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SC Court of Appeals

LOT PURCHASE AGREEMENT

THIS LOT PURCHASE AGREEMENT (this "Agreement") is made as of the Effective Date, as defined in Section 22, by and between **RED CLAY DEVELOPMENT, SC, LLC**, a South Carolina limited liability company ("Seller"), and **DAN RYAN BUILDERS SOUTH CAROLINA, LLC**, a South Carolina limited liability company, or its assigns ("Buyer").

EXPLANATORY STATEMENT

A. Pursuant to a separate agreement, Seller has the right to purchase those certain parcels of land situate and lying in Greenville County, South Carolina in what will become the subdivision commonly known to the parties as **Shinnecock Hills at Roberts Farm** (the "Subdivision"), containing approximately 41.95 acres, more or less, which will be developed to include at least **one hundred forty-seven (147)** market-rate single-family and townhome residential building lots, consisting of eighty-three (83) single family lots (the "SF Lots") and sixty-four (64) townhouse lots (the "TH Lots"), all as shown on the preliminary site plan attached hereto as **Exhibit A**, and more fully described in the legal description of the Property attached hereto as **Exhibit A-1**. The SF Lots and TH Lots may each be referred to as a "Lot" and collectively as the "Lots".

B. Seller desires to sell to Buyer and Buyer desires to purchase from Seller, the Property (defined below), upon the terms and conditions herein contained.

NOW, THEREFORE, that in consideration of the Explanatory Statement, which is incorporated by reference herein, the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each party hereto, the parties agree as follows:

1. **Sale and Purchase.** Seller does hereby agree sell and convey unto Buyer, and Buyer does hereby agree to purchase from Seller, pursuant to the terms and conditions of this Agreement, the Lots and the improvements thereon, including and together with (i) all easements, rights, privileges, appurtenances, entitlements, and approvals belonging to the Lots, (ii) all agreements that are in force and effect and benefit the Lots that Buyer elects to assume, and (iii) all surveys, plans, specifications, reports and other engineering to which Seller has access regarding the Lots (collectively, the "Property").

2. **Purchase Price, Deposit and Payment.**

(a) **Purchase Price.** The purchase price ("**Purchase Price**") for each of the individual Lots shall be as follows:

(i) **TH Lots.** The Purchase Price for each of the TH Lots shall be **Fifty-One Thousand Five Hundred Dollars (\$51,500.00)** per Lot.

(ii) **SF Lots.** The Purchase Price for each of the SF Lots shall be **Sixty-Seven Thousand Dollars (\$67,000.00)** per Lot.

(iii) **Purchase Price Escalator.** Beginning on the date that is one (1) year

after the date of the First Closing (as hereinafter defined), the Purchase Price shall increase on an annual basis at the simple rate of **two percent (2%) per annum** (the “Escalator”). For the avoidance of doubt, references in this Agreement to the Purchase Price shall mean the Purchase Price, as the same has been increased by the Escalator, at the time of Closing. Notwithstanding the foregoing, in no event shall the Purchase Price increase by the Escalator during periods when Seller is in default or a Closing is delayed due to the non-satisfaction of the conditions precedent set forth in Section 4(b) below.

The Purchase Price shall be payable as follows:

(b) Deposit.

(i) Initial Deposit. Within ten (10) days after the Study Period Expiration Date (as hereinafter defined), Buyer shall deliver to Nelson Galbreath, LLC (the “Escrow Agent”), in escrow, the sum of **Two Hundred Thousand Dollars (\$200,000.00)** (the “**Initial Deposit**”), in accordance with the escrow agreement attached hereto as Exhibit B. Provided the conditions precedent to the release of the Deposit set forth in Section 2(c) below have been fully satisfied, the Escrow Agent shall release the Initial Deposit to Seller immediately prior to Seller’s purchase of the Property from its current owner.

(ii) First Additional Deposit. Within ten (10) days after Buyer confirms that Seller has completed site clearing of the Property, Buyer shall deliver to the Escrow Agent an addition sum of **Three Hundred Thousand Dollars (\$300,000.00)** (the “**First Additional Deposit**”). Upon receipt of the First Additional Deposit and provided the conditions precedent to the release of the Deposit set forth in Section 2(c) below are still satisfied, the Escrow Agent shall immediately release the First Additional Deposit to Seller.

(iii) Second Additional Deposit. Within ten (10) days after Buyer confirms that Seller has commenced (on-site) installation of sanitary sewer to serve the Property, Buyer shall deliver to the Escrow Agent an addition sum of **Three Hundred Thousand Dollars (\$300,000.00)** (the “**Second Additional Deposit**”). Upon receipt of the Second Additional Deposit and provided the conditions precedent to the release of the Deposit set forth in Section 2(c) below are still satisfied, the Escrow Agent shall immediately release the Second Additional Deposit to Seller.

(iv) The Initial Deposit, First Additional Deposit and Second Additional Deposit may collectively be referred to as the “**Deposit**”. In the event that the Deposit, or any portion thereof, is refundable to Buyer under the terms of this Agreement, Escrow Agent shall immediately refund the same to Buyer. Otherwise, the Deposit shall be credited from Seller to Buyer on a pro-rata basis toward the Purchase Price of the Lots purchased at each Closing (\$5,442.18 per Lot).

(c) Deposit Release. Provided this Agreement has not been terminated and no Seller default exists, the Escrow Agent shall release the portion of the Deposit in Escrow Agent’s possession to Seller immediately following its receipt thereof from Buyer, and upon satisfaction, at Seller’s cost and expense, of the following conditions precedent: (i) delivery to Buyer of a promissory note payable to the order of Buyer in the amount of the full Deposit, in a form prepared

by Buyer or Buyer's counsel and reasonably acceptable to and executed by Seller (the "Note"), (ii) recordation of a first position mortgage lien against the Property (or a second position mortgage lien against the Property subordinate only to a lien of a commercial bank or other financial institution for a loan to finance only the purchase and/or development of the Property in a total amount not greater than sixty-five percent (65%) of the current market value of the Property at the time of the release (the "Permitted Financing") in a form prepared by Buyer and reasonably acceptable to and executed by Seller (the "Deposit Mortgage")), which secures the repayment and proper application of the released Deposit in accordance with the terms of this Agreement, (iii) delivery to Buyer of a mortgagee's title policy insuring the first position (or second position, as described above) of the Deposit Mortgage, issued by the Buyer's title company in the full amount of the released Deposit, and otherwise in form and content reasonably satisfactory to Buyer (the "Mortgagee Policy"), and, to the extent the Deposit Mortgage is a second position mortgage as set forth above, (iv) an intercreditor agreement reasonably acceptable to and executed by Buyer and the Current Lender and/or New Lender (each defined in Section 7 below), which (x) prevents the Current Lender and/or New Lender from breaching the terms of its acquisition and/or development loan, (y) includes non-disturbance language that, despite any default by Seller under its acquisition and/or development loan, the Current Lender and/or New Lender will recognize and not disturb Buyer's rights to acquire Lots pursuant to the terms and conditions of this Agreement, and (z) requires Seller to immediately notify the Current Lender and/or New Lender of any Seller default hereunder (and does not require Buyer to notify the Current Lender and/or New Lender of any such default), and (v) documentation reasonably satisfactory to Buyer that shows the first position mortgage lien against the Property, if any, has not breached the Permitted Financing. The terms of repayment or forgiveness of the Note and Deposit Mortgage shall be as follows: (A) the Note and Deposit Mortgage shall become null and void in the event Buyer defaults hereunder and fails to cure the default within such applicable notice and cure period, (B) the Note shall immediately due and payable upon any default by Seller hereunder that is not cured within such notice and cure period, or if Buyer elects to terminate this Agreement as permitted hereunder (provided that Buyer is not otherwise in default); and (C) the principal balance of the Note shall not bear interest until the Note becomes due under clause (B) above, after which time the outstanding principal balance shall bear interest at the rate of ten percent (10%) per annum. Any recording fees required to be paid in connection with the Deposit Mortgage shall be paid by Seller. Any interest accrued on the Note shall be credited toward the Purchase Price of the Lots purchased by Buyer at the next Closing. Seller shall execute and deliver to the Title Company such documents and affidavits as reasonably requested by the title company for the issuance of the Mortgagee Policy. Upon written confirmation from the title company to Buyer and Seller, in form and content satisfactory to Buyer, that the Deposit Mortgage is a recorded first lien against the Property, and receipt by Buyer of the Note and Mortgagee Policy, the Escrow Agent shall deliver the Deposit to Seller. Notwithstanding anything in this Agreement to the contrary, in the event that Seller fails to satisfy the conditions precedent to any Closing as and when required under Sections 4(b)-(c) below, notwithstanding any other rights to which Buyer may be entitled thereto, Seller shall thereafter pay Buyer interest at the rate of twelve percent (12%) per annum on the full Deposit, less any amounts previously credited from Seller to Buyer, until such time that the conditions precedent to that Closing are satisfied. Any such interest will be applied toward the Purchase Price of the Lots purchased at the next Closing to occur.

(d) Purchase Price Remainder. The balance of the Purchase Price, subject to any adjustments contained in this Agreement, shall be payable by Buyer to Seller in cash, certified

check, title company check, or wire transfer at the time of Closing and conveyance of good and marketable title on each of such Lots.

3. **Closing Schedule.**

(a) The first closing (the “**First Closing**”), at which time the parties shall settle on at least twelve (12) SF Lots and eight (8) TH Lots (two townhome buildings—subject to change up or down based on final building configuration to the extent necessary—provided that Buyer shall only be required to purchase the number of Lots consisting of two townhome buildings), shall occur within fifteen (15) days after the satisfaction of the conditions precedent to Closing set forth herein for such Lots.

(b) The second closing (the “**Second Closing**”), at which time the parties shall settle on at least twelve (12) SF Lots and eight (8) TH Lots (two townhome buildings—subject to change up or down based on final building configuration to the extent necessary—provided that Buyer shall only be required to purchase the number of Lots consisting of two townhome buildings), shall occur within six (6) months after the date of the First Closing.

(c) The third closing (the “**Third Closing**”), at which time the parties shall settle on at least eight (8) SF Lots and four (4) TH Lots (one townhome building—subject to change up or down based on final building configuration to the extent necessary—provided that Buyer shall only be required to purchase the number of Lots consisting of one townhome building), shall occur within three (3) months after the last date on which the Second Closing could have occurred.

(d) Each subsequent Closing, the parties shall settle on at least eight (8) SF Lots and will alternate between either eight (8) TH Lots or four (4) TH Lots (with Buyer purchasing the number of Lots consisting of two townhome buildings at the fourth Closing and the number of Lots consisting of one townhome building at the fifth Closing—and alternating back and forth thereafter until all of the Lots have been purchased), shall occur within three (3) months after the last date on which the previous Closing could have occurred.

(e) The First Closing, Second Closing, Third Closing and any subsequent Closing may be individually referred to as a “**Closing**” and together they may be referred to as “**Closings**”.

(f) Notwithstanding anything to the contrary contained herein, Buyer shall have the right, at its sole discretion, to skip one (1) Closing by providing written notice to Seller on or before the date the skipped Closing was scheduled to occur. In such an event, Buyer shall not be required to purchase any Lots at said skipped Closing.

(g) Notwithstanding the foregoing, Buyer shall have the right to close on any Lots in advance of the Closing date scheduled therefor, upon ten (10) days prior notice to Seller (“**Additional Lots**”), and receive a credit for the Additional Lots purchased at the next Closing(s) to occur hereunder.

(h) Each Closing shall be contingent upon the satisfaction of the conditions precedent described in Section 4(b) herein. Each Closing shall occur on a date and, at a time and

at such place or places designated by Buyer in a written notice to Seller during said period; provided, however, that the parties shall have the right to conduct Closing via escrow for any Closing that is to occur under this Agreement if the parties agree in writing to such escrow Closing. In such a case, the parties shall review the settlement documents at least twenty-four (24) hours prior to the date of Closing to ensure the accuracy thereof and shall provide written notice to the settlement agent ("**Settlement Agent**") of any changes that may be required. On the date of any escrow Closing, Seller and Buyer shall each execute and distribute to the Settlement Agent each of the required settlement documents for such Closing no later than 1:00 P.M. Closing shall be deemed to have occurred upon notice from the Settlement Agent to Seller and Buyer that all documents were received, properly executed and if applicable recorded, and all funds due at Closing have been transferred to the appropriate party.

