# NEW CONSTRUCTION PURCHASE AGREEMENT

**1. PARTIES:** ICG HOMES, LLC, "Seller", NC contractor license # _____; Classification: _____; Limit: _____ and _____, "Buyer" agree as follows.

**2. PROPERTY:** Seller agrees to sell and Buyer agrees to purchase from Seller, Lot No. 4, Block No. N/A, Subdivision: BRIXLEY, in Book of Maps 20233, Page 1054, WAKE County Registry together with the dwelling and other improvements built or to be built in accordance with the plans and specifications described below (the "Property"). Address: 6729 BRIXLEY CREST COURT, RALEIGH, 27614 (city/zip), NC. No personal property is included in this sale.

**Note: Governmental authority over taxes, zoning, school districts, utilities and mail delivery may differ from address shown.**

**3. NEIGHBORHOOD DOCUMENTATION, OWNER'S ASSOCIATION and DISCLOSURES:** (Mark and complete all that are applicable)

**BUYER ACKNOWLEDGES RECEIPT OF THE FOLLOWING:**

| | |
|---|---|
| ☑ Covenants, Conditions and Restrictions | ☑ Homeowner's Association Disclosure |
| ☐ Bylaws and/or Rules/Regulations | ☐ Disclosure (as noted): _____ |
| ☑ Recorded Map | ☐ Disclosure (as noted): _____ |
| ☑ Other (as noted): SEPTIC PERMIT & SITE PLAN | ☑ Other (as noted): ATTORNEY SELECTION ADDENDUM |

**Prior to signing this Agreement, Buyer is advised to review restrictive covenants, if any, which may limit the use of the Property, and to read any declaration of restrictive covenants, bylaws, articles of incorporation, rules and regulations, and other governing documents of the owner's association(s) and/or the subdivision, if applicable. Buyer understands and agrees to be bound by and perform the obligations of owners imposed thereby upon becoming an owner.**

Copies of the foregoing documents have been made available to the Buyer at the office of Seller and shall be available for further examination by Buyer at such office during regular business hours. From and after the date the deed to the Property is filed for record, Buyer agrees to comply with the provisions of applicable declarations, rules and regulations, and bylaws and to perform the obligations of a homeowner thereunder.

☐ **Covenants Not Final:** In the event this section is marked, the final declaration of covenants, conditions and restrictions (the "Covenants") for the neighborhood have not been provided to Buyer. Seller shall deliver the final Covenants to Buyer as soon as possible. Buyer shall then have three (3) days from delivery to terminate this agreement by written notice to Seller if Buyer does not approve the Covenants. In the event Buyer does not give timely notice of termination, Buyer shall be bound by this Agreement.

**OWNER'S ASSOCIATION(S):** As an owner of the Property, Buyer will become a member of one or more Owner's Associations ("HOA") regarding the property as set out in any declarations, covenants and/or restrictions affecting the Property and shall be required to pay a Capital Contribution ("Capital") into such association(s) at closing and periodic regular assessments ("HOA Assessments") thereafter currently estimated as follows:

$ _____ Capital for BRIXLEY HOA HOA and ☐ Annual ☐ Quarterly ☑ Monthly HOA Assessments of $ 250.00

$ 3,000.00 Capital for 1 X CAPITAL CONTRIBUTION FEE HOA and ☐ Annual ☐ Quarterly ☐ Monthly HOA Assessments of $ _____

It is understood and agreed, however, that the amount of such Capital and Association Assessments is subject to change by the Association(s) without notice prior to closing and Buyer agrees to pay the amounts charged by the Association at closing and thereafter.

**In the event any fee is imposed by any HOA in which Buyer will become a member for transferring the records of the HOA to register and record the ownership by Buyer ("HOA Transfer Fee"), such fee shall be paid by Buyer.**

**4. PURCHASE PRICE AND PAYMENT:**

The Purchase Price for the Property in U.S. Dollars is $ _____ payable as follows (Mark and complete all that are applicable):

(a) ☐ N/A as Earnest Money, upon execution of this Agreement, payable to N/A as escrow agent, who shall retain it in a separate escrow account until the sale is closed, at which time it will be credited to the purchase price, or until this Agreement is otherwise terminated and the Earnest Money is disbursed in accordance with the terms of this Agreement. [See Additional Provisions Section 2]

☑ $ _____ as the total non-refundable builder fees, including any installments set out in (b) below.

☐ $ _____ Construction-to-Perm: See attached Fees Agreement, which is incorporated herein, for Fees.

☑ $ _____ Balance due at Settlement

(b) Installment non-refundable builder fees shall be paid as follows:
[NOTE: The total of any installments should equal the amount set forth in Paragraph 4(a) above.]
$_____ Date or event triggering Payment: AT EXECUTED CONTRACT
$_____ Date or event triggering payment: _____
$_____ Date or event triggering payment: _____
$_____ Date or event triggering payment: _____
The non-refundable builder fees are not a part of the Earnest Money Deposit and will be used by Seller in the construction of the special improvements described above. The non-refundable builder fees will be credited to the Purchase Price at Settlement.

Should Buyer fail to deliver the non-refundable builder fees or any installment thereof in accordance with the terms of this subparagraph, Buyer shall have two (2) days after written notice to deliver them or the installments to Seller. In the event Buyer does not timely deliver the non-refundable builder fees, Seller shall have the right, but not the obligation, to terminate this Agreement upon written notice to Buyer.

**These deposits and Payments are for builder fees, Upgrades or Options, if any, and any subsequent fees made, which shall be payable to** ICG HOMES, LLC **and will be used by Seller in the construction and applied to the purchase price at closing and <u>are non-refundable.</u>**
**In addition, any deposits and Payments Toward Upgrades or Options are not refundable if Buyer is unable to obtain the Loan and Buyer terminates the Agreement as set out in paragraph 5 below.**
It is acknowledged by Buyer and Seller that no real estate broker has any responsibility as an escrow agent for any fee paid.

