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HOME PURCHASE AGREEMENT BC40-0085

Date: 3/15/05 3:36 PM

GENERAL TERMS AND CONDITIONS

S.C. SUPREME COURT

D. R. Horton, Inc.
Purchase Agreement

THIS CONTRACT IS SUBJECT TO MANDATORY BINDING ARBITRATION
PURSUANT TO THE SOUTH CAROLINA UNIFORM ARBITRATION ACT

Date: 03/11/2005

1. PARTIES. D.R. Horton, Inc., ("Seller") agrees to sell to Greg Smith, Stephanie Marcella ("Purchaser") and Purchaser agrees to buy all that tract or parcel of land, with such improvements as are located thereon, described as follows:

All that tract of land being known as (Address) 4830 Harvest Moon Court, being more particularly described as Lot 0085, Phase ___ of Parkwood subdivision, as depicted in the plat recorded in Plat Book ___, Page ___, in the Register of Deeds Office for Charleston/Dorchester/Berkeley County, South Carolina, together with all lighting fixtures attached thereto, all electrical, mechanical, plumbing, air-conditioning, and any other systems or fixtures as are attached thereto and now a part thereof, together with all the improvements thereon and all appurtenances thereto (the "Property"). The full legal description of the Property is as stated on the Plat referenced above. The conveyance shall be subject to all easements and restrictions of record on the Closing Date.

2. PURCHASE PRICE AND METHOD OF PAYMENT. The Purchase Price of the Property shall be \$237,700 to be paid as set forth in subparagraph 2(a) below: \$233,390 CR 3-28-05 3143 8PM

(a) All Cash at Closing (No financing contingency). Purchaser to pay all usual and customary closing costs. Purchaser agrees to provide Seller written documentation from a financial institution verifying Purchaser's funds to close. If an appraisal is desired, Purchaser is responsible for requesting from a licensed appraiser. If this subparagraph is checked, subparagraph 2(b) shall not apply.

(b) Where New Loan Is to Be Obtained:

i. Purchaser shall obtain a loan in the principal amount of 100% of the Purchase Price (reduced to the next lowest hundred dollars) to be secured by a first priority mortgage on the Property; said loan to be paid in consecutive monthly installments of principal and interest of a term of not less than 30 years. This loan shall be a:

- (1) Conventional Loan, with a market interest rate, as of the Closing Date.
(2) Adjustable Rate Mortgage ("ARM") Loan, with an initial interest rate of not more than market interest rate as of the Closing Date. The interest rate payable to lender by Purchaser may increase or decrease according to the terms of said loan, and as a result the monthly installments of principal and interest payable by Purchaser may increase or decrease.
(3) FHA or VA Loan: It is expressly agreed upon that notwithstanding any other provisions of this contract the purchaser shall not be obligated to complete the purchase of the property described herein, incur any penalty by forfeiture of earnest money deposits, or otherwise unless the purchaser has been given, in accordance with HUD / FHA or VA requirements, a written statement issued by the Federal Housing Commissioner, Veterans Administration, or a Direct Endorsement lender setting forth the Appraised value of the property (excluding closing costs) of not less than the sales price. The purchaser shall have the privilege and option of proceeding with consummation of the contract without regard to the amount of the appraised evaluation. The appraised valuation is arrived to determine the maximum mortgage the Department of Housing and Urban Development will insure. HUD does not warrant the value or the condition of the property. The purchaser should satisfy himself/herself that the price and condition of the property are acceptable.

FHA REAL ESTATE CERTIFICATION: We, the Seller, Borrower and Real Estate Broker, or Agent involved in this loan transaction, do hereby certify that the terms of the sales contract are true to the best of our knowledge and belief. All agreements entered into by any of the following parties are fully disclosed and attached to the sales contract.

(4) Seller is participating in the Dreammaker Program.

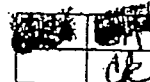
(5) Other:

ii. Provided that Purchaser obtains a first mortgage loan and closes through Seller's approved lender and Seller's preferred closing agent, Seller shall contribute up to \$4,000 towards Purchaser's closing costs, including statutory recording fees, surveys, lender's attorney's fees, and any other costs required by Seller's approved lender and closing agent, including discount points, interim interest and prepaid items excluding HOA fees, approved by the lender. Purchaser is responsible for any remaining closing costs including but not limited to prepaids, discount points, buy downs, subsidies, lock-in fees and any other fees used to control the interest rate. The total amount of closing costs paid by the seller for the buyer, which would also include any fees which buyer is prohibited from paying by the Veterans Administration, Department of Housing or Regulatory Agencies. The Purchaser acknowledges that The Seller has agreed to provide The Purchaser with the above only if The Purchaser uses DHI Mortgage Company as the Purchaser's lender and the Seller's preferred closing agent. This incentive will not be Credited to The Purchaser at closing if The Purchaser uses any other lender or Attorney for The Purchaser's mortgage requirements. Private Mortgage Insurance Premiums, if required by the lender, shall be paid by Purchaser, in cash at Closing or through monthly payments, as may be required by the lender.

iii. Purchaser shall apply for this loan within seven (7) business days from date of acceptance of this Agreement and pursue the application diligently and in good faith. Purchaser shall be presumed to have satisfied this condition and obtain loan approval unless Purchaser notifies Seller within thirty (30) days of the date of acceptance in writing that Purchaser has not been able to obtain the loan referred to in this Section. In the event Purchaser timely notifies Seller of its failure to obtain loan approval, Seller shall have the right to contact Purchaser's lender to determine the status of Purchaser's loan application and loan approval.

