

**RECEIPT OF CONDOMINIUM INFORMATION STATEMENT  
AND RESALE CERTIFICATE FOR THE CAYENA CONDOMINIUMS**

**PURCHASER RECEIVED A CONDOMINIUM INFORMATION STATEMENT AND RESALE CERTIFICATE FROM SELLER BEFORE PURCHASER SIGNED THE PURCHASE AND SALE AGREEMENT ATTACHED HERETO.**

**PURCHASER ACKNOWLEDGES SELLER'S RECOMMENDATION THAT PURCHASER READ THE CONDOMINIUM INFORMATION STATEMENT AND RESALE CERTIFICATE BEFORE SIGNING THE AGREEMENT OF SALE AND PURCHASE ATTACHED HERETO.**

**HAVING RECEIVED THE CONDOMINIUM INFORMATION STATEMENT AND RESALE CERTIFICATE PRIOR TO SIGNING THE PURCHASE AND SALE AGREEMENT ATTACHED HERETO, PURCHASER DOES NOT HAVE A RIGHT OF RESCISSION PURSUANT TO SECTIONS 82.156(A) OR 82.156(B) OF THE TEXAS UNIFORM CONDOMINIUM ACT.**

**PURCHASER:**

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

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

**THE CAYENA CONDOMINIUMS**  
**PURCHASE AND SALE AGREEMENT**

**UNIT NUMBER:** \_\_\_\_\_

**EFFECTIVE DATE:** \_\_\_\_\_, 2019

**SELLER:** HC Cayena Homes, LLC  
c/o Hopper Communities, Inc.  
1616 Cleveland Ave.  
Charlotte, NC 28203  
Telephone: 704-805-4800  
Email: \_\_\_\_\_

**PURCHASER:** \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_  
Email: \_\_\_\_\_

**TITLE COMPANY:** Heritage Title Company of Austin, Inc.  
Attn: Mary Metz  
2500 Bee Cave Road, Suite 100  
Austin, Texas 78746  
Telephone: 512-329-3900  
Email: mmetz@heritage-title.com

**1. AGREEMENT AND SCHEDULES:** This “Agreement” means this Purchase and Sale Agreement, all Schedules attached hereto and any and all addenda that may be attached hereto in the future in accordance with the terms hereof. Capitalized terms, unless otherwise defined herein, shall have the meanings ascribed to them in Schedule A attached hereto. Purchaser hereby acknowledges having read all sections and schedules of this Agreement and agrees to be bound by the terms hereof. The “Effective Date” of this Agreement shall be the date last set forth below the signatures of Purchaser and Seller on the execution page of this Agreement; the Effective Date shall be inserted into the space provided at the beginning of this Agreement.

**2. PURCHASE AND SALE:** For the Purchase Price and otherwise on and subject to the terms and conditions hereinafter set forth, Seller hereby agrees to sell to Purchaser, and Purchaser hereby agrees to purchase and accept from Seller, all of Unit No. \_\_\_\_\_, located in the condominium project known as “The Cayena Condominiums” (the “Project”), in the City of Austin, Travis County, Texas, as established pursuant to, and more fully described in, that certain Declaration of Condominium Regime for the Project, recorded under Document No. 2018059648, in the Official Public Records of Travis County, Texas (as the same may be amended from time to time, the “Declaration”), which such unit is shown on Schedule B attached hereto and made a part hereof (together with all of the rights and privileges granted to the owner of the Condominium Unit in the Declaration, the “Unit”). The drawings attached hereto as Schedule B are approximate and subject to change based on field conditions, governmental requirements, and similar factors; however, no such changes shall diminish materially the accessibility, value, or size of the Unit. The Closing shall be established as provided in Section 1.A of Schedule A.

**3. PURCHASE PRICE AND TERMS OF PAYMENT:**

- A. Base Purchase Price: \$ \_\_\_\_\_
- Rooftop Terrace Price: \$ \_\_\_\_\_
- Upgraded Elevation Price: \$ \_\_\_\_\_
- Purchase Price:** \$ \_\_\_\_\_

Upon Purchaser's selection of the Standard Selections and Upgrades, the Purchase Price shall be increased by an amount equal to the Option Upgrade Costs, as more particularly described in Section 4 of Schedule A.

B. Purchaser shall deliver to the Title Company an earnest money deposit concurrently with the execution of this Agreement by Purchaser equal to \$ \_\_\_\_\_, such amount being five percent (5%) of the of the sum of the Purchase Price (the "Earnest Money Deposit"). Purchaser shall also deliver to Seller the Option Upgrade Costs Deposit in accordance with the provisions of Section 4 of Schedule A. The Option Upgrade Costs Deposit may be commingled with other funds of Seller. Neither Seller nor the Title Company shall have the obligation to deposit the Earnest Money Deposit or Option Upgrade Costs Deposit in an interest-bearing account, but if the Earnest Money Deposit and/or Option Upgrade Costs Deposit is deposited in an interest-bearing account, then all interest accruing thereon shall belong to Seller. In the event Purchaser fails to timely deposit the Earnest Money Deposit or the Option Upgrade Costs Deposit as required herein, Seller may at any time thereafter elect to terminate this Agreement by giving written notice thereof to Purchaser at any time prior to Purchaser's actual deposit of the Earnest Money Deposit or the Option Upgrade Costs Deposit, as applicable. In the event that the Closing occurs, the Earnest Money Deposit and the Option Upgrade Costs Deposit shall be credited against the Purchase Price. In all other events, THE EARNEST MONEY DEPOSIT AND THE OPTION UPGRADE COSTS DEPOSIT SHALL BE NONREFUNDABLE TO PURCHASER UNDER ALL CIRCUMSTANCES NOTWITHSTANDING THE FACT THAT THIS AGREEMENT MAY HAVE BEEN TERMINATED, UNLESS OTHERWISE EXPRESSLY PROVIDED HEREIN.

C. In addition to the Purchase Price, Purchaser will also be required to pay at Closing the closing costs and expenses identified in Section 2 of Schedule A, including, without limitation, Purchaser's prorated share of all Assessments.

D. Purchaser shall pay the Purchase Price and the closing costs and expenses as required to be paid by Purchaser pursuant to the terms hereof as follows (check only one option):

Cash Purchase. Currently with Purchaser's execution hereof, Purchaser shall provide proof to Seller, in a form acceptable to Seller and Seller's existing lender, if any, in their sole and absolute discretion, that Purchaser has the financial capacity and creditworthiness to purchase the Unit. If Purchaser fails to provide proof that it has the financial capacity and creditworthiness to purchase the Unit, or if such proof is unacceptable to Seller or Seller's existing lender, if any, then Seller may terminate this Agreement upon written notice to Purchaser, whereupon the Earnest Money Deposit shall be returned to Purchaser, and the parties shall have no further rights or obligations hereunder except for those that expressly survive termination hereof.

Financing Required. Within five (5) days following the Effective Date, Purchaser will apply for, and thereafter use its good faith and reasonable efforts in order to obtain, financing for its purchase of the Unit from a lender ("Lender") of Purchaser's own selection on terms which are suitable to Purchaser, and shall deliver to Seller a pre-qualification letter issued by such Lender. If Purchaser fails to do so, Purchaser shall be deemed to be in default in the performance of its obligations hereunder, and Seller may at any time thereafter elect to terminate this Agreement effective immediately upon giving written notice thereof to Purchaser. Purchaser agrees to furnish any and all information and verifications requested by Purchaser's Lender within seventy-two (72) hours following Purchaser's receipt of such request from Lender, whether written or oral. Purchaser's failure to timely provide the required information and verifications to Purchaser's Lender shall also be deemed to be a default by Purchaser in the performance of its obligations hereunder, thereby likewise entitling Seller to terminate this Agreement effectively immediately upon written notice thereof to Purchaser. Purchaser understands and agrees that Purchaser's obligation

to close the transaction contemplated by this Agreement is not conditioned upon Purchaser having obtained financing for its acquisition of the Unit.

