEYS FOR
CRESCENT HOMES SC, LLC:**

COMES NOW Plaintiff CJN, LLC ("CJN"), pursuant to *South Carolina Rules of Civil Procedure* Rule 56 and the Uniform Declaratory Judgment Act, S.C. Code Ann. §15-53-10, *et seq.*, and hereby move this Court for partial summary judgment on its first cause of action for Declaratory Judgment and seeks the entry of an Order declaring that Defendant Crescent Homes SC, LLC ("Crescent") has no right of first refusal or other right to certain real property owned by CJN. In support of CJN's Motion for Partial Summary Judgment, CJN would show the following:

- 1) CJN is the owner of certain real property that is the subject of this dispute and is located at an unassigned address on Standing Springs Road in Greenville County, South Carolina and has been assigned TMS: P/O 0584010102601 ("CJN Property").
- 2) Crescent has filed a series of Lis Pendens to prevent the sale of the CJN Property based on a purported right of first refusal ("ROFR") arising out of the Agreement for Purchase and Sale of Developed Lots ("Agreement") entered between CJN and Crescent in relation to the development of neighboring property.

- 3) The ROFR by its terms applies to the sale of Lots, assuming Lots are developed on the property, but does not apply to the sale of the CJN Property as raw, undeveloped land.
- 4) The ROFR contains no time limitation within which it may be exercised and is therefore void in violation of the rule against perpetuities.
- 5) The ROFR lacks specificity as to duration of the right, the property subject to the right, the purchase price, and the procedures for exercising the right and is therefore void as an unreasonable restraint on alienation.
- 6) CJN is entitled to a declaration that the ROFR is void and of no effect.
- 7) CJN is entitled to a declaration that Crescent has no interest in the CJN Property, under the ROFR or otherwise, and has no basis to file any Lis Pendens on the CJN Property.
- 8) For the foregoing reasons, CJN respectfully requests this honorable Court grant its Motion for Partial Summary Judgment.

This Motion is based upon the pleadings of record, the applicable Rules of Civil Procedure and their related authority, and upon such supporting memorandum and affidavits as may submitted in connection herewith at a future time.

Respectfully submitted this 19th day of March 2021,

/s/ F. James Warmoth

John T. Crawford, Jr., (SC Bar No. 69682)

F. James Warmoth, (SC Bar No. 101072)

KENISON, DUDLEY & CRAWFORD, LLC

704 E. McBee Avenue

Greenville, South Carolina 29601

PH: (864) 242-4899

FAX: (864) 242-4844

Attorneys for Plaintiff

Greenville, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	C.A. NO. 2019-CP-23-05954
CRESCENT HOMES SC, LLC	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
CJN, LLC,	)	
	)	
Defendant.	)	
	)	

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	C.A. NO. 2020-CP-23-04351
CJN, LLC	)	
	)	
Plaintiff,	)	
	)	
v.	)	CRESCENT HOMES SC, LLC'S
	)	MOTION TO ALTER OR AMEND
	)	ORDER DATED MAY 27, 2022
CRESCENT HOMES SC, LLC	)	
	)	
Defendant.	)	
	)	

COMES NOW the Defendant Crescent Homes SC, LLC ("Crescent"), who files this Motion to Alter or Amend, pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure. This Motion relates to the Court's Order filed May 27, 2022 ("Order"), which granted declaratory judgment to Plaintiff CJN, LLC ("CJN") that the right of first refusal in a negotiated contract was unenforceable, even though CJN is a sophisticated party that intended to be bound under a valid right of first refusal relating to the Future Phase property.

For the reasons set forth more fully below, Crescent requests that the Order be altered and amended to rule either that: (i) the Right of First Refusal is valid and enforceable for the reasons

--- - set forth below; or (ii) there is no justiciable controversy at this time concerning the enforceability of the Right of First Refusal such that declaratory judgment should be refused. The grounds for this Motion include the following, which will be addressed in greater detail through an additional memorandum, exhibits and a transcript of the relevant testimony once it is available:

1. The preponderance of the evidence (including the express wording of the Agreement for Purchase and Sale (the "Agreement"), the additional exhibits, the admitted testimony regarding the intentions of the parties, and the additional testimony of Nick Franchina and Mr. Edward Terry) supported a ruling that the parties entered a valid and enforceable right of first refusal.