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Purchaser: Greg Smith, Stephanie Marcella Community: Parkwood Phase ___ Lot: 0085



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If Seller determines, in its sole discretion, that Purchaser failed to diligently and in good faith pursue its loan application, Seller shall terminate this Agreement following seven (7) days written notice to Purchaser, retain Purchaser's Earnest Money as full liquidated damages, and thereafter neither party shall have any further obligation to the other. Within thirty (30) days, Purchaser agrees to provide Seller with a letter from Purchaser's lender confirming that Purchaser has been approved for the loan referred to in this Section. Purchaser understands and acknowledges that loan/credit approvals are valid for up to 120 days. Furthermore, Buyer agrees to update loan/credit approval documentation as needed in order to maintain current loan approval up until the date of closing. If Seller determines, in its sole discretion, that Purchaser failed to diligently pursue or maintain its loan/credit approval, Seller shall terminate this Agreement following seven (7) days written notice to Purchaser, retain Purchaser's Earnest Money as full liquidated damages, and thereafter neither party shall have any further obligation to the other. Purchaser agrees to execute all papers and perform all other actions necessary to obtain this loan and to accept such a loan if approved by lender. Purchaser shall, in addition to the payment of principal and interest upon said loan, pay at Closing such amounts as may be required by the lender to establish or maintain an escrow for insurance, property taxes or private mortgage insurance. Unless specifically disclosed in writing in this Agreement, Purchaser warrants that this Agreement is not contingent upon the sale or closing of other property owned by Purchaser and that, at the time of Closing, Purchaser will have sufficient cash available (together with the loan referred to above) to complete the purchase and shall immediately disclose to Listing Broker the name(s) of the lender(s) with which the Purchaser has applied.

Purchaser Initial(s): _____

- iv. Purchaser acknowledges that there are many different loan programs available from many different lenders. If Purchaser is unable to obtain a mortgage loan commitment on the type of loan chosen on page 1 of this Agreement, Purchaser agrees to apply and secure an approval on a different loan program for which Buyer can obtain an approval. If the loan obtained by Purchaser contains any contingencies, Seller may require the satisfaction of those contingencies within the thirty (30) day time period specified in this Agreement for obtaining the loan approval and terminate this Agreement if those contingencies are not waived or satisfied. If Seller determines, in its sole discretion, that Purchaser failed to diligently and in good faith remove any loan contingencies, Seller shall terminate this Agreement following seven (7) days written notice to Purchaser, retain Purchaser's Earnest Money as full liquidated damages, and thereafter neither party shall have any further obligation to the other.
- v. Purchaser may apply for a loan with different terms and conditions and close the transaction provided: (a) all other terms and conditions of this Agreement are fulfilled; and (b) the new loan does not increase the closing costs charged to Seller or delay the Closing. Purchaser shall be obligated to close this transaction if Purchaser qualifies for a loan with terms described in the above Section or in this Section.
- vi. The proceeds of the loan, together with the balance of the Purchase Price, shall be paid to Seller, in cash or its equivalent, by Purchaser at Closing.
- vii. The Purchaser acknowledges and agrees that our financial situation may affect our ability to obtain a loan and/or purchase this property. We further acknowledge and agree that it is important for the Seller to know our financial situation and our ability to obtain financing. In consideration for the Seller entering into this agreement, we do hereby grant permission for the Seller to contact any mortgage company or financial institution to which we may apply for a loan and discuss our financial situation and the likelihood of obtaining a loan. We further authorize DHI Mortgage Company, or any other mortgage company or financial institution from which we may seek a loan, to discuss our financial status with the Seller and to provide the Seller with any documentation supporting our financial status.
- viii. The Purchaser acknowledges and agrees that the Seller is not responsible for interest rate locks and will not guarantee interest rate locks due to Seller's failure to meet the scheduled closing date.

Purchaser Initial(s): _____

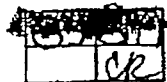
3. **EARNEST MONEY Deposit.** Purchaser has paid to Seller \$ 3000 ("Earnest Money") by check or money order made payable to D.R. Horton receipt of which is acknowledged by Seller. If the Earnest money deposit is for a home under construction that may close within 60 days, the Purchaser agrees to furnish the Seller with a certified check **WITHIN 24 HOURS UPON PURCHASER SIGNING THE PURCHASE AGREEMENT.** The parties agree that the Earnest Money is to be deposited in Seller's trust account upon acceptance of this Agreement by Seller. The parties agree that the Earnest Money shall be applied as a credit at Closing, unless otherwise provided by this Agreement.

- a. **Disbursement.** The Earnest Money shall be retained by Seller except: (1) upon failure of loan approval during the thirty (30) days following acceptance of this Agreement, the Earnest Money shall be disbursed to Purchaser, unless Seller determines that Purchaser did not diligently and in good faith pursue its loan application as set forth in Section 2; and (2) as otherwise specifically set out in this Agreement. If any dispute arises between Purchaser and Seller as to the final disposition of all or part of the Earnest Money, Seller may, but is not required to, interplead all or any disputed part of the Earnest Money into court. Purchaser and Seller agree that if Seller interpleads the Earnest Money into court, Seller shall be entitled to recover the costs of such interpleader, including reasonable attorney's fees and expenses incurred in connection with the interpleader, from the Earnest Money. If Seller decides not to interplead, Seller may make a disbursement of the Earnest Money upon a reasonable interpretation of this Agreement. It may take up to thirty (30) business days for Earnest Money to be refunded.

Purchaser Initial(s): _____

- b. **Liquidated Damages.** The parties agree that if this transaction fails to close for any reason, the amount of damages suffered by Seller would be difficult to determine and Seller shall be entitled to retain the Earnest Money as a reasonable estimate of Seller's damages.

4. **WARRANTY OF TITLE.** Seller agrees to convey good and marketable fee simple title to the Property to Purchaser at Closing.