(c) The balance of the Purchase Price in good funds at closing (including mortgage proceeds) upon delivery of the deed to Buyer.
(d) No portion of the purchase price is to be paid by a promissory note, nor may any portion of the purchase price be paid by the assumption of any existing loan.
(e) Should any check or other funds paid by Buyer be dishonored, for any reason, by the institution upon which the payment is drawn, Buyer shall have one (1) banking day after written notice to deliver good funds to the payee. In the event Buyer does not deliver good funds as provided, the Seller shall have the right to terminate this Agreement by written notice to Buyer.

**5. SOURCE OF FUNDS:**
☐ Buyer will pay cash; OR

☐ Buyer will secure a loan under the following conditions:
a. Buyer agrees to make written application for the Loan and promptly pay any necessary fees and authorize any required appraisal on or before _____. Buyer further agrees to pursue qualification for and approval of the Loan diligently and in good faith and to continually and promptly provide requested documentation to the lender. Buyer shall promptly furnish Seller written confirmation from the lender of having applied for the Loan. If Buyer fails to furnish Seller written confirmation from the lender of having applied for the Loan as agreed, Seller may make written demand for compliance. If Buyer does not furnish Seller written confirmation from the lender of application within five (5) days after such demand, then Seller may terminate this Agreement by written notice to Buyer at any time thereafter, provided Seller has not received either written evidence of the application or a waiver of the Loan Condition, and all Earnest Money and Deposits paid by Buyer shall be forfeited to Seller and such forfeiture shall not affect any other remedies available to Seller.
b. **Time shall be of the essence with respect to all dates and deadlines set forth in paragraph5(a).**

**NOTE: This Contract is NOT conditioned upon the Buyer securing a loan for the Property.**

**6. BUYER'S PROPERTY**: Buyer ☐ DOES ☐ DOES NOT have to sell or lease other real property in order to qualify for a new loan or to complete the purchase. *(Complete the following only if Buyer DOES have to sell or lease other real property:)*

Other Property Address: _____

☐ (*Check if applicable*) Buyer's other property IS under contract as of the date of this offer, and a copy of the contract has either been previously provided to Seller or accompanies this offer. *(Buyer may mark out any confidential information, such as the purchase price and the buyer's identity, prior to providing a copy of the contract to Seller.)* Failure to provide a copy of the contract shall not prevent this offer from becoming a binding contract; however, SELLER IS STRONGLY ENCOURAGED TO OBTAIN AND REVIEW THE CONTRACT ON BUYER'S PROPERTY PRIOR TO ACCEPTING THIS OFFER.

☐ (*Check if applicable*) Buyer's other property IS NOT under contract as of the date of this offer. Buyer's property (*check only ONE of the following options*):
☐ is listed with and actively marketed by a licensed real estate broker.
☐ will be listed with and actively marketed by a licensed real estate broker.
☐ Buyer is attempting to sell/lease the Buyer's Property without the assistance of a licensed real estate broker.

**NOTE: This Contract is NOT conditioned upon the sale/lease or closing of Buyer's other property.**

Buyer initials _____ _____ Seller initials _____

**7. BUILDER REPORTS CONDITIONS**

☐ **MARK HERE IF DWELLING CONSTRUCTION HAS COMMENCED AND THIS SECTION DOES NOT APPLY (THEN SKIP TO SECTION 8)**

☐ **(Mark here for Pre-Sales or when dwelling construction has not started):** This Agreement is contingent upon Seller obtaining the following report(s) or permits marked as "applicable" (collectively the "Reports"):

(a) **Soil Suitability** (☐ Applicable ☐ Not Applicable): A report showing the soil is suitable for the Dwelling.

(b) **Utility Availability** (☐ Applicable ☐ Not Applicable): A report showing the following utilities are available to the Property: _____.

(c) **Environmental Restrictions** (☐ Applicable ☐ Not Applicable): A report showing there is no environmental contamination, law, rule or regulation that prohibits or unreasonably limits the use of the Property for residential purposes.

(d) **Environmental Permits** (☐ Applicable ☐ Not Applicable): An Improvement Permit from any environmental regulatory agency which may have jurisdiction concerning the Real Estate which would allow the construction of the Dwelling.

(e) **Flood Hazard** (☐ Applicable ☐ Not Applicable): A report showing there is no flood hazard that prohibits or unreasonably Limits the use of the Property for residential purposes.

(f) **Septic System** (☐ Applicable ☐ Not Applicable): An Improvement Permit or written evaluation from the County Health Department ("County") allowing a (check only ONE) ☐ conventional or ☐ other _____ _____ ground absorption sewage system for a _____ bedroom home.

(g) **Private Drinking Water Well** (☐ Applicable ☐ Not Applicable): A Construction Permit from the County allowing a private drinking water well.

(h) **Zoning/Restrictive Covenants** (☐ Applicable ☐ Not Applicable): A report showing the Dwelling may be constructed in Accordance with applicable zoning and restrictive covenants.

(i) **Architectural Review** (☐ Applicable ☐ Not Applicable): A report showing approval from architectural review board/committee that the Dwelling meets applicable architectural requirements.

(j) **Land Use Permit(s)** (☐ Applicable ☐ Not Applicable): A permit or permits from any applicable local government(s) that may have jurisdiction showing approval of the Real Estate for development.

All costs and expenses of obtaining the Reports shall be borne by Seller, and Seller shall use best efforts to timely obtain the Reports. If the Reports cannot be obtained by _____ ("Builder Report Date"), Builder may terminate this Contract by delivering to Buyer written notice of termination. If the Builder has delivered such notice, this Agreement shall be terminated and all Earnest Money shall be refunded to Buyer. ☐

**8. SUBDIVISION STREET DISCLOSURE:** The street upon which the Property fronts **is designated ☐ Public or ☐ Private**

**If Public**: The Seller certifies that the street ☐ HAS BEEN ☐ HAS NOT BEEN accepted for maintenance by the North Carolina Department of Transportation or the municipality, as applicable.