Seller may suggest one or more "Preferred Lenders," in which case **PURCHASER EXPRESSLY ACKNOWLEDGES AND AGREES THAT NO SELLER PARTY HAS MADE, AND SELLER HEREBY EXPRESSLY DISCLAIMS, ANY REPRESENTATIONS, WARRANTIES OR COVENANTS OF ANY KIND REGARDING ANY PREFERRED LENDER'S ABILITY OR WILLINGNESS TO LOAN FUNDS TO PURCHASER, PURCHASER'S QUALIFICATIONS FOR ANY LOAN OR THE TERMS OF ANY PROPOSED LOAN WITH ANY PREFERRED LENDER OR ANY OTHER LENDER. PURCHASER RELEASES AND WAIVES ANY AND ALL CLAIMS AND CAUSES OF ACTION AGAINST ANY SELLER PARTY RELATING TO OR ARISING OUT OF PURCHASER'S ELECTION TO USE ANY PREFERRED LENDER FOR ITS FINANCING.** The foregoing waiver and release shall survive Closing. Obtaining the loan and any other financing contemplated by Purchaser from any Preferred Lender shall be solely Purchaser's responsibility. Purchaser is not required to use any Preferred Lender as a condition for purchase of the Unit.

**4. CONDOMINIUM INFORMATION STATEMENT: PURCHASER ACKNOWLEDGES THAT SELLER HAS PROVIDED TO PURCHASER, AND PURCHASER IS IN RECEIPT OF, PRIOR TO PURCHASER'S EXECUTION OF THIS AGREEMENT, A COPY OF THE CONDOMINIUM INFORMATION STATEMENT FOR THE PROJECT, WHICH INCLUDES: (I) THE DECLARATION, (II) THE CERTIFICATE OF FORMATION FOR THE CAYENA CONDOMINIUM ASSOCIATION, INC., A TEXAS NON-PROFIT CORPORATION (THE "ASSOCIATION"), (III) THE COMMUNITY MANUAL FOR THE ASSOCIATION (WHICH INCLUDES THE BYLAWS AND RULES AND REGULATIONS OF THE ASSOCIATION), (IV) THE PROJECTED BUDGET OF THE ASSOCIATION, AND (V) ALL EXHIBITS ATTACHED TO THE CONDOMINIUM INFORMATION STATEMENT AND ANY OF THE AFOREMENTIONED DOCUMENTS (COLLECTIVELY, THE "CONDOMINIUM DOCUMENTS").**

**PURCHASER ACKNOWLEDGES SELLER'S RECOMMENDATION THAT PURCHASER READ THE CONDOMINIUM INFORMATION STATEMENT BEFORE SIGNING THIS AGREEMENT.** Prior to the execution of this Agreement, Purchaser has executed a certificate acknowledging Purchaser's receipt of the Condominium Information Statement. At Closing, Seller may again require Purchaser to sign a certificate acknowledging Purchaser's receipt of the Condominium Information Statement.

**PURCHASER HEREBY ACKNOWLEDGES AND AGREES THAT SELLER HAS THE RIGHT TO MODIFY, CHANGE, REVISE AND AMEND, WITHOUT PURCHASER'S APPROVAL, THE CONDOMINIUM INFORMATION STATEMENT AND ANY OR ALL OF THE CONDOMINIUM DOCUMENTS. IN THE EVENT THAT SELLER AMENDS, MODIFIES, CHANGES OR REVISES THE CONDOMINIUM INFORMATION STATEMENT OR THE CONDOMINIUM DOCUMENTS PRIOR TO CLOSING, AND PROVIDED SUCH AMENDMENT, CHANGE OR MODIFICATION ADVERSELY AFFECTS PURCHASER, THEN A COPY OF THE AMENDED, MODIFIED, CHANGED OR REVISED CONDOMINIUM INFORMATION STATEMENT AND/OR CONDOMINIUM DOCUMENT(S), AS APPLICABLE, WILL BE PROVIDED TO PURCHASER.**

**5. CONDOMINIUM RESALE CERTIFICATE: PURCHASER ACKNOWLEDGES THAT SELLER HAS PROVIDED TO PURCHASER, AND PURCHASER IS IN RECEIPT OF, PRIOR TO PURCHASER'S EXECUTION OF THIS AGREEMENT, COPIES OF THE DECLARATION AND THE COMMUNITY MANUAL (WHICH INCLUDES THE BYLAWS AND RULES AND REGULATIONS OF THE ASSOCIATION) AND A RESALE CERTIFICATE WHICH HAS BEEN PREPARED NOT EARLIER THAN THREE (3) MONTHS PRIOR TO THE DATE OF THIS AGREEMENT. PURCHASER ACKNOWLEDGES SELLER'S RECOMMENDATION THAT PURCHASER READ THE RESALE CERTIFICATE BEFORE SIGNING THIS AGREEMENT.**

**6. CONDITIONS ON SELLER'S OBLIGATIONS:** Purchaser expressly understands and agrees that Seller's obligations under this Agreement are conditioned on the satisfaction of certain conditions as outlined in Section 20 of Schedule A. Purchaser understands that if Seller is unable to satisfy such conditions, or, if at any time

hereafter, Seller reasonably determines that such conditions cannot reasonably be satisfied, on or before the date that is one (1) year following the Effective Date, then Seller shall have the right to terminate this Agreement at any time by delivery of written notice of cancellation to Purchaser. If Seller elects to terminate as provided above, the Earnest Money Deposit shall be returned to Purchaser, and the parties shall have no further rights and liabilities under this Agreement, except those obligations which expressly survive the termination of this Agreement.

IN WITNESS WHEREOF, Seller and Purchaser have executed this Agreement as of the Effective Date.

**SELLER:**

**PURCHASER:**

HC Cayena Homes, LLC,  
a Texas limited liability company

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

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

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

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

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

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

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

ACCEPTANCE BY THE TITLE COMPANY AND  
RECEIPT OF EARNEST MONEY DEPOSIT

The Title Company hereby acknowledges receipt of a fully executed counterpart of this Agreement and receipt of \$ \_\_\_\_\_ constituting the Earnest Money Deposit.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

TITLE COMPANY:

HERITAGE TITLE COMPANY OF AUSTIN, INC.

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

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

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

Schedules:

Schedule A – Terms and Conditions

Schedule B – Unit Plan

Schedule C – Form of Special Warranty Deed

Seller's Initials: \_\_\_\_\_

Purchaser's Initials: \_\_\_\_\_

**SCHEDULE A**

**TERMS AND CONDITIONS**

**1. CLOSING:**

A. Seller will notify Purchaser and the Title Company of a date subsequent to the substantial completion of the Unit (such date being referred to herein as the "Scheduled Closing Date") for the closing of the transaction contemplated under this Agreement (the "Closing"). The date on which the Closing actually occurs is referred to herein and the "Closing Date." The issuance of a certificate of occupancy or its equivalent by the appropriate governmental agency shall constitute irrefutable and conclusive evidence of substantial completion of the Unit. The fact that the Unit may require minor repairs, touch-ups or adjustments, including, without limitation, completion by Seller (or on behalf of Seller) of the repairs noted on the Inspection List, shall not constitute a valid reason for Purchaser to fail to close on the Closing Date. Notwithstanding the foregoing, if, as of the Scheduled Closing Date, Seller, in Seller's sole and absolute discretion, is unable to satisfy the requirements of Seller's existing lender for release of the Unit from the instruments securing Seller's existing financing, including, without limitation, any deed of trust, then Seller may extend the Scheduled Closing Date until such requirements have been satisfied, or Seller may terminate this Agreement upon written notice to Purchaser, whereupon Seller shall refund the Earnest Money Deposit to Purchaser. Purchaser expressly acknowledges that, during construction of the Unit, it is difficult to estimate a Scheduled Closing Date for a particular Unit due to numerous factors outside Seller's control. All statements regarding completion of the Unit or closing dates are estimates only and are subject to change. For that reason, the Scheduled Closing Date is based on events rather than calendar dates. Accordingly, Seller shall not be liable to Purchaser for expenses or lost opportunities relating to or resulting from delays in completing the Unit or scheduling the Scheduled Closing Date. **Purchaser is advised to wait for confirmation of the Scheduled Closing Date from Seller before scheduling a move into the Unit.**

B. Prior to the Closing Date, Purchaser shall, at its expense, make arrangements with the appropriate utility companies to have the accounts for utility services to the Unit transferred into Purchaser's name. If Purchaser fails to do so, then Purchaser shall pay to Seller on demand any utility charges for the Unit pertaining to periods after the Closing Date, together with an administrative fee of Two Hundred Fifty Dollars (\$250.00), and the obligation of Purchaser to pay such utility charges and the administrative fee shall survive the Closing of the transaction contemplated by this Agreement.

