

# Spring Run Townhomes

## REAL ESTATE PURCHASE CONTRACT FOR NEW HOME CONSTRUCTION

<b>BUYER(S):</b>	
<b>BUYER'S CURRENT ADDRESS:</b>	
<b>BUYER PHONE:</b>	
<b>BUYER EMAIL:</b>	
<b>UNIT NUMBER:</b>	
<b>PROPERTY ADDRESS:</b>	
<b>BASE PURCHASE PRICE:</b>	
<b>CONSTRUCTION UPGRADES COST:</b>	To be approved by Seller and Buyer in writing called "Addendum A".
<b>FINISH UPGRADE COST:</b>	To be approved by Seller and Buyer in writing called "Addendum B".
<b>TOTAL PURCHASE PRICE:</b>	The Base Purchase Price plus costs stated in Addendum A and in Addendum B.
<b>ESCROW AGENT:</b>	National Title Agency

### CONTRACT DEADLINES

<b>OFFER DATE:</b>	
<b>3 DAY CANCELLATION DATE:</b>	The 3rd calendar day from date of Seller's Acceptance date by 4:00 PM. ( _____, 20__ )
<b>INVESTIGATION DEADLINE:</b>	The 3rd calendar day from date of Seller's Acceptance date by 4:00 PM.
<b>LOAN COMMITMENT DATE:</b>	The 5th calendar day from date of Seller's Acceptance date by 4:00 PM.
<b>FINANCING DEADLINE DATE:</b>	The 10th calendar day from date of Seller's Acceptance date by 4:00 PM.
<b>DESIGN MEETING DEADLINE:</b>	The 24th calendar day from date of Seller's Acceptance date by 4:00 PM.
<b>UPGRADES/SELECTION DATE:</b>	The same date as the Design Meeting date unless agreed otherwise in writing.
<b>CLOSING DATE:</b>	Within 3 business days following issuance of certificate of occupancy (C of O) which is estimate to be on or before _____, 20__. A delayed issuance of the C of O shall extend the closing date to the 3 <sup>rd</sup> business day thereafter. Seller shall give 7 calendar days advance notice thereof.

Buyer Confirmation of the Contract Deadlines: \_\_\_\_\_

This *Real Estate Contract for New Home Construction* ("**Contract**"), is delivered to Spring Run Townhomes, LLC, a Utah limited liability company ("**Seller**"), by the above-named home buyer(s) ("**Buyer**") as of the Offer Date identified above. Buyer wishes to purchase from Seller a new townhome ("**Home**") on the lot identified above ("**Lot**") (collectively, the Home and the Lot are referred to herein as the "**Property**").

## ACCEPTANCE BY SELLER'S AUTHORIZED REPRESENTATIVE REQUIRED

BUYER UNDERSTANDS AND AGREES THAT THIS CONTRACT WILL BECOME A BINDING CONTRACTUAL OBLIGATION OF BUYER AND SELLER IF, AND ONLY IF, THE CONTRACT IS ACCEPTED BY SELLER'S AUTHORIZED REPRESENTATIVE. AS USED IN THIS CONTRACT, "SELLER'S AUTHORIZED REPRESENTATIVE" MEANS ONE OF SELLER'S OWNERS AND NO OTHER PERSON. AS SET FORTH IN SECTION 21, BELOW, SELLER'S ACCEPTANCE, IF ANY, WILL BE INDICATED BY THE SIGNATURE OF SELLER'S AUTHORIZED REPRESENTATIVE ON THE ACCEPTANCE PAGE OF THIS CONTRACT. BUYER UNDERSTANDS AND AGREES THAT SELLER'S SALES REPRESENTATIVE IS NOT AUTHORIZED TO ACCEPT THIS CONTRACT ON BEHALF OF SE

## TERMS AND CONDITIONS

Subject to Acceptance of this Contract by Seller's authorized representative, Buyer and Seller agree to the following terms and conditions with respect to Buyer's purchase of the Property from Seller.

**1. PROPERTY.** As used in this Contract, Property refers to the Townhome also referred to as "Home" or "home" to be purchased by Buyer in the project identified above ("**Project**").

**2. PURCHASE PRICE.** At Closing, Buyer will pay a purchase price for the Property ("**Purchase Price**") which is equal to the Base Purchase Price identified above, plus the price for Options for Construction Upgrades stated in Addendum A, above, plus the price for Options for Finish Upgrades selected by Buyer described in **Section 6.1** stated in Addendum B (if applicable). Addendum A and Addendum B shall constitute amendments to this Agreement when signed by Seller and Buyer. In addition, the Purchase Price may be modified by any approved Change Order.

**2.1 Earnest Money Deposit.** An earnest money deposit ("**Earnest Money Deposit**") in the amount of \$3,000.00 will be due from Buyer, in the form of a check or a wire payable to the escrow agent ("**Escrow Agent**"), within 2 business days of Seller's acceptance of this Contract.. Upon Acceptance, the Earnest Money Deposit will be deposited with, and held by, the above-named escrow agent ("**Escrow Agent**") in accordance with the laws of the State of Utah. If Seller does not accept this Contract, the entire amount of the Earnest Money Deposit will be returned to Buyer. Buyer shall have until 4:00 PM on the 3<sup>rd</sup> day from the date of Seller's acceptance date to cancel the Contract and receive a full refund of the Earnest Money Deposit for any reason. Unless otherwise provided in this Contract, the Earnest Money Deposit will be **NON-REFUNDABLE TO BUYER AT THE END OF THE 3-DAY CANCELTION PERIOD**. At Closing, the Earnest Money Deposit will apply towards the Purchase Price payable by Buyer.

**2.2 Construction Deposit.** A construction deposit ("**Construction Deposit**") will be due and payable to Seller within 2 business days of the date of the Design Meeting. The total Construction Upgrade costs shall be added to this Contract as **ADDENDUM A**.

**2.2.1 Construction Upgrades:** 50% of the Upgrade costs requested by Buyer totaling \$5,000 or more.

**2.2.2 Basement Upgrade:** 50% of the additional Basement Upgrade cost.

The Construction Deposit, if applicable, must be paid by Buyer at the time of the Design Meeting, as hereinafter set forth. Failure to do so will result in a delay in construction and/or a cancellation of the Contract, in which case the Earnest Money Deposit will be released to and retained by Seller.

Unless otherwise provided in this Contract, the Construction Deposit will be **IMMEDIATELY NON-REFUNDABLE TO BUYER** when paid, and shall be immediately disbursed to Seller and used by Seller for all costs incurred in connection with construction of the Home on the Lot. At Closing, the Construction Deposit will apply towards the Purchase Price payable by Buyer.

**3. EXISTING HOME SALE CONTINGENCY.** If Buyer and Seller have signed a Sale of Existing Home Contingency Addendum ("**Contingency Addendum**"), Buyer's and Seller's respective duties under this Contract are contingent on the terms and conditions of

the Contingency Addendum being satisfied and this Contract not being canceled pursuant to a right provided in the Contingency Addendum.

**4. BUYER'S INVESTIGATION PERIOD.** Buyer shall have a period continuing for three (3) calendar days after the Seller's Acceptance Date ("**Investigation Period**") to conduct the investigations provided for in this **Section 4** and to exercise the rights provided herein. The Investigation Period shall be deemed to end at 4:00 PM on the 3<sup>rd</sup> day after the Seller's Acceptance Date.

**4.1 Buyer's Obligation to Conduct Investigations.** Buyer is responsible to perform all Investigations which Buyer deems necessary and appropriate for Buyer to make an informed decision to purchase the Property including, but not limited to: reviewing the location of the Property and the terms of the applicable plat; assessing easements and rights of way on or affecting the Property; determining applicable setback requirements; reviewing the CC&Rs and title reports; examining proposed layouts for the community; analyzing neighboring properties and uses; utility services; Seller's Disclosures; Eagle Mountain City standards, laws, and requirements; and reviewing applicable zoning and building laws and regulations.

**4.2 Investigation Materials.** Buyer must make an independent investigation of the Property. Any materials provided by Seller are for Buyer's convenience only, and Seller makes no representation about the completeness, accuracy, or timeliness of such materials. Buyer acknowledges and agrees that **BUYER MAY NOT RELY ON ANY ORAL STATEMENTS OR VERBAL REPRESENTATIONS FROM SELLER OR SELLER'S SALES REPRESENTATIVES**. Buyer may rely only on written statements and written information approved and provided by Seller.

**4.3 Survey and Other Materials.** Buyer shall be solely responsible to pay all costs for any survey desired by Buyer. In the event of any conflict between the legal description of the Property set forth in the deed delivered to Buyer at Closing and any survey stakes or pins that may be located on the property at Closing, the legal description set forth in the deed shall control. At Seller's request, Buyer agrees to confirm that all survey pins are in place on the Property. After Closing, Buyer will be solely responsible for maintaining and preserving the survey pins for the Property.