If not yet accepted for maintenance, the Seller certifies that the right of way and the design and construction of the street has been or will be in accordance with the applicable standards for subdivision streets adopted by the North Carolina Department of Transportation or by the municipality.

**If Private:**

- Construction of the street:
  - ☐ is complete; or,
  - ☐ shall be completed by Developer and/or Seller; and
    - ☐ will ☐ will not be constructed to applicable minimum standards of the State highway system or municipal street system; or,
  - ☐ shall be the responsibility of the Buyer as owner of the Property; or,
  - ☐ Other (specify) _____
- No street maintenance shall be performed by the North Carolina Department of Transportation or any other state or local government agency.
  - ☐ Covenants, conditions or restrictions concerning street maintenance and other restrictions and conditions of use and occupancy of the Property, are recorded at Book _____ Page _____ ; or,
  - ☐ A street maintenance agreement is recorded at Book _____ Page _____ ; or,
  - ☐ There is no street maintenance agreement and Buyer is solely responsible.

NOTE: NC General Statutes Section 136-102.6(f) (the "Statute") requires that under certain circumstances described in the Statute, a buyer must be provided a subdivision streets disclosure statement prior to entering into an agreement to buy subdivided property described in the Statute. If Buyer or Seller are uncertain whether the sale of the Property described in the Contract is subject to the Statute, they should consult a NC real estate attorney

Buyer initials _____ _____ Seller initials _____

**9. CONSTRUCTION OF DWELLING.**

(a) **Quality of Construction:** Seller shall construct the Dwelling (i) in accordance with the Plans and Specifications; (ii) in compliance with all laws, regulations, codes, and ordinances applicable to the construction of the Dwelling; and (iii) in a good and workmanlike manner with new, good quality materials and components.

(b) **Changes:**

(i) **Seller Changes:** Minor changes from plans may be necessary and are permitted. However, Seller shall not make any significant deviation or change in the Plans and Specifications without the prior written consent of Buyer.

(ii) **Buyer Changes:** Buyer may request changes in the construction of the Dwelling within the general scope of the Plans and Specifications, consisting of additions, deletions or other revisions.

(iii) **Change Order**: Changes under (i) and/or (ii) above shall be made only by a Change Order, which shall be in writing and signed by both Buyer and Seller ("Change Order"). Change Orders will accordingly address changes to the Purchase Price, Construction Fees, allowance amount(s), and other changes agreed to between Buyer and Seller as to the Plans and Specifications. These can affect the total price and completion date of the Property.

(c) **Construction Costs:** Seller shall provide and pay for all labor, materials, equipment, tools, clean-up, utilities, transportation, facilities, permits, fees, licenses, all plans and specifications and all other costs, charges and expenses whatsoever in connection with or related to the construction of the Dwelling unless otherwise agreed in writing.

(d) **Construction Financing:** Seller shall pay all costs, charges, and other expenses, of any nature whatsoever, for Seller's construction financing of the Dwelling.

(e) **Punch List Items**: Seller shall notify Buyer when there has been Substantial Completion (see definition below) of the Dwelling and shall schedule a mutually agreeable date and time on which Buyer shall inspect the Dwelling. Prior to Settlement, Buyer and Seller shall agree upon a written list of all deficiencies in workmanship and material that are detectable by visual examination ("Punch List Items"). Seller shall correct Punch List Items at Seller's cost within a reasonable period of time. AFTER SUBSTANTIAL COMPLETION(as defined herein), SELLER'S FAILURE TO CORRECT A PUNCH LIST ITEM PRIOR TO SETTLEMENT WILL NOT BE GROUNDS FOR DELAYING SETTLEMENT OR THE IMPOSITION OF ANY CONDITIONS ON SETTLEMENT; PROVIDED, SETTLEMENT SHALL NOT RELIEVE SELLER FROM THE OBLIGATION TO CORRECT ANY PUNCH LIST ITEM.

(f) **Delay in Construction:** If Seller is delayed at any time in the progress of construction by (i) any act or neglect of Buyer; (ii) written Change Orders; (iii) shortages of materials, adverse weather conditions, or delays in transportation which were not reasonably anticipated; or (iv) acts of God, Seller shall give as much notice as possible of the delay to Buyer and the time for Substantial Completion of construction shall be extended by a reasonable time to account for the delay(s) experienced. BUYER ACKNOWLEDGES AND UNDERSTANDS THE IMPORTANCE OF COOPERATING FULLY WITH SELLER IN ORDER TO HELP EXPEDITE THE CONSTRUCTION OF THE DWELLING AND TO AVOID OR MINIMIZE ANY DELAY IN SETTLEMENT, INCLUDING BUT NOT LIMITED TO TIMELY COMMUNICATION OF ANY REQUESTED CHANGES IN THE CONSTRUCTION OF THE DWELLING IN ACCORDANCE WITH PARAGRAPH 3(b)(ii) ABOVE AND MAKING PROMPT DECISIONS ON ANY ALLOWANCE ITEMS.

(g) **Radon Inspection**: Buyer shall have the option, at Buyer's expense, to have the Property tested for radon prior to Settlement. The test result shall be deemed satisfactory to Buyer if an indoor air test indicates an average radon level of less than 4.0 pico curies per liter of air **(as of January 1, 1997, EPA guidelines reflect an "acceptable" level as anything less than 4.0 pico curies per liter of air).** If the indoor air test result exceeds the above-mentioned level, Seller shall remediate to bring the radon level within the satisfactory range. Upon the completion of remediation, Buyer may have another indoor radon test performed at Seller's expense, and if the test result indicates a radon level less than 4.0 pico curies per liter of air, it shall be deemed satisfactory to Buyer. The test result for radon or similar radiological chemicals in well water shall be deemed satisfactory to Buyer if the water test does not show the presence of radon or similar radiological chemicals which exceed local or federal government health regulations. If the water test result does exceed local or federal government health regulations for radon or similar radiological chemicals, Seller shall remediate to bring the water quality into compliance. Upon the completion of the remediation, Buyer may have another water test performed at Seller's expense, and if the test result indicates compliance with local or federal government health regulations, it shall be deemed satisfactory to Buyer.