4. Seller's Deliveries at Closing and Conditions Precedent to Buyer's Obligations.

(a) In addition to other conditions precedent set forth elsewhere in this Agreement, Seller shall execute and deliver to Buyer at Closing, and upon request by Buyer, shall circulate to Buyer for its review prior to Closing, all of the following, the delivery of which shall be a condition to Buyer's obligation to consummate the purchase of the Lots:

(i) Warranty Deed. A special warranty deed in recordable form, signed by all parties necessary or required by the Title Commitment or Title Opinion (as hereinafter defined), free and clear from all liens and encumbrances except for the Permitted Exceptions (as hereinafter defined).

(ii) Consents. All consents that may be required from any third person or entity in connection with the sale of any Lot, as well as a certified copy of the resolution(s) of Seller authorizing and approving this Agreement and the transactions contemplated herein and the execution of the Agreement and the Closing documents, if applicable.

(iii) Releases. Lien releases, affidavits and other documents reasonably satisfactory for Buyer, indemnifying Buyer from all liability and expense, including attorneys' fees, that Buyer may incur in connection with unfiled mechanics' or materialman's liens in the event of any work being completed or performed, or material being furnished, at, on, or about any of the Lots prior to the date of Closing by anyone employed by, through or under Seller.

(iv) FIRPTA. A Foreign Investment in Real Property Tax Act of 1980 ("**FIRPTA**") certification in conformance with the requirements of FIRPTA, except that Seller shall only be required to provide a FIRPTA certification at the First Closing.

(v) Additional Documents. Such additional customary documents or instruments as may be reasonably requested by Buyer or Buyer's title company to consummate the transactions contemplated by this Agreement and to cause the title company to issue and deliver its title policy subject only the Permitted Exceptions and such other exceptions to which Buyer consents.

(b) Buyer's obligation hereunder to complete Closing shall be conditioned upon satisfaction of each of the following conditions:

(i) Each of Seller's representations and warranties as set forth in Section 7 being true as of the date of each Closing, and all applicable Seller covenants/obligations herein satisfied. Notwithstanding that certain of Seller's representations and warranties may be limited to the extent of Seller's knowledge of the facts stated therein, the condition precedent to Buyer's obligation to settle hereunder set forth in this Section 4(b) shall not be so limited, and the satisfaction of said conditions shall depend upon the actual correctness as of the time of settlement of the facts stated in all such representations and warranties.

(ii) Seller shall have obtained the final Approvals (as hereinafter defined), with all appeal periods having expired with no appeal thereof, for at least one hundred forty-seven (147) Lots suitable for single-family and/or townhome residential construction, without additional restrictions, substantially as shown on the preliminary site plan attached hereto as **Exhibit A**. Seller also shall have recorded the final plat for the Lots to be purchased at such Closing.

(iii) Seller shall have completed the Development Work in accordance with the terms hereof for all Lots to be settled. Notwithstanding anything contained herein, to the extent Buyer is delayed in or prevented from obtaining a building permit, proceeding with construction, obtaining a certificate of occupancy, or in otherwise fulfilling its obligations to Seller as a result of Seller's failure or inability to timely comply with the Development Work, then, in addition to any and all other rights and remedies available to Buyer, any and all deadlines, targets, and timetables for Buyer's performance hereunder, and any Purchase Price increases, if any, shall be automatically extended by a time period equal to such delay caused by Seller.

(iv) Seller shall have completed its obligations under Section 4 of **Exhibit D**.

(v) The Lots then being settled shall be vacant, free from survey defects and/or boundary disputes, free of leases and other occupancy rights and title shall be in the condition set forth in Sections 6 and 7 hereof.

(vi) Seller shall have delivered to Buyer a Phase I environmental site assessment ("**Phase I ESA**") from a certified and registered environmental engineer dated no more than one hundred eighty (180) days prior to the date of Closing, which indicates that no recognized environmental conditions are present at or near the Property, and a reliance letter from such engineer that allows Buyer to rely on said Phase I ESA as if it were prepared directly for Buyer. Notwithstanding anything to the contrary in this Agreement, Seller shall deliver the Phase I ESA and reliance letter described in this Section 4(b)(vi) to Buyer at least fifteen (15) days prior to the Study Period Expiration Date.

(c) Buyer alone shall have the benefit of the satisfaction of the conditions precedent set forth in the provisions of Section 4(b), and shall be entitled to waive Buyer's rights thereto. In the event the conditions precedent to the First Closing have not been satisfied on or before **one hundred eighty (180) days after the Study Period Expiration Date** or in the event

the conditions precedent to any subsequent Closing have not been satisfied on or before thirty (30) days before the date by which that Closing must occur, then Buyer shall have the right to (i) terminate this Agreement by written notice to Seller, in which event the parties shall be relieved of all obligations hereunder, except the Deposit shall be immediately returned to the Buyer, (ii) extend the time for the satisfaction of the condition by up to one (1) additional year by written notice to Seller, which notice shall set forth the length of the extension, (iii) waive the condition(s) and proceed to Closing, and/or (iv) if applicable, declare Seller in default and exercise Buyer's remedies for default under Section 11 hereof. In the event that Buyer elects to extend the time for the satisfaction of the condition, and the condition has not been satisfied by the conclusion of the extension, then at such time, Buyer may exercise options (i), (ii), (iii) or (iv) above.

The purchase of Lots does not relieve Seller of any obligations as described in this Agreement or shown on the exhibits.

5. Inspections, Study Period, Marketing, Approvals, and Development Work.

(a) Buyer, its employees, agents, architects, engineers, invitees and/or designees, at their risk and expense, shall have the full right from and after the Effective Date of this Agreement to enter upon the Property at any reasonable time, and from time to time, for purposes of conducting studies, inspections, environmental audits, investigations and the like with respect to the Property, including such boring, engineering, water, sanitary and storm sewer, traffic, utilities, topographic and/or other tests, market studies and/or other studies Buyer may determine to be made.

(b) Buyer shall have the right to terminate this Agreement, by written notice to Seller sent on or before (the "Study Period Expiration Date") 11:59 P.M. on the date that is **forty-five (45) days after the Effective Date (the "Study Period")**, in its sole and absolute discretion, (i) if Buyer is dissatisfied with the results of any inspections, studies or due diligence conducted with respect to the Property, (ii) if Buyer is dissatisfied with any materials furnished to it pursuant to the terms of this Agreement, or (iii) for any reason whatsoever. Unless, on or before the Study Period Expiration Date, Buyer has given written notice to Seller that Buyer has elected to maintain this Agreement in full force and effect, this Agreement shall automatically terminate as of the Study Period Expiration Date, and thereafter neither party hereto shall have any further obligation or liability to the other with respect to the transactions contemplated by this Agreement, except for those provisions which expressly survive termination of this Agreement. Buyer's right to terminate this Agreement pursuant to the terms of this Section 5(b) is in addition to such other rights set forth elsewhere herein and this Section 5(b) and any election hereunder shall not be deemed a waiver or election against any such other rights.

(c) Seller agrees that, from and after the Study Period Expiration Date, Buyer shall have the right to place signs and a sales trailer on the Property and to conduct marketing activities thereon, all in accordance with the requirements of any applicable governmental authority, and in areas approved by Seller, such approval not to be unreasonably withheld or delayed. Additionally, prior to Closing, Seller agrees to provide areas mutually acceptable to Buyer and Seller, from time to time, for the location of Buyer's construction trailer(s), storage of equipment and materials, a concrete wash out station, and/or for a paint wash out station, which Buyer or its contractors may from time to time reasonably require. Such space shall be made

available at no cost to Buyer. Buyer shall maintain the said area in a clean and orderly manner and in accordance with all federal, state and local laws and regulations.

(d) If Buyer enters the Property prior to Closing, Buyer shall: (i) keep the Property free and clear of any and all liens or claims resulting therefrom; and (ii) indemnify and hold Seller harmless from and against any losses, liabilities, damages, costs, or expenses (including reasonable attorneys' fees) caused by Buyer's investigative activities and/or other entry onto the Property pursuant to this Section 5 and including, without limitation, injury to any person, damage to any property (collectively, "**Damages**") provided (w) such Damages are not caused by any act or omission of Seller, its agents or consultants; (x) such Damages are not due to the discovery by Buyer, its agents, or consultants of latent defects on the Property; (y) such Damages are not due to any diminution in value of the Property arising from or relating to matters discovered by Buyer, its agents, or consultants during its investigation of the Property; or (z) such Damages are not due to the release or spread of any hazardous substances or Hazardous Materials (as hereinafter defined) which are discovered (but not deposited) on or under the Property by Buyer, its agents, or consultants. In the absence of the events described in sub-sections (w) – (z) above, upon any termination of this Agreement, Buyer shall return the Property to the extent damaged or disturbed by Buyer, its agents, or consultants, to substantially the same condition it was in prior to the performance of such investigative activities and/or other entry to the extent reasonably practicable; provided Buyer shall not be required to replace any vegetation that is damaged or removed in the performance of permitted activities. Buyer's obligations under this Section 5(d) shall survive the termination of this Agreement.

(e) Commencing on the date hereof, Seller shall apply for and diligently and continuously pursue all final and unappealable governmental approvals necessary for the recorded subdivision approval of the Property and final development approval of the Property in accordance with the preliminary site plan attached hereto as **Exhibit A** (collectively the "**Approvals**"). The Approvals shall be subject to only such conditions as are approved by Buyer. Prior to filing any application, petition, plat and/or plan in connection with the Approvals to a governmental authority, Seller shall first deliver a copy thereof to Buyer for review and approval, not to be unreasonably withheld, conditioned or delayed.

(f) Commencing on the date hereof, Seller shall diligently and continuously pursue the completion of the Development Work set forth in **Exhibit D** attached hereto ("**Development Work**").

6. **Title, Title Insurance and Further Encumbrances.** At each Closing contemplated by this Agreement, title for the Lots containing covenants of special warranty and further assurances shall be executed by Seller, which shall convey good and marketable title to the Lots to Buyer, in fee simple. Title to the Lots shall be of good record and fact, insurable at standard rates, subject only to such liens, encumbrances, encroachments, covenants, conditions, restrictions, easements or limitations set forth in the Title Commitment (as defined below), in the Title Opinion (as defined below), or on the Survey (as defined below), which are not objected to by Buyer (or objected to but thereafter waived by Buyer) pursuant to the terms of this Section 6 (collectively, the "**Permitted Exceptions**").

Buyer may, at Buyer's expense, promptly after executing this Agreement, seek a commitment or title abstract (the "**Title Commitment**") from a title insurance company of Buyer's choice that is licensed to do business in the State of South Carolina for an owner's title insurance policy on the most recent Standard ALTA Policy form and/or Buyer may, at Buyer's Expense, seek a title opinion (the "**Title Opinion**") from an attorney licensed to practice law in the State of South Carolina, and/or obtain a survey of the Property (a "**Survey**"). If the Title Commitment, Title Opinion or Survey shows exceptions or conditions that are unacceptable to Buyer in its sole discretion, then Buyer shall give Seller notice of its objections (collectively, the "**Objections**") on or before the Study Period Expiration Date ("**Title Objection Notice**"). Upon receipt of such Title Objection Notice, Seller shall have the right, within **five (5) days** after receiving the Title Objection Notice, to elect in writing (i) to cure the title Objection(s) at Seller's sole cost and expense; or (ii) not to cure such Objection(s). Seller's failure to notify Buyer within the stated time frame shall be deemed Seller's election to cure the Objection(s). If Seller elects to cure the Objection(s) then Seller shall diligently pursue said cure and complete the cure prior to the applicable Closing. If Seller elects not to cure, then Buyer shall be entitled to terminate this Agreement not later than the later of **ten (10) days** after Seller's election or deemed election not to cure or the expiration of the Study Period, and upon such termination, Buyer shall be entitled to the immediate return of the Deposit. If Buyer does not so terminate this Agreement, then the Objections shall be waived by Buyer and the Objections shall be Permitted Exceptions. If Seller elects to cure, but fails to cure prior to the First Closing notwithstanding its diligent efforts, then Buyer shall be entitled to terminate this Agreement prior to the First Closing and Buyer shall be entitled to the immediate return of the then posted Deposit and Seller shall reimburse Buyer for Buyer's out of pocket third party costs in connection with this transaction. Notwithstanding the foregoing, Buyer shall have the right, in its sole discretion, to update the Title Commitment, Title Opinion and/or Survey prior to each Closing to ensure that no new liens, encumbrances, encroachments, covenants, conditions, restrictions, easements, exceptions or limitations affect the Property. In such an event, Buyer shall deliver a Title Exception Notice to Seller, and thereafter Seller and Buyer shall follow the same steps as set forth above, unless said new items were placed on the Property in violation of this Agreement in which event Buyer shall also have the right to pursue its remedies set forth in Section 11 below.