C. If Purchaser is unable or unwilling to close on the Scheduled Closing Date provided for in Section 1.A of this Schedule A, Purchaser shall be in default under this Agreement, and Seller shall have the right to exercise any and all of its rights and remedies as provided in this Agreement. In addition to the rights and remedies afforded to Seller hereunder in connection with Purchaser's default, Seller shall also have the right, at its sole discretion, without waiving or being deemed to have waived Purchaser's default, to postpone the Scheduled Closing Date, in which event Purchaser agrees to pay a fee equal to Five Hundred Dollars (\$500.00) per day from the Scheduled Closing Date until the Closing Date as liquidated damages for Purchaser's default. The parties agree and acknowledge that the actual damages that would be suffered by Seller in the event of Purchaser's failure to close on the Scheduled Closing Date would be extremely difficult or impossible to precisely determine, but nonetheless stipulate and agree that such fee constitutes a good faith estimate of the damages that will be incurred by Seller as a result of Purchaser's default. TIME IS OF THE ESSENCE with respect to the Closing Date, and also with respect to any other provision of this Agreement that requires performance by Purchaser within a specified time period.

D. All payments at Closing shall be made by wire transfer or certified check, cashier's check or attorney's trust account check drawn on a bank located in the Austin, Texas area in United States currency.

E. Seller does not represent and warrant to Purchaser that the Unit will be completed by any particular date. As construction of the Unit progresses, Seller may elect to update Purchaser periodically as to the estimated completion date for the Unit, but such updates shall not be binding upon Seller, and the Scheduled Closing Date shall be established only in the manner provided in Section 1.A.

Seller's Initials: \_\_\_\_\_

Purchaser's Initials: \_\_\_\_\_

F. At Closing, and conditioned upon the prior or contemporaneous performance by Purchaser of all of the duties and obligations then or theretofore performable by Purchaser hereunder, Seller shall do the following:

1. Execute and deliver to Purchaser a Special Warranty Deed (the "Deed") in the form attached hereto as Schedule C conveying fee simple title to the Unit to Purchaser, subject to the Permitted Exceptions;

2. Execute and deliver to Purchaser Seller's Non-Foreign Certificate; and

3. Execute and/or deliver such other closing documents as may be called for by provisions contained elsewhere in this Agreement or which, in the reasonable opinion of the Title Company, may be necessary or appropriate for purposes of consummating this transaction.

At Closing, Purchaser shall do the following:

1. Deliver to Seller the Purchase Price in cash (subject to credit for the Earnest Money Deposit and Option Upgrade Costs Deposit); and

2. Execute and/or deliver such other closing documents as may be called for by provisions contained elsewhere in this Agreement or which, in the reasonable opinion of the Title Company or Seller, may be necessary or appropriate for purposes of consummating this transaction.

**2. EXPENSES OF CLOSING:**

A. The additional costs to be paid by the Purchaser at the Closing include the following:

1. All closing costs associated with any loan obtained by Purchaser, including, without limitation, the loan origination fee, loan application fees and any other fees charged by Purchaser's lender or its underwriter, credit reports, preparation of loan documents, prepaid items such as interest and escrows, loan discount points, Purchaser's legal fees, appraisal fees, the cost of any loan title policy (including endorsements thereto) requested by Purchaser's lender and any Private Mortgage Insurance Premium (PMI), VA Loan Funding Fee, or FHA Mortgage Insurance Premium (MIP) as required by the lender;

2. All escrow fees, title search costs, costs for tax certificate(s) and the premium for any owner's title policy of insurance (including endorsements thereto) requested by Purchaser;

3. The cost of recording the Deed and any other documents required to be recorded by Purchaser's lender if Purchaser obtains a loan, including, without limitation any deed of trust securing Purchaser's loan;

4. Purchaser's prorated share of all real property taxes levied against the Unit, which shall be prorated on a calendar year basis as of the Closing Date and otherwise in accordance with Section 2.C below;

5. Purchaser's prorated share of all assessments levied against the Unit by the Association, which shall be prorated on a calendar year basis as of the Closing Date, together with any other charges and fees required to be paid to the Association under and pursuant to the Declaration, including any transfer-related fees, working capital contributions and reserve fund contributions (collectively, the "Assessments"), which Assessments shall be forwarded directly to the Association; and

6. All other expenses payable by Purchaser under this Agreement.

B. The Seller agrees to pay the following amounts in connection with the Closing:

1. The expense of preparation of the Deed, an affidavit as to debts and liens and parties in possession, to be in a form reasonably acceptable to Seller and the Title Company, Seller's Non-Foreign Certificate and Seller's Internal Revenue Service Form 1099; and

2. The cost of recording any release of liens securing Seller's existing financing which encumber the Unit, if any.

C. Real property taxes for the Unit shall be prorated as of the Closing Date. If the Closing shall occur before the tax rate is fixed for the then current year or before actual taxes are known with certainty, the apportionment of taxes shall be on the basis of the tax rate of the preceding year applied to the latest assessed valuation. Subsequent to the Closing, when the tax rate is fixed for the year in which the Closing occurs and actual taxes become known, Seller and Purchaser covenant and agree to adjust the proration of taxes and, if necessary, refund or pay such sums as shall be necessary to effect such adjustment. Seller shall be responsible for paying all assessments which shall have been levied against the Unit on and as of the Closing Date; Purchaser shall be responsible for paying all assessments levied against the Unit subsequent to the Closing Date. The provisions of this Section 2.C shall survive the Closing.

**3. CONSTRUCTION OF THE UNIT:**

A. If the Unit is not substantially complete as of the Effective Date, Seller shall construct and complete the Unit substantially in accordance with the Condominium Documents, the final plans and specifications for the Unit, the applicable Selection Package chosen by Purchaser for the Unit, and the applicable Upgrades, if any, chosen by Purchaser for the Unit (collectively, the "Plans"). Purchaser also acknowledges that in the course of construction of the Unit, certain minor changes, substitutions or modifications to the Unit may be necessitated by governmental authorities having jurisdiction over the Unit, job conditions, design changes by the Contractor or architect, or availability of materials. All such changes, substitutions, and modifications are hereby authorized by Purchaser, provided that the changes do not materially and adversely affect the size or the value of the Unit. Seller expressly reserves the right to make substitutions of materials or products in the construction of the Unit, provided that such substitutions do not materially and adversely affect the value of the Unit. Seller shall notify Purchaser of any such changes, substitutions, or modifications that materially and adversely affect the value of the Unit.

B. No part of the Purchase Price is based on the number of square feet of the Unit or the improvements located thereon. Purchaser acknowledges that any information provided regarding the amount of square feet is an estimate only, and Seller will not be bound by any such estimate as the Purchase Price has not been determined on the basis of square feet. **Purchaser acknowledges that the square footage of the Unit and any improvements located thereon may be measured different ways for different purposes, such as for conveyance purposes, tax purposes, appraisal purposes, sales purposes and for purposes of carpeting and paint. The legal boundaries of the Unit are established by the Declaration. The legal boundaries of the Unit for purposes of conveyance may be different from the area which may be used for actual living purposes or as calculated for appraisal or any other purpose.** Purchaser has, or will have had prior to Closing, the opportunity to inspect the Unit, and upon acquiring the Unit, Purchaser hereby expressly waives any claim or demand against any Seller Party for any difference, shortage or discrepancy between the actual physical and accessible area of the Unit as constructed and the legal boundaries of the Unit as determined by the Declaration and depicted on the final Plat and Plans attached to the Declaration.