(h) **Buyer Inspections:** Buyer may complete inspections and provide a written Punch List to Seller no more than 7 days following the Notice of Substantial Completion (See Section 12). Seller will endeavor to complete the Punch List work agreed upon prior to Closing. However, Closing may precede completion of the Punch List work as set out in Section 12. (Also see Additional Provisions Section 5).

**10. EXPENSES, CLOSING COSTS, AND ATTORNEY:** Unless otherwise agreed, Buyer shall be responsible for all costs with respect to any loan obtained by Buyer, appraisal, title search, title insurance, HOA Transfer Fees, recording the deed and for preparation and recording of all instruments required to secure the balance of the purchase price.

Seller shall pay for the preparation of a deed and all other documents necessary to perform Seller's obligations under this agreement and for excise tax (revenue stamps) required by law. The parties shall pay their own attorney's fees unless otherwise provided herein.

Seller shall pay at closing $ _____ toward any of Buyer's expenses associated with purchase of the Property, including any FHA/VA lender and inspection costs that Buyer is not permitted to pay, but excluding any portion disapproved by Buyer's lender. Buyer will be responsible for any additional costs incurred to comply with FinCen requirements, including any filing or attorney fees.

Buyer agrees to use MOORE AND ALPHIN, PLLC as the closing attorney and understands their right to choose their own.

11. **ADDITIONAL PROVISIONS and ADDENDA:** All of the Additional Provisions attached hereto are expressly incorporated herein by reference and shall apply to this Agreement.

Additionally, the following Addenda are attached hereto and made a part of this Agreement: (Mark and complete all that are applicable):

☐ Plans and specifications, which shall be subject to reasonable modification during construction on the Property.

**[Note: The above selection should be marked and the addendum initialed and attached or the Alternative Plans and Specifications section below should be marked and completed if construction is substantially not complete.]**

☐ Cut-sheets, elevations, and/or floor plans, which shall be subject to reasonable modification during construction on the Property.

☐ Options and Upgrades Addendum

☐ Other Addenda (as noted)_____

**Alternative Plans and Specifications Provision**

☐ The Plans and Specifications are not suitable for attachment. However, they are identified as follows: _____ (Clearly identify the Plans and Specifications).

These Plans and Specifications have been reviewed and approved by Buyer and are made a part of this Agreement, but shall be subject to reasonable modification during construction on the Property as set out above.

**12. SETTLEMENT AND CLOSING: (Mark and complete only one of the sections below which shall apply)** Closing shall be defined as the date and time of recording of the deed. All parties agree to execute any and all documents and papers necessary in connection with Closing and transfer of title on or before the Closing Date ("Settlement") at a time and a place designated by Buyer in the reasonable proximity of the Property.

☐ **COMPLETED CONSTRUCTION: (Only fill out if construction IS complete.)** Closing shall be on or before _____(the "Closing Date").

If either party is unable to Close by the Closing Date, then provided that the party is acting in good faith and with reasonable diligence to proceed to Closing, such party shall be entitled to reasonable delay of the Closing Date and shall give as much notice as possible to the non-delaying party and Closing agent. In such event, however, either party for whom the Closing Date is delayed shall have a maximum of seven (7) days from the Closing Date, or any extension of the Closing Date agreed-upon in writing, in which to Close.

In the event Buyer is unable to complete Closing on or before seven (7) days after the Closing Date, or any extension of the Closing Date agreed-upon in writing, then Buyer shall pay to Seller at Closing a per diem carrying charge in the amount of $_____per day from that date until Closing occurs or the Agreement is terminated. In the event Buyer fails to complete Closing on or before seven (7) days after the Closing Date, or any extension of the Closing Date agreed-upon in writing, Seller may terminate this Agreement by written notice to Buyer and all sums paid to Seller shall belong to Seller and all Earnest Money shall be paid to Seller.

☐ **CONSTRUCTION NOT COMPLETE AT TIME OF AGREEMENT: (Only fill out if construction IS NOT complete.)** The anticipated completion date is on or about_____("Anticipated Completion Date"). It is understood and agreed that this is an estimated date only. Closing shall be within fourteen (14) days after written notice from Seller to Buyer of Substantial Completion as defined herein ("Closing Date"). Provided, however, the Closing Date will not be any earlier than the Anticipated Completion Date unless the parties agree in writing. Buyer and Seller will agree upon the exact Closing Date in accordance with the above, but failing any agreement being reached, the Closing Date shall be the first business day occurring 14 days after the written notice from Seller of Substantial Completion.

**A.** **"Substantial Completion**" shall mean the completion of the construction of the Dwelling in accordance with the Plans and Specifications and any other special provisions that may be part of the Contract to the degree that: (i) it is habitable and broom-clean, (ii) a certificate of occupancy has been issued by the appropriate governmental authority having jurisdiction over the construction of the Dwelling and delivered to Buyer, and (iii) only Punch List Items remain to be corrected.

**B.** **Delayed Completion:** The parties recognize that adverse weather, unavailability of material, strikes and other conditions beyond the reasonable control of Seller may delay completion and it is, therefore, agreed by the parties that in the event, and only in the event, that the home is not Substantially Completed within one hundred-twenty (120) days after the Anticipated Completion Date because of such conditions, Buyer shall have the right to declare this Agreement null and void. However, Seller shall not be required to return to Buyer the sums paid under paragraph 4, and Buyer's and Seller's rights shall cease and terminate without liability on the part of either party.