**4.4 Buyer's Right to Cancel During Investigation Period.** Buyer may terminate the Contract for any reason within the Investigation Period and receive a full refund of the Earnest Money Deposit. However, to be effective, **SUCH WRITTEN TERMINATION NOTICE MUST BE RECEIVED BY SELLER PRIOR TO 4:00 P.M. ON THE THIRD (3<sup>RD</sup>) DAY (LAST DAY) OF THE INVESTIGATION PERIOD**.

**4.5 Notice For Release of Earnest Money.** In any of the events that the Earnest Money has become non-refundable, as stated in any section herein and the Contract states that it shall be released to Seller, written notice shall first be given to Buyer and to the Escrow Agent. Seventy-two (72) hours from the date and time of sending such notice, the Earnest Money shall be released to Seller by Escrow Agent, both of whom shall be released from further responsibility or obligations to Buyer.

**5. BUYER'S FINANCING.** Buyer covenants and agrees to use Buyer's best efforts during the investigation period to qualify for financing to purchase the Home and submit a loan application to an Approved Lender. The application must include Buyer's income, expenses, assets, and liabilities, a credit report application, together with any other requirements of the lender.

(a) By 4:00 PM on the 5th day from the date of Seller's Acceptance Date Buyer is required to submit a letter to Seller from an Approved Lender that is subject only to verification of the information set forth in Buyer's loan application, the Approved Lender will provide a loan to Buyer in the amount of the Purchase Price ("**Pre-Qualification Letter**").

(b) By 4:00 PM on the 10th day from the date of Seller's Acceptance Date Buyer must transmit written Loan Commitment from the Approved Lender to Seller stating the following: (1) the information contained in the loan application has been verified, (2) the credit report is acceptable, (3) the Lender will provide a loan to Buyer in the amount of the Purchase Price including upgrades, (4) the interest rate and payment, and (e) any remaining conditions. Approved Lenders are defined hereafter.

**5.1 Seller Suggested Lender.** Seller may suggest a lender that will be deemed to be an Approved Lender if the requirements of Section 5 including those below are completed within the specified time. Each such lender is subject to the requirement to provide a Loan Commitment Letter to Seller as stated herein.

**5.2 Buyer Selected Lender.** Alternatively, Buyer may submit a complete loan application to a lender of Buyer's choice with the information necessary for the lender to issue the Loan Commitment Letter. This lender shall be deemed to be an Approved Lender if the requirements of Section 5 including those below are completed within the specified time.

**5.2.1** Buyer must notify Seller in writing that Buyer has elected to use Buyer's Lender to close this transaction, and to provide to Seller the name and contact information for Buyer's Lender within 3 business days of Seller's Acceptance. Buyer agrees to provide to Seller by 4:00 PM of the 5<sup>th</sup> day after Seller's Acceptance Date a written Loan Commitment Letter from Buyer's Lender for the required loan, subject only to verification of information in the application and satisfactory credit information including the following: (a) Maximum approved purchase price and loan amount; (b) Lender's conditions for approval (the loan commitment/approval may include commercially reasonable conditions that the parties reasonably believe will be satisfied by Closing); and (c) Interest rate.

**5.2.2** After 4:00 PM on the 5<sup>th</sup> day from the date of Seller's Acceptance, Buyer **shall not** have the right to change Buyer's Lender **unless**: (a) Buyer has notified Seller and Seller gives written approval within the following 2 business days thereafter and (b) the new Buyer's Lender provides the information required by Section 5 including subsection 5.4 to Seller in writing by the Financing Deadline dates.

**5.3** This Contract is conditioned upon an Approved Lender providing the Loan Commitment Letter, on terms and conditions acceptable to Seller in Seller's sole discretion. Until Closing, Buyer agrees to fully respond to any requests from an Approved Lender, if applicable, for documents or information, within two (2) business days after any such request.

**5.4 Seller's Right to Communicate with Lenders.** Buyer hereby authorizes Seller during the term of this Contract to communicate with the Approved Lender and, if applicable, Buyer's Lender regarding Buyer's ability to qualify for and secure financing for the purchase of the Property. Without limiting the foregoing, Seller may request and receive periodic status updates on such financing. Buyer further authorizes Seller during the term of this Contract to disclose to, and receive from, Approved Lender, Buyer's Lender, and Escrow Agent the following: (a) information about Buyer, (b) information about all aspects of this transaction and the financing thereof, and (c) information about this Contract and the appraisal of the Property.

**5.5 Buyer's Right to Terminate (Financing).** If Buyer is unable to obtain the Loan Commitment Letter meeting the requirements of Section 5, then Buyer may terminate this Contract by written notice to Seller, **PRIOR TO** 4:00 PM on the Financing Deadline Date and, Escrow Agent shall promptly disburse the Earnest Money Deposit to Buyer. If notification of termination is delivered to Seller after the Financing Deadline Date, then Escrow Agent will promptly disburse the Earnest Money Deposit to Seller.

**5.6 Buyer's Failure to Terminate Prior to Financing Deadline.** If Buyer does not terminate this Contract by 4:00 PM on the Financing Deadline Date, then except as otherwise provided in this Contract, the total amount of the Earnest Money Deposit will become non-refundable to Buyer and released to Seller.

**5.7 Seller's Right to Terminate (Financing).** In addition to any other right of termination provided to Seller in this Contract, Seller shall have the right to terminate on the following conditions.

**5.7.1** If Buyer has not submitted a loan application to the Approved Lender and transmitted a Loan Commitment Letter to Seller within ten (10) business days after the Seller's Approval Date, then Seller may terminate this Contract by written notice to Buyer, in which case the Earnest Money Deposit will become non-refundable to Buyer, and Escrow Agent will deliver the Earnest Money Deposit to Seller.

**5.7.2** In the event Buyer is unable to obtain the Loan Commitment Letter before the expiration of the Financing Deadline Date, or the terms of the Loan Commitment Letter are unsatisfactory to Seller or the Approved Lender, Seller may, in its sole discretion, terminate the Contract, in which case the Earnest Money Deposit will become non-refundable to Buyer, and

Escrow Agent will deliver the Earnest Money Deposit to Seller. In no event shall Seller's election not to terminate the Contract under this Section be deemed an approval of Buyer's financing methods or a waiver of any rights of Seller or any conditions set forth in this Contract.

**5.7.3** If at any time during the term of this Contract, after the Loan Commitment Letter has been provided to Seller, Buyer's lender changes or the terms of Buyer's financing change and such changes are not approved by Seller, Seller may, in its sole discretion, terminate the Contract, in which case the Earnest Money Deposit will become non-refundable to Buyer, and Escrow Agent will deliver the Earnest Money Deposit to Seller.

**5.8 Lender Actions.** Buyer acknowledges and agrees that Seller will not be liable for any of the following: (a) any lender's refusal to provide a Loan Commitment Letter, or an update thereto, or to otherwise refuse to provide a loan for Buyer's purchase of the Property; (b) any changes in interest rates applicable to Buyer's financing, which changes are caused for any reason, including without limitation, construction delays, changed market conditions, etc.; (c) any delay or cost due to any change in the structure of the loan requested by Buyer, Approved Lender, or Buyer's Lender and Buyer alone is responsible for any delay or cost caused by any such change. Buyer assumes all risk in entering into a so called "interest rate lock" with any lender.

## **6. OPTIONS, DESIGN MEETING, AND BUYER OPTIONS APPROVALS.**

**6.1 Options.** Buyer will have the opportunity to review many choices (including upgrades) currently available for the design, color, materials, and structural components of the Home ("**Options**") prior to the Design Meeting. **BUYER UNDERSTANDS AND AGREES THAT BUYER'S SELECTION OF OPTIONS MAY INCREASE THE PURCHASE PRICE FOR THE PROPERTY AND THAT THE SELECTION OF CERTAIN OPTIONS MAY REQUIRE BUYER TO PAY AN ADDITIONAL FEE, AS SET FORTH IN SECTION 2.2.** The cost of any particular Option will be determined as of the date such Option is selected, not as of the Acceptance Date. When finalized, the Options selected by Buyer will be added to this Contract as **ADDENDUM B** (Options and Upgrades, and Color Selection Addendum).

**6.2 Design Meeting.** Buyer shall schedule a meeting with Seller's design team ("**Design Meeting**") to select the Options for the Home. During the Design Meeting, Seller's design team will assist buyer with the selection of various Options, including, without limitation, colors, lighting, cabinetry, countertops, flooring, optional basement finish and other Options. Buyer shall finalize Buyer's Options selections and Buyer and Seller shall execute all documentation regarding Options for the Home, including but not limited to an addendum signed by Buyer and Seller specifying upgrades and the cost thereof referred to as **ADDENDUM B**. The Design Meeting shall occur no later than the Design Meeting Deadline, which shall also be the **Upgrades Selection Deadline**. No changes to the Options shall be allowed after the Design Meeting without a payment of \$500 from Buyer and with Seller's approval. Buyer shall pay 50% of the costs in excess of \$5,000 specified in Addendum B.

**6.2.1** Buyer's Options selections will determine the amount of the Construction Deposit in accordance with section 2.2. As the total cost of the Options increases, the amount of the Construction Deposit will increase.

