



Caviness & Cates Building and Development Co. Purchase and Sale Agreement

THIS PURCHASE AND SALE AGREEMENT ("Agreement") made and entered into as of the date of final execution hereof, among CAVINESS & CATES BUILDING AND DEVELOPMENT CO. (herein called "Builder"), and Buyer Name (herein called "Buyer," whether one or more)." Builder agrees to construct a Residence (as hereinafter defined) upon the Property as described below and upon completion of construction to sell to Buyer, and Buyer agrees to purchase the Property described below, upon the terms and conditions stated herein."

1. PROPERTY DESCRIPTION:

- a. Lot Site Number in the residential community known as Community, County County, North Carolina.
- b. Street Address Address, City, State Zip

hereinafter collectively referred to as the "Property."

NOW, THEREFORE, all parties to this Agreement mutually agree: *(check one)*

- ☐ COMPLETED INVENTORY HOME. All changes, upgrades, or available options to be determined at time of Contract. The value and designation of any options, upgrades or selections chosen by the Buyer will be either set out as an Amendment to this Agreement and/or as an Exhibit hereto. The Buyer will be responsible for any Non-refundable deposit required by the Builder for the Buyers choice of any option, upgrade, or selection.
- ☐ NEW-CONSTRUCTION OR UNDER-CONSTRUCTION HOME.
Builder shall construct or complete construction of the _____
Residence substantially similar to the plan or model identified as Plan Name: Plan Name / CC# Elevation: Elevation,
Garage: 2 car, 3 car on file in the office of Builder (the "Residence"), which Residence Builder will construct on
the described Property substantially in accordance with the plans and specifications for the Residence, also on file in
Builder's office together with all written amendments made thereto agreed to by the parties (the "Plans and
Specifications"). If a conflict exists between the plans and the specifications, the specifications shall govern.

2. PURCHASE PRICE: The base purchase price of the Property is \$ Price ("Purchase Price") and will be paid as follows:

- a. \$ Earnest Money, earnest money in a personal check, wire transfer, cashier's check or money order to be paid at execution of this agreement and to be deposited and held in escrow by Escrow Agent, until Closing (hereinafter defined), at which time it will be credited to Buyer, or until this Agreement is otherwise terminated (the "Earnest Money Deposit"). In the event: (i) this offer is not accepted; or (ii) any of the conditions to Buyer's obligations hereunder are not satisfied, the Earnest Money Deposit shall be returned to Buyer. In the event of a breach of this Agreement by Builder, upon Buyer's request, the Earnest Money Deposit shall be returned to Buyer, but such return shall not affect any other remedies available to Buyer for such breach. In the event this offer is accepted and Buyer breaches this Agreement, then the Earnest Money Deposit shall be forfeited upon Builder's request, but receipt of such forfeited Earnest Money Deposit shall not affect any other remedies available to Builder for such breach.
- b. Buyer agrees to pay Builder \$ Building Deposit, Building Deposit. The Building Deposit shall be paid to Builder (not Escrow Agent) within seven (7) days of the effective date of this Agreement. The Building Deposit is not a part of the Earnest Money deposit and may be used by Builder in the construction of special improvements pursuant to the Sales Addendum. The Building Deposit will be credited to the Buyer at Closing. The Building Deposit shall be refundable ONLY in the event of a material breach of the Contract by Builder, or if this Contract is terminated under Paragraph 15 of this Agreement.

Buyer _____

Page 1 of 17

Builder _____

c. \$ Balance Balance of the Purchase Price in good funds at Closing.

3. FINANCING: This Agreement is conditioned upon Buyer providing Builder, proof of cash to close within (7) days of the date of this Agreement, if a loan is not going to be used to finance the Property. If Buyer fails to provide to Builder proof of funds to close, Builder may terminate this Agreement at any time thereafter by written notice to Buyer, retaining the Earnest Money Deposit as liquidated damages resulting from the breach. Builder and Buyer have agreed that Builder shall have the option of retaining the Earnest Money Deposit as liquidated damages under the terms of this paragraph because that sum of money is determined to be a reasonable estimate of the actual damages that Builder would suffer as a result of Buyer's breach, which actual damages would be difficult to determine.

If a loan is going to be used to finance the Property, this Agreement is conditioned upon Buyer making loan application (at no charge) within seven (7) days of the date of this Agreement and obtaining and depositing a pre-qualifying loan commitment with the Builder. The Buyer is also required under the terms of this Agreement to obtain and deposit a written conditional approval letter, subject to only an appraisal, clear title report and Buyer provided hazard insurance, from the Buyer's lender and to deliver a copy of it to Builder within thirty (30) days following the date of this Agreement. Time is of the essence for date and deposit of both loan commitments.

copy of the conditional approval letter within thirty (30) days of this Agreement, or if Buyer fails to make loan application within seven (7) days of the date of this Agreement, Builder may terminate this Agreement at any time thereafter by written notice to Buyer. Buyer shall be solely responsible for and shall have final approval as to when interest rate, terms and discount points are locked in, and Builder shall have no responsibility for such decisions. Buyer shall use Buyer's best efforts to obtain a customary conditional approval letter from Buyer's mortgage lender and satisfy all terms and conditions thereof. If Buyer does not cooperate thereafter with Buyer's mortgage lender, such failure on Buyer's part will be a breach of this Agreement, and Builder may terminate this Agreement, retaining the Earnest Money Deposit as liquidated damages resulting from the breach. Builder and Buyer have agreed that Builder shall have the option of retaining the Earnest Money Deposit as liquidated damages under the terms of this paragraph because that sum of money is determined to be a reasonable estimate of the actual damages that Builder would suffer as a result of Buyer's breach, which actual damages would be difficult to determine. Buyer agrees that any interest rate or discount fee lock selected with the mortgage lender shall expire no sooner than fifteen (15) days after the estimated Closing Date to be provided by Builder.

