

## CONDOMINIUM PURCHASE AND CONSTRUCTION AGREEMENT

This agreement (“Agreement”) is entered into on \_\_\_\_\_, 2018, between The Dells of Marion Oaks, LLC (“Developer”), a Michigan limited liability company, of 1295 Maxfield Road, Brighton, Michigan 48114, Capital Construction Group, LLC (“Builder”), of 1295 Maxfield Road, Brighton, Michigan 48114, and \_\_\_\_\_ (“Buyer”), of \_\_\_\_\_, on the terms and conditions set forth below.

### *Transaction Description*

The Buyer desires to purchase a lot from the Developer in the development known as Unit \_\_ (referred to herein as the “Lot”) in The Dells of Marion Oaks (the “Development”) as described and depicted in the Master Deed and related condominium documents for the Development. The Buyer also desires to have the Builder construct a home on the Lot in accordance with the terms of this Agreement (the “Project”). The Developer has agreed to sell the Lot and the Builder has agreed to build the Project, and to facilitate the financing for both transactions, the Developer and the Builder have agreed to cooperate to complete the closings of both sales as one unified transaction (the “Transaction”). Therefore, at closing, the Developer shall transfer the Lot to the Builder, and the Builder shall convey the Lot to the Buyer with the completed Project. The parties acknowledge that the Developer retains title to the Lot until closing and retains responsibility for the Development.

### *Purchase Price and Financing*

1. **Purchase Price.** In exchange for completing the Transaction, Buyer agrees to pay Builder the total sum of \_\_\_\_\_ (\$\_\_\_\_\_) (the “Purchase Price”). The Buyer shall pay the Builder the sum of \_\_\_\_\_ (\$\_\_\_\_\_) upon execution hereof. This amount is a nonrefundable amount and will be used by the Builder for costs for items such as permits and preconstruction items. Prior to commencement of construction as defined below, the Buyer shall pay an additional sum of \_\_\_\_\_ (\$\_\_\_\_\_). The remainder of the Contract Price shall be paid pursuant to construction draws as described below, or in the Builder’s discretion, may be paid at Closing.
2. **Funds for Construction.** Buyer shall provide to Builder evidence, satisfactory to Builder, of the funds or pre-approval for financing to be used by Buyer for the balance of the Purchase Price. If Buyer has arranged for financing for all or any portion of the construction of the Project, the financing shall be closed on or before the date on which such funds are due to the Builder hereunder. If the Buyer has not yet received financing pre-approval, Buyer agrees to obtain such approval within fifteen days (15) days after execution hereof. Buyer acknowledges that unless checked below, this agreement is not contingent upon such financing pre-approval.
3. **Financing Contingency.** Completion of this transaction is contingent on the Buyer’s ability to obtain a loan commitment or an acceptable conditional pre-approval for approximately \$\_\_\_\_\_ (the “Mortgage Loan Commitment”). Buyer shall apply for the Mortgage Loan Commitment within three days of the execution of this Agreement and will proceed to complete the application in a timely manner. Buyer acknowledges that the Builder has no obligation to proceed with any work on the Project hereunder until this contingency is waived and satisfied. If the Buyer is unable to get a Mortgage Loan Commitment, the Lot Deposit (as defined below) shall be returned. If Buyer is unable to get the Mortgage Loan Commitment within thirty (30) days after

execution hereof, the Builder shall have a right to declare this agreement void in which event the Lot Deposit shall be returned and all parties hereto shall be released from all obligations under this Agreement.

4. **No Final Appraisal Contingency.** Buyer acknowledges that neither Developer nor Builder guaranty that after construction of the Project, the Lot and Project will appraise for the total final Purchase Price, and that a failure to appraise for the final Purchase Price shall not in any manner diminish the Buyer's obligations under this agreement, and any waiver of lien by Builder shall not be construed as a waiver of claims for changes in the scope of the Project.
5. **Construction Disbursements.** All funds for the construction of the Project except for the pre-construction deposits described above, shall be disbursed to Builder monthly in accordance with the status of completion of the Project as of the end of each month as certified by the Builder. Following the end of each month during the construction of the Project, Builder shall prepare a request for payment together with a sworn statement and waivers of lien to the Buyer. If the Buyer is financing the project, the materials shall also be submitted to the Title Company acting as the Escrow Agent for the Project (Escrow Agent), if any, and the Escrow Agent shall certify that the documents are sufficient for it to issue an updated title insurance endorsement to insure the Lot for the construction work through the end of the prior month. Builder shall be paid the amount certified for the construction through the end of the prior month. Builder may, in its discretion, accept a payment schedule other than monthly if required by Buyer's lender, such schedule, however, must be approved by Builder in writing. No such changes, however, shall affect the payment of change orders, which shall remain due in full, at the time of the issuance of said change order. In addition, it shall remain the Buyer's sole responsibility to ensure that Buyer has sufficient funds to close at the completion of the Project.