**6.2.2** Any agreed upon changes or changes to Buyer's Options selections made after the Options Selection Deadline will require a written Change Order approved by Seller in accordance with **Section 7.4** including the costs resulting from such changes.

**6.2.3** If Buyer is permitted by Seller to make changes to the Options after the Options Selection Deadline, Buyer will be required to supplement the Construction Deposit consistent with section 2.2 of this Contract. Such supplemental amounts will be immediately due and payable at the time of execution of the applicable Change Order. Seller may suspend construction activities, and all deadlines set forth in this Contract shall be postponed, including the date for Substantial Completion, until such additional Construction Deposit is paid to Seller.

**6.2.4** All color selection items, including floorings, countertops, paint, cabinets, etc., are **SUBJECT TO AVAILABILITY AT THE DESIGN CENTER**. Seller may increase the amount of the Construction Deposit based upon customized colors including

accent wall colors and material color selections of Buyer. Such increase in the Construction Deposit will be Seller's reasonable estimate of the costs that Seller would incur to change the color and/or the materials to a neutral or appropriate color in order to re-sell the Home in the event that Buyer defaults under this Contract

**6.2.5** Options available for the Home shall only be those Options offered at the design center and Seller shall have no liability for any limitations or unavailability of Options. Options that are or were available for other homes in the Subdivision may not be available for Buyer's Home. Options that are available on the Acceptance Date may become temporarily or permanently unavailable thereafter **WITHOUT NOTICE TO BUYER**.

**6.3 Delay in Design Meeting.** The date of the Design Meeting may be extended past the timeframe set above but only in the following circumstances:

**6.3.1** Upon written notice to Seller, Buyer may extend the date of the Design Meeting up to fourteen (14) calendar days if Buyer requires additional time to select Options for the Home; however Buyer must still pay the Construction Deposit within the time period required by **Section 2.2**

**6.3.2** Upon written notice to Buyer, Seller may extend the date of the Design Meeting up to three (3) periods of fourteen (14) calendar days each if Seller needs additional time to prepare for or schedule the Design Meeting.

**6.3.3** If through no fault of Seller, the Design Meeting does not occur within the required time period, Seller shall have the option to terminate this Contract by written notice to Buyer, whereupon all of the Earnest Money Deposit will be delivered to and retained by Seller, and all of the Construction Deposit will be returned to Buyer.

**7. CONSTRUCTION OF THE HOME.** Following the Design Meeting and payment of the Construction Deposit, Seller is authorized to take all actions necessary to construct the Home. Seller shall pay all building permit fees, impact fees, and utility connection fee; provided that the Seller will only pay for the following utilities: culinary water and secondary water, sewer, electricity, and natural gas. If Buyer desires other utility connections, Buyer must request the same on a Change Order and Buyer will be responsible for the connection fee for such utilities. Seller makes no warranty that utilities other than the previously-mentioned utilities are available in the Project.

**7.1 Construction Schedule.** Seller will make reasonable efforts to have the Home Substantially Complete within [\_\_\_\_] days after the later of (a) the Design Meeting, or (b) the date the building permit for the Home is issued by the applicable governmental authority.

**7.1.1** Notwithstanding the foregoing, Seller does not guaranty any specific date for Substantial Completion, and Substantial Completion may occur before, on, or after such date. Moreover, Seller will not be liable for any delay in construction or Closing caused by any reason beyond Seller's control, including but not limited to: governmental order or action, governmental inaction or failure to approve permits or applications, theft of material and building supplies, labor or material shortages, action or inaction by Buyer or Buyer's withholding of applicable approvals, adverse weather, unanticipated field/site conditions, casualty events, political disruptions, disasters, or acts of God (each an "**Event of Force Majeure**"). Any Event of Force Majeure shall automatically extend the estimated date for Substantial Completion.

**7.1.2** If Buyer is unable to demonstrate Buyer's ability to make full payment of the Purchase Price at any time after the Meeting (including, without limitation, Buyer's failure to provide an updated Loan Commitment upon request from Seller), then Seller may (but is not obligated to) cease its construction activities related to the Home until such time as Buyer is able to demonstrate Buyer's ability to make full payment of the Purchase Price at Closing, and any such delay shall be considered an Event of Force Majeure.

**7.2 Construction Plans.** At the Design Meeting, Buyer and Seller shall approve in writing the structural, floorplan, layout, and design components and the various Options for the Home (such structural, floorplan, layout, design, and Option selections, as modified by any approved Change Orders being the "**Plans**"). If Buyer fails to provide written approval at the Design Meeting,

Buyer will be deemed to have approved the Plans unless Buyer provides written objection to the Plans within five (5) days after the Design Meeting.

**7.3 Seller's Discretionary Right to Make Changes.** Although Seller will construct the Home substantially in accordance with the Plans, Buyer hereby acknowledges and agrees that the Home, its final location and elevation on the Lot, and other characteristics of the Property, including, without limitation, side yards, front setbacks, and/or rear setbacks, **MAY VARY FROM THE PLANS** due to such matters as requirements of applicable governmental authorities, locations of utility lines and easements, and other development and construction considerations which may be resolved in Seller's sole and absolute discretion.

**7.3.1** Buyer acknowledges and agrees that there may be minor variations in the Home, including, by way of example only and without any limitation, square footage, room size, dimensions, and construction of the Home as a mirror image of model homes viewed by Buyer or shown in the Plans approved by Buyer, changes to electrical outlets and switches, HVAC duct work and plumbing, cabinet panel size, and placement of cabinet drawers and cabinet doors, etc., all of which may be made by Seller in Seller's sole and absolute discretion. Notwithstanding the foregoing, all changes will meet applicable building code requirements.

**7.3.2** In the event that Seller deems that any material changes to the Plans are necessary to comply with building code requirements, governmental inspections, etc., or to accommodate the discontinuance or shortage of any colors or materials identified in Buyer's Options selections, then Seller will propose such changes in writing to Buyer, whereupon Buyer will have five (5) calendar days to approve the same. If Buyer does not respond to Seller in writing within such five (5) day period, then Buyer will be deemed to have accepted Seller's proposed modifications to the Plans. If Buyer rejects such proposed modifications to the Plans, then the parties agree to work in good faith to agree on modifications to the Plans so as to comply with applicable government rules, regulations, inspection requirements or to account for such material discontinuance or shortage. If the parties are unable to reach an agreement, Seller may, after written notice to Buyer, terminate this Agreement whereupon the Earnest Money Deposit and Construction Deposit will be released to and retained by Seller.

**7.3.3** Buyer acknowledges and agrees that Seller may, in Seller's sole and absolute discretion, change or substitute building materials, finishes, colors, components, and fixtures with reasonably comparable items, and Buyer acknowledges that Seller makes no representation or warranty regarding the suppliers or materialmen to be used in the construction of and furnishing of materials for the Home.

**7.3.4** Buyer acknowledges that Seller may modify the landscape plan as deemed necessary for the integrity and overall appearance of the development. This could include, without limitation, the remove any plants, trees, and shrubbery from the Home as Seller deems necessary.

**7.3.5** Buyer acknowledges and agrees that changes to the Project plat or plans may require additional changes to the Home not identified in this **Section 7.3**, and Buyer consents to such changes.

**7.3.6** Buyer acknowledges and agrees that Seller makes no representation that the Home will be consistent with any model home or other home in the Subdivision with respect to layout, height, lot placement, or square footage.

**7.3.7** Buyer hereby indemnifies and holds harmless Seller and affiliates from and against all claims of any nature, including but not limited to attorneys' fees and costs, arising from or related to any of the foregoing matters. The foregoing waiver, release, and indemnity shall survive Closing and any termination of this Contract.

**7.4 Change Orders.** Following the Options Selection Deadline, additions, changes, or modifications to the Plans, including any Buyer's request for upgrades or other changes or modifications to Buyer's Options selections can only be made through a

change order form ("**Change Order**") approved by Seller and Buyer. Any Change Order approved by Seller must comply with the following provisions.

**7.4.1** The time for making Change Orders is limited. After certain points in the construction process, certain requests for changes cannot be accommodated. However, all Change Orders are subject to Seller's approval which may be refused in Seller's sole discretion.

**7.4.2** Each Change Order must identify in detail: (a) the specific addition, change, or modification requested by Buyer, and (b) any increases or other changes to the Purchase Price for the Home which result from the additions, changes, or modifications identified in the Change Order.

**7.4.3** Buyer must provide to Seller evidence that Buyer can pay for the increase in the Purchase Price in cash or that the Approved Lender or Buyer's Lender has approved the increase in the Purchase Price.

**7.4.4** Notwithstanding any other provision of this Agreement, Buyer understands and agrees that Seller has no obligation to approve any Change Order. Buyer's request for a Change Order may be denied **FOR ANY REASON IN SELLER'S SOLE DISCRETION**. Buyer also understands that no Change Order will be deemed effective unless and until **APPROVED BY SELLER'S AUTHORIZED REPRESENTATIVE** as provided in **Section 21**.