(a) Notwithstanding the foregoing, failure of Buyer to disclose to its lender the ownership of any property which may affect Property should Buyer be disqualified by Buyer's mortgage lender on the basis of the Buyer's payment obligations related to such property.

(b) VA/FHA Clause. (When FHA or VA financing applies and the value is known) Except as provided below, if Buyer is obtaining Property or to incur any penalty by forfeiture of Earnest Money Deposit or otherwise unless Buyer has been given, in accordance with HUD/FHA or VA requirements, a written statement by the Federal Housing Commissioner, VA, or a Direct Endorsement lender setting forth the appraised value of the Property. Buyer shall have the privilege and option of proceeding with consummation of the Agreement without regard to the amount of the appraised valuation. The appraised valuation is arrived at to determine the maximum mortgage the Department of Housing and Urban Development ("HUD") will insure. HUD does not warrant the value nor the condition of the Property. Buyer should satisfy himself/herself that the price and condition of the Property are acceptable.

☐ Buyer is Obtaining VA Financing. When the valuation of the Property by VA is unknown, it is expressly agreed that, notwithstanding any other provisions of this Agreement, Buyer shall not incur any penalty by forfeiture of Earnest Money or otherwise or be obligated to complete the purchase of the Property described herein, if the Purchase Price or cost exceeds the reasonable value of the Property established by the Veterans Administration. Buyer shall, however, have the privilege and option of proceeding with the consummation of this Agreement without regard to the amount of reasonable value established by the VA.

☐ Buyer is Obtaining FHA Financing. By signing this Agreement on the last page the Builder, Buyer and Real Estate Brokers/Agents involved in this transaction do hereby certify that the terms of this Agreement are true to the best of their knowledge and belief. All agreements entered into by the Builder, Buyers and Real Estate Brokers/Agents are fully disclosed

Buyer _____

Page 2 of 12

Builder _____

and attached to the Agreement.

4. Builder's Contribution: , Builder agrees to pay at settlement up to \$ CC\$ as a contribution toward Buyer's Closing expenses accrued and payable at closing including any FHA/VA lender and inspection costs that Buyer is not permitted to pay less any portion disapproved by Buyer's lender. Buyer may apply this contribution, up to the total amount, toward the loan origination fee, appraisal fees, attorney fees, pre-pays, taxes, owners' association dues and/or contributions, and insurance or other usual and customary lender fees. No portion of this amount may be applied toward a rate buy-down, as a credit to the Buyer, a principal reduction in Buyer's loan or to other expenses/vendors not previously agreed to as part of the Purchase and Sale Agreement. Builder's contribution to buyer's Closing Costs to be applied only after all lender credits have been applied. Builder will pay for the preparation of Deed, 1099S, lien waiver and any other builder documents needed, as determined by Builder's attorney.

5. PROPERTY:

- a. If within five months Builder is unable to take title to the Property, or obtain a building permit for the Property for any reason beyond Builder's reasonable control, including, without limitation, the lack of availability of sanitary sewer, septic permit or any other utility reasonably necessary to the use and occupancy of the intended improvements, or if Builder determines the Residence will not fit on the Property, has excessive costs in preparing the lot to accommodate the Residence to include a change in the foundation, or if the subdivision Architectural Review Board will not approve the Plans and Specifications, then Builder may terminate this Agreement by written notice to Buyer and upon such termination the Earnest Money Deposit and the Building Deposit (if any) shall be returned to Buyer, and thereafter neither of the parties shall have any further duties or obligations hereunder.
- b. Buyer may not enter upon the Property ("Site Visit") between 6:00 a.m. and 6:00 p.m. Monday through Friday, excluding holidays, unless approved by an authorized agent of the Builder. Site Visits shall be conducted at such time and in such manner so as not to interfere with the progress of the work and construction and shall not be conducted if Builder, in Builder's sole discretion, determines that entry during the relevant stage of construction then existing would be too dangerous or relevant insurance coverage does not allow the conduct of such inspection at the time requested. Builder shall have the right, but not the obligation, to have a representative of Builder accompany Buyer during Site Visit or any portion of Site Visit as Builder, in Builder's sole discretion, shall deem appropriate. Buyer realizes and acknowledges that entry upon the Property during construction can be dangerous and that hazards may exist which are not observable. Buyer's Site Visits shall be solely at Buyer's own risk. Buyer does hereby waive any and all claims against Builder, its employees, agents, officers, directors, subcontractors or suppliers for injury or loss to persons or property arising out of or in connection with Site Visits by Buyer or any other person accompanying Buyer or otherwise entering the Property at Buyer's direction. Buyer shall indemnify and hold harmless Builder, Builder's agents, employees, officers, directors, suppliers and contractors from and against any and all loss, cost, injury, claim, suit, judgment, action, or expense of any nature whatsoever including, but not limited to, reasonable attorneys' fees, resulting from any such inspection by Buyer, any other person accompanying Buyer, or Buyer's designated representative. In the event that during Site Visits Buyer reasonably shall determine that such construction is not proceeding in accordance with the Plans and Specifications of this Agreement, Buyer shall give written notice to Builder within 24 hours after Buyer learns of such failure by Builder which notice shall specify the particular deviation, deficiency or omission. Builder shall correct such deviation, deficiency or omission, or shall inform Buyer why the claimed deviation, deficiency or omission does not exist or is not material. Buyer may not make alterations, changes, or additions to the Residence while under construction. Builder will use its discretion in locating the Residence on the Property (including reversing floor plan) to assure that it
- c. blends with surrounding homes, is properly sited for drainage, and protects as many trees as practical. Builder will not remove trees or undergrowth outside the area affected by construction and reserves the right to determine which trees affect construction and drainage. Builder will make reasonable efforts not to damage other trees, bushes or vegetation during construction, but because of possible damage and disease, and effects of grade alterations, Builder does not guarantee the life of any tree, bush or vegetation, and Builder will not be responsible for damage to such trees, bushes or vegetation. If the Residence will not fit on the Property at the minimum setback requirements or cannot be constructed on the
- d. Property, as reasonably determined by Builder's surveyor, Builder shall notify Buyer of the problem and this Agreement shall be terminated and the Earnest Money Deposit and Building Deposit (if any) returned to Buyer. Upon return of these deposits, neither party shall have any further duties or obligations hereunder.