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by general limited warranty deed, subject only to: (a) zoning ordinances affecting said Property; (b) general utility, drainage and other easements of record upon which the dwelling does not encroach; (c) subdivision easements and restrictions of record; (d) subdivision covenants, conditions and restrictions; (e) matters shown on the final plat for the subdivision where the Property is located, as of the Closing Date; and (f) any other matters specified in this Agreement. "Marketable Title" shall mean title which a title insurance company licensed to do business in South Carolina will insure at its regular rates, subject only to standard exceptions.

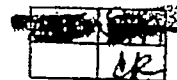
5. **TITLE EXAMINATION.** Purchaser shall have a reasonable time after acceptance of this Agreement to examine title and to furnish Seller with a written statement of objections affecting the marketability of said title. If Seller cannot satisfy Purchaser's valid objections within a reasonable time, Purchaser shall have the right to terminate this Agreement and receive a refund of the Earnest Money. If Seller is contributing to Purchaser's closing costs pursuant to subparagraph 2(b) above, Seller will cause a title report to be prepared and delivered to the lender making the mortgage loan to Purchaser. At Closing, Seller shall cause its closing agent to issue the lender a title insurance commitment and subsequent lender's title insurance policy.
6. **DESTRUCTION.** If the home built on the Property is either totally destroyed or substantially damaged before Closing, either party may terminate this Agreement by written notice to the other within ten (10) days of the date of such casualty.
7. **CONDITION OF THE PROPERTY.** The Property shall be completed in accordance with all applicable governmental regulations, ordinances and codes. A certificate of occupancy shall be proof of compliance with this requirement and the property shall be deemed complete upon certificate of occupancy issuance by the proper authority.
8. **INSPECTION.** At the appropriate stage of construction, Seller shall cause the appropriate utility services to be operational so that Purchaser may complete Purchaser's inspections under this Agreement. Purchaser or Purchaser's agents or representatives, at Purchaser's expense and at reasonable times during normal business hours, shall have the right to enter upon the Property for the purpose of inspecting, examining, testing, and surveying the Property. Such inspections shall only be with prior notice to Seller at such times, as Seller shall reasonably permit.
Purchaser shall have the privilege of inspecting the Property with Seller or Seller's representative immediately prior to Closing. Seller's obligation to complete any "punch list" items, which it has agreed to complete, shall survive Closing. Seller shall not be obligated to complete any items from a private inspection other than through the procedures in this Section; Seller is obligated to complete only those items it has agreed to correct in writing. Should the Seller, in its sole opinion of the President thereof, determine that it could not satisfy the requirements of the Purchaser for the completion of the improvements or should Purchaser attempt to delay the closing for completion of punchlist items, then the Seller, at its option, may void this Contract and refund to the Buyer their Earnest Money. If voided, the Seller shall have absolutely no further obligation to the Purchaser.
Should Purchaser choose to conduct an independent professional inspection of the Property prior to Closing, Purchaser will contact Seller at least seven (7) business days prior to that inspection for an appointment with Seller's agent who must accompany Purchaser or Purchaser's inspector. Purchaser shall cause Purchaser's inspector to furnish Seller with proof that Purchaser's inspector has a \$300,000 General Liability Insurance Policy which names Seller as additional insured prior to site inspection, a copy of the inspector's business license, and if applicable, a copy of inspector's State license certificate. Seller is only required to complete items on the inspector's list that is a violation of the building code, RWC guidelines, outline specifications, or performance specifications as outlined in, "Foundations" warranty guide.
Such inspections survive closing and cannot delay a closing on behalf of the Purchaser.
Purchaser assumes all responsibility for the acts of Purchaser, Purchaser's agents or representatives in exercising Purchaser's rights under this Section, and Purchaser hereby indemnifies Seller from any loss or expense it may suffer for any claim, which arises directly or indirectly from a breach of this Section.

D.R. HORTON HOME INSPECTION POLICY

- a. **Home Inspection:** D.R. Horton recognizes that buyers may desire that a home inspector review their home prior to closing. D.R. Horton agrees to allow such inspections with the following provisions:
 1. D.R. Horton reserves the right to have an appointed representative accompany the Home Inspector at its discretion. Private inspections may delay completion of homes, and as a result, closing dates may need to be extended at the seller's discretion.
 2. All inspections must be scheduled through the Community Sales Manager. These inspections must be scheduled one week in advance and are to take place during normal working hours (Mon. - Fri. 8:00AM to 4:00PM) and must be in accordance with the Community Field Manager's production schedule.
 3. Only Inspector recommendations pertaining to building codes per the governing municipality will be addressed.
 4. Inspection firm must be licensed to do business in the local jurisdiction and by the State of South Carolina.
 5. Inspection firm must be bonded/insured against damage or liability while on D.R. Horton property.
 6. Buyer shall pay for all inspections initiated by buyer.
 7. D.R. Horton reserves the right to refuse access to the property to anyone at any time.

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Purchaser: Greg Smith, Stephanie Marcella Community: Parkwood Phase _____ Lot: 0085



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8. Inspector must provide D. R. Horton with proof of required Liability Insurance and Workman's Compensation Insurance prior to entering property.

We understand that if an inspector does not have an appointment ONE week prior to the private inspection, the inspector will not be allowed to perform the inspections and will be instructed to reschedule.

D. R. Horton will not pause construction waiting for the rescheduled appointment.

Purchaser Initial (s): [Redacted] SM

9. RESPONSIBILITY TO COOPERATE. Seller and Purchaser agree to sign at Closing such papers as may be necessary to carry out the terms of this Agreement.

10. REAL ESTATE BROKER AND COMMISSION. Purchaser represents there are no co-brokers or Purchaser's agents ("Co-Broker") except Lina Costanza Lina Costanza-Prudential, who represents Purchaser. (Note: Commission to Broker and Co-Broker to be handled by separate document to be presented simultaneously with this Agreement).

