

# **CONDOMINIUM PURCHASE CONTRACT**

This Condominium Purchase Contract is entered into by and between:

**CSGM CANYON RIDGE, LP** ("Seller")

and

\_\_\_\_\_ (whether one or more "Purchaser").

Seller agrees to sell to Purchaser and Purchaser agrees to purchase from Seller the Subject Property (as hereafter described) for the price and on the terms and the conditions set forth in this Contract.

1. **Subject Property.** The Subject Property consists of:
  - a. **Condominium Unit.** Unit No. \_\_\_\_\_ (the "Unit") located in The Hillside, a condominium project in Travis County, Texas (the "Condominium") created pursuant to the Condominium Declaration dated recorded under Document No. 2006207830 of the Official Public Records of Travis County, Texas as amended by that certain First Amendment to the Condominium Declaration for The Hillside, a Condominium Project in Travis County, Texas, recorded under Document No. 2007022978 of the Official Public Records of Travis County, Texas (the "Declaration").
  - b. **Interest in the Common Elements.** An undivided interest, appurtenant to the Unit, in and to the Common Elements in the percentage designated for the Unit in Exhibit "C" attached to the Declaration.
2. **Purchase Price.** The Purchase Price (herein so called) shall be the base price of \$ \_\_\_\_\_ for the Subject Property and the amount of any Upgrade Payment and/or the amount shown on any addendum executed by Seller and Purchaser.
3. **Closing Date.** The Closing Date (herein so called) shall be a business day selected by Seller for the Closing within thirty (30) days after the Unit is Available to Purchaser for Occupancy, but occurring on or before the second (2<sup>nd</sup>) anniversary of the date Purchaser executes this Contract (the "Completion Deadline"). Seller shall give Purchaser and the Title Company written notice of the estimated date for Closing not less than ten (10) days in advance of the Closing Date. As used herein, "business day" shall mean a weekday, Monday through Friday, except a legal holiday or a day on which banking institutions in Austin, Texas are authorized or required by law to be closed.
4. **Method of Payment.** The Purchase Price shall be payable in cash by Purchaser in good funds, immediately available at the place specified herein for Closing, as follows:
  - a. **Earnest Money Deposit.** Upon Purchaser's execution of this Contract, Purchaser shall pay \$ \_\_\_\_\_ to the Title Company as the Earnest Money Deposit;
  - b. **Payment at Closing.** On the Closing Date, Purchaser shall pay the balance of the Purchase Price (the Purchase Price less the Earnest Money Deposit) to the Title Company, all of which payments are to be held and disbursed by the Title Company in accordance with the provisions of this Contract.

5. **General Contract Terms.** Seller and Purchaser agree that Seller shall sell and Purchaser shall buy the Subject Property on the terms set forth above and upon the General Contract Terms which are attached hereto and incorporated herein for all purposes, and any addendum executed by Purchaser and Seller.

**Addenda attached to this Contract are:**

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IN WITNESS WHEREOF, this Contract has been executed as of the Effective Date.

**SELLER:**

CSGM Canyon Ridge, LP,  
a Texas limited partnership  
By: CSGM Canyon Ridge GP, LLC,  
a Texas limited liability company

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**PURCHASER:**

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

**Seller's Notice Address**

8012 Bee Caves Road, Suite 300  
Austin, Texas 78746  
Fax: 512-329-8842  
Phone 512-329-0123

**Purchaser's Notice Address**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Real Estate Brokers**

The Principal Broker to this sale is:

Urbanspace Realtors, LLP  
800 west 5<sup>th</sup> street, suite 100  
Austin, Tx 78703  
Phone: (512) 457-8884 Fax: (512) 457-8991

Seller will pay Principal Broker a commission under a separate agreement between Seller and Principal Broker. Principal Broker is representing only Seller.

The Other Broker to this sale is:

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Other Broker is representing only Purchaser.

Principal Broker has agreed to pay Other Broker \_\_\_\_\_% of the total sales price when Principal Broker's fee is received. Escrow Agent is authorized and directed to pay Other Broker from Principal Broker's fee at closing.

The real estate commissions identified above will only be due if this sale is consummated in accordance with the terms and conditions of this Contract and will be paid, if due, in Travis County, Texas. Seller authorizes Escrow Agent to pay Principal Broker and Other Broker their commissions as shown on the Closing Statement (HUD 1) signed by Seller at the Closing.

Neither Principal Broker, nor Other Broker, is a party to this Contract. The joinder of Principal Broker is required to amend or terminate this Contract. This Contract will not be amended by Seller and Purchaser to reduce the commission amount of Other Broker identified above without the consent of Other Broker.

**TITLE COMPANY RECEIPT**

Receipt of \$ \_\_\_\_\_ constituting the Earnest Money Deposit is acknowledged by the Title Company. The Title Company hereby agrees to comply with the terms of the Contract to the extent applicable to Title Company and to disperse the Earnest Money in accordance with the Contract. The Title Company is hereby designated as, and accepts the designation as, the "Reporting Person" pursuant to Section 6045 of the Internal Revenue Code and the regulations promulgated thereunder.

Executed on \_\_\_\_\_, 2009.