**C.** **Final Inspection:** Within seven (7) to ten (10) days of receipt of the certificate of occupancy by the Authority Having Jurisdiction (AHJ), or if there is none, within seven (7) to ten (10) days after receiving Seller's certificate of substantial completion, the Buyer will deliver to Seller a signed punch list identifying any workmanship or materials not conforming to the Contract plans and specifications, and/or any claimed deficiencies in workmanship or materials. Deficiencies in workmanship or materials shall be defined by the Residential Performance Guidelines, a publication of the National Association of Home Builders. Seller, at its own expense, shall then timely correct all workmanship and materials and rectify all deficiencies in accordance with the Residential Construction Performance Guidelines. Upon completion of this punch list work, Buyer shall deliver to Seller a signed Certificate of Acceptance. Any failure of Buyer to inspect within the three-day period and/or deliver a signed punch list shall constitute acceptance of the workmanship and materials and acknowledgement that the construction has been completed in accordance with the Contract plans and specifications.

**D. Delayed Closing**: In the event Buyer is unable to complete Closing on the Closing Date, or any extension of the Closing Date agreed-upon in writing, then Seller may delay the Closing and Buyer shall pay to Seller at Closing a per diem carrying charge in the amount of $ _____ per day from that date until Closing occurs or the Agreement is terminated. In the event Buyer fails to complete Closing on or before seven (7) days after the Closing Date, or any extension of the Closing Date agreed-upon in writing, Seller may terminate this Agreement by written notice to Buyer and all sums paid to Seller shall belong to Seller and all Earnest Money shall be paid to Seller.

**E. Suspension of Work:** If Buyer fails to timely make any payment obligations due under this agreement, or fails to comply with any other material obligation under this contract, the Seller may, in its discretion, suspend construction work until such payment is made or obligation fulfilled.

**DEED:** The deed is to be made to _____.

**13. ZONING AND ASSESSMENTS:** Seller warrants that there are no restrictions, zoning, easement or other governmental regulations that would prevent the reasonable use of the Property for residential purposes. Seller further warrants that there are no encumbrances or special assessments, either pending or confirmed, for sidewalk, paving, water, sewer or other improvements on or adjoining the Property. Notwithstanding the foregoing, Seller shall pay all owners' association assessments and all governmental assessments confirmed through the time of closing, if any, and Buyer shall take title subject to all pending assessments, if any, unless otherwise agreed as follows:

**14. FLOOD HAZARD DISCLOSURE/CONDITION (Choose and mark ONE of the following alternatives):**

☐ To the best of Seller's knowledge, the Property **IS** located partly or entirely with a designated Special Flood Hazard Area. Buyer understands that it may be necessary to purchase flood insurance in order to obtain any loan secured by the Property from any federally regulated institution or a loan insured or guaranteed by an agency of the U.S. Government.

☑ To the best of Seller's knowledge, the Property **IS NOT** located partly or entirely with a designated Special Flood Hazard Area. If, following the execution of this Agreement, it is determined that any permanent improvements on the Property are located within a designated Special Flood Hazard Area according to the current FEMA flood map, or if this Agreement is subject to a loan condition and Buyer's lender requires Buyer to obtain flood insurance as a condition of making a loan, then in either event Buyer shall have the right to terminate this Agreement upon written notice to Seller, and all monies paid by Buyer to Seller pursuant to this Agreement shall be returned to Buyer.

**15. WARRANTIES:**

**(a) LIMITED WARRANTY OF CONSTRUCTION:** Unless otherwise provided herein, Seller hereby warrants that, for a period of one (1) year from the date of Closing or the date Buyer occupies the Property, whichever comes first, Seller will make all necessary repairs and corrections to the house on the Property, either interior or exterior, structural or non-structural, that shall become necessary by reason of faulty construction, labor or materials or unreasonable non-conformity of construction to the plans and specifications. At Seller's sole option, Seller may either (i) make such repairs and corrections, (ii) replace any faulty or non-conforming item or condition, or (iii) pay to Buyer the reasonable cost of such repair, correction or replacement. This limited warranty: (1) is for the benefit of Buyer only and may not be assigned nor shall it inure to the benefit of any other person or entity, and (2) shall survive closing and the delivery of the deed.

**(b) WARRANTIES OF COMPONENTS:** Seller shall assign, to the extent reasonably possible, and deliver to Buyer at closing all guarantees and warranties of all components contained in or that are part of the improvements to the Property. Buyer shall be responsible for compliance with any registration, maintenance obligations, and notice and claim procedures set forth therein.

**(c) STATE WARRANTIES:** North Carolina law mandates that certain express and/or implied warranties are included as a matter of law in the purchase of new construction. These warranties may cover such issues as structural defects or latent defects. It is recommended that Buyer seek guidance from a NC licensed attorney regarding such warranties.

**16. INSULATION DISCLOSURE:** Seller hereby discloses that Seller has purchased, paid for, and employed an independent contractor to install insulation in the Property as follows:

☐ Insulation installed at the Property will be in accordance with the specifications attached to this Agreement; or

☑ Insulation installed at the Property will be as set out as follows:

| | FLOORS* | CEILINGS | WALLS |
|---|---|---|---|
| TYPE | PER NC | PER NC | PER NC |
| THICKNESS | BUILDING inches | BUILDING inches** | BUILDING inches** |
| R-FACTOR | R- CODE | R- CODE | R- CODE |

*** Disclosure does not apply to dwellings constructed on concrete slabs.**

**** Thickness may vary due to normal settling and presence of beams, rafters, studs and other structural members.**

Buyer initials _____ _____ Seller initials _____

17. **LIVING AREA MEASUREMENT:** The approximate living area of the residence that has been built or is to be built on the Property may have been observed by or represented to Buyer in various ways and places. It is understood and agreed between Buyer and Seller that "living area" square footage as represented by Seller and Seller's agents has been based upon builder plan dimensions and is subject to change without notice during construction. Buyers may verify actual living area measurements as improvements are completed prior to closing. However, this Property and the house constructed on it are not being sold on a "per square foot" pricing basis. Although the completed improvements should substantially comply with agreed plans and specifications, no adjustment will be made in price because of discrepancies in living area in the completed improvements.