**4. SELECTION PACKAGE AND UPGRADES:** Within ten (10) days of Seller's delivery of the Selections/Upgrades Sheet to Purchaser (the "Selections/Upgrade Period", as the same may be extended by Seller in its sole discretion), Purchaser shall make selections among the various colors and options, floor coverings, countertops, cabinets and other features available to Purchaser, as set forth on the "Standard Selections" portion of the Selections/Upgrades Sheet delivered to Purchaser by Seller. The Selections/Upgrades Sheet also reflects certain upgrades to the Standard Selections and the prototype floor-plans for the Unit. The Standard Selections selected by Purchaser are referred to herein as the "Selection Package", and the upgrades selected by Purchaser in its Selection/Upgrades Sheet shall be referred to herein as the "Upgrades". At the time Purchaser delivers its Selection Package and Upgrades to Seller, Purchaser shall also deliver to Seller an amount (the "Option Upgrade Costs Deposit") equal to fifty percent (50%) of the costs for the Selection Package and Upgrades (the "Option Upgrade

Seller's Initials: \_\_\_\_\_

Purchaser's Initials: \_\_\_\_\_



Costs”), and the remaining fifty percent (50%) shall be paid by Purchaser to Seller at Closing. The Purchase Price shall be increased by an amount equal to the Option Upgrade Costs, such increase to be memorialized by an addendum to this Agreement. If no Standard Selections are identified as being selected by Purchaser in the Selection/Upgrades Sheet, then Seller will be entitled to make **all** selections on behalf of Purchaser (and such selections will be considered the “Selection Package” referenced herein), Purchaser shall be deemed to have approved the Option Upgrade Costs in connection therewith, shall deliver to Seller the Option Upgrade Costs Deposit within three (3) days following Seller’s request and will be obligated to purchase the Unit so finished. The Plans for the Unit will incorporate the Selection Package and Upgrades to the extent the Option Upgrade Costs are timely delivered by (or on behalf of) Purchaser to Seller in full as required herein. Seller will contract with a general contractor of Seller’s selection to construct the Unit according to the Plans (the “Contractor”). Except as otherwise provided in this Agreement, Purchaser shall have no right to request any changes to the Plans, including, without limitation, the Selection Package or Upgrades, or to select any additional upgrades after the date hereof which may be reflected, but not initially selected by Purchaser, on Selections/Upgrades Sheet. Seller will not be required to begin work (or continue work) on any Unit until all contingencies set forth in this Agreement have been satisfied, and Purchaser has complied in all respects with each of the provisions of this Agreement. In the event Seller is unable to furnish any materials identified in the Selection Package or Upgrades due to shortages, unavailability or other causes beyond the control of Seller, Seller shall be permitted to substitute alternate materials of comparable quality to complete such construction. Purchaser understands and agrees that materials used in connection with the Selection Package and Upgrades may vary somewhat from any samples or renderings provided by any Seller Party to Purchaser, and that such variations are inherent in manufacturing and shall not be grounds for any refusal by Purchaser to accept the Unit at Closing.

**5. INSPECTIONS:**

A. After substantial completion of the Unit, Purchaser agrees that it shall inspect the Unit prior to Closing with representatives of Seller or any contractor engaged by Seller (including the Contractor), become thoroughly familiar with the condition of the Unit, and complete with Seller or its representative an inspection list, noting any work required to be completed or corrected in order for the Unit to conform to the Plans, including any visible surface defects which were present at the time of that inspection and such other defects as were apparent at inspection (the “Inspection List”).

B. Purchaser will cooperate with Seller in selecting a mutually agreeable date for the inspection prior to Closing. If Purchaser cannot participate in the scheduled inspection, Purchaser shall designate an agent to conduct the inspection on Purchaser’s behalf. If Purchaser or its agent fails to participate in the inspection and complete the Inspection List within five (5) days following Seller’s first request for Purchaser to inspect the Unit, Purchaser’s right to inspect the Unit shall be deemed waived, in which event, Purchaser shall accept the Unit in its then-present condition. If Purchaser claims the existence of a visible defect noted by Purchaser after the Closing, and said defect is not noted on the Inspection List, Purchaser shall have the burden of overcoming a presumption in favor of the accuracy and completeness of the Inspection List in any arbitration or litigation, should Seller reject Purchaser’s claim.

C. If Seller has not completed the repairs shown on the Inspection List prior to Closing, such failure shall not entitle Purchaser to delay the Closing or to hold back any portion of the Purchase Price, nor shall such failure be considered an event of default hereunder, and Purchaser shall provide Seller and its employees, contractors, agents and representatives with access to the Unit following the Closing for the purpose of making any such repairs.

**D. PURCHASER HEREBY ACKNOWLEDGES THAT CONSTRUCTION SITES ARE INHERENTLY DANGEROUS.** Purchaser acknowledges that neither the federal Occupational Safety and Health Act (“OSHA”) nor Seller’s insurance will allow Purchaser to make unaccompanied visits to any area under construction within the Project, including, without limitation, the Unit. Accordingly, Purchaser shall not visit the Unit or any area of the Project under construction unless accompanied by a representative of Seller. **IF PURCHASER INSPECTS OR FOR ANY REASON ENTERS INTO THE UNIT PRIOR TO THE CLOSING OR ENTERS UPON ANY PORTION OF THE PROJECT UNDER CONSTRUCTION, PURCHASER SHALL DO SO AT ITS OWN COST AND RISK, AND NEITHER SELLER NOR ANY OF**

ITS PRINCIPALS, MANAGERS, MEMBERS, PARTNERS, OFFICERS, EMPLOYEES, AGENTS, CONTRACTORS AND REPRESENTATIVES (COLLECTIVELY, THE "SELLER PARTIES", AND, INDIVIDUALLY, A "SELLER PARTY") SHALL BE LIABLE FOR ANY COSTS, DAMAGES, INJURY OR DELAYS SUFFERED OR CAUSED BY PURCHASER OR ITS EMPLOYEES, AGENTS, CONTRACTORS, REPRESENTATIVES AND INVITEES (COLLECTIVELY, THE "PURCHASER PARTIES") IN CONNECTION THEREWITH. PURCHASER AGREES TO INDEMNIFY AND HOLD THE SELLER PARTIES HARMLESS FROM AND AGAINST ANY AND ALL LIABILITY FOR PERSONAL INJURY OR PROPERTY DAMAGE RESULTING FROM VISITS TO ANY AREA UNDER CONSTRUCTION WITHIN THE PROJECT, INCLUDING, WITHOUT LIMITATION, THE UNIT, BY ANY OF THE PURCHASER PARTIES, AND PURCHASER HEREBY RELEASES THE SELLER PARTIES FROM ANY AND ALL LIABILITY RESULTING FROM ANY PERSONAL INJURY TO, OR DAMAGE TO PROPERTY OWNED BY, ANY OF THE PURCHASER PARTIES VISITING ANY AREA UNDER CONSTRUCTION WITHIN THE PROJECT. This Section 5.D shall survive the expiration or earlier termination of this Agreement.

**6. LIMITED WARRANTIES:**

A. Purchaser acknowledges that the issuance of a Certificate of Occupancy for the Unit by the applicable governmental entity shall constitute conclusive evidence that Seller has fulfilled all of its obligations with respect to the construction of the Unit, subject to the completion of any unfinished items set forth on the Inspection List. Seller shall cause Contractor to warrant the construction of the Unit to Purchaser in accordance with Contractor's then-prevailing warranty standards and pursuant to a written limited warranty agreement to be provided to Purchaser (the "Contractor Warranty").

B. Seller shall assign, or cause the Contractor to assign, to Purchaser at Closing all manufacturers' warranties relating to the appliances, personal property and equipment included within the Unit, if any. Purchaser understands that the warranty period is defined in each warranty assigned to Purchaser and may begin to run from a date which is different than the Closing Date. Seller itself is not providing any warranties whatsoever, whether express, implied, or otherwise with regard to the appliances, personal property, equipment and heating and air conditioning system for the Unit, and Purchaser agrees to look solely to the manufacturers with respect to any claims relating to those items.

