

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge

Case No.: 2012-CP-10-03870

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SC Court of Appeals

Peter T. Phillips and Summar C. Phillips Respondents,

v.

Omega Flex, Inc., John Wieland homes and Neighborhoods of the Carolinas, Inc., AAA
Plumbing, Fogel Services, Inc., Charleston LEC, Inc., Defendants,

Of whom John Wieland Homes and Neighborhoods of the Carolinas, Inc., is the ... Appellant,

And Omega Flex, Inc., AAA Plumbing, Fogel Services, Inc., Charleston LEC, Inc.,
are..... Respondents.

**INITIAL BRIEF OF RESPONDENTS PETER T. PHILLIPS AND SUMMAR C.
PHILLIPS**

McDONALD, McKENZIE, RUBIN,
MILLER AND LYBRAND, L.L.P.
1704 Main Street
Post Office Box 58
Columbia, South Carolina 29202
(803) 252-0500
ROBERT A. McKENZIE
AMANDA N. PITTMAN
JOHN F. McKENZIE
ATTORNEYS FOR PETER T. PHILLIPS
AND SUMMAR C. PHILLIPS

Columbia, South Carolina
February 17, 2014

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STATEMENT OF ISSUES ON APPEAL

1. Did the Circuit Court correctly find that the Purchase Agreement was not governed by the Federal Arbitration Act when the Purchase Agreement did not involve transactions involving interstate commerce?
2. Did the Circuit Court correctly find that the Purchase Agreement was not governed by the Federal Arbitration Act in view of the fact that the Addenda to the Agreement included only inconsequential choices that the Phillipses could make on the home in question?
3. Did the Circuit Court correctly find that the arbitration clause should not be enforced?
4. Did the Circuit Court correctly find that the Phillipses should not be compelled to arbitrate their claims against the Trade Contractors?

STATEMENT OF THE CASE

A. Procedural History of the Case

Peter T. Phillips and Summar C. Phillips (“the Phillipses”), the Respondents, filed a complaint in the Charleston County Court of Common Pleas on June 14, 2012, against Respondent Omega Flex, Inc. (“Omega Flex”), Appellant John Wieland Homes and Neighborhoods of the Carolinas, Inc. (“John Wieland Homes”), Respondent AAA Plumbing (“AAA Plumbing”), Respondent Fogel Services, Inc. (“Fogel Services”), and Respondent Charleston, LEC, Inc. (“Charleston LEC”). (Compl.). The Phillipses pled the following causes of action: negligence, breach of express warranty, breach of implied warranty of merchantability, breach of the implied warranty of fitness for a particular purpose, strict liability, breach of contract, breach of implied warranty of workmanlike service, and breach of implied warranty of habitability. (Compl. ¶ 14, ¶ 18, ¶ 22, ¶ 26, ¶ 32, ¶ 34, ¶ 39, ¶ 44, ¶ 48, ¶ 51, ¶ 56, ¶ 61, ¶ 64, ¶ 69, ¶ 74, ¶ 77, ¶ 82, ¶ 87).

The Phillips Complaint arises out of a home fire on June 25, 2009, at the Phillipses’ home located at 1417 Hooper Street in Daniel Island, South Carolina. (Compl. ¶¶ 7-9). The Phillipses purchased the home from John Wieland Homes approximately one (1) year prior to the fire. (Compl. ¶ 9). The Phillipses pled that the fire resulted from a lightning strike which created a hole in the corrugated stainless steel tubing (“CSST”), and caused the natural gas to ignite at the hole in the CSST. (Compl. ¶ 10). The ignited gas which escaped the hole in the CSST ignited surrounding materials and spread, creating an extensive fire. (Compl. ¶ 10). As a result, the Phillipses home and its contents were severely damaged, and they were unable to live in their home for a period of time. (Compl. ¶ 11).

At the time of the purchase, the Phillipses and John Wieland Homes executed a Purchase Agreement containing an arbitration clause, prompting the Appellant, John Wieland Homes, on October 29, 2012, to move to compel arbitration between the Phillipses and the other Defendants in the original action. (Mot. to Compel Arbitration). The Appellant argued in its motion to compel arbitration that the Phillipses claims were subject to arbitration under the Federal Arbitration Act. (Mot. to Compel Arbitration). In turn, the Phillipses filed a Memorandum in Opposition to John Wieland Homes' motion to compel arbitration, arguing that the Agreement was not subject to the Federal Arbitration Act because the contract was for the sale of a home rather than the construction of a home, meaning interstate commerce was not involved in the transaction. (Memo. in Opposition to Mot. to Compel Arbitration). The Honorable J.C. Nicholson, Jr. heard the motion on December 18, 2012, and issued an order which held that, in accordance with the Phillipses Memorandum in Opposition to Motion to Compel Arbitration, the Agreement did not involve interstate commerce, and therefore, was not subject to the Federal Arbitration Act. (Order).

The Appellant filed a Motion to Reconsider, Alter, or Amend that Order on May 6, 2013, which was denied, and Appellant filed a notice of its intent to appeal on June 25, 2013. (Notice of Appeal).

B. Facts

The Phillipses and John Wieland Homes entered into a Purchase and Sale Agreement ("Purchase Agreement") on June 7, 2008, which purported to include a mandatory arbitration provision. (Purchase Agreement). The parties have agreed that the arbitration section does not conform to the South Carolina Uniform Arbitration Act requirements. (Order). The Purchase Agreement states that the contract is for the sale of property. (Purchase Agreement).

Additionally, the Purchase Agreement incorporated the John Wieland Homes and Neighborhoods 5-20 Extended Warranty, along with the Addendum to the Purchase Agreement. (Purchase Agreement; Addendum).

STANDARD OF REVIEW

“Arbitrability determinations are subject to *de novo* review.” *Bradley vs. Brentwood Homes, Inc.*, 398 S.C. 447, 453, 730 S.E.2d 312, 315 (Ct. App. 2012) (citing *Simpson vs. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 22, 644 S.E.2d 663, 667 (2007)). However, an appellate court will not reverse a circuit court’s factual findings “if any evidence reasonably supports the findings.” *Id.*

ARGUMENT

I. The trial court did not err when it found that the purchase agreement was not governed by the Federal Arbitration Act because the agreement was for the sale of a home and not the construction of a home.

According to the Federal Arbitration Act, “[a] written provision in . . . a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.” 9 U.S.C.A. § 2 (West). The Federal Arbitration Act defines commerce under the Act as “among the several States.” 9 U.S.C.A. § 1 (West). In the instant case, the Court did not commit an error of law when it found that the Purchase Agreement did not involve interstate commerce because the Purchase Agreement was for the sale of a home rather than for the construction of a home.

The contract between Appellant and the Phillipses provided for mandatory binding arbitration in the original Purchase Agreement. (Purchase Agreement § 22). Even though all parties agree that the arbitration provision is invalid and unenforceable under South Carolina law, the Appellant asserts that the Federal Arbitration Act preempts state law if state law

invalidates a valid arbitration agreement involving interstate commerce. *Bradley*, 398 S.C. at 454-55, 730 S.E.2d at 315. The trial court was correct in determining that the Federal Arbitration Act does not govern this transaction because this was a contract for the sale of a home as distinguished from the construction of a home. “The development of land within South Carolina borders is the quintessential example of a purely intrastate activity.” *Zabinski vs. Bright Acres, Ass’n*, 346 S.C. 580, 595, 553 S.E.2d 110, 117-18 (2001).

Our Supreme Court has held that when a home purchase agreement provides that a purchaser is receiving a completed dwelling and is not contracting for the construction of a home, the transaction does not involve interstate commerce, meaning that the transaction is not subject to the Federal Arbitration Act. *Bradley*, 398 S.C. at 458, 730 S.E.2d at 318. This is the case here. Paragraph One (1) of the purchase agreement explicitly states that the contract is for the sale of property. (Purchase Agreement; Exhibit A). Additionally, Appellant’s own witness, Dennis A. Black, a Division Quality Manager for Appellant, states in Paragraph Three (3) of his affidavit supporting Appellant’s motion that the Phillipses “entered a purchase agreement with JWH to buy a home in the located [sic] at 1417 Hooper Street, Charleston, SC 29492.” (Aff. Of Dennis A. Black; Exhibit B). The sale occurred after the Supreme Court of South Carolina decided *Bradley vs. Brentwood Homes, Inc.* It is clear in this context that this was a contract for the sale of a dwelling and not for the construction of a home. Consequently, the agreement is not governed by the Federal Arbitration Act.

Appellant relies on *Munoz vs. Green Tree Fin. Corp.* in an attempt to claim that arbitration agreements are enforceable according to their terms. 343 S.C. 531, 539, 542 S.E.2d 360, 363-64 (2001). However, *Munoz* involved “an installment contract and security agreement with Gerald Sealy (Builder) to finance home improvements in the amount of \$15,000 secured by

a mortgage on their home.” 343 S.C. at 536, 542 S.E.2d at 362. The facts in *Munoz* implicate interstate commerce. First, it was a construction contract; additionally, the Court found that the Builder assigned its right to a Delaware corporation, the principal place of business of that corporation was in Minnesota, the agreement was prepared in Minnesota, and the proceeds of their loan were disbursed from a Minnesota bank. *Munoz*, 343 S.C. at 539, 542 S.E.2d at 364. The instant case deals solely with the sale of a home, and the sale of a home is a purely intrastate activity. *Zabinski*, 346 S.C. at 595, 553 S.E.2d 117-18.

II. The Trial Court correctly considered the Addenda to the Agreement in finding the Agreement was not governed by the Federal Arbitration Act.

Appellant claims that because the Phillipses made some choices regarding the home that the Purchase Agreement was for the construction of a home rather than for the sale of a home. However, Appellants’ argument is flawed.

In *Bradley*, the Supreme Court of South Carolina found that arbitration was not mandatory when the Purchaser made incidental choices regarding the home. This Court can review the public record and take judicial notice of the *Bradley* Home Purchase Agreement where the seller “[gave] \$1,000.00 credit towards [sic] refrigerator to Buyer” and “upgrade[d] lighting to Buyer satisfaction in kitchen and dining room.” Plaintiff’s Notice of Motion and motion for Summary Judgment Pursuant to Rule 56, S.C.R.C.P., “Exhibit C,” at 59, *Bradley vs. Brentwood Homes*, 398 S.C. 447, 730 S.E.2d 312 (2012). Mr. Bradley, the purchaser, determined which appliances would be in his kitchen with the \$1,000.00 credit, and also chose the lighting in the kitchen and the dining room. Even though the Purchaser made some choices regarding the home, the Supreme Court of South Carolina found these were not significant and that the Home Purchase Agreement was for the purchase of a home and not the construction of a home.

The present case is on point with *Bradley* in that the choices made by the Phillipses were, at most, incidental. In Section Eight (8) of the Purchase Agreement, the seller (John Wieland Homes) is given full authority to make all decisions over the materials used on the home. (Purchase Agreement). Section Twelve (12) of the purchase agreement states that the seller “reserves the right to approve the lot, house placement, driveway location, number of deck steps included in Purchase Price and all exterior colors.” (Purchase Agreement). Additionally, Section Fourteen (14) of the purchase agreement states that the purchaser (Phillipses) or the purchaser’s agents have no authority to do work on the property prior to closing on the home. (Purchase Agreement). In Section Nine (9) of the purchase agreement, the Phillipses were given the option to choose the type of carpet, vinyl, and fixtures. (Purchase Agreement). In Addendum One, the Phillipses were to make selections regarding heated and cooled rooms, the bathrooms, and the closets on the third floor. (Addendum One; Exhibit C). The addendum has a Design Selection Checklist where the Phillipses had the option to choose incidental, purely aesthetic features of the home. (Addendum; Exhibit D). From both the original Agreement and the Addendum, it is clear that the Phillipses, like in *Bradley*, had no real decision-making authority regarding the construction specifics of the home. If the contract were for the actual construction of a home, then the Phillipses would have made the ultimate decisions regarding the materials and would have been allowed access to the construction process prior to closing. (Purchase Agreement). However, like in *Bradley*, since the Phillipses made only incidental choices, it is clear that the contract was for the sale of a home and not the construction of a home.

Appellants cite *Bradley* to state that this Purchase Agreement should be governed by the Federal Arbitration Act and argue that the Supreme Court of South Carolina did not consider the Bradleys’ choices when determining whether the contract was for the sale of a home or the

construction of a home. The Appellants cite a footnote which states that if the Agreement was for the construction of a residence, then it would have been subject to the Federal Arbitration Act. *Bradley*, 398 S.C. at 458, 730 S.E.2d at 318, n. 8. We agree that if this Purchase Agreement had been for the construction of a home that it would have been governed by the Federal Arbitration Act, but this, like the Purchase Agreement in *Bradley*, was for the sale of a home for the reasons set forth above.

Appellants' argument that the Agreement was for the construction of a home fails, and this Court should uphold the circuit court's factual analysis and determination that the transaction is not governed by the Federal Arbitration Act.

III. The trial court correctly found that the Purchase Agreement does not expressly and unambiguously compel arbitration because the arbitration clause is unconscionable.

The trial court correctly determined that the Purchase Agreement does not expressly and unambiguously compel arbitration of all claims. "General contract principles of state law apply to arbitration clauses governed by the FAA." *Munoz*, 343 S.C. at 549, 542 S.E.2d at 364.

Therefore, even if this Court were to find that the arbitration clause is subject to the Federal Arbitration Act, this Court should not enforce the arbitration clause because it is unconscionable. In South Carolina, to assert the defense of unconscionability, one must prove, first, the absence of meaningful choice, and, second, that the terms are oppressive and one-sided. *Simpson*, 373 S.C. at 24-25, 644 S.E.2d at 668-69.

When determining whether there was a lack of meaningful choice in the bargaining process, courts generally "take into account the nature of the injuries suffered by the plaintiff; whether the plaintiff is a substantial business concern; the relative disparity in the parties' bargaining power; the parties' relative sophistication; whether there is an element of surprise in the inclusion of the challenged clause; and the conspicuousness of the clause." *Simpson*, 373

S.C. at 25, 644 S.E. 2d at 669. The contract between the Phillippes and John Wieland Homes was a contract of adhesion. The majority of the terms in the agreement were from a standard agreement used by John Wieland Homes.

In *York vs. Dodgeland*, the South Carolina Court of Appeals examined an arbitration agreement between York and Dodgeland and another arbitration agreement between Cristy and Jim Hudson. 406 S.C. 67, 749 S.E.2d 139 (Ct. App. 2013). The Court of Appeals determined that Cristy lacked meaningful choice when “[a]side from the selection of the desired vehicle VIN and figures dependent upon the agreed price, the remaining terms of the sale, many of which are quite significant, were pre-printed, and presumptively, non-negotiable.” 406 S.C. at 67, 749 S.E.2d at 149. In *York*, Cristy lost the right to a jury trial, her purchase price was not a substantial business concern of the car dealership, and there was a significant disparity in the bargaining power between the purchaser and the car dealership. *Id.* As in *York*, the Phillippes lacked meaningful choice because they, too, lost the right to a jury trial, the purchase price of the home was not a substantial business concern of John Wieland Homes, and there was a significant disparity in the bargaining power between the Phillippes and John Wieland Homes.

The Phillippes can also satisfy the second prong of the unconscionability defense because the terms of the agreement are both oppressive and one-sided. A clause is considered oppressive when “no reasonable person would make them and no fair and honest person would accept them.” *York*, 406 S.C. at 67, 749 S.E.2d at 149-50 (citing *Simpson*, 373 S.C. at 25, 644 S.E.2d at 668). The South Carolina Court of Appeals has held that when the amount of damages are restricted by the arbitration clause that the terms are oppressive. *York*, 406 S.C. at 67, 749 S.E.2d at 150. The Wieland 5-20 Extended Warranty similarly restricts the Phillippes amount of damages: “The maximum amount payable under this warranty by Wieland for all claims

submitted is the original final sales price of the Home shown on the warranty certificate applicable to the Home, which includes the parcel of land on which the Home was constructed.” (JWH Warranty, § V, ¶ E; Exhibit E).

