



TREE HILL HOMES

REAL ESTATE SALES AGREEMENT

1. **PARTIES:** Tree Hill Homes whose address is **550 Brigman Road Maypearl, Tx. 76064** (“Seller”) agrees to sell and convey to: _____ (“Buyer(s)”) whose address is _____ agrees to buy from Seller, the property described below.

2. **PROPERTY:** Lot _____, Block _____, Tree Hill Estates Addition, City of Waxahachie, of Ellis County, Texas, (address) _____, or described on the attached exhibit, together with improvements, fixtures, and all other property located thereon or placed thereon (hereinafter, the “Property”).

3. **CONTRACT SALES PRICE:**

A. Cash portion of Sales Price payable by Buyer at Closing \$ _____

B. Sum of all financing described below (excluding any FHA, Mortgage Insurance Premium [MIP], VA Funding Fee, or Private Mortgage Insurance Premium [PMI]) \$ _____

C. Sales Price (hereinafter Sales Price) (Sum A & B) \$ _____

If buyer elects to pay all cash for the Property, then Buyer agrees to provide Seller within ten (10) days of the date of this Contract with proof that is satisfactory to Seller of Buyer’s financial ability to pay the Sales Price at the time of closing. Failing that, Seller may declare this Contract null and void, the Earnest Money shall be forfeited to Seller, and the parties shall be released from any further obligations (except for those provisions that expressly survive the termination of this Contract).

4. **FINANCING:** The portion of Sales Price not payable in cash will be paid as follows:

A. **THIRD PARTY FINANCING:**

(1) This Contract is subject to approval for Buyer of a third party first mortgage loan having a loan-to-value ratio not to exceed 95 % as established by such third party (excluding any financed PMI Premium), due in full in 30 year(s), with interest not to exceed MKT % per annum for the first 30 year(s) of the loan. The loan will be with without PMI.

(2) This Contract is subject to approval for Buyer of a third party second mortgage loan having a loan-to-value ratio not to exceed _____ % as established by such third party (excluding any financed PMI Premium), due in full in _____ year(s), with interest not to exceed MKT % per annum for the first _____ year(s) of the loan. The loan will be with without PMI.

B. **FHA INSURED FINANCING:** This Contract is subject to approval for Buyer of a Section 203B FHA insured loan of not less than \$ _____ (excluding any financed MIP), amortizable monthly for not less than _____ years, with interest not to exceed _____ % per annum for the first _____ year(s) of the Loan. *As required by HUD-FHA valuation is unknown, “It is expressly agreed that, notwithstanding any other provisions of this Contract, the purchaser (Buyer) shall not be obligated to complete the purchase of the Property described herein or to incur any penalty by forfeiture of earnest money deposits or otherwise unless the purchase (buyer) has been given in accordance with the HUD/FHA or VA requirements a written statement issued by the Federal Housing Commissioner, Department of Veteran Affairs, or a Direct Endorsement Lender setting forth the appraised value of the Property of not less than \$_____.* The purchaser (Buyer) shall have the privilege and option of proceeding with consummation of the Contract without regard to the amount of the appraised valuation. The appraised valuation is arrived at to determine the maximum mortgage the Department of Housing and Urban Development will insure. HUD does not warrant the value or the condition of the Property. The purchase (Buyer) should satisfy himself/herself that the price and the condition of the Property are acceptable. If the FHA appraised value of the Property (excluding closing costs and MIP) is less than the Sales Price (3C above), Seller may reduce the Sales Price to an amount equal to the FHA appraised value (excluding closing costs and MIP) by a written instrument signed by Seller and the parties hereto shall close the sale at such lower Sales Price, with Sections 3A and 3B being adjusted accordingly.

C. **VA GUARANTEED FINANCING:** This contract is subject to approval for Buyer of a VA guaranteed loan of not less than \$ _____ (excluding any financed Funding Fee), amortizable monthly for not less than _____ years, with interest not to exceed _____ % per annum for the first _____ year(s) of the Loan.