Purchaser Initial (s): [Redacted] SM

11. DISCLAIMER. Seller and Purchaser acknowledge that they have not relied upon the advice or representations, if any, of Seller, Broker, or their associated salespersons relative to the legal and tax consequences of this Agreement, the terms and conditions of financing, and other such matters. Purchaser acknowledges that if such matters have been of concern to Purchaser, they have sought and obtained independent advice relative thereto.

12. WOOD INFESTATION REPORT. At the time of Closing, Seller shall provide Purchaser with a soil treatment report from a pest control company licensed in the South Carolina stating that the Property has been treated for subterranean termite infestation within one (1) year of the Closing. If required by Purchaser's lender, Purchaser may obtain at its expense a South Carolina Wood Infestation Report performed by a South Carolina, licensed pest-inspection company. In the event such Wood Infestation Report identifies any wood infestation, or recommends that repairs be made to the Property, Seller shall either: (1) eliminate such infestation and complete such repairs prior to Closing, or (2) escrow funds sufficient to eliminate such infestation and complete such repairs following Closing.

13. TESTING. Purchaser acknowledges that Seller has made no tests or surveys of the Property or to the improvements and makes no representation or warranty with respect to toxic waste, radon, hazardous materials or undesirable substances and specifically excludes these matters from any warranties given under this Agreement.

14. WARRANTIES AND DISPUTE RESOLUTION.

a. Structural Warranty. At Closing, Seller shall execute and deliver to Purchaser at no additional cost a warranty from Residential Warranty Corporation ("RWC") or such other national warranty provider as Seller may reasonably elect (the "RWC Warranty"). This RWC Warranty will provide, at a minimum, a ten (10) year structural warranty. The RWC Warranty referred to in this paragraph is the only warranty being made by Seller, except for such warranties which may not be disclaimed by State or Federal law. In addition, Seller hereby assigns to Purchaser all warranties, express or implied, which arise or are given by the manufacturer of any product installed in the home built on the Property.

b. RWC Warranty. Purchaser has been, or will be prior to Closing, provided with a copy of the RWC Warranty book on the Ten Year Limited Warranty, which is administered by Residential Warranty Corporation. Validation of the RWC Warranty is conditioned upon Seller's compliance with all RWC's enrollment procedures and upon Seller remaining in good standing in the RWC Program.

c. The RWC Warranty is provided by Seller to Purchaser in lieu of all other warranties, verbal agreements, or representations and Seller makes no warranty, express or implied, as to quality, fitness for a particular purpose, merchantability, habitability or otherwise, except as is expressly set forth in the Program or as otherwise required by Federal or State law. Particularly, Purchaser understands and agrees that any and all complaints of any nature in regard to the property that arise more than 365 days after closing must be submitted to RWC. Purchaser understands and agrees that the warranties of all appliances and other consumer products installed in the home are those of the manufacturer or supplier and same are assigned to Purchaser, effective on the date of Closing. In any event, Seller shall not be liable for any personal injury or other consequential or secondary damages and/or losses, which may arise from or out of any and all defects. Except for purchasers of FHA or VA financed homes, Purchaser acknowledges and understands that the RWC Warranty includes a provision requiring all disputes that arise under the RWC Warranty to be submitted to binding arbitration. Purchaser has been, or will be given prior to Closing, provided with a copy of the D. R. Horton Warranty manual, "Foundations". Purchaser understands and agrees to all warranties to their extent as outlined in said manual. Purchaser shall execute an acknowledgment that Seller makes no warranties express or implied, as to fitness for a particular purpose, merchantability, and habitability as set forth above at Closing, which statement shall be affixed to Purchaser's deed.

Purchaser Initial (s): [Redacted] SM

[Redacted Signature]

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d. Exclusions. The following are excluded from all warranties provided by Seller: (i) those matters excluded in the RWC Warranty documents; (ii) those matters excluded in sub-paragraph (f) below, and (iii) the following matters:

Landscaping, including trees, shrubs, grass and flowers are not covered by any warranty. All grading, fill, landscaping, disposition of trees and control of water flow shall be constructed and maintained at the sole discretion of Seller prior to Closing. Grading and drainage are not covered by any warranty nor will they be maintained or modified by Seller after closing in any way whatsoever UNLESS the grading or drainage is found to be in violation of the applicable provision of the South Carolina Residential Construction Standards. Many areas will be left in their natural state and will not be landscaped in any way. As of the date and time of the Closing, Seller shall have no further responsibility for soil erosion, the growth of grass, death of trees, grass or shrubbery, or soil conditions. Seller is not liable for trees or shrubs, or damage or destruction to same. Seller makes no warranty whatsoever as to the type, location or amount of trees, which will exist, on the Property after construction. Seller will plant grass seeds or install sod, as the case may be, as part of its construction. Because the growth of grass seeds and the health of sod is dependent on Purchaser's care and maintenance, no warranty is provided and all grass is installed "as-is". Because prevention of erosion is dependent on Purchaser's proper maintenance of the grass and sod, Seller provides no warranty for erosion. Purchaser's closing of the sale constitutes an acceptance of Seller's drainage and erosion controls for the Property, except for matters noted on Purchaser's "Punch list". Seller shall not be responsible for the correction of any leakage or seepage caused by (i) damaged water pipes or mains, (ii) alteration of the landscaping by a party other than Seller (specifically including, without limitation, any changes which cause water to flow toward the dwelling), or (iii) prolonged direction of water against the outside foundation wall from a spigot, sprinkler, hose or improperly maintained gutters or down spouts. Seller will not warrant any cosmetic defect post-closing unless this condition is listed on the "punch list" prior to Closing. Examples of "cosmetic defects" include sheetrock dings, dimples and nail pops, paint discoloration, chips or irregularities in marble, Formica, or tile. Unless a defect is noted on the "punch list", Seller does not warrant the installation or the quality of any carpet or flooring product (however, note that Seller assigns the manufacturer warranties to Purchaser at Closing).