While the sales price of the home is the most one can recover, the warranty further restricts recovery in certain situations, all of which arguably apply here. According to the Wieland 5-20 Extended Warranty, only the defective item itself will be repaired or replaced should there be a defect, not the damage caused by the defect, and damage caused by failure to comply with warranty requirements “by anyone other than Wieland or Wieland’s employees, agents or subcontractors” is not covered by the Extended Warranty. (JWH Warranty, § II, ¶ A; JWH Warranty, § IV, ¶ I). “Loss or damage not caused by a defect or deficiency in the design or construction of the Home by Wieland or Wieland’s employees, agents or subcontractors” is not covered by the warranty. (JWH Warranty, § IV, ¶ J). John Wieland Homes also states in its warranty that it is not liable for any loss, defect, or claim if the Phillips had insurance on the home. (JWH Warranty, § V, ¶ M). Since this case involves an allegedly defective product, and also involves a subrogated claim, the warranty on its face would not cover the damages to the home, the Phillipses contents, or the Phillipses loss of use of the home. Appellant John Wieland Homes, who through its agents and/or servants chose the allegedly defective product, installed the allegedly defective product, and sold the home to the Phillipses containing the allegedly defective product, would be responsible for at most, the cost of replacing corrugated stainless steel tubing. No reasonable person would make or accept these incredibly oppressive provisions.

The terms of the arbitration clause in the Purchase Agreement and Warranty are unconscionable, and the lower court correctly chose not to enforce the arbitration clause even

though the Phillips signed the Agreement that the Purchase Agreement was subject to the FAA, which factually it was not.

IV. The Circuit Court did not commit an error in law in denying Appellant John Wieland Homes' motion to arbitrate the Phillipses' claims against the Trade Contractors.

The Phillipses have no contract between themselves and any of the Trade Contractors. The Phillipses claims against the Trade Contractors are based in whole or in part on work they did on the home sold to the Phillipses. Since the Federal Arbitration Act does not apply to the transaction between the Phillipses and John Wieland Homes, it should not govern any claims by the Phillipses against the Trade Contractors. The Phillipses agree that the claims against John Wieland Homes and the Trade Contractors should be handled in a consistent manner and as determined under the circuit judge's order.

CONCLUSION

The Circuit Court's decision that the Purchase Agreement between the Phillipses and John Wieland Homes was not governed by the Federal Arbitration Act should be affirmed because the Agreement was for the sale of a home rather than the construction of a home.

For the foregoing reasons, the Circuit Court's Order Denying the Motion to Compel Arbitration filed by John Wieland Homes and the Order Denying John Wieland Homes' Motion to Reconsider Alter or Amend the Order Denying the motion to Compel Arbitration should be **AFFIRMED.**

McDONALD, McKENZIE, RUBIN,
MILLER AND LYBRAND, L.L.P.
1704 Main Street
Post Office Box 58
Columbia, South Carolina 29202
(803) 252-0500

BY: 

ROBERT A. McKENZIE
AMANDA N. PITTMAN
JOHN F. McKENZIE
ATTORNEYS FOR PETER T. PHILLIPS
AND SUMMAR C. PHILLIPS

Columbia, South Carolina
February 17, 2014

EXHIBIT A

6/5/08
(Date of Purchaser's Offer)

The Property and Financial Terms

- 1. Agreement to Buy and Sell Property.** The undersigned Purchaser agrees to buy, and the undersigned Seller agrees to sell, all that tract or parcel of land, lying and being in the City of Charleston, Berkeley County, South Carolina; Being Lot 3 of Block Z Parcel M of Smythe Park Neighborhood, Daniel Island; Being more commonly known as 1417 Hooper Street, Charleston, SC 29492 (street address, city, state, zip); Being recorded in Berkeley County Records, Plat Book _____, Page _____. (The foregoing land and the improvements constructed or to be constructed thereon by Seller are referred to herein as the "Property.") Purchaser acknowledges that the neighborhood/subdivision name and/or street names may change, and Purchaser agrees to accept any such changes.
- 2. Purchase Price and Deposit.** The Purchase Price of the Property shall be Six Hundred Fourteen thousand nine hundred Dollars, (\$ 614,900.00) to be paid to Seller in immediately available funds at closing. Purchaser has delivered to Daniel Island Real Estate Company, LLC as Builder's listing broker (the "Broker"), an earnest money deposit ("Earnest Money Deposit") of Fifteen Thousand Dollars, (\$ 15,000.00) to be held by Broker until Closing, or to be disbursed as set forth in this Agreement. The parties acknowledge and agree that Broker will place the Earnest Money Deposit in a federally insured financial institution. Purchaser acknowledges and agrees that any interest earned with regard to the Earnest Money Deposit shall be designated to the benefit of the Daniel Island Community Fund, Inc., a nonprofit community service organization.
- 3. Additional Deposits.** \$10,000.00 shall be paid to Seller (not to Broker as earnest money) as a non-refundable foundation deposit when the foundation is started, with such amount to be credited to Purchaser at closing. Such foundation deposit shall be non-refundable unless Seller is unable or unwilling to close, and Purchaser hereby acknowledges that such deposit and any interest thereon is a part of Seller's liquidated damages upon Purchaser's default. Purchaser acknowledges that Seller reserves the right to require additional non-refundable deposits for the installation of extras not included as a standard feature for the neighborhood in the amount of at least fifty percent (50%) of the total charge for such item(s) (Seller may require larger deposits in its discretion). Such non-standard items are determined in Seller's sole discretion and may include, without limitation, basement finishing, skylights, additional fireplaces, custom tile or marble, retaining walls and structural framing and foundation modifications. These additional deposits may be required in the above instances regardless of Purchaser's mortgage down payment requirements but shall be credited to Purchaser at closing. Such deposits shall be non-refundable unless Seller is unable or unwilling to close, and Purchaser hereby acknowledges that such deposits and any interest thereon are a part of Seller's liquidated damages upon Purchaser's default.
- 4. Brokers.** Broker has entered into a client relationship with Seller and has acted as agent for the Seller in this transaction. Lexa Owens - ("Selling Broker") has entered into a client relationship with Purchaser and has acted as agent for the Purchaser in this transaction. Any Agency Disclosure form attached hereto is made a part hereof. Purchaser acknowledges that Broker's representation of Seller has been disclosed to Purchaser in a timely manner and that there is no brokerage or agency relationship between Broker and Purchaser, even though Broker may perform ministerial acts for the benefit of Purchaser. Purchaser acknowledges that Purchaser has not relied upon the advice or representations, if any, of Seller or Broker, or their respective representatives, relative to the purchase and ownership of the Property and any matters related thereto. Purchaser acknowledges that if such matters are or have been of concern to Purchaser, Purchaser has sought and obtained independent advice relative thereto. Except as set forth in this agreement, Purchaser and Seller represent and warrant that they have not dealt with, and have not been and are not represented by, any other agent or broker, or other person or entity, in connection with the sale of the Property, and they agree to indemnify and hold each other harmless from any and all claims, losses, damages, costs and expenses, including, without limitation, attorneys' fees and court costs, incurred or suffered by one of them because of any claim for any fee or commission with respect to this transaction made by the other or by an agent or broker, or other person or entity, claiming to represent the other. Broker and Selling Broker have performed valuable services in negotiating this agreement and are made parties hereunder to enforce their commission rights. Payment of commission to a broker shall not create an agency or subagency relationship between Selling Broker and either Seller or Broker. If this transaction closes in accordance with the terms hereof, Seller agrees to pay Broker at closing a commission (which commission has already been negotiated in a separate agreement) of 6 % of the above Purchase Price. If this sale is made in cooperation with a Selling Broker, Broker shall receive 3 % of the total real estate commission paid hereunder and the Selling Broker shall receive 3 % of the total real estate commission paid hereunder. If this transaction does not close in accordance with the terms hereof (for any reason whatsoever), Seller shall not be obligated to pay any real estate commission or similar fee to any person or entity. From time to time, Seller may make additional monetary or merchandise awards to brokers and agents in connection with this and other transactions. Purchaser shall have no obligations regarding any such awards. Seller will, upon request by Purchaser, provide Purchaser with additional information regarding any awards to any broker or agent involved in this transaction and which relate to this transaction. Real estate commission rates or fees are not fixed by law or custom and are not controlled, suggested, recommended or maintained by the Charleston Trident Board of Realtors, Inc. or the Charleston Trident Multiple Listing Service, Inc. Compensation for services rendered is solely a matter of negotiation between the broker/agent and the client. No broker to this transaction shall owe any duty to Purchaser or Seller greater than is set forth under South Carolina law. Seller and Purchaser acknowledge that if they have entered into a client relationship with a broker, that broker has disclosed on a prior basis (a) the types of brokerage relationships offered by

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the broker, (h) any other brokerage relationship which would conflict with the client's interest, and (c) the compensation of broker and whether commissions will be shared with other brokers. In this agreement, the term "broker" shall mean a licensed South Carolina real estate broker and the broker's affiliated licensees.

5. **Title.** Seller shall convey good and marketable title to the Property to Purchaser by general warranty deed subject only to (a) zoning ordinances affecting the Property, (b) general utility and right-of-way easements serving the Property, (c) subdivision restrictions of record and items reflected on the recorded plat as of the closing date, and (d) other restrictions and encumbrances herein specified (see Subparagraph # 11A). Purchaser shall have a reasonable time after the effective date of this agreement in which to examine title and in which to furnish Seller with a written statement of objections (other than the foregoing) which materially and adversely affect the marketability of title. Purchaser and Seller agree that marketable title shall mean title which a reputable title insurance company, licensed to do business in the State in which the Property is located, will insure at its regular rates. Seller shall have until closing to satisfy all valid objections and if Seller fails to satisfy such valid objections, then Purchaser may terminate this agreement by written notice to Seller, the builder deposit and other deposits made hereunder shall be returned to Purchaser, and the parties shall have no further rights or obligations hereunder.

6. **Covenants.** Purchaser acknowledges that the Property is or will be subject to recorded protective covenants, that Purchaser has received a copy of such covenants or substantially similar covenants, and that Purchaser and the Property shall be bound by the recorded covenants. Purchaser acknowledges that only the neighborhood association having jurisdiction over the Property is authorized to approve architectural alterations and that approval or assistance of any type provided by any sales agent, builder representative or other person or entity shall not be sufficient to authorize any architectural alteration and shall not prejudice the rights of such association to enforce the architectural control provisions of the covenants. The covenants obligate Purchaser to submit plans for all interior alterations to home and site for prior approval. Purchaser acknowledges that the neighborhood association having jurisdiction over the Property is mandatory and Purchaser shall be a member. Purchaser shall pay dues levied by such association, including dues to be paid at closing based on the date of closing and the schedule provided by such association. If the Property is not shown on a recorded plat as of the effective date of this agreement, Purchaser acknowledges that the boundaries of the Property as finally platted may vary slightly from preliminary boundaries. Purchaser also acknowledges that the final boundaries of the Property shall be as per (text recorded plat thereof as of date of closing (and not as on any lot survey or other document provided at closing or otherwise). Boundaries are not established by landscaping, trees, fencing, Purchaser assumptions or other action, or anything other than the latest recorded plat as of the date of closing, and Seller shall have no obligation, responsibility or liability whatsoever for issues arising out of the foregoing.

7. **Loan.** A written loan application shall be made by Purchaser within 10 days after the date of Purchaser's offer (as noted in the upper right-hand corner of the first page of this agreement). Within 30 days after the effective date of this agreement, Purchaser shall obtain a lender commitment letter with all conditions fully disclosed and acceptable to Seller, and provide a copy of such letter to Seller. If Purchaser fails to obtain and provide a copy of such letter within such 30 day period, Seller may at any time thereafter terminate this agreement and retain the builder deposit and all other deposits hereunder as liquidated damages. In addition, if Purchaser fails to make timely written loan application, or fails at any time to supply the necessary information on a timely basis to allow for loan processing, or fails at any time to diligently pursue loan approval in good faith, all as determined in Seller's reasonable discretion, Seller may at any time terminate this agreement and retain the builder deposit and all other deposits hereunder as liquidated damages. Upon termination of this agreement and payment of monies pursuant to this paragraph, the parties shall have no further rights or obligations hereunder.

Wieland Financial Services is familiar with the building practices of Seller and the unique attributes, including the protective covenants, applicable to the Property. As a result, Seller requests, but does not require, the use of Wieland Financial Services for loan application and processing to benefit both Purchaser and Seller.

Construction Matters

8. **Materials.** If items or materials are not available when needed, Seller may substitute items or materials of equal or better grade, in Seller's reasonable discretion. Seller may also make substitutions of equal or better grade where such substitutions would be consistent with Seller's general practice. Purchaser acknowledges that the color and grade of certain materials used in the home may vary from the calculations made by Purchaser due to factors beyond the control of Seller. Purchaser agrees that industry standards, as determined in the reasonable exercise of Seller's discretion, shall govern the acceptability of any particular variance. For example, the colors of exterior siding and interior stain and the color and size of brick and variation is within industry standards. Purchaser shall be bound by such determination. Purchaser further acknowledges that Seller shall not be required to obtain Purchaser's consent for changes, deviations or omissions to the home during construction which do not adversely affect the value of the home and which are necessitated by: action of governmental authorities; lender, FHA, or VA requirements; or particular job-site conditions.

9. **Selections.** Purchaser shall select, within stated allowances, if not already installed:
 (a) Level II carpet (installed with pad).
 (b) Level I vinyl.
 (c) Lighting fixtures and ceiling fans @ \$3,000.00 total.

If Purchaser's selections exceed stated allowances, Purchaser shall pay Seller the difference in cash at the time of selection. An additional deposit of 50% of all design options exceeding the stated allowances will be

Seller's Initials [Signature] Purchaser's Initials PTP Broker's Initials RH Selling Broker's Initials [Signature]
 Page 2 of 10

collected with the written addendum to add them. All such amounts to be credited to Purchaser at closing. The foregoing deposits shall be non-refundable unless Seller is unable or unwilling to close, and Purchaser hereby acknowledges that such deposits and any interest thereon are a part of Seller's liquidated damages upon Purchaser's default. IF PURCHASER REFUSES TO SCHEDULE AN APPOINTMENT TO MAKE DECORATING SELECTIONS FOR THE PROPERTY WITHIN 14 DAYS OF THE DATE OF PURCHASER'S OFFER (AS NOTED IN THE UPPER RIGHT-HAND CORNER OF THE FIRST PAGE OF THIS AGREEMENT), PURCHASER SHALL BE IN DEFAULT. ANY DELAY BY PURCHASER IN MAKING DECORATING SELECTIONS WILL DELAY THE CLOSING DATE. Purchaser acknowledges that all items to be selected by Purchaser have been made, are installed, and are acceptable except as noted in Stipulation # 110.

- 10. **Alarm System/Other.** The alarm system, if standard for this neighborhood, shall include all first floor operable windows (lower windows only) and doors, including basement level windows (lower windows only) and doors. Seller neither provides nor installs call paper holders or towel racks.
- 11. **Insulation.** Insulation will be installed in the exterior walls and upper-level ceilings as follows:
 - (a) Exterior walls of first and second floor heated living areas will be insulated with fiberglass insulation to a thickness of 3-1/2 inches, which thickness, according to the manufacturer, will yield an R value of 13.
 - (b) Upper-level ceilings above all heated living areas with sufficient head room to allow for blown insulation will be insulated with blown fiberglass insulation yielding an R value of 30 and a thickness as required by the manufacturer to achieve the R value designated, which thickness shall be posted in the attic, or
 - (c) Upper-level ceilings above all heated living areas that do not allow for blown insulation will be insulated with fiberglass batt insulation having a thickness of six inches, which thickness, according to the manufacturer, will yield an R value of 19.
 - (d) Floors over crawl spaces will be insulated with fiberglass batt insulation having a thickness of 6 inches, which thickness, according to the manufacturer, will yield an R value of 19.

Purchaser acknowledges that the above R value information is based solely upon information supplied by the manufacturer or installer and Seller does not warrant the accuracy of this information. Purchaser further acknowledges that R value may vary based upon normal construction variances in insulation thickness and openings in walls.