Buyer _____

Page 2 of 12

Builder _____

6. ADDITIONAL PROVISIONS: The following are additional provisions of this Agreement:

- a. Buyer authorizes the Buyer's lender(s), the parties' real estate agent(s), closing attorney and Builder (1) to provide this Contract to any appraiser employed by Buyer or by Buyer's lender(s); and (2) to release and disclose any, settlement statement, closing disclosure and/or disbursement summary, or any information therein, to the parties to this transaction, their real estate agent(s), closing attorney and Buyer's lender(s). Builder authorizes: (1) any attorney presently or previously representing Builder to release and disclose any title insurance policy in such attorney's file to Buyer and both Buyer's and Builder's agents and attorneys; and (2) the Property's title insurer or its agent to release and disclose all materials in the Property's title insurers' (or title insurer's agent's) file to Buyer and both Buyer's and Builder's agents and attorneys; (3) the closing attorney to release and disclose any Builder's closing disclosure, settlement statement and/or disbursement summary, or any information therein, to the parties to this transaction, their real estate agent(s), or Buyer's lender(s).

"Closing" is defined as the date and time of recording of the Deed, transfer of the property and keys (hereinafter defined).

7. CLOSING:

- a. Anticipated "Closing Date" is on/before Closing. The Anticipated Closing Date for Homes Under Construction and New Construction/Presales will be determined at Pre-drywall Orientation. Buyer and Builder agree to execute any and all documents and papers necessary in connection with the Closing and transfer of title to the Property, and the Deed shall be delivered to Buyer on the Closing Date (as hereinafter defined). Buyer and Builder agree the closing shall occur on the date and at a time and place designated by Builder within seven (7) days following either the anticipated completion date of the Residence specified by Builder or the date of issuance of the Certificate of Occupancy for the Residence, whichever comes later (the "Closing Date"). If Buyer does not close on the Closing Date, Builder, at Builder's discretion, may terminate this Agreement with written notice to Buyer and Builder will retain all of the Earnest Money Deposit and any Non-refundable Deposits, together with any other remedies for failure to close. If Builder elects not to terminate this Agreement, then Parties will agree to a new Closing Date. If Buyer fails to meet the new Closing Date, Buyer agrees to pay to Builder three tenths of one hundredths of one percent (.03%) of the total purchase price per day extension charge from the initial Closing Date, which will be collected at Closing. The parties agree that such extension charge is not a penalty, constitutes a good faith estimate of the costs that will be incurred by Builder solely as a result of the delay in Closing, and shall not in any way affect any other remedy available to Builder for Buyer's default of Buyer's obligations pursuant to this Agreement. Once the completion notice and notice of the Closing Date are given by Builder, time shall be of the essence insofar as the Closing Date is concerned. The Deed is to be made to Deed Name. At Closing, Builder will convey title to Buyer, free and clear of liens and encumbrances, other than ad valorem property taxes for the current year (prorated to the Closing Date), and the Permitted Exceptions (hereinafter defined). Buyer shall pay the balance of the Purchase Price at Closing in immediately available good funds, by Fedwire transfer, cashier's check, or other form acceptable to Builder's attorney. Buyer will indemnify and hold Builder harmless with respect to any and all ad valorem property taxes which have been prorated at Closing and credited to the Buyer or which have otherwise not been paid in full at Closing. Possession shall be delivered at Closing, unless the parties have executed a separate written agreement providing otherwise. Buyer's storage upon or occupancy of the Property pursuant to such agreement shall constitute unqualified acceptance by Buyer of the Property for Closing, in its conditions as of the date of such possession. Notwithstanding anything to the contrary in this Agreement, the Closing and transfer of title to the Property to Buyer shall occur not later than two (2) years after the date Buyer executes this Agreement except for delays resulting from the matters set forth in Section 9 or 15 hereof. The Residence shall be considered completed when it has been constructed in substantial conformance with the Plans
- b. and Specifications and when a Certificate of Occupancy has been issued. Prior to Closing and upon Builder notifying Buyer that a final inspection may be conducted, Buyer shall conduct any desired inspection of the Property. At the time of such inspection, Buyer shall compile and deliver to Builder a written "punch list" of items which Buyer deems are not completed or which need correction. Prior to Closing, with respect to each item on the "punch list", Builder shall either (i) complete said "punch list" item, (ii) agree in writing with Buyer that said "punch list" item will be completed within a reasonable time after Closing, or (iii) notify Buyer in writing, that Builder does not consider the "punch list" item to be Builder's responsibility. Closing of the purchase of the Property by Buyer from Builder shall constitute Buyer's acknowledgement and agreement that: (i) Buyer is satisfied with, and accepts Builder's completion of the "punch list" items which Builder agreed to complete prior to Closing; (ii) Buyer is satisfied with, and accepts, Builder's agreement to

complete those "punch list" items which Builder has agreed to complete after Closing; (iii) Buyer is satisfied with, and accepts, the fact that Builder shall not be obligated to complete those "punch list" items which Builder has indicated to Buyer in writing are not Builder's responsibility; and (iv) except for the "punch list" items which Builder has agreed to complete after Closing, Buyer accepts the condition of the Property "As Is." The fact that Builder is to complete additional work for items identified on the "punch list" shall not delay or postpone the obligation of Buyer to close the purchase of the Property or to pay the balance of the Purchase Price at Closing. Upon request from Builder, if necessary, Buyer shall provide Builder, or Builder's representatives or contractors, access to the Property after Closing in order to allow Builder to complete any unfinished items or necessary repairs identified on the "punch list" and such entry shall not constitute a trespass.