C. **PURCHASER EXPRESSLY ACKNOWLEDGES AND AGREES THAT, EXCEPT FOR THE WARRANTY OF TITLE SET FORTH IN THE DEED, SELLER HAS NOT MADE ANY REPRESENTATIONS OR WARRANTIES CONCERNING THE UNIT AND HEREBY SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES, ORAL OR WRITTEN, EXPRESS, IMPLIED OR STATUTORY, PAST, PRESENT OR FUTURE, OF, AS TO OR CONCERNING THE UNIT, INCLUDING, WITHOUT LIMITATION, FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, DESIGN, QUANTITY, QUALITY, OPERATION, COMPLIANCE WITH SPECIFICATIONS, ABSENCE OF LATENT DEFECTS, COMPLIANCE WITH LAWS, THE PHYSICAL CONDITION OF THE UNIT OR ANY OTHER MATTER AFFECTING THE UNIT. SELLER'S SILENCE AS TO ANY MATTER DOES NOT AND WILL NOT CONSTITUTE AN AFFIRMATIVE ASSURANCE REGARDING THE UNIT. PURCHASER ACKNOWLEDGES THAT IT IS NOT RELYING UPON ANY REPRESENTATION, STATEMENT OR OTHER ASSERTION WITH RESPECT TO THE UNIT'S CONDITION, BUT IS RELYING SOLELY UPON ITS EXAMINATION OF THE UNIT. PURCHASER AGREES THAT SELLER WILL NOT BE LIABLE TO PURCHASER FOR, AND PURCHASER HEREBY FULLY RELEASES AND DISCHARGES THE SELLER PARTIES FROM, ANY AND ALL CLAIMS FOR COSTS, EXPENSES, LOSSES, LIABILITIES, DAMAGES, DEMANDS, ACTIONS AND CAUSES OF ACTION ARISING FROM OR RELATED TO THE UNIT, INCLUDING, WITHOUT LIMITATION, THE PHYSICAL CONDITION OF THE UNIT. AS A MATERIAL PART OF THE CONSIDERATION FOR THIS AGREEMENT, SELLER AND PURCHASER AGREE THAT, EXCEPT FOR THE COMPLETION OF THE ITEMS REFLECTED ON THE INSPECTION LIST, IF ANY, THE SALE OF THE UNIT HEREUNDER IS MADE FROM SELLER TO PURCHASER ON AN "AS IS" AND "WITH ALL FAULTS" BASIS, AND THAT PURCHASER IS TAKING THE UNIT WITH ANY AND ALL LATENT AND PATENT DEFECTS. IT IS UNDERSTOOD AND AGREED THAT THE PURCHASE PRICE HAS BEEN**

Seller's Initials: \_\_\_\_\_

Purchaser's Initials: \_\_\_\_\_

ARRIVED AT BY PRIOR NEGOTIATION TO REFLECT THAT THE UNIT IS SOLD BY SELLER SUBJECT TO THE FOREGOING PROVISIONS. DISCLAIMERS SIMILAR TO THE FOREGOING SHALL BE INCLUDED IN THE DEED AND, AT SELLER'S ELECTION, IN ANY OTHER CLOSING DOCUMENTS TO BE DELIVERED BY SELLER TO PURCHASER AND SHALL SURVIVE THE CLOSING FOR AN UNLIMITED PERIOD OF TIME. PURCHASER REPRESENTS AND WARRANTS THAT (A) IT HAS THE RIGHT TO SEEK LEGAL COUNSEL IN DETERMINING WHETHER TO ENTER INTO THIS AGREEMENT, (B) IF PURCHASER HAS SOUGHT LEGAL COUNSEL, PURCHASER'S LEGAL COUNSEL HAS EXPLAINED THE MEANING AND IMPACT OF THE FOREGOING PROVISIONS TO PURCHASER AND (C) PURCHASER FULLY UNDERSTANDS THE MEANING OF THE PROVISIONS SET FORTH IN THIS PARAGRAPH AND THEIR IMPACT ON PURCHASER.

**WAIVER OF CONSUMER RIGHTS**

\_\_\_\_\_ (Purchaser's Initials) AFTER CONSULTATION WITH AN ATTORNEY OF PURCHASER'S OWN SELECTION, PURCHASER HEREBY KNOWINGLY AND VOLUNTARILY WAIVES TO THE MAXIMUM EXTENT PERMISSIBLE ALL OF ITS RIGHTS UNDER THE DECEPTIVE TRADE PRACTICES -- CONSUMER PROTECTION ACT, SECTION 17.41 ET SEQ., TEXAS BUSINESS AND COMMERCE CODE, A LAW THAT GIVES CONSUMERS SPECIAL RIGHTS AND PROTECTIONS (the "DTPA"). PURCHASER REPRESENTS AND WARRANTS TO SELLER THAT: (A) PURCHASER HAS KNOWLEDGE AND EXPERIENCE IN FINANCIAL AND BUSINESS MATTERS THAT ENABLE IT TO EVALUATE THE MERITS AND RISKS OF THE TRANSACTION CONTEMPLATED UNDER THIS AGREEMENT; (B) PURCHASER IS NOT IN A SIGNIFICANTLY DISPARATE BARGAINING POSITION AS TO ANY PROVISION OF THIS AGREEMENT OR AS TO ANY MATTER CONTAINED OR PROVIDED FOR HEREIN; AND (C) AFTER CONSULTATION WITH AN ATTORNEY OF PURCHASER'S OWN SELECTION, PURCHASER HAS VOLUNTARILY CONSENTED TO THIS WAIVER. PURCHASER ACKNOWLEDGES AND AGREES THAT THE RIGHTS AND REMEDIES OF PURCHASER WILL BE GOVERNED BY LEGAL PRINCIPLES OTHER THAN THE DTPA.

D. The provisions of this Section 6 shall survive the Closing.

**7. REAL ESTATE BROKERS:** Seller and Purchaser acknowledge that this Agreement was procured without intervention of any broker except for Gottesman Residential Real Estate ("Seller's Broker"), who represents Seller, and the broker identified in the addendum attached this Agreement, if any, as representing Purchaser ("Purchaser's Broker"). Purchaser shall indemnify and defend Seller from and against the claims of any broker, except for Seller's Broker and Purchaser's Broker, including any attorney's fees incurred as a result of such claim.

**8. DEFAULT:**

A. If Seller fails to perform any of the covenants of this Agreement, then Purchaser shall send written notice thereof to Seller in accordance with Section 13 hereof, and Seller shall have ten (10) days from its receipt of such notice within which to cure such default. If Seller shall fail, after written notice and the expiration of such ten (10) day cure period, to cure such default, then Purchaser shall have the right to terminate this Agreement by delivering written notice thereof to Seller, in which event the Earnest Money Deposit and the Option Upgrade Costs Deposit paid by Purchaser to Seller pursuant to this Agreement shall be returned to Purchaser, and the parties shall have no further rights or obligations hereunder, except for those expressly surviving termination. Purchaser's legal and equitable remedies shall be limited to those contained in this Section 8.A and in no event shall Seller be liable to Purchaser for damages of any kind, including, without limitation, actual, consequential, punitive or special damages, all of which are hereby waived, nor shall Purchaser have the right to seek specific performance against Seller which right is also hereby waived.

B. If Purchaser fails to perform any of the covenants of this Agreement, then Seller shall have the right to terminate this Agreement and retain the Earnest Money Deposit and Option Upgrade Costs Deposit paid by Purchaser as liquidated damages. Seller and Purchaser acknowledge that the actual damages that would be suffered

Seller's Initials: \_\_\_\_\_

Purchaser's Initials: \_\_\_\_\_

by Seller in the event of Purchaser's default would be extremely difficult or impossible to precisely determine, but nonetheless stipulate and agree that the Earnest Money Deposit and Option Upgrade Costs Deposit represent a reasonable forecast of those damages. In addition, Seller shall have the right to exercise any other right or remedy available at law or in equity as a result of Purchaser's default, including, but not limited to, an action for monetary damages and specific performance.

**9. CONVEYANCE:** Upon Closing, and subject to the terms and conditions provided herein, Seller shall convey good and indefeasible fee simple title to the Unit by Special Warranty Deed, subject to the following "Permitted Exceptions":

- A. All taxes and assessments not yet due and payable.
- B. Applicable zoning ordinances and all other restrictions and regulations by governmental authorities.
- C. All of the terms, conditions, provisions, rights, privileges, obligations, easements, and liens set forth and contained in any one or more of the Condominium Documents, as now or hereafter amended. Purchaser expressly acknowledges, by execution of this Agreement, that the Unit shall be subject to all of the terms, conditions, use restrictions, easements, assessments, architectural restrictions and other provisions contained in the Condominium Documents and amendments thereto, including the obligation to pay monthly assessments to the Association.
- D. All other restrictions, agreements, and easements of record which affect the Unit.