Seller covenants in Section 7(d) below that it will not further encumber the Lots without the written consent of Buyer and that it will not voluntarily create or cause or permit a lien or encumbrance to attach to the Lots between the Effective Date of this Agreement and any Closing contemplated by this Agreement; any monetary lien or encumbrance so attaching, as well as any existing monetary lien or encumbrance, including any existing mortgage, deed of trust, judgment lien, tax lien or similar lien against the Lots which can be discharged by the payment of money shall not be a Permitted Exception, whether or not Buyer has objected thereto, and shall be discharged by the Seller at or prior to Closing, using Purchase Price proceeds if necessary to do so.

7. **Covenants, Representations and Warranties of Seller.** In order to induce Buyer to enter into this Agreement and to purchase the Lots, and in addition to the warranties and representations contained elsewhere in this Agreement, Seller (i) makes the following representations, warranties, each of which is material and is relied upon by the Buyer, and each of which are true as of the date hereof and as of the date of each Closing, and (ii) shall satisfy the following covenants:

(a) Marketable Title. Seller has the right to purchase the Property and at Closing shall own and convey to Buyer good, marketable and insurable title to the Property, free and clear of all occupancy rights, third-party interests, mortgages, liens, encumbrances, leases, tenancies, security interests, covenants, conditions, restrictions, rights-of-way, exceptions, easements, or reservations of any kind whatsoever, excepting only the Permitted Exceptions.

(b) Validity, Authority, and No Consents Necessary. Seller has the legal right, power and is duly authorized to enter into and perform its obligations under this Agreement. Seller has duly and validly executed this Contract, and has obtained all necessary consents. The person(s) executing this Contract on behalf of the Seller and any other document which Seller is required to execute pursuant to the terms hereof have been duly and properly authorized to do so.

(c) No Pending Proceedings. No actions, suits or other legal proceedings have been instituted or threatened against or affecting the Seller or the Property at law or in equity or before any federal, state, municipal or local governmental authority, department, commission, board, bureau, agency or instrumentality thereof, and Seller has no knowledge that any such notices, suits or other legal proceedings are forthcoming.

(d) No Further Encumbrances. Seller will not further encumber the Property without the written consent of Buyer and will not voluntarily create or cause or permit a lien or encumbrance to attach to the Property between the Effective Date of this Agreement and Closing except to the extent permitted hereunder.

(e) No Violations. Neither Seller nor the Property is in violation of, and Seller has not received notice of violation of, any building, zoning, health or other ordinances, resolutions, statutes or regulations of any government or governmental agencies, any of the easements or restrictions of record affecting the Property, or any intellectual property rights, with respect to the use, occupation, maintenance, condition or operation of the Property or any part thereof which has not been cured, and Seller has no knowledge that any such conditions or violations are forthcoming. Seller shall comply with all easements, covenants, conditions, restrictions, laws, statutes, rules, regulations and ordinances applicable to the Property.

(f) No Third Party Rights. No tenant or other third party has any agreement, option, or right of first refusal, to purchase or lease the Lots to be purchased by Buyer or any part thereof, nor does any other party have any occupancy rights, with respect to the Lots to be purchased by Buyer (nor shall Seller grant any of the foregoing rights).

(g) No Mechanics' Liens. All bills and claims for labor performed or services and materials furnished to or for the benefit of the Property or any part thereof have been paid in full or will be paid in full as of the date of each Closing, and there are no mechanic's or materialman's liens on or affecting the Property or any part thereof.

(h) No Assessments and Impact Fees. There are no public or private improvements required to be completed with respect to the Property that have not yet been completed and/or which have not heretofore been assessed/required, and there are no impact fees or special, general, or other assessments pending, or to Seller's knowledge, threatened, against or

affecting the Property, except for those assessments and fees that Seller is responsible for paying as otherwise set forth in this Agreement which Seller shall satisfy at or prior to Closing.

(i) Material Facts. None of the materials which have been provided to Buyer pursuant to the terms of Section 9 hereof are untrue or incomplete in any material adverse respect as of the date they were prepared, and none of the materials, documents and financial information which have been provided to Buyer prior to execution of this Agreement are untrue or incomplete in any material adverse respect as of the date they were prepared. Seller shall continue to provide Buyer with copies of all material documents of the nature described in Section 9 hereof, which Seller shall receive prior to Closing.

(j) No Other Agreements. Neither the execution of this Agreement nor the consummation of the transactions contemplated hereby will: (i) conflict with, or result in a breach of, the terms, conditions or provisions of, or constitute a default under, any agreement or instrument to which the Seller is a party; (ii) violate any law, rule, regulation or restriction relating to the Property or to which Seller is subject; or (iii) conflict with or violate Seller's organizational documents.

(k) No Hazardous Materials. Seller, its agents, tenants or licensees have not placed on the Property, shall not place on the Property, and to the best of the Seller's knowledge, the Property (including the land, sub-surface water, ground water, and any improvements) is free of, any material amounts of waste or debris, and Seller, its agents, employees, members and managers have not placed on the Property, shall not place on the Property, and to the best knowledge of the Seller, the Property is free of, any contamination, including the following (collectively, "**Hazardous Materials**"): (i) any "**Hazardous Waste**" as defined by the Resource Conservation and Recovery Act of 1976, as amended from time to time, and regulations promulgated thereunder; (ii) any "**hazardous substance**" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended from time to time, and regulations promulgated thereunder; (iii) any substance the presence of which on the Property is prohibited by any other federal, state, or local law applicable to the Property; and (iv) underground storage tanks. No landfill exists or has existed on the Property and no debris, including without limitation organic material (e.g., tree stumps), has been buried or placed on the Property. In the event that such disposal of Hazardous Materials or debris occurs prior to Closing, Seller shall remove all such materials at Seller's expense prior to Closing, in accordance with applicable laws.

(l) No Flood Plains and Wetlands. No portion of the Lots is located in any flood zone, flood hazard area, flood plain or similarly designated zone on the applicable FEMA maps or in a "**wetlands**" area as defined by any governmental authority.

(m) No Historic Designation or Historic Use. There is no actual or pending designation of all or any portion of the Property, or of the area or district in which the Property is located, as a historic district, site, building, battlefield, structure, object or other resource on the National Register of Historic Places or any other similar list or survey maintained by any governmental authorities such that the Property or any portion thereof is or may become subject to development restrictions or prohibitions, nor does Seller have any knowledge that any such designation is contemplated. The Property has not been designated and is not an historical

preservation site, nor does it contain any aboriginal or Native American burial grounds, or items or remains of historical or anthropological interest, which would delay or prevent the construction of dwellings thereon or materially add to the construction costs of the same.

(n) No Cemeteries. The Property does not contain any cemeteries or graveyards, and the Property is not subject to any easements for access to any cemeteries or graveyards.

(o) No Encroachments. There are no encroachments onto the Property of any improvements on any adjoining real estate, and there are no encroachments onto any real estate of any improvements on the Property.

(p) No Prohibitions. There are no facts or circumstances that would prohibit, inhibit, or adversely affect (i) Buyer from utilizing the Lots for their intended use as a development of single-family and/or townhome residences, or (ii) the issuance of occupancy permits upon completion of construction ("**Intended Use**").

(q) No Bankruptcy. Seller is not bankrupt or insolvent under any applicable federal or state standard, nor has filed for protection or relief under any applicable bankruptcy or creditor protection statute nor has any such party been threatened by creditors with an involuntary application of any applicable bankruptcy or creditor protection statute. Seller is not entering into the transactions described in this Agreement with intent to defraud any creditor or to prefer the rights of one creditor over any other. Seller and Buyer have negotiated this Agreement at arms-length and the consideration to be paid represents fair value for the assets to be transferred.

(r) Current Mortgages and Taxes. Seller will, during the term of this Agreement, keep any existing mortgage(s) and deeds of trust against the Property current and not in default and pay taxes and other public charges against the Property so as to avoid forfeiture of Buyer's rights under this Agreement. The forgoing shall be satisfied and released by Seller on or before Closing.

(s) Current Zoning. The Property is currently zoned for the construction of at least one hundred forty-seven (147) single-family and/or townhome dwelling units in the Subdivision. No petition, application or proceeding is pending or threatened to alter the zoning of the Property. Except for the Permitted Exceptions, Seller has made no commitments relative to the Property, whether verbally or in writing, to any governmental authority or any neighboring property owner, which would be binding on Buyer after the Closing.

(t) No Threatened Condemnation. There is not now pending or threatened eminent domain or condemnation proceedings which would affect the Property or any part thereof.

(u) No Moratoriums. There is no pending moratorium on, or other impediment to, immediate public sewer and water availability which is applicable to any portion of the Property.

(v) No Mining. The Property has not been used for purposes of mining or explorations for mineral, chemicals or other natural resources.

(w) No Wildlife Protection. The Property does not contain any wildlife protection areas, nor does it contain or constitute an environment for any endangered species of plant or animal life as the same might be defined or designated pursuant to the Endangered Species Act or any similar law or regulation.

(x) Lender's Non-Disturbance. Prior to the end of the Study Period, Seller shall use diligent commercially reasonable efforts to obtain from its acquisition and/or development lender(s) (each a "Current Lender") a recognition and non-disturbance agreement reasonably acceptable to Buyer to the effect that, despite any default by Seller under its acquisition and/or development loan, the Current Lender(s) will recognize and not disturb Buyer's rights to acquire Lots pursuant to the terms and conditions of this Agreement. If Seller is unable to obtain such a recognition or non-disturbance agreement reasonably acceptable to Buyer notwithstanding its diligent efforts, and Buyer elects to terminate this Agreement prior to the end of the Study Period, then Seller shall reimburse Buyer for all of the Buyer's out-of-pocket costs associated with its negotiation of this Agreement and due diligence investigation. If, to the extent permitted under this Agreement, Seller obtains financing through a different acquisition and/or development lender (the "New Lender"), Seller shall require and within ten (10) days after closing on its new loan, obtain, a recognition and non-disturbance agreement from its New Lender reasonably acceptable to Buyer to the effect that, despite any default by Seller under its acquisition and/or development loan, the New Lender will recognize and not disturb Buyer's rights to acquire Lots pursuant to the terms and conditions of this Agreement.

(y) Right of Ingress and Egress. The right of ingress to and egress from the Property through direct access to a dedicated public road (or to a dedicated private road with direct access to a dedicated public road) is or will be immediately available to the applicable Lot(s) at Closing.

(z) Further Actions. Seller will not take or cause to be taken any action, or fail to perform any obligation, which would cause any of the foregoing representations or warranties to be untrue as of the Closing. Seller shall immediately notify the Buyer, in writing, of any event or condition known to Seller which occurs prior to Closing hereunder, which causes a change in the facts relating to, or the truth of, any of the above representations or warranties.

(aa) OFAC. To Seller's knowledge, Seller is currently in compliance with and shall at all times during the term of this Agreement (including any extension thereof) remain in compliance with the regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons List and the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism).

(bb) Property Condition. During the term of this Contract, subject to and excepting the Development Work, Seller shall maintain the Property in its present state of repair and in substantially the same condition as on the Effective Date.

(cc) Covenants. Seller represents and warrants that Seller shall satisfy, and as of each Closing shall have satisfied, all Seller covenants set forth herein.

(dd) Further Remedies and Survival. In addition to, but not in limitation of, other default remedies herein elsewhere stated, in the event that any of the aforesaid covenants, representations and/or warranties are not true, shall not have been complied with or shall not have transpired now or at the time of Closing, Buyer, at any time prior to or at Closing, subject to the cure period set forth below, may (i) declare this entire Agreement null and void and of no further effect, in which event the Deposit shall be immediately refunded to Buyer, or (ii) terminate this Agreement with respect to only those Lots affected, at which time the Deposit shall be immediately refunded to Buyer on a pro-rata basis for said Lots, and the Agreement shall remain in full force and effect for the remaining Lots. All representations and warranties contained in this Agreement shall survive each Closing for two (2) years and shall not be merged into the deeds of conveyance, except as otherwise set forth in this Section 7. Acceptance of possession of the Lots by Buyer at Closing shall not be deemed a waiver of Seller's obligation to deliver the Lots in the condition set forth herein. In addition, Buyer may exercise any and all of its other rights at law or in equity with respect to any breach or untruth concerning said covenants, representations and/or warranties. Without limiting the foregoing, any covenant, promise or obligation in this Agreement which is not by expressed language intended to be fulfilled or performed at a Closing shall not merge into the deed of conveyance but shall remain in full force and effect and be binding on the parties hereto until fully performed or fulfilled.