- c. In addition to the Purchase Price, Buyer agrees to pay all allowable Closing costs, recording cost including excise tax or revenue, lender and title related fees, all prepaid items, and to pay or finance as a part of the loan any VA funding fees, other funding fees, FHA or private upfront mortgage insurance fee required as a part of Buyer's loan and the purchase unless otherwise stipulated in Paragraph 4 of the Purchase and Sale Agreement.

8. TAXES, PRORATIONS AND ASSESSMENTS:

Buyer(s) Initials: _____

- a. Buyer shall pay at closing any state and county excise tax due upon recording of deed.
- b. Real estate taxes, interest and all charges and assessments payable to the Homeowner's Association shall be prorated as of the date of Closing.
- c. Homeowner's Association dues, if any, are \$ Dues per annum. Homeowner's Association dues shall be Buyer's responsibility after Closing.
- d. Homeowner's Association Initial Working Capital Assessment in the amount of \$ HOA CA, shall be Buyer's responsibility and paid at closing.
- e. Homeowner's Association Transfer Fee / Certification Fee in the amount of \$ HOA CA, shall be Buyer's responsibility and paid at closing.
- f. Buyer, as owner of the Property, will be a member of the community or subdivision Homeowner's Association and will be entitled to the rights and privileges (as well as the duties and responsibilities) set forth in the declarations, restrictions, covenants, bylaws, rules and regulations of such association (as applicable). As a member of such homeowners association, Buyer will be subject to the payment of assessments from time to time, which assessments shall be a lien upon the Property.
- g. Builder does not guarantee the actual amount of the dues and assessments, either at the time of Closing or thereafter, and Buyer acknowledges that the actual amount of dues, assessments and capital contribution or other charges may vary from time to time.
- h. Home Owner's Association: *Buyer shall contact the association for complete information on HOA to include fees, services & amenities included in the HOA fees. It is buyer's responsibility to confirm all fees charged by the HOA.*

Association Name:

Address:

Telephone No.:

Website:

9. TITLE:

- a. It is understood that until the recording of the Deed with the Register of Deeds and the receipt by Builder of good funds constituting the Purchase Price in full, the Property, either under construction or completed, and all materials and supplies stored or installed on the Property remain the property of Builder and no keys shall be given to Buyer.

Buyer _____

Page 6 of 12

Builder _____

- b. Builder agrees to convey the Property, which is within the platted community listed in Section 1 hereof, to Buyer by General Warranty Deed (the "Deed"), with the usual covenants of title and free and clear of all encumbrances and subject to ad valorem taxes for the current year, applicable easements and restrictive covenants of record, applicable zoning ordinances, restrictions and covenants relating to the subdivision or community, and bylaws, rules and regulations relating to the subdivision or community and its homeowners association, and any other exceptions not objected to by Buyer (the "Permitted Exceptions"). Builder makes no representation to Buyer with regard to the location of any utility company's equipment on any easements. Buyer acknowledges receipt of the Plot Plan or copy of the Plat Map, Declaration of Covenants, Conditions and Restrictions of the community, recorded in the Register of Deeds Office of the County of County , North Carolina and all other applicable covenants and restrictions of record affecting the Property, as they may be amended from time to time; and Buyer agrees to be bound by same. In addition, Buyer hereby acknowledges and agrees that upon conveyance of the Property Buyer shall be a member of the Homeowner's Association for the community or subdivision (the "Association"), paying all applicable dues and assessments of the Association and maintaining membership in good standing in accordance with the Association's restrictions, covenants, and bylaws.
- c. If examination of title to the Property by the attorney for Buyer discloses any defect in the title to the Property other than the Permitted Exceptions, Buyer immediately shall notify Builder in writing of the specific title defect and Builder shall have the option to provide Buyer a title insurance binder or commitment from a title insurance company licensed to do business in the State of North Carolina committing said title insurance company to issue to Buyer an owner's policy of title insurance in the face amount of the purchase price without exception for the defect noticed by the attorney for the Buyer or Buyer, and thereafter such defect shall be deemed cured for the purposes of this Agreement and the conveyance hereunder.

10. MODEL HOME: Any model home is displayed for illustrative purposes only, and such display shall not constitute an agreement or commitment on the part of Builder to deliver the Property purchased in exact accordance with any model. None of the items or furnishings shown in any model are included in this Agreement unless Builder specifically agrees in writing to deliver same as part of the Purchase Price.

11. CONSTRUCTION OBLIGATIONS:

Buyer(s) Initials: _____

- a. Builder diligently shall pursue the construction of the Residence, and shall complete construction of the Residence on the Property on or before the Date of Closing, which date shall be no later than the date which is two (2) years after the date this Agreement is executed by Buyer except as provided in this Section in accordance with the Interstate Lands Sales Act. If Builder is delayed in the performance of the work as a result of any neglect of Buyer or of any employee, agent, or representative of Buyer, or by Change Order Request, delays in completion of selections by Buyer, or by the combined action of workmen (either those employed in the work on the Property or any industry essential to the conduct of the work), or by strikes, lockouts, embargos, fire, casualties, delay in transportation, shortage of materials, shortage of labor, national emergency, weather, litigation, governmental moratoriums or acts of governmental agencies, appraisals, acts of lenders, acts of God, delays in the issuance of permits from any applicable governmental permitting authority which delays are not the result of any action or inaction of Builder, or by any other causes beyond the control of Builder, then the time for performance by Builder shall be extended for such reasonable time as is necessary due to such delay. Builder shall not be obligated to provide or compensate Buyer for any special damages or make accommodations as a result of construction delays associated with completion of the Residence or the Closing of the sale thereof; further, Builder shall not have any responsibility for loss of the loan commitment or increased loan costs, including, but not limited to, additional appraisal or reappraisal fees, inspection or re-inspection fees, origination and/or discount fees, or increased interest rates arising out of or associated with delays in final construction of the Residence or the Closing of the sale thereof. Buyer agrees to hold harmless Builder for any damage to Builder's work and construction on the Property arising out of that work whether completed by Builder or on behalf of Builder by others when such damage is covered by property insurance purchased by Buyer, to the extent permitted by Buyer's insurance. Builder shall have the right to substitute materials of similar quality, pattern and design. It is also understood that dimensions may vary somewhat according to field conditions.
- b. It is understood that the Purchase Price includes the cost of construction of the Residence to be built on the Property and the standard selections as provided in the Plans and Specifications. Subject to the sole discretion of Builder, Buyer may order nonmaterial changes to the Plans and Specifications if such changes are within the general scope of the Plans