**TITLE COMPANY:**

Prominent Title

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

# **GENERAL CONTRACT TERMS**

## **1. DEFINITIONS**

Section 1.1. **Terms Defined.** Terms used with initial capital letters and not specifically defined in this Contract have the meanings given to them in the Declaration. As used; in this Contract, the following terms shall have the meanings set forth below:

“Available to Purchaser for Occupancy.” The date on which the Unit is ready for occupancy by Purchaser, as evidenced the receipt by Seller of certificates of occupancy (from all Governmental Authorities required to issue such certificates) for the Unit.

“Deed.” A special warranty deed on Seller’s form, executed and acknowledged by Seller conveying to Purchaser good and indefeasible title in fee simple to the Unit, free and clear of any and all liens, encumbrances, conditions, easements, assessments, reservations and restrictions, except for the Permitted Exceptions.

“Effective Date.” The date on which the last of Purchaser and Seller executes this Contract.

“Force Majeure.” Events or occurrences outside the control of Seller resulting in a delay in the construction of the Condominium or the Unit, including any event or action that is legally recognized as a defense to a contract action in the State of Texas, acts of God, casualty losses, unavoidable accidents, labor strikes or lockouts, shortages of materials, acts of any Governmental Authority (including eminent domain), civil riot, terrorism, flood, fire, explosion, inclement weather, impossibility of performance and any delay referenced in Section 4.1(g) of this Contract.

“Governmental Authority.” Any nation or government, any state or political subdivision thereof and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

“Limited Warranty.” Seller is hereby providing Purchaser with the warranty contained in the most recent edition of the Strucsure Home Warranty Express Limited Warranty Coverage Booklet, as of the date of the execution of this Agreement. That Booklet has been made available to Purchaser, and is incorporated by reference, and made a part of this Contract. The warranty contained in the Strucsure Home Warranty Express Limited Warranty Coverage Booklet is the sole warranty provided to Purchaser. Any other warranty or warranties, whether express or implied, are disclaimed by seller and waived by Purchaser, unless otherwise prohibited by particular state law.

“Occupancy Notice.” Written notice from Seller to Purchaser that the Unit is Available to Purchaser for Occupancy and that the Unit is available for inspection.

“Permitted Exceptions.” (i) The terms and provisions of the Declaration and any other restrictive covenants of record affecting the Subject Property; (ii) real estate taxes for the year in which the Closing occurs (prorated to the Closing Date) and subsequent years; (iii) existing building and zoning ordinances and platting requirements; (iv) liens created by Purchaser as security for the Purchase Price, (v) the Easements and any other covenants, restrictions, conditions, reservations, exceptions, easements and other matters shown on Exhibit B to the Title Commitment affecting the Subject Property; (vi) utility easements and other matters shown on the final plat affecting the Subject Property; (vii) the standard printed exceptions on the Title Policy to be issued by the Title

Company; and (ix) any other exception or encumbrance that does not materially affect the use and enjoyment of the Subject Property.

“Permitted Termination.” A termination that is permitted under the provisions of Sections 2.3(d), 2.5(a), 2.5(b), 4.1(g) and 4.2 of this Contract.

“Plans and Specifications.” The latest version of the plans and specifications, as of the Effective Date, for the improvements that will comprise the Unit.

“Purchaser’s Default.” Shall have the meaning set forth in Section 2.5(a) of this Contract.

“Seller’s Other Obligations.” Shall have the meaning set forth in Section 2.5(b) of this Contract.

“Seller’s Other Obligation Default.” Shall have the meaning set forth in Section 2.5(b) of this Contract. “Seller’s Unconditional Obligations.” Shall have the meaning set forth in Section 2.5(b) of this Contract.

“Seller’s Unconditional Obligation Default.” Shall have the meaning set forth in Section 2.5(b) of this Contract.

“Title Commitment.” A commitment by the Title Company to issue the Title Policy on the Texas Standard form.

“Title Company.” First American Title Company

“Title Policy.” An Owner’s Policy of Title Insurance on the standard Texas form policy T-1R.

“Upgrade Payment Addendum.” An addendum, if any, executed by Seller and Purchaser, pursuant to Section 4.1(f) of this Contract.

Section 1.2. **Number and Gender.** Whenever the context requires, references in this Contract to the singular number shall include the plural, and, likewise, the plural number shall include the singular, and words denoting gender shall include the masculine, feminine and neuter.

## **2. SALE TERMS**

Section 2.1. **Construction of the Unit.** For good and valuable consideration and upon the terms and conditions hereinafter stated, Seller agrees to construct or cause to be constructed and have Available to Purchaser for Occupancy the Unit within 24 months after the date Purchaser executes this Contract, subject to delays resulting from Force Majeure or a Purchaser’s Default.

Section 2.2. **Earnest Money Deposit.** At the Closing, the Earnest Money Deposit shall be applied to the Purchase Price and paid to Seller. If the Closing does not occur, the Title Company shall disburse the Earnest Money Deposit in the manner provided for in this Contract. The Title Company shall be authorized to invest the Earnest Money Deposit in an interest bearing account; provided, however, that the Title Company shall invest the Earnest Money Deposit only in such manner as will allow the Title Company to disburse the Earnest Money Deposit upon not more than 24 hours notice. Purchaser agrees to look solely to the Title Company for payment of such interest and hereby releases Seller from any liability therefore, and this provision survives the termination of this contract or the Closing. All interest or other earnings on the Earnest Money Deposit shall become a part of the Earnest Money Deposit and be disbursed to the party entitled to the Earnest Money Deposit.