8. Buyer's Representations.

(a) Validity, Authority, and No Consents Necessary. Buyer is a duly organized and validly existing Maryland limited liability company. Buyer has the legal right, power and is duly authorized to enter into and perform its obligations under this Agreement. Buyer has duly and validly executed this Agreement, and has obtained all necessary company consents. The person executing this Agreement on behalf of Buyer and any other document which Buyer is required to execute pursuant to the terms hereof has been duly and properly authorized to do so.

(b) No Other Agreements. Neither the execution of this Agreement nor the consummation of the transactions contemplated hereby will: (i) conflict with, or result in a breach of, the terms, conditions or provisions of, or constitute a default under, any agreement or instrument to which the Buyer is a party; (ii) violate any law, rule, regulation or restriction relating to the Property or to which Buyer is subject to; or (iii) conflict with or violate Buyer's Articles of Organization or Operating Agreement.

(c) Further Actions. Buyer will not take or cause to be taken any action, or fail to perform any obligation, which would cause any of the foregoing representations or warranties to be untrue as of the Closing. Buyer shall immediately notify the Seller, in writing, of any event or condition known to Buyer which occurs prior to Closing hereunder, which causes a change in the facts relating to, or the truth of, any of the above representations or warranties.

(d) Further Remedies and Survival. In the event that any of the aforesaid covenants, representations and/or warranties are not true, shall not have been complied with or shall not have transpired now or at the time of Closing, Seller, at any time prior to or at Closing, subject to the cure period set forth below, may declare this entire Agreement null and void and of no further effect. Each of Buyer's representations contained in this Agreement shall survive each Closing for two (2) years, and shall not be merged into the deeds of conveyance. In addition, Seller

may exercise any and all of its other rights at law or in equity with respect to any breach or untruth concerning Buyer's representations.

9. **Delivery of Certain Materials to Buyer.** Promptly, but in no event later than five (5) days following the Effective Date of this Agreement, Seller shall deliver to Buyer the following:

(a) A true and complete copy of all owner's policies of title insurance, if any, previously obtained by or in the possession of Seller with respect to the Property.

(b) All surveys, engineering, geotechnical, environmental or similar reports in Seller's possession relating to the Property. Seller, at its expense, shall also deliver to Buyer a mutually acceptable letter executed by each firm that prepared a survey, engineering report, geotechnical report or environmental report referred to above, which letters shall permit Buyer to rely on such reports as if they were prepared directly for Buyer. In the event that Seller is unable to obtain such letter, then Seller must send written notice to Buyer and Buyer may (i) terminate this Agreement within ten (10) days after notice from Seller regarding such, or (ii) waive the requirement of this condition in writing with respect to such unobtainable reliance letters. In the event the above described environmental report, or any other independent report obtained by Buyer, sets forth environmental conditions that are reasonably unacceptable to Buyer, Buyer shall have thirty (30) days from the receipt of such environmental report(s) to terminate this Agreement and receive an immediate refund of the Deposit.

(c) Copies of all notices of any violation relating to the Property which is uncorrected, if any.

(d) Copies of documents related to work done, being done or to be done on the Property by Seller, its agents or contractors.

(e) Copies of real property tax assessments.

(f) Copies of all documents related to the Approvals for the Property.

(g) Information necessary for reporting the sale to tax authorities, if applicable.

10. **Possession, Risk of Loss, and Condemnation.**

(a) **Possession.** Possession of the Lots shall be given to Buyer as of the date of Closing, free and clear of (i) the possessory interests of any parties, and (ii) all trash and debris.

(b) **Risk of Loss.** The risk of loss or damage to the Property is assumed by Seller until Closing or possession by Buyer.

(c) **Condemnation.** If, prior to a Closing, any portion of the Property not yet conveyed to Buyer is condemned, Buyer shall have the option of (i) terminating this Agreement, in which event Buyer shall be refunded the Deposit, (ii) terminating this Agreement as to only the Lots affected by the taking, in which event Buyer shall be refunded a pro-rata portion of the Deposit, or (iii) proceeding with the Closing in accordance with the terms hereof, in which event

the entire condemnation proceeds applicable thereto shall be delivered to Buyer at such Closing (and, in connection with the foregoing, Seller expressly acknowledges and agrees that Seller will not settle any proceeding or agree to any condemnation award or compensation without Buyer's prior written consent, given or withheld in Buyer's sole discretion), or, if Seller has not yet received such proceeds, then the right to receive such proceeds shall be assigned to Buyer at such Closing hereunder by instrument acceptable to Buyer. Buyer shall exercise its option within fifteen (15) days after it receives written notice from Seller of any such condemnation together with all information reasonably necessary for Buyer to make an informed decision, including, without limitation, the amount of any proposed condemnation proceeds.

11. Default.

(a) Default by Buyer. Subject to Section 11(c) below, in the event that Buyer breaches any term or defaults on any obligation under this Agreement, Seller's sole remedy shall be to retain the remaining, uncredited portion of the Deposit as full and complete liquidated damages. Seller and Buyer have negotiated and hereby expressly agree and acknowledge that the actual damages suffered by Seller would be difficult, if not impossible to measure, and the parties have agreed that said Deposit is a fair estimation of the damages. The parties have further agreed that this is a sole and exclusive remedy of Seller against Buyer in the event of Buyer's default, and Seller shall have no other remedy against Buyer whatsoever, including without limitation any right to specific performance, injunction or damages beyond the forfeiture of such Deposit as liquidated damages.

(b) Default by Seller. Subject to Section 11(c) below, if Seller breaches any term or defaults on any obligation required of it by this Agreement, then Buyer shall be entitled to any right or remedy at law or equity, including, but not limited to, actions for specific performance and/or damages. Buyer shall also be entitled to reasonable attorneys' fees and court costs incurred by Buyer in such action.

(c) Notice. Notwithstanding the foregoing, neither party shall be deemed to be in default hereunder, unless and until, it shall have received Notice of such default from the other party, and shall have failed to cure the default within fifteen (15) days of the date of such notice.

(d) Buyer's Right to Continue Development. In the event that Seller fails to complete the subdivision of the Property or the development of the Property in accordance with Exhibit D hereto within the times required under Sections 4(b)-(c) of this Agreement and Buyer is not then in default under the terms and conditions of this Agreement beyond the expiration of any applicable grace or cure periods, then in addition to any other remedy herein contained for Seller's default, Buyer shall have the right to enter the Property and complete the development work at Seller's cost and risk. Any cost incurred by Buyer in finishing the development of the Property, plus an administrative fee equal to twelve percent (12%) thereof, shall be deducted from the Purchase Price to be paid by Buyer at the first Closings to occur under the terms of this Agreement, until such costs of development have been reimbursed in full.

(e) Lot Remedies Related to Hazardous Materials. Without limiting any other remedies set forth herein, if following Closing on any Lot, Buyer encounters Hazardous Materials (as defined in Section 7(k)) on such Lot, then Seller shall be required, at Buyer's election, to either:

(i) remediate such Hazardous Materials in accordance with all applicable laws and regulations to Buyer's reasonable satisfaction, or (ii) repurchase such affected Lot(s) for the Purchase Price paid for the affected Lot(s) by Buyer, plus the costs of such transaction, plus Buyer's out-of-pocket costs for excavation and non-vertical construction costs expended within the building pad, it being understood that detection of Hazardous Materials will occur during excavation for house construction, and Seller shall not be responsible for the vertical costs associated with construction of the house. It is the Buyer's responsibility to carefully examine and discover such Hazardous Materials during excavation, and once the foundation walls are completed on a Lot, the Seller shall no longer be required to perform and/or pay for either items (i) or (ii) above as to such Lot. The provisions of this Section 11 shall survive each Closing and the delivery of the deed(s) to the Lots.

(f) Post-Closing Defaults. Notwithstanding the foregoing, with respect to post-Closing defaults, the parties shall have the right to pursue all rights and remedies available at law or in equity, excluding however special, indirect, incidental, consequential, exemplary and/or punitive damages.

12. Adjustments, Prorations and Closing Costs, Post Closing.

(a) Any taxes, general or special, and all other public or governmental charges or assessments against the Lots which are, or may be, payable on an annual basis (including benefit charges, assessments, liens or encumbrances for sewer, water, drainage or other public improvements, completed or commenced, on or prior to the date hereof, or subsequent thereto), shall be adjusted and apportioned as of the date of Closing, said adjustment apportionment to be on the basis of the fiscal year for which assessed, whether or not such assessments had been levied as of the date of Closing.

(b) All other charges, if any, and fees customarily pro-rated and adjusted in similar transactions shall be pro-rated at Closing and thereafter assumed by the Buyer. All taxes, charges and assessments shall be based upon the most recent available bill as of Closing. In the event that accurate prorations and other adjustments cannot be made at Closing because current bills or statements are not obtainable, the parties shall pro-rate on the best available information, subject to adjustment upon receipt of the final bill or statement.

(c) Seller shall be responsible for paying all documentary stamps, recordation taxes, transfer taxes and settlement fees. Buyer shall be responsible for its title insurance costs. Each party shall be responsible for the fees of its respective legal counsel.

(d) Seller shall pay prior to or at Closing, without any contribution from Buyer, any agricultural, land, rezoning, recapture, roll-back and all other similar taxes due in connection with the conveyance or deed for the Lots being settled under any law, regulation or ordinance (or any similar tax or assessment).

13. Governmental Moratorium. Notwithstanding anything in this Agreement to the contrary, if any time during the term of this Agreement, there is any law, ordinance, regulation, moratorium, order, decree, directive or other determination/action ("Moratorium") imposed, enacted or proposed by the federal, state, county or city government, or any agency or subdivision thereof, the effect of which would either: (a) impair the Intended Use of the Property; (b) impair

or delay Buyer's ability to obtain any approvals or building permits necessary for the construction or installation of any improvements on the Lots necessary to develop it for its Intended Use; (c) impair or delay the connection of the improvements to the public utilities necessary for the development of the Property for its Intended Use; or (d) require additional contributions from Buyer as a condition of development or use of the Property for its Intended Use; then in that event, Buyer shall have the right, at its sole option, to: (i) notify Seller that this Agreement, and all time periods and performance deadlines set forth herein, are extended for an amount of days equal to the duration of such Moratorium, and any escalation of the Purchase Price, if any, shall be suspended (i.e., the Purchase Price shall not escalate during any such period); or (ii) waive its rights under this Section 13 and proceed in accordance with the terms of this Agreement without delay. In any event, if such delay caused by a Moratorium extends for a period of two (2) years, either party may terminate this Agreement by written notice of same to the other, in which event the Deposit shall be immediately returned to Buyer, and Seller and Buyer shall be relieved of further obligations under this Agreement, except for indemnification obligations hereunder, provided however that any such Seller termination shall be null and void if within fifteen (15) days following Buyer's receipt of Seller's termination notice, Buyer elects to waive the tolling and proceed under the terms of this Agreement. Additionally, in the event Buyer is unable to perform its obligations set forth in this Agreement because of acts of God, strikes, adverse weather conditions or other causes reasonably beyond its control, (x) Buyer's performance and all time periods and deadlines set forth herein for Buyer's performance shall be extended for an amount of days equal to the duration of such delay, (y) any escalation of the Purchase Price, if any, shall be suspended, and (z) Buyer shall not be liable for damages to Seller, and shall also not be required to perform its indemnification or other obligations pursuant to Section 15 hereof, for any damages resulting from such failure to perform or otherwise from such causes.

14. Agency. Seller and Buyer each warrant and represent to the other that neither has used the services of any real estate broker, agent or finder in connection with this Agreement. In reliance of these warranties and representations, each party agrees to indemnify and hold the other harmless against any claim by any real estate broker, agent or finder for a commission or fee arising by reason of the indemnifying party's breach of its representation and warranty. The provisions of this Section 14 shall survive each Closing and the delivery of the deed to the Lots.

15. Indemnification. Seller agrees to defend, indemnify and hold Buyer harmless from any and all claims, losses, damages, and causes of action, including all third-party and counterparty claims and losses, arising out of, or directly or indirectly related to: (i) Seller's construction activities in the Subdivision, including without limitation the Development Work, and the activities of Seller's employees, agents and subcontractors, including, without limitation, claims or liens by mechanics, materialmen or any other third-party individuals or entities, if any; and (ii) subject to the survival period set forth in Section 7, the breach by Seller of its representations and warranties set forth in Section 7 above. Seller's indemnity of Buyer shall include reasonable attorneys' fees, court costs, and all other costs, expenses and liabilities incurred by Buyer from the date Buyer first received notice of any actual or anticipated claim or demand.