Buyer _____

Page 6 of 12

Builder _____

and Specifications. Such changes may consist of additions, deletions, and other revisions to the Plans and Specifications. If Builder agrees to such changes, Buyer shall reimburse Builder for any and all expenses incurred by Builder as a result of such changes including, but not limited to, (i) the cost of materials ordered but not used as a result of such change; and (ii) a construction, management, and administrative fee to be paid to Builder to compensate Builder for Builder's administrative cost to process the change order, which fee shall be an amount determined by Builder in Builder's sole discretion. Additional time needed to complete changes requested by Buyer and approved by Builder shall be taken into consideration in the Residence completion date and date of Closing. All such changes shall be made only by a change order which shall be in writing and signed by both Buyer and Builder (herein referred to as a "Change Order"). Any Change Orders must be detailed and priced on a written Change Order Request submitted for approval, and are subject to Builder's written acceptance and a non-refundable payment to Builder in an amount determined by Builder in accordance with the Change Order Request. Change Orders will not be effective in the absence of such payment. Change Order fees and other fees for non-standard options are deemed to be earned and non-refundable under any circumstances after start of construction, and are not included toward liquidated damages or the Earnest Money Deposit. Any additional costs for engineering, surveying, site work, fill, tree removal, retaining walls and/or other necessary work as a result of a Change Order or non-standard option will be the sole responsibility of Buyer.

- c. It is further understood and agreed that Builder has the right not to commence construction of the improvements on the Property until all contingencies contained in this Agreement are satisfied, including without limitation, depositing a conditional approval letter from the Buyer's lender with Builder, and sale of Buyer's existing residence if applicable.

12. OWNERSHIP OF PLANS AND SPECIFICATIONS: Buyer acknowledges that Buyer has no ownership rights in any of the Plans and Specifications used in connection with this Agreement, and that Buyer will be liable to Builder or other owner of the Plans and Specifications in the amount of any lost profits, consequential damages, and other applicable damages for any re-use, sale, or dissemination of such Plans and Specifications.

13. ENVIRONMENTAL DISCLOSURE: The use and development opportunities may be limited and health risks may be associated with certain properties if those properties, in their past or present condition, are or were covered by the Clean Water Act, the Comprehensive Environmental Response, Compensation and Liability Act, or any other federal, state, or local law, regulation or ordinance concerning health, safety or the environment, including but not limited to those laws, regulations and ordinances concerned with (1) radon gas; (2) underground or aboveground storage tanks; (3) electromagnetic fields; and (4) glass wool substances.

14. DAMAGE FROM LATENT DEFECTS: It is expressly understood that Builder shall not be liable for damages to personal property resulting from latent defects not known to Builder at time of Closing or at time of occupancy, whichever first occurred.

15. DEFAULT:

- a. In the event Buyer defaults under any terms of this Agreement, Builder may pursue, in Builder's discretion, one or more of the following remedies: (i) require specific performance by Buyer; (ii) terminate this Agreement and all rights of Buyer shall cease; or (iii) seek any other remedy available at law or in equity. All monies paid by Buyer to Builder, as well as the Earnest Money Deposit, shall be retained by Builder to apply to damages sustained by Builder, but the retention of such monies shall not constitute (i) satisfaction of the amounts owed to Builder by Buyer arising from such default or (ii) liquidated damages. Builder shall also have the right to recover, and Buyer shall be liable for, actual damages and such other sums, if any, as are necessary to restore Builder to the position Builder was in prior to the date this Agreement was entered into, including (by way of illustration and not limitation) the actual cost of installation and removing any modifications, extras, custom orders or other additional work contracted for by Buyer so that Builder may, in its sole discretion, restore the Property to a condition to facilitate the resale of the Property. Additionally, if Buyer defaults under this Agreement, Buyer shall be liable for the cash brokerage fee due listing firm, selling firm and for any other damages and expenses, including reasonable attorneys' fees incurred by the listing firm and selling firm and Builder in connection with this transaction or with the enforcement of this Agreement. The indemnity obligation of Buyer pursuant to Section 3(b) of this Agreement shall survive termination.
- b. In the event Builder defaults under the terms of this Agreement, Buyer may pursue, in Buyer's discretion, one or more of the following remedies: (i) require specific performance by Builder; (ii) terminate this Agreement; or (iii) seek any other remedy available at law or in equity. If Builder defaults under the terms of this Agreement, then, in such event, the

Earnest Money Deposit and Building Deposit shall be returned to Buyer by Builder, but such retention shall not affect any other remedies for such breach available to Buyer at law, in equity, or pursuant to this Agreement. The indemnity obligation of Buyer pursuant to Section 3(b) of this Agreement shall survive termination.

16. LIMITED WARRANTY OF CONSTRUCTION: At Closing, Builder will provide a limited warranty that provides one-year workmanship, two-year systems and qualifying ten-year structural defect coverage for certain construction defects in the subject home as outlined below. Buyer represents that they have been furnished with a copy of the Warranty and has had an opportunity to read and understand it before signing this Agreement.

Builder agrees to provide to the Buyer warranted components of the Home that will be free from defect for the periods of time set forth below in conjunction with the Warranty Standards. This warranty is expressly limited by the contents of the "Exclusions" and other express terms provided for in the Warranty Manual and may not be modified, revised, extended or supplemented except in writing signed by the Buyer and an authorized agent of Builder.