Section 2.3. **Title Commitment.**

- (a) Within twenty (20) days after the Effective Date, Seller, will deliver or cause to be delivered to Purchaser a current Title Commitment from the Title Company for the issuance of the Title Policy to Purchaser. In the event Buyer either pays all cash for the Unit or obtains financing from a lender listed on Seller's preferred lender list, then Seller will pay the premium for the Title Policy. In the event Buyer does not pay all cash for the Unit and obtains financing from a lender that is not listed on Seller's preferred lender list, then Buyer will pay the premium for the Title Policy.
- (b) Purchaser shall have a period of ten (10) days from receipt of the Title Commitment in which to review the Title Commitment (the "Title Review Period") and to deliver to Seller in writing such objections as Purchaser may have to anything contained or set forth in the Title Commitment other than the Permitted Exceptions. All items to which Purchaser does not object within the Title Review Period shall be deemed included as a part of the Permitted Exceptions.
- (c) As to items to which Purchaser makes timely objection, Seller shall have a reasonable period of time after receipt of Purchaser's objections within which Seller may attempt to cure such objections specified as aforesaid by Purchaser, provided, however, Seller shall be under no obligation to incur any costs whatsoever in connection with such cure.
- (d) In the event Seller has not yet satisfied each and every of Purchaser's stated title objections within thirty (30) days following the date of Purchaser's provision of such objections, Seller shall notify Purchaser in writing ("Seller's Notice") of any of Purchaser's title objections which Seller is unable to, or elects not to, satisfy. Within three (3) business days following Seller's Notice, Purchaser shall elect to either (i) terminate this Contract, which shall constitute a Permitted Termination, or (ii) waive those title objections specified in the Seller's Notice which Seller has not satisfied and proceed to Closing whereupon such waived title matters shall also be deemed "Permitted Exceptions." In the event Purchaser fails to elect (i) or (ii) within such three (3) business days period, then, and in such event, Purchaser shall be deemed to have elected (ii).

Section 2.4. **Condition Precedent.** Seller shall not be obligated to perform under this Contract unless and until Seller and Purchaser have fully executed and delivered this Contract to the Title Company and Purchaser has delivered all of the Earnest Money Deposit to the Title Company as required by this Contract.

Section 2.5. **Termination and Default.**

- (a) If Purchaser breaches or fails to perform any provision of this Contract, such breach or failure shall be an event of default (each a "Purchaser's Default"). Following the occurrence of a Purchaser's Default, Seller shall deliver written notice to Purchaser of a Purchaser's Default allowing Purchaser seven days to cure such default. If a Purchaser's Default is not cured within said seven-day period, Seller shall be entitled, as Seller's sole and exclusive remedy under this Contract, to either: (1) terminate this Contract, or (2) enforce specific performance of this Contract against Purchaser. A termination of this Contract by Seller as provided in this Section 2.5(a) is a Permitted Termination.
- (b) If the Unit shall not be constructed and Available to Purchaser for Occupancy within 24 months after the date Purchaser executes this Contract, subject to delays resulting from Force Majeure or a Purchaser's Default ("Seller's Unconditional Obligations") such failure shall be an event of default ("Seller's Unconditional Obligation Default"). If Seller shall fail to perform any obligation other than Seller's Unconditional Obligations ("Seller's Other Obligations") under this Contract, such failure shall be an event of default ("Seller's Other Obligation Default"). Following the occurrence of a Seller's Unconditional Obligation



Default Purchaser shall be entitled to either: (1) enforce all rights and remedies available at law or in equity, including specific performance of this Contract, against Seller, or (2) terminate this Contract. Following the occurrence of a Seller's Other Obligation Default, Purchaser shall deliver written notice to Seller allowing Seller seven days to cure such default. If Seller's Other Obligation Default is not cured within said seven day period Purchaser shall, as Purchaser's sole and exclusive remedy, be entitled to either (i) enforce specific performance of this Contract against Seller, or (ii) terminate this Contract. If Purchaser has not filed suit against Seller for specific performance of this Contract within 30 days following the expiration of the cure period for Seller's Other Obligation Default as specified in this Section 2.5(b), Purchaser shall be deemed to have elected the remedy to terminate this Contract, and such termination is a Permitted Termination.