Buyer agrees to defend, indemnify and hold Seller harmless from any and all claims, losses, damages, and causes of action arising out of, or directly or indirectly related to (i) Buyer's construction activities on the Lots, if any; and (ii) subject to the survival period set forth in Section 8, the breach by Buyer of its representations set forth in Section 8 above. Buyer's indemnity of

Seller shall include reasonable attorney's fees, court costs, and all other costs, expenses and liabilities incurred by Seller from the date Seller first received notice of any actual or anticipated claim or demand.

The provisions of this Section 15 shall survive each Closing and the delivery of the deed(s) to the Lots.

16. **Notices.** Any notice or demand under this Agreement shall be in writing and sent by registered or certified mail, return receipt requested, postage prepaid, or by recognized overnight courier service such as Federal Express, or by electronic mail as follows:

If to Seller: Red Clay Development SC, LLC
Attention: Frank M. Warlick
PO Box 3871
Greenville, SC 29608
E-mail: fwarlick@redclaydevelopment.us

With a copy to:

If to Buyer: Dan Ryan Builders South Carolina, LLC
Attention: Ronny Salameh
2099 Gaither Road, Suite 600
Rockville, MD 20850
E-mail: rsalameh@drbgroup.com

With a copy to: Dan Ryan Builders South Carolina, LLC
Attention: Thomas M. Tracy, Esq.
2099 Gaither Road, Suite 600
Rockville, MD 20850
E-mail: ttracy@drbgroup.com

Any such notice or demand shall be deemed given three (3) days after same has been deposited in the United States mail as aforesaid, or the next business day after deposited with a recognized overnight courier, or the same day if sent by facsimile or electronic mail if sent at or before 11:59 PM local time. Either party by notice to the other in accordance with the above, may designate a substitute address for such notice or demand and thereafter such substitute address shall be used for the giving of notice or demand.

17. **Miscellaneous.**

(a) **Binding Nature/Assignment.** This Agreement shall inure to the benefit of and be binding upon Seller and Buyer and their respective heirs, personal representatives, successors and assigns. Buyer specifically reserves the right at any time prior to or at Closing to assign this Agreement, in whole or in part, to any person or entity selected by it, in its sole and absolute discretion, in which event such assignee shall be entitled to all benefits of and be subject to all obligations of Buyer hereunder, and Buyer shall be relieved of all of its obligations under this Agreement. This Agreement may not be assigned by Seller without the prior written consent

of Buyer, which consent shall not be unreasonably withheld. In the event of such an assignment by Seller under this Agreement, Seller shall not be released from any of its obligations under this Agreement. Any assignment not permitted hereunder shall be null and void.

(b) Entire Agreement. This Agreement, together with the Exhibits attached hereto, contains the final and entire agreement between the parties hereto and supersedes all prior oral representations, negotiations and agreements, and neither the parties, nor their agents, shall be bound by any terms, conditions and representations not herein written. This Agreement may not be modified or changed orally, but only by agreement in writing signed by the party against whom enforcement of any such change is sought.

(c) Governing Laws. The interpretation, construction and performance of this Agreement shall be governed by the laws of the State of South Carolina.

(d) Titles. The titles of the sections are inserted as a matter of convenience and for reference and in no way define, limit or describe the scope of this Agreement or the intent of any provision thereof.

(e) Drafting Party. This Agreement is the result of the combined draftsmanship and/or review of Seller and Buyer and/or their respective agents, accordingly, there shall be no presumption or interpretation of this Agreement based on its having been drafted by one or the other.

(f) Non-Merger. Subject to the limitation on survival of representations and warranties pursuant to Sections 7 and 8 hereof, all provisions of this Agreement that contemplate or provide for performance by either party after any applicable Closing (the “**Surviving Obligations**”) shall survive such Closing hereunder and shall not be deemed to have merged into the deed to be executed and delivered by Seller at any such Closing. Despite any contrary provision of this Agreement, if Buyer acquires a portion of the Property but this Agreement terminates without Buyer having acquired all of the Property, all of the terms and provisions of this Agreement shall remain in full force and effect as they pertain to the portion of the Property acquired by Buyer.

(g) Reasonable Cooperation. Each party shall reasonably cooperate with the other in connection with the satisfaction of any condition or obligation which must be satisfied by Closing pursuant to the terms of this Agreement, and in connection therewith each party agrees to execute any document contemplated by the terms of this Agreement, which may be reasonably requested by the other party.

(h) Execution of Agreement. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(i) Time is of the Essence. Time shall be of the essence of each and every provision of this Agreement.

(j) Waiver by Writing. Buyer and Seller each reserve the right to waive any of the terms and conditions of this Agreement which benefit the party waiving same and to purchase

or sell the Property in accordance with the terms and conditions of this Agreement which have not been so waived. No party hereto shall be deemed to have waived the exercise of any right which it holds hereunder unless such waiver is made expressly and in writing (and no delay or omission by any party hereto in exercising any such right shall be deemed a waiver of its future exercise), except for any term of this Agreement in which the passage of time specifically waives such right. No such waiver made as to any instance involving the exercise of any such right shall be deemed a waiver as to any other such instance, or any other such right. Failure by either party to require performance of a term of this Agreement by the other party or a waiver by either party of a breach by the other party shall not prevent subsequent enforcement of such provision or be deemed a waiver of any subsequent breach thereof.

(k) Time Periods. Any and all references in this Agreement to time periods which are specified by reference to a certain number of days refer to calendar days, unless "business days" is otherwise expressly provided. Therefore, if (i) the last date by which a Closing is permitted to occur hereunder, or (ii) any performance deadline, or other date by which either party is required to provide the other party with notice hereunder, occurs on a Saturday or Sunday or a banking holiday in the jurisdiction where the Lots are located, then and in any of such events, such applicable dates shall be deemed to occur, for all purposes of this Agreement, on that calendar day which is the next, succeeding day, which is not a Saturday, Sunday or banking holiday.

(l) Invalid Provisions. No determination by any court, governmental or administrative entity or otherwise that any provision of this Agreement or any amendment hereof is invalid or unenforceable in any instance shall affect the validity or enforceability of (i) any other such provision, or (ii) such provision in any circumstance not controlled by such determination. Each such provision shall be valid and enforceable to the fullest extent allowed by, and shall be construed wherever possible as being consistent with, applicable law.

(m) No Partnership. Nothing in the provisions of this Agreement shall be deemed in any way to create between the parties hereto any relationship of partnership, joint venture or association, and the parties hereto hereby disclaim the existence of any such relationship.

18. Rule Against Perpetuities. So as not to violate the rule against perpetuities, all Closings under this Agreement must occur, if at all, within ten (10) years after the Effective Date of this Agreement.

19. Exclusivity and No More Favorable Terms. Provided that this Agreement is in full force and effect, Seller shall not offer to another builder any Lot contemplated by this Agreement. In the event that there are lots in the Subdivision that are not made part of this Agreement, Seller shall not sell any other lot in the Subdivision of a similar size and of similar characteristics as the Lots for less than the Purchase Price applicable to said Lots set forth in this Agreement. In the event Seller sells a lot in violation of the foregoing, the Purchase Price for each Lot purchased by Buyer during the preceding six (6) months, and for each Lot purchased by Buyer thereafter, shall be reduced to the lowest purchase price in which Seller sold a lot to another party.

20. Recording of Agreement. This Agreement shall not be recorded by either party, provided, however, Buyer shall have the right to record a memorandum setting forth the terms of

this Agreement (the "Memorandum") as set forth in Exhibit C. Seller shall sign and notarize said Memorandum simultaneously with the execution of this Agreement.

21. **WAIVER OF JURY TRIAL/Payment of Fees.** SELLER AND BUYER EACH WAIVES TRIAL BY JURY IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM BROUGHT IN CONNECTION WITH ANY MATTER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT. In the event any party is required to resort to litigation to enforce its rights hereunder, the parties agree that any judgment awarded to the prevailing party (as determined by the trier of fact) shall include all litigation expenses including reasonable attorneys' fees.

22. **Effective Date.** The Effective Date of this Agreement shall be the date upon which both Buyer and Seller agree to all of the terms and conditions set forth herein, as evidenced by the latest date set forth next to the parties' signatures below.

23. **Name/Logo.** Buyer shall have the right to use "Shinnecock Hills" or any derivative thereof, and any related logo, in any signage, marketing, advertising and/or promotional material, both printed and electronic, in connection with the marketing and sale of homes at the Subdivision.

[SEE SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year below shown.

ATTEST/WITNESS:

Janice W. Horne

SELLER:

RED CLAY DEVELOPMENT, SC, LLC.

Frank M. Warlick (SEAL)

Its: Managing Member

Date 10/27/2020

ATTEST/WITNESS

Kimberly Sycalch

BUYER:

DAN RYAN BUILDERS SOUTH CAROLINA,
LLC

By: Paul J. Yeager (SEAL)
Paul J. Yeager, Executive Vice President

Date 11/11/2020

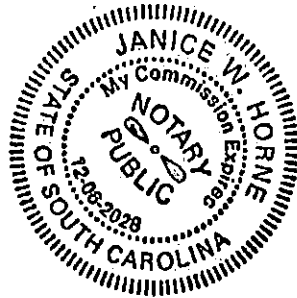


EXHIBIT A-1

LEGAL DESCRIPTION OF PROPERTY

Being all of that certain piece, parcel or tract of land, with any improvements thereon, lying, being and situate in the County of Greenville, State of South Carolina, being shown and designated as **Lots 1, 2, 3, 4, 5, of Mountain Creek Park, Sheet 1**, as recorded 2/20/1997 in Plat Book 34-V, page 6 and **Lots 6, 7, and 8 of Mountain Creek Park, Sheet 2**, as recorded 2/20/1997 in Plat Book 34-V, page 7; said plats are incorporated herein by reference for a more complete metes and bounds description.

TAX PARCEL #s:

P023.00-03-001.00
P023.00-03-001.01
P023.00-03-002.00
P023.00-03-003.00
P023.00-03-004.00
P023.00-03-005.00
P023.00-03-006.00
P023.00-03-007.00
P023.00-03-008.00

EXHIBIT B

ESCROW AGREEMENT

WHEREAS, Dan Ryan Builders South Carolina, LLC and Red Clay Development, SC, LLC, have caused or will cause certain funds to be deposited in escrow with Nelson Galbreath, LLC, the “Escrow Agent” as set forth in Section 2 of the Lot Purchase Agreement attached hereto, on the terms and conditions more particularly described herein.

NOW, THEREFORE, in consideration of the premises set forth herein, the parties hereby agree as follows:

1. Establishment of Deposit. The parties have caused or will cause to be deposited with the Escrow Agent the sum of **Eight Hundred Thousand Dollars (\$800,000.00)** (the “Deposit” as defined in the Lot Purchase Agreement).

2. Treatment of Deposit. The monies constituting the Deposit shall be deposited in a non-interest bearing account pursuant to the terms of this Escrow Agreement.

3. Payment Instructions. The Deposit shall be held and disbursed in accordance with the terms of the Lot Purchase Agreement and this Escrow Agreement.

4. Termination. This Escrow Agreement shall terminate upon the first to occur of any of the following events:

A. The disbursement of the Deposit in accordance with the provisions of Section 3 hereof.

B. Any termination of the Lot Purchase Agreement, in which case the remaining balance of the Deposit shall be disbursed in accordance with the provisions of Section 3 hereof.

5. Limitation of Escrow Agent’s Capacity.

A. This Escrow Agreement expressly and exclusively sets forth the duties of Escrow Agent with respect to any and all matters pertinent hereto, and no implied duties or obligations shall be read into this Escrow Agreement against Escrow Agent. This Escrow Agreement constitutes the entire agreement between the Escrow Agent and the other parties hereto in connection with the subject matter of this escrow, and no other agreement entered into between the parties, or any of them, shall be considered as adopted or binding, in whole or in part, upon the Escrow Agent, notwithstanding that any such other agreement may be referred to herein or deposited with Escrow Agent or the Escrow Agent may have knowledge thereof, and Escrow Agent’s rights and responsibilities shall be governed solely by this Escrow Agreement.

B. Escrow Agent acts hereunder as a depository only, and is not responsible or liable in any manner whatsoever for the sufficiency, correctness, genuineness or validity of the

subject matter of this Escrow Agreement or any part thereof, or for the form of execution thereof, or for the identity or authority of any person executing or depositing such subject matter. Escrow Agent shall be under no duty to investigate or inquire as to the validity or accuracy of any document, agreement, instruction or request furnished to it hereunder believed by it to be genuine and Escrow Agent may rely and act upon, and shall not be liable for acting or not acting upon, any such document, agreement, instruction or request.

6. Authority to Act.

A. Escrow Agent is hereby authorized and directed by the parties hereto to deliver the subject matter of this Escrow Agreement only in accordance with the provisions of this Escrow Agreement.