2. The Court should have given weight to the evidence in the record and testimony from both parties that provided the basis for supplying reasonable time frames in which the Right of First Refusal had to be exercised. Additionally, the parties presented evidence as to the reasonable length of time to which the duration of the Right of First Refusal could be limited.

3. In ruling that the Right of First Refusal was unenforceable, the Court erred in basing its decision in part upon the fact that a memorandum of the Right of First Refusal was never publicly recorded. The underlying validity of the Right of First Refusal is unaffected by whether a separate memorandum was ever recorded. Furthermore, the preponderance of the evidence showed that it was CJN who prevented a memorandum from being filed, which precludes CJN from reaping any benefit from the absence of a recorded memorandum. In this regard, CJN's conduct violated its duties and obligations under the Agreement. *See, e.g., Agreement*, at Section 21(D) and 21(E).

4. Crescent respectfully submits that the Order includes and relies upon several findings of fact that are erroneous, including but not limited to the following: (a) the finding that the Agreement contains no reference to Phase 2 (also referred to as the "Future Phase") outside of

Section 19, when there is a specific exhibit that depicts the Future Phase (Exhibit A-2), as well as other general terms of the Agreement that apply to the Future Phase, including but not limited to Sections 9, 13, 14, 21; (b) the finding that Crescent “conceded” that the Agreement does not contain any terms related to Phase 2; (c) the finding that the multiple delays in moving ahead with the “Initial Closing” were caused only “in part” by CJN; (d) the finding that Paragraph 19 of the Agreement is lacking in specific and critical areas, when any missing time frames could and should have been supplied by the Court based on the testimony of the parties and the evidence in the record; and (e) Paragraph 19 of the Agreement is broad and open-ended, when it could have been reformed in accordance with South Carolina law and relates only to a specific, identified parcel that both parties clearly intended would be the “Future Phase” of the River Springs Subdivision, which is why it was described in this fashion. As demonstrated by the preponderance of evidence in the record, the word “lots” is used as there was a mutual intention and expectation that there would be a Future Phase.

5. Crescent respectfully submits that the Order is based upon errors of law, including but not limited to: (a) the determination that the litigation presents issues that are ripe and ready for resolution by the Court; (b) the ruling that the language of Paragraph 19 of the Agreement allows Crescent, without judicial resolution, to indefinitely have rights relative to CJN’s ability to transfer, sell or otherwise develop the lots in the Future Phase, when the duration of the right of first refusal can and should have been reformed rather than cast aside; (c) Paragraph 19 of the Agreement relates to the present ability of CJN to sell the Future Phase tract as a whole or being limited to develop and sell the tract as lots only, when the right of first refusal can have survived a sale to a third party as raw land; (d) the ruling that Paragraph 19 of the Agreement creates an unreasonable restraint of alienation of interest in land; and (e) the conclusion that the Right of First Refusal in Paragraph 19 of the Agreement is not enforceable.

6. -- - The Court incorrectly found that Crescent filed a lis pendens to “prevent the sale” of the Future Phase to Mr. Clark in June 2020. The purpose of Crescent’s filing of the lis pendens was not to prevent a sale but to place other potential purchasers on notice that Crescent had a legitimate Right of First Refusal in the Phase 2 property and to address breaches of contract by CJN that violated Crescent’s rights and/or were undertaking for the purpose of circumventing Crescent’s rights. *See Horry Cnty. v. Ray*, 382 S.C. 76, 674 S.E.2d 519 (Ct. App. 2009) (quoting 51 Am. Jur.2d Lis Pendens § 2 (2020)) (“[L]is pendens is designed primarily to protect unidentified third parties by alerting prospective purchasers of property as to what is already public record, *i.e.*, the fact of a suit involving property.”)

7. Based on the South Carolina Rule Against Perpetuities, South Carolina law requires the Court to reform the interest so that it satisfies the rule at the time of the creation of the interest. *See* S.C. Code 27-6-40; *see also* *See Exhibit H* (S. Alan Medlin and F. Ladson Boyle, *What Every South Carolina Lawyer Should Know About the (Ugh!) Rule Against Perpetuities*, S.C. Lawyer, May/June 1991, at pp. 27, 28).