- 12. **Seller's Approval of Certain Matters.** Seller reserves the right to approve the lot, house placement, driveway location, number of deck steps included in Purchase Price and all exterior colors. No structural or mechanical changes will be made to the Property once framing is complete, unless otherwise provided in this agreement.
- 13. **sewer and Water Services.** Seller warrants that the improvements on the Property are served by public sanitary sewer, septic tank. Seller warrants that the improvements on the Property are served by public water, well system, other. Purchaser's Initials: [Signature]
- 14. **Non-Interference by Purchaser.** Neither Purchaser nor Purchaser's agents may do any work on the Property or enter the Property prior to closing without prior written permission of Seller, which permission may be withheld for any reason. Purchaser may visit the Property prior to closing, but shall not interrupt or interfere with sales or construction in the neighborhood. Purchaser shall direct questions to the sales agent or community coordinator for the neighborhood.

Pre-Closing Issues

- 15. **Inspection.** Purchaser, at Purchaser's expense, may have the Property and all improvements inspected prior to closing by a mutually agreeable independent property inspector. If such an inspection is made, the inspector shall diligently and comprehensively evaluate all aspects of the Property and all improvements. However, the inspector may not attend the New Home Orientation meeting between Purchaser and Seller. If the inspection report discloses items which do not comply with applicable building or health codes, Seller shall immediately proceed to correct such items and diligently pursue correction to completion. Items other than such code violations shall be resolved in accordance with Seller's standard pre-closing and post-closing warranty work procedures. Prior to commencement of the inspection, Purchaser and Seller shall agree upon the inspector in writing. Any written report prepared by the inspector shall be delivered to Seller not later than fifteen (15) days prior to closing and prior to New Home Orientation. FAILURE TO FOLLOW THE FOREMENTIONED PROCEDURE WILL NECESSITATE THE POSTPONEMENT OF ANY AGREED UPON CLOSING DATE. Purchaser's Initials: [Signature], Seller's Initials: [Signature]
- 16. **Pre-Closing Occupancy.** Seller recommends that Purchaser allow two (2) full days between scheduled closing date and furniture move-in to accommodate unforeseen delays in actual closing. Seller's policy is not to allow occupancy prior to closing. However, Seller, at its sole option, may permit the Purchaser to occupy the Property prior to closing. Purchaser acknowledges, however, that Seller is under no obligation to allow Purchaser to occupy the Property prior to closing, and that refusal of Seller to grant permission to Purchaser to occupy in no way affects any other part of this agreement. If permission is granted, a mutually agreeable occupancy agreement shall be executed prior to occupancy.

Closing

- 17. **Closing.** The sale shall be closed not later than 7 days after completion of the home (New Home Orientation walk-through items excepted). Notwithstanding anything to the contrary hereof, Seller shall complete construction of the home on the Property within two (2) years after the effective date of this agreement. Possession of the Property shall be granted by Seller to Purchaser no later than closing.

Seller's Initials: [Signature] Purchaser's Initials: [Signature] Broker's Initials: [Signature] Selling Broker's Initials: [Signature]
 Page 3 of 10

- 18. **Closing Costs.** Seller shall pay the recording fee, which is calculated based on the value of the Property. Purchaser shall pay prepaid items including any prepaid interest and provide a paid-up termite insurance policy at closing. Purchaser shall pay closing costs, loan costs and discount points (see Schedule # NA). Purchaser shall pay mortgage insurance down payment, if any, as required by Purchaser's lender. Purchaser shall reimburse Seller at closing \$ 330.00 for the cost of the survey (THE SURVEY WILL BE ORDERED BY SELLER AND WILL BE DONE BY A SURVEYOR OF SELLER'S CHOICE). Taxes shall be estimated and prorated at closing based on the best available tax information. If the closing is held after a tax bill has been issued for the year of closing, proration at closing shall be final. If closing is held before actual taxes for the year of closing are known, Seller and Purchaser agree to adjust the estimate of taxes promptly upon request of the other based on actual taxes for the year of closing when those taxes are billed. Seller agrees to make refund payments to each other as appropriate based on the adjusted estimate (and such payments shall incur a late fee of 10% of the amount due, if not paid within 30 days after demand for payment is made, and shall bear interest at 12% per annum from 30 days after demand for payment is made until paid). Seller may suspend warranty work until Purchaser makes any reproduction payment requested by Seller. The parties acknowledge that taxes may increase significantly if the Property is located in a county that undergoes property tax reassessment. If the county in which the Property is located has passed a 15% tax cap ordinance as allowed by SC Code Section 12-37-221A(A), the parties acknowledge that there may be an additional, substantial increase in property taxes for the tax year following closing.
- 19. **Closing Agency and Documents.** Seller reserves the right to select the closing attorney as long as costs are equal to or less than those available to Purchaser from alternate sources. Any closing costs incurred at the request or for the special benefit of Purchaser, including, but not limited to, courier, express mail or unusual copying requirements, shall be the expense of Purchaser. Both parties shall execute and deliver all documents necessary to close.
- 20. **Termite.** Seller shall deliver to Purchaser at closing a certificate stating that the Property has been treated against termite infestation by a termite control agency.
- 21. **Refrigerator and Appliances.** All charges for extras added by Purchaser not already paid and rent not already paid, if any, shall be payable in certified funds acceptable to Seller at closing. If the Property does not appraise at an amount at least equal to the Purchase Price, Purchaser shall pay any additional amount needed to close in certified funds acceptable to Seller.
- 22. **Warranty and Arbitration.** Purchaser and Seller hereby agree that, in connection with the sale contemplated by this agreement, Purchaser will be enrolled in the John Wieland Homes and Neighborhoods 5-20 Extended Warranty program (JWH Warranty), the JWH Warranty being incorporated herein by reference. THERE ARE AND WILL BE NO OTHER OR FURTHER WARRANTIES OR REPRESENTATIONS ON THE PROPERTY AND IMPROVEMENTS (INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, WORKMANLIKE QUALITY, HABITABILITY, SUITABILITY FOR RESIDENTIAL PURPOSES, OR FITNESS FOR A PARTICULAR PURPOSE, OR OTHERWISE), EITHER EXPRESS OR IMPLIED, WRITTEN, ORAL OR STATUTORY, MADE BY SELLER OTHER THAN AS EXPRESSED IN THE JWH WARRANTY, AND ALL SUCH OTHER WARRANTIES ARE HEREBY EXPRESSLY EXCLUDED AND DISCLAIMED BY SELLER. THE JWH WARRANTY IS ALSO GIVEN BY SELLER AND ACCEPTED BY PURCHASER IN LIEU OF ALL OTHER RIGHTS OR REMEDIES THAT PURCHASER HAS OR MAY HAVE AT LAW OR IN EQUITY AGAINST SELLER RELATING TO THE PROPERTY, CONSTRUCTION ON THE PROPERTY, AND THE CONDITIONS OR CIRCUMSTANCES EXISTING ON THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, ANY RIGHTS OR REMEDIES BASED ON NEGLIGENT CONSTRUCTION, MISREPRESENTATION, ANY TORT, VIOLATION OF ANY CODE, STATUTE OR RULE, BREACH OF CONTRACT (EXPRESS OR IMPLIED), OR BREACH OF WARRANTY (OTHER THAN BASED ON THE TERMS OF THE JWH WARRANTY), AND ALL SUCH OTHER RIGHTS OR REMEDIES ARE HEREBY EXPRESSLY WAIVED BY PURCHASER. PURCHASER ACKNOWLEDGES THAT PURCHASER HAS RECEIVED AND READ A COPY OF THE CURRENT JWH WARRANTY AND CONSENTS TO THE TERMS THEREOF, INCLUDING, WITHOUT LIMITATION, THE MANDATORY BINDING ARBITRATION PROVISIONS CONTAINED THEREIN. Certain appliances and other consumer products sold as part of the improvements are covered by manufacturers' warranties. Purchaser is entitled to examine those warranties upon request to the Seller.
Purchaser's initials CHP Seller's initials MSY

Post-Closing Matters

- 23. **Trees.** Seller shall have no obligation, responsibility or liability whatsoever for (1) trees and/or shrubbery that Seller would have removed, or had planned to remove, during construction but which Purchaser specifically requested not be removed, (2) natural areas left undisturbed by Seller, including, without limitation, drainage in such areas, (3) site drainage other than as stated in the JWH Warranty, and (4) trees of any kind whatsoever.
- 24. **Heating and Cooling Systems.** Purchaser acknowledges that different people have different expectations and operating practices regarding the heating and cooling systems for a home and that the performance of such systems can be affected by the orientation of a room or home in relation to the sun. The heating and cooling systems for the Property have been sized and designed in accordance with industry standards for the type and size of home to be constructed. If the heating and cooling systems operate in accordance with industry standards, Purchaser shall not make any claim against Seller with respect thereto.
- 25. **CHANGES IN DEVELOPMENT PLANS AND AMENITIES.** PURCHASER ACKNOWLEDGES THAT CURRENT DEVELOPMENT PLANS FOR THIS NEIGHBORHOOD ARE SUBJECT TO CHANGE WITHOUT NOTICE AND NO GUARANTEES ARE MADE THAT ANY OF THE COMPONENTS

Seller's Initials MSY Purchaser's Initials CHP Broker's Initials RLH Selling Broker's Initials JSO
 Page 4 of 10

PRESENTLY PROPOSED WILL BE A PART OF THE NEIGHBORHOOD, OR THAT ADDITIONAL COMPONENTS WILL NOT BE ADDED TO THE NEIGHBORHOOD. IF SOME OR ALL OF SUCH COMPONENTS ARE PROVIDED, NO GUARANTEES ARE MADE AS TO THE DATE OF AVAILABILITY FOR USE OR THAT CURRENT PLANS WILL ACCURATELY REFLECT ACTUAL CONSTRUCTION OR LOCATION OF SUCH COMPONENTS.

- 26. **Construction Easement.** Purchaser grants to Seller a grading and construction easement, 5 feet in width from adjacent property, onto the Property for temporary access for construction on other property which lies adjacent to the Property; provided, such easement shall not interfere with Purchaser's use of the Property, and any damage to the Property shall be repaired by Seller. Such easement shall exist only during the period of construction upon adjacent property. Purchaser shall keep unobstructed all drainage structures and easements as shown on the recorded plat and the survey which will be provided at closing.
- 27. **Photography of Property.** Purchaser grants Seller the right to obtain and use photography of the Property for publication and advertising purposes.

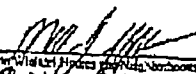
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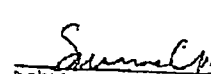
- 28. **Default Prior to Closing.** If Purchaser defaults under this agreement prior to closing, Seller may elect to receive the builder deposit and all other deposits as agreed-upon liquidated damages, in which event this agreement shall terminate and Purchaser and Seller shall have no further rights or obligations hereunder. Alternatively, Seller may elect to seek enforcement of this agreement by specific performance. Upon default by Purchaser prior to closing, Purchaser shall, notwithstanding anything to the contrary herein, also immediately pay the full amount of the real estate commissions due hereunder. Broker and Selling Broker may jointly or independently pursue Purchaser for that portion of the commission which they would have otherwise received had this transaction closed. If Seller defaults under this agreement prior to closing and such default is the sole cause of this transaction not closing, Purchaser may elect to receive a refund of all deposits, in which event this agreement shall terminate and Purchaser and Seller shall have no further rights or obligations hereunder. Alternatively, Purchaser may elect to seek enforcement of this agreement by specific performance. In no event shall any party have the right to seek damages from another party upon default prior to closing, except the recovery of liquidated damages pursuant to this agreement.
- 29. **Termination Prior to Closing.** If, prior to closing, a dispute arises between Purchaser and Seller concerning construction, boundaries, consideration or any other matter relating to this transaction and such dispute cannot be resolved within 10 days after the dispute has arisen by both parties acting reasonably and in good faith, Seller shall have the right to terminate this agreement upon written notice (by certified mail, return receipt requested, or personal delivery) to Purchaser. Upon termination, Seller shall pay to Purchaser the sum of \$100.00 and shall, in addition, return all monies paid by Purchaser pursuant to this agreement, together with simple interest on such monies at the rate of 6 percent per annum from the date of deposit of Purchaser's payments. Upon termination, the parties shall have no further rights or obligations hereunder and such termination shall not be a default by any party. For the purposes of this provision, a tender of the monies by Seller to Purchaser will be sufficient, whether or not accepted by the Purchaser.
- 30. **Force Majeure.** Notwithstanding anything to the contrary contained herein, Seller shall be excused for the period of delay occasioned by circumstances beyond the control of Seller, including, without limitation, delay caused by the Purchaser, any labor strike or war affecting performance of work hereunder, failure of Seller's suppliers of materials to deliver requested materials, delay and/or failure due to computer viruses, "bugs" or other computer-related disruptions, riots, and acts of God, including, but not limited to, fire, windstorm, flood, tornadoes, earthquakes, lightning or other casualty. Seller shall not be liable for any inconvenience or expense to Purchaser caused by events beyond Seller's control.
- 31. **Entire Agreement and Disclosures.** This agreement constitutes the sole and entire agreement between the parties hereto and no modification of this agreement shall be binding unless attached hereto and signed by, at a minimum, Purchaser and Seller (any parties other than Purchaser and Seller not being necessary parties to the execution of any modifications to this agreement unless such modifications adversely affect the commission to be paid hereunder). NO REPRESENTATION, PROMISE, OR INDUCEMENT NOT INCLUDED (WHETHER MADE BY AN AGENT OR REPRESENTATIVE OF SELLER OR OTHERWISE) IN THIS AGREEMENT SHALL BE BINDING UPON ANY PARTY HERETO, INCLUDING, WITHOUT LIMITATION, REPRESENTATIONS REGARDING PROPERTY BOUNDARIES, ADJACENT PROPERTY, OR AMENITIES. Purchaser acknowledges the following:
 - (a) any association budget that may be provided to Purchaser (Seller being under no obligation to provide any such budget) is based on estimated expenses only, and assessments may increase or decrease significantly when the actual expenses of the association become known;
 - (b) the Property is located adjacent to or in the vicinity of thoroughfares which could be improved or widened in the future;
 - (c) the views from the Property can change over time due to, among other things, additional development and the removal or addition of landscaping;
 - (d) no representations are made regarding zoning of adjacent property, and the zoning category to which adjacent property is subject may change;
 - (e) no representations are being made regarding which schools may now or in the future serve the Property; since in every neighborhood there are conditions which different persons may find objectionable, Purchaser acknowledges that there may be conditions outside of the Property which Purchaser finds objectionable and that it shall be the sole responsibility of Purchaser to become acquainted with neighborhood conditions which could affect the Property; and

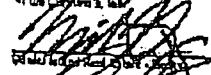
Seller's Initials AK Purchaser's Initials PIP Broker's Initials BH Selling Broker's Initials JKO
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- (2) no representations are made that the Property and/or home/unit thereon is or will be soundproof or that sound may not be transmitted from one property and/or home/unit to another.
- 32. **Time of Essence.** Time is of the essence of this agreement.
- 33. **Liquidated Damages.** In all cases where a party is entitled to receive liquidated damages hereunder, the parties acknowledge that such damages cannot be determined with certainty, the amount to be paid represents the parties' best estimate of such damages, and each payment shall not constitute a penalty.
- 34. **Misapplication.** Each provision of this agreement is severable from every other provision and if any provision is determined to be unenforceable, the parties shall be bound by the remaining provisions. No provision of this agreement shall be construed more strictly against a party because that party or its agent prepared or is deemed to have prepared such provision. The failure of any party to exercise any right hereunder at any particular time shall not be deemed a waiver of such party's rights. Titles or captions of sections 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 provisions hereof. References to the singular shall mean, where applicable, the plural. This agreement shall not be binding until both Purchaser and an authorized representative of Seller have both executed the same copy of this agreement. However, some time periods hereunder begin to run from the date of Purchaser's offer (as noted in the upper right-hand corner of the first page of this agreement). A signature transmitted by facsimile machine shall be treated as an original signature.
- 35. **Survival.** The terms and conditions contained herein shall not survive closing or termination of this agreement and shall merge upon delivery of the warranty deed, except for the provisions of the last sentence of Section 1 and Sections 2, 3, 4, 6, 7, 8, 11, 13, 12, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34 and 35, which shall survive closing or termination of this agreement and shall not merge upon delivery of the warranty deed.


THE EFFECTIVE DATE FOR THIS AGREEMENT SHALL BE THE DATE THAT IT IS LAST EXECUTED BY PURCHASER OR SELLER.