- (c) If a Permitted Termination occurs under Section 2.5(a) or 2.5(b) of this Contract, the terminating party shall notify the non-terminating party and the Title Company in writing of the Permitted Termination, the terminating party shall receive the Earnest Money Deposit as liquidated damages as it's sole and exclusive remedy under this Contract, and neither Seller nor Purchaser shall have any further rights or obligations under this Contract, except pursuant to provisions of this Contract that expressly survive termination. If Seller or Purchaser elects a Permitted Termination under Section 2.5(a) or 2.5(b) of this Contract and receipt of the Earnest Money Deposit as Seller's or Purchaser's sole remedy under this Contract, Seller and Purchaser agree that the damages incurred by Seller or Purchaser from a default, pursuant to which a Permitted Termination occurs, are difficult to ascertain, and that the Earnest Money Deposit represents a fair and reasonable estimate of those damages. The receipt by Seller or Purchaser of the Earnest Money Deposit is not intended by Seller or Purchaser as a penalty. The liquidated damages specified in this Section 2.5(c) shall be retained by Seller or Purchaser, as applicable, in lieu of all other damages, claims and remedies to which Seller or Purchaser may be entitled pursuant to a Permitted Termination under this Contract. If a Permitted Termination occurs under Section 2.3(d) or 4.2 of this Contract, the Earnest Money Deposit shall be received by the Purchaser, and neither Seller nor Purchaser shall have any further rights or obligations under this Contract, except pursuant to provisions of this Contract that expressly survive termination. This Section 2.5(c) shall survive the termination of this Contract.
- (d) If either Purchaser or Seller becomes entitled to the Earnest Money Deposit upon a Permitted Termination, the Title Company shall disburse the Earnest Money Deposit to the party entitled thereto. Any party who wrongfully fails or refuses to sign a release acceptable to the Title Company with 7 days of receipt of the request will be liable to the other party for liquidated damages in an amount equal to the sum of: (i) three times the amount of the Earnest Money Deposit; (ii) the Earnest Money Deposit; (iii) reasonable attorney's fees; and (iv) all costs of suit. This Section 2.5(d) shall survive the termination of this Contract.
- (e) Notwithstanding anything contained in this Contract to the contrary, it is understood and agreed that Seller shall not be responsible or liable to Purchaser for any costs, expenses or damages suffered or incurred by Purchaser as a result of (1) a Seller's Other Obligation Default, (2) any delay caused by Purchaser, or (3) any delay due to the occurrence of an event of Force Majeure, including any costs and expenses incurred by Purchaser in obtaining alternate accommodations pending the Closing. This Section 2.5 (e) shall survive the termination of this Contract.

Section 2.6. **Sale or Lease by Purchaser.** Purchaser shall not offer the Subject Property for sale or lease or advertise or otherwise market or attempt to market the Subject Property for sale or lease in any way prior to the Closing. Purchaser acknowledges and agrees that breach of the

foregoing covenant by Purchaser prior to the Closing shall be a Purchaser's Default that shall entitle Seller to exercise Seller's remedies pursuant to Section 2.5(a) of this Contract.

Section 2.7. **"As-Is, Where Is"**. EXCEPT AS SPECIFICALLY PROVIDED IN THIS CONTRACT AND THE LIMITED WARRANTY, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES IN CONNECTION WITH THE SUBJECT PROPERTY, AND PURCHASER AGREES THAT PURCHASER IS ACQUIRING THE SUBJECT PROPERTY "AS IS" AND "WHERE IS." THIS SECTION 2.8 SHALL SURVIVE THE CLOSING.

### **3. THE CLOSING**

Section 3.1. **Place of the Closing**. The Closing shall take place at the Title Company

Section 3.2. **Closing**.

(a) At the Closing (or otherwise as set forth below), Seller shall do the following:

- (1) deliver a duly executed and acknowledged Deed conveying to Purchaser the Unit and the undivided interest in the Common Elements allocated to the Unit, subject to the Permitted Exceptions;
- (2) cause to be delivered to Purchaser, promptly after the Closing in accordance with the usual practice of the Title Company, the Title Policy. The Title Policy shall be issued by the Title Company in the amount of the Purchase Price and shall insure good and indefeasible title in fee simple to the Unit, and the undivided interest of Purchaser in the Common Elements, each subject to the Permitted Exceptions. EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN THE DEED DELIVERED TO PURCHASER AT THE CLOSING, PURCHASER HEREBY WAIVES ANY AND EVERY CLAIM OR CAUSE OF ACTION AGAINST SELLER, ITS AGENTS, EMPLOYEES, REPRESENTATIVES, DIRECTORS AND OFFICERS, RELATING TO OR ARISING OUT OF TITLE TO THE SUBJECT PROPERTY (INCLUDING ALL IMPLIED WARRANTIES), AND PURCHASER HEREBY AGREES TO PROCEED SOLELY AND EXCLUSIVELY AGAINST THE TITLE COMPANY IN THE EVENT OF ANY SUCH CLAIM. THIS WAIVER AND RELEASE SHALL SURVIVE THE CLOSING; and
- (3) deliver to Purchaser a copy of the Limited Warranty attached as **Exhibit A**, executed by Seller;
- (4) execute and deliver all other documents reasonably required by the Title Company to complete the Closing

(b) At the Closing, Purchaser shall do the following:

- (1) pay the Purchase Price, less any portion thereof previously paid to Seller by Purchaser, in funds immediately available in Austin, Texas, by wire transfer to an account designated by the Title Company;
- (2) deliver to Seller a copy of the Limited Warranty executed by Purchaser; and
- (3) execute and deliver all other documents reasonably required by the Title Company to complete the Closing.

Section 3.3. **Possession**. Seller shall deliver possession of the Subject Property to Purchaser upon consummation of the Closing, subject to the Permitted Exceptions.

Section 3.4. **Adjustments at the Closing.** Ad valorem taxes and assessments for the Subject Property for the calendar year in which the Closing occurs shall be prorated between Seller and Purchaser as of the Closing Date, with the amount due for the Closing Date attributable to Purchaser. If actual ad valorem taxes for the year in which the Closing occurs are not available at the Closing, proration of taxes shall be made on the basis reasonably determined by Seller, with a subsequent cash adjustment of such proration to be made between Seller and Purchaser, if necessary, when actual tax figures become available. This subsequent adjustment provision shall survive the Closing. At the Closing, Purchaser shall pay the Association (1) the monthly assessments for (a) the month in which the Closing occurs (prorated from and including the Closing Date) and (b) the first full calendar month following the Closing, and (2) the amount of the Working Capital Contribution required by the Declaration.