18. **MINERAL, OIL AND GAS RIGHTS DISCLOSURE:** Mineral, oil and gas rights can be severed from the title to real property by conveyance (deed) of the mineral, oil and gas rights from the owner or by reservation of the mineral, oil and gas rights by the owner. If mineral, 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 minerals, 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, oil and gas rights, Seller makes the following disclosures:

Buyer Initials ____ ____ 1. Mineral, oil and gas rights were severed from the Property by a previous owner. ☐ Yes ☐ No ☑ No Representation

Buyer Initials ____ ____ 2. Seller has severed mineral, oil and gas rights from the Property. ☐ Yes ☑ No

Buyer Initials ____ ____ 3. Seller intends to sever the mineral, oil and gas rights from the Property prior to transfer of title to Buyer. ☐ Yes ☑ No

[**NOTE:** This Paragraph contains a **disclosure only**, and in no way modifies the obligations of the Seller to deliver fee simple title to Buyer as described in Paragraph 1 of the Additional Provisions. In the event any severing of oil and gas rights to the Property has occurred or is planned, it is necessary that the terms of such must be agreed upon by Buyer as part of this Agreement or in a related agreement.]

19. **ENTIRE AGREEMENT:** This Agreement, along with the signed Addenda, if any, and the matters expressly referred to herein, constitute the entire agreement between the parties. No representations, warranties, undertakings or promises whether oral, implied or otherwise have been made by either Seller or Buyer unless expressly stated herein or unless mutually agreed upon in writing between the Seller and Buyer.

**HOWARD PERRY & WALSTON REALTY INC. D/B/A COLDWELL BANKER HOWARD PERRY AND WALSTON AND THE JIM ALLEN GROUP INC. ALONG WITH ANY OF THEIR AGENTS OR INDEPENDENT CONTRACTORS MAKE NO REPRESENTATIONS AS TO THE LEGAL VALIDITY OR ADEQUCY OF ANY PROVISION OF THIS FORM IN ANY SPECIFIC TRANSACTION. IF YOU DO NOT UNDERSTAND THIS FORM OR FEEL THAT IT DOES NOT PROVIDE FOR YOUR LEGAL NEEDS, YOU SHOULD CONSULT A NORTH CAROLINA REAL ESTATE ATTORNEY BEFORE YOU SIGN IT.**

**Buyer:** **Seller:**

_____ Date: _____ _____ Date: _____

_____ Date: _____ _____ Date: _____

Notice Address: _____ Notice Address: _____

_____ _____

**AGENTS:**

**Selling Firm**: _____ Firm License #: _____

Individual Agent: _____ License #: _____

Acting as: ☐ Buyer's Agent ☐ Seller's (sub)agent ☐ Dual Agent ☐ Designated Dual Agent

Selling Agent Mailing Address: _____

Selling Agent Email: _____ Fax: N/A Phone _____

Listing Firm: COLDWELL BANKER HOWARD PERRY and WALSTON/Jim Allen Group Firm License # C1232

Individual Agent: Sydney Stumpo /Jim Allen MLS ID r11804 License # 318114

Acting as: ☐ Seller's (sub)agent ☐ Dual Agent ☐ Designated Dual Agent

Individual Listing Agent Email: SYDNEYSTUMPO@JIMALLEN.COM Fax: N/A Phone: 9199000173

# EARNEST MONEY ACKNOWLEDGMENT:

6729 BRIXLEY CREST COURT, RALEIGH, NC 27614
Property Address

I/WE HEREBY ACKNOWLEDGE RECEIPT OF THE EARNEST MONEY DESCRIBED IN THE FOREGOING PURCHASE AGREEMENT AND AGREE THAT THE EARNEST MONEY WILL BE HELD AND DISBURSED IN ACCORDANCE WITH THIS AGREEMENT (See Additional Provisions Section 2.)

Firm:

By: _____ Date: _____

# DEPOSIT ACKNOWLEDGEMENT:

I HEREBY ACKNOWLEDGE RECEIPT OF THE FOLLOWING DEPOSIT(S) AND/OR PAYMENT:

$ _____ Deposit paid to Seller.

$ _____ Deposit paid to Seller for NONREFUNDABLE BUILDER DEPOSIT .

$ _____ Payment made to Seller for (describe as for upgrades, options, etc.) _____

Listing Agent: _____ Date: _____

OR

Seller or Seller's Representative: _____ Date: _____

# ADDITIONAL PROVISIONS

**1. POSSESSION:**
Possession will be given upon Closing and receipt in full by Seller of all monies due and payable by the terms of this Agreement. Seller shall remove, by the date possession is made available to Buyer, all personal property which is not a part of the purchase and all garbage and debris from the Property. Seller shall furnish a general warranty deed conveying to Buyer a fee simple marketable title to the Property, free and clear of all encumbrances except (a) those liens and encumbrances specifically set forth in this Agreement; (b) covenants, rights, restrictions, reservations, easements and conditions of record including such thereof as may be contained in the Declaration and Bylaws governing the homes and Common Areas; (c) real estate taxes and assessments both general and special for the current year not yet due and payable; and (d) zoning ordinances, it any. If Seller cannot convey clear title to the premises as required, Seller may terminate this Agreement whereupon all funds deposited by Buyer and documents shall be returned to the Buyer and this Agreement shall be null and void and the parties release each other from any further liability hereunder.