VA NOTICE TO BUYER: “It is expressly agreed that, notwithstanding any other provisions of this Contract, Buyer shall not incur any penalty by forfeiture of earnest money or otherwise or be obligated

to complete the purchase of the Property described herein, if the Contract Purchase Price or cost exceeds the reasonable value of the Property established by the Department of Veterans Affairs. Buyer shall, however, have the privilege and option of proceeding with the consummation of this Contract without regard to the amount of the reasonable value established by the Department of Veteran Affairs.” If Buyer elects to complete the purchase at an amount in excess of the reasonable value established by VA, Buyer shall pay such excess amount in cash from a source which Buyer agrees to disclose to the VA and which Buyer represents will not be from borrowed funds except as approved by VA. If VA reasonable value of the Property is less than the Sales Price (3C above), Seller may reduce the Sales Price to an amount equal to the VA reasonable value by a written instrument signed by Seller and the parties hereto shall close the sale at such lower Sales Price, with Sections 3A and 3B being adjusted accordingly.

- D. TEXAS VETERANS’ HOUSING ASSISTANCE PROGRAM LOAN: This Contract is subject to approval for Buyer of a Texas Veterans’ Housing Assistance Program Loan (the Program Loan) of \$_____ for a period of at least _____ years at the interest rate established by the Texas Veterans’ Land Board at the time of closing.

If Buyer is obtaining financing for the purchase of the Property, Buyer shall apply for a loan with five (5) days from the date of this Contract and shall make every reasonable effort to obtain approval from _____, as lender (“Lender”), Contemporaneous with the signed of this Contract, Seller is provided Buyer with “Lender Contact Sheet.” Buyer agrees that Buyer will provide Seller with a completed “Lender Contact Sheet” within fifteen (15) days of the date of this Contract. If Buyer’s financing is not approved by the above designated Lender to the satisfaction of Seller within thirty (30) days of the date of this Contract or Buyer elects to obtain financing from a lender other than the Lender designated above, Seller, at its option, shall have the right to terminate this Contract and return the Earnest Money to Buyer, and thereupon, the parties shall be released from any further obligations under this Contract except for those that expressly survive its termination. Seller shall not be liable if Buyer’s interest rate “lock” expires or must be extended no matter the reason.

5. **EARNEST MONEY:** Upon execution of this contract by both parties, Buyer shall deposit \$_____ as earnest money with Tree Hill Homes as escrow agent, at 550 Brigman Road, Maypearl, Tx 76064.

6. **MANDATORY MEMBERSHIP IN AN OWNERS ASSOCIATION:** (Check One Box Only)

- The property IS subject to mandatory membership in an owners’ association.
- The property IS NOT subject to mandatory membership in an owners’ association.

Buyer(s) Initials

Notice to Buyer: If the Property is subject to mandatory membership in an owners’ association, Seller notifies Buyer under Section 5.012, Texas Property Code, that, as a purchaser of property in the residential community in which the Property is located, you are obligated to be a member of an owners’ association. Restrictive Covenants governing the use and occupancy of the property and a dedicatory instrument governing the establishment, maintenance, and operation of this residential community have been or will be recorded in the Real Property Records of the county in which the Property is located. Copies of the restrictive covenants and dedicatory instrument may be obtained from the county clerk. You are obligated to pay assessments to the owners association. The amount of the assessments is subject to change. Your failure to pay the assessments could result in a lien on and the foreclosure of the Property.

7. **TITLE POLICY AND SPECIAL WARRANTY DEED:**

- A. TITLE POLICY: Seller shall furnish to Buyer at Seller’s Buyer’s expense (if no box is checked, it shall be at Buyer’s expense) an owner title policy of title insurance (the “Title Policy”) issued by Ellis County Abstract & Title Company in the amount of the Sales Price, dated at or after the closing, insuring the Buyer against loss under the provisions of the Title Policy, subject to promulgated exclusions (including building and zoning ordinances) and the following exceptions:
- (1) Restrictive covenants common to the platted subdivision in which Property is located.
 - (2) The standard printed exception for standby fees, taxes and assessments.
 - (3) Liens created as part of the financing described in Section 4 above.
 - (4) Utility easements created by the dedication deed or plat of the subdivision in which Property is located.
 - (5) Reservations or exceptions otherwise permitted by this Contract or as may be approved by Buyer in writing and reservations of mineral interests or royalty interests.
 - (6) The standard printed exception as to discrepancies, conflicts, shortages in area or boundary lines, encroachments or protrusions, or overlapping improvements. Buyer, at Buyer’s expense, may have the exception amended to read “shortages in area”.
 - (7) The standard printed exception as to marital rights.
 - (8) The standard printed exception as to waters, tidelands, beaches, streams, and related matters.