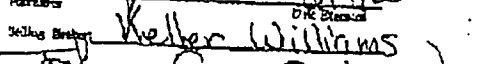
 6/19/08
 In the presence of the Seller's Agent, the Buyer's Agent, and the Seller's Agent, the Buyer has signed this Agreement.
 Date Executed

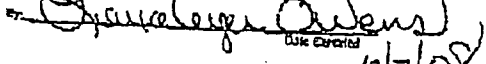
 6/17/08
 Purchaser
 Date Executed

 6/19/08
 Date Executed

 6/17/08
 Date Executed

 6/17/08
 Broker-in-Charge Date Executed

 6/17/08
 Selling Broker
 Keller Williams
 Date Executed

 6/17/08
 Date Executed

See Addendum "1" which is part of this contract.

REAL ESTATE CONTRACT ADDENDUM

This is an Addendum to that certain Real Estate Contract dated 6/5/08 between Purchaser(s) Peter & Summer Phillips and John Wieland Homes and Neighborhoods of the Carolina's, Inc., Seller, for property located on Daniel Island at 1417 Cooper Street, Charleston, SC 29492 also known as Lot 3, Block Z, Parcel M, Summeh Park Neighborhood.

The following shall be added to the above mentioned Agreement:

1. **DANIEL ISLAND DEVELOPMENT.** Purchaser acknowledges that the Property is part of the planned community located in the City of Charleston, Berkeley County, South Carolina, known as "Daniel Island" ("Development"). The nature and extent of the rights and obligations of the Purchaser in acquiring and owning property in the Development shall be controlled by and subject to the approved Master Plan for Daniel Island and the Development Agreement among Harry F. Guggenheim Foundation, Daniel Island Development Company, Inc., and City of Charleston, Daniel Island, Berkeley County, South Carolina.
2. **DANIEL ISLAND COMMUNITY ASSOCIATION, INC.**
 - (a) **Governing Documents.** Purchaser acknowledges that the Property is a portion of real property and improvements which have been made subject to that certain Declaration of Covenants, Conditions and Restrictions for Daniel Island Residential Zone recorded in the Register of Merit Conveyance Office for Berkeley County, South Carolina, as it may be amended from time to time, and all exhibits thereto ("Declaration"). The nature and extent of the rights and obligations of the Purchaser in acquiring and owning the Property are controlled by and subject to the Declaration, as well as the Daniel Island Design Guidelines, and the Articles of Incorporation, the By-Laws, and the rules and regulations of the Daniel Island Community Association, Inc. ("Association"), as they may be amended (collectively, the "Governing Documents"). Purchaser acknowledges receipt of the foregoing documents and agrees to comply with all of the terms, conditions and obligations set forth therein. Purchaser further acknowledges that the plans for the construction of the home and landscaping on the Property, and any changes thereto, must be approved by the Architectural Review Board ("ARB"), as established pursuant to the Declaration.
 - (b) **Membership in Association.** Upon conveyance of the Property to Purchaser, Purchaser shall automatically become a member of the Association and shall be subject to all assessment obligations, ARB procedures, and other provisions of the Governing Documents.
 - (c) **Expansion.** Purchaser further acknowledges that this Development may be expanded to include additional lots in accordance with the terms of the Declaration. Purchaser also acknowledges that no obligation exists on the part of any person or entity to expand the Development to include lots other than those presently subject to the Declaration.
 - (d) **Amendments to the Declaration.** The Declarant under the Declaration may make certain changes in or amendments to the Declaration which do not materially affect the rights of Purchaser and such changes or amendments may be made without the approval of Purchaser. In addition, the Declarant may make any amendment necessary to comply with the guidelines established by, or the requirements of, any governmental authority, title insurer, or institutional lender. Such changes or amendments shall not affect the rights and liabilities of the parties under the Agreement, or be a cause or reason for termination or revision of the Agreement.
 - (e) **Common Expense Assessments.** The annual assessments, if any, levied by the Association against the Property as provided in the Declaration shall be prorated between Seller and Purchaser as set forth in the Agreement.
 - (f) **Contribution to Working Capital.** At closing, Purchaser shall pay a one-time contribution to the working capital of the Association in the amount of one-sixth (1/6) of the annual assessment for the year of closing, which amount shall be in addition to, and not in lieu of, assessments thereafter coming due.
3. **AMENITIES.** Purchaser acknowledges that the proposed features and amenities described on the master plan and/or other Daniel Island sales or marketing brochures, announcements or other materials are based on current development plans, which are subject to change without notice. No guarantee is made that the proposed features or amenities, if constructed, will consist of the number, type, size and location as depicted on the master plan or otherwise.
4. **NO JOINT VENTURE.** Purchaser acknowledges and agrees that no partnership, joint venture, or principal and agent relationship exists between Seller and Daniel Island Company, Inc., and Daniel Island Associates L.L.C.

We hereby agree to accept the foregoing as an Addendum to the aforementioned Agreement, as of this 5th day of June, 2008.

Summer Phillips
Purchaser

[Signature]
Purchaser

[Signature]
John Wieland Homes and Neighborhoods of the Carolina's, Inc. (Seller)

Seller's Initials [Signature]

Purchaser's Initials SK
PTP

Broker's Initials RH

Selling Broker's Initials [Signature]

SPECIAL STIPULATIONS

Attached to this certain agreement dated between Peter L. Sumner Philip Purchaser, and John Wieland Homes and Neighborhoods of the Carolina's, Inc., Seller, for property known as Lot # 3M of Block # 2 of Daniel Island Smythe Park Neighborhood; being more commonly known as 1417 Hooper Street, Charleston, SC 29405.

1. PLAN SELECTION

The home to be constructed is to be a Colonial plan built to The Smythe Park standards. The front elevation is double stacked front porch with an attached 2 Car rear entry garage with a finished room above built on a crawl space with stucco and lattice, and Hardplank siding.

2. ORIENTATION/CLOSING DATE.

Orientation and Closing dates will be set upon completion of Bath Vanity tops.

3. ORIENTATION/FINAL WALK THROUGH

All Purchasers must attend Orientation and Final Walk Through.

4. THIS CONTRACT IS NOT ASSIGNABLE.

5. PROPERTY FOR PERSONAL USE

Purchaser represents that Purchaser is buying the property for personal use as a residence for Purchaser and/or Purchaser's family, and not for investment purposes or for immediate resale. Seller reserves the right, in its sole discretion, to require Purchaser to sign a recordable agreement, to be attached to the deed at closing, which grants Seller the option to repurchase the Property for the same purchase price paid by Purchaser at closing, if Purchaser conveys the Property within one (1) year after the date of closing. Any such agreement and any additional related provisions Seller may desire in such agreement, shall be prepared by Seller, and the form and substance of any such agreement shall be satisfactory to Seller in its sole discretion. Purchaser acknowledges and agrees that Seller's requirement of such agreement in no way affects any other part of this agreement and shall not constitute a default of noncompliance with this agreement by Seller. Purchaser further acknowledges and agrees that Purchaser's refusal to sign such agreement upon request shall constitute a default by Purchaser under this agreement.

6. WELAND FINANCIAL SERVICES

If Purchaser procures and closes a loan with Wieland Financial Services, Seller will credit Purchaser \$2,500.00 towards closing costs.

[Signature]
Seller: John Wieland Homes & Neighborhoods
of the Carolina's, Inc.
6/9/08
Date

[Signature]
Purchaser _____ Date _____
[Signature]
Purchaser _____ Date _____

Seller's initials *[Signature]* Purchaser's initials *[Signature]* Broker's initials *[Signature]* Selling Broker's initials *[Signature]*
Page 8 of 10

EXHIBIT B

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
)
 Peter T. Phillips and Summar C. Phillips,)
)
 Plaintiffs,)
 v.)
)
 Omega Flex, Inc., John Wieland Homes, and)
 Neighborhoods of the Carolinas, Inc., AAA)
 Plumbing, LLC, Fogel Services, Inc.,)
 Charleston LEC. Inc.,)
)
 Defendants.)
 _____)

IN THE COURT OF COMMON PLEAS
 NINTH JUDICIAL CIRCUIT
 C/A NUMBER: 12-CP-10-3870

Affidavit of Dennis A. Black

APPEARING BEFORE ME AND BEING DULY SWORN, Dennis A. Black states the following:

1. I am a resident of South Carolina, am over eighteen years of age, and competent to testify about the matters stated herein based on my own personal knowledge.
2. I currently serve as Division Quality Manager for John Wieland Homes and Neighborhoods of the Carolinas, Inc. ("JWH").
3. I am informed and believe that in June 2008, Peter T. Phillips and Summar C. Phillips ("the Phillips") entered a purchase agreement with JWH to buy a home in the located at 1417 Hooper Street, Charleston, SC 29492.
4. Because JWH's development of the Smythe Park subdivision and construction of homes within it, including the Phillips' property, implicates interstate commerce, JWH has included (and still includes) a mandatory binding arbitration provision in its Purchase Agreement and in its Warranty that provides for the arbitration of all disputes concerning any property JWH sells in the subdivision in accordance with the Federal Arbitration Act, 9 U.S.C. §§ 1-16.

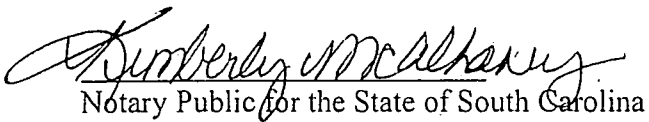
5. Attached hereto is a true and authentic copy of the Purchase Agreement (Exhibit A) and the JWH Warranty (Exhibit B).

FURTHER AFFIANT SAYETH NOT.



By: DENNIS A BLACK

SWORN BEFORE ME
This 29 day of October 2012



Notary Public for the State of South Carolina
My Commission Expires:

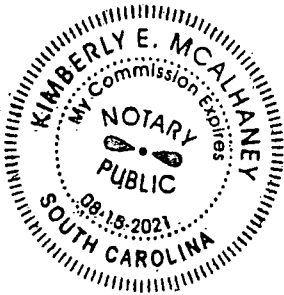


EXHIBIT C

FROM : LEXA'S
FROM : LEXA'S
FROM : LEXA'S

FAX NO. : 8432329363
FAX NO. : 8432329363
FAX NO. : 8432329363

Jun. 11 2008 04:55
Jun. 11 2008 02:07PM
Jun. 09 2008 03:18PM P2

12-22 12-22 12-22

WELLS FARGO

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ADDENDUM ONE

Addendum One to contract between John Welland Homes (Seller) and Peter T. Phillips and Gannett C. Phillips (Buyers) dated June 3, 2008 for purchase of property located at 1417 Heiper Street, Danby Island.

This addendum by agreement below becomes part of the above referenced contract.

1. John Welland Homes agrees to ~~reallocate~~ ^{reallocate} the third floor unused into up stairs, including as part of the purchase price. Selections to be made by purchaser in a timely manner.

2. John Welland Homes warrants by signature below that the property is not in a condemned zone. Welland further agrees to provide buyer with "good work" property to located in within ten days.

3. John Welland Homes agrees to allow buyer ten (10) days to meet with design center and a trade pricing on option selections. If pricing is not satisfactory buyer has the option to void this contract without penalty.

Buyer to pay 3% contingency will be applied towards the final purchase price of 1417 Heiper and final purchase manufactured by welland. Welland will provide letter acknowledging void if required.

6/10/08
PTP 6/9/08
SUP 6/10/08

Buyer: [Signature] Date: 6/7/08
Seller: [Signature] Date: 6/9/08

John Welland Homes agrees to complete third floor heated and cooled room, bath, closets as part of contract price. Selections to be made by purchaser in a timely manner.

~~T.C. selections made by designer during the contingency period are not satisfactory to buyer, buyer may release contract by written notice and receive earnest money refund.~~

MSJ 6/9/08
PTP 6/10/08
SUP 6/10/08
6/7/08
6/9/08
6/11/08
PTP 6/11/08
SUP 6/11/08

EXHIBIT D

Design Selection Checklist

Lot # 3m Plan: Calboun Buyer: Peter + Summer Phillips

Selections available are determined by the date purchaser is able to make final decisions at the John Winland Home Design Center (JW Design hours: M-F 8:00-5:00)

Purchaser is to make all selections within the chosen parts of JW Design. Purchaser understands that they need to make selections in the order of design specifications. If selections are not made by the specified appointment, purchaser's name will be removed from the list.

**** At contract, agent to call building team to confirm available selections - Richard Jackson 843-297-1424.**

SELECTIONS DATE RANGE:	SELECTIONS DATE RANGE:	SELECTIONS DATE RANGE:
<p>1st (3 hour) Appointment: Shingle Color Brick (if applicable) Exterior Paint Fireplace Treatment Cabinetry Countertops Appliances Stair Treatment</p> <p>2nd (3 hour) Appointment: Plumbing Fixtures Hardwood Interior Paint Vanity Tops Vinyl Tile Carpet</p> <p>3rd (3 hour) Appointment: Lighting</p>	<p>1st (3 hour) Appointment: Exterior Paint (limited) Fireplace Treatment (Finish) Cabinetry Countertops Appliances Plumbing Fixtures (limited)</p> <p>2nd Appointment: Hardwood (limited) Interior Paint Vanity Tops Vinyl Tile Carpet</p> <p>3rd Appointment: Lighting</p>	<p>1st (3 hour) Appointment: Fireplace Treatment (Finish) Appliance color Hardwood (limited) Plumbing Fixtures (limited) Vanity Tops Interior Paint Vinyl In-stock Tile Carpet</p> <p>2nd (3 hour) Appointment: In-stock Lighting</p>

SELECTIONS DATE RANGE:
<p>1st Appointment: Appliance color Hardwood (limited) Vanity Tops Vinyl Carpet</p>

SELECTIONS DATE RANGE:
<p>1st Appointment: Carpet</p>

Purchaser's Signature: [Signature]

Date: 6/17/08

Purchaser's Signature: [Signature]

Date: 6/17/08

Neighborhood Sales Manager: _____

Date: _____

Builder's Signature: _____

Date: _____

Seller's Initials: [Initials]

Purchaser's Initials: PTP

Broker's Initials: [Initials]

Selling Broker's Initials: [Initials]

EXHIBIT E

EXHIBIT

tabbles

3

John Wieland
5-20
WARRANTY

John Wieland
JOHN WIELAND HOMES
AND NEIGHBORHOODS

*JOHN WIELAND HOMES
AND NEIGHBORHOODS*

THE WIELAND 5-20
EXTENDED WARRANTY

THE WIELAND 5-20 EXTENDED WARRANTY

IN GEORGIA:

Customer Service Department, 1950 Sullivan Road, P. O. Box 87363, Atlanta, GA 30337
Phone: (770) 907-3400 Fax: (770) 907-3440
Website: www.jwcustomercare.com

IN TENNESSEE:

Customer Service Department, 300 Seaboard Lane, Suite 3, Franklin, TN 37067
Phone: (615) 790-3090 Fax: (615) 790-0075
Website: www.jwcustomercare.com

IN CHARLOTTE, NORTH CAROLINA:

Customer Service Department, 8325-D Arrowridge Boulevard, Charlotte, NC 28273
Phone: (704) 522-9200 Fax: (704) 522-9040
Email: customerservice.charlotte@jwhomes.com
Website: www.jwcustomercare.com

IN RALEIGH, NORTH CAROLINA:

Customer Service Department, 107-A Quail Fields Court, Morrisville, NC 27560
Phone: (919) 481-3309 Fax: (919) 481-9157
Website: www.jwcustomercare.com

IN CHARLESTON, SOUTH CAROLINA:

Customer Service Department, 496 LaMesa Drive, Mt. Pleasant, SC 29464
Phone: (843) 849-8787 Fax: (843) 849-8877
Website: www.jwcustomercare.com

IN KENTUCKY:

Website: www.jwcustomercare.com

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LIMITED WARRANTY

I. What is Covered

- A. Workmanship. During the first year of this warranty, which commences on the day that title first transfers from Wieland or that occupancy by anyone first occurs (whichever occurs first), Wieland warrants that the Home will be free from defects in materials or workmanship, as defined in the Construction Quality Standards, except as they apply to defects in fixtures and equipment which are covered in accordance with the manufacturer's warranty.
- B. Systems. During the first two (2) years of this warranty, which commences on the day that title first transfers from Wieland or that occupancy by anyone first occurs (whichever occurs first), Wieland warrants that the Home will be free from defects in the electrical, plumbing and mechanical systems, as defined in Sections X, XI and XII of the Construction Quality Standards, to include the wiring, piping and ductwork portions of the systems. This coverage applies to the HVAC system only if Homebuyer(s) document that the HVAC system has been professionally maintained (i.e., by a company or individual who is licensed as necessary and who is currently in the business of providing such residential maintenance service) per manufacturer's standards/instructions at least once per year. Defects in any of the systems resulting from failures in a fixture or piece of equipment which are covered by a manufacturer's warranty are not covered by this warranty.
- C. Extended Items. During the first five (5) years of this warranty, which commences on the day that title first transfers from Wieland or that occupancy by anyone first occurs (whichever occurs first), Wieland warrants that the Home will be free from the following, as defined in the Construction Quality Standards:
1. Verified leaks, due to defects in materials or workmanship, at roof penetrations made in the course of construction.
 2. Verified active flow of exterior surface water into the basement or so as to create standing water in the crawl space for at least forty-eight (48) consecutive hours, so long as the active flow is due solely to acts or omissions of Wieland. Wieland must receive written notice of any covered claim within ten (10) days of the date of discovery by Homebuyer(s). Wieland will not be responsible for anything caused by (a) breaks, leaks or bursting of water mains or pipes; (b) any grading done by or on behalf of Homebuyer(s) which causes water to flow toward the outside foundation wall; (c) failure to maintain the grade initially established by Wieland for the Home; (d) prolonged direction of water against the outside foundation wall from water spigots, sprinklers, hoses, or broken or clogged gutters; (e) bent, broken, or clogged downspouts; (f) landscaping improperly installed by or on

behalf of Homebuyer(s); and (g) an irrigation system that was not installed by Wieland.