The acceptance of the Deed by Purchaser shall be deemed to be full performance and discharge of every agreement and obligation on the part of Seller to be performed pursuant to the provisions of this Agreement, except those which are specifically designated in this Agreement to survive the Closing or which survive the Closing by operation of law.

**10. CONSTRUCTION ACTIVITIES:** Purchaser acknowledges that construction activities at the Project may occur subsequent to the Closing, and that such activity may cause some inconvenience to Purchaser. Without limiting the foregoing, Purchaser acknowledges that such construction activities may, from time to time, produce certain conditions, including, without limitation: (a) noise or sound that is objectionable because of its volume, duration, frequency or shrillness; (b) smoke; (c) noxious, toxic or corrosive fumes or gases; (d) obnoxious odors; (e) dust, dirt or flying ash; (f) unusual fire or explosion hazards; (g) temporary interruption of utilities; and/or (h) other conditions that may threaten the security or safety of Purchaser within the Unit. Purchaser agrees to make no claim against any Seller Party as a result of such construction activity and further acknowledges that if Purchaser or Purchaser's employees, contractors, agents, representatives or invitees enter any construction site, the indemnities and waivers contained in Section 5.D shall apply. The provisions of this Section 10 shall survive the Closing.

**11. POSSESSION:** Subject to the terms and conditions provided herein, possession of the Unit shall be delivered by Seller to Purchaser at Closing. Purchaser shall not occupy the Unit until after Closing and possession of the Unit has been delivered to Purchaser. In no event shall Purchaser advertise, list or otherwise market the sale of the Unit prior to Closing.

**12. PERFORMANCE DISRUPTION:** Notwithstanding anything to the contrary contained in this Agreement, Seller shall not be liable for delay in the performance of its obligations if such performance is prevented, hindered, delayed or affected by: workers' or subcontractors' labor strike, riots, acts of God (including but not limited to fire, windstorm, flood, tornadoes, earthquakes, lightning or other casualty), failure of Seller's suppliers of building materials to deliver requested building materials, terrorist actions or any other unusual act, event or catastrophe. If the Unit or any portion of the Project is substantially damaged or destroyed by fire or other casualty prior to Closing, then Seller may, at its option, either terminate this Agreement by delivery of written notice to Purchaser, in which event the Earnest Money Deposit shall be returned to Purchaser, and neither party shall have any further liability under this Agreement, except for such obligations that expressly survive termination hereof, or Seller may extend the Closing for a period of up to ninety (90) days from the date of the casualty in order to repair

the damage. If, prior to the Closing, any material portion of the Unit shall be condemned or threatened to be condemned, then Seller may terminate this Agreement by written notice thereof to Purchaser, whereupon the Earnest Money Deposit shall promptly be returned to Purchaser, and neither party shall have any further liability under this Agreement, except for such obligations that expressly survive termination hereof. If Purchaser does not so elect to terminate this Agreement, then the Closing shall take place as provided herein, and Seller shall assign to Purchaser at Closing all of Seller's interest in and to any condemnation award relative to the Unit, to the extent the same has not been assigned and delivered to Seller's existing lender.

**13. NOTICE:** The delivery of any item and the giving of notice in compliance with this Agreement shall be accomplished in writing by personal delivery, certified mail addressed or email to the parties at the addresses set forth on the first page of this Agreement. Any notice given in accordance with the provisions of this Section 13 shall be deemed to be effective, if personally delivered, on the date of such delivery, if mailed by registered or certified mail, on the date the same is deposited in the mail, or if emailed, on the date the notice is emailed to the party. The parties' telephone numbers may be included on the first page of this Agreement, and, if they are, those telephone numbers are provided merely for the convenience of the parties in communicating with one another, and, for purposes of this Agreement, information or communications delivered by telephone (including, without limitation, in any voice mail message) are **not** effective notice – notice may be effectively given only in one of the means specified in the foregoing provisions of this paragraph. Each party may give notice to the other party of a change of its address for the purpose of giving notice under this Section 13.

**14. ASSIGNMENT:** This Agreement is personal to Purchaser and may not be assigned by Purchaser without the prior written consent of Seller, which consent may be withheld by Seller in its sole and absolute discretion. Any attempted assignment in violation of this provision shall be null and void. Seller shall have the right to assign its rights under this Agreement, without the consent of Purchaser. Without limiting the foregoing, Seller may elect to collaterally assign this Agreement, including, without limitation, Seller's interest in and to the Earnest Money Deposit and Option Upgrade Costs Deposit, to any lender providing financing to Seller for the acquisition, development and/or construction of the Unit by Seller, and, upon any such assignment, Purchaser shall recognize Seller's lender as the "Seller" hereunder following a foreclosure of deed-in-lieu of foreclosure of the Unit. No such assignment by Seller shall have any effect on the obligations of Purchaser under this Agreement.

**15. BINDING EFFECT:** This Agreement shall be binding upon, and shall inure to the benefit of, the heirs, successors, executors, administrators, legal representatives and permitted assigns of the respective parties.

**16. AGREEMENT:** Purchaser acknowledges that Purchaser's Earnest Money Deposit is tendered with this Agreement and that this Agreement is not binding upon Seller until executed by an authorized officer or agent of Seller. A sales representative is not an officer or authorized agent of Seller.

**17. PURCHASER:** If Purchaser is composed of more than one person, the choices, designations, and other decisions of one person shall bind all of the others, and all persons comprising Purchaser shall be jointly and severally liable for all obligations of Purchaser under this Agreement.

**18. MISCELLANEOUS:** References to Purchaser or Seller and other references contained herein shall be deemed to include the plural, neuter, feminine and masculine. If any provision of this Agreement is held invalid or unenforceable, the remainder of it shall not be affected thereby, and to this end the provisions hereof are declared severable.

**19. COMPLETE AGREEMENT:** This Agreement contains all agreements of Seller and Purchaser with respect to the Unit, and supersedes any prior written or oral agreements between the parties. Neither party is relying on any statement or representation made by or on behalf of the other party that is not set forth in this Agreement. This Agreement may not be modified orally, but only by a written modification agreement executed by both Seller and Purchaser. No salesperson, broker, or realtor has authority to modify the terms of this Agreement, or make any representation or agreement not contained in this Agreement, and anything to the contrary shall not be binding upon Seller.

**20. CONDITIONS TO SELLER'S OBLIGATIONS:** Seller's obligations under this Agreement are expressly conditioned upon: (i) Seller's obtaining all necessary governmental permits and approvals to construct the Unit, including, but not limited to, construction permits and occupancy permits (Seller agrees to apply for all such permits and approvals in a timely manner, and to use commercially reasonable good faith efforts to obtain all such permits and approvals prior to the Closing Date), without any condition or restriction on the issuance of such permits and approvals that is unsatisfactory to Seller, in Seller's sole and absolute discretion; (ii) Seller's execution of a sufficient number of sales contracts for units in the Project in such form and content acceptable to Seller and Seller's lender, in their sole and absolute discretion; (iii) Seller's procurement of financing for the acquisition, development and/or construction of the Unit on terms and conditions acceptable to Seller, in its sole and absolute discretion (provided, however, if this requirement is not satisfied as of the Effective Date, Seller shall apply for such financing in a timely manner and shall use commercially reasonable good faith efforts to obtain such financing, but Seller hereby discloses to Purchaser, and Purchaser hereby acknowledges, that such financing may be contingent upon items outside of Seller's control); and (iv) the approval by Seller's lender of the Condominium Documents and any other document requiring the approval of Seller's lender.

If Seller, despite good faith efforts to do so, is unable to satisfy all of the foregoing conditions within **ONE (1) YEAR** following the Effective Date, or if Seller at any time after the Effective Date reasonably determines that the foregoing conditions cannot be satisfied within one (1) year following the Effective Date, then Seller may terminate this Agreement by delivery of written notice to Purchaser at any time after the expiration of such 1-year period, and, in such event, Seller shall return to Purchaser the Earnest Money Deposit paid by Purchaser, and the parties shall be released from all further obligations under this Agreement, except for those which expressly survive termination hereof.