The warranties are limited as follows:

A. Ten Year Major Structural

Builder warrants that the Residence will be free from any defect which: (a) due to noncompliance with the Warranty Standards, (b) results in or causes actual, tangible damage to a "Load-Bearing Component" of the Residence (c) materially diminishes the structural integrity and the load-bearing performance of the Residence, and (d) materially affects the physical safety of the occupants of the Residence. Only a defect or defects meeting all of the criteria listed in (a) through (d), inclusive, above shall be deemed a "Major Structural Defect." The Warranty also covers damage to the roof, walls or foundation of the Residence resulting from expansion, subsidence or lateral movement of the soil, provided that such damage is caused by a Major Structural Defect as defined above. The term of this Major Structural Defect Warranty shall be ten (10) years beginning on the date of actual closing.

As used above, the term "Load-Bearing Component" means only the following: (1) roof framing members (rafters and trusses); (2) floor framing members (joists and trusses); (3) bearing walls; (4) columns; (5) lintels; (6) girders; (7) load-bearing beams; and (8) foundation systems and footings.

The following items are NOT Load-Bearing Components and defects thereto shall not be covered as Major Structural Defects pursuant to this Section: (a) non-load-bearing partitions and walls; (b) wall tile or wallpaper; (c) plaster, laths or drywall; (d) flooring and subflooring material; (e) brick, stucco, stone or veneer; (f) any type of exterior siding; (g) roof shingles, sheathing and tar paper; (h) heating, cooling, ventilating, plumbing, electrical and mechanical systems; (i) appliances, fixtures or items of equipment; and (j) doors, trim, cabinets, hardware, insulation, paint and stains.

B. Two Year Major Components

For a period of two (2) years beginning on the date of actual Closing, Builder warrants that the "Major Components" of the Residence will be free from defects in material and workmanship due to non-compliance with the Warranty Standards.

Major Components refers only to the following plumbing, electrical, heating and cooling systems of the Home:

Electrical System: Electrical wiring and connections

HVAC System: Heating/cooling duct work, drain lines, refrigerant lines, and registers. (NOTE: Manufacturer warrants other parts for at least 1 year)

Plumbing System: Plumbing pipes and their fittings.

C. One Year Equipment

For a period of one (1) year beginning on the date of actual closing Builder warrants that the "Equipment" of the Residence will be free from defects in material and workmanship due to noncompliance with the Warranty Standards. For the purposes of this Warranty, the term "Equipment" refers to the following items, if applicable (not all of the below items will be installed in every Residence):

- Alarm System

- Light Fixtures

Buyer _____

Page 8 of 12

Builder _____

- Plumbing Fixtures
- Shower Door
- Smoke Detectors
- Fire Sprinkler System (if provided)
- Tubs/Showers
- Water Heater
- Receptacles/GFI
- Windows

- Cabinets
- Doors
- Fans
- Fireplaces
- Floor Coverings
- Garbage Disposal
- Garage Door Opener

A number of the Residence's Equipment items are specifically covered by warranties from the manufacturers of those items. All of these manufacturer's warranties are at least one (1) year in duration. A list of such Equipment, the names of their manufacturers, and the addresses for contacting the manufacturer's representatives, is available upon request from Builder.

Buyer recognizes that, except as provided above, the Equipment in the Residence is not warranted by Builder, but is warranted only by the particular manufacturer.

If the Buyer finds defects in any of the Equipment items, it is the Buyer's obligation to follow the procedures in the applicable manufacturers' warranty and deal directly with the manufacturer of such Equipment. Builder will use reasonable efforts to assist Buyer in dealing with such manufacturers, if necessary.

Builder will make all necessary repairs to the Residence, either interior or exterior, that shall become necessary by reason of faulty construction, labor or materials. At Builder's sole option, Builder may either (a) make such repairs, (b) replace any faulty item, or (c) pay to Buyer the reasonable cost of such repair or replacement. This limited warranty is for the benefit of Buyer however, it may be assigned as a result of the transfer of ownership of said Residence; shall survive Closing and the delivery of the Deed; and is in lieu of all other warranties, oral or written, express or implied. To the extent that the remaining terms and provisions of this Agreement may be inconsistent with the provisions of this Section, the provisions of this Section shall govern. Nothing in this Section affects Builder's obligation to complete the punch list items which Builder has agreed to complete after Closing.

Builder shall assign to Buyer at Closing all manufacturers' warranties on the components comprising the Residence to the extent same are assignable. Buyer shall be responsible for compliance with any notice and claim procedure set forth therein.

17. RISK OF LOSS: The risk of any damage or loss by fire or other casualty prior to Closing shall be upon Builder. In the event a material portion of the Residence is damaged or destroyed by such fire or other casualty prior to Closing, then, in such event, Builder may terminate this Agreement and the Earnest Money Deposit shall be refunded to Buyer, without interest, and thereafter neither Buyer nor Builder shall have rights or obligations pursuant to this Agreement except that the indemnity obligation of Buyer pursuant to Section 3(b) of this Agreement shall survive such termination.

18. GENERAL:

- Any notice given hereunder shall be in writing and shall be deemed given three business days after being deposited in the U.S. Mail, certified mail, postage prepaid, addressed to the party to whom such notice is given at the address of that party set forth below or at such other address as the person receiving such notice shall have directed in writing or when delivered in person or transmitted by facsimile or email to Buyer or Buyer's Agent, with printed confirmation of sending.
- Builder may waive the benefit of any provisions contained herein for its benefit without in any way affecting the obligation
- of Buyer hereunder.

Whenever the context hereof shall require, the singular shall include the plural, the plural the singular, and references to

- any gender shall include all genders.
- This Agreement, the addenda and any signed written amendments hereto contain the full understanding of the parties, and both parties acknowledge that neither has relied upon any oral representation, inducement or agreement by the other or by any person acting on behalf of the other. This Agreement may not be modified, except by a writing signed by

both Buyer and Builder. If any term or provision of

this Agreement is declared illegal or otherwise invalid, the remaining terms and provisions shall remain in full force and
 Buyer _____ Page 4 of 17 Builder _____

effect.