8. The Court could and should have reformed the Right of First Refusal under governing law. Under South Carolina law, the case as presented to this court during the trial did not involve a justiciable controversy and should have been dismissed on this basis, as Crescent requested. *See, e.g., Peoples Fed. Sav. & Loan Assoc. of S.C. v. Resources Planning 918 Corp.*, 358 S.C. 460, 477, 596 S.E.2d 51, 60 (2004) (reversing lower court’s ruling relating to right of first refusal as no justiciable controversy existed “absent a pending sale or offer for sale, or purchase or offer to purchase, or the presence of a third-party challenging right of first refusal”). Furthermore, as noted above, any time frames that were not specified in the Agreement could be implied and inserted into a reformed version of the Agreement based upon what is “reasonable.”

9. Notwithstanding the clear evidence that CJN intended and did provide a Right of First Refusal as to the Future Phase, and intended to be bound, the Order allows for CJN to unjustly uproot Crescent's reasonable reliance and expectations that the parties had agreed to a Future Phase over which Crescent would have a right of first refusal. The equities in this scenario called for the Right of First Refusal to be reformed and enforced rather than thrown out. The Order also disrupts the rights and expectations of the parties without the benefit of a justiciable controversy, which is not in keeping with the jurisdictional limitations upon the Court or the interests of justice.

WHEREFORE, having shown the reasons why this Court should reconsider, alter or amend, and grant relief from the Court's Order dated May 27, 2022, Crescent requests that this Motion be granted, that the Court fully withdraw its Order dated May 27, 2022, and that the Court issue a new order that resolve the issues presented and correct each of the factual errors, legal errors, and other defects discussed above, as will be described with additional particularity in a forthcoming memorandum of law with supporting exhibits.

Respectfully submitted,

By: s/Ellis R. Lesemann

Ellis R. Lesemann

erl@lalawsc.com

Benjamin H. Joyce

bhj@lalawsc.com

LESEMANN & ASSOCIATES LLC

418 King Street, Suite 301

Charleston, SC 29403

(843) 724-5155

June 6, 2022

Charleston, South Carolina

Attorneys for Defendant

Crescent Homes SC, LLC

CERTIFICATE OF SERVICE

I hereby certify that I have on this date **e-mailed** a true and correct copy in PDF format of **CRESCENT HOMES SC, LLC'S MOTION TO ALTER OR AMEND ORDER DATED MAY 27, 2022** to the following counsel of record at the primary e-mail address listed in the Attorney Information System (AIS) pursuant to Supreme Court of South Carolina Order No. 2022-05-06-04 Re: Service by E-mail in the Trial Courts:

F. James Warmoth, Esq.
KENISON DUDLEY & CRAWFORD, LLC
704 East McBee Avenue
Greenville, SC 29601
warmoth@conlaw.com

Attorneys for Defendant CJN, LLC

s/ Ann Cunniffe
Ann Cunniffe, Paralegal

June 6, 2022
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	Case No. 2019-CP-23-05954
CRESCENT HOMES SC, LLC,	)	Case No. 2020-CP-23-04351
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
CJN, LLC,	)	
	)	
Defendant.	)	
	)	
CJN, LLC,	)	NOTICE OF EXCERPTS OF
	)	DEPOSITION OF NICHOLAS
Plaintiff,	)	FRANCHINA TO BE OFFERED AT
	)	TRIAL PURSUANT TO RULE 32(a)(5),
	)	SCRCF
	)	
vs.	)	
	)	
CRESCENT HOMES, SC, LLC	)	
	)	
Defendant.	)	
	)	

Crescent Homes SC, LLC ("Crescent"), by and through its undersigned counsel, provide the following deposition excerpts of the April 7, 2022 Deposition of Nicholas Franchina for use at the Trial of the above-referenced matter that is scheduled for May 4, 2022 before Master-In-Equity Judge Charles B. Simmons, Jr.:

Deposition Transcript of Nicholas Franchina dated April 7, 2022

1. Page 4, line 23 to Page 5, line 5;
2. Page 45, line 3 to Page 46, line 18;
3. Page 47, line 19 to Page 48, line 22;
4. Page 49, line 5 to Page 50, line 9;
5. Page 51, line 1 to Page 51, line 18;
6. Page 53, line 15 to line 22;
7. Page 55, line 9 to line 24;
8. Page 58, line 5 to line 17;

9. Page 63, line 2 to line 11;
10. Page 82, line 15 to line 22;
11. Page 127, line 16 to Page 128, line 9; and
12. Page 132, line 4 to Page 133, line 24

The aforementioned deposition excerpts are attached hereto as Exhibit A.