B. Escrow Agent shall be protected in acting upon any written notice, request, waiver, consent, certificate, receipt, authorization, power of attorney or other paper or document which Escrow Agent in good faith believes to be genuine and what it purports to be, including, but not limited to, items directing investment or non-investment of funds, items requesting or authorizing release, disbursement or retainage of the subject matter of this Escrow Agreement, and items amending the terms of this Escrow Agreement.

C. Escrow Agent may consult with legal counsel at the joint and several cost and expense of the undersigned (other than Escrow Agent) in the event of any dispute or question as to the construction of any of the provisions hereof or its duties hereunder, and it shall incur no liability and shall be fully protected in acting in accordance with the advice of such counsel.

D. In the event of any disagreement between any of the parties to this Escrow Agreement, or between any of them and any other person, resulting in adverse claims or demands being made in connection with the matters covered by this Escrow Agreement, or in the event that Escrow Agent, in good faith, is in doubt as to what action it should take hereunder, Escrow Agent may, at its option, refuse to comply with any claims or demands on it, or refuse to take any other action hereunder, so long as such disagreement continues or such doubt exists, and in any such event, Escrow Agent shall not be or become liable in any way or to any person for its failure or refusal to act, and Escrow Agent shall be entitled to continue to so refrain from acting until (i) the rights of all interested parties shall have been fully and finally adjudicated by a court of competent jurisdiction, or (ii) all differences shall have been adjudged and all doubt resolved by agreement among all of the interested parties, and Escrow Agent shall have been notified thereof in writing signed by all such parties. Escrow Agent is hereby authorized, in its sole discretion, to comply with and obey any such orders, judgments, decrees or levies. The rights of Escrow Agent under this sub-section are cumulative of all other rights which it may have by law or otherwise.

7. Indemnification. The parties to this Escrow Agreement (other than Escrow Agent) hereby jointly and severally agree to indemnify and hold Escrow Agent, its affiliates, officers, employees, successors, assigns, attorneys and agents (each an "**Indemnified Party**") harmless from all losses, costs, claims, demands, expenses, damages, penalties and attorney's fees suffered or incurred by any Indemnified Party or Escrow Agent as a result of anything which it may do or refrain from doing in connection with this Escrow Agreement or any litigation or cause of action

arising from or in conjunction with this Escrow Agent or involving the subject matter hereof or the Deposit; provided that the foregoing indemnification shall not extend to the gross negligence or willful misconduct of Escrow Agent.

8. Notice. Any payment, notice, request or any other communication required or permitted in this Escrow Agreement shall be provided in the manner and to such persons set forth in the Lot Purchase Agreement.

9. Miscellaneous.

A. Escrow Agent shall make no disbursement, investment or other use of funds until and unless it has collected funds. Escrow Agent shall not be liable for collection items until the proceeds of the same in actual cash have been received by Escrow Agent.

B. Escrow Agent may resign at any time by giving at least five (5) days prior written notice to the parties hereto, whereupon the parties hereto will immediately appoint a successor Escrow Agent. Until a successor Escrow Agent has been named and accepts its appointment or until another disposition of the subject matter of this Escrow Agreement has been agreed upon by all parties hereto, Escrow Agent shall be discharged of all of its duties hereunder save to keep the subject matter whole.

C. This Escrow Agreement is being made in and is intended to be construed according to the laws of the State of SOUTH CAROLINA. This Escrow Agreement shall inure to and be binding upon the parties hereto and their respective successors, heirs and assigns.

D. The terms of this Escrow Agreement may be altered, amended, modified or revoked only by an instrument in writing signed by the parties hereto and the Escrow Agent.

E. Escrow Agent shall not be liable to the undersigned for any loss or damage arising out of any acts of God, strikes, war, terrorism, or any other act or circumstance beyond the reasonable control of Escrow Agent.

10. Discharge of Escrow Agent. Upon the delivery of all of the subject matter or monies pursuant to the terms of this Escrow Agreement, the duties of Escrow Agent shall terminate and Escrow Agent shall be discharged from any further obligation hereunder.

11. Entire Agreement. This Escrow Agreement contains the final and entire agreement between the parties hereto and supersedes all prior oral representations, negotiations and agreements, and neither the parties, nor their agents, shall be bound by any terms, conditions and representations not herein written.

[SEE SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year below shown.

WITNESS/ATTEST

Kimberly Sycaletti

DAN RYAN BUILDERS SOUTH CAROLINA, LLC

By: Paul J. Yeager

Name: Paul J. Yeager

Title: CVP & CFO

Date: 11/11/2020

WITNESS/ATTEST

Frank M. Warlick

RED CLAY DEVELOPMENT, SC, LLC

By: Frank M. Warlick

Its: Managing Member

Date: 10/27/2020

The undersigned hereby agrees to act as Escrow Agent in accordance with the terms and conditions of the foregoing Escrow Agreement, and hereby agrees to be bound thereby.

WITNESS/ATTEST

Nelson Galbreath, LLC

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT C

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT (“Memorandum”) made this _____ day of _____, 2020 by and between **Red Clay Development, SC, LLC**, a South Carolina limited liability company (“**Seller**”) and **Dan Ryan Builders South Carolina, LLC** a South Carolina limited liability company, or its assigns (“**Buyer**”).

A. This Memorandum is prepared for purposes of recordation and to notify the public that Buyer and Seller have entered into an agreement for the purchase those certain parcels of land situate and laying in Greenville County, South Carolina in the subdivision commonly known as **Shinnecock Hills at Roberts Farm**, containing approximately 41.95 acres, more or less, including **one hundred forty-seven (147) market-rate single-family and townhome residential building lots** (each a “**Lot**” and collectively the “**Lots**”), as shown on the preliminary site plan attached hereto as **Exhibit 1** and as more fully described in the legal description attached hereto as **Exhibit 1-1**, as set forth under the Lot Purchase Agreement dated _____ between Buyer and Seller (the “**Agreement**”). In the event of any conflict between this Memorandum and the terms of the Agreement, the terms of the Agreement shall prevail.

B. Pursuant to Section 11(d) of the Agreement, in the event that Seller fails to complete the subdivision of the Property or the development of the Property in accordance with Exhibit D of the Agreement within the times required under Sections 4(b)-(c) of the Agreement, and Buyer is not then in default under the terms and conditions of this Agreement beyond the expiration of any applicable grace or cure periods, then in addition to any other remedy provided for under the Agreement, Buyer shall have the right to take possession of the Property prior to Closing (as defined in the Agreement) and complete the development work at Seller’s cost and risk.

C. This Memorandum shall remain in effect until all Lots are purchased under the Agreement, but shall not remain in effect beyond the date set forth in Section 18 of the Agreement.

D. To facilitate execution, this Memorandum may be executed in duplicate, and it shall not be necessary that the signature of, or on behalf of, each party, or that the signatures of the persons required to bind any party, appear on more than one counterpart. All counterparts shall collectively, constitute a single Memorandum.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Agreement as of the date first above written.

[SEE SIGNATURES ON FOLLOWING PAGES]

ATTEST/WITNESS:

SELLER:

RED CLAY DEVELOPMENT, SC, LLC

- 1. Alison Allen
- 2. Janice W. Horne

Frank M. Warlick (SEAL)

Date 10/27/2020

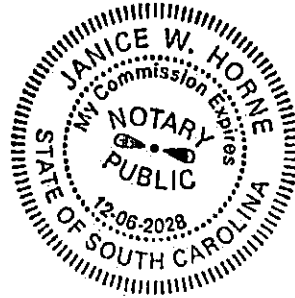
STATE OF South Carolina
COUNTY OF Greenville

ON THIS 27 day of October, 2020, before me, the undersigned, personally appeared Frank M. Warlick, known to me (or satisfactorily proven) to be the person whose name is subscribed to within the instrument and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Janice W. Horne
Notary Public

My Commission expires 12-6-2028



ATTEST/WITNESS:

BUYER:

DAN RYAN BUILDERS SOUTH CAROLINA, LLC

- 1. Kimberly Sycalick
- 2. _____

By: Paul J. Yeager (SEAL)
Paul J. Yeager, Executive Vice President

Date 11/11/2020

STATE OF MARYLAND

COUNTY OF MONTGOMERY

ON THIS ____ day of _____, 2019, before me, the undersigned, personally appeared Paul J. Yeager, known to me (or satisfactorily proven) to be the person whose name is subscribed to within the instrument and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My Commission expires _____

EXHIBIT 1 TO MEMORANDUM OF AGREEMENT
PRELIMINARY SITE PLAN SHOWING THE LOTS
TO BE PURCHASED BY BUYER

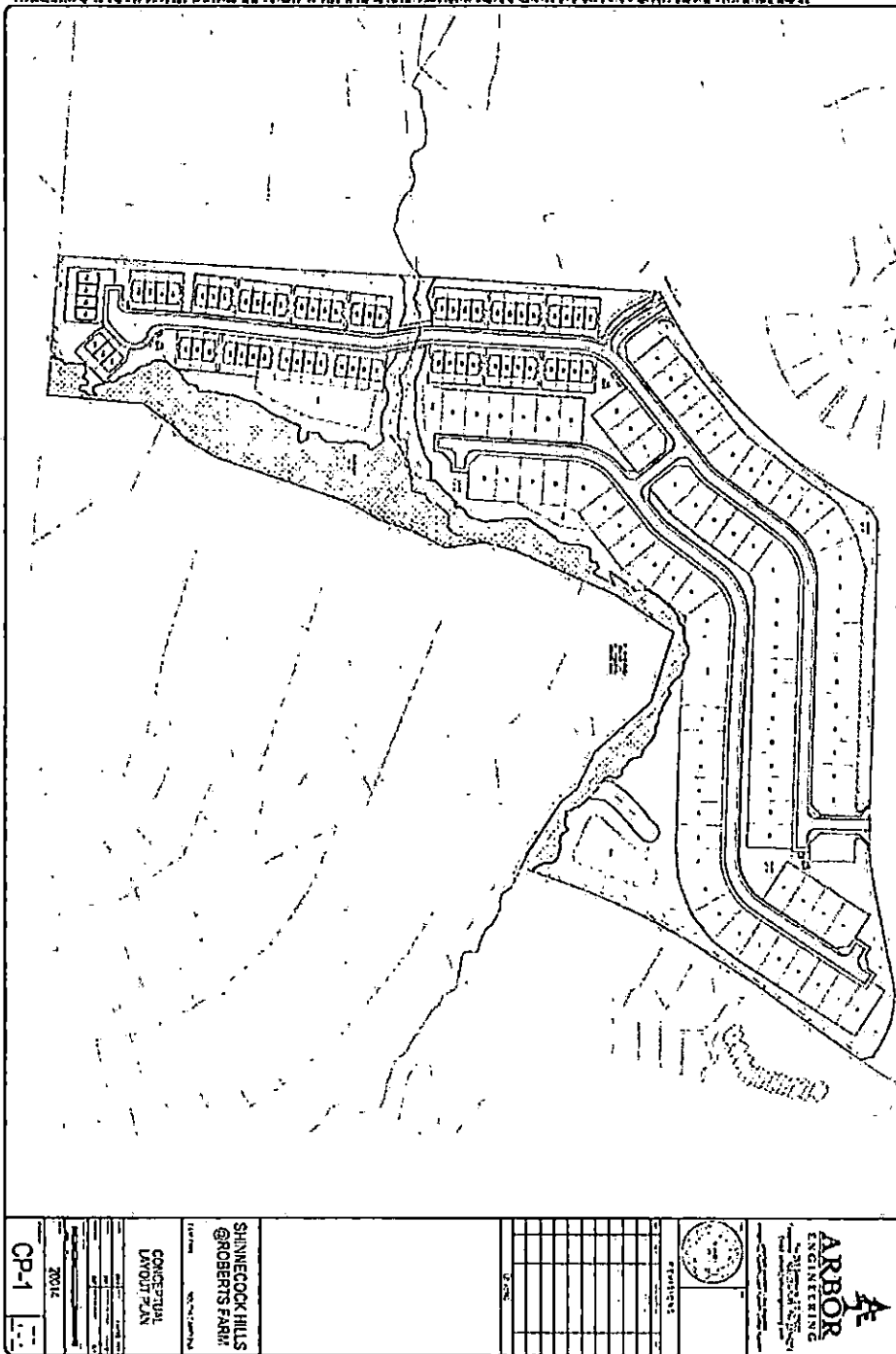


EXHIBIT 1-1 TO MEMORANDUM OF AGREEMENT

LEGAL DESCRIPTION OF THE PROPERTY

Being all of that certain piece, parcel or tract of land, with any improvements thereon, lying, being and situate in the County of Greenville, State of South Carolina, being shown and designated as **Lots 1, 2, 3, 4, 5, of Mountain Creek Park, Sheet 1**, as recorded 2/20/1997 in Plat Book 34-V, page 6 and **Lots 6, 7, and 8 of Mountain Creek Park, Sheet 2**, as recorded 2/20/1997 in Plat Book 34-V, page 7; said plats are incorporated herein by reference for a more complete metes and bounds description.