### *Condominium Requirements and Provisions*

6. **Association membership.** Buyer shall become a member of the Marion Oaks Development Association and shall be subject to and abide by all the terms and provisions in the master deed, the condominium bylaws, and the subdivision plan of the Development and in the articles of incorporation, bylaws, and rules and regulations, if any, of the Association.
7. **Lot to be purchased.** The Lot, and Buyer's rights to it, shall be subject to the Michigan Condominium Act, MCL 559.101 et seq. (the "Act").
8. **Escrow provisions.**
  - a. In addition to the deposit required for the Builder, the Buyer shall pay a Lot deposit in the amount of \$\_\_\_\_\_ (the Lot Deposit). Any Lot deposit received from Buyer pursuant to this Agreement shall be deposited with Select Title Agency, as escrow agent, whose address is 6870 Grand River Ave, Brighton, MI 48114 ("Escrow Agent") (or another Escrow Agent qualified to serve under the Act later substituted by Developer), under an escrow agreement between Developer and Escrow Agent, a copy of which is attached (the "Escrow Agreement"), the terms of which are incorporated by reference, and accepted by Buyer, who agrees to be bound by the Escrow Agreement as though a party to it.
  - b. The Lot Deposit shall be credited to the Buyer at Closing, however, Developer shall retain sufficient funds in escrow with Escrow Agent (or provide sufficient security to Escrow Agent) to ensure completion of any uncompleted improvements that are labeled "must be built" under the terms of the Development's documents.

9. **Cancellation rights of Buyer.**

a. This Agreement shall not become binding and Buyer may withdraw without cause and without penalty if the withdrawal is made within nine business days after receipt by Buyer of a copy of the recorded master deed and other documents required by MCL 559.184a. If Buyer does not withdraw as provided above, this Agreement shall become binding on Buyer following acceptance by Developer and at the expiration of nine business days following receipt by Buyer of the documents specified above.

b. If Buyer withdraws from this Agreement before the date on which it becomes a binding purchase agreement, any Lot Deposit shall be returned to Buyer within three business days after Escrow Agent receives written notification of the withdrawal, and all rights and liabilities of Buyer and Developer under this Agreement shall terminate.

10. **Cancellation rights of Developer.** If, before the date on which this Agreement becomes a binding purchase agreement, Developer determines not to construct the Lot or for any other reason desires to withdraw as a party to this Agreement, Developer may do so by notifying Buyer and Builder in writing. If Developer withdraws, all sums paid under this Agreement shall be returned to Buyer, and all rights of Buyer, Builder and Developer under this Agreement shall terminate without further liability on the part of Developer or Builder.

### *Construction and Completion*

11. **Plans, Specifications and Selections.** The Project will be built according to the approved house plans, specifications and selections designated and signed by the Buyer, in connection with the execution of this Agreement. In the event of unavailability or shortage of any supply or material, Builder reserves the right to select a replacement of comparable or better quality.

12. **Change Orders.** Any other deviation of the house plans or Specifications List requested by the Buyer after building contract has been signed will require Buyer to fill out a **Written Change Order Request** describing the changes. Buyer will pay in advance and in full any additional cost resulting from the Written Change Order Request, plus a fee of \$500 or 10% of the cost of the Change Order, whichever is greater. This amount will increase the cost of this contract and any payments made pursuant to Written Change Order Requests shall not in any way decrease the amount owing as set forth in paragraph 1 above. The cost will be mutually agreed upon between Builder and Buyer and be stated on the Written Change Order Request. Builder shall not be obligated to make any changes and/or alterations in the work and/or materials except upon written orders signed by Buyer and Builder wherein the changes and/or alterations to be made and the amount to be paid for same by Buyer to Builder are set forth, and upon payment for the same by Buyer to Builder at the time the order is given. However, any changes or alterations that may be required by any public agency or inspector may be completed by Builder and shall be paid for by Buyer without the necessity of Buyer's prior approval.