3. Verified plumbing leaks in the exterior water service line, plumbing pipes and fittings, tubs, sinks, faucets, and toilets. Tarnishing and pitting of faucets is excluded.
4. Defects in materials or workmanship in only the following appliances selected from the Wieland selections: Oven, Range, Range Hood, Dishwasher, Garbage Disposal, Built-In Microwave, and Water Heater. After expiration of any manufacturer's warranty, Wieland will cover materials and labor as would be covered by the manufacturer's warranty.
5. Verified interior gas line piping leaks.
6. Defects in materials or workmanship in the electrical main breaker panel, electrical service disconnect, interior wiring, switches, and outlets.
7. Failure of the HVAC compressor pump and condenser coil, heat exchanger, and thermostats installed by Wieland. After expiration of any manufacturer's warranty on the above components, Wieland will replace the above components as would be covered by the manufacturer's warranty. This coverage applies only if Homebuyer(s) document that the above components have been professionally maintained (i.e., by a company or individual who is licensed as necessary and who is currently in the business of providing such residential maintenance service) per manufacturer's standards/instructions at least once per year.
8. Breaks in the hermetic seal of insulated windows, and defects in materials and workmanship in sash tracks and sash locks, as defined in the manufacturer's warranty. After expiration of any manufacturer's warranty, Wieland will cover materials as would be covered by the manufacturer's warranty.
9. Verified sewer service line leaks due to defects in materials or workmanship.

D. Structural. During the first twenty (20) years of this warranty, which commences on the day that title first transfers from Wieland or that occupancy by anyone first occurs (whichever occurs first), Wieland warrants that the Home will be free from "Structural Defects."

A "Structural Defect" is (i) actual physical damage (ii) to only the following designated load-bearing elements of the Home (iii) caused by failure of such load-bearing elements which affect their load-bearing function (iv) to the extent that the

Home becomes unsafe or unsanitary. The following elements, if load-bearing, constitute the designated elements: 1. foundation systems and footings; 2. beams; 3. girders; 4. lintels; 5. columns; 6. walls and partitions; 7. floor systems; and 8. roof framing systems. All four (4) parts of the definition must be satisfied in order for a condition to qualify as a Structural Defect. This is designed to be coverage only for catastrophic failure of load-bearing elements of the Home.

Examples of elements not covered by this warranty which are deemed not to have Structural Defect potential are: 1. nonload-bearing partitions and walls; 2. wall tile, wall paper, etc.; 3. plaster, laths, or drywall; 4. flooring and subflooring material; 5. stucco, synthetic stucco, brick or stone veneer; 6. any type of exterior siding; 7. roof shingles, sheathing and felt paper; 8. heating, cooling, ventilating, plumbing, electrical and mechanical systems; 9. appliances, fixtures or items of equipment; 10. doors, trim, cabinets, hardware, insulation, paint and stains; 11. basement slabs and other interior floating, ground-supported concrete floor slabs; and 12. water intrusion, including, without limitation, leaks in walls, roofs, plumbing, basements and crawl spaces.

II. What Wieland Will Do

- A. Notwithstanding any language herein to the contrary, if a defect occurs in a warranted item during the applicable period of this warranty, Wieland will repair, replace or pay the Homebuyer(s) the reasonable cost of repairing or replacing the defective item. The choice to repair, replace, pay or combination thereof is solely that of Wieland. Wieland will also repair (or pay for the repair of) any item needing to be damaged or destroyed in order to make the warranted repair, except for improvements added after the completion of Wieland's original construction, which are the responsibility of Homebuyer(s) to remove or repair.
- B. With regard to Structural Defects, Wieland will repair and/or replace the Structural Defects or make arrangements for such repairs and/or replacement. Wieland shall have complete discretion as to the methods and manners for repairing and/or replacing Structural Defects. The repair of a Structural Defect is limited to: 1. the repair of damage to the load-bearing portions only as necessary to restore the load-bearing ability of such load-bearing portions; and 2. the repair of those items of the Home damaged by the Structural Defect which make the Home unsafe or unsanitary.
- C. Notwithstanding anything herein to the contrary, where Wieland shall become responsible to pay the reasonable costs of repair or replacement for Structural Defects arising at any time during the applicable period of this warranty and amounting to \$2,500 or more, payment shall be made to or on behalf of the Homebuyer(s) and the mortgagee or successor mortgagees who have notified Wieland in writing of their security interest in the Home on or prior to the date of payment of the claim, as their respective interests may appear.

- D. Before Wieland repairs or pays for the repair of a claim, there must be an assignment to Wieland of any rights that may exist against any other person or entity with respect to the claim. No repairs, replacements or payments made under the terms and conditions of this warranty shall act to extend this warranty or any time periods hereunder.
- E. Notwithstanding anything herein to the contrary, if an item is on or in the common elements of a condominium or is otherwise under the ownership or maintenance control of a homeowners, neighborhood or condominium association, and such association refuses to allow Wieland to perform work on the item, Wieland shall be relieved of any obligation to perform work on the item, and the item shall be deemed excluded from this warranty.

III. What the Homebuyer(s) Must Do

If the Homebuyer(s) should have a complaint on any item covered by this warranty during the applicable period of this warranty, the Homebuyer(s) must send a clear and specific written complaint to Wieland (dating the defect occurrence). This written notice must be received no later than 30 days after the expiration of the applicable coverage period for such item under this warranty (except where a shorter time period is specified). The written notice must be sent to the Wieland Customer Service Department at the address listed on the Table of Contents page of this warranty. In case of an emergency problem, the Homebuyer(s) must notify Wieland immediately in order that further damages can be mitigated. The Homebuyer(s) should take reasonably immediate action if circumstances dictate the need.

However, Wieland is entitled to assess claimed defects and decide on an appropriate repair plan. Wieland is also entitled to choose to repair or replace, or to pay the fair value of the repair or replacement of, a covered defect. If Homebuyer(s) repair (or cause the repair of) the claimed defect before Wieland has an opportunity to inspect the claimed defect, it is impossible for Wieland to assess whether the defect was covered by this warranty, whether the repair made was cost-effective, necessary, and effective, and whether Wieland would have been able to solve the problem in another way. For these reasons, Wieland will not accept, nor will arbitrators be able to award to Homebuyer(s), any claimed defect which Homebuyer(s) have had replaced or repaired, except for an emergency repair which was authorized by Wieland. If Wieland is unavailable for emergency authorization, Homebuyer(s) must make minimal repairs so that further damages can be mitigated and report the emergency to Wieland as promptly as possible. Repairs will not be reimbursed unless, at a minimum, the above procedures have been followed.

IV. Exclusions

This warranty does not apply to:

- A. Defects in outbuildings, including, without limitation, detached garages and detached carports (except finished space over garages and outbuildings that contain or are served by the plumbing, electrical, heating, cooling or ventilation systems serving the Home); built-in refrigerators; home theatres/entertainment components; other non-standard "extras" in the Home; swimming pools and other recreational facilities; driveways, walkways, decks and porches; patios (attached or detached), stoops and steps (except as specifically stated herein); boundary walls, retaining walls and bulkheads (except where boundary walls, retaining walls and bulkheads are necessary for the structural stability of a covered building); fences; landscaping of any kind (except as specifically stated herein); irrigation and fire suppression sprinkler systems; or any other improvements not a part of the Home; and in addition:

Any and all aspects of any "tankless" water heating system and the installation thereof, and anything else related thereto, are excluded. The foregoing specifically excludes, without limitation, (a) repair, replacement and any other aspect of such water heating system, and (b) any damage or problems with any other aspect of the Home resulting from such water heating system, including, without limitation, structural damage or matters;

- B. Damage to real property that is not part of the Home;
- C. Damage to or defects in concrete floors of attached or detached garages or attached or detached patio slabs that are built separate from foundation walls or other structural elements of the Home;
- D. Bodily or personal injury of any kind (including physical or mental pain and suffering and emotional distress); medical, hospital, rehabilitation or other incidental or consequential expenses; attorneys' fees, court costs, experts' fees and other such expenses; or damage to any property of others;
- E. Any loss or damage which the Homebuyer(s) has not taken appropriate action to minimize as soon as practicable;
- F. Any defect in, or caused by, alterations made by or on behalf of Homebuyer(s), or material or work supplied by anyone other than Wieland or Wieland's employees, agents or subcontractors;
- G. Loss of use, loss of opportunity, loss of market value, loss of rental value or any and all consequential loss or damages;

- H. Defects in any property not included in the original Home delivered for the original final sales price;
- I. Any damage to the extent it is caused or made worse by:
1. Negligence, improper maintenance, lack of maintenance or improper use or operation by anyone other than Wieland or Wieland's employees, agents or subcontractors;
 2. Failure by the Homebuyer(s) to give prompt and proper notice to Wieland of any defects;
 3. Changes of the grading of the ground that do not comply with accepted grading practices, including changes in, and failure to maintain, grades, swales, drainage structures, stabilized soil, and sodded, seeded and landscaped areas;
 4. Changes in the level of underground water table which were not reasonably foreseeable at the time of construction of the Home;
 5. Subsidence or soil movement which was not reasonably predictable through reasonable soil testing or other geological investigation at the time of construction of the Home (this does not apply to any Home with an original FHA loan still in effect);
 6. Dampness, condensation, mold/mildew or any other condition arising due to the failure to maintain adequate ventilation and/or adequately low humidity levels; or
 7. Failure by the Homebuyer(s) or by anyone other than Wieland or Wieland's employees, agents or subcontractors to comply with the warranty requirements of manufacturers of appliances, equipment or fixtures;
- J. Loss or damage not caused by a defect or deficiency in the design or construction of the Home by Wieland or Wieland's employees, agents or subcontractors;
- K. Loss or damage externally caused, including, but not limited to: acts of God; riot or civil commotion; hurricane, tornado or other windstorm; fire; explosion; smoke; water; mold/mildew; hail; lightning; falling trees or other objects; aircraft; vehicles; flood; mud slides; earthquakes; volcanic eruption; radon or other natural or introduced gases; abuse or use of the Home, or any part thereof, beyond the reasonable capacity of such part for such use; conditions or occurrences beyond Wieland's control; or by any other external cause (including, without limitation, criminal acts);

- L. Any loss, damage, defect, cost or expense which is caused, in whole or in part, by any peril or occurrence for which compensation is provided in whole or in part by legislation, by class action or other lawsuit settlement, or which is covered by other insurance or public funds;
- M. Rotting of any kind; mold/mildew; the presence of mold/mildew anywhere in the Home, including, without limitation, in any crawl space, unfinished basement or other unfinished or finished space (all aspects of mold/mildew, including cleaning or otherwise addressing, are the responsibility of the Homebuyer(s) as part of maintenance of the Home); the presence of radon or other natural or introduced gases; insect damage; and damage due to vermin, radiation, pollution or toxic substances of any kind;
- N. Any loss or damage which arises while the Home or any portion thereof is being used for nonresidential purposes;
- O. Any condition which does not result in actual physical damage to the Home;
- P. Costs of shelter, transportation, food, moving, storage, or other incidental expenses related to relocation during repair, or any other costs due to loss of use, inconvenience or annoyance;
- Q. Any complaint or claim on an item reported to Wieland after an unreasonable delay or later than 30 days after the expiration of the applicable coverage period for such item under this warranty (or later than any shorter time period herein specified); or loss or damage resulting from failure to comply with manufacturers' warranty requirements;
- R. Normal wear and deterioration;
- S. Failure of Wieland to complete construction;
- T. Glass breakage and exterior hardware;
- U. Failure of Wieland to perform any washing, cleaning or clean-up of any kind;
- V. Structural slab foundation systems that have experienced some movement but are within the foundation's design performance criteria; separation, settlement or movement of concrete slabs within the structure at control joints (joint material maintenance is not the responsibility of Wieland);
- W. Violations of local, state or national building codes, ordinances or standards;
- X. Pre-existing conditions the Homebuyer(s) were aware of before closing on the Home

and knowingly accepted (waived), such as "punch list" or "orientation" items, whether or not appearing on a punch list or orientation checklist;

- Y. Outside hosebibs and other hose connections;
- Z. Loss or damage resulting from any failure to comply with federal, state, local or other elevation requirements, including, but not limited to: 1. failure of the lowest floor elevation of the Home to meet or exceed the base flood elevation established by the Federal Emergency Management Agency and applicable community floodplain management ordinances; and 2. errors in connection with the collection and certification of elevation information, whether committed by Wieland, an agent of Wieland or by any person authorized by state or local law or ordinance to provide floodplain management information, or by any other person;
- AA. Damage due to weather conditions which exceed the specifications for any covered item;
- BB. Damage to any personal property;
- CC. Damage caused by any alteration to a covered item;
- DD. Any aspect whatsoever related to light fixtures and fans, except as noted in Section 12.2 of the Construction Quality Standards;
- EE. Performance of any covered item; operation only is covered by this warranty;
- FF. Persistent failure of any covered item in many homes such that the item is considered defective as made or manufactured, as reasonably determined by Wieland; and
- GG. ALL CONSEQUENTIAL DAMAGE OF ANY KIND.

V. General Provisions

- A. Time is of the essence. The time limits contained in this warranty are a material condition of this warranty.
- B. **Homebuyer(s)** means any and all record owners of the Home (stated in the warranty certificate applicable to the Home, if the initial Homebuyer(s)) and **Home** means the dwelling described in the warranty certificate applicable to the Home. **Builder or Wieland** means John Wieland Homes and Neighborhoods, Inc., in Georgia, Tennessee and Kentucky, and means John Wieland Homes and Neighborhoods of the Carolinas, Inc., in North Carolina and South Carolina.
- C. A warranted defect must first occur during the applicable designated portion of the warranty for that warranted defect in order to be covered as provided in this warranty. Therefore, per Section IV.X of this warranty, any pre-existing conditions the Homebuyer(s) knew about before closing on the Home and knowingly accepted (waived), such as "punch list" or "orientation" items, are not covered.
- D. No one is authorized to change, alter or add to this warranty without the express written consent of Wieland.
- E. The maximum amount payable under this warranty by Wieland for all claims submitted is the original final sales price of the Home shown on the warranty certificate applicable to the Home, which includes the parcel of land on which the Home was constructed.
- F. This warranty is independent of any contractual arrangement between the Homebuyer(s) and Wieland for the construction of the Home and/or its sale, if any. Nothing contained in any such contract or any other contract between Wieland and the Homebuyer(s) can restrict or override the provisions of this warranty. The contractual arrangement includes, but is not limited to, Builder substitutions or changes in plans, specifications or materials.
- G. If Wieland's performance of any of its obligations is delayed by any event not resulting from Wieland's own conduct, Wieland will be excused from performing until the effects of that event are remedied. Examples of such events are acts of God or the common enemy, labor strikes, shortages of materials, war, riot, civil commotion, sovereign conduct, or acts of persons who are not parties to this warranty.
- H. Wieland and Wieland's employees, agents, contractors and subcontractors must be allowed access to the Home and areas around or attached to the Home during normal business hours when claim servicing is required and to inspect, repair and conduct tests as, in Wieland's judgment, may be required. It is Homebuyer(s) responsibility to ensure this access. This warranty shall be void if this access is not permitted.