Respectfully submitted,

By: s/Ellis R. Lesemann

Ellis R. Lesemann

erl@lalawsc.com

Benjamin H. Joyce

bhj@lalawsc.com

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418 King Street, Suite 301

Charleston, SC 29403

(843) 724-5155

Attorneys for Crescent Homes SC, LLC

May 3, 2022

Charleston, South Carolina

EXHIBIT A

Highlighted Excerpts from Deposition of Nicholas Franchina

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF GREENVILLE

3 CRESCENT HOMES SC, LLC,

4 Plaintiff,

5 vs.

C/A NO. 2019-CP-23-05954

2020-CP-23-04351

6 CJN, LLC,

7 Defendant,

8 CJN, LLC,

9 Plaintiff,

10 vs.

11 CRESCENT HOMES SC, LLC,

12 Defendant.

13
14 DEPOSITION OF: NICHOLAS FRANCHINA

15 DATE: April 7, 2022

16 TIME: 10:12 a.m.

17 LOCATION: Law Offices of Kenison Dudley &
Crawford
18 704 E McBee Avenue
Greenville, SC

19 TAKEN BY: Counsel for CRESCENT HOMES SC, LLC

20 REPORTED BY: ERIC S. GLAZIER, Court Reporter

1 today.

2 If there's a question that I ask that
3 is poorly worded or is confusing, please just ask
4 me to clarify it, and I'll be happy to do so. Is
5 all that fair and understood?

6 A. Understood.

7 Q. Okay. And you're good at giving verbal
8 answers. That's another thing that's important, is
9 that the court reporter needs to have a verbal
10 answer rather than anything that is nonverbal --

11 A. Yes.

12 Q. -- in terms of a nod, shrug, or what
13 have you.

14 Is there any reason why today would be
15 an unsuitable time for your deposition to be taken?

16 A. No.

17 Q. Okay.

18 And the court reporter has placed you
19 under oath. And do you understand the significance
20 of that act?

21 A. Yes.

22 Q. Okay.

23 So we'll continue forward.

24 Are you here on behalf or as a
25 representative of CJN, LLC?

Page 5

1 A. Yes.

2 Q. Okay. And are you a part-owner of CJN?

3 A. Yes.

4 Q. All right. Who are the other owners?

5 A. Charles Howard and Jeff Howard.

6 Q. Okay. Does Rodney Gray have any
7 interest?

8 A. In CJN? No.

9 Q. Yeah, okay.

10 All right. And how are the membership
11 interests divided between yourself, Charles, and
12 Jeff?

13 A. A third, a third, a third.

14 Q. Okay.

15 All right. Is CJN actively involved at
16 this time in -- if I use the phrase, horizontal
17 development -- I know you're in the business --
18 would you understand that phrase?

19 A. I would.

20 Q. Okay.

21 Is CJN -- other than in River Springs
22 or in Orchard Valley, is CJN presently involved in
23 the horizontal development of any projects for
24 purposes of creating residential lots?

25 A. Yes.

1 Q. All right. So I'm going to get back to
2 Exhibit 2.

3 Does CJN understand that with each
4 contract it signs, it has an implied covenant of
5 good faith and fair dealing?

6 A. Yes.

7 Q. Okay. And do you have an operating
8 understanding of what that means?

9 A. Yes.

10 Q. All right.

11 When you entered into this contract
12 that included a right of first refusal, did CJN
13 intend for those provisions to be enforceable?

14 A. Absolutely.

15 Q. Okay.

16 A. As long as everything was met with the
17 contract.

18 Q. Insofar as reviewing this contract
19 before it gets signed, you're a sophisticated real
20 estate investor, broker, developer. Charles Howard
21 is a real estate attorney. Is Jeff also a real
22 estate --

23 A. No.

24 Q. What does Jeff do?

25 A. Financial planner.

1 Q. All right.

2 Would Charles have reviewed this
3 contract on behalf of CJN before it was signed?

4 A. He did.

5 Q. And did you, did Nick Franchina also
6 review this?

7 A. Not really, not to the extent that
8 Mr. Howard did.

9 Q. Okay. So in a division of duty, that
10 might be something that Charles handles?

11 A. That's correct.

12 Q. All right.

13 To your knowledge, was Charles
14 satisfied with the agreement in terms of -- that he
15 considered it adequate, valid, and enforceable?