13. **Commencement and completion.** Construction shall be commenced with due diligence after the Buyer has satisfied the builder of available funds and/or financing as required above, and when all necessary permits have been secured and utilities provided. Construction shall be completed as soon as reasonably possible and Builder shall not be liable for delays caused by weather conditions, strikes, unavailability of materials, changes in governmental regulations, acts of governmental agencies or their employees, acts of God, or the failure of the Buyer to cooperate, or because of any other reason

beyond the control of the Builder. Buyer acknowledges that any delay in the Project caused by Buyer or Buyer's agents or within Buyer's control shall cause Builder to incur additional costs. Notice of costs shall be in writing to Buyer and the Contract Price shall be adjusted accordingly by written change order. The Builder shall obtain all necessary permits from the proper governmental authorities in respect to the work to be completed and comply with the building codes.

14. **Supervision of workers and contractors.** The direction and supervision of the working forces, including subcontractors, rests exclusively with the Builder, and the Buyer shall not issue any instructions to or otherwise interfere with the workers. In addition, the Buyer shall not negotiate for additional work with the Builder's subcontractors or engage other Builders or subcontractors, except with the Builder's written consent. The Builder's consent may be withheld or granted on whatever conditions the Builder thinks advisable. Any work or material obtained in violation of this provision shall not be covered by the warranty given by Builder hereunder.
15. **Insurance.** Before the commencement of construction work under this Agreement and extending until final payment is made, Builder shall procure insurance in an amount necessary to allow reconstruction of any constructed improvements, insuring the improvements on the Lot against loss or damage by fire, windstorm, or other hazards, including vandalism, under a Builder's risk policy insured by a carrier and containing coverage acceptable to Builder. Builder shall carry any public liability insurance and worker's compensation insurance required by law and shall deliver evidence of that insurance to Buyer on request. In the event that there is loss occasioned to the property of whatsoever nature through whatsoever source in whatsoever amount, the Builder or Buyer shall have the option of either completing the Project according to the terms of the contract, or in the alternative, effectuating a cash settlement with the Buyers through the use of insurance proceeds. In the event this later method is adopted, Builder shall be paid the full amount of his costs from the proceeds plus twenty (20%) percent.
16. **Copyright of Plans.** All copyright to the design drawings and Plans and Specifications prepared and/or supplied by Builder vest in Builder. If any copyright rights for the design drawings and Plans and Specifications are construed to vest in Buyer in accordance with U.S. copyright laws, Buyer assigns all of its copyright rights in the design drawings and Plans and Specifications prepared by or for Builder to Builder for the Lot and agrees, on request, to sign any documents necessary to perfect the assignment. Builder may photograph the exterior or otherwise depict the Project.
17. **Buyer Plans.** If the Builder agrees to construct based upon plans and/or specifications provided by the Buyer, Buyer shall indemnify and hold Builder harmless from and against any and all claims that the construction plans and specifications violate or infringe on any copyright or patent, and from any claims arising out of defects in such plans or specifications.
18. **Site Conditions.** Buyer acknowledges that Builder has not tested or analyzed and is not responsible for the soil conditions of the Lot beyond standard preconstruction inquiry. Buyer specifically waives any costs, liabilities and expenses incurred as a result of inadequate soil conditions. Builder will not be held responsible for any unforeseen conditions that arise during construction, including but not limited to, hazardous materials, or unstable ground. Buyer acknowledges and agrees that the Contract Price is based on standard excavation with no subsurface solid rock, streams or springs, or fill that requires dewatering, excavation, or special equipment other than a tracked front-end loader or backhoe. Excavation costs above standard conditions are to be paid as a Change Order and/or added to the Contract Price. If the Builder determines in his opinion that ground conditions existing on the Lot are such that they will not support the Project upon normal foundations, or require work

beyond the standard excavation, Builder shall have the option of terminating his contract with the Buyer and is under no further obligation to Buyer. Builder may, but is not obligated to, add an additional condition to the existing contract mutually acceptable to both the Builder and the Buyer to reimburse Builder for additional costs encountered. Buyer shall agree before work is performed and pay additional footing costs or other costs incurred as a result of subsurface conditions, including but not limited to dewatering, to Builder as extra costs to be added to the Contract Price.