- I. Anything requiring repair or replacement which cannot be repaired or replaced with items readily available in the standard marketplace will be repaired or replaced with items of similar kind and quality which are so available.
- J. This warranty does not apply to appliances, consumer products, or other pieces of equipment, except as noted in Section I of this warranty.
- K. Any legal action resulting from disputes between the Homebuyer(s) and Wieland that are not the direct result of provisions contained in this warranty are not the responsibility of Wieland.
- L. Each successor in title to the Home, including any mortgagee in possession, in no way affects the coverage under this warranty for its unexpired term. Each such successor is also bound by the provisions of this warranty and the Construction Quality Standards. There is no limit to the number of such successions during the unexpired terms, nor any cost incurred because of such successions.
- M. If, at the time of a claimed loss, there is any valid and collectible insurance, whether primary, excess or contingent, that applies to the losses, defects or claims covered by this warranty, then Wieland shall not be liable for any of said losses, defects or claims.
- N. When repairing or replacing, Wieland will attempt to match and replace with the original choice of colors and materials, except where the item was custom-ordered. Due to manufacturing variances, discontinued items, natural fading, weathering, etc., Wieland cannot and does not guarantee color matches. In addition, Wieland is not accountable for discontinued items, changes in dye lots, colors or patterns, or items ordered outside of the original construction of the Home.
- O. **Mandatory Binding Arbitration.** Wieland and Homebuyer(s) will cooperate with one another in avoiding and informally resolving disputes between them. Wieland and Homebuyer(s) shall first mediate formally any disputes between them, with the mediation commencing, and the mediator being selected, in the same manner as set forth below for the commencement of arbitration and the selection of an arbitrator (if the parties cannot mutually agree otherwise).

Any and all unresolved claims or disputes of any kind or nature between Wieland and Homebuyer(s) arising out of or relating in any manner to any purchase agreement with Wieland (if any), this warranty, the Home and/or property on which it is constructed, or otherwise, shall be resolved by final and binding arbitration conducted in accordance with this provision, and such resolution shall be final. This applies only to claims or disputes that arise after the later of: (a) the issuance of the final certificate of occupancy for the Home, or (b) the initial closing of the purchase

of the Home by the initial Homebuyer(s). This specifically includes, without limitation, claims related to any representations, promises or warranties alleged to have been made by Wieland or its representatives; rescission of any contract or agreement; any tort; any implied warranties; any personal injury; and any property damage.

The terms and procedures of this warranty shall first apply to any claims or disputes that are within the coverage of this warranty. In order to be able to arbitrate or mediate any warranty claims, Homebuyer(s) must first have complied with all procedures set forth in this warranty within the time limits set forth herein. Failure of Homebuyer(s) to comply with such procedures in a timely manner shall bar any such claims against Wieland.

In order to initiate arbitration for disputes, Wieland or Homebuyer(s) must provide clear and specific written notice (if to Homebuyer(s), at the Home address; if to Wieland, to Wieland's Customer Service Department at the address set forth in this warranty) to the other that such party desires to arbitrate matters in dispute, together with a description of the claim or dispute and of the damages or relief being sought. Arbitrations will be conducted by an independent, neutral, third-party arbitrator, located in the general metropolitan area where the Home is located, selected by Construction Arbitration Associates, Inc., Atlanta, Georgia (CAA) (CAA is not precluded from selecting itself); if CAA is unable or legally precluded from selecting an arbitrator, then the American Arbitration Association (AAA) shall do so (AAA is not precluded from selecting itself). As the purchase agreement with Wieland and this warranty are transactions involving interstate commerce, arbitrations shall be governed by the U.S. Arbitration Act, 9 U.S.C. Sections 1-16, to the exclusion of any provisions of state law.

Arbitrations will be conducted in accordance with rules provided or determined by the person or entity selecting the arbitrator as provided above; provided, however, if any procedural matters are not covered in those rules, the arbitrator shall decide such matters. The arbitrator will hold a hearing on the claim(s) or dispute(s) and render a decision or award, and such decision or award shall be final and binding on the parties.

If Wieland so chooses, Wieland may have its supplier(s) and contractor(s) whose work or supplies are involved in the dispute included as parties to the arbitration. Questions of whether issues are arbitrable and the actual interpretation of terms needing definition in order to arbitrate an issue shall be determined by the arbitrator.

Judgment upon an award rendered by an arbitrator may be entered in any court having jurisdiction thereof upon the application of Wieland or Homebuyer(s). Wieland shall pay all up front filing fees relating to arbitration or mediation. Each party shall bear its own costs and expenses and an equal share of the arbitrator's fees, the administrative fees of arbitration, and/or fees of mediation.

WIELAND AND HOMEBUYER(S) HEREBY ACKNOWLEDGE AND AGREE THAT THE ARBITRATION PROCEDURE SET FORTH HEREIN SHALL BE THE SOLE AND EXCLUSIVE REMEDY FOR THE RESOLUTION OF ANY AND ALL DISPUTES ARISING AFTER THE INITIAL CLOSING OF THE PURCHASE OF THE HOME BY THE INITIAL HOMEBUYER(S). WIELAND AND HOMEBUYER(S) HEREBY WAIVE ANY AND ALL OTHER RIGHTS AND REMEDIES AT LAW, IN EQUITY OR OTHERWISE WHICH MIGHT OTHERWISE HAVE BEEN AVAILABLE TO THEM IN CONNECTION WITH ANY SUCH DISPUTES.

Any dispute involving Wieland's directors, officers, shareholders, employees, agents, predecessors, affiliates or related companies shall be resolved through the foregoing mediation and arbitration process and not in a court of law. The waiver or invalidity of any portion of this Section shall not affect the validity or enforceability of the remaining portions of this Section; specifically, if it is validly determined that a particular claim or type of claim is not subject to arbitration hereunder, such determination shall not affect or invalidate the applicability of arbitration or mediation hereunder to any other claim or type of claim.

- P. THERE ARE AND WILL BE NO OTHER OR FURTHER WARRANTIES OR REPRESENTATIONS ON THE HOME AND/OR PROPERTY ON WHICH IT IS CONSTRUCTED (INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, WORKMANLIKE QUALITY, HABITABILITY, SUITABILITY FOR RESIDENTIAL PURPOSES, OR FITNESS FOR A PARTICULAR PURPOSE, OR OTHERWISE), EITHER EXPRESS OR IMPLIED, WRITTEN, ORAL OR STATUTORY, MADE BY WIELAND OTHER THAN AS EXPRESSED IN THIS WARRANTY, AND ALL SUCH OTHER WARRANTIES ARE HEREBY EXPRESSLY EXCLUDED AND DISCLAIMED BY WIELAND. THIS WARRANTY IS ALSO GIVEN BY WIELAND AND ACCEPTED BY HOMEBUYER(S) IN LIEU OF ALL OTHER RIGHTS OR REMEDIES THAT HOMEBUYER(S) HAVE OR MAY HAVE AT LAW OR IN EQUITY AGAINST WIELAND RELATING TO THE HOME AND/OR PROPERTY ON WHICH IT IS CONSTRUCTED, CONSTRUCTION OF THE HOME, AND THE CONDITIONS OR CIRCUMSTANCES EXISTING IN THE HOME AND/OR ON THE PROPERTY ON WHICH IT IS CONSTRUCTED, INCLUDING, BUT NOT LIMITED TO, ANY RIGHTS OR REMEDIES BASED ON NEGLIGENT CONSTRUCTION, MISREPRESENTATION, ANY TORT, VIOLATION OF ANY CODE, STATUTE OR RULE, BREACH OF CONTRACT (EXPRESS OR IMPLIED), OR BREACH OF WARRANTY (OTHER THAN BASED ON THE TERMS OF THIS WARRANTY), AND ALL SUCH OTHER RIGHTS OR REMEDIES ARE HEREBY EXPRESSLY WAIVED BY HOMEBUYER(S).

LEGAL NOTICES

For Georgia only:

GEORGIA LAW CONTAINS IMPORTANT REQUIREMENTS THAT YOU (HOMEBUYER(S)) MUST FOLLOW BEFORE YOU MAY FILE A LAWSUIT OR OTHER ACTION FOR DEFECTIVE CONSTRUCTION AGAINST THE CONTRACTOR WHO CONSTRUCTED, IMPROVED OR REPAIRED YOUR HOME. IF APPLICABLE, NINETY (90) DAYS BEFORE YOU FILE YOUR LAWSUIT OR OTHER ACTION, YOU MUST SERVE ON THE CONTRACTOR A WRITTEN NOTICE OF ANY CONSTRUCTION CONDITIONS YOU ALLEGE ARE DEFECTIVE. UNDER THE LAW, A CONTRACTOR HAS THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR OR PAY FOR THE DEFECTS, OR BOTH. YOU ARE NOT OBLIGATED TO ACCEPT ANY OFFER MADE BY A CONTRACTOR. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER STATE LAW, AND FAILURE TO FOLLOW THEM MAY AFFECT YOUR ABILITY TO FILE A LAWSUIT OR OTHER ACTION.

For Kentucky only:

SECTIONS 411.250 TO 411.266 OF THE KENTUCKY REVISED STATUTES CONTAIN IMPORTANT REQUIREMENTS THAT YOU (HOMEBUYER(S)) MUST FOLLOW BEFORE YOU MAY FILE A LAWSUIT FOR DEFECTIVE CONSTRUCTION AGAINST THE BUILDER OF YOUR HOME. IF APPLICABLE, YOU MUST DELIVER TO THE BUILDER A WRITTEN NOTICE OF ANY CONSTRUCTION CONDITIONS YOU ALLEGE ARE DEFECTIVE AND PROVIDE THE BUILDER THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR OR PAY FOR THE DEFECTS. YOU ARE NOT OBLIGATED TO ACCEPT ANY OFFER MADE BY THE BUILDER. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER STATE LAW, AND FAILURE TO FOLLOW THEM MAY AFFECT YOUR ABILITY TO FILE A LAWSUIT.

CONSTRUCTION QUALITY STANDARDS

The following Construction Quality Standards are based on standards that have been developed and accepted by the residential construction industry in general. While it is virtually impossible to develop a construction standard for each possible deficiency, Wieland has attempted to isolate the most common deficiencies that occur and in so doing list the extent of Builder and Homebuyer(s) responsibility. Where a specific deficiency has not been identified, the standard practice of the residential construction industry at the time of construction of the Home will apply.

Homebuyer(s) should be aware that all new homes go through a period of expansion and contraction. During this period, a home may experience some minor material shrinkage, cracking and other events that are unavoidable and considered normal, such as, without limitation, temporary expansion of pipes that then make contact with wall studs or other material, floor squeaks, and other noises and sounds that are part of the settlement of the home. Homebuyer(s) should also be aware that Homebuyer(s) are responsible for proper home maintenance. Damage caused by negligence, lack of maintenance, improper maintenance or changes, alterations or additions by or on behalf of Homebuyer(s), is excluded from the warranty.

The following Construction Quality Standards are expressed in terms of required standards that Wieland's construction must meet. Non-compliance with these standards calls for corrective action. Unless otherwise noted below, all following items identified are One Year (Workmanship) warranted items.

I. SITE WORK

1.1 GROUND SETTLING

•DEFICIENCY: Excessive ground settling around the foundation, utility trenches or other areas on the lot that have been excavated and backfilled affecting drainage away from the Home.

CONSTRUCTION STANDARD: Ground settling should not exceed 6 inches from the final landscaping grade established by the Builder and should not impede water drainage away from the Home.

BUILDER CORRECTION: If the Builder provided final landscaping grade, the Builder shall recompact and backfill excessively settled areas affecting drainage away from the Home one time, but only during the first year of the warranty. Any landscaping affected by the repair is not the responsibility of Builder.

1.2 LANDSCAPING

•Builder shall have no obligation, responsibility or liability whatsoever for (1) trees and/or shrubbery that Builder would have removed, or had planned to remove, during construction but which Homebuyer(s) (or predecessor) specifically requested not be removed, (2) natural areas left undisturbed by Builder, including, without limitation, drainage in such areas, (3) site drainage and/or standing or ponding water of any kind or nature whatsoever, and (4) trees of any kind whatsoever, except as specifically stated herein.

•Builder will provide a replacement shrub one time only for any shrub that dies during the first 30 days of the warranty. No labor or other materials will be provided.

•Builder guarantees the survival of at least two-thirds (2/3) of the total number of nursery-grown "B&B" transplanted trees during the first six months of the warranty, so long as they are properly cared for as determined by Builder. *Proper care includes: 1) watering: during the spring, summer and early fall, water trees at least once per week, soaking the root ball heavily; 2) fertilizing: in March, May and July, fertilize each tree with 1/3 cup of 10-10-10 fertilizer per inch of trunk diameter; and 3) mulch: maintain pine straw mulch around the base of the tree to a depth of 3" to 4". Any*

replacement trees that may be required to meet the minimum two-thirds (2/3) total number will be replanted one time only. Dead trees will be cut flush to the ground where possible. Stumps will be ground only if the tree was in a grassed area of the front yard.

•During the first year of the warranty, Builder warrants that lawns of Bermuda and Zoysia sod that are laid when dormant will come out of dormancy. Areas of 25 contiguous square feet or less are excluded as these will grow over naturally. Areas greater than 25 contiguous square feet will be repaired one time only in the Spring.

•Fescue lawns (seed and sod) are not covered by the warranty.

II. CAST-IN-PLACE CONCRETE

•DEFICIENCY: Excessive basement or foundation wall cracks.

CONSTRUCTION STANDARD: Non-structural cracks are not unusual in concrete foundation walls.

Cracks greater than 1/8 inch are considered excessive.

BUILDER CORRECTION: The Builder shall repair non-structural cracks in excess of 1/8 inch by surface patching. If needed, any such work should be done toward the end of the first year of the warranty.

•DEFICIENCY: Excessive cracking of basement floor, attached garage slab or attached patio slab, other than as excluded by Section IV.A and IV.C of the warranty.

CONSTRUCTION STANDARD: Minor cracks are common. Cracks exceeding 1/4 inch in width or 1/4 inch in vertical displacement are considered excessive.

BUILDER CORRECTION: The Builder shall repair cracks exceeding the maximum tolerances by surface patching or other methods, as required.

•DEFICIENCY: Cracks in concrete slab on grade finished floors.

CONSTRUCTION STANDARD: Cracks which significantly impair the appearance or performance of the finish flooring material are not acceptable.

BUILDER CORRECTION: The Builder shall repair cracks as necessary so as not to be apparent when the finish flooring material is in place. Repair or replace finish flooring.

•DEFICIENCY: Uneven concrete floors.

CONSTRUCTION STANDARD: Concrete floors in rooms designed and finished by Builder or habitation should not have pits, depressions or areas of unevenness exceeding 1/4 inch in 32 inches or slope in excess of 1/240 of room width or length. Not applicable to floors designed for specific drainage purposes or to slabs that have experienced some movement but are within design performance criteria.

BUILDER CORRECTION: Builder to repair or replace to meet the above standard. Surface patching shall be acceptable. Repair or replace finish flooring installed by Builder, if any.

•DEFICIENCY: Pitting, scaling or spalling of non-excluded concrete.

CONSTRUCTION STANDARD: Such concrete surfaces should not disintegrate to the extent that the aggregate is exposed and loosened under normal conditions of weathering and use. Not applicable to deterioration caused by salt, chemicals, mechanical implements, normal activities involved in the construction of the Home, and other factors beyond the Builder's control.

BUILDER CORRECTION: Builder to repair or replace to meet the above standard.

•DEFICIENCY: Excessive separation of brick or masonry edging from concrete slab and step.

CONSTRUCTION STANDARD: Cracks or separation is common, but cracks in excess of 1/4 inch are excessive.

BUILDER CORRECTION: The Builder shall grout the crack.

•DEFICIENCY: Cracking, settling, heaving or separating of structurally attached stoops or steps.