Purchaser Initial (s) [Signature]

e. Existing Trees: D.R. Horton will make every effort to save as many existing trees as possible during the construction process. Those trees that must be removed will be removed at the sole discretion of the Area Manager and their Field Manager. D.R. Horton reserves the right to remove any trees, which in their judgment may have the roots damaged by construction to the extent that the tree would not be expected to live. Those trees that are in or within close vicinity of the home's footprint or a concrete flatwork area will be removed. Additionally, trees that impede the drainage of the site, or overall community drainage plan will be removed. D.R. Horton does not guarantee the health, survival or growth of any tree after closing. Repairs to living trees and removal or replacement of dead trees at any time after closing is the responsibility of the buyer unless requested before closing, agreed upon, and noted in writing at the "Pre-settlement Orientation Inspection."

Purchaser Initial (s) [Signature]

f. Landscaping: D.R. Horton does not guarantee the continued health, growth or life of any landscape components after closing. Survival of landscaping components (trees, bushes, plants, sod, seed etc.) after closing is the buyer's responsibility. No landscaping items will be replaced or repaired after closing unless noted in writing and agreed upon at the "Pre-settlement Orientation Inspection". Landscaping requires a continuous maintenance program, which includes proper watering, fertilization, mowing and weed control. Deficiencies, other than those noted prior to closing, will not be warranted by D.R. Horton. Upon closing all maintenance is the responsibility of the buyer. The buyer is responsible for any damage due to neglect or inadequate maintenance. Wetland, wetland buffers and wooded natural areas throughout the Community will be left "as is". Buyer understands that "standing water" beyond 48"-0" of the home may occur in wetland, wetland buffers and wooded natural areas. Maintenance and repair of the aforementioned areas are the sole responsibility of the Buyer after closing. Clearing and disturbance of natural areas in order to provide underground utility services to the home may be necessary. These areas will be left un-landscaped and allowed to return to their natural state. The remaining undisturbed area will be left in its natural state.

Purchaser's Initial(s) [Signature]

g. MANDATORY BINDING ARBITRATION. Purchaser and Seller each agree that, to the maximum extent allowed by law, they desire to arbitrate all disputes between themselves. The list of disputes which shall be arbitrated in accordance with this paragraph include, but are not limited to: (1) any claim arising out of Seller's construction of the home; (2) Seller's performance under any Punch List or Inspection Agreement; (3) Seller's performance under any warranty contained in this Agreement or otherwise; and (4) any other matters as to which Purchaser and Seller agree to arbitrate.

i. If the arbitration arises out of a claim arising under the RWC Warranty, the rules, terms and conditions in the RWC Warranty certificate and related materials delivered to Purchaser shall control.

ii. If the arbitration arises out of any claim other than a claim under the RWC Warranty, then the arbitration shall be conducted in Charleston/Dorchester/Berkeley County, South Carolina. The arbitration shall be conducted by an arbitrator or panel of arbitrators agreed upon by the parties, and to the extent possible, the proceeding shall be conducted under rules, which provide for an expedited hearing. The filing fee for such arbitration shall be paid by the party filing the arbitration demand, but the arbitrator shall have the right to assess or allocate the filing fees and any other costs of the

[Handwritten initials/signature]

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arbitration as a part of the arbitrator's final order. The arbitration referred to in this paragraph shall be binding and any party shall have the right to seek judicial enforcement of the arbitration award.

Purchaser Initial(s):

- k. In addition to the rights and obligations of each party specified in subparagraphs (a) - (d) above, in the event that a bona fide dispute, as determined by the Seller, should arise between Purchaser and Seller prior to the Closing Date, and such dispute cannot in good faith be resolved completely and to the mutual satisfaction of all parties within ten (10) days after the beginning of the dispute, then Seller shall have the right, upon written notice to Purchaser, to terminate this Agreement and return the Earnest Money to Purchaser, and no cause of action shall accrue on behalf of Purchaser because of such termination.
l. Limitation of Liability. EXCEPT FOR THE RWC WARRANTY, AND EXCEPT FOR THE TITLE WARRANTIES SPECIFIED IN PARAGRAPH 4 ABOVE, AND EXCEPT FOR ANY WARRANTIES IMPOSED BY LAW, WHICH CANNOT BE DISCLAIMED, SELLER MAKES NO OTHER WARRANTY OF ANY KIND, ALL SUCH OTHER WARRANTIES ARE HEREBY DISCLAIMED BY SELLER. SELLER MAKES NO WARRANTY AS TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, EITHER EXPRESSED OR IMPLIED. THE EXCLUSIVE REMEDY FOR ANY DEFECT OF ANY ITEM OR CLAIMED DEFECT IN THE HOME IS BY WRITTEN NOTIFICATION PRIOR TO THE EXPIRATION OF THE WARRANTY PERIOD. SELLER'S OBLIGATION SHALL BE THE CORRECTION OF SUCH DEFECT BY REPAIR OR REPLACEMENT, IN ITS DISCRETION. NO SUCH ACTIONS TAKEN BY SELLER TO REPAIR OR REPLACE A DEFECT SHALL EXTEND THE WARRANTY PERIOD. SELLER SHALL NOT BE LIABLE FOR MONETARY DAMAGES OF ANY KIND, INCLUDING SECONDARY, CONSEQUENTIAL, PUNITIVE, GENERAL, SPECIAL OR INDIRECT DAMAGES.
j. Requests for warranty service within the first 365 days after closing, must be in writing and faxed, mailed, or delivered to Seller at Seller's address as indicated below Seller's signature on this Agreement. Verbal requests to Seller's staff are not acceptable. Such requests must comply with all applicable law and must state the nature of the problem with particularity. Seller has 30 days to determine whether such request will be fulfilled.