19. **Hazardous Materials.** Developer and Builder state that they are not currently aware of any Hazardous Materials on the Lot. Buyer acknowledges and agrees that the Contract Price does not include the removal and transfer of any contaminated or hazardous materials or soils as may be defined by applicable law. If Builder encounters such material or soil, it shall notify Buyer in writing and stop work in the affected area. Builder shall have no obligation to remove or transfer such material or soil unless agreed to in a written and signed change order. In addition, the Buyer of the Project and Lot and any other occupants may now or in the future be exposed to various environmental conditions in or near the Project or Lot (including, without limitation, radon gas, electromagnetic fields from power lines and appliances, the presence of surface and underground utility facilities, and the possibility of air, water and soil pollution). Builder does not claim any expertise in such conditions, and expressly disclaims any liability for any type of damage which such conditions might cause to the Project, the Buyer, or occupants of the Project. The federal Environmental Protection Agency recommends that radon levels be tested in all homes so Buyer may wish to test the Project after the Closing for its specific radon level.
20. **Landscaping, Grade, Tree removal and responsibility.** Builder, may in its sole discretion, remove any trees which interfere with, in any manner whatsoever, the proposed Project, driveway, sidewalks, easements and electric, sewer, water and gas lines, and Builder has no responsibility whatsoever for the trimming, landscaping, removal, replacement or condition of any trees remaining on the Lot. The work to be done by Builder does not include finish grading, seeding or landscaping, or any other site improvement work unless it is expressly otherwise provided in the plan and/or specifications.
21. **Completion and Orientation.** The building shall be deemed completed as of the date of issuance of a Certificate of Occupancy by the governmental entity having jurisdiction to issue the same, notwithstanding any minor items that require completion, replacement or repair after that date. Upon completion of the Project, Builder shall conduct a walkthrough and pre-settlement orientation (“Orientation”) with the Buyer to review the Project. After the Orientation, the Buyer shall sign off on Project in its then current condition. If the Builder and Buyer discover any items that they mutually agree are incomplete and/or require attention, they shall prepare a detailed list of such items to be corrected by Builder. Builder will correct the items listed prior to Closing, except for any items that cannot be corrected immediately, such as, by way of illustration only (i) items waiting on materials to be delivered or (ii) items waiting on a third party to comply with or preserve a warranty. Such items shall be completed as soon as possible under the relevant circumstances. Identification of any items at the Orientation does not render the Project not substantially complete for the purpose of final payment or Closing.
22. **Possession during Construction.** Possession of the Lot and all improvements constructed on the Lot shall be deemed to be surrendered exclusively to Builder as of the time work is commenced under this Agreement and continue until the Project is completed. Builder shall be entitled to exclusive possession of the Lot until Builder notifies Buyer that the Project is substantially complete and ready for occupancy and the contract price, adjusted for additions and deductions, if any, is paid

in full. The Buyer shall not sell, transfer convey or otherwise encumber the Lot during the construction process without first obtaining written consent of the Builder. The Buyer shall also not enter onto the Lot for the purpose of performing any work or modifications to the Project or on the Lot without the written consent of the Builder. During construction Builder shall permit the Buyer, persons financing the cost of the Project on behalf of the purchaser, and all public authorities to inspect the Project, provided inspections are made at reasonable times and that persons making them do not interfere with workmen.