TAX PARCEL #s:

P023.00-03-001.00
P023.00-03-001.01
P023.00-03-002.00
P023.00-03-003.00
P023.00-03-004.00
P023.00-03-005.00
P023.00-03-006.00
P023.00-03-007.00
P023.00-03-008.00

EXHIBIT D

DEVELOPMENT OBLIGATIONS

1. Seller, at its sole cost and expense, shall diligently finish each of the Lots in accordance with the terms and conditions set forth in this Exhibit D and the Seller-Buyer Responsibility Checklist attached hereto as Exhibit E and incorporated by reference herein, in a good and workmanlike manner and in conformity with all applicable codes, ordinances and regulations, and in compliance with the Plans (as defined below) and development conditions applicable to the Property. In the event there is a conflict between this Exhibit D and Exhibit E, the terms of this Exhibit D shall prevail. The provisions of this Exhibit D shall survive each Closing.

A. Seller shall complete all overlot clearing, grading, and padding of Lots so that each Lot has a minimum padded buildable area of (i) thirty feet (30') wide by thirty-three feet (33') deep for each of the TH Lots and (ii) sixty feet (60') wide by one hundred twenty feet (120') deep for each of the SF Lots. Each Lot shall balance taking into account Buyer's homebuilding excavation, including, without limitation, footing spoils, without the import or export of materials. The Lots will be padded to permit mono-slab foundations. This work shall be done in accordance with the final development plans and specifications approved by Buyer and Greenville County ("Plans"), which define the development area ("Development Area"), if applicable. Notwithstanding anything to the contrary in the Agreement or this Exhibit D, at least fifteen (15) days prior to the Study Period Expiration Date, Seller shall provide Buyer proposed grading plans for the Property (inclusive of the Lots) for Buyer's review and approval, which such grading plans shall include a lot fit matrix and permit Buyer's house plans to fit on all Lots, to Buyer's satisfaction, without restriction. Each Lot, the Development Area, and the common areas shall be graded to meet minimum property standards of the local government or authority, the requirements of the approved Plans, to allow landscaping on the Lots without additional grading other than on lot fine grading. Upon completion of the grading and padding of Lots by Seller, Seller shall provide Buyer with an as-built survey of the Property that confirms the Lots were graded as set forth herein. Seller shall have all on lot, placed and compacted fill, no matter the depth, inspected by a third party engineer, and Seller shall obtain and deliver to Buyer a compaction certification issued by a soils engineer registered in the State of South Carolina for all Lots in accordance with FHA, VA, FNMA and other governmental requirements and all necessary or appropriate soil tests. Seller shall not place more than twelve inches (12") of un-compacted fill on any Lot without the prior written consent of Buyer. All fill placed on any Lots and all building pads for each Lot shall be suitable for normal residential construction, normal concrete floors on-grade, standard drainage systems, and without the necessity of pierings or special footings. Seller shall have all building pad elevations on each Lot inspected by a third party engineer to verify compliance with the Plans, and Seller shall obtain and deliver to Buyer a certification issued by Seller's engineer for each Lot purchased by Buyer, which shall include a reliance letter issued to Buyer from said engineer that allows Buyer to rely on the certification issued. Buyer shall have the responsibility for on-lot fine grading of the Lots. Without limiting any other rights or remedies set forth in the Agreement, in the event that Buyer discovers any subgrade conditions or expansive soils that require extraordinary costs when constructing a home on any Lot ("Subgrade Issue"), Buyer shall immediately notify Seller. Seller shall either, at Buyer's election: (i) remedy the Subgrade Issue

in accordance with recommendations from a licensed engineer, with Seller responsible for all costs related to such remediation (including the engineer's recommendations); or (ii) repurchase the Lot from Buyer within thirty (30) days for the Purchase Price paid by Buyer plus Buyer's out-of-pocket third-party costs related to the construction of any and all improvements on and/or benefiting the Lot. In the event of a repurchase hereunder, Section 12 of the Agreement shall govern the payment of settlement costs and apportionment of taxes.

B. Seller shall install, or have installed by the appropriate authority, a complete and functional public water and sewer system as shown on the Plans to serve the dwelling units to be constructed on the Lots with all required authorizations and allocations with water and sewer lines to serve each Lot extended to the Lot property line and ready for immediate hookup at rates no greater than those charged for similar communities within Greenville County. The laterals shall be clearly marked. All required tests and inspections shall be completed by and satisfactory to the proper authorities prior to Closing. Seller shall clearly mark and locate the sewer and water service for each Lot one (1) foot inside the lot line. Seller shall deliver a letter to Buyer from each utility company that indicates said sewer and water service has been approved and is ready for immediate hook-up. Seller shall make payment to the water or sewer district of any deficit contributions (including proffers, impact fees, payments-in-lieu, adequate public facilities ordinances, etc.) for the installation of the water and sewer to the Lots and all other water and sewer related fees.

C. Seller shall construct and complete all infrastructure, including but not limited to asphalt paved streets, curbs, gutters, ditch lines, and common area sidewalks as shown on the Plans. The asphalt paved streets servicing the Lots shall be connected to existing public streets, all as required by the Plans submitted to and approved by Greenville County. Base course asphalt paving shall be completed by Closing. Final paving shall be completed as and when required by Seller's bond and the requirements of Greenville County therefore which shall be posted with the proper governmental authorities and so as not to hinder or delay the issuance of any building permit or use and occupancy permit for Buyer's dwelling units. Buyer shall have the responsibility for the installation of the driveways and lead walks on the Lots. Seller shall be responsible for any damage, not caused by Buyer, that occurs to any final paving that is completed prior to Buyer's completion of its construction activities in the Subdivision. Notwithstanding the foregoing, Seller shall complete all infrastructure repairs necessary within thirty (30) days of notification regarding such repairs from Buyer.

D. All underground electric, gas (if available and required), cable lines and telephone main lines as are necessary to service the residences, and street lights (if required), shall be installed and available for use by the date of Closing. Seller shall cause any necessary re-grading to be completed upon the completion of the installation of such utilities.

E. Seller shall construct, complete and maintain all storm drainage facilities, stormwater structures, pipes, facilities, stormwater management systems, sedimentation and erosion controls as shown on and as required by the approved Plans, or required by all appropriate governmental authorities except for individual on-Lot silt control on the Lots during individual house construction thereon. Seller shall obtain, and shall have recorded, all proper instruments.. establishing easements and rights-of-way needed for off-site storm drainage and other utilities, the same to be unencumbered if so required by the appropriate governmental authority. After

installation of such by Seller and Seller's completion of any incomplete or defective work as shown on the Lot Inspection Report (as hereinafter defined), Buyer shall take responsibility for maintaining the silt control devices utilized by Buyer on the Lots. Seller shall continue to be solely responsible for off-Lot stormwater management systems and all other sedimentation and erosion control ponds. Buyer shall have the right, in its sole discretion, to commence any work reasonably necessary by utilizing Seller's disturbance permits, if allowed by Greenville County. Seller shall maintain an active and valid NPDES land disturbance permit at all times during development and home building operations until the last building has been constructed and all disturbed areas stabilized. Seller shall provide Buyer with its NPDES information prior to the Study Period Expiration Date and shall comply with all applicable NPDES regulations.

F. Seller shall complete all culverts, retaining walls, and screening walls as required by the Plans or as necessary to develop the Property for its Intended Use, and will post any bonds required for the work by any government authority. In the event a retaining wall is necessary on-Lot to accommodate Buyer's house construction, Seller shall have graded the Property so that any such retaining wall to be constructed by Buyer, if any, shall be eighteen inches (18") in height or less. Seller shall construct an entranceway to the Subdivision in accordance with mutually acceptable plans and specifications (prepared by Seller, at Seller's expense), which shall additionally include plans for an entry monument, common area landscaping, and Subdivision amenity sites, with such plans and specifications to be approved by the parties prior to the Study Period Expiration Date. Such construction shall be completed by Seller within sixty (60) days after the date of the First Closing, and shall provide an entry monument, common area landscaping, perimeter screening landscaping, perimeter fencing, lighting, and street signage for the community, which shall each conform to the foregoing mutually acceptable plans and specifications. Seller shall be responsible for all Subdivision snow and ice removal, and for all street cleaning within the Subdivision until such responsibilities have been transferred to the applicable governmental authority(ies) and/or the HOA. Seller shall be responsible for sediment and erosion control and stormwater maintenance for the common area and for all final common area and right-of-way landscaping including grass, common area trees and shrubs, as shown on the approved site and landscaping plans. Each party shall be responsible for landscaping of all Lots that it owns. On both common areas and Lots, landscaping shall include, without limitation, mowing on a regular basis so that the height of vegetation is never greater than twelve inches (12"), provided, however, that the first thirty feet (30') away from any roadway as well as any median or grass strip next to a roadway shall be mowed so that the height of vegetation is never greater than six inches (6").

G. Seller shall complete a one-time installation of front and rear property markers (in the form of metal survey pins) for each Lot.

H. Seller shall obtain, post and/or maintain street, site, grading, storm drain, maintenance and such other permits and surety, performance, and completion bonds as may be required by the applicable governmental authorities (or at Buyer's request) for development of the Property and Lots and as may be necessary for Buyer to obtain the issuance of any building permit, use and occupancy permit, and all other permits, for Buyer's Intended Use. Seller shall authorize Buyer to utilize its grading permit and related bonds as required in order for Buyer to obtain building permits and use and occupancy permits and will execute such documents in connection

therewith as shall be reasonably requested by Buyer. Seller shall ensure the completion of all bonded improvements (in accordance with all appropriate governmental requirements) and satisfaction of all required development conditions necessary for Buyer to obtain building permits and certificates of occupancy for completed dwelling units on the Lots.

I. Seller shall be fully responsible for all fees, proffered obligations, offsite contribution charges, and grant of all dedications, imposed by Greenville County, and all other governmental authorities in connection with the subdivision of the Property and/or the development and finishing of the Lots as required of Seller and Buyer in fulfillment of their responsibilities under this Agreement and when the same become due and payable.

J. Seller shall perform and complete all other off-Lot and off-Property site improvements (including, without limitation, any amenities) and actions, as set forth on the Plans, required by all appropriate governmental authorities having jurisdiction (including but not limited to FHA/VA), exclusive of house construction as a condition for the occupancy of residential dwellings constructed by Buyer.

K. Seller shall cause all public improvements to be dedicated to public use and acceptance for maintenance by the applicable governmental authorities or HOA at the earliest practical date.

L. Seller shall make available to Buyer, at no charge, copies of all bonds, documents, plats, reports and correspondence relating to the lot finishing process.

M. The Lots shall be free of rubbish and debris at the time of delivery to Buyer.

N. Within sixty (60) days of the First Closing, Seller shall install all concrete pads, sidewalks, and required parking spaces, if any, for gang mailbox kiosk(s) serving the Subdivision. Buyer shall be responsible for the installation of all such gang mailbox kiosk(s).

O. Seller shall diligently complete all development items listed above and in Exhibit E for which it is responsible to ensure that all building permits, plumbing connections, use and occupancy permits, or other permits required for the erection of residences on the applicable Lots are available for immediate issuance upon application therefore by Buyer (so as not to unreasonably delay any sale and settlement of Lots by Buyer to its homebuyers).

2. **CERTIFICATE OF READINESS.** Upon the accomplishment of the items lettered A, B, C (with the exception of final surface paving), D, E, F, G, H, I, J, L, M, and N in Section 1 above as to the Lots and, Seller shall issue and deliver a "Certificate of Readiness" (shown in Exhibit F) as to such Lots certifying the accomplishment of the foregoing items..

3. **COMPLETION OF FINISHED LOTS.** When the finishing and other work as described in this Exhibit D for or in connection with the Lots designated to be purchased by Buyer at a particular Closing, as required under Section 2 of this Exhibit D, have been completed and the Certificate of Readiness delivered, the parties shall, through their agents, servants, or employees, jointly inspect the improvements accomplished on those Lots designated to be

purchased by Buyer at a particular Closing and sign a memorandum ("Lot Inspection Report," shown in Exhibit G), wherein are described the results of their joint inspection. As a condition precedent to Closing, Seller shall complete the items noted on the Lot Inspection Report and repair all deficiencies within thirty (30) days after the date thereof, but in no event later than the date of Closing.