16 A. Adequate, valid, and enforceable. When
17 we signed it, absolutely.

18 Q. Okay. All right.

19 Did he express any reservations to you
20 about anything being vague or ambiguous?

21 MR. WARMOUTH: I'm going make a similar
22 objection that you might have made yesterday,
23 Ellis. To the extent Mr. Francis was acting as the
24 attorney for CJN at that time, we might be getting
25 into some privileged conversations.

1 MR. LESEMANN: Okay. Sure, and I would
2 not mean to do that, Mr. Howard.

3 MR. WARMOUTH: I'm just going to direct
4 the witness to think about whether any
5 conversations that he's communicating right now
6 were in an attorney client-type setting, and if so,
7 not to reveal those conversations.

8 THE WITNESS: Okay.

9 BY MR. LESEMANN:

10 Q. Does Mr. Howard bill -- did Mr. Howard
11 send a bill to CJN for the review of this
12 agreement?

13 A. I can't remember.

14 Q. Okay. Is there any letter of
15 engagement as between CJN and Mr. Howard's firm for
16 legal services?

17 A. I can't remember.

18 Q. Okay.

19 At the time that this contract was
20 entered, did CJN have concerns that it was perhaps
21 vague or ambiguous in any way?

22 A. You would have to ask Mr. Howard. He
23 read the whole contract. I did not.

24 Q. Okay. You know, he's an attorney. I'm
25 sort of asking, from your perspective as a member

1 of CJN and the person who actually signed it, did
2 you have any concerns that it was vague or
3 ambiguous?

4 A. Once Mr. Howard told me, I signed it.

5 Q. Okay.

6 Once CJN signs it, is it fair to say
7 that CJN intends to be bound by it?

8 A. Yes.

9 Q. Okay.

10 Did you, Nick, look at all at these
11 individual provisions, including but not limited to
12 paragraph 19, the right of first refusal?

13 A. At the time, before I signed it?

14 Q. Yes.

15 A. Probably not, myself, you know. CJN
16 did, obviously, because Mr. Howard looked at it.

17 Q. Okay.

18 So in terms of what CJN's understanding
19 about what this contract is or what it means, those
20 are really questions better presented to
21 Mr. Howard?

22 A. I would think so.

23 Q. Do you recall if -- was there a process
24 whereby this -- drafts, redlines, and versions of
25 this contract were exchanged, Mr. Howard made edits

1 and people on Crescent's side made edits,
2 et cetera? Do you recall there being a process
3 like that?

4 A. I don't recall.

5 Q. All right. On Page 9 of this
6 contract -- if you wouldn't mind turning to it for
7 me, please -- the first paragraph there is labeled,
8 J, and it's within Section 9, which is seller's
9 general representations and warranties. It starts
10 back on Page 7.

11 But could you just read for me what
12 that subsection J says?

13 A. I can barely see right now. I've got
14 pink eye, so...

15 Q. Oh, okay. How about this, if I -- if I
16 read it and you just --

17 A. That's fine.

18 Q. -- follow along?

19 A. That's fine.

20 Q. All right. I read it to say, seller
21 will not take any action or admit to take any
22 action which action or omission would have the
23 effect of violating or causing to be untrue any of
24 the representations, warranties, covenants, and
25 agreements contained herein.

1 Did I read that correctly?

2 A. Yes.

3 Q. All right.

4 And seller in this case would be CJN?

5 A. Yes.

6 Q. All right. And so CJN agreed and

7 understood that it would be bound by this

8 Section 9J, correct?

9 A. Yes.

10 Q. Okay.

11 Now, at this point, is it correct to

12 say that there is still an intention that there

13 will be a future phase of River Springs?

14 A. By me or someone else?

15 Q. By the parties to the -- entering into

16 a contract that refers to a future phase, has an

17 exhibit indicating the future phase.

18 A. Well, if you're referring to the

19 contract, then if you go over to the other page

20 where the option of first refusal is, it says it'll

21 be taken care of at the time of -- at closing, we'd

22 have it done, we'd have it recorded at closing. So

23 that would be part of this contract. Am I correct?

24 Q. There's a sentence --

25 A. So if we're going to the contract --

1 Q. There's a sentence in paragraph 19 that
2 says, a memorandum of such right of first refusal
3 and a form reasonable -- reasonably reasonable
4 accepted to the parties will be recorded in the
5 public records of Greenville County at the initial
6 closing.