Within twenty (20) days after the Title Company receives a copy of this contract, Seller shall furnish to Buyer a

commitment for title insurance (Commitment) and, at Buyers expense, legible copies of restrictive covenants and documents evidencing exceptions in the Commitment (Exception Documents) other than the standard printed exceptions. Seller authorizes the Title Company to mail or hand deliver the Commitment and Exception Documents to Buyer at Buyer's address. If the Commitment and Exception Documents are not delivered to Buyer within specified time, the time for delivery will be automatically extended up to fifteen (15) days or the Closing Date, whichever is earlier.

B. SPECIAL WARRANTY DEED: At closing, Seller shall furnish to Buyer a Special Warranty Deed conveying good and merchantable title to the Property showing no additional exclusions and exceptions to those permitted in Section 7A above.

8. AT CLOSING:

(1) Seller's Expenses:

(a) All Sales: Lender, FHA or VA completion requirements, releases of existing liens, including prepayment penalties and recording fees; tax statements or certificates; preparation of deed; one-half of escrow fee; those expenses Buyer is prohibited by FHA or VA from paying; and other expenses stipulated to be paid by Seller under other provisions of this Contract.

(2) Buyer's Expenses:

(a) All Sales: Expenses incident to any loan, including application, origination and commitment fees; interest on the notes from the date of disbursement to one month prior to date of first monthly payments; recording fees; endorsements required by lender, copies of easements and restrictions; mortgagee title policy; loan-related inspection fees; credit reports; all prepaid items, including required premiums for flood and hazard insurance, reserve deposits for insurance, ad valorem taxes and special government assessments; tax deletion; EPA endorsement; final compliance inspection; other expenses stipulated to be paid by Buyer under other provisions of this Contract.

(b) Conventional Loan Sales: Expenses noted above and other loan-related expenses, including PMI premiums, photos, amortization schedules, escrow fees, preparation of loan documents, courier fee, repair inspections, underwriting fee, wire transfer, tax statements or certificates.

(c) FHA Loan Sales: Expenses noted above and other loan-related expenses, including photos, amortization schedules, escrow fees, preparation of loan documents, courier fee and repair inspections.

In no event shall Buyer pay charges and fees expressly prohibited by FHA, VA or other governmental loan program regulations, if applicable.

9. REAL ESTATE FEE: _____% commission shall be payable to _____ out of Seller's proceeds at the closing. BUYER AGREES TO INDEMNIFY, DEFEND AND HOLD SELLER HARMLESS FROM ANY OTHER PERSON OR ENTITY REGARDING A FEE OR COMMISSION PAYABLE IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED BY THIS CONTRACT AND FROM THE PERSON NAMED HEREIN IF THE CLOSING DOES NOT OCCUR. This provision shall survive the closing or any earlier termination of this Contract.

10. FTC INSULATION DISCLOSURE DATA: The following data reflect characteristics of insulation according to data from the manufacturer or installer:

Ceilings:

Flat:	Type: Blown	Thickness: 14"	R-Value: 38
Slope:	Type: Batts	Thickness: 5.5"	R-Value: 19
Exterior Walls	Type: Batts	Thickness: 3.5"	R-Value: 13
Other:	Type: <u>Sheathing</u>	Thickness: <u>.5"</u>	R-Value: <u>3</u>

All R-Values given are for living areas only.

11. POSSESSION: Tree Hill Homes will not under any circumstances allow potential Buyers to move any items onto the Property or allow any potential Buyers to occupy the home prior to closing and funding. (Consult your insurance agent prior to change of ownership or possession to avoid any economic loss.)

12. LIMITED WARRANTY: Seller agrees to provide a one year warranty on the home on all workmanship. Additional manufactures warranties on products included in the home may apply. Any major structural defect of the home will be warranted up to year ten.