**2. EARNEST MONEY:**
The Buyer and Seller acknowledge that, in the event of a dispute between Seller and Buyer over the return or forfeiture of any Earnest Money held in escrow by a licensed real estate broker ("Broker") as Escrow Agent, the Broker is required by state law to retain said Earnest Money in the Escrow Agent's trust or escrow account until Escrow Agent has obtained a written release from the parties consenting to its disposition or until disbursement is ordered by a court of competent jurisdiction. Alternatively, if a Broker is holding the Earnest Money, the Broker may deposit the disputed monies with the appropriate clerk of court in accordance with the provisions N.C.G.S. §93A-12.
**The parties agree that a real estate brokerage firm acting as Escrow Agent may place any Earnest Money deposited by Buyer in an interest bearing trust account and that any interest earned thereon shall be disbursed to the Escrow Agent monthly in consideration of the expenses incurred by maintaining such account and records associated therewith.**

**3. DEFAULT:**
Except as expressly provided for herein, if Buyer shall default in any of the payments or obligations called for in this Agreement and such default shall continue for fifteen (15) days after notice from Seller to Buyer, then in such event Seller may terminate this Agreement and all amounts paid toward the purchase price will be forfeited to Seller and such forfeiture shall not affect any other remedies available to Seller. In the event of a default of this Agreement by Seller and such default shall continue for fifteen (15) days after notice from Buyer to Seller, then in such event, the sums paid by Buyer shall be returned to Buyer, and this Agreement shall terminate and neither party shall have any further liability to the other party under this Agreement.

**4. PRORATIONS:**
Prorations for the closing of this transaction shall be as follows:

(a) Ad valorem taxes (both real and personal property) on the home shall be prorated on a calendar year basis as of the date of filing of the deed for record.

(b) Seller shall pay all municipal or governmental special assessments which constitute a lien on the Property as of the Closing Date. All on-site improvements have been paid or will be paid by Seller.

(c) The amount of any prepaid monthly assessment of the homeowners association for common expenses paid by Seller with respect to the Property shall be prorated as of the date the deed is filed for record.

**5. ACCESS TO PROPERTY, BUYER INSPECTION AND PUNCH LIST:**
Buyer understands and agrees that Seller shall control the Property prior to Closing and may impose any restrictions and limitations on access to the Property as may be necessary in Seller's sole discretion to maintain safety and keep the Property secure. Buyer agrees that Buyer or anyone acting for or at the direction of Buyer shall only go upon the Property after receiving the express permission of Seller and to abide by all rules or restrictions that Seller may notify Buyer of from time to time. Buyer will indemnify, defend and hold Seller and Seller's agents harmless from all claims made by Buyer's agents due to their inspection of Property, including reasonable legal expenses. Buyer agrees not to interfere with any work being performed on the Property by Seller or Seller's agents. Unless otherwise stated herein: (i) the electrical, plumbing, heating and cooling systems and built-in appliances, if any, shall be in good working order at closing; (ii) the roof, gutters, structural components, foundation, fireplace(s) and chimney(s) shall be performing the function for which intended and shall not be in need of immediate repair; (iii) there shall be no unusual drainage conditions or evidence of excessive moisture adversely affecting the structure(s); and (iv) the well/water and septic/sewer systems, if any, shall be adequate, not in need of immediate repair and performing the function for which intended. Buyer shall have the option to have the above listed systems, items and conditions inspected by a reputable inspector or contractor, at Buyer's expense (unless otherwise provided in this Agreement). IN THE EVENT OF ANY PRIVATE INSPECTIONS BY BUYER OR PUNCH LIST ITEMS PROPOSED BY BUYER, SELLER RESERVES THE RIGHT TO REFUSE TO CORRECT ITEMS THAT ARE NOT IN VIOLATION OF LOCAL BUILDING CODES OR THAT MEET LOCAL GENERAL AND CUSTOMARY BUILDING PRACTICES. If any repairs are necessary, Seller shall have the option of completing them or refusing to complete them.

Buyer initials _____ _____ Seller initials _____

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**Howard Perry and Walston**
**The Jim Allen Group**

If Seller elects not to complete the repairs, then Buyer shall have the option of accepting the Property in its present condition or terminating this Agreement, in which case all monies paid by Buyer to Seller shall be refunded. Closing shall constitute acceptance of each of the systems, items and conditions listed in (i), (ii), (iii) and (iv) above in its then existing condition unless provision is otherwise made in writing. Buyer shall, at Buyer's expense, promptly repair any damage to the Property resulting from any activities of Buyer and Buyer's agents and contractors during Buyer's inspection of Property. Buyer will indemnify and hold Seller harmless from all loss, damage, claims, suits or costs, which shall arise out of any contract, agreement, or injury to any person or property as a result of any activities of Buyer and Buyer's agents and contractors relating to the Property except for any loss, damage, claim, suit or cost arising out of pre-existing conditions of the Property and/or out of Seller's negligence or willful acts or omissions This indemnity shall survive this Contract and any termination hereof.

IF BUYER OBTAINS A VETERAN'S ADMINISTRATION (VA) LOAN, SELLER SHALL PAY THE COST OF ANY WELL/WATER AND SEPTIC/SEWER INSPECTION.

**6. FIRE OR OTHER CASUALTY:**
The risk of loss or damage by fire or other casualty prior to closing shall be upon Seller.

**7. TERMITES:**
Unless otherwise stated herein, Seller shall provide at Seller's expense a new construction termite certificate from a licensed pest control operator on a standard form in accordance with the rules of the North Carolina Structural Pest Control Committee.

**8. FOUNDATION PLOT:**
Seller shall furnish to Buyer a preliminary Foundation Plot.

**9. DESIGNATION OF LIEN AGENT; LABOR OR MATERIAL:**
If required by N.C.G.S. §44A-11.1, Seller shall have designated a Lien Agent, and Seller shall deliver to Buyer as soon as reasonably possible a copy of the appointment of Lien Agent. Seller shall furnish at closing an affidavit and indemnification agreement in form satisfactory to Buyer showing that all charges for labor or materials, if any, furnished to the Property within 120 days prior to the date of closing have been paid and agreeing to indemnify Buyer against all loss from any cause or claim arising therefrom.

**10. ADDITIONAL COSTS/EXPENSES:**
Seller may unilaterally charge Buyer additional fees for an increase in costs and/or expenses in the form of escalation charges and fuel surcharges. These may occur if, after the effective date of the contract, the total actual cost of labor, building materials, and/or equipment rental exceed five percent (5%) of the contract price, through no fault of Seller.