**7.5 Buyer's Entry onto Lot Prior to Closing.** Buyer acknowledges that construction sites are inherently dangerous. Buyer agrees not to enter the Property prior to Closing unless: (a) Buyer schedules an appointment with Seller, (b) Seller authorizes such visit at the appointed time, and (c) Buyer is accompanied by an employee or representative of Seller. Buyer agrees not to bring children under the age of fifteen (15) to the Property during construction. Buyer agrees to observe all directions from Seller or Seller's representatives. Notwithstanding the foregoing, any entry by Buyer or Buyer's family or Buyer's invitees **with or without Seller's approval** shall conclusively constitute assumption of all risks of bodily injury and property damage by Buyer and Buyer's family or Buyer's invitees. Buyer shall indemnify and hold Seller harmless from any and all claims or damages incurred or asserted by any person (including, but not limited to, claims for personal injury) and from any damage to the Property or other properties or to any personal property arising from or relating to entry onto the Property by Buyer or Buyer's family or Buyer's invitees and Buyer shall be solely responsible for all costs or damages caused by entry upon the Property by Buyer or Buyer's family or Buyer's invitees.

**7.6 Buyer's Work.** For various reasons, including but not limited to concerns regarding, safety, insurance, construction scheduling, warranties, and liability, no work of any nature may be performed by Buyer or anyone contracted by Buyer or acting on behalf of or at the request of Buyer until Closing is complete and possession of the Property has been transferred to Buyer. If Buyer violates this section, Buyer shall be responsible for all the costs of removing any work performed by Buyer (or any person acting on behalf of or at the request of Buyer). In addition, Buyer indemnifies and holds Seller harmless for any damages, losses, or claims incurred by Seller, or asserted against Seller, including attorney fees, as a result of, or arising from, any work performed by Buyer or any person acting on behalf of or at the request of Buyer.

**7.7 Drainage Plan.** The "**Drainage Plan**" for the Lot includes, but is not limited to, grading the Lot, establishing the dirt elevation around the foundation of the Home, and installing rain gutter down spout extensions in specific locations. Once the components of the Drainage Plan for the Lot are accepted by the city or county in which the Lot is located as meeting applicable drainage requirements (which acceptance will be evidenced by a certificate of occupancy for the Home), then Buyer covenants and agrees to maintain such drainage plan. Buyer assumes all risks of, and agrees to indemnify and hold Seller harmless from (a) any alterations or modifications to the Drainage Plan caused by the actions of Buyer or any third-party, and (b) alterations or modifications to the Drainage Plan caused by events beyond Seller's control including, without limitation: weather events, rain, sprinkler water, settling of the soils through natural causes or watering, or development of adjacent properties.

**7.8 Water Damage.** Buyer acknowledges and agrees that Seller shall have no liability or responsibility of any kind for water seepage, flooding, leaks, or other water damage to the Home caused by or resulting from Buyer's use of the Property, Buyer's sprinklers (if any), or any other actions of Buyer or Buyer's guests, family members, or invitees.



**7.9 Substantial Completion.** As used in this Contract, “**Substantial Completion**” or “**Substantially Complete**” means that all construction work with respect to the Home has been completed, subject to only minor items remaining to be completed or repaired (with such items being nothing more than industry-standard “punch list” items), and the Home has received – or is ready to receive – a certificate of occupancy from the applicable governmental authority. Though not a condition for Substantial Completion, the issuance of a certificate of occupancy shall be deemed confirmation of receiving Substantial Completion.

**7.9.1** Notwithstanding the foregoing, if Closing occurs during the months of October through May, and Seller is unable to complete landscaping, concrete, and/or any other items that are affected by poor weather conditions, Seller will escrow sufficient funds with Escrow Agent (the amount determined based on Seller’s cost to complete such work) until such work is complete. Such incomplete work will not affect Substantial Completion provided the escrow funds are delivered to the Escrow Agent.

**7.9.2** Completion of the unfinished exterior work will commence as soon as the weather conditions permit. As Seller completes such unfinished exterior work, the amount of escrowed funds allocated to such work item(s) will be released to Seller upon notice to Escrow Agent by Seller that such work is complete.

**7.9.3** If the unfinished exterior work is not completed by Seller by the later of (a) sixty (60) days after weather conditions permit, or (b) July 31st following the Closing Date, and no dispute is then existing between Seller and Buyer, then Buyer is permitted after five (5) business days’ written notice to Seller to use the balance of the escrowed funds to finish the incomplete work. If Buyer elects to use the escrowed funds, then Seller will be released from any obligation to complete such work.

**7.10 Final Walk Through.** Upon 72 hours written notice to Buyer following Substantial Completion and prior to Closing, Buyer agrees to attend a final walk through of the home (“**Homeowner Orientation Walk Through**”) with Seller’s sales representative or another representative designated by Seller.

**7.10.1** During the Homeowner Orientation Walk Through, Buyer shall identify items which Buyer believes to be punch list items and notify Seller of the same.

**7.10.2** Seller shall thereafter repair and/or cure Buyers punch list Items to the extent reasonably requested by Buyer and agreed upon by Seller, in Seller’s sole and absolute discretion. In no event shall any punch-list items include any additional work which was not required by the Plans or an approved Change Order. In no event shall any punch list items which have not been repaired or cured extend or hold up the Closing, nor shall the Purchase Price be reduced, nor shall any funds be placed in escrow to cure such punch list items (except as provide above in the event of a winter Closing).

**7.10.3** In the event that any punch list Items remain after Closing, Seller is hereby granted a license and a right of entry to enter the Home after Closing, at reasonable times and with advance notice if the Home is occupied, to the fullest extent necessary or convenient in order to repair and/or cure any and all then-remaining punch list Items. This license and right of entry shall survive Closing.

**7.10.4** If Buyer fails to identify any punch list items during the Homeowner Orientation Walk Through, Buyer shall have been deemed to have accepted the condition of the Home.

**7.11 Buyer’s Right to Terminate for Delay; Remedy.** If Substantial Completion has not been completed by the time set forth in this Contract (provided that such time will be automatically extended without the need for a Change Order or written amendment upon the occurrence of events beyond Seller’s control that delay construction of the Home or the Subdivision, all as set forth in **Section 7.1.1**), then Buyer may provide to Seller written notice that Buyer intends to terminate the Contract because of such delay (“**Buyer’s Delay Notice**”). Seller shall have Sixty (60) days from the date Seller receives Buyer’s Delay

Notice to complete construction of the Home to the point that the home is Substantially Complete. If the Substantial Completion has not occurred within such Sixty (60) day period after Seller's receipt of Buyer's Delay Notice, then Buyer may, by separate written notice to Seller, terminate this Contract. If Buyer terminates because of any construction delay on Seller's part, after satisfying the notice and cure provisions herein, then Buyer's sole and exclusive remedy shall be to receive a return of the Earnest Money Deposit and the Construction Deposit, and Buyer specifically waives any other remedies, whether legal or equitable, for any claims related to a construction delay.

## **8. CLOSING.**

### **8.1 Closing and Closing Date.**

**8.1.1** At or prior to Closing, Buyer shall deliver the Purchase Price, in cash or loan proceeds, to Escrow Agent. Seller shall deliver a Special Warranty Deed to Escrow Agent, and both parties will deliver to Escrow Agent all documents required by this Contract, Buyer's lender, or the Escrow Agent.

**8.1.2** Provided all of the contingencies set forth in this Contract have been satisfied, including without limitation, the Seller's Conditions to Closing set forth below, then the date on which Closing will take place ("**Closing Date**") at the offices of the Escrow Agent will be within four (4) business days after the Homeowner Orientation Walk Through.

**8.2 Seller's Conditions to Closing.** Seller's obligation to close the sale of the Home to Buyer is expressly contingent on all of the following conditions being satisfied at, or prior to, Closing:

**8.2.1** Seller's Acceptance. Seller's Authorized Representative has accepted this Contract as stated in **Section 21**.

**8.2.2** No Breach by Buyer. Buyer has not breached any of Buyer's duties and obligations under this Contract.

**8.2.3** Buyer Deliveries. Buyer has delivered to Escrow Agent all of the following: (a) all documents required by this Contract, by the Buyer's Lender, by written escrow instructions and by applicable law; (b) any monies required to be paid by Buyer under this Contract have been delivered by Buyer to Escrow Agent in the form of certified, cleared, or cleared funds; and (c) the Home is Substantially Complete.