Section 3.5. **Closing Costs.** Unless otherwise expressly provided for in this Contract all of the Closing costs and expenses shall be paid by Purchaser, including all costs of Purchaser's financing, if any. Seller shall pay one-half of the escrow fee, the cost of preparation of the Deed and any release of lien (including filing fees for such release), Seller's own attorney's fees, if any, and other costs or expenses directly and expressly incurred by Seller. Seller agrees to pay the basic premium for the Title Policy (not including the amendment of the survey exception or any other endorsement to the Title Policy).

#### **4. CONSTRUCTION MATTERS**

##### **Section 4.1. Construction; Changes.**

- (a) Purchaser acknowledges that the interior dimensions and area of the Unit, and other portions of the Condominium as represented or reflected in any marketing materials are approximate and that some construction-related variances could occur. Certain design features of the Condominium may change although any such changes will not change the Subject Property or the type of amenities that will be included in the Condominium. Seller shall not be liable to Purchaser as a result of any changes described in this subparagraph (a).
- (b) Purchaser acknowledges that Seller may, from time to time, substitute such other equipment, appliances, cabinets, finishes or materials utilized in the construction of the Units and the Common Elements from those specified or contemplated in the Plans and Specifications or referred to by Seller or any sales agent or in any marketing or other Seller materials, provided that the quality of any substituted equipment, appliances, cabinets, finishes or materials is substantially equal to or better than the that originally indicated in the Plans and Specifications as reasonably determined by Seller. It is understood and agreed that Seller is not building the Condominium or the Unit to the precise specifications or designs of any model residence, marketing display, Seller's marketing materials or to the specifications of Purchaser. Any model residence, marketing display, or Seller's marketing materials are displayed for illustrative purposes only and such display shall not constitute an agreement or commitment on the part of Seller to deliver the Unit in exact accordance with any such model residence, marketing display, Seller's marketing materials, or to the specifications of Purchaser. Consultation with Purchaser with respect to the specifications of the Unit to be built shall not, in any case, be deemed a waiver of Seller's rights under this Section 4.1. None of the items of furnishings shown in any model residence are included in this Contract unless Seller specifically agrees in writing to deliver the same as part of the Purchase Price by inclusion as optional items or by subsequent written instrument. The Unit is being sold unfurnished and will contain only the appliances and equipment installed at the time of the inspection of the Unit by Purchaser and Seller.

- (c) Purchaser acknowledges that as of the Closing Date construction of all of the units of the Condominium and all other portions of the Condominium (other than the Unit) may not be completed.
- (d) Construction of the Subject Property shall be deemed to have been satisfactorily and fully performed on the date when the Unit is Available to Purchaser for Occupancy, and Seller shall be deemed to have completed the Unit in full compliance with the terms of this Contract (except for "punch-list" items referenced below) when Seller issues the Occupancy Notice. Within ten days of receipt of the Occupancy Notice, Purchaser shall promptly arrange for an appointment with Seller's representative to make the inspection. At the inspection, Purchaser and Seller shall mutually determine and list in writing the minor "punch-list" items to be completed. If Purchaser is unwilling or fails to attend the appointment, Seller shall inspect the property and prepare the "punch-list" of items to be completed. Seller shall complete the "punch-list" items prior to the Closing or as soon thereafter as reasonably possible.
- (e) Purchaser shall (utilizing "Seller's finish option form") notify Seller of Purchaser's selection of standard finish options for the Unit from those available for selection within fourteen (14) days of Seller's notice to Purchaser that such elections must be made. If Purchaser shall fail to provide such selections to Seller within such time period, all selections shall be made in accordance with the standard finishes as reasonably determined by Seller.
- (f) If Purchaser desires that the Unit be upgraded, customized or changed from the Unit as shown in the Plans and Specifications, such upgrades, customization or changes must be detailed in writing on an Upgrade Payment Addendum to this Contract. If an Upgrade Payment Addendum to this Contract contains a provision that results in additional amounts to be paid by Purchaser, such additional amounts shall be added to the Purchase Price, and notwithstanding any other provision in this Contract, any advance payments made by Purchaser as provided in an Upgrade Payment Addendum shall be credited against the amount of the Purchase Price payable to Purchaser at the Closing, shall not be a part of the Earnest Money Deposit and shall not be refundable to Purchaser for any reason except a Permitted Termination by Purchaser.
- (g) If Purchaser chooses to make changes to the standard materials from those set forth in the Plans and Specifications which are otherwise provided by Seller and Seller consents thereto, then Seller shall not be held liable for any delays in completing the Unit by the Closing Date and any such delay shall be deemed to be an event of Force Majeure (provided such delays are as a result of such revised work not being completed in time, and not the fault of Seller).
- (h) The provisions of this Section 4.1 shall survive the termination of this Contract or the Closing.