BUYER ACCEPTS FROM SELLER ALL CONSUMER PRODUCTS INSTALLED IN THE HOME "AS-IS" AND

“WITH ALL FAULTS.” BUYER UNDERSTANDS AND AGREES THAT THE ONLY WARRANTIES ON CONSUMER PRODUCTS INSTALLED IN THE HOME ARE THOSE OF THE MANUFACTURER OF SUPPLIER WHICH ARE ASSIGNED BY SELLER TO BUYER, EFFECTIVE ON THE CLOSING DATE. THE TERM “CONSUMER PRODUCTS” AS USED IN THIS CONTRACT IS DEFINED IN 15 U.S.C. 2301.

Without waiving the foregoing, Buyer shall have the obligation to notify Seller immediately upon the detection of any defects in materials and/or workmanship. Furthermore and without waiving the foregoing disclaimers, Seller’s obligation, if any, shall not include any obligation to repair damages caused by Buyer through normal wear and tear, negligence or otherwise, nor shall Seller be obligated for routine maintenance for any damage resulting from the failure of Buyer to perform routine maintenance. TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, IN NO EVENT SHALL SELLER BE LIABLE FOR ANY INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING FROM ANY DEFECTS OR DEFICIENCIES IN MATERIALS OR WORKMANSHIP, INCLUDING, BUT NOT BY WAY OF LIMITATION, ANY DAMAGE TO FURNISHINGS, CARPET, PERSONAL PROPERTY, CLOTHING, MOTOR VEHICLES, WALL COVERINGS, WINDOW TREATMENTS, OR ANY DAMAGE FOR LOSS OR INTERRUPTION OF THE USE OF THE HOME, AND SELLER’S SOLE LIABILITY AND RESPONSIBILITY, IF ANY, HEREUNDER SHALL BE TO REPAIR AND/OR REPLACE, AT SELLER’S OPTION, ANY DEFECTIVE MATERIALS AND/OR WORKMANSHIP FOR WHICH SELLER IS RESPONSIBLE HEREUNDER OR UNDER APPLICABLE LAW.

IF THE HOME CONTAINS AN ALARM SYSTEM, BUYER ACKNOWLEDGES THAT SELLER DOES NOT REPRESENT OR WARRANT ANY OF THE FOLLOWING: (1) THAT THE ALARM SYSTEM MAY NOT BE COMPROMISED OR CIRCUMVENTED; OR (2) THAT THE ALARM SYSTEM OR SERVICE IN ALL CASES PROVIDE THE PROTECTION FOR WHICH IT IS INSTALLED OR INTENDED. BUYER ACKNOWLEDGES AND AGREES THAT, TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, SELLER HAS MADE NO REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS OR IMPLIED BY LAW, AS TO ANY MATTER WHATSOEVER WITH RESPECT TO THE ALARM SYSTEM, INCLUDING, BUT NOT BY WAY OF LIMITATION, THE CONDITION OF THE EQUIPMENT, ITS MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. BUYER FURTHER ACKNOWLEDGES AND AGREES THAT SELLER IS NOT AN INSURER AND THAT BUYER HAS AGREED TO ASSUME ALL RISK OR DAMAGE TO BUYER’S PROPERTY, PREMISES AND PERSON.

SELLER DOES NOT WARRANT OR GUARANTY ANY TREE(S) OR LANDSCAPING, ON THE PROPERTY. After the closing, Buyer is solely responsible for the care and maintenance of any landscaping (including trees and vegetation) existing on the Property. Seller is not responsible for any loss or damage to such landscaping occurring after the closing. It is Buyer’s responsibility to maintain the grading of the Property, including the prompt installation of proper ground cover (i.e. sod or grass) if needed after the closing. Failure to maintain the proper grading by Buyer can result in damage to the Property, for which Seller is not liable. Modifications and/or alterations to the Property can have a negative effect on grading include, but are not limited to, the installation of a swimming pool, decking, patios, and/or landscaping. Buyer agrees that Seller has no liability in connection with damages occurring to the Property as a direct or indirect result of any modification and/or alteration.