CONSTRUCTION STANDARD: Stoops or steps should not settle, heave or separate in excess of 1 inch in relation to the house structure. No cracks except hairline cracks (less than 1/4 inch) are acceptable in structurally attached concrete stoops.

BUILDER CORRECTION: Builder to take corrective action to meet standard. Surface patching shall be acceptable.

III. MASONRY

3.1 BRICK, BLOCK AND STONE

•DEFICIENCY: Excessive cracking in masonry walls.

CONSTRUCTION STANDARD: Small cracks in masonry and mortar due to shrinkage are not unusual. Cracks greater than 1/8 inch in width are considered excessive.

BUILDER CORRECTION: Repair cracks in excess of 1/8 inch by pointing or patching. It is recommended that this be done toward the end of the first year of the warranty. Horizontal cracks greater than 3/16 inch should be investigated to determine the cause. Horizontal cracks greater than 3/16 inch should be repaired by pointing, patching, reinforcement or replacement of defective area. Color matching is not guaranteed.

•DEFICIENCY: Excessive cracking in masonry walls or veneer above grade.

CONSTRUCTION STANDARD: Small cracks due to shrinkage are not unusual. Cracks greater than 1/8 inch in width are considered excessive.

BUILDER CORRECTION: Repair cracks in excess of 1/8 inch by pointing. It is recommended that this be done toward the end of the first year of the warranty. Color matching is not guaranteed.

3.2 STUCCO

•DEFICIENCY: Excessive cracking or spalling of finish surface.

CONSTRUCTION STANDARD: Hairline cracks are common. Cracks greater than 1/8 inch in width are considered excessive.

BUILDER CORRECTION: Clean out area by scraping and fill with stucco. Color, finish and texture matching are not guaranteed.

3.3 HARDCOAT STUCCO

•DEFICIENCY: Excessive cracking in hardcoat stucco wall surfaces.

CONSTRUCTION STANDARD: Hairline cracks are normal in hardcoat stucco wall surfaces. Cracks greater than 1/8 inch in width are considered excessive.

BUILDER CORRECTION: Builder to repair cracks by filling with a latex filler. Existing color and finish to be matched as closely as possible by using tinted filler or painting the repaired area. Exact matching of the color, finish and texture is not guaranteed.

IV. CARPENTRY

4.1 ROUGH CARPENTRY

•DEFICIENCY: Floor squeak.

CONSTRUCTION STANDARD: Floor areas should not have squeaks that are loud and reasonably objectionable, and the subflooring should be secure to the joists. However, there is no guarantee that floors will not squeak, so isolated floor squeaks are not defects.

BUILDER CORRECTION: Builder should locate and make every reasonable effort to repair, if caused by improper installation.

•DEFICIENCY: Uneven wood framed floors.

CONSTRUCTION STANDARD: Floors should be level within 1/4 inch in 32 inches, measured parallel to floor joists. The overall floor slope should not be in excess of L/240 of room width or length.

BUILDER CORRECTION: Builder to correct or repair to meet the above standards.

•DEFICIENCY: Bowed stud walls and/or ceilings.

CONSTRUCTION STANDARD: All interior and exterior walls and ceilings have slight variances on

their finished surfaces. Bowing should not be so visible as to detract from the finished surface. Walls and ceilings bowed in excess of L/240 of any horizontal or vertical measurement is considered excessive.

BUILDER CORRECTION: Builder to correct or repair to meet the above standards.

•**DEFICIENCY:** Out of plumb wood framed walls.

CONSTRUCTION STANDARD: Walls should be plumb within 1 inch in 8 feet.

BUILDER CORRECTION: Builder to correct or repair to meet the above standards.

•**DEFICIENCY:** Delaminating subflooring.

CONSTRUCTION STANDARD: Subflooring that delaminates on the "finish" side is a defect.

BUILDER CORRECTION: Builder to repair or replace the subflooring and replace the finish materials as needed to match the existing finish as closely as possible. Color, finish and texture matching are not guaranteed.

4.2 FINISH CARPENTRY — INTERIOR

•**DEFICIENCY:** Quality of finished interior trim workmanship.

CONSTRUCTION STANDARD: Joints between moldings and adjacent surfaces should not exceed 1/8 inch.

BUILDER CORRECTION: Repair joints and touch up the finish as needed to match existing as close as possible. Caulking is acceptable.

4.3 FINISH CARPENTRY—EXTERIOR

•**DEFICIENCY:** Quality of finished exterior trim workmanship.

CONSTRUCTION STANDARD: Joints between exterior trim elements should not exceed 3/8 inch. In all cases the exterior trim at masonry and siding shall be capable of performing its function to exclude the elements.

BUILDER CORRECTION: Repair joints and touch up the finish as needed to match existing as close as possible. Caulking is acceptable.

4.4 NAIL HOLES

•**DEFICIENCY:** Exposed nail heads in wood.

CONSTRUCTION STANDARD: Nail holes which have not been filled on finished painted wood are deficiencies. However, material used to fill nail holes may shrink and/or dry up over time, but this is not a deficiency. In addition, some nail holes may not be filled where, because of the product, the surface finish is not conducive or designed to have nail holes filled, and this is not a deficiency.

BUILDER CORRECTION: Fill nail holes as required to meet standard and touch up finish as necessary to match as closely as possible. Color and finish matching are not guaranteed.

V. THERMAL AND MOISTURE PROTECTION

5.1 BASEMENTS AND CRAWL SPACES

•**DEFICIENCY:** Active water flow into basement or so as to create standing water in the crawl space for at least forty-eight (48) consecutive hours.

CONSTRUCTION STANDARD: Leaks resulting in active flow of water through the basement walls or through the basement floor are unacceptable. Leaks resulting in active flow of water that creates standing water in the crawl space for at least forty-eight (48) consecutive hours are unacceptable. Leaks caused by landscaping improperly installed by or on behalf of Homebuyer(s) or by failure to maintain the grades established by Builder are not deficiencies. Dampness in walls and floors may occur in new construction and is not considered a deficiency.

BUILDER CORRECTION: During the first five years of the warranty, the Builder shall take such

action as necessary to correct basement and crawl space leaks as described above, except where the cause is determined to result from neglect or action by Homebuyer(s) or someone acting on behalf of Homebuyer(s). Any mold/mildew and/or the presence thereof anywhere in the Home, including, without limitation, in any crawl space, unfinished basement or other unfinished or finished space, is not covered. All aspects of mold/mildew, including cleaning or otherwise addressing, are the responsibility of the Homebuyer(s) as part of maintenance of the Home.

5.2 EXTERIOR SIDING

•DEFICIENCY: Loose siding; delamination, splitting or deterioration of siding.

CONSTRUCTION STANDARD: Siding should be securely fastened to the Home. It should not delaminate, split or deteriorate.

BUILDER CORRECTION: Builder to re-secure or reinstall loose siding. Builder will repair or replace delaminated, split or deteriorated siding matching the existing texture and finish as closely as possible.

NOTE: Any item related in any way to exterior siding (including, without limitation, water intrusion) is covered for one year from the commencement of the warranty.

5.3 SYNTHETIC STUCCO (EIFS)

•DEFICIENCY: Cracks in synthetic stucco wall surfaces.

CONSTRUCTION STANDARD: Cracks are normal in synthetic stucco wall surfaces. Cracks greater than 1/8 inch in width are considered excessive.

BUILDER CORRECTION: Builder to clean out area by scraping and fill with synthetic stucco to repair cracks as required and touch up the finish to match the existing finish as closely as possible. Color, finish and texture matching are not guaranteed.

NOTE: Any item related in any way to synthetic stucco (including, without limitation, water intrusion) is covered for one year from the commencement of the warranty.

5.4 ROOFING

•DEFICIENCY: Leaks at roof penetrations made in the course of construction.

CONSTRUCTION STANDARD: Roof penetrations made in the course of construction should not leak under normal weather conditions. Leaks resulting from severe weather conditions, such as ice and snow build-up, high winds and driven snow or rains, are not deficiencies. In addition, maintenance/replacement of boots and caulking are Homebuyer(s) maintenance items.

BUILDER CORRECTION: During the first five years of the warranty, Builder shall correct or repair any verified leaks at roof penetrations made in the course of construction.

•DEFICIENCY: Lifted, curled or torn shingles.

CONSTRUCTION STANDARD: Shingles should not lift, curl or tear under normal weather conditions. Accidental loss or damage from, for example, natural causes, fire, aircraft or vehicles is not a deficiency.

BUILDER CORRECTION: Builder to repair and/or replace defective shingles to match the existing shingles as closely as possible.

5.5 SEALANTS

•DEFICIENCY: Leaks in exterior walls due to inadequate caulking.

CONSTRUCTION STANDARD: Joints and cracks in exterior wall surfaces and around openings should be properly caulked to exclude the entry of water and excessive drafts. Properly installed caulking will shrink and must be maintained by Homebuyer(s) during the life of the Home; this is not a deficiency.

BUILDER CORRECTION: If requested by Homebuyer(s), Builder shall repair and/or caulk joints or

cracks in exterior wall surfaces as required to correct the deficiency. It is Homebuyer(s) responsibility to maintain the caulking.

5.6 GUTTERS AND DOWNSPOUTS

•DEFICIENCY: Gutters and/or downspouts leak or have standing water.

CONSTRUCTION STANDARD: Gutters and downspouts should not leak. Gutters should be pitched properly to drain water. Standing water in the gutter that does not exceed 1 inch in depth is acceptable. However, it is the Homebuyer(s) responsibility to keep gutters and downspouts clean so as to assure proper drainage and prevent leaks, overflow or standing water.

BUILDER CORRECTION: Repair leaks and pitch to drain properly.

VI. DOORS AND WINDOWS

6.1 INTERIOR AND EXTERIOR DOORS

•DEFICIENCY: Warping of interior and exterior doors.

CONSTRUCTION STANDARD: Exterior doors may warp to some degree due to the temperature and moisture differential between the inside and outside faces. Doors that warp so as to prevent normal closing are defective. Warping of 1/4 inch or less, measured from top to bottom, is acceptable.

BUILDER CORRECTION: Repair or replace the doors as needed and finish to match the existing doors as closely as possible.

•DEFICIENCY: Door binds against the frame. Door will not lock.

CONSTRUCTION STANDARD: Doors should operate freely without binding against the frame. The lock should operate smoothly and fit to the keeper.

BUILDER CORRECTION: Builder to adjust the door and keeper to operate freely.

•DEFICIENCY: Door panels shrink showing bare wood.

CONSTRUCTION STANDARD: Panels will shrink and expand, showing raw wood edges, with temperature and humidity changes. This is not a deficiency.

BUILDER CORRECTION: None.

•DEFICIENCY: Split door panel.

CONSTRUCTION STANDARD: Splits that allow visible light penetration through the door are defects.

BUILDER CORRECTION: Repair or replace as needed one time during the first year of the warranty. Finish to match the existing doors as closely as possible.

•DEFICIENCY: Door rubs on the carpet.

CONSTRUCTION STANDARD: The door should not rub the carpet.

BUILDER CORRECTION: Builder to trim the bottom of the door and re-seal the bottom edge.

6.2 GARAGE DOOR(S) ON ATTACHED GARAGE

•DEFICIENCY: Garage door(s) fail to operate properly.

CONSTRUCTION STANDARD: Garage door(s) should operate properly and fit the opening closely. Under heavy weather conditions, there may be some penetration by the elements.

BUILDER CORRECTION: Builder to adjust or replace garage doors as required to operate under normal weather conditions.

6.3 WOOD, METAL AND PLASTIC WINDOWS

•DEFICIENCY: Malfunction of windows.

CONSTRUCTION STANDARD: Windows should operate with reasonable ease. Double hung window sashes are permitted to move within a 2 inch tolerance when in the open position.

BUILDER CORRECTION: Builder to adjust, repair or replace as required. During the first five years of the warranty, Builder to adjust or replace wood double hung window sash tracks if necessary to correct the deficiency.

•DEFICIENCY: Condensation and/or frost on windows.

CONSTRUCTION STANDARD: Condensation on interior surfaces is caused by temperature and humidity differences. In cold weather, this will turn to frost. This is not a deficiency.

BUILDER CORRECTION: None.

6.4 SASH LOCK

•DEFICIENCY: Sash lock will not operate properly.

CONSTRUCTION STANDARD: The sash lock should be firmly attached to the window frame and close properly so as to lock the window.

BUILDER CORRECTION: During the first five years of the warranty, Builder to adjust, repair or replace the sash lock. Builder to adjust the window if the sashes do not align properly to permit the sash lock to operate.

6.5 STORM DOORS, WINDOWS AND SCREENS

•DEFICIENCY: Improper operation of storm doors, windows and screens installed by Builder.

CONSTRUCTION STANDARD: Storm doors, windows and screens should operate and fit so as to provide the protection they are intended to provide.

BUILDER CORRECTION: Builder to adjust or replace as needed.

6.6 WEATHERSTRIPPING AND SEALS

•DEFICIENCY: Air or water infiltration around doors and windows.

CONSTRUCTION STANDARD: Air infiltration is generally normal and necessary for proper ventilation of the Home, even in colder or warmer weather. Air infiltration will be noticeable around doors and windows, especially during high winds. There could be some water infiltration during high winds as well.

BUILDER CORRECTION: None. This is not a defect.

6.7 INSULATED WINDOW SEALS

•DEFICIENCY: Clouding or condensation between the panes of insulated glass.

CONSTRUCTION STANDARD: The windows should be free of clouding and condensation between the panes of glass.

BUILDER CORRECTION: During the first five years of the warranty, Builder to repair breaks in the hermetic seal of insulated windows to correct the deficiency, as defined in the manufacturer's warranty. After expiration of any manufacturer's warranty, Builder will cover materials as would be covered by the manufacturer's warranty.

VII FINISHES

7.1 LATH AND PLASTER

•DEFICIENCY: Excessive cracks in surfaces.

CONSTRUCTION STANDARD: Hairline cracks are common. Cracks larger than 1/8 inch in width are considered excessive.

BUILDER CORRECTION: Builder to repair cracks and touch up the paint to match as closely as possible, one time only during the first year of the warranty.

7.2 DRYWALL

•DEFICIENCY: Defects caused by poor workmanship such as blisters in tape, excess compound in joints, exposed corner beads, or trowel marks.

CONSTRUCTION STANDARD: Imperfections such as occasional nail pops that do not crack the finish, seam lines and hairline cracks are common to drywall and are not defects. Depressions or slight mounds at nail heads are not defects. Blisters in tape, excess compound in joints, exposed corner beads, trowel marks, excessive nail pops and nail pops that cause cracking of the finish are defects.

BUILDER CORRECTION: Builder to correct defects to acceptable tolerance and touch up the finish to match the existing finish as closely as possible, one time only during the first year of the warranty. Significant repairs may require the entire area to be repainted. An exact color match is not guaranteed.

7.3 HARD SURFACE FINISHES (CERAMIC TILE, MARBLE, FLAGSTONE, QUARRY TILE)

•DEFICIENCY: Finish material (not the mortar or grout joints) cracks and/or becomes loose.

CONSTRUCTION STANDARD: Finish material that cracks or becomes loose is a defect.

BUILDER CORRECTION: Builder to replace any cracked materials and resecure any loose materials. Slight color and pattern variations are normal. Builder is not responsible for discontinued materials by the manufacturer. Unless the defective area is greater than 25% of the finished area, the Builder will not be required to replace the entire area.

•DEFICIENCY: Cracks in mortar or grout joints or at junctions with other material, such as a bathtub.

CONSTRUCTION STANDARD: Cracks are common under normal conditions.

BUILDER CORRECTION: Builder will repair mortar or grout as necessary, one time only in the first year of the warranty. Builder is not responsible for color variations or discontinued color grout.

7.4 HARDWOOD FLOORING

•DEFICIENCY: Cracks between the planks, squeaks and uneven floors.

CONSTRUCTION STANDARD: There are no industry standards for determining an acceptable or excessive crack. Builder will repair cracks that exceed 1/16 inch. But Homebuyer(s) must prevent excessive moisture from getting on the floor and maintain a stable temperature and humidity level in the Home year-round. Floors should be level within 1/4 inch in 32 inches.