**11. ASSIGNMENTS:**
This Agreement may not be assigned without the written consent of Buyer and Seller.

**12. PARTIES:**
This Agreement shall be binding and shall inure to the benefit of the parties and their heirs, successors and assigns. As used herein, words in the singular include the plural and the masculine includes the feminine and neuter genders, as appropriate.

**13. SURVIVAL:**
Any provisions herein contained which by its nature and effect if required to be observed, kept or performed after the closing shall survive the closing and remain binding upon and for the benefit of the parties hereto until fully observed, kept or performed.

**14. NOTICE:**
Any notice or communication to be given to a party herein may be given to the party or to such party's agent. Any written notice or communication in connection with this transaction contemplated by this Agreement may be given to a party or a party's agent by sending or transmitting it to any mailing address, e-mail address or fax number set forth in this Agreement for such party or agent or to such other address provided by Buyer or Seller for the receipt of notices hereunder.

**15. COMPUTATION OF DAYS:**
For purposes of this Agreement, the term "days" shall mean consecutive calendar days, including Saturdays, Sundays, and holidays, whether federal, state, local or religious. For the purposes of calculating days, the count of "days" shall begin on the day following the day upon which any act or notice as provided in this Agreement was required to be performed or made.

**16. MARKETING COLLATERALS:**
It is agreed that the Seller may use any information about the Property or photographs of the Property for marketing purposes

**17. PROJECT PLANS-COPYRIGHT:**
The parties agree that the ownership of architectural plans and drawings are protected by U.S. Copyright Law. Seller represents and warrants that the copyright for any plans or drawings, including preliminary designs, that have been furnished by Seller are either the sole property of Seller, have been duly licensed from a third party for legal use under copyright law, or have been taken from architectural works that are in the public domain. These plans and drawings may not be copied, sold, modified or used in the construction of other real property without express written permission. The Buyer represents and warrants that any plans and/or sketches which the Buyer has supplied to Seller are either the sole property of Buyer, have been duly licensed from a third party for legal use under copyright law, or have been taken from architectural works that are in the public domain. Buyer agrees to indemnify, defend and hold Seller harmless from all liability and expenses which may be incurred, to include legal fees and court costs, from any third-party claims of copyright infringement involving the use of Buyer's submitted plans or sketches.

**18. IMPERVIOUS SURFACE AREA DISCLOSURE:**
All construction within a protected watershed may be subject to limitations on the amount of impervious surface area (driveways, sidewalks, rooftops, etc.). The recorded subdivision plat should indicate if any impervious surface limitations exist and what they are.

**19. ROCK AND UNSUITABLE SOILS:**
If Seller discovers soils unsuitable for footings specified by the project engineer, including rock, existing underground tanks, septic tanks or fields, Buyer will pay the cost of removal of such materials or structures and replacement with suitable materials. Should these discoveries add to the cost of construction (such as rock, in-fills or unstable soil, an abnormally high water table, inadequate soil

percolation, existing foundations and other constructs, or hazardous materials), the Seller may suspend work and shall promptly notify Buyer. The Buyer shall have the right to investigate the condition within _____day(s) of notification. The parties will make a good-faith effort to mutually agree upon the appropriate corrective measures, which may include hiring a third-party expert, assessing the costs for additional work to be performed, and/or extending the time for work completion. Any such additional work shall be written as change orders and signed by the parties. If the parties cannot agree on corrective measures, the Seller may provide written notice of cancellation of the contract to Buyer due to the unforeseen site condition. Cancellation due to an unforeseen site condition shall be deemed to be by mutual consent of the parties without recourse or default and any deposits shall be refunded to Buyer.

**20. ORAL AGREEMENTS:**

Seller shall not be held responsible for any oral commitments by Seller or Seller's sub-contractors. If Buyer believes there are statements or understandings that are not reflected in this Purchase Agreement or any written Change Orders, Buyer must identify same and arrange with Seller to put such statements or understandings into writing as a part of this Agreement or any Change Order.

**21. DISPUTE RESOLUTION:**

Any and all disputes between the parties, including but not limited to a dispute relating to or arising out of any alleged breach of contract, any alleged breach of statutory obligation, any claim for damages against the Seller, any claim of negligence, fraud, breach of warranty, or any consumer protection act violation, shall be resolved as follows:

a. First, either party may request mediation by giving written notice to the other. The notice shall include a brief description of the disagreement. Neither party is required to accept mediation. If an offer to mediate is accepted, the parties shall select and agree upon a JAMS approved mediator. The parties agree that mediated results are non-binding, but the parties may reduce any mediation resolution to writing and treat it as a binding contract. The cost of mediation shall be equally divided among the parties.
b. Next, any matter not resolved by mediation shall be decided by mandatory arbitration. The parties shall agree upon a JAMS approved arbitrator. Decisions of the arbitrator shall be binding on the parties and the parties agree not to appeal the arbitrator's decision.

**22. ATTORNEY'S FEES:**

Unless otherwise provided for in this Contract, all reasonable attorney's fees and legal expenses incurred by one party, that arise out of the breach this Contract by the other party, or that arise by a failure in the other party's obligations, shall be paid by the party who has breached or who has otherwise failed to perform.

**23. JURISDICTION:**

The provisions of this Contract shall be interpreted and governed in accordance with the laws of the state of North Carolina.

**24. ENTIRE CONTRACT:**

This Contract, together with exhibits and any supplementary document specifically referenced in this Contract, constitutes the entire agreement between Seller and Buyer with respect to matters contained in this Contract, superseding all prior oral or written representations and agreements. No waiver, modification or change of any of the Contract terms shall be valid unless in writing and signed by all parties hereto, except for change orders which shall be valid when signed by Buyer.

[This space intentionally left blank.]

Buyer initials _____ _____ Seller initials _____