The terms of this Section shall survive the closing.

GENERAL TERMS OF CONTRACT

1. **CONSTRUCTION:** Seller agrees to construct a home on the Property substantially in compliance with the plans and specifications (including all amendments thereto approved by Seller) which supersedes model home displays, if any, with approval upon final inspection of the lender’s agent, the Federal Housing Administration or the Veterans Administration, as the case may be, and such substantial compliance shall constitute performance by Seller of all of its construction obligations under this Contract. Seller reserves the right to update the plans and specifications for minor design or structural modifications, as well as any modifications required by the Federal Housing Administration, the Veteran’s Administration, lenders, or other governmental authorities. Seller also reserves the right to substitute materials of similar quality, and the right to determine the location of all wiring, plumbing, utility lines, heating and cooling systems, and hot water heaters. Seller’s normal time for completion of constructions, without unforeseen circumstances, is ninety (90) days after actual commencement of construction. “**Commencement of Construction**” is defined as the physical start of wall framing on the Property. Notwithstanding the foregoing, if Seller is unable to substantially complete Buyer’s home within ninety (90) days after Commencement of Construction, Buyer shall have, at its option, the right to cancel this Contract and receive a full refund of its Earnest Money and \$500 as its sole and exclusive remedy under this Contract and applicable law in accordance with Section 6 of these General Terms of Contract. If Buyer chooses to cancel this Contract pursuant to this paragraph, buyer must send Seller written notice of such election no later than one hundred (100) days following the Commencement of Construction. If Buyer fails to send such notice, Buyer shall be deemed to have waived its right to cancel this Contract and shall proceed to the closing with no adjustment to the Contract Sales Price and Seller shall have no further liability as to such matter thereafter. Seller makes no representation concerning when Commencement of Construction will occur.

All construction on the Property must be approved and controlled by Seller. All work on the Property must be performed by Seller or a representative of Seller holding a fully executed, current independent Contractor/Supplier Base Agreement with Seller. Under no circumstances may Buyer perform any work or install any items on Property.

Buyer understands that the completed home may vary from the plans and specifications, as well as any brochures, marketing materials and/or model homes that may have been viewed by Buyer before construction. These changes may be due to the configuration of the Property (for example - certain property may require a floor plan that is reversed). In addition, model homes are intended to be viewed solely as examples of possible furnishings and finishes to the home. The completed home may contain furnishings and finishes (including but not limited to, wall and floor coverings, molding, cabinets, counter-tops, paint and landscaping) that differ in appearance, and quality from those in model homes. Any figures provided regarding size, square footage, and other dimensions are only estimates. The furnishings and finishes seen in model homes are not included in the Contract Sales Price of this Contract, unless specifically mentioned.

Nothing contained herein shall render Seller liable for any delay in the construction caused by acts of Buyer, failure of any subcontractor or material men, fires, strikes, delays due to governmental regulations, war, change order or selection of materials by Buyer, inclement weather, allocation of materials or priorities, delays or defaults by public carriers, shortages of labor or materials, acts of God, or other work stoppages, casualties or causes beyond Seller’s control. In the event of such delays, Seller may extend the date for substantial completion by the number of days resulting from such delays.

Seller reserves the right to cancel this Contract and refund all deposit monies less any actual expenses incurred by Seller in the event geological or physical formations make it impractical to construct the type of home selected on the site selected with normal anticipated construction cost. Seller reserves the right to cancel this Contract due to strikes, building moratoriums, adverse weather conditions, material shortages, price increases, building code changes, impact fees or adverse soil conditions or other circumstances out of Seller's control. Further, this Contract shall be contingent upon Seller obtaining the necessary permits to construct the home on the Property. If the permits are not obtained within three (3) months of permit application, either party may, as its sole and exclusive remedy, cancel this Contract and shall have no further obligations hereunder, and all deposit monies shall be returned to Buyer by Seller. If Seller has yet to purchase the Property, Seller's obligations under this Contract are contingent upon the closing of the Property, and if said closing does not occur within ten (10) days of the date hereof, Seller may terminate this Contract at any time thereafter by delivering notice to Buyer. Upon Seller's election to terminate, Seller shall refund to Buyer all deposit monies under this Contract, and thereafter, the parties shall be released from any further obligations under this Contract except for those that expressly survive termination.