Section 4.2. **Condemnation and Casualty**. If all or a substantial part of the Condominium has been taken by or is threatened with condemnation or been damaged or destroyed after the date of this Contract but before the Closing, then Seller may, prior to the Closing, terminate this Contract under this Section 4.2; provided, however, if Seller elects to repair such damage and such damage may reasonably be repaired in a period not to exceed 180 days, this Contract shall remain in full force and effect, with the Closing Date to be extended to a date designated by Seller on not less than 10 days advance written notice from Seller to Purchaser. Any termination pursuant to this Section 4.2 shall be a Permitted Termination. Upon the Closing, all risk of loss for damage to the Subject Property shall be assumed by Purchaser, and such obligation to assume shall survive the Closing.

## 5. CONDOMINIUM INFORMATION STATEMENT AND DOCUMENTS

**PURCHASER ACKNOWLEDGES RECEIPT OF THE CONDOMINIUM INFORMATION STATEMENT REQUIRED BY THE ACT. SELLER HEREBY RECOMMENDS THAT PURCHASER READ THE CONDOMINIUM INFORMATION STATEMENT BEFORE EXECUTING THIS CONTRACT.** Purchaser hereby acknowledges receipt of a copy of the Condominium Documents attached to the Condominium Information Statement. Purchaser agrees to be bound by the provisions of the foregoing documents, as amended from time to time in accordance with the provisions of each document. The budget contained in the Condominium Information Statement is based upon assumptions that, to the best of Seller's knowledge and belief, are reasonable for the initial year of operation of the Condominium. Purchaser acknowledges that such budget does not constitute a representation or warranty on the part of Seller. The provisions of this Article shall survive the Closing.

## **6. BROKERAGE COMMISSION; ABSTRACTS**

SELLER AGREES TO INDEMNIFY PURCHASER AND HOLD PURCHASER HARMLESS FROM ANY LOSS, LIABILITY, DAMAGE, COST OR EXPENSE (INCLUDING REASONABLE ATTORNEYS' FEES) PAID OR INCURRED BY PURCHASER BY REASON OF ANY CLAIM TO ANY BROKER'S, FINDER'S OR OTHER FEE IN CONNECTION WITH THIS TRANSACTION BY ANY PARTY CLAIMING BY, THROUGH OR UNDER SELLER. PURCHASER AGREES TO INDEMNIFY SELLER AND HOLD SELLER HARMLESS FROM ANY LOSS, LIABILITY, DAMAGE, COST OR EXPENSE (INCLUDING REASONABLE ATTORNEY'S FEES) PAID OR INCURRED BY SELLER BY REASON OF ANY CLAIM TO ANY BROKER'S, FINDER'S OR OTHER FEE IN CONNECTION WITH THIS TRANSACTION BY ANY PARTY CLAIMING BY, THROUGH OR UNDER PURCHASER, EXCEPT THAT SELLER SHALL PAY A COMMISSION TO PRINCIPAL BROKER COOPERATING BROKER ONLY AS PROVIDED IN THIS CONTRACT. BY EXECUTION OF THIS CONTRACT, PURCHASER ACKNOWLEDGES THAT, AT THE TIME OF EXECUTION OF THIS CONTRACT, PURCHASER WAS ADVISED BY THIS WRITING THAT PURCHASER SHOULD HAVE AN ATTORNEY OF ITS OWN SELECTION EXAMINE AN ABSTRACT OF TITLE TO THE SUBJECT PROPERTY OR PURCHASER SHOULD BE FURNISHED WITH OR OBTAIN A POLICY OF TITLE INSURANCE COVERING THE SUBJECT PROPERTY. THIS ARTICLE SHALL SURVIVE THE CLOSING.

## **7. MISCELLANEOUS**

Section 7.1. **Notices.** All notices, demands, requests and other communications required or permitted hereunder shall be in writing and shall be deemed to be delivered when actually received, or, if earlier and regardless of whether actually received (except in Section 7.19 of this Contract where actual receipt is specified), two days following deposit in a regularly maintained receptacle for the United States mail, registered or certified, postage fully prepaid, addressed to the addressee. Notice may additionally be provided by facsimile transmission so long as a copy of such notice is promptly forwarded by one of the other means described above and the facsimile notice shall be deemed delivered when actually received. The proper addresses and facsimile numbers for Seller and Purchaser are as provided below each party's signature. Each party to this Contract shall have the right to change its address hereunder to any other location within the continental United States by the giving of 30 days' notice to the other party in the manner set forth herein.

Section 7.2. **Subordination.** Purchaser agrees that all the rights of Purchaser pursuant to the terms and conditions of this Contract are and shall be subject and subordinate to the lien of any mortgage now existing or hereafter made to finance the acquisition of the real property described in the Declaration and the cost of construction and other costs during construction of the improvements thereon and to any and all advances made thereon and to any and all sums which may become a lien pursuant to the terms of such mortgage or any other agreement relating to the acquisition of such real property and construction of such improvements, including cost of services provided incidental to such construction. The subordination of Purchaser's rights as

herein provided shall be self-operating, and no further instrument of subordination shall be required. In confirmation of such subordination, Purchaser agrees to promptly execute and deliver any instrument that the holder of any mortgage as above described or its successors in interest may require to evidence such subordination, and Seller agrees that any liens referenced in this Section 7.2 shall be released with respect to the Unit at or prior to the Closing.