23. **Unauthorized Visitation.** The Buyer acknowledges that this is a construction site and that during the construction certain dangerous conditions may exist. In the event, the Buyer enters upon the Lot without the permission, consent and/or supervision of the Builder, the Buyer indemnifies and holds the Builder harmless from all costs, damages, and liabilities that may arise or occur as a result of such unauthorized visit.
24. **Unauthorized Occupation.** If Buyer occupies the Lot before substantial completion and final payment, without the prior written consent of Builder, that occupancy shall constitute a complete and final acceptance of all work performed under this Agreement and a waiver by Buyer of any objection to the work performed to that date and of any claim for uncompleted work, and Builder shall then be relieved of any responsibility for defective materials or workmanship.
25. **Buyer's Personal Property.** If Buyer places any personal or other property belonging to Buyer on the Lot before the completion of construction, it shall be done only with the Builder's consent and permission and at Buyer's risk.
26. **Transfer of Possession.** Builder agrees to deliver possession of the Lot and Project at the time of Closing unless otherwise mutually agreed on by Buyer, Builder and Developer. If the Buyer has closed on the Lot prior to completion of the Project for any reason, Builder shall deliver possession of the Lot and Project to Buyer on the occurrence of (i) completion of construction, (ii) receipt of an occupancy permit, and (iii) payment of all amounts owed to Builder under this Agreement. Buyer's taking by of possession shall constitute complete acceptance by Buyer and acknowledgment that all items of construction to be completed under the Plans and Specifications are completed, excepting only those items provided for in any outstanding work order.
27. **Utilities.** On or before the day of Closing, the Buyer shall have transferred to the Buyer's name all utilities serving the Lot and Project. Buyer will be responsible for the cost of all utilities after the transfer of possession. If Buyer does not transfer any utility or does not have them transferred prior to the transfer of possession, the Builder reserves the right to charge the Buyer for any charges incurred, or to have any such utility disconnected on the day after Closing or the transfer of possession, whichever is sooner.
28. **Builder Showings and Post Closing Possession.** Builder shall have the right to enter on the Lot after the time of delivery of possession during the business hours of Builder to complete any items provided for in any escrow or work order or to be repaired under Builder's warranty. Builder may exhibit the Project to other prospective Buyers of Builder, without cost, at any time before delivery of possession and may, after the date of delivery of possession, photograph the exterior of the Project or otherwise depict the Project for purposes of Builder's promotional advertising, without payment to Buyer.

## *Closing Items*

29. **Closing.** Upon completion of the Project, as defined above, a closing shall be scheduled to occur at a time mutually agreed upon by the parties, provided such time is within five (5) days of notice from the Builder indicating that the Project has been completed. For good cause the Builder may grant to the Buyer an additional five (5) days in which to complete a Closing. Failure of Buyer to timely close within this ten (10) day period is an act of default under this contract.
30. **Closing Delay Penalties.** It is Buyer's sole responsibility to ensure that its mortgage lender will be available to close within the closing period set forth above. Failure of Buyer's mortgage lender to be available for closing within the time set forth above will not excuse Buyer's responsibility to close. If Builder, in its sole discretion, agrees to extend the time for closing beyond the closing period set forth above, Buyer agrees to pay \$250 per day for each day of the extension, as liquidated damages, to reimburse Builder for all damages and costs Builder incurs due to such extension, due to the uncertainty of determining all damages, interest and costs incurred.
31. **Conveyance of title.** At Closing, Developer and Builder agree to convey to Buyer good and marketable title to the Lot and Project, subject to (a) the lien of the current year's real estate taxes not yet invoiced; (b) local governmental fees, charges, and assessments for improvements placed against the Lot; (c) easements, covenants, and building and use restrictions of record; (d) applicable zoning and building laws or ordinances; (e) acts done or caused by Buyer; (f) the Act; (g) the master deed for the Development and all amendments to it; and (h) liens and other matters over which the title insurer commits to insure. At or before closing, Builder or Developer shall provide to Buyer a standard form commitment for issuance of an owner's policy of title insurance by a licensed title insurance company designated by Developer or Buyer showing title in Developer subject to the general printed exceptions in the policy and the title exceptions described above and, promptly after closing, shall cause to be issued and delivered to Buyer an owner's policy of title insurance based on the commitment. The title insurance commitment shall be conclusive evidence that good and marketable title is being conveyed to Buyer and shall be in the amount of the purchase price designated in section 1 of this Agreement.
32. **Settlement fees and prorations.** Buyer shall pay for recording the deed to the Lot and its financing costs (if any), the owner's policy of title insurance and transfer taxes imposed on the deed of conveyance of the Lot. Condominium assessments and real property taxes levied against the Lot shall be prorated to the date of closing. The real property taxes and assessments, if any, shall be prorated on a due date basis on the presumption that the taxes are paid in advance. At Closing, Buyer shall deposit with Developer, on behalf of the Association, both the pro rata share of the current yearly assessment for the Lot and an additional sum equal to \$\_\_\_\_\_ for the reserves of the Association. The reserves may be used by the Association, at its option, either for working capital or as a reserve for major repair and replacement of the common elements. The reserve payment is not refundable and shall not be applied toward any future monthly installment or annual assessment of the Association. In addition, at Closing, Buyer shall pay Builder the following fees as cost reimbursements: processing fee \$595; records fee \$450.
33. **Real Estate Professionals.** Developer and Builder are represented in this Agreement through the services of Developer's sales representative, \_\_\_\_\_.  
Buyer is represented in this Agreement through the services of \_\_\_\_\_.  
\_\_\_\_\_. (If none, write N/A or none) Buyer shall be

responsible to ensure its agent enters into a commission sharing agreement with Developer's representative. Buyer shall indemnify Developer and Builder against the claim of any other real estate broker or agent, including attorney fees incurred as a result of such claim. The Buyer also acknowledges that the Managing Member of the Developer and Builder is licensed as a real estate salesperson under Article 25 of Act 299 of 1980.