**8.3 Buyer's Delay.** If Closing is delayed by Buyer or by Buyer's Lender, Buyer shall pay to Seller a fee of \$100.00 per day for each day of delay ("**Delay Fee**") until Closing or termination of the Contract, as applicable. The Delay Fee is in addition to the Purchase Price and shall not apply to, or reduce, the amount of the Purchase Price payable at Closing. Additionally, if such delay continues for seven (7) calendar days past the otherwise applicable Closing Date, this Contract shall automatically terminate unless Buyer and Seller subsequently execute a written addendum to this Contract that extends the Closing Date, calculates the amount of the late fee that must be paid by Buyer to Seller for such extension, and contains such other terms as may be agreed upon by the parties. Notwithstanding the foregoing, after such seven (7) day period has expired, Seller may elect, in its sole discretion to: (a) rescind or revoke such automatic termination (which in no event will be considered a waiver of any defaults and remedies hereunder) and (i) proceed to close this transaction and/or (ii) bring an action for specific performance against Buyer; or (b) recover from Buyer the Break-Up Fee (as defined below) and require the Escrow Agent to immediately disburse the Earnest Money Deposit to Seller. As used herein, the "**Break-Up Fee**" is an amount equal to the greater of \$10,000 or the total amount of the Earnest Money Deposit plus the Construction Deposit. The Earnest Money Deposit and the Construction Deposit received by Seller shall be credited towards the Break-Up Fee. The monies retained by Seller, the Delay Fee charged under this Section, and the Break-up Fee are not intended to be penalties, but instead are intended to be liquidated damages to compensate Seller for market risk, carrying costs on loans, administrative expenses, overhead, and the other risks associated with constructing the Home for Buyer. The obligation to pay the Delay Fee and the Break-Up Fee shall survive the Closing or termination of the Contract. Seller may, at its discretion, require the Delay Fee to be paid before Closing, at Closing (to be included on the Closing Statement), after Closing, or after termination of the Contract.

**8.4 Closing Costs.** Costs payable at Closing shall be allocated among the parties as follows:

**8.4.1** Buyer shall pay the Escrow Agent for fees and costs related to Closing.

**8.4.2** Real estate taxes and assessments for the current year shall be prorated as of the Closing Date.

**8.4.3** Assessments payable to the HOA, if applicable, will be allocated as follows: (a) regular assessments will be prorated between the parties as of the Closing Date, and (b) special assessments made by the HOA after Acceptance will be prorated as of the Closing Date.

**8.4.4** Seller will pay for a standard-coverage owner's policy of title insurance issued by Escrow Agent insuring Buyer's title to the Property subject to the contents of the Title Commitment (identified below) in the amount of the Purchase Price ("**Owner's Title Policy**"). If Buyer uses a title company other than Escrow Agent for title insurance and Closing-related services, then Buyer must pay all of the costs of such Owner's Title Policy. In addition, Buyer is responsible for (a) any lender's policy of title insurance that may be required by Buyer's lender, (b) extended title insurance coverage if desired by Buyer, and (c) costs of credit reports, recording costs, Buyer's loan fees, and impounds.

**8.5 Possession and Metered Utilities.** Seller shall deliver physical possession of the Property to Buyer within 24 hours after Closing. **UNDER NO CIRCUMSTANCES SHALL BUYER OCCUPY THE HOME OR STORE ANY PERSONAL ITEMS ON THE PROPERTY UNTIL CLOSING IS COMPLETE.** All separately metered utilities to the Property will be changed within three calendar days after Closing into Buyer's name. Buyer is responsible to pay all connection fees charged in connection therewith.

## **9. SELLER'S WARRANTIES.**

**9.1 Written Home Warranty.** Seller will provide to Buyer only those warranties, if any, set forth in the home warranty manual which Seller will provide to Buyer within three (3) days of Seller's Acceptance Date. If Seller has not provided the home warranty manual within that time period, Buyer shall request a copy of the home warranty manual from Seller so that Buyer has the opportunity to review such manual prior to the Design Meeting. Buyer agrees to deliver to Seller a copy of the home warranty manual signed by Buyer indicating Buyer's acceptance of the same no later than the Design Meeting. Failure to provide a signed copy of the manual at or prior to the Design Meeting will be deemed approval and acceptance of such manual by Buyer. The home warranty manual will identify the only warranties provided by Seller to Buyer with respect to the Property.

**9.2 No Other Warranties.** Except for warranties expressly set forth in the home warranty manual described above and except to the extent implied under Utah law, **BUYER IS PURCHASING THE HOME AND THE LOT AS-IS, WHERE-IS, WITH ALL FAULTS AND, UPON CLOSING, BUYER ACCEPTS THE CONDITION OF THE PROPERTY AS-IS, WHERE-IS, WITH ALL FAULTS. TO THE FULLEST EXTENT ALLOWED UNDER LAW, SELLER PROVIDES NO WARRANTIES, GUARANTIES, OR REPRESENTATIONS, EXPRESS OR IMPLIED, OF ANY NATURE TO BUYER, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.** Notwithstanding any provision of this Agreement to the contrary, Seller disclaims any warranties of any sort not contained in the home warranty manual including, without limitation, warranties regarding soils conditions, environmental conditions, mold, radon, or any other component of the Property.

**9.3 Third Party Warranty.** Additionally, Buyer may purchase and pay for a supplemental multi-year warranty from a company of Buyer's choice.

## **10. TITLE INSURANCE.**

**10.1 Selection of Settlement Agent.** Buyer is not required to obtain title insurance from Escrow Agent but has the right to select a different title company to provide any title insurance coverage Buyer wants on the condition it is paid for by Buyer. Nevertheless, Buyer is notified that Seller will use Escrow Agent for all Closing related services on the Seller's side and all documents required to be delivered by Buyer to Seller must be delivered to Escrow Agent. In accordance with section 8.4.4,

Buyer may consult any title companies Buyer chooses to determine the cost and availability of any title insurance coverage or endorsements which Buyer desires to obtain in connection with the transaction contemplated by this Contract.

**10.2 Title Commitment.** Buyer may, but is not obligated, to request a commitment for title insurance ("**Title Commitment**") from Escrow Agent within two (2) calendar days after Seller's Acceptance Date to determine the status of title to the Property. If Buyer is not satisfied with the exceptions to title, Buyer's sole remedy is to terminate this Contract within the Investigation Period. If Buyer fails to obtain a Title Commitment or fails to cancel as provided herein, Buyer shall be conclusively deemed to have waived any objections to the status of title.

**11. SALE RESTRICTION AND EXCEPTIONS.** Buyer hereby covenants and agrees that for a period ending twenty-four (24) months from the Closing Date, Buyer may not sell the Property or otherwise transfer title to the Property to any third party ("**Sale Restriction**"), provided that the Sale Restriction will not apply if one or more of the following occurs: (a) Buyer's employment requires a relocation of more than 50 miles from Buyer's current employment, (b) Buyer loses employment for more than thirty (30) consecutive days, (c) Buyer is party to a divorce decree, (d) Buyer and/or Buyer's spouse dies, or (e) Seller consents in writing to such sale of the Property. At Seller's option, the Sale Restriction may be included as a deed restriction. The Sale Restriction shall automatically terminate in the event that Buyer's Lender obtains title to the Property through foreclosure or a deed in lieu of foreclosure.

**12. SELLER'S DISCLOSURES.** Buyer shall review and sign receipt for the Seller's Disclosures provided by Seller by 4:00 PM of the last day of the Investigation Period. The Seller's Disclosures are incorporated herein by this reference, and made a part of this Contract. In addition to transmission of the Seller's Disclosures at the time this Contract is signed, a copy is available at [www.SpringRunTownhomes.com](http://www.SpringRunTownhomes.com). If a copy of the Seller's Disclosures signed by Buyer is not delivered to Seller by 4:00 PM of the Investigation Period, then Seller shall have the right to terminate this Contract and Buyer's Earnest Money shall be released to Buyer.

**13. TERMINATION.** In addition to those rights of termination elsewhere provided for in this Contract, Buyer and Seller shall have the right to terminate this Contract as provided in this **Section 13**.

#### **13.1 Buyer's Right to Terminate.**

**13.1.1** In addition to Buyer's right to terminate prior to the expiration of the Investigation Period (subject to release of Earnest Money as explained in this Contract), Buyer shall have the right to terminate in the event of an Uncured Seller Default. As used in this Contract, the term "**Uncured Seller Default**" means that Seller has materially defaulted in the performance of its obligations under this Contract (provided that Buyer is not in default of any of its obligations under this Contract), and Seller fails to cure such default within sixty (60) days of written notice to Seller by Buyer (provided that Seller will not be in default under this Contract if Seller commences a cure within such sixty (60) day period and diligently pursues such cure to completion). If Buyer terminates because of an Uncured Seller Default then Escrow Agent is authorized to immediately release the Earnest Money Deposit and the Construction Deposit will be returned to Buyer.

**13.1.2** If Substantial Completion has not occurred within the estimated time period set forth in **Section 7.1** (such time period is subject to automatic extension for any applicable Events of Force Majeure and for all delays caused by Buyer or Buyer's lender), then after such date Buyer may provide a notice of intent to terminate termination to Seller. If Substantial Completion does not thereafter occur within sixty (60) days after receipt by Seller of such Buyer's notice, then this Contract shall terminate and the Earnest Money Deposit and the Construction Deposit shall be returned to Buyer.