BUILDER CORRECTION: Builder will repair cracks that exceed 1/16 inch. Cracks between planks of 1/16 inch to 1/8 inch will be repaired by filling with a color coordinated wood filling compound to match as closely as possible. Cracks that exceed 1/8 inch will be repaired by replacing the planks. Squeaks caused by defective installation will be repaired. Uneven flooring resulting from buckling, swelling, or warping that exceeds 1/4 inch in 32 inches as measured perpendicular to the planks will be repaired if caused by defective workmanship.

7.5 RESILIENT FLOORING

•DEFICIENCY: Nail pops appear on the surface of flooring.

CONSTRUCTION STANDARD: Readily apparent nail pops are a deficiency.

BUILDER CORRECTION: The Builder shall correct nail pops which have broken the surface and repair or replace the floor covering in the affected area only (not the entire floor). Builder is not responsible for discontinued patterns or color variations in tile floor covering.

•DEFICIENCY: Depressions or ridges appear in the flooring due to subfloor irregularities.

CONSTRUCTION STANDARD: Readily apparent depressions or ridges exceeding 1/8 inch should be repaired. The ridge or depression measurement is taken at the gap created at one end of a 6 inch straight edge placed over the depression or ridge with three inches on one side of the depression or ridge held tightly to the floor.

BUILDER CORRECTION: The Builder shall take corrective action as necessary to bring the defect within acceptable tolerances so that it is not readily visible. Builder is not responsible for discontinued patterns or color variations in floor covering.

•DEFICIENCY: Seams or shrinkage gaps show.

CONSTRUCTION STANDARD: Gaps shall not exceed 1/8 inch in width. Where dissimilar materials abut, the gap shall not exceed 3/16 inch.

BUILDER CORRECTION: Builder to correct. If replacement is necessary, the Builder is not responsible for discontinued patterns or color variations in the floor covering.

7.6 CARPETING

•DEFICIENCY: Carpet seams separate, carpet becomes loose or excessive stretching occurs.

CONSTRUCTION STANDARD: Seams that separate due to improper installation are a deficiency. Carpet should not come loose. Carpet should not have excessive stretching. The carpeting material itself is not covered, but is covered solely by the manufacturer's warranty.

BUILDER CORRECTION: Builder to repair seams. Builder to resecure or restretch carpeting as needed one time only during the first year of the warranty.

7.7 PAINTING

•DEFICIENCY: Mildew or fungus on painted surfaces.

CONSTRUCTION STANDARD: Mildew or fungus is a maintenance item. It is not a deficiency.

BUILDER CORRECTION: None.

•DEFICIENCY: Exterior paint or stain peels or deteriorates.

CONSTRUCTION STANDARD: Exterior paints or stains should not fail during the first year of the warranty. Fading is normal and subject to sun and weather exposure. Fading is not a deficiency. Peeling or other deterioration of exterior paint which occurs after the end of the first year of the warranty is not covered, even though some peeling or deterioration of some part of the exterior paint may have occurred during such first year.

BUILDER CORRECTION: Builder shall properly prepare and refinish affected areas only, matching the existing color as closely as possible. Color matching of paint is not guaranteed.

•DEFICIENCY: Painting required as corollary repair because of other work.

CONSTRUCTION STANDARD: Necessary repair of a painted surface under warranty will be refinished to match surrounding areas as closely as possible.

BUILDER CORRECTION: Refinish repaired areas as indicated. Color matching of paint is not guaranteed.

•DEFICIENCY: Deterioration of varnish or lacquer finishes.

CONSTRUCTION STANDARD: Natural finishes on interior woodwork that deteriorate during the first year of the warranty are a deficiency. Exterior varnish-type finishes deteriorate rapidly and are not covered.

BUILDER CORRECTION: Refinish the affected area only, matching the color as closely as possible.
•DEFICIENCY: Interior paint application and coverage.

CONSTRUCTION STANDARD: Interior paint shall sufficiently cover wall, ceiling and trim surfaces.

BUILDER CORRECTION: Builder shall repaint affected surfaces only where inadequate paint has been applied. The color shall be matched as closely as possible.

•DEFICIENCY: Paint splatters and smears on finish surfaces.

CONSTRUCTION STANDARD: Excessive splatters and smears that detract from the finish, and which can not be removed by normal cleaning methods, are a deficiency. Minor paint splatters that are not readily noticeable are not a deficiency.

BUILDER CORRECTION: Builder to clean/remove paint and restore the surface finish, matching colors as closely as possible.

7.8 WALL COVERING

•DEFICIENCY: Peeling of wallpaper.

CONSTRUCTION STANDARD: Peeling of wallpaper, not due to abuse or negligence, is a deficiency. Wallcovering installed by anyone other than Builder is not covered.

BUILDER CORRECTION: Builder to repair or replace defective wallpaper. Builder is not responsible for discontinued patterns or variations in color.

•DEFICIENCY: Mismatching in wallcovering pattern originally installed by Builder.

CONSTRUCTION STANDARD: Mismatching pattern due to workmanship over a large area that severely detracts from the appearance is a deficiency. Wallcovering installed by anyone other than Builder is not covered.

BUILDER CORRECTION: Builder to replace mismatched wallcovering. Builder is not responsible for discontinued patterns or variations in color.

VIII. FIREPLACES

8.1 FIREPLACE OPERATION

•DEFICIENCY: Fireplace or chimney does not draw properly causing smoke to enter the Home.

CONSTRUCTION STANDARD: The fireplace and chimney should function as intended. High winds can cause temporary negative draft situations. Similar negative draft situations can also be caused by obstructions such as large branches of trees too close to the chimney. In some cases, it may be necessary to open a window slightly to create an effective draft. Builder is not responsible for malfunctions due to natural causes and/or causes beyond Builder's control.

BUILDER CORRECTION: Builder to correct malfunctions caused by improper construction.

8.2 CHIMNEY

•DEFICIENCY: Chimney separating from structure to which it is attached.

CONSTRUCTION STANDARD: Newly built fireplaces will often incur slight amounts of separation from the main structure. Separation greater than 1/2 inch from the main structure in any 10 foot vertical measurement is a deficiency.

BUILDER CORRECTION: Builder to correct as required. Grouting or caulking is acceptable for separations up to 1/2 inch.

IX. CABINETS

9.1 KITCHEN AND VANITY CABINETS

•DEFICIENCY: Cabinet doors and drawers malfunction.

CONSTRUCTION STANDARD: Cabinet doors, drawers and other operating parts should function as designed.

BUILDER CORRECTION: Builder to repair or replace.

•DEFICIENCY: Warping of cabinet doors and drawer fronts.

CONSTRUCTION STANDARD: Warpage that exceeds 1/4 inch (exclusive of any gap created by spacers), measured from the face of the cabinet frame with the door or drawer in the closed position, is a deficiency.

BUILDER CORRECTION: Builder to correct or replace as required.

•DEFICIENCY: Gaps between cabinets and the ceiling or walls.

CONSTRUCTION STANDARD: Gaps should not exceed 1/4 inch.

BUILDER CORRECTION: Adjust cabinets and countertops, or close with suitable moulding to match the finish as closely as possible. Caulking is acceptable.

9.2 COUNTERTOPS

•DEFICIENCY: Surface cracks, delaminations and chips in high pressure laminated vanity and kitchen countertops.

CONSTRUCTION STANDARD: Countertops fabricated with high pressure laminate coverings should not delaminate or have chips or surface cracks. Gaps between joints should not exceed 1/16 inch. Moisture and water build-up in seams will occur if such areas are not properly maintained by Homebuyer(s) so, unless caused by Builder, moisture and water build-up in seams is not a deficiency.

BUILDER CORRECTION: Builder to repair or replace to meet the standard.

X. PLUMBING SYSTEMS

10.1 SEPTIC TANK SYSTEM

•DEFICIENCY: Septic system fails to operate properly.

CONSTRUCTION STANDARD: Septic system should properly handle normal flow of household effluent. It is possible that an overflow can occur due to freezing, soil saturation, changes in the ground water table or excessive use of plumbing or appliances. Periodic pumping of the septic tank is considered a Homebuyer(s) maintenance responsibility and a normal need for pumping is not a deficiency.

BUILDER CORRECTION: During the first two years of the warranty, Builder to repair system to correct malfunction due to improper design or installation. Builder shall not be responsible for malfunctions which occur through negligence or abuse or natural causes (such as freezing or changes in ground water table) and/or conditions that are beyond the Builder's control. The following are considered negligence or abuse:

- A. Excessive use of water, such as overuse of the washing machine and the dishwasher, including their simultaneous use.
- B. Connection of sump pump, roof drains or backwash from water conditioner to the system.
- C. Placing of non-biodegradable items in the system.
- D. Addition of any harsh chemicals, greases or cleaning agents, and excessive amounts of bleaches or drain cleaners.
- E. Use of a food waste disposer not supplied by Builder.
- F. Placement of impervious surfaces over the disposal area.
- G. Allowing vehicles to drive or park over the disposal area.

H. Failure to periodically pump out the septic tank when required.

10.2 PLUMBING

•DEFICIENCY: Water service line breaks or leaks or fails to deliver water.

CONSTRUCTION STANDARD: Service connections are the Builder's responsibility. The water service line should function as intended. Damage or failure resulting from neglect or abuse or landscaping activities, or from conditions beyond the Builder's control (such as, for example, without limitation, disruption or elimination of sources of water supply), is not covered.

BUILDER CORRECTION: During the first five years of the warranty, Builder to repair verified leaks in the line or restore service, if leak or failure is due to defective workmanship or materials, and restore the landscaping in the affected area. The Builder's responsibility for water service lines extends only from the Home to the water meter connection on the property on which the Home is situated.

NOTE: Should a water service line break or leak occur, Homebuyer(s) should immediately shut off the water service at the meter and call the appropriate public utility service.

•DEFICIENCY: Leakage in pipes or fittings. Leakage from pipes freezing and bursting.

CONSTRUCTION STANDARD: No leaks should exist in any plumbing pipes or fittings. Condensation on piping does not constitute leakage. Exterior hose bibs and other hose connections are not covered. Leaks occurring because of neglect or failure to maintain suitable temperatures in the Home to prevent pipes from freezing and bursting are not covered.

BUILDER CORRECTION: During the first five years of the warranty, Builder shall repair any leakage from pipes or fittings installed by Builder, except for leakage caused by freezing. During the first two years of the warranty, Builder shall repair any leakage from pipes or fittings installed by Builder caused by freezing.

NOTE: Should a water pipe leak occur, Homebuyer(s) should immediately shut off the water service and call the appropriate public utility service.

•DEFICIENCY: Stopped up sewers, fixtures and drains.

CONSTRUCTION STANDARD: Sewer fixtures and drains should operate properly. Damage, insufficient operation or clogging due to neglect, abuse, improper operation or landscaping activities, or from conditions beyond Builder's control, is not covered.

BUILDER CORRECTION: During the first five years of the warranty, where defective construction is shown to be the cause of the deficiency, the Builder will make the necessary repairs. The Builder's responsibility for sewer lines extends only to the boundary line of the property on which the Home is situated.

•DEFICIENCY: Leakage in a faucet, valve, tub, sink or toilet.

CONSTRUCTION STANDARD: No faucet, valve, tub, sink or toilet should leak due to defects in material or workmanship. Replacement and maintenance of washers and seals are the responsibility of the Homebuyer(s). Leakage due to worn washers or seals is not covered.

BUILDER CORRECTION: During the first five years of the warranty, Builder shall repair or replace the leaking faucet, valve, tub, sink or toilet.

•DEFICIENCY: Defective plumbing fixtures or trim fittings.

CONSTRUCTION STANDARD: Fixtures or fittings should operate or perform their intended function properly. Tarnishing and pitting of faucets are not covered, but are covered solely by the manufacturer's warranty. High iron content in the water will cause staining of fixtures. It is the Homebuyer(s) responsibility to treat the water, if necessary. No Builder correction is required.

BUILDER CORRECTION: During the first five years of the warranty, the Builder shall repair or replace any fixture or fitting which is outside of acceptable standards of operation or performance.

10.3 GAS LINE

•DEFICIENCY: Leakage in the interior gas line piping.

CONSTRUCTION STANDARD: No leaks should exist in any gas pipes or fittings. Damage resulting from neglect or abuse, or from conditions beyond the Builder's control (such as, for example, without limitation, disruption or elimination of sources of gas supply), is not covered.

BUILDER CORRECTION: During the first five years of the warranty, Builder to repair verified leaks in piping as necessary, if leak is due to defective workmanship or materials.

NOTE: Should a gas pipe leak occur outside the Home, Homebuyer(s) should call the appropriate public utility service immediately. If the leak occurs inside the Home, Homebuyer(s) should shut off the gas service immediately, ventilate the Home, and call the appropriate public utility service immediately.

XI. HEATING AND AIR CONDITIONING SYSTEM

11.1 HEATING

•DEFICIENCY: Inadequate heating.

CONSTRUCTION STANDARD: The heating system shall be capable of producing an inside temperature of 68 degrees Fahrenheit as measured in the center of each room at a height of 3 feet above the floor under local outdoor winter design conditions as specified in the ASHRAE handbook. There may be times when the outdoor temperature falls below the design temperature. When this occurs, the temperature in the Home may be lower than 68 degrees. Rooms located over garages and sunporches will experience a temperature differential due to their exposure, and this is not a deficiency.

BUILDER CORRECTION: Correct the heating system to meet the standard. Builder to balance dampers, registers and make other minor adjustments one time only during the first year of the warranty.

11.2 AIR CONDITIONING

•DEFICIENCY: Inadequate cooling.

CONSTRUCTION STANDARD: If air conditioning is provided, the cooling system shall be capable of maintaining an inside temperature of 78 degrees Fahrenheit as measured in the center of each room at a height of 5 feet above the floor under local outdoor summer design conditions as specified in the ASHRAE handbook. There may be times when the outdoor temperature rises above the design temperature. When this occurs, the temperature in the Home may be higher than 78 degrees. When the outdoor temperature exceeds 95 degrees, a differential of 17 degrees will be accepted as meeting the standard. Rooms located over garages and sunporches will experience a temperature differential due to their exposure, and this is not a deficiency.

BUILDER CORRECTION: Correct the cooling system to meet the standard. Builder to balance dampers, registers and make other minor adjustments one time only during the first year of the warranty. Changing and/or adding refrigerant, which should be done on at least an annual basis, is the responsibility of the Homebuyer(s).

•DEFICIENCY: Refrigerant line leak or clog.

CONSTRUCTION STANDARD: Refrigerant lines should not develop leaks during normal operation. However, condensation lines will clog under normal use. This is the maintenance responsibility of the Homebuyer(s) and requires no correction by the Builder.

BUILDER CORRECTION: During the first two years of the warranty, repair leaking refrigerant lines and recharge the unit.

•DEFICIENCY: Ductwork separates or becomes unattached.

CONSTRUCTION STANDARD: Ductwork should remain intact and securely fastened.

BUILDER CORRECTION: During the first two years of the warranty, reattach and resecure as necessary.

XII. ELECTRICAL SYSTEM

12.1 ELECTRICAL CONDUCTORS

•DEFICIENCY: Failure of wiring to carry its designated circuit load to the electrical box.
CONSTRUCTION STANDARD: Wiring shall carry the designed load for normal residential use.
BUILDER CORRECTION: During the first five years of the warranty, correct the wiring as necessary to meet the standard.

12.2 SWITCHES AND RECEPTACLES

•DEFICIENCY: Fuses blow or circuit breakers kick out.
CONSTRUCTION STANDARD: Fuses and circuit breakers should not activate under normal usage.
BUILDER CORRECTION: During the first two years of the warranty, correct the fuse wiring or breakers as necessary.
•DEFICIENCY: Malfunction of electrical outlets and switches.
CONSTRUCTION STANDARD: All outlets and switches should operate as intended.
BUILDER CORRECTION: During the first five years of the warranty, repair or replace defective switches and outlets. Light fixtures are covered solely by the manufacturer's warranty.

12.3 SERVICE AND DISTRIBUTION

•DEFICIENCY: Ground fault interrupter trips frequently.
CONSTRUCTION STANDARD: Ground fault interrupters are sensitive safety devices that protect against electrical shock and can be tripped very easily. A ground fault interrupter that does not operate as intended is a deficiency.
BUILDER CORRECTION: Builder to replace defective ground fault interrupter.

John Wieland
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AND NEIGHBORHOODS

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