**21. DISAGREEMENT:** If at any time before the Closing, there is a material disagreement between Purchaser and Seller as to the quality, nature or character of the work performed by any Seller Party, or any matter, fact or thing affecting the Plans, including, without limitation, the Selection Package and Upgrades, Seller may, at its option, return the Earnest Money Deposit to Purchaser and cancel this Agreement, and neither party shall have any further duties or obligations, except for those which expressly survive termination hereof.

**22. ATTORNEYS' FEES:** In the event any action or proceeding in law or equity is instituted by Seller for an alleged breach of any obligation of Purchaser under this Agreement, the prevailing party in such action or proceeding shall be entitled to recover as part of such action or proceeding such reasonable attorneys' fees, expert witness fees, and court costs as may be fixed by the court or jury, or arbitration panel, but this provision shall not apply to any cross complaint filed by anyone other than Seller in such action or proceeding. The parties hereto agree that the "prevailing party" means the party who successfully prosecutes the action or successfully defends against it, prevailing on the main issue, even though not necessarily receiving an award of damages or other form of recovery.

**23. MODEL UNIT:** Any unit, model unit, or sales display shown to Purchaser is shown for illustrative purposes only and such display does not constitute an obligation on the part of Seller to deliver the Unit herein purchased in exact accordance with any such unit, model unit, or sales display exhibited. Any colors, textures, patterns, and detailing of the Unit to be constructed as set out or shown in any floor plans, elevations, brochures and other materials provided by Seller to Purchaser are approximate and are shown for illustrative purposes only. Purchaser has, or will have had prior to Closing, the opportunity to inspect the Unit and the improvements constructed therein. Purchaser expressly waives any claim or demand which Purchaser may have against Seller on account of any difference, shortage or discrepancy between the Unit and improvements constructed therein as actually existing and as it is shown in any sales information. None of the furnishings or landscaping shown in any unit, model unit, or sales display displayed to Purchaser is included in this Agreement unless Seller herein or hereafter specifically agrees in writing to deliver same.

**24. INTERSTATE LAND SALES FULL DISCLOSURE ACT EXEMPTION:** House Resolution 2600, passed as Public Law No. 113-167 on September 26, 2014, and effective on March 25, 2015, exempts the Unit from registration under the Interstate Land Sales Full Disclosure Act, 15 USC §1701 et seq. (the "Act"), which Purchaser acknowledges and agrees; accordingly, the Unit is not registered under the Act and Purchaser will not receive a Property Report as contemplated thereunder.

25. **ADDITIONAL PROVISIONS:** Purchaser and Seller hereby agree that the terms and conditions attached as Schedule A to the Agreement are hereby supplemented and/or amended as follows: \_\_\_\_\_

26. **DISCLOSURES:**

**A. NOTICE OF MEMBERSHIP IN PROPERTY OWNERS ASSOCIATION CONCERNING THE UNIT.** As a purchaser of property in the residential community in which this Unit is located, you are obligated to be a member of a property owners' association. The Declaration governing the use and occupancy of the Unit and the Association Bylaws governing the establishment, maintenance and operation of this residential community are attached to the Condominium Information Statement. You are obligated to pay assessments to the Association. The amount of the assessments is subject to change. Your failure to pay the assessments could result in a lien on and the foreclosure of your Unit. Additionally, as a member of the property owners' association, you will have the right to use certain facilities and amenities which have been constructed to date; however, you will not necessarily have the right to use other facilities if any are subsequently constructed.

**B. TRANSFER FEES:** If the Unit is subject to a private transfer fee obligation, then Seller hereby notifies Purchaser that the private transfer fee obligation may be governed by Chapter 5, Subchapter G of the Texas Property Code.

**C. INSULATION:** The Unit contains or will contain the following:

1. Exterior walls of improved living areas: insulated with fiberglass batt insulation to a thickness of 3.5 (2x4 walls) or 5.5 (2x6 walls) inches which yields an R-Value of R-15 or R-19.

2. Walls in other areas of the home: insulated with Icynene open cell foam (at attic kneewalls & gable ends) insulation to a thickness of 3.5 inches which yields an R-Value of R-13.

3. Ceilings in improved living areas: insulated with Icynene open cell foam insulation to a thickness of 7.5 inches which yields an R-Value of R-27.

4. Floors of improved living areas not applied to a slab foundation: insulated with Icynene open cell foam insulation to a thickness of 5.5 inches which yields an R-Value of R-20.

5. Other insulated areas: insulated with N/A insulation to a thickness of N/A inches which yields an R-Value of N/A.

All stated R-Values are based on information provided by the manufacturer of the insulation.

**D. DECLARATION:** Seller hereby gives Purchaser notice that the Declarant has reserved certain rights under the Condominium Documents. Purchaser is advised to review the Condominium Documents and Condominium Information Statement carefully for a description of these rights. Certain disclosures regarding the Unit and the Project are set forth in Article 4 of the Declaration and are hereby incorporated herein by reference (collectively, the "Disclosures"). Purchaser acknowledges that the Disclosures apply to the Unit and Common Elements and that Purchaser has read the Disclosures. Purchaser acknowledges that the Declarant, not Seller, prepared the budgets contained in the Condominium Documents and that such budgets were prepared in accordance with generally accepted accounting principles and are based upon reasonable assumptions for the initial year of operation of the Association. Purchaser acknowledges that such budgets do not constitute a representation or warranty on the part of Seller or Declarant. The provisions of the immediately preceding sentence of this paragraph shall survive the Closing.

**E. CHAPTER 27 OF THE CODE:** This Agreement is subject to Chapter 27 of the Texas Property Code. The provisions of that Chapter may affect your right to recover damages arising from a

Seller's Initials: \_\_\_\_\_

Purchaser's Initials: \_\_\_\_\_

**construction defect. If you have a complaint concerning a construction defect and that defect has not been corrected as may be required by law or by contract, you must provide the notice required by Chapter 27 of the Texas Property Code to the contractor by certified mail, return receipt requested, not later than the 60th day before the date you file suit to recover damages in a court of law or initiate arbitration. The notice must refer to Chapter 27 of the Texas Property Code and must describe the construction defect. If requested by the contractor, you must provide the contractor an opportunity to inspect and cure the defect as provided by Section 27.004 of the Texas Property Code.**

27. **MLS:** Seller shall have the right at any time to add the Unit to any and all Multiple Listing Services and other public listings published in circulars, newspapers, magazines and on the internet as desired by Seller.

28. **EXECUTION:** To facilitate execution, this Agreement may be executed in any number of counterparts as may be convenient or necessary, and it shall not be necessary that the signatures of both parties hereto be contained on any one counterpart hereof. Additionally, for purposes of facilitating the execution of this Agreement, the parties hereto hereby covenant and agree that: (a) the signature pages taken from separate individually executed counterparts of this Agreement may be collated and/or combined to form multiple fully executed counterparts; and (b) electronic execution and delivery shall be deemed to be the delivery by such party of his, her or its original signature hereon. All executed counterparts of this Agreement shall be deemed to be originals, but all such counterparts, taken together or collectively, as the case may be, shall constitute one and the same agreement.

[End of Schedule A]



**SCHEDULE B**

**UNIT PLAN**

[See Attached]

**SCHEDULE C**

**FORM SPECIAL WARRANTY DEED**

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.**

**SPECIAL WARRANTY DEED**

STATE OF TEXAS                   §  
  §  
COUNTY OF TRAVIS           §

KNOW ALL BY THESE PRESENTS THAT:

HC CAYENA HOMES, LLC, a Texas limited liability company ( "Grantor"), for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) cash and other good and valuable consideration in hand paid by \_\_\_\_\_ (whether one or more, "Grantee"), the receipt and sufficiency of which are hereby acknowledged, **[NOTE: INCLUDE THE FOLLOWING IF A VENDOR'S LIEN IS REQUIRED; IF NOT, THEN DELETE THE FOLLOWING LANGUAGE:** and for the further consideration of additional sums advanced and paid to Grantor by \_\_\_\_\_ ("Lender"), at the instance and request of Grantee, the receipt of which is hereby acknowledged, as evidence of which Grantee has executed and delivered to Lender, as payee, a certain promissory note (the "Note") of even date herewith, in the original principal amount of \$ \_\_\_\_\_, bearing interest and being payable as therein provided, **END OPTIONAL LANGUAGE]** has GRANTED, BARGAINED, SOLD and CONVEYED, and by these presents does hereby GRANT, BARGAIN, SELL and CONVEY, unto Grantee all that certain real property (including the improvements thereon) situated in Travis County, Texas, to wit:

Unit No. \_\_\_\_\_, of The Cayena Condominiums, a condominium regime established by that certain Declaration of Condominium Regime for The Cayena Condominiums recorded as Document No. 2018059648, in the Official Public Records of Travis County, Texas, together with an undivided interest in and to the common elements appurtenant thereto (the "Property").