### *Warranties and Post Closing Items*

34. **Limited warranty on Lot.** THERE IS NO WARRANTY ON THE LOT ITSELF OR ON THE COMMON ELEMENTS OF THE DEVELOPMENT OTHER THAN AS SPECIFIED IN THE CONDOMINIUM DOCUMENTS, AND BUYER IS BUYING THE LOT "AS IS." THIS COMMON ELEMENT WARRANTY IS EXPRESSLY MADE IN LIEU OF ANY AND ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED; AND UNDER NO CIRCUMSTANCES WILL DEVELOPER BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND.
35. **Project Warranty and Acceptance of Work.** Buyer's sole warranty for the construction of the Project and other improvements on the Lot shall come from Builder. Builder warrants that the Project will be free from defects in material and workmanship for one year from the date the Project is substantially complete and ready for occupancy, subject to the limitations set forth herein. Builder shall repair or replace any defective work, at Builder's option. **Repair or replacement shall be the Buyer's exclusive remedy, and in no event shall Builder be liable for any consequential or incidental damages.** Builder shall repair or replace any such defects in workmanship and/or materials which appear and of which the Builder shall be notified, in writing, within a period of twelve months from the transfer of possession as defined above; provided, however, Builder shall not be responsible for conditions which are the result of contraction, expansion, or other normal and/or ordinary characteristics of building materials; provided, further, Builder shall not be responsible for any items that have been modified or altered by the Buyer; provided, further, Builder shall not be responsible for any malfunction of the septic system if the installation of same has been approved by governmental authority; and provided, further, Builder shall not be responsible for any inadequacy in the efficiency of the well to furnish inadequate supply of water. **Builder makes no warranty with respect to any appliances or other completed products that are installed in the Project** (such as furnaces, sump pumps, hot water heaters, air-conditioning units, water softeners, etc.), **but Builder shall pass on to Buyer whatever warranties are made by the manufacturers of such equipment which shall be Buyer's sole remedy.** BUILDER MAKES NO WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, OTHER THAN AS EXPRESSLY SET FORTH IN THIS PARAGRAPH, AND ALL IMPLIED WARRANTIES OF ANY KIND, WHETHER OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, HABITATION, OR OTHERWISE, ARE EXPRESSLY DISCLAIMED BY BUILDER AND EXCLUDED FROM THIS AGREEMENT. Further, Builder makes no representations or warranties, covenants, or agreements of any kind, express or implied, for any trees, bushes, vegetation, or other natural growth that may be present on the Lot, whether before or after the signing of this Agreement. Buyer understands and agrees that the trees, bushes, vegetation, or other natural growth may be destroyed, removed, or cut in the course of construction and that any remaining after construction is completed may have been damaged during construction.

## *Defaults and Miscellaneous*

36. **Buyer Default.** If Buyer defaults in the performance of any of the payments or obligations required by this Agreement or the Construction Agreement, and the default continues for 10 days after Developer mails written notice of the default to Buyer, at the option of Developer, all rights of Buyer under this Agreement shall terminate, and Developer may pursue all remedies available at law. In such event, at Builder's election, Builder may terminate construction of the Project or complete construction in accordance with the Plans and Specifications or in any other manner Builder elects, declare Buyer's interest in the Agreement terminated, and give Buyer notice of Builder's election to repurchase the Lot from Buyer for 90 percent of the Purchase Price paid by Buyer or a lesser amount after deducting Builder's damages due to Buyer's default. Buyer shall convey all of its interest in and title to the Lot for that amount, free and clear of all liens and encumbrances. Concurrently with the conveyance of the Lot to Builder, Builder shall pay, (i) if there is a construction mortgagee, to the construction mortgagee the amount of any outstanding construction mortgage on the Lot if that amount was used to pay Builder or its subcontractors or suppliers to construct the Project or, (ii) if there is no construction mortgagee, to Buyer the amount that Buyer has paid to Builder or its subcontractors or suppliers to construct the Project. Builder shall retain all other remedies provided by law in addition to the remedy provided under this subsection.