- f. Builder shall furnish to Buyer a termite inspection report or soil treatment guarantee from a licensed termite control company by date of Closing.
- g. This Agreement may not be assigned by Buyer except with prior written consent of Builder.
- h. Any amendment to this Agreement, Change Orders and any agreement terminating this Agreement shall be effective only if made in writing and signed by all of the parties hereto. If two or more persons are identified as Buyer, any one of them shall have the authority to bind the other in all matters relating to this Agreement.
BUYER AGREES TO ACCEPT THE WARRANTY SPECIFIED HEREIN IN LIEU OF ALL OTHER REPRESENTATIONS AND/OR WARRANTIES, WHETHER EXPRESSED OR IMPLIED. BUYER ACKNOWLEDGES AND AGREES THAT BUILDER IS RELYING ON THIS WAIVER AS PART OF THE CONSIDERATION FOR THE PROPERTY. BUILDER DISCLAIMS ANY OTHER WARRANTY OF ANY KIND, WHETHER EXPRESSED OR IMPLIED, INCLUDING WARRANTIES AS TO THE PHYSICAL CONDITION OF THE PROPERTY OR AS TO THE CONDITION OR EXISTENCE OF IMPROVEMENTS, SERVICES, APPLIANCES, OR SYSTEMS SERVING THE PROPERTY OR AS TO THE MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY OR IMPROVEMENTS THEREON. BUILDER MAKES NO WARRANTIES IN CONNECTION WITH THE EXACTNESS OF THE SQUARE FOOTAGE OF THE RESIDENCE. WHILE SUCH INFORMATION IS ONLY APPROXIMATED AND IS BELIEVED TO BE ACCURATE, IT IS SUBJECT TO VERIFICATION BY THE BUYER BASED UPON THE RECEIPT OF SUCH APPRAISAL REPORTS AND SURVEYS AS BUYER MAY CHOOSE TO HAVE PERFORMED PRIOR TO CLOSING
- j. This Agreement shall be performed in the State of North Carolina and Buyer and Builder agrees, notwithstanding the principles of conflicts of law, that the internal laws of the State of North Carolina shall govern and control the validity, interpretation, performance and enforcement of this Agreement. This Agreement is for the sole benefit of the parties
- k. hereto, and no other person or entity shall be entitled to rely upon or receive any benefit from this Agreement or any term hereof.
- l. Whenever the last day for the performance of any act required by either Builder or Buyer under this Agreement shall fall upon a day which is not a business day, the date for the performance of such act shall be extended to the next business day. As used herein, a business day shall mean any day which is not a Saturday, Sunday, or federal or North Carolina holiday or a day where a substantial portion of the businesses in the local area are closed due to extraordinary events, such as hurricanes, tornadoes, floods, or similar events.
- m. This Agreement shall be binding upon the parties and inure to the benefit of the parties and their heirs, successors and assigns; provided, however, nothing in this provision shall allow an assignment of this Agreement except in accordance with the other terms and provisions hereof, and upon prior written consent of Builder.
- n. If any provision herein contained which by its nature and effect is required to be observed, kept, or performed after Closing, it shall survive Closing and remain binding upon and for the benefit of the parties hereto until fully observed, kept or performed.
- o. This Agreement may be signed in multiple counterparts, each of which shall be deemed an original.

19. DISPUTE RESOLUTION:

- a. Mediation:
 - i. Any claim, dispute, or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party. Requests for mediation shall be made in writing and delivered as required by Section 16(a) hereof along with a description of the proposed method for such mediation. In the event the party receiving such notice is in agreement with the proposed method for mediation, the parties shall proceed with mediation in accordance therewith. However, if the parties are unable to agree upon the method for such mediation within ten (10) days following the delivery of such notice for mediation, either party may initiate arbitration in accordance with Section 18(b) hereof.
 - ii. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Cumberland County, North Carolina, unless another location is mutually agreed upon by the parties. Agreements reached in

Buyer _____

Page 10 of 12

Builder _____

mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

b. Arbitration:

- i. Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with Section 16(a) hereof.
- ii. Claims, disputes and other matters in question between the parties that are not resolved by mediation shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the operative Sections of Article 45C of Chapter 1 of the North Carolina General Statutes and shall be engaged when either Builder or Buyer delivers written notice of demand for arbitration to the other party in a writing delivered as required by Section 16(a) hereof.

iii. A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

iv. Notwithstanding any other provisions of this Agreement, in any arbitration proceeding between Builder and Buyer related to the Residence or Property, either party shall have the right to include, by consolidation, joinder, or in any other manner, any person or entity whom either party believes to be substantially involved in a common question of fact or law with respect to such arbitration proceeding. Within fifteen (15) days after the receipt of written notice of demand for arbitration, each party shall identify, by providing the name, address, and telephone number to the other party, an arbitrator selected by each party for purposes of resolving the matter which is the subject of the demand, and each party shall notify the arbitrator selected by such party that the arbitrator has been identified and that such arbitrator, acting jointly with the arbitrator selected by the other party, if one is so selected, shall be required to select a third arbitrator within thirty (30) days after their selection as arbitrators; provided, however, in the event either party does not identify an arbitrator within the aforesaid fifteen (15) day period, the arbitration proceeding shall be conducted solely by the arbitrator named by the other party. If the two arbitrators selected by the parties fail to select a third arbitrator within the aforesaid thirty (30) day period, either party may petition any Cumberland County, North Carolina Superior Court Judge to appoint a third arbitrator, and the third arbitrator so appointed shall serve with the two arbitrators selected by the parties. Arbitration proceedings shall be heard and resolved the purposes of venue in Cumberland County, North Carolina.

v. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

20. State of North Carolina: Mineral and Oil and Gas Rights Mandatory Disclosure Statement

1. The Residential Property Disclosure Act (G.S. 47E) ("Disclosure Act") requires owners of certain residential real estate such as single-family homes, individual condominiums, townhouses, and the like, and buildings with up to four dwelling units, to furnish Buyers a Mineral and Oil and Gas Rights Disclosure Statement ("Disclosure Statement"). This form is the only one approved for this purpose.
2. A disclosure statement is not required for some transactions. For a complete list of exemptions, see G.S. 47E-2(a). A DISCLOSURE STATEMENT IS REQUIRED FOR THE TRANSFERS IDENTIFIED IN G.S. 47E-2(b), including transfers involving the first sale of a dwelling never inhabited, lease with option to purchase contracts where the lessee occupies or intends to occupy the dwelling, and transfers between parties when both parties agree not to provide the Residential Property and Owner's Association Disclosure Statement.
3. You must respond to each of the following by placing a check ☒ in the appropriate box.

MINERAL AND OIL AND GAS RIGHTS DISCLOSURE

Mineral rights and/or oil and gas rights can be severed from the title to real property by conveyance (deed) of the mineral rights and/or oil and gas rights from the owner or by reservation of the mineral rights and/or oil and gas rights by the owner. If mineral rights and/or oil and gas rights are or will be severed from the property, the owner of those rights may have the perpetual right to drill, mine, explore, and remove any of the subsurface mineral and/or oil or gas resources on or from the property either directly from the surface of the property or from a nearby location. With regard to the severance of mineral rights and/or oil and gas rights, Seller makes the following disclosures:

Buyer _____

Page 11 of 12

Builder _____

property by a previous owner.
Buyer Initials _____

property. ☐
Buyer Initials _____

from the property prior to
Buyer Initials _____ transfer of title to the Buyer.

property by a previous owner.
Buyer Initials _____

the property.
Buyer Initials _____

Buyer Initials _____ 6. Seller intends to sever the oil and gas rights from the property prior
to transfer of title to Buyer.

Yes No No Representation

1. Mineral rights were severed from the

☐ ☐ ☒

2. Seller has severed the mineral rights from the

☒

3. Seller intends to sever the mineral rights

☐ ☒

4. Oil and gas rights were severed from the

☐ ☐ ☒

5. Seller has severed the oil and gas rights from

☐ ☒

☐ ☒

Note to Buyers

If the owner does not give you a Mineral and Oil and Gas Rights Disclosure Statement by the time you make your offer to purchase the property, or exercise an option to purchase the property pursuant to a lease with an option to purchase, you may under certain conditions cancel any resulting contract without penalty to you as the Buyer. To cancel the contract, you must personally deliver or mail written notice of your decision to cancel to the owner or the owner's agent within three calendar days following your receipt of this Disclosure Statement, or three calendar days following the date of the contract, whichever occurs first. However, in no event does the Disclosure Act permit you to cancel a contract after Closing or (in the case of a sale or exchange) after you have occupied the property, whichever occurs first.

21. HOMEOWNERS' ASSOCIATION; COVENANTS, CONDITIONS AND RESTRICTIONS ("CC&Rs"):

Upon Closing, Buyer automatically becomes a member of the community's Homeowners Association if applicable (the "Association") which has been or will be established to govern the affairs of the Community; to own, operate and maintain any common areas within the Community; and to enforce the Covenants, Conditions and Restrictions and/or Master Deed ("CC&Rs") which apply to the Community.

As a homeowner and member of the Association, Buyer may be required to pay dues and assessments to the Association which will be used to operate and otherwise carry out the purposes of the Association. Builder estimates that at the time of Closing, the amount of the annual dues, assessments, capital contribution, transfer or certification fees, kiosk mailbox keys, applicable to Buyer's Property as set out in paragraph 8 of this Agreement will be due from Buyer; provided, however, Builder does not guarantee the actual amount of the dues and assessments, either at the time of Closing or thereafter, and Buyer acknowledges that the actual amount of dues, assessments and capital contribution or other charges may vary from time to time.

Pursuant to the CC&Rs, an architectural review board or committee (the "ARC") may have been (or may be) established by the Association to review and approve all plans and specifications for construction of improvements within the Community, which may include parking, outbuildings, decks, antennas and satellite dishes, flagpoles, landscaping, fencing and other items. Buyer acknowledges that prior written approval of the ARC may be required prior to making any improvements or modifications to the Property and Buyer further acknowledges that the CC&Rs may establish additional standards, limitations and/or prohibitions with respect to any improvements or modifications to the Property.

Buyer has carefully reviewed the CC&Rs for the purpose of determining Buyer's rights and responsibilities thereunder and its application to Buyer's Property, the Community and the use of the Home.

22. ADDENDA: The following Addenda are made a part of this Agreement and incorporated herein by reference:

- ☒ ☒ General Builder's Addendum
- ☒ New Construction Acknowledgement
- Home Inspection and Radon Inspection Addendum

Buyer _____

Page 12 of 12

Builder _____

☐ _____
☐ _____
☐ _____

WITNESS the following signatures causing this Agreement to be executed on the day and year below stated.

BUYER:

Buyer Signature Date _____

Buyer Signature Date _____

Address: Current Address

Phone: Phone

Email: Email

BUILDER:

CAVINESS & CATES BUILDING AND DEVELOPMENT CO.

Date _____

EARNEST MONEY

Held by: Attorney, (Escrow Agent)

Acknowledgement of Receipt:

Date _____

BUILDING DEPOSIT

Held by Builder

Acknowledgement of Receipt:

Date _____

BUYER'S AGENT IF APPLICABLE:

Agent / Firm:

Email:

Phone:

License Number:

CAVINESS & CATES BUILDING AND DEVELOPMENT CO. NEW HOMES SPECIALIST:

Agent / Firm:

Email:

Phone:

License Number:

Buyer _____

Page 12 of 12

Builder _____

Purchase and Sale Agreement 1/1/2021