7 A. Okay.

8 Q. All right?

9 So did -- and you've indicated, and I
10 don't disagree with you, that that memorandum was
11 not ultimately recorded.

12 A. It was never discussed --

13 Q. Right.

14 A. -- or recorded --

15 Q. Okay. And so are you --

16 A. -- or brought to me by your client or
17 myself. Neither one of us knew it was in there,
18 obviously.

19 Q. Neither one of us --

20 A. I mean, I didn't know it was in there
21 there, because Mr. Howard read it. Your client
22 didn't bring it to me at closing.

23 Q. All right. So you're saying --

24 A. So then he should have -- he should
25 have brought it to my attention too at closing,

-- Page 53

1 Q. I'm just -- I'm looking at the last
2 sentence and asking a basic question about that
3 last sentence.

4 A. The last sentence --

5 Q. It doesn't say --

6 A. The last sentence does not say it, but
7 it does say -- initial closing...

8 The seller granting to the purchaser.
9 So if they granted it to the purchaser, it would be
10 the purchaser's obligation to bring something back
11 to them at closing. But that's just -- I'm not an
12 attorney.

13 Q. That's your view of things. Fair
14 enough.

15 All right. There's a reference to a
16 future phase in this Section 19, right?

17 A. Absolutely.

18 Q. All right.

19 And so I'm just asking you that there
20 was a mutual intent that there would be a future
21 phase, correct?

22 A. Yes.

23 Q. All right. Thanks.

24 All right. Before CJN tried to sell
25 the property to Doug Clark, did CJN ever

1 A. But that was his heart.

2 Q. Understood. And we've got to follow
3 our heart, but you know, if we're going to follow
4 our heart and not find a backup property, then we
5 may lose a 1031 exchange, right?

6 A. That's on him.

7 Q. Yeah, right. Okay. So I want to
8 unpack a couple things in your last response.

9 When Doug Clark approached CJN about
10 purchasing the future phase, you, Nick, were not
11 even aware that the contract included a right of
12 first refusal provision?

13 A. At that time, I did not.

14 Q. Okay. But you do recall and admit that
15 you're the one that signed the contract on behalf
16 of CJN, right?

17 A. I do, yes.

18 Q. All right. And --

19 A. Let me back up. Did I know there was a
20 right of first refusal in there? I cannot
21 remember. I just can't remember. So I wouldn't
22 say that. I couldn't remember. But then, when I
23 brought it to Mr. Howard, he's the one who
24 basically brought it back to my attention.

25 MR. WARMOUTH: Mr. Howard or Mr. Clark?

1 embarrassed, you know? \$74,000, just fighting this
2 thing.

3 A. Right.

4 Q. But at any rate.

5 Now, if -- when CJN's entering a
6 contract, if Mr. Howard or if you feel like that
7 something needs to be more clearly defined or -- or
8 set out in some other kind of way, are you and
9 Mr. Howard and CJN fully capable of bringing that
10 issue to the other party's attention?

11 A. Yes.

12 Q. Okay.

13 And I just want to be clear that at the
14 time that this contract was signed, there was no
15 request on CJN's part that anything else be further
16 clarified or elucidated in this contract?

17 A. Correct.

18 Q. All right.

19 All right. So at the time, then, that
20 the contract was entered, do you feel like that CJN
21 had an adequate understanding of in the event that
22 there was an offer on the future phase, that the
23 parties could figure out how to honor that right of
24 first refusal? Did you have any question in your
25 mind at the time the contract was signed that this

1 that I understand.

2 CJN does not allege that Crescent
3 refused to file a memorandum, right? It wasn't a
4 circumstance where you prepared one and you
5 presented to them, let's file this, and then
6 Crescent refused? That's not what you're alleging,
7 correct?

8 A. No.

9 Q. Okay.

10 A. They never -- they never gave me one,
11 we never gave them one.

12 Q. All right.

13 A. But it's part of the contract, saying
14 that it would be done at closing. It was not done
15 at closing.

16 Q. Now, and there's --

17 A. So does that survive closing?

18 Q. Again, you know, it will, because --

19 A. I mean, does it say it will survive --

20 Q. Well, there's no -- there's no
21 closing -- there's no closing on the future phase,
22 right? The closing's been on the initial closings.
23 But again, I don't want you to waste all your ammo,
24 and, you know, again, we've got a good judge
25 who'll -- if we don't resolve this, he'll raise all

1 tournament. I went down to a basketball tournament
2 for one of my daughters, and his son was playing in
3 the tournament down there. I saw him there. I'd
4 say a couple weeks.