Section 7.3. **Governing Law.** THIS CONTRACT WILL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS (WITHOUT REGARD TO THE PRINCIPLES OF CONFLICTS OF LAW) APPLICABLE TO A CONTRACT EXECUTED AND PERFORMABLE IN SUCH STATE. Venue for any action hereunder shall be in Travis County, Texas.

Section 7.4. **Time is of the Essence.** With respect to all provisions of this Contract, time is of the essence. Notwithstanding the foregoing, if the last day of any time period stated herein shall fall on a Saturday, Sunday or legal holiday, then the duration of such time period shall be extended so that it shall end on the next succeeding day which is not a Saturday, Sunday or legal holiday.

Section 7.5. **Further Assurances and Corrections.** From time to time at the request of Seller, Purchaser will promptly correct any defect, error or omission that may be discovered in the contents of this Contract or in the execution or acknowledgement thereof.

Section 7.6. **Assignment.** Purchaser shall not have the right to assign, transfer, pledge, mortgage or encumber this Contract or its rights contained in this Contract without Seller's prior written consent and any purported attempt to do so shall be a Purchaser's Default and shall be void ab initio and of no effect. Notwithstanding the foregoing, Purchaser shall be permitted to assign this Contract from and after the 180<sup>th</sup> day following the Effective Date upon execution by Purchaser and the assignee of an assignment agreement in form and substance satisfactory to Seller and payment to Seller of an administrative fee of \$1,000.00. Seller shall have the right to assign its rights and obligations under this Contract and, if the assignee assumes the obligations of Seller under this Contract, the Seller shall have no further obligations under this Contract or any documents delivered pursuant to this Contract. This provision shall survive the termination of this Contract or the Closing.

Section 7.7. **Entire Contract.** This Contract embodies and constitutes the entire understanding between the parties with respect to the transactions contemplated herein, and all prior or contemporaneous agreements, understandings, representations and statements (oral or written) are merged into this Contract. Neither this Contract nor any provision hereof may be waived, modified, amended, discharged or terminated except by an instrument in writing signed by the party against whom the enforcement of such waiver, modification, amendment, discharge or termination is sought, and then only to the extent set forth in such instrument. No broker, salesman, employee or agent of Seller has authority to modify the terms herein nor any authority whatsoever to make any reference, representation or agreement not contained in this Contract and no reference, representation or agreement not contained herein shall be binding upon Seller or in any way affect the validity of this Contract or form any part hereof. Purchaser acknowledges that no representations have been made by Seller, any broker, its agents or employees, or in any marketing or other materials in order to induce Purchaser to enter into this Contract, other than as expressly stated herein. Without limiting the generality of the foregoing, Purchaser acknowledges that neither Seller, any broker, nor its agents or employees have (i) made any representation or statement to Purchaser of the investment potential or resale at any future date, at a profit or otherwise, of the Subject Property; (ii) rendered any advice or expressed any opinions to Purchaser regarding any tax consequences of ownership of the Subject Property or (iii) made any statement or representation not set forth in this Contract, including any statement or representation as to the views from the Unit being impacted in the future. Purchaser acknowledges that Purchaser has read and understands each and every part of this Contract. The provisions of this Section 7.7 shall survive the termination of this Contract or the Closing.

Section 7.8. **Counterpart Execution**. This Contract may be executed in several counterparts, each of which shall be fully effective as an original and all of which together shall constitute one and the same instrument. A facsimile signature of Purchaser or Seller shall be the same as an original signature for all purposes hereunder.

Section 7.9. **Headings; Construction**. The headings that have been used throughout this Contract have been inserted for convenience or reference only and do not constitute matter to be construed in interpreting this Contract. The words “herein”, “hereof”, “hereunder” and other similar compounds of the word “here” when used in this Contract shall refer to this entire Contract and not to any particular provision or section. The word “including” shall be deemed to be followed by the words “but not limited to.”

Section 7.10. **Invalid Provisions**. If any one or more of the provisions of this Contract, or the applicability of any such provision to a specific situation, shall be held invalid or unenforceable, such provision shall be modified to the minimum extent necessary to make it or its application valid and enforceable, and the validity and enforceability of all other provisions of this Contract and all other applications of any such provision shall not be affected thereby.

Section 7.11. **Binding Effect**. This Contract shall be binding upon and inure to the benefit of Seller and Purchaser, and their respective heirs, personal representatives, successors and permitted assigns. Except as expressly provided herein, nothing in this Contract is intended to confer on any person, other than the parties hereto and their respective heirs, personal representatives, successors and permitted assigns, any rights or remedies under or by reason of this Contract.

Section 7.12. **Further Acts**. In addition to the acts recited in this Contract to be performed by Seller and Purchaser, Seller and Purchaser agree to perform or cause to be performed at the Closing or after the Closing any and all such further acts as may be reasonably necessary to consummate the transactions contemplated hereby.

Section 7.13. **Exhibits**. All Exhibits attached hereto are made a part hereof for all purposes the same as if set forth herein verbatim, it being expressly understood that if any Exhibit attached hereto which is to be executed and delivered at the Closing contains blanks, the same shall be completed in accordance with the terms and provisions contained herein and as contemplated herein prior to or at the time of execution and delivery thereof.