Buyer acknowledges that Builder has agreed to the Contract Price and otherwise entered into this Agreement with the express understanding that Builder will utilize Builder's standard construction and contract administration processes and procedures in constructing the Project and otherwise performing this Agreement, without disruption of or interference with those processes and procedures by or from Buyer. Buyer acknowledges that it shall be a default of this Agreement if Buyer engages in any specific acts or course of dealing which materially disrupts Builder's standard and customary contract performance processes and procedures, including but not limited to the following actions:

- a. Failure to take actions required by Buyer under this Agreement within the indicated time frames;
- b. Refusal to deal with the particular people whom Builder has designated as its representatives to perform certain aspects of this Agreement;
- c. Interfering with or attempting to direct or supervise the performance of Builder under this Agreement or any of Builder's subcontractors or material suppliers in the performance of any aspect of their work;
- d. Refusal to acknowledge acceptance or approval of work which complies with the Contract Documents and is otherwise performed in good and workmanlike manner as would be customarily accepted in the applicable trade, provided that such acceptance or approval shall not under any circumstances constitute, or be construed to constitute, a condition to the performance of any of Buyer's obligations under this Agreement; or
- e. Other actions similar in nature to the foregoing which would have the effect of delaying the construction schedule, increasing Builder's cost of performance, modifying the specifications or otherwise substantially impeding Builder's performance of this Agreement.

37. **Builder's Default.** If Builder owns the Lot, and Builder fails to comply with this Agreement without legal excuse, and Buyer is in complete compliance with this Agreement, then Buyer shall, as Buyer's sole remedy, be entitled to terminate this transaction whereupon Builder shall cause the refund to Buyer of all sums paid by Buyer to Builder pursuant to this Agreement, together with the sum of \$1000.00, not as a penalty but as liquidated damages, since actual damages would be speculative and difficult to ascertain. Buyer hereby waives all other remedies, including the right to recover money damages in excess of all sums paid by Buyer to Builder pursuant to this Agreement

and liquidated damages specified above. No interest shall ever be attributed to any sums paid by Buyer to Builder pursuant to this Agreement.

If Buyer owns the Lot, and Builder fails to comply with this Agreement without legal excuse, and Buyer is in complete compliance with this Agreement, then Buyer shall, as Buyer's sole remedy, be entitled to terminate this transaction, and retain title to the Lot, free from lien, upon payment to the Builder of all sums owing for work completed to date, based upon an inspection by the certifier of progress as set forth above, less the sum of \$1000.00, not as a penalty but as liquidated damages, since actual damages would be speculative and difficult to ascertain. Buyer hereby waives all other remedies, including the right to recover money damages in excess of all sums paid by Buyer to Builder pursuant to this Agreement and liquidated damages specified above. No interest shall ever be attributed to any sums paid by Buyer to Builder pursuant to this Agreement.

38. **Tender of Completion.** Tender of a deed or purchase money shall not be necessary if the other party has defaulted. A failure to appear at the time and place stated above following the delivery of a notice to close the transaction shall be a default. Time is of the essence under this Agreement.
39. **Arbitration.** At the exclusive option of the buyer, any claim which might be the subject of a civil action against the Developer which involves an amount less than \$2,500.00, and arises out of or relates to this purchase agreement or the Lot or Development to which this agreement relates, shall be settled by binding arbitration conducted by the American arbitration association. The arbitration shall be conducted in accordance with applicable law and the currently applicable rules of the American arbitration association. Judgment upon the award rendered by arbitration may be entered in a circuit court of appropriate jurisdiction.

Any claim that might be the subject of a civil action against Builder or Developer that involves an amount greater than \$2,500 and arises out of or relates to this Agreement, the Lot, the Development or the Project shall be settled by binding arbitration conducted before a single arbitrator who is mutually acceptable to the Buyers and the Builder. If the parties are unable to agree on an arbitrator, either party, at any time, may request that the president of the Livingston County Home Builders Association appoint an arbitrator who is either a licensed Builder actively engaged in residential construction in Livingston County or an attorney actively engaged in the practice of law in Livingston County. The decision of the arbitrator on any dispute shall be final and binding on the parties and enforceable in any court of appropriate jurisdiction. Any expenses of the arbitrator shall be shared equally by the parties.