5 Q. Okay. Do you guys have dinner
6 together, drinks together, anything like that from
7 time to time?

8 A. No.

9 Q. All right.

10 A. No, I don't drink. I don't have time.
11 Got to get dinner. I've got four kids.

12 Q. Got to eat.

13 A. I do, with my family.

14 Q. Yeah. No, unders- -- good.

15 Do you understand that in this case
16 about the right of first refusal, that Crescent has
17 raised the argument that -- that there is not a
18 pending contract to -- at least maybe these offers
19 will be brought forward to us shortly that you
20 mentioned.

21 A. No, there's not a pending contract
22 right now. I had pending contracts --

23 Q. Okay.

24 A. -- and they scared them off.

25 Q. All right. Do you know the date when

1 deal, is what I was giving Mr. Clark at the time.

2 Q. Okay.

3 A. But Mr. Clark was also a man of his
4 word. When people shake my hand and look me in the
5 eye and they tell me the truth, I mean, I tend to
6 do them favors.

7 Q. Okay.

8 A. You can ask anyone in my office.

9 Q. So I think that -- I just want to ask
10 you this to confirm that you think your asset is
11 worth more and that the market appeared --

12 A. Well, I don't think it's more.

13 Q. -- to think your asset is worth more --
14 just let me finish.

15 A. Yeah.

16 Q. Well, you don't -- you don't think the
17 asset's worth more than 1.25?

18 A. No, I think the market has spoken. It
19 is worth more than 1.25.

20 Q. Okay. Right.

21 And it's worth more than 775?

22 A. Absolutely.

23 Q. Okay. So by -- you know, it continues
24 to appreciate and CJN continues to hold the
25 property until it sells it, right?

1 A. Until it sells it or decides to develop
2 it. And if I were to develop lots, I would give
3 them the first right of first refusal. That's what
4 I've said from the very beginning.

5 Q. Okay. But you have no plans to develop
6 it?

7 A. At this point right now, not right now.

8 Q. Right. Understood.

9 A. But things change.

10 Q. Okay. Well --

11 A. Interest rates are going up.

12 Q. Right. No, I know, right.

13 A. We're going see builders squirming here
14 soon.

15 Q. No, I hear you. No, it's been --
16 it's --

17 MR. LESEMAN: And we can go off.

18 (Off-the-record conference.)

19 EXAMINATION

20 BY MR. WARMOUTH:

21 Q. Nick, this is, as you know, James
22 Warmouth, your attorney, asking a few follow-up
23 questions. And what I'd like to do is just touch
24 on a few things you testified to and clarify what
25 appeared to me to be kind of open doors that I'd

1 would prevent you from selling that Phase
2 Two property?

3 A. Absolutely not. I still don't.

4 Q. One more question, and I'll preface
5 this by saying, this is a somewhat unusual case in
6 that a lot of the communication has been attorney
7 to attorney, so some of the kind of key events have
8 been reflected in that.

9 You testified earlier that you didn't
10 think that there had been a memorandum of right of
11 first refusal proposed by either side in this case;
12 is that correct?

13 A. Correct.

14 Q. I'll represent that I recall that there
15 were some proposals back and forth that the
16 attorneys made on that. Does that change anything
17 about your -- I mean, do you recall that, if I tell
18 you that?

19 A. Well, we did that after the fact, but I
20 was talking about before the first closing, initial
21 closing.

22 Q. Right. Okay.

23 Well, what I'm doing is I'm reminding
24 you and I'm representing that there was some
25 exchange on that.

1 A. Yes, there was.

2 Q. And I'm just getting you to -- now that
3 I tell you that --

4 A. I got you.

5 Q. -- you acknowledge that that --

6 A. Yes.

7 Q. -- potentially happened, at least?

8 A. I acknowledge it.

9 Q. Yeah. Okay.

10 A. Did we go into the lawsuit before the
11 first closing?

12 MR. LESEMAN: Yeah.

13 BY MR. WARMOUTH:

14 Q. I believe so.

15 A. Then maybe we did talk about it, then,
16 before the first closing.

17 Q. Yeah.

18 A. You might be right.

19 Q. Well, I just -- that may come into play
20 later. I just wanted to get you --

21 A. Well, that's what I was wondering. I
22 couldn't remember. I know we did at some point,
23 but I didn't know when the first closing took
24 place.

25 MR. LESEMAN: Can we just go off the