In the event the parties shall be unable to agree upon the completion of the Lot finishing and/or any other development work contemplated herein, or the defects in the completion of such work, each of the parties shall select a licensed professional engineer, and the two (2) engineers thus selected shall select a third and the majority decision of such three (3) engineers respecting the completion or non-completion of Lot finish shall be binding upon the parties and shall be issued in writing to the parties ("Engineer Certificate"). Each party shall pay all costs and expenses associated with the engineer which that party selects. All costs and expenses associated with the third engineer, selected by the first two engineers, shall be paid one-half (1/2) by Seller and one-half (1/2) by Buyer. Notwithstanding anything to the contrary contained in the Agreement, if the Engineer Certificate provides that any Lot finishing and/or any other development work contemplated herein, or the defects in the completion of such work, have been completed in all material respects, then Buyer's sole option, waiving all other rights and remedies at law and in equity, shall be to either (a) close on the disputed Lots in accordance with the Agreement including paying the full Purchase Price set forth in the Agreement without any offset, deduction or setoff and to thereafter resolve the alleged Buyer claims with Seller after Closing, (b) terminate this Agreement as to only the disputed Lots no later than ten (10) days after the delivery of the Engineer Certificate and thereafter receive a refund of the Deposit as it relates only to the disputed Lots, or (c) terminate this Agreement in whole no later than ten (10) days after the delivery of the Engineer Certificate and thereafter receive a refund of the entire Deposit upon the termination of this Agreement.

Upon completion of dwelling unit construction activity within any section of the Lots, Seller or Buyer, upon notification to the other, shall meet to complete the Post Construction Report (shown in Exhibit H), to list any deficiencies not listed on the Lot Inspection Report for which one or the other parties may be responsible to repair pursuant to this Exhibit D. The responsible party shall repair any deficiencies listed on the Post Construction Report and attributable to it, at its expense, within thirty (30) days of notification or at such other time as shall be agreed upon by Seller and Buyer.

4. HOMEOWNERS' ASSOCIATION.

A. Seller shall, at Seller's expense:

i. Cause to be established provisions for the maintenance, insurance, management, and ownership of the common areas, and the architectural integrity of the improvements to be constructed within the Subdivision through a homeowners' association (the "HOA"). At least fifteen (15) days prior to the Study Period Expiration Date, Seller shall prepare and provide to Buyer, for Buyer's approval, all HOA documents, including, without limitation, a public offering statement, a declaration of covenants, conditions, and restrictions covering the Subdivision (the "Declaration"), by-laws, architectural guidelines, and management company

information (collectively, the "HOA Documents"). Subject to Buyer's approval, Seller shall record or file the Declaration in the appropriate governmental records on or before the First Closing.

ii. Serve as the "**Declarant**" and the architectural review committee under the Declaration. Seller, as the Declarant and the architectural review committee, hereby approves Buyer's house plans (and all elevations thereof). Seller shall at no time deny Buyer's right to build a specific house plan or use certain products (including, without limitation, vinyl siding) within the Subdivision.

iii. Take all steps necessary to cause the Lots, as well as all other property comprising the Subdivision (including, without limitation, associated common areas and open space), to be annexed as a part of the HOA and subjected to the benefits and burdens of the Declaration, and in the event that Lots are added to the HOA in phases, the Lots to be purchased at a Closing must be annexed before Buyer settles on such Lots;

iv. Take all steps necessary to provide access for the owners purchasing homes from Buyer to all recreational facilities and/or other amenities, if any, serving any portion of the Subdivision on the same basis and at the same cost, if any, to which all other users thereof are subject; and

v. Cause to be administered the HOA, including establishment of an annual operating budget, so that monthly assessment information may be provided to Buyer's customers.

B. Seller shall, at Seller's expense, to cause the HOA Documents to be approved by the proper governmental authorities (including, if necessary, but not limited to, revising the HOA documents, subject to Buyer's approval); posting any and all bonds for public or private improvements within the Property; creating and funding any and all escrows as may be required by any such authorities; and delivering an attorney's certification letter to such authorities). Seller shall cause the HOA Documents to be modified as requested by Buyer in connection with Buyer's development on the Lots and construction and sale of homes within the Subdivision.

C. Seller shall cause the common areas to be deeded either to the HOA or to the appropriate governmental authority, when and as may be required by the HOA documents, or such governmental authority, or when requested by Buyer, with good and marketable fee simple title, free and clear of all agreements, easements, covenants, restrictions, liens and encumbrances of any kind, except for those expressly permitted by the HOA documents. Seller agrees to supply Buyer with all information regarding the HOA that is required by any governmental authority to be disclosed. Seller also agrees to promptly execute any and all documents and certificates in connection therewith as is reasonably requested by Buyer.

D. Buyer shall be exempt from paying assessments and any capital contributions to the HOA. Seller shall be solely responsible for funding any deficit of the HOA.

E. Buyer shall include in its contracts with homebuyers all disclosures required by SOUTH CAROLINA law with respect to the HOA. Buyer hereby agrees to indemnify Seller from

any liability or damage as a result of Buyer's failure to comply with this provision.

F. Seller shall ensure that the Declaration provides Buyer at least one (1) vote for each of the Lots owned by Buyer and shall add Buyer, at Buyer's discretion, as a member of the HOA Board of Directors.

EXHIBIT E

SELLER-BUYER RESPONSIBILITY CHECKLIST

A.	<u>Designs and Plans</u>	SELLER	BUYER	N/A
1	Boundary Survey	x		
2	Topographic Survey	x		
3	Preliminary Plan(s)	x		
4	Zoning Approvals	x		
5	Wetlands Study	x		
7	Flood Plain Certification	x		
8	Sediment Control Design Plans	x		
9	Water and Sewer Design Plans	x		
10	Pavement Design Plans	x		
11	Individual House Siting Plans		x	
12	Entry Features and Monument Plans	x		
13	Landscape Plans – ROW and Common Areas in vicinity of roads (including collector roads, if any) shown on the Final Subdivision Plat	x		
14	Landscape Plans – On Lot		x	
15	Driveway Centerline Plans		x	
16	Storm Drainage Design Plans	x		
17	Storm Water Management Plans	x		
18	Mass Grading Plans, including any agreed upon Hold Downs	x		
19	Lot Grading Plans – Hold Down Plan	x		
20	Lot Grading Plans – Final Grading after Home Construction		x	
21	Retaining Wall Plans – Off Lot or On Lot - if required by the Plans or necessary to develop the Property for its Intended Use	x		
22	Retaining Wall Plans – On Lot - if necessary specifically to accommodate Buyer's house construction		x	
23	Common Areas Amenities Design Plans	x		

B.	<u>Platting and Legal Documents</u>	SELLER	BUYER	N/A
1	Record Subdivision Plats/Final Plats	x		
2	Homeowner's Association Documents	x		
3	Homeowner's Association Disclosure Statement		x	
4	ROW Easements	x		
5	Utility Easements – On-Site	x		
6	Utility Easements – Off-Site	x		
7	Public Works Agreements	x		

C.	Permits, Bonds and Fees	SELLER	BUYER	N/A
1	Maintenance Bonds	x		
2	Subdivision Bonds	x		
3	Sediment Control Bonds – Site, if any	x		
4	Development Bonds and Permit Fees – Site	x		
5	HOA Assessment Fees – Lots, if any	x		
6	Primary Electric Connection Fees	x		
7	Secondary Electric Connection Fees		x	
8	Site Development Plan – Bonds and Fees	x		
9	Sewer and Water Reservation Fees	x		
10	Sewer and Water Impact Fees	x		
11	Building Permit Fees		x	
12	Plumbing Permit Fees		x	
13	Water or Sewer Connection/Tap Fees		x	
14	Impact Fees – associated with Plat recordation prior to application for Building Permit, if any	x		
15	Entry Monument Permits, Bonds and Fees	x		
16	HOA Capital Contributions - Lots, if any	x		

D.	Computations, Controls and Stakeout	SELLER	BUYER	N/A
1	Clearing Stakeout	x		
2	Clearing Stakeout – Lots	x		
3	Lot Stakeout Controls (one time only)	x		
4	Excavation Stakeout – Mass Grading	x		
5	Excavation Stakeout for On-Lot Grading – Hold Down	x		
6	Excavation Stakeout for On-Lot Grading – Final Grading (Home Construction)		x	
7	Water and Sewer Main Stakeout	x		
8	Storm Drainage Stakeout	x		
9	Curb and Gutter/Pavement Stakeout	x		
10	Primary Electric and Telephone Stakeout including Street Crossings	x		
11	Secondary Electric, Gas and Telephone Stakeout		x	
12	House Corner Stakeout		x	
13	Front Lot Corners (one time)	x		
14	Rear Lot Corners (one time)	x		
15	Traverse Controls for House Stakeout		x	
16	Final Lot/House Survey		x	
17	Wall Check Surveys		x	
18	Earthwork Computations – Lots	x		
19	Earthwork Computations – ROW	x		
20	SWM, Utility, and Roadway As-Builts	x		

<u>E.</u>	<u>Development Work</u>	<u>SELLER</u>	<u>BUYER</u>	<u>N/A</u>
1	Clearing ROW and Common Areas	x		
2	Clearing Lots – per Mass Grading Plan	x		
3	Grade Establishment – ROW, Common Areas, On-lot Hold Down	x		
4	Final Grade On Established Lots (after Home Construction only)		x	
5	On-Lot fill placed on building pad as shown on Approved Plans and Compaction and Engineer's Certification of such fill.	x		
6	Pad Elevation Certifications	x		
7	Erosion and Sediment Control Initial Installation Per Approved Plans (Site E & S Plan)	x		
8	Water and Sewer Main Installation	x		
9	Storm Drain and Management Areas Installation	x		
10	Curb and Gutter Installation	x		
11	Base Course and Final Pavement Installation	x		
12	Installation of Primary Electric and Telephone to Property Line of Each Lot	x		
13	Grade Establishment for Installation of Primary Electric and Telephone to Property Line of Each Lot	x		
14	Blasting for building pads, if necessary	x		

F.	Amenities, Common Area	SELLER	BUYER	N/A
1	Sewer and Water Laterals Clearly Marked at Each Lot Line	x		
2	Initial Seeding and Stabilization of Lots	x		
3	Street Lights shown on Plans	x		
4	Street Signs	x		
5	Sidewalks – within the ROW abutting the front or side yards of Lots acquired by Buyer		x	
6	Sidewalks – within or adjacent to any public right-of-way adjacent to or serving the Property	x		
7	Sidewalks – On-Lots (lead walks from public sidewalk/driveway to house)		x	
8	Retaining Walls – Off Lots or On Lots - if required by the Plans or necessary to develop the Property for its Intended use	x		
9	Retaining Walls – On Lots - if necessary to specifically accommodate Buyer's house construction		x	
10	Driveway Aprons to Property Line, if any		x	
11	Driveway Culverts, if any		x	
12	Landscape Installation – ROW and Common Areas and in vicinity of roads (including collector roads, if any) shown on Final Subdivision Plat	x		
13	Landscape Installation – On-Lots		x	
14	Street Trees Installation – ROW and Common Areas and in vicinity of roads (including collector roads, if any) shown on Final Subdivision Plat	x		
15	Street Trees Installation – On-Lots		x	
16	Short-term and Long-term maintenance of Street Trees		x	
17	Entry Monument Construction	x		
18	Entry Monument Landscape Installation	x		
19	Mailboxes - acquisition and installation – individual curbside, if any		x	
20	Mailboxes - installation of concrete pads, sidewalks, and required parking spaces, if any, for gang mailbox kiosk(s) serving the Subdivision, in addition to any and all such gang mailbox kiosk(s).	x		
21	Mailboxes – approval by USPS and local authorities for all mail facilities, including site work, required parking and shelters, if necessary.	x		
22	Trash Receptacles	x		
23	Tot Lots – design, if any	x		
24	Tot Lots – Construction, if any	x		
25	Trash Pad	x		
26	Trash Pad Fencing	x		
27	Common Area/ROW Fencing, if any	x		
28	Storm Water Management Area Fencing, if required	x		

EXHIBIT F

CERTIFICATE OF READINESS

In accordance with the Lot Purchase Agreement dated _____, 2020, by and between **RED CLAY DEVELOPMENT, SC, LLC** ("Seller") and **DAN RYAN BUILDERS SOUTH CAROLINA, LLC** ("Buyer"), Seller certifies that it has completed all work prerequisite to Closing on Lots numbered:

_____.

Date: _____

Signed:

RED CLAY DEVELOPMENT, SC, LLC

By: _____