15. SURVIVAL OF AGREEMENT. Any condition or stipulation not fulfilled at time of Closing shall survive the Closing, execution and delivery of the Warranty Deed until such conditions or stipulations are fulfilled. (Closing Attorney is directed to transfer this paragraph to the closing statement.)

16. CLOSING. Seller shall set closing date and notify Purchaser a minimum of (7) seven days prior to that closing date. If Seller chooses to do so, Seller may ask or request that Purchaser set a closing date. Such a request must be complied within (15) fifteen days. If it is not, Seller may, at its option cancel the contract by written notice and return earnest money to Purchaser. In the event that the closing date should change, Seller will notify purchaser within 48 hours of previously scheduled closing. Seller does not guarantee loan locks or extensions, doing so is at the sole discretion of the purchaser. Seller shall deliver to Purchaser at Closing, a Certificate Of Occupancy, or the appropriate equivalent or substitute. If Purchaser does not close on the Closing date set forth by the Seller, Seller may in its discretion collect liquidated damages in the amount of \$500.00 per day from Purchaser at Closing. Purchaser acknowledges that such amount represents Seller's liquidated damages and is not a penalty or fine. In addition, Seller may in its discretion require additional earnest money be paid by Purchaser, the amount to be determined at the discretion of the Seller. Purchaser acknowledges and agrees that Seller is not responsible for interest rate locks and will not guarantee interest rate locks based upon Seller's failure to meet the scheduled closing date.

Purchaser Initial (s):

Seller shall grant possession of the Property to Purchaser at time of Closing. Purchaser agrees to transfer utilities into Purchaser's name within three (3) business days after Closing. Punch List items shall not delay the Closing. Purchaser shall not move its goods or property onto the Property prior to Closing. Real estate taxes on the Property for the calendar year in which the sale is closed shall be prorated as of the date of Closing. Seller shall pay South Carolina statutory filing fee, formerly known as the documentary stamp tax. Purchaser shall be responsible for any municipal or county transfer fees. To the maximum extent allowed by state law, Seller shall have the right to approve the place of Closing.

Final inspection and approval of the subject land and improvements thereon by the lender's agent, the FHA or the VA, whichever is applicable, or final inspection or approval for occupancy by the appropriate governmental inspector, shall constitute complete performance by Seller of its obligations under this paragraph. Buyer understands and agrees that all agreements or representations, whether oral or written, or relating to the date of completion of construction shall not be relied upon by Buyer or shall not be binding upon Seller. Seller does not guarantee completion by any given date.

Purchaser Initial(s):

If this Agreement is for the construction of a new home (i.e., a pre-sale or a home which is to be built), in addition to the above provisions, Seller shall not be obligated to start home construction (the "Construction Start Date") until the following conditions are met: (1) mortgage approval has been obtained to Seller's satisfaction; (2) Purchaser has paid all amounts due; (3) Purchaser selections have been completed; and (4) all contingencies have been removed by Purchaser to Seller's satisfaction. The transaction contemplated in this Agreement shall be consummated (Closing) at the office of the Seller's preferred attorney, at a time designated by Seller, no later than five (5) business days after receipt of Certificate Of Occupancy on that home (the "Closing Date").

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Because of these factors, the "Closing Date" listed above is only an estimate of the actual Closing Date, please refer to Item 16. CLOSING, on the Home Purchase Agreement.

Purchaser Initial(s):

17. HOUSE PLAN. The Purchase Price is for the Garnet 1994A, to be built on a () slab, or () basement, or () crawl space. Purchaser acknowledges that each home is handmade and unique, and although this home is based on the plans indicated above, variations in layout will occur. Closing the sale of this home waives any objection to conformance with the plans. Seller shall not be responsible for any variation from the plans unless that variation causes a failure of the structural integrity in the home as constructed. Seller agrees to complete the construction of this home in accordance with the quality standards, materials and finish as are otherwise being used by Seller in construction of new homes in this subdivision. If this Agreement is for a home for which construction has not started, this Agreement: (a) is subject to Seller's ability to place that home on the designated lot; (b) is subject to Seller's ability to build that home on the designated lot without obtaining variances for setback rules; (c) is subject to Seller's ability to build that home on the designated lot without incurring special costs for foundation, slab or structural support walls; and (d) is subject to Seller's discretion as to the orientation and placement of that home on the designated lot; (e) is subject to Seller's ability to close on said lot with the developer. In the event Seller determines that it cannot build the home within those conditions, Seller shall have the right to terminate this Agreement by written notice to Purchaser and in that event Seller shall return Purchaser's Earnest Money. If this Agreement is for a home for which construction has already begun, Purchaser agrees to accept all color selections, appliances, driveway placement, all options, framing dimensions and included features installed in the Home "as is" or ordered by Seller for installation in the home as of the Agreement date.

Purchaser Initial(s):

18. OPTIONS. Seller will include options ("Options") at the prices indicated. Purchaser acknowledges that certain Options may require a non-refundable payment for those Options (the "Option Money") simultaneously with this Agreement and/or at the Color Selection Meeting. All non-standard / custom option price requests will require a non-refundable \$250.00 administrative fee to be paid at the time of contract or at the time of color selections. In the event Seller omits the installation of any optional item, Seller's responsibility shall be limited to a refund of the listed price or allowance. Any such omission shall not invalidate this Agreement, constitute a breach of its terms, nor give rise to any claim for damages against Seller. Purchaser agrees that the Option Money shall be delivered to Seller simultaneously with the addition of options at the Color Selection Meeting. The Option Money shall not be held in escrow, shall be non-refundable and, in the event of Purchaser's default under the Agreement, Seller may retain the Option Money, together with the Earnest Money (as specified in the Agreement) as Seller's liquidated damages. The parties acknowledge that it is impossible to estimate more precisely the damages Seller might incur in the event of Purchaser's default, and the Option Money, together with the Earnest Money, was a reasonable estimate of the damages Seller may incur. The Option Money paid to Seller shall be credited against the Purchase Price at Closing. See Exhibit A for Options.