THIS CONVEYANCE IS EXPRESSLY MADE AND ACCEPTED SUBJECT TO: all matters visible or apparent on the ground as would be revealed by a true, correct and current survey of the Property; validly existing easements, rights-of-way, and prescriptive rights, whether of record or not; all presently recorded and validly existing restrictions, reservations, covenants, conditions, oil and gas leases, mineral interests and water interests, including, without limitation, the terms, conditions, covenants, options, restrictions and easements set forth in the Declaration; and taxes for the year 20\_\_\_\_, which Grantee assumes and agrees to pay, and subsequent assessments for that and prior years due to change in land usage, ownership, or both, the payment of which Grantee assumes (collectively, the "Permitted Exceptions").

TO HAVE AND TO HOLD the Property, and the rights and appurtenances in anywise belonging thereto as aforesaid, subject to the Permitted Exceptions, unto Grantee, and Grantee's successors and assigns, forever, and Grantor does hereby bind Grantor, and Grantor's heirs and successors, to WARRANT AND FOREVER DEFEND, all and singular, the Property (subject to the Permitted Exceptions) unto Grantee, and Grantee's successors and assigns, against every person whomsoever lawfully claiming or to claim the same, or any part thereof, by, through or under Grantor, but not otherwise.

**GRANTEE EXPRESSLY ACKNOWLEDGES AND AGREES THAT, EXCEPT FOR THE WARRANTY OF TITLE SET FORTH IN HEREIN, GRANTOR HAS NOT MADE ANY REPRESENTATIONS OR WARRANTIES CONCERNING THE PROPERTY AND HEREBY SPECIFICALLY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, ORAL OR WRITTEN, EXPRESS, IMPLIED OR STATUTORY, PAST, PRESENT OR FUTURE, OF, AS TO OR CONCERNING**

Seller's Initials: \_\_\_\_\_  
Purchaser's Initials: \_\_\_\_\_

THE PROPERTY, INCLUDING, WITHOUT LIMITATION, FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, DESIGN, QUANTITY, QUALITY, OPERATION, COMPLIANCE WITH SPECIFICATIONS, ABSENCE OF LATENT DEFECTS, COMPLIANCE WITH LAWS, THE PHYSICAL CONDITION OF THE PROPERTY OR ANY OTHER MATTER AFFECTING THE PROPERTY. GRANTOR'S SILENCE AS TO ANY MATTER DOES NOT AND WILL NOT CONSTITUTE AN AFFIRMATIVE ASSURANCE REGARDING THE PROPERTY. GRANTEE ACKNOWLEDGES THAT IT IS NOT RELYING UPON ANY REPRESENTATION, STATEMENT OR OTHER ASSERTION WITH RESPECT TO THE PROPERTY'S CONDITION, BUT IS RELYING SOLELY UPON ITS EXAMINATION OF THE PROPERTY. GRANTEE AGREES THAT GRANTOR WILL NOT BE LIABLE TO GRANTEE FOR, AND GRANTEE HEREBY FULLY RELEASES AND DISCHARGES GRANTOR AND ITS PRINCIPALS, MANAGERS, MEMBERS, PARTNERS, OFFICERS, EMPLOYEES, AGENTS, CONTRACTORS AND REPRESENTATIVES FROM, ANY AND ALL CLAIMS FOR COSTS, EXPENSES, LOSSES, LIABILITIES, DAMAGES, DEMANDS, ACTIONS AND CAUSES OF ACTION ARISING FROM OR RELATED TO THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE PHYSICAL CONDITION OF THE PROPERTY. AS A MATERIAL PART OF THE CONSIDERATION FOR THE CONVEYANCE MADE HEREIN, GRANTOR AND GRANTEE AGREE THAT, EXCEPT FOR THE COMPLETION OF THE ITEMS REFLECTED ON THE INSPECTION LIST, IF ANY, THE CONVEYANCE OF THE PROPERTY HEREUNDER IS MADE FROM GRANTOR TO GRANTEE ON AN "AS IS" AND "WITH ALL FAULTS" BASIS, AND THAT GRANTEE IS TAKING THE PROPERTY WITH ANY AND ALL LATENT AND PATENT DEFECTS. IT IS UNDERSTOOD AND AGREED THAT THE CONSIDERATION FOR THE CONVEYANCE MADE HEREIN HAS BEEN ARRIVED AT BY PRIOR NEGOTIATION TO REFLECT THAT THE PROPERTY IS SOLD BY GRANTOR SUBJECT TO THE FOREGOING PROVISIONS. GRANTEE REPRESENTS AND WARRANTS THAT (A) IT HAS THE RIGHT TO SEEK LEGAL COUNSEL IN DETERMINING WHETHER TO ACCEPT THE PROPERTY SUBJECT TO THIS PARAGRAPH, (B) IF GRANTEE HAS SOUGHT LEGAL COUNSEL, GRANTEE'S LEGAL COUNSEL HAS EXPLAINED THE MEANING AND IMPACT OF THE FOREGOING PROVISIONS TO GRANTEE AND (C) GRANTEE FULLY UNDERSTANDS THE MEANING OF THE PROVISIONS SET FORTH IN THIS PARAGRAPH AND THEIR IMPACT ON GRANTEE.

[NOTE: INCLUDE THE FOLLOWING IF A VENDOR'S LIEN IS REQUIRED; IF NOT, THEN DELETE THIS PARAGRAPH: It is expressly agreed that the Note described hereinabove, represents funds advanced to Grantor by Lender at the special instance and request of Grantee and, in part, used in the payment of the purchase price of the hereinabove described Property. As security therefor, the vendor's lien, as well as the superior title in and to the above described Property, are hereby reserved and retained by Grantor for the benefit of Lender, to whom such vendor's lien and superior title are hereby assigned without recourse, until the Note and indebtedness evidenced thereby have been fully paid according to the face, tenor, effect and reading thereof, when this Special Warranty Deed shall become absolute. To additionally secure Lender in the payment of the Note and indebtedness evidenced thereby, Grantee has executed and delivered a certain deed of trust dated of even date herewith conveying the Property to \_\_\_\_\_, as Trustee, for the benefit of Lender. **END OPTIONAL LANGUAGE]**

[Remainder of This Page Intentionally Left Blank –  
Signature Page Follows]

EXECUTED as of the date(s) set forth in the parties' respective acknowledgments hereinbelow, delivered to be effective, however, as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**GRANTOR:**

HC CAYENA HOMES, LLC,  
a Texas limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF TEXAS            §  
                                      §  
COUNTY OF TRAVIS       §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, as \_\_\_\_\_, of HC CAYENA HOMES, LLC, a Texas limited liability company, on behalf of said limited liability company.

\_\_\_\_\_  
Notary Public, State of Texas

[Signatures Continued on the Following Page]

**GRANTEE:**

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

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

STATE OF TEXAS           §  
                                      §  
COUNTY OF TRAVIS       §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by  
\_\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of Texas

STATE OF TEXAS           §  
                                      §  
COUNTY OF TRAVIS       §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by  
\_\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of Texas

AFTER RECORDING,  
RETURN TO:

Heritage Title Company of Austin, Inc.  
Attn: \_\_\_\_\_ (GF No. \_\_\_\_\_)  
2500 Bee Cave Road, Suite 100  
Austin, Texas 78746

GRANTEE'S ADDRESS:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_