40. **Assignability.** Buyer shall not assign, set over, or transfer this Agreement or any of Buyer's rights or interests under the Agreement without the prior written consent of Builder, and at Builder's election, any such purported assignment shall be void and of no effect. Builder's refusal to consent to an assignment shall not entitle Buyer to terminate this Agreement or give rise to any claim for damages against Builder. Developer may assign its rights under this Agreement; and if the assignment is to secure a lender, Buyer's rights under this Agreement shall be subject and subordinate to the rights of the lender.
41. **License Status and Number.** All Builders performing work shall be licensed as required by state law. Copies of the licenses will be provided to Buyer on request. A residential Builder or residential maintenance and alteration Builder is required to be licensed under article 24 of the occupational code, 1980 PA 299, MCL 339.2401 to 339.2412. An electrician is required to be licensed under the electrical administrative act, 1956 PA 217, MCL 338.881 to 338.892. A plumbing Builder is required to be licensed under the state plumbing act, 2002 PA 733, MCL 338.3511 to 338.3569. A mechanical

Builder is required to be licensed under the Forbes mechanical Builders act, 1984 PA 192, MCL 338.971 to 338.099. Builder is licensed as a residential Builder and Builder's license number is 2102185356.

42. **Contract Documents.** The contract documents consist of this Agreement, the drawings, plans, specifications and site plan. If anything in the incorporated specifications and drawings is inconsistent with this agreement, this agreement shall govern. The contract documents shall constitute the entire agreement between the Buyer, Developer and the Builder. There are no other agreements, written or oral, expressed or implied, between the parties hereto, except as set forth in the contract documents.
43. **Notices.** Notice shall be deemed to be given in accordance with the provisions of this Agreement on personal delivery to or facsimile or other electronic transmission to any one of the persons signing as Buyer or Builder below or on mailing to them by ordinary mail to their last known address as shown on this Agreement or any amendment to this Agreement.
44. **Waiver.** Neither the waiver by the parties hereto, of a breach or a default under any of the provisions of this Agreement, nor the failure of either of the parties, on one or more occasions, to enforce any of the provisions of this Agreement or to exercise any right or privilege hereunder shall thereafter be construed as a waiver of any subsequent breach or default of a similar nature, or as a waiver of any such provisions, rights or privileges hereunder.
45. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective successors and assigns, if any expressly allowed in writing.
46. **Amendments.** No amendment, modification or discharge of this Agreement, and no waiver hereunder, shall be valid or binding unless set forth in writing and duly executed by the party against whom enforcement of the amendment, modification, discharge or waiver is sought.
47. **No Reliance.** BUILDER SHALL NOT BE BOUND BY ANY PROMISES OR REPRESENTATIONS UNLESS THEY ARE IN WRITING AND SIGNED BY BUILDER'S AUTHORIZED REPRESENTATIVE. BUYER ACKNOWLEDGES AND AGREES THAT BUYER IS NOT RELYING ON ANY ORAL PROMISES OR REPRESENTATIONS AND THAT ANY RELIANCE UPON ANY PROMISE, STATEMENT OR REPRESENTATION NOT CONTAINED HEREIN SHALL BE UNREASONABLE.
48. **Governing Law.** This Agreement shall be deemed to have been executed and delivered within the State of Michigan, and the rights and obligations of the parties hereunder shall be construed and enforced in accordance with, and governed by, the laws of the State of Michigan without regard to principles of conflict of law.
49. **Costs of Enforcement.** In the event either party hereto fails to perform any of its obligations under this Agreement or in the event a dispute arises concerning the meaning or interpretation of any provision of this Agreement, the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder, including, without limitation, court costs and actual attorneys' fees.

50. **Severability.** Should any part, term or provision of this Agreement be decided by the courts to be illegal, unenforceable or in conflict with any state law, federal law or any other applicable law, the validity and enforceability of the remaining portions of this Agreement shall not be affected thereby.

51. **Advice of Counsel.** This is a legal document and it is recommended that all parties to this Agreement consult an attorney to protect their interest in the Transaction.

***SIGNATURES:***

**DEVELOPER:**  
THE DELLS OF MARION OAKS, LLC

\_\_\_\_\_  
By: Jack Lansing II  
Its: Manager

**PURCHASER(S):**

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

**BUILDER:**  
CAPITAL CONSTRUCTION  
GROUP, LLC

\_\_\_\_\_  
By: Jack Lansing II  
Its: Manager