**13.1.3** Upon any termination by Buyer, neither Buyer nor Seller will have any further obligations under this Contract and Seller may sell the Property to a third-party. Buyer will not be entitled to any additional damages or remedies or claims beyond the return of the Earnest Money Deposit and the Construction Deposit, such return constituting Buyer's sole remedy. In no event shall Seller be liable for any consequential, speculative, or punitive damages as a result of a default by Seller under this Contract.

**13.2 Buyer's Remedies.** Buyer's sole remedy for any Uncured Seller Default, or any other failure by Seller to perform under this Contract shall, be the forgoing right to terminate this Contract together with the right to the return of the Earnest Money Deposit and, if applicable, the Construction Deposit. In no event shall any default by Seller give rise to a claim for compensatory damages, direct damages, special damages, consequential damages, punitive damages, or any other legal or equitable remedy and buyer expressly **WAIVES ALL SUCH RIGHTS AND REMEDIES**.

**13.3 Seller's Right to Terminate.** Seller may terminate the Contract at any time prior to Closing for any of the following reasons upon written notice to Buyer:

**13.3.1 Approvals.** Seller is unable to obtain all necessary public, private, and government approvals and permits for construction of the Home within sixty (60) days after Seller's Acceptance Date.

**13.3.2 Delay.** Seller determines that, for reasons beyond Seller's control, the Home cannot be completed and made habitable before the time estimated for Substantial Completion, or within a reasonable time as Seller determines, or in any event, within sixty (60) days after the time estimated for construction.

**13.3.3 Title.** Seller is unable to obtain title to the Lot or otherwise deliver to Buyer good and marketable title to the Property.

**13.3.4 Destruction or Condemnation.** The Property is destroyed or materially damaged prior to Closing or the Property is taken by an entity with the power of eminent domain, or any eminent domain proceedings are commenced with respect to the property, or Seller receives an eminent domain notice.

**13.3.5 Loan Commitment Letter.** Buyer does not submit the Loan Commitment Letter from the Approved Lender or, if applicable, Buyer's Lender, as required under this Contract or if Seller deems the terms of the Loan Commitment Letter unsatisfactory in Seller's sole discretion.

**13.3.6 Financing and Updates to the Loan Commitment Letter.** Buyer fails to: (a) provide updates to the Loan Commitment Letter upon request from Seller; (b) provide evidence upon request from Seller that Buyer will be able to satisfy all the conditions set forth in the Loan Commitment Letter; **OR** (c) otherwise demonstrate to Seller's reasonable satisfaction that Buyer will be able to pay the Purchase Price at Closing. In addition to having the right to terminate the Contract upon the occurrence of any of the preceding conditions, and without waiving Seller's right to terminate, Seller will have the right to delay proceeding under this Contract, without termination, including delaying construction of the Home, until Buyer remedies Buyer's failure and such delay shall not constitute a breach on Seller's part. Upon any of the failures set forth in this **Section 13.3.6**,

**13.3.7 Buyer's Default.** Buyer breaches any provision of this Contract and such breach is not cured within five (5) business days (unless a different time period is provided under this Agreement) after written notice to Buyer.

**13.3.8 Contentious Buyer.** Buyer's conduct (or the conduct of Buyer's representative) results in a contentious or difficult relationship with Seller, in Seller's sole discretion. Factors indicating a contentious or difficult relationship may include, but are not limited to excessive requests for Change Orders, harassment or belittling of Seller or any of Seller's representatives or employees, derogatory statements to Seller or any of Seller's representatives or employees, threats of any nature directed to Seller or any of Seller's representatives or employees.

**13.4 Release of Earnest Money and Construction Deposit.** Upon any termination of this Contract by Seller, neither Buyer nor Seller will have any further obligations under this Contract to close this transaction, and Seller may sell the Property to a third party. If Seller terminates this Contract pursuant to **Section 13.3.1** (approvals), **Section 13.3.2** (delay), or **Section 13.3.3** (title), or If Seller terminates this Contract pursuant to **Section 13.3.4** (destruction) then Escrow Agent will promptly disburse the Earnest

Money Deposit to Buyer and Seller will return the Construction Deposit to Buyer. For the foregoing, in the event of any other termination by Seller, Seller may retain the Construction Deposit and Escrow Agent will promptly disburse the Earnest Money Deposit to Seller.

**13.5 Contract Consideration.** Notwithstanding any provision of this Contract, in the event the Earnest Money Deposit is returned to Buyer, ten dollars (\$10) of the Earnest Money Deposit shall be non-refundable and shall constitute consideration for this Contract (along with other good and valuable consideration), and shall be delivered to Seller, provided that upon the Closing, such contract consideration shall be credited against the Purchase Price along with the remainder of the Earnest Money Deposit.

**13.6 No Waiver of Seller's Termination Right.** The failure of Seller to promptly terminate for any of the foregoing conditions shall not prejudice or otherwise affect Seller's right to terminate the Contract at a later date based on the previous occurrence of such conditions.

**13.7 Seller's Remedies Not Limited.** After acceptance of this Contract, Seller will incur daily carrying and other costs attributable to holding the Property off the market and with respect to such costs attributable to holding the Property off the market, **BUYER AND SELLER ACKNOWLEDGE AND AGREE THAT THE AMOUNT OF SUCH COSTS IN THE EVENT OF A DEFAULT BY BUYER WOULD BE DIFFICULT TO ASCERTAIN, THAT ESTABLISHING THE ACTUAL AMOUNT OF SUCH COSTS WOULD BE TIME-CONSUMING AND EXPENSIVE, AND THAT THE EARNEST MONEY DEPOSIT AND THE CONSTRUCTION DEPOSIT CONSTITUTE A REASONABLE APPROXIMATION OF SELLER'S ANTICIPATED COSTS RELATED TO HOLDING THE PROPERTY OFF THE MARKET AND IS NOT A PENALTY.** Notwithstanding the foregoing, in the event of a breach by Buyer of Buyer's obligations hereunder Buyer understands and agrees that Seller may incur other damages in addition to carrying and other costs attributable to holding the Property off the market, and Buyer agrees that seller is entitled to compensation for such other damages, and that by retaining the Earnest Money Deposit and Construction Deposit as liquidated damages for Seller's carrying and other costs related to holding the Property off the market, **SELLER DOES NOT WAIVE AND SPECIFICALLY RESERVES THE RIGHT TO PURSUE ACTUAL, COMPENSATORY, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING FROM OR RELATING TO ANY BREACH OF BUYER'S OBLIGATIONS UNDER THIS CONTRACT.** Moreover, nothing in this Contract shall prevent Seller from seeking other legal or equitable relief to which Seller may be entitled, including, without limitation, injunctive relief.

**14. ASSIGNMENT.** Buyer may not assign any interest under this Contract without Seller's written consent. Seller may assign its rights and obligations under this Contract to any person or entity upon written notice to Buyer.

**15. NOTICE REQUIRED UNDER UTAH CODE – PROTECTION AGAINST LIENS AND CIVIL ACTION.** Notice is hereby provided in accordance with Section 38-11-108 of the Utah Code that under Utah law a "owner" may be protected against liens being maintained against an "owner-occupied residence" and from other civil action being maintained to recover monies owed for "qualified services" performed or provided by suppliers and subcontractors as a part of this contract (the foregoing terms are defined in Section 38-11-102 of the Utah Code), if either section (1) or (2) is met:

(1)(a) the owner entered into a written contract with an original contractor, a factory built housing retailer, or a real estate developer; (b) the original contractor was properly licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act at the time the contract was executed; **AND** (c) the owner paid in full the contracting entity in accordance with the written contract and any written or oral amendments to the contract; **OR**

(2) the amount of the general contract between the owner and the original contractor totals no more than \$5,000.

(3) An owner who can establish compliance with either section (1) or (2) may perfect the owner's protection by applying for a Certificate of Compliance with the Division of Occupational and Professional Licensing. The application is available at [www.dopl.utah.gov/rlrf](http://www.dopl.utah.gov/rlrf).

**16. MANDATORY DISPUTE RESOLUTION.** By executing this agreement, Buyer agrees that any Disputes (defined below) between which Buyer has or may have against Seller shall be resolved pursuant to the arbitration provisions of this **Section 16** and Buyer hereby waives the right to pursue any legal action in the courts except as provided herein. Notwithstanding the foregoing,

nothing in this **Section 16** shall prevent either party from seeking temporary or permanent injunctive relief from a court of competent jurisdiction if exigent circumstances warranting such action exist.

**16.1 Disputes.** These dispute resolution provisions apply to any and all actions or claims by or on behalf of Buyer, or by any third-party in privity with Buyer, against Seller or, as applicable, the insurer under any warranty provided by Seller, which arise out of or in any way relate to this Contract, the Home, the Lot, the Property, the Subdivision, the HOA, the CC&Rs, including, without limitation, any work performed on the Property or in connection with the construction of the Home, any claims regarding grading or water damage, any claims that any component of the Home, the Lot, or any improvement within the Subdivision is or contains a construction defect, and claims which allege violation of statutory standards, strict liability, negligence, breach of implied or express warranties, or breach of any other legal duty (each of the foregoing being a **"Dispute"**). Disputes shall also include without limitation any controversy between Buyer and Seller and their successors or assigns (whether or not the controversy includes third-parties) in any way arising out of or relating to controversies arising out of or relating to the interpretation of the Plans or construction actually performed. Disputes include any claim or cause of action whether arising in law, equity, tort, contract, statute, or otherwise.