Section 7.14. **Attorneys’ Fees**. If it shall be necessary for either Purchaser or Seller to employ an attorney to enforce its rights pursuant to this Contract, the defaulting party shall reimburse the non-defaulting party for reasonable attorney’s fees and costs. The provisions of this Section 7.14 shall survive the termination of this Contract and the Closing.

Section 7.15. **LIMITATION OF LIABILITY**. EXCEPT AS SPECIFICALLY PROVIDED IN THE LIMITED WARRANTY AND DEED, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES IN CONNECTION WITH THE SUBJECT PROPERTY AND PURCHASER AGREES THAT PURCHASER IS ACQUIRING THE SUBJECT PROPERTY “AS IS” AND “WHERE IS.” IN NO EVENT SHALL SELLER BE RESPONSIBLE OR LIABLE UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHER THEORY OF LAW OR EQUITY, FOR ANY INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY NATURE ARISING FROM THIS CONTRACT, AND PURCHASER EXPRESSLY WAIVES THE RIGHT TO CLAIM, SEEK OR COLLECT ANY SUCH DAMAGES.

Section 7.16. **CREDIT REPORT**. PURCHASER AUTHORIZES SELLER TO ORDER, OBTAIN AND REVIEW A CREDIT REPORT RELATING TO PURCHASER.

Section 7.17. **Insulation**. Insulation Information is as set forth below:

- (a) Exterior walls of improved living areas: insulated with BATT insulation to a thickness of 3.5" inches which yields an R-Value of R-13.
- (b) Walls in other areas of the home: insulated with BATT insulation to a thickness of 3.5" inches which yields an R-Value of R-13.
- (c) Ceilings in improved living areas: insulated with BATT insulation to a thickness of 9.5" inches which yields an R-Value of R-30.
- (d) Floors of improved living areas not applied to a slab foundation: insulated with no insulation to a thickness of n/a inches which yields an R-Value of n/a.
- (e) Other insulated areas: mid floor/ceiling between 1<sup>st</sup> and 2<sup>nd</sup> floor insulated with HD Quietzone insulation to a thickness of 3.5" inches which yields an R-Value of R-11.

The Insulation Information was furnished to Seller by the installer and/or manufacturer of the insulation and if there is a change of the Insulation Information, Seller will furnish to Purchaser a written statement of such information.

Section 7.18. **No Recording**. Neither this Contract nor any summary thereof shall be recorded by Purchaser or Seller without the prior written consent of the other party. Any attempt to record this Contract without such prior written consent shall constitute a breach of this Contract.

Section 7.19. **Offer and Acceptance**. This Contract when executed by Purchaser and delivered to Seller together with the Earnest Money Deposit shall constitute an irrevocable offer by Purchaser to purchase the Subject Property for a period of seven (7) days after the date of execution of this Contract by Purchaser. This Contract shall not be binding on Seller until accepted by Seller, which shall be manifested by the execution by Seller of the Contract and delivery of the Contract by Seller to Purchaser. If this offer is not accepted by Seller within such period, Seller may consider Purchaser's offer to be a continuing offer which may be accepted by Seller at any time prior to Seller's receipt of written revocation of said offer from Purchaser. If Seller rejects Purchaser's offer, or Purchaser revokes its offer after said period and prior to acceptance by Seller, the Earnest Money Deposit shall be returned to Purchaser and the offer shall be deemed withdrawn. No real estate broker or agent has authority to act on behalf of Seller.

Section 7.20. **Right to Rescind this Contract Within Six Days of Effective Date**. BY WRITTEN NOTICE TO SELLER RECEIVED BY SELLER ON OR BEFORE 5:00 P.M. CENTRAL LOCAL TIME ON THE SIXTH (6TH) DAY FOLLOWING THE EFFECTIVE DATE, PURCHASER SHALL HAVE THE RIGHT TO RESCIND AND CANCEL THIS CONTRACT. IF PURCHASER TIMELY EXERCISES THIS RIGHT TO RESCIND, THIS CONTRACT SHALL BE VOID AND OF NO FURTHER FORCE OR EFFECT AND NEITHER PARTY SHALL HAVE ANY FURTHER OBLIGATION TO THE OTHER. THE TITLE COMPANY SHALL PROMPTLY RETURN TO PURCHASER 100% OF THE EARNEST MONEY DEPOSIT AND ANY ACCRUED INTEREST RELATED THERETO.

Section 7.21. **Arbitration of Disputes Which Arise After Close of Escrow**. It is hereby agreed that all claims, disputes and controversies between Purchaser and Seller arising from or related to the Unit, or to any defect in or to the Unit or the real property on which the Unit is situated, or the sale of the Unit by Seller, including but not limited to, any claim for breach of contract, negligent or intentional misrepresentation, nondisclosure in the inducement, execution or performance of any contract, including this arbitration agreement, and breach of any alleged duty of good faith and fair dealing, shall be submitted to binding arbitration by and pursuant to the



arbitration provision contained in the most recent edition of the Warranty Booklet, as of the date of the execution of this Agreement. That Booklet has been made available to Purchaser, and is incorporated herein by reference, and made a part of this Agreement. As set forth in the Warranty Booklet, binding arbitration of disputes which arise after the close of escrow will be accomplished pursuant to the rules of Construction Arbitration Services, in effect at the time of the request for arbitration. This arbitration agreement shall be governed by the Federal Arbitration Act, to the exclusion of any inconsistent state law.”