Purchaser Initial (s)

19. MISCELLANEOUS.

a. Inquiries. Purchaser agrees to direct all inquiries and questions to the closing coordinator, who will provide Purchaser with a timely response; however, the closing coordinator does not have the authority to change the terms of this Agreement. Changes may only be made by a written amendment, at or prior to selection meeting which must be executed by an authorized representative of the Seller. Purchaser acknowledges that Seller's sales associates, superintendents, closing staff, warranty staff and other employees do not have authority to modify this Agreement. Only a corporate officer of Seller has authority to modify this Agreement.

Purchaser Initial (s)

b. Color Selection Meeting. The color selection meeting is for the purpose of ensuring that a mutual understanding exists between Seller and Purchaser of all relevant details as regards the finishes and completion of the construction of the home. This meeting must be scheduled and held within 14 days of acceptance of this Agreement or the Agreement may be terminated at the option of Seller. Color Selection Meetings are held Monday through Friday at 9:00am, 11:00am, and 2:00pm, and are scheduled on a first come first serve basis. Once the selection meeting is complete, all selections will be final. No additional deletions / changes will be allowed after the selection meeting. If Seller determines, in its sole discretion, that Purchaser failed to diligently and in good faith schedule and attend a selection meeting, Seller may terminate this Agreement following seven (7) days written notice to Purchaser, retain Purchaser's Earnest Money as full liquidated damages, and thereafter neither party shall have any further obligation to the other.

c. Substitutions. Seller reserves the right to make substitutions of construction materials used in the construction of the home with materials, which are of equal or comparable value. Determination of equal or comparable value will be in Seller's sole opinion. Purchaser acknowledges that any delay as a result of back order or out-of-stock selections must be promptly remedied; Seller may make substitutions as may be necessary; Purchaser acknowledges that, in some instances, installations shall occur subsequent to Closing. Purchaser understands that all furniture, decorator items, special landscaping, and other items displayed in or about Seller's model home (s) are for marketing purposes and do not constitute representations, assurances or warranties as to the Home you are purchasing and are not a part of this Agreement.

d. Promotions. Purchaser agrees that Seller may photograph the interior and exterior of the home and the Property, and may use those photographs for advertising and marketing purposes without restriction for up to two (2) years from the

Handwritten initials and a signature box containing the initials 'CS' and 'SM'.

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- Closing Date. Seller shall have the right, from time to time, to place marketing and directional signs along a five (5') foot strip of land adjacent to the street on the Property for a period of two (2) years from the Closing Date.
- e. Contractors. All work and materials shall be provided or performed by Seller's personnel and vendors. Purchaser shall not have the right to have any work performed on the Property or supplies delivered to the Property prior to Closing.
- f. Manufacturers. Purchaser reserves the right to install or complete any aspect of the property as they see fit. Failure to comply with manufacturers specifications will not give rise to any liability on the part of the Seller. Seller only warrants that property that meets state, county, town and city or other applicable laws or codes. Manufacturer specifications are not guaranteed.
20. COVENANTS AND HOMEOWNER'S ASSOCIATION. Purchaser acknowledges that a copy of the Farm Declaration of Covenants, Conditions and Restrictions (the "Covenants") has been made available to Purchaser, and Purchaser agrees that the Covenants may be amended or updated by the Declarant or Seller from time to time. Purchaser acknowledges that the restrictive covenants governing this subdivision require the payment of an initiation fee in the amount of \$ 250 at Closing, as well as annual dues (presently, \$ 400), payable annually, prorated at Closing for the year of the Closing.
21. SURVEY & PROPERTY BOUNDARIES. Purchaser shall be responsible for reviewing the survey and determining the boundaries of the Property. Neither Seller, nor Broker, nor their agents and employees are authorized to make any representation to Purchaser about such matters.
22. COMPLETION. Seller shall complete the construction of the home located on the Property by the Closing Date (as that date may be extended pursuant to the terms of this Agreement). Seller shall deliver to Purchaser, at Closing, a Certificate Of Occupancy, or the appropriate equivalent or substitute.
23. HEATING AND AIR-CONDITIONING. The Property shall be adequately and efficiently heated and air-conditioned with equipment having at least the minimum specifications for the Property as established by Load Calculations, Manual J, of the Air-Conditioning Contractors of America, current edition. The clothes dryer vent shall be installed to the outside.
24. LOT PREMIUM. Purchaser acknowledges that certain of Seller's lots in the subdivision are believed by Seller to have more value than others, or may have higher construction or development costs than others and accordingly a "Lot Premium" or price adjustment has been incorporated into the Purchase Price on these lots. Purchaser acknowledges that Seller's inclusion of a lot premium in the Purchase Price does not make any warranty or promise to Purchaser about any particular feature of the lot.
25. DELAYS. Seller shall have no liability for any delays in construction caused by strikes or acts of God, delays in the delivery of materials, delays caused by Seller's inability to obtain a building permit or architectural approval, delays which are the result of matters which are beyond Seller's control, or delays caused by Purchaser's change orders or selection of materials. In the event of such delays, Seller may extend the dates in this Agreement by the number of days resulting from such delays upon notice to Purchaser.
26. INSULATION. Insulation has been installed (or will be installed prior to Closing) in at least the following minimum standards: (a) exterior walls, excluding exterior garage walls with BATT insulation to a thickness of 1 5/8 inches which will, according to the manufacturer, yield an R-value of 13; (b) ceilings below attic areas are insulated with BLOWN insulation to a thickness of 13 inches which will, according to the manufacturer, yield an R-value of 39; (c) vaulted ceilings are insulated with BATT insulation to a thickness of 6 1/4 inches which will, according to the manufacturer, yield an R-value of 19; and (d) floor overhangs are insulated with BATT insulation to a thickness of 1 5/8 inches which will, according to the manufacturer, yield an R-value of 13.
27. TIME IS OF THE ESSENCE. Time is of the essence as to this Agreement.
28. SUCCESSORS AND ASSIGNS. This Agreement shall inure to the benefit of, and be binding upon, the parties hereto, their heirs, successors, administrators, executors and assigns. Purchaser shall not have the right to assign Purchaser's interest in this Agreement without written consent of Seller.
29. ENTIRE AGREEMENT. This document contains the sole and entire agreement between the parties hereto and no modification of this Agreement shall be binding unless attached hereto and signed by all parties to this Agreement. Any prior agreements, written or oral, are superseded by this Agreement. Purchaser acknowledges that they are not relying upon any promises, agreements or representation made by the Seller, Seller's Salespersons, Seller's agents, Seller's subcontractors, Seller's partners, or Seller's employees (Seller's Representatives) concerning the Home or any land adjacent to or near the Home or the Community, except as expressly set forth in this Agreement. All prior discussions have been merged into this Agreement. No representation, promise, or inducement not included in this Agreement shall be binding upon any party hereto. This agreement may be changed only by a written document signed by both Purchaser and a corporate officer of the Seller.
- Purchaser Initial (s): GS
30. AGENCY DISCLOSURE. Purchaser acknowledges receiving, reading and understanding the South Carolina Real Estate Commission Agency Disclosure Form and understands that they will be considered a "Customer" in this transaction.