Buyer understands that before closing, Seller may perform grading work on the Property that may change the slope or grade of the Property and/or remove trees on the Property as determined necessary by Seller in order to construct the home or provide for drainage. Seller reserves the right to determine the location and extent of fencing, if Seller has otherwise agreed in writing to construct or install the same on the Property. Seller is not obligated to construct any retaining walls, unless the wall is on the grading plans or otherwise agreed to in writing by Seller.

2. DESTRUCTION: If the home built on the Property is either totally destroyed or substantially damaged before the closing, either party may terminate this Contract by written notice within ten (10) days of the date of such casualty. If this Contract has been terminated pursuant to the foregoing option, the deposits delivered to Seller by Buyer for this Contract shall be returned to Buyer, and the parties shall be released from any further obligations under this Contract except those that expressly survive termination of this Contract. This Contract may not be terminated after the closing occurs.

3. CLOSING: Seller shall send Buyer written notification of substantial completion of the above home, and the closing shall be on or before ten (10) days from the date of said notice (hereinafter, the "Closing Date"). Failure to close within said ten (10) day period will, at Seller's option, render this Contract null and void and the Earnest Money and all other deposits will be forfeited to Seller. "**Substantial completion**" and any derivations thereof shall mean the earlier to occur of (1.) the issuance of a certificate of occupancy for the home, or (2.) a final building inspection of the home.

4. PRORATIONS: Taxes for the current year, maintenance fees, assessments, dues, and rents will be prorated through the Closing Date. If taxes for the current year vary from the amount prorated at the closing, the parties shall adjust the prorations when tax statements for the current year are available. If taxes are not paid at, or prior to, the closing, Buyer will be obligated to pay taxes for the current year. The terms of this Section shall survive the closing.

5. ROLLBACK TAXES: Buyer is not responsible for rollback taxes.

6. NOTICE OF MEDIATION AND ARBITRATION AGREEMENT:

A. **MEDIATION:** It is the policy of the State of Texas to encourage the peaceable resolution of disputes through alternative resolution procedures. Buyer and Seller hereby agree that any controversy or claim or matters in question between parties including, but not limited to, any matter arising out of or relating to (a) this Contract, and any amendments or addenda thereto, (b) any breach thereof, (c) the transaction reflected in this Contract, (d) the design or construction of the home or improvements to the Property, (e) any alleged fraud, misrepresentations or breach of warranties, express or implied, (f) claims for defective design or construction of the home or improvements to the Property, (g) intentional and/or negligent infliction of emotional distress or mental anguish, (h) violations of the Texas Deceptive Trade Practices-Consumer Protection Act, (i) claims of a construction defect or any claim implicating the Texas Residential Construction Liability Act and/or the Texas Residential Construction Commission Act, and/or (j) any other cause of action relating to or arising out of the negotiation of any acts or omissions leading up to the execution of this Contract, construction and/or sale of the home or the Property by Seller regardless of defendants named in the claim, even claims involving allegations of individual liability, (herein referred to collectively as a "**Dispute**"), shall be submitted to mediation before a mediator to be mutually agreed upon by the parties, as a condition precedent to any other legal or equitable proceeding, where the parties will endeavor in good faith to resolve the Dispute in an amicable manner. In the event the parties are unable to agree upon a mediator, a mediator will be appointed by the American Arbitration Association office nearest to the county in which the Property is located. The mediation shall be conducted at a time and place to be mutually agreed upon by the parties in accordance with the Construction Industry Mediation Rules of the American Arbitration Association then currently in effect. Buyer and Seller shall share the costs of mediation equally. Any agreements reached in mediation shall be enforceable as settlement agreements in any court of competent jurisdiction. Either party shall be entitled to recover reasonable attorney's fees necessary to enforce this agreement to mediate. This agreement to arbitrate and any other written agreement(s) to arbitrate shall be specifically enforceable under applicable law in any court having jurisdiction thereof. The parties understand and agree that no claim subject to this Contract, and any amendments or addenda thereto will be filed as a class action. Buyer hereby waives any right to serve as a class representative, whether in court or in mediation.