**16.2 Claim Notice.** In the event of a Dispute, the Buyer, or any person bringing on claim on Buyer's behalf or because of privity with Buyer, shall deliver to Seller written notice that a dispute exists (**"Claim Notice"**). A Claim Notice shall mean and include the following information to the fullest extent to which the information is available and can reasonably be provided: (1) an explanation of the nature of the Dispute giving rise to the claim; (2) a specific breakdown and calculation of any alleged damages associated with the Dispute; (3) a specific description of the claim along with any supporting opinions, information, or factual evidence upon which the claim or Dispute is based; (4) photographs of any alleged condition, if applicable; (5) samples of any alleged defective conditions or materials; (6) all efforts taken to avoid, mitigate, or minimize the claim or any alleged damages arising therefrom; and (7) the names, phone numbers, and address of each person providing factual information, legal or factual analysis, or legal or factual opinions related to the claim. If any additional, different, or modified claims, damages, calculations, supporting information, or descriptions are added, provided to, or asserted against the Seller or the warranty insurer that were not included in any previously submitted Claim Notice, the Claim Notice requirement will restart and all other provisions of this Section 16, including the right to cure, shall immediately apply again, and any pending action or proceedings, including any mediation or arbitration, shall be stayed during the renewed cure period.

**16.3 Right to Cure.** After receiving a Claim Notice, Seller shall have one hundred eighty (180) days to cure the condition(s) giving rise to the claim or the Dispute or, if a cure is not possible within such one hundred eighty (180) day period, to commence a cure, provided Seller thereafter pursues a cure to its conclusion.

**16.4 Mediation.** If Seller cannot or does not cure the condition(s) giving rise to the Dispute within the cure period identified above, Buyer and any other person bound by these dispute resolution provisions, may arrange for mediation with a mutually agreeable mediator. Mediation is a mandatory step before a claimant can proceed with Arbitration.

**16.5 Formal Arbitration.** If the parties to the Dispute cannot resolve the claim pursuant to the procedures described above, including the cure period and the mediation requirement, the parties shall resolve the Dispute by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association (**"AAA"**) as modified by this Agreement. The aggrieved party shall commence the arbitration proceeding before a AAA arbitrator located in Salt Lake County, Utah, or before another mutually agreeable arbitrator.

**16.6 Rules and Procedures.** The following rules and procedures apply to any arbitration between the parties and shall supersede any contrary rules of the AAA. (a) The arbitrator shall have the authority to try and shall try, **WITHOUT A JURY**, all issues, whether of fact or law, including without limitation, the validity, scope and enforceability of these dispute resolution provisions. (b) The arbitrator must be a neutral and impartial retired judge, an attorney with construction law experience, or another person with substantial experience in construction matters. (c) Except in the case of a Dispute alleging a construction or design defect (**"Defect Dispute"**) as set forth below, no party shall be entitled to serve any form of written discovery requests (interrogatory, requests for admissions, requests for authentication, requests for document production or depositions) on any

other party unless leave to do so is first granted by the arbitrator. Any party shall, within fifteen (15) days of receipt of the date that the arbitration hearing is first set, have the right to demand in writing, served personally or by facsimile, that all other parties to the dispute resolution proceeding provide a list of witnesses they intend to call (designating which witnesses will be called as expert witnesses) and a list of documents they intend to introduce. A copy of such demand shall be served on the arbitrator. Such lists shall be mutually exchanged and served personally or by facsimile on the opposing party within fifteen (15) days thereafter. Copies thereof shall be served on the arbitrator. Listed documents shall be made available for inspection and copying at reasonable times prior to the arbitration hearing trial. (d) Notwithstanding the foregoing, in the context of a Defect Dispute, all parties shall be entitled to conduct all discovery as otherwise provided under Utah law, and the arbitrator shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge, with rights to regulate discovery and to issue and/or enforce subpoenas, protective orders or other limitations on discovery available under Utah law. In the context of Defect Disputes where the owner of the property at issue is a party to the dispute resolution proceeding, all parties consent to and/or are entitled to reasonable site inspections, visual inspections, destructive testing, and other discovery mechanisms commonly employed in such disputes.

**16.7 Hearing and Decision.** The arbitration hearing shall be conducted in accordance with Construction Industry Arbitration Rules of the AAA, as modified by this Agreement, and the Utah Rules of Evidence. The arbitrator may issue any remedy or relief allowed under this Agreement. The arbitrator may require one or more pre-hearing conferences. The arbitrator's decision shall be final and binding on all parties and, upon filing the arbitrator's statement of decision any court of the State of Utah having jurisdiction, a judgment may be entered thereon.

**16.8 No Jury Trial.** AS TO ALL DISPUTES COVERED BY THIS PROVISION, THE PARTIES WAIVE ANY RIGHTS TO JURY TRIAL AND OTHER CIVIL LITIGATION PROCEEDINGS FOR SUCH DISPUTES, EXCEPT AS OTHERWISE PROVIDED HEREIN. THE PARTIES MAKE THIS WAIVER KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, AND ACKNOWLEDGE THAT NO ONE HAS MADE ANY REPRESENTATION OF FACT TO INDUCE THEM TO MAKE THIS WAIVER OR IN ANY MANNER OR IN ANY WAY TO MODIFY OR NULLIFY ITS EFFECT. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE HAD THE OPPORTUNITY TO BE ADVISED BY INDEPENDENT LEGAL COUNSEL IN CONNECTION WITH THIS AGREEMENT AND IN MAKING THIS WAIVER. THE PARTIES FURTHER ACKNOWLEDGE, HAVING READ AND UNDERSTOOD THE MEANING AND RAMIFICATIONS OF THIS WAIVER, AND INTEND THIS WAIVER BE READ AS BROADLY AS POSSIBLE AND EXTEND TO ALL DISPUTES EXCEPT AS OTHERWISE PROVIDED HEREIN. HOWEVER, THESE DISPUTE RESOLUTION PROVISIONS SHALL IN NO WAY BE CONSTRUED TO LIMIT ANY VALID CAUSE OF ACTION WHICH MAY BE BROUGHT BY ANY OF THE PARTIES.

**16.9 Attorney fees.** Each party shall bear its own attorney fees and costs (including expert witness costs) for the arbitration, despite the outcome. The arbitration filing fee and other arbitration fees shall be divided and paid equally as between the parties. The parties agree that the arbitrator **SHALL NOT AWARD ANY LEGAL FEES, EXPERT WITNESS FEES, OR ARBITRATION COSTS/FEES TO THE PREVAILING PARTY.**

**16.10 No Waiver.** If Owner or Builder files a proceeding in any court to resolve any Dispute or any claim based on a Dispute, such action shall not constitute a waiver of the right of such party, or a bar to the right of any other party, to seek arbitration of that or any other Dispute or related claim, and such court shall, upon motion of any party to the proceeding, stay the proceeding before it and direct that such Dispute be arbitrated in accordance with the terms set forth herein.

**16.11 Survival.** These dispute resolution provisions shall survive Closing and any termination of the Contract.

## **17. MISCELLANEOUS.**

**17.1 Headings.** The headings used in this Contract are for convenience. In the event of any conflict between a heading and the substantive terms of a section, the substantive terms shall control.

**17.2 Addenda, Exhibits, and Riders.** The exhibits to this Contract are hereby incorporated. Any Addenda or Riders are incorporated if they are Accepted by Seller's Authorized representative, as provided herein.



**17.3 Joint and Several Obligations.** If Buyer consists of more than one individual, then the obligations of Buyer hereunder are joint and several for all such individuals.

**17.4 Modifications and Waiver.** This Contract may be changed, modified or amended only by a written instrument signed by both Seller and Buyer. No requirements, obligations, remedy or provisions of this Contract (including the right to delay construction or terminate this Contract) should be deemed waived unless expressly waived in writing.

**17.5 Consent of Land Owner.** The Lot may be owned by a third party ("**Land Owner**"), which may or may not be an affiliate of Seller. This Contract is subject to the approval of Land Owner, which shall be evidenced by Land Owner executing the written acknowledgement below. Any failure, defect, or delay in the execution of such written acknowledgment by Land Owner does not invalidate this Contract between Buyer and Seller but shall constitute an Event of Force Majeure. Buyer acknowledges that any Dispute regarding the construction of the Home is between Buyer and Seller only. Buyer hereby releases Land Owner from any liability regarding the obligations of Seller hereunder. Land Owner reserves the right to transfer the Property to another affiliate of Seller prior to Closing.