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© 1999 D. R. Heriot, Inc. - Torrey, Revised March 16, 2005 Torrey File 112800.02

Purchaser: Greg Smith, Stephens Marcella Community; Parkwood Phase _____ Lot: 0085

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OR

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Purchaser understands that as a "Customer" D. R. Horton or its Representatives and/or Licensees will not act as your agent. Purchaser understands that they have a right to Buyer's Representation. In addition, you cannot ask D. R. Horton or its Representatives to promote your best interest or to keep bargaining information confidential.

Purchaser Initial (s): [Redacted] [Signature]

31. **ADDENDUMS.** The following Addendums, Special Stipulations or Exhibits are attached to this Agreement and are made a part of this Agreement.

32. **SPECIAL STIPULATIONS:** _____

WHEN SIGNED BY YOU AND OUR AUTHORIZED AGENT, THIS AGREEMENT WILL BECOME A LEGALLY BINDING AGREEMENT. PLEASE MAKE SURE THAT ALL PROVISIONS ARE READ AND UNDERSTOOD BEFORE SIGNING. IF YOU DO NOT UNDERSTAND ANY PROVISION, YOU SHOULD SEEK LEGAL ADVICE.

Purchaser Initial (s): [Redacted] [Signature]

[Redacted]
[Signature]

HOME PURCHASE AGREEMENT BC40-0085

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GENERAL TERMS AND CONDITIONS

Please print parties name and sign below.

Purchaser:

~~Greg Smith~~
Purchaser's Name:

~~Greg Smith~~
Purchaser's Signature:

3/16/05 3:36 PM
Date: Time:

~~Stephanie Marsella~~
Purchaser's Name:

~~Stephanie Marsella~~
Purchaser's Signature:

3/16/05 3:00 pm
Date: Time:

Seller:

D.R. Horton, Inc.

By: Cindy Rogers

Date: 3-28-05

Time: 3:43 pm

Seller's Address: 593 Wando Park Blvd, Suite 200

Mt. Pleasant, SC 29464

Seller's Phone: (843) 284-5000

Seller's Fax: (843) 284-5010

Seller's FMLS/MLS Code: 1429

Co-Broker:

By: Lina Costanzo
Co-Broker or Co-Broker's Associated Salesperson

Co-Broker's Phone: 843.814.1291

Co-Broker's Fax: 843.202.8490

Co-Broker's FMLS/MLS Code: 1579/5223

Purchaser's Current Mailing Address:

90 Perkins Street
Springfield, MA 01118

Purchaser's Email: rick101004@aol.com

Purchaser's Phone: 413.739.1998

Purchaser's Work Phone: _____

Purchaser's Cell Phone: _____

Purchaser's Fax: 413.967.9542

RECEIVED

FEB 17 2015

S.C. SUPREME COURT

OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.

Attorneys at Law

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www.ogletreedeakins.com

Matthew K. Johnson
matthew.johnson@ogletreedeakins.com

February 16, 2015

Via Federal Express

The Hon. Daniel E. Shearouse
Clerk of Court
Supreme Court Building
1231 Gervais Street
Columbia, SC 29201

RE: *Gregory W. Smith and Stephanie Smith v. D.R. Horton, Inc., et al.*
Appellate Case No. 2013-001345

Dear Mr. Shearouse:

Pursuant to your correspondence dated February 11, 2015, requesting a more legible copy of the home purchase agreement appearing at pp. 151–160 of the Appendix, we have gone back and recreated the best available copy with the correspondence page numbers with the attached. Your correspondence did not identify the number required, so we have provided an unstapled original and fourteen (14) stapled copies. Unfortunately, due to the date of the purchase agreement and the age of this case, there is no completely “clean” copy available.

Very truly yours,



Matthew K. Johnson

MKJ/
Enclosures

cc: Michael A. Timbes, Esq. (w/enclosures)
Phillip W. Segui, Jr., Esq. (w/enclosures)
John T. Chakeris, Esq. (w/enclosures)

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