B. **ARBITRATION:** In the event any Dispute cannot be resolved by mediation, the Dispute shall be decided by binding Arbitration before a single Arbitrator in accordance with the then applicable Construction Industry Arbitration Rules of the American Arbitration Association. A demand for arbitration must be made in writing and delivered to the other party and must include, at a minimum, a factual description of the Dispute in sufficient detail to advise the responding party of the nature of all claims asserted, the date when each of the claims in the Dispute arose, and the relief requested. Buyer and Seller understand and agree that Seller will initially bear any administration fee or arbitration commencement fee and any other type of expense or cost that Buyer would not be required to advance if Buyer were free to bring the Dispute in court, which fee or expense may be reallocated or divided between the parties (whether equally or otherwise) by the arbitrator in accordance with the rules of the arbitration. Buyer and Seller shall each pay their own attorney's fees incurred in connection with the arbitration unless a statute or contract at issue in the Dispute authorized the award of attorney's fees, in which case the arbitrator shall have the authority to make an award of attorney's fees as required or permitted by applicable Texas law. Notwithstanding anything to the contrary herein or under Texas law, if Buyer fails to prevail on its claims raised in the Dispute, the arbitrator shall award Seller its reasonable and necessary attorneys' fees and expenses incurred in defending the Dispute.

Notwithstanding any other rule to the contrary, the parties to the arbitration shall be entitled to discover all documents and information reasonably necessary for a full understanding of any legitimate issue raised in the arbitration as permitted under Texas law, provided that each side shall be limited to two (2) depositions of fact witnesses not to exceed four hours each and one expert deposition for each expert designated not to exceed six hours each. Prior to the deposition of any expert witness, the party proposing to call such witness on their behalf shall provide a full and complete report by the expert, together with the expert's calculations and other data by which the expert reached any opinions concerning the subject matter of the arbitration. Any award rendered in any such arbitration proceeding must be based on Texas substantive law (without regard to the Texas General Arbitration Act or the Federal Arbitration Act), and shall be final and binding subject to each parties' right to review of any questions of law, and judgment upon any such award may be entered in any court of competent jurisdiction. The arbitrator shall have no authority to award expert or engineers' fees or attorneys' fees incurred by either party in the investigation of a claim of construction defect, breach of limited warranty or implied warranty or structural defect, and the arbitrator may not award any

remedy or relief that a court of this state could not order or grant. If any party to this Contract files a proceeding in any court to resolve such controversy, dispute or claim, such action shall not constitute a waiver of the right of such party or a bar to the right of any other party to seek arbitration of that or any other claim, dispute or controversy, and the court shall, upon motion of any party to the proceeding, direct that such controversy, dispute or claim be arbitrated in accordance herewith. This agreement to and any other written agreement(s) to arbitrate shall be specifically enforceable under applicable law in any court having jurisdiction thereof. The parties understand and agree that no claim subject to this Contract, and any amendments or addenda thereto will be filed as a class action. Buyer hereby waives any right to serve as a class representative, whether in court or in arbitration.

BUYER AND SELLER UNDERSTAND AND AGREE THAT ANY DEMAND FOR ARBITRATION BY EITHER PURCHASER OR SELLER SHALL BE FILED WITH THE STATUTE OF LIMITATIONS THAT IS APPLICABLE TO THE CLAIM(S) UPON WHICH ARBITRATION IS SOUGHT OR REQUIRED. THE FAILURE TO DEMAND ARBITRATION WITHIN THE APPLICABLE STATUTE OF LIMITATIONS SHALL CONSTITUTE A WAIVER OF ALL RIGHTS TO RAISE ANY CLAIMS IN ANY FORM ARISING OUT OF ANY DISPUTE THAT WAS THE SUBJECT OF ARBITRATION. EITHER PARTY SHALL HAVE THE RIGHT WITHOUT WAIVER OF THE REQUIREMENT OF ALL DISPUTES TO BE RESOLVED THROUGH ARBITRATION, FOR THE JUDGE (BUT NOT JURY) OF A COURT OF COMPETENT JURISDICTION TO DETERMINE WHETHER ANY OF THE CLAIMS CONTAINED WITHIN THE DISPUTE ARE BARRED BY LIMITATIONS.