**17.6 Reservation of Lot.** If this Contract is Accepted prior to the recordation of the final plat ("**Plat**") for the Subdivision, then notwithstanding anything herein to the contrary, then this Contract shall be considered in the nature of a non-binding lot reservation only and Acceptance Date hereunder shall be deemed to be the date, if any, on which the Plat is recorded in the county recorder's office (the "**Recordation Date**"). In such event, either party may terminate this Contract prior to the Recordation Date by providing written notice to the other party as provided herein.

**17.7 Further Acts and Assurances.** The parties hereto agree to execute and deliver such additional documents and to take such other and further action as may be required to carry out fully the transactions contemplated herein and to correct clerical errors.

**17.8 Entire Contract.** THIS CONTRACT, INCLUDING ALL EXHIBITS AND ADDENDA, REPRESENTS THE COMPLETE CONTRACT BETWEEN SELLER AND BUYER. THIS CONTRACT SUPERSEDES ALL PRIOR AND CONTEMPORANEOUS AGREEMENTS, CORRESPONDENCE, MEMORANDA, REPRESENTATIONS AND UNDERSTANDINGS OF THE PARTIES RELATING TO THE PROPERTY, WHETHER ORAL OR WRITTEN, AND WHETHER MADE DIRECTLY OR INDIRECTLY BY SELLER OR SELLER'S REPRESENTATIVES. NO VERBAL STATEMENTS MADE BY SELLER'S REPRESENTATIVE OR BUYER'S REPRESENTATIVE MAY BE RELIED UPON BY BUYER OR BINDING AGAINST SELLER UNLESS EXPRESSLY SET FORTH IN WRITING IN THIS CONTRACT OR IN A WRITTEN ADDENDUM SIGNED BY BOTH PARTIES. SHOULD ANY TERM OR PROVISION OF THIS CONTRACT BE RULED INVALID OR UNENFORCEABLE BY A COURT OF COMPETENT JURISDICTION, THE REMAINDER OF THIS CONTRACT SHALL CONTINUE IN FULL FORCE AND EFFECT.

**17.9 No Estoppel.** Buyer agrees that Buyer will not rely on, or take any acts or make any forbearance based on, any statements of any person, including Seller's sales representatives or employees of Seller, which conflict with or vary from the terms of this Contract.

**17.10 Governing Law.** This Contract will be governed by the laws of the State of Utah.

**17.11 Electronic Counterparts.** This Contract may be executed in any number of counterparts. Counterparts may be executed in person or by an electronic signature service approved by Seller.

**17.12 Authority Of Signers.** I Buyer is a corporation, partnership, trust, estate, limited liability company or other entity, the person signing this agreement on its behalf warrants his or her authority to do so and to bind the Buyer.

**18. NOTICES.** Except as otherwise required by law, any notice, demand or request given in connection with the transaction contemplated by this Contract shall be in writing and shall be given by personal delivery, overnight courier service, email (when there is a response to the notice by email from the party receiving notice), or U.S mail, properly addressed to Seller or Buyer at the addresses set forth in this Contract. Notice shall be deemed to have been given on the date on which notice is delivered, if notice is

given by personal delivery or email, on the date of delivery to the overnight courier service, if such a service is used, or on the date of deposit in the mail, if mailed.

**19. ESCROW INSTRUCTIONS.** An escrow for this transaction shall be established with Escrow Agent, and Escrow Agent is hereby engaged to administer the escrow. This Contract constitutes escrow instructions to Escrow Agent and a copy shall be deposited with Escrow Agent for this purpose. Should Escrow Agent require the execution of its standard form printed escrow instructions prior to Closing, Buyer and Seller agree to execute same; however, such instructions shall be construed as applying only to Escrow Agent's engagement, and if there are conflicts between the terms of this Contract and the terms of the printed escrow instructions, the terms of this Contract shall control. If Buyer uses a title company other than the Escrow Agent to close Buyer's side of the purchase or provide any title insurance paid for by Buyer, then such title company must be identified in an addendum to this Contract. If no other escrow agent is identified in an addendum to this Contract, then Closing must occur through Escrow Agent. If Buyer elects to use a title company other than Escrow Agent to close this, then Buyer (and not Seller) will be required to pay the entire cost for the Owner's Title Policy as described in this Contract.

**20. AGENCY DISCLOSURE.** Buyer acknowledges that one of the principals of the Seller has an interest in the Property and represents the Seller as a principal broker licensed in the State of Utah. Neither Buyer nor Seller shall have any obligation to a Representative or Broker retained by the other party **except as may be agreed to in writing**. Buyer and Seller each indemnify and hold the other party harmless from and against any claims for commission or brokerage fees asserted by a Representative or Broker claiming a commission or brokerage fee on account of the conduct of the indemnifying party. Buyer acknowledges that Seller's Sales Representative only represents Seller in this transaction, **AND DOES NOT REPRESENT BUYER. BUYER ACKNOWLEDGES THAT SELLER'S REPRESENTATIVE HAS ADVISED BUYER THAT BUYER IS ENTITLED TO BE REPRESENTED BY A BUYER'S REPRESENTATIVE WHO WILL REPRESENT ONLY BUYER. BUYER ALSO ACKNOWLEDGES THAT SELLER'S SALES REPRESENTATIVE IS NOT AN AUTHORIZED REPRESENTATIVE OF SELLER FOR PURPOSES OF ACCEPTANCE OF THIS CONTRACT.** Buyer selects from the following options:

Buyer's Representative:    ☐ Not represented (Buyer will represent itself in all aspects of this transaction)  
                                      ☐ Buyer's Representative Name: \_\_\_\_\_  
                                      Buyer's Representative's Phone: \_\_\_\_\_  
                                      Buyer's Representative's Email: \_\_\_\_\_  
                                      Brokerage Name: \_\_\_\_\_

**21. SELLER'S ACCEPTANCE.** As used in this Contract, "**Accept,**" "**Acceptance,**" or "**Accepted**" means: (a) this Contract has been approved by Seller's Authorized Representative, (b) Seller's Authorized Representative has signed and dated this Contract, and (c) a fully executed copy of this Contract has been delivered to Buyer, or Buyer's Representative. **ONLY A MANAGER OF SELLER IS AUTHORIZED TO ACCEPT THIS CONTRACT ON BEHALF OF SELLER NO OTHER PERSON ACTING ON BEHALF OF SELLER, INCLUDING SELLER'S SALES REPRESENTATIVE, IS AUTHORIZED TO ACCEPT THIS CONTRACT.** The signature or initials on this Contract of Seller's sales representative or any person other than Seller's Authorized Representative shall indicate only Seller's receipt of Buyer's offer to enter into an agreement on the terms set forth in this Contract, but **shall not** be deemed Acceptance unless or until the Agreement is Accepted by Seller's Authorized Representative. **Any Addendum to this Agreement dated after the Acceptance Date must be signed Seller's Authorized Representative before it will become a binding part of this Agreement.** Seller is under no obligation to Accept this Agreement and Seller may elect to refuse to Accept this Agreement for any reason without any liability to Buyer. In the event Seller refuses this Agreement or does not Accept within twenty-one (21) business days after it is delivered to Seller for review, Buyer shall be entitled to the immediate release of the Earnest Money Deposit, and neither party shall have any liability, obligations, or duties under this Agreement.

**THIS CONTRACT, WHEN ACCEPTED BY SELLER, WILL CONSTITUTE A LEGALLY BINDING AGREEMENT BETWEEN BUYER AND SELLER. BUYER IS STRONGLY ENCOURAGED TO CONSULT WITH BUYER'S ATTORNEY, ACCOUNTANT, OR OTHER ADVISORS OF BUYER'S CHOOSING BEFORE SIGNING THIS AGREEMENT. BY SIGNING THIS CONTRACT BUYER AGREES, REPRESENTS, AND WARRANTS THAT: (a) BUYER HAS READ AND UNDERSTANDS THE PROVISIONS OF THIS CONTRACT AND ANY ADDENDA HERETO; (b) BUYER HAS BEEN GIVEN THE OPPORTUNITY TO REVIEW THIS CONTRACT WITH ATTORNEYS OR OTHER ADVISORS OF BUYER'S CHOOSING; (c) UPON**

**SELLER'S ACCEPTANCE, BUYER WILL HAVE ENTERED INTO A BINDING AGREEMENT FOR THE PURCHASE OF THE PROPERTY; AND (d) BUYER WILL FULLY AND TIMELY PERFORM ALL OF BUYER'S OBLIGATIONS UNDER THIS CONTRACT.**

<b>BUYER:</b>  _____ Signature  Name (Printed): _____  Signed on _____, 20____.	<b>BUYER:</b>  _____ Signature  Name (Printed): _____  Signed on _____, 20____.
<b>RECEIPT FOR BUYER'S DEPOSIT(S):</b>  Acknowledgment of receipt of Buyer's Earnest Money  Check payable to the Escrow Agent in the amount of  \$_____  By: _____ (Sales Representative)	<b>ACCEPTANCE BY SELLER:</b>  <b>SPRING RUN TOWNHOMES, LLC</b>  By: _____ Authorized Signer  Name: _____  Signed on _____, 20____