UNLESS OTHERWISE AGREED IN WRITING BY THE PARTIES, ANY ARBITRATION SHALL TAKE PLACE IN THE COUNTY OF THE PROPERTY. BUYER AND SELLER UNDERSTAND AND AGREE THAT THIS CONTRACT PRECLUDES THEIR RESPECTIVE RIGHTS TO HAVE ANY DISPUTES DETERMINED BY A JURY TRIAL.

The foregoing provisions of this Section 6 shall not in anyway waive or affect Buyer's obligation to first comply with Section 426.005 of the Texas Property Code as a condition precedent to initiating an action for damages or other relief arising from an alleged construction defect. The terms of this Section 6 and the agreements to mediate and arbitrate shall survive the closing or any earlier termination of this Contract.

7. TERMINATION OR DEFAULT:

- A. BUYER DEFAULT: Buyer agrees that in the event of a default hereunder by buyer other than a default with regard to Buyer's failure to indemnify Seller for certain matters in accordance with this Contract, Seller shall be entitled to collect and retain the Earnest Money along with any other deposits and non-refundable fees for any optional upgrades selected by Buyer, without proof of loss or damage, such sum being agreed on by Buyer and Seller as liquidated damages and not as a penalty for failure of Buyer to perform the duties, liabilities, and obligations imposed on it by the terms and provisions of this Contract. Seller agrees to accept and take said cash payment as its total damages and relief hereunder in such event. The parties to this Contract agree that Seller's actual damages, in the event of a default by Buyer, would be difficult to definitely ascertain because of the uncertainties of the real estate market and the fluctuations of property values between the date of this Contract and the date of breach, and because of differences of opinion with respect thereto, and the parties therefore agree that such amount is, as to each of them, reasonable as liquidated damages and shall not be deemed a penalty.
- B. SELLER DEFAULT: Seller agrees that in the event of a default hereunder by Seller, Buyer shall be entitled to collect and retain the Earnest Money plus \$500. Without proof of loss or damage, such sum being agreed on by Buyer and Seller as liquidated damages and not as a penalty for failure of Seller to perform the duties, liabilities and obligations imposed on it by the terms and provisions of this Contract. Buyer agrees to accept and take said cash payment as its total damages and relief hereunder in such event. The parties to this Contract agree that Buyer's actual damages, in the even of a default by Seller, would be difficult to definitely ascertain because of the uncertainties of the real estate market and the fluctuations of property values between the date of this Contract and the date of breach, and because of differences of opinion with respect thereto, and the parties therefore agree that such amount is, as to each of them, reasonable as liquidated damages and shall not be deemed a penalty.
- C. TERMINATION: Without regard to default and for any reason or no reason, Seller shall have the right to terminate this Contract, at any time prior to the closing upon the return of Buyer's Earnest Money and any other deposits plus \$500, and upon payment of such amount, the parties shall be released from any further obligations under this Contract except for those provisions that expressly survive. This Contract shall automatically terminate if Seller is unable to deliver the Special Warranty Deed to the Property to Buyer within one hundred and seventy nine (179) days of the date of the final execution of this Contract.
- D. DISPUTE BETWEEN THE PARTIES: Notwithstanding anything in this Contract to the contrary, if a bona fide dispute should arise between Buyer and Seller before the closing concerning boundaries, consideration, construction, or any matter relating to this Contract, and if such bona fide dispute cannot in good faith be resolved completely and to the satisfaction of both parties within ten (10) days after such dispute has arisen, then Seller shall have the right, upon written notice to Buyer, to terminate this Contract and return the Earnest Money to Buyer and no cause of action shall accrue on behalf of Buyer because of such termination. Thereafter, the parties shall have no further obligations under this Contract except for those that expressly survive the termination.

8. MISCELLANEOUS:

- A. After the closing, as between Buyer and Seller, the risk of liability or expense for environmental problems, even if arising from events before the closing, will be the sole responsibility of the Buyer, regardless of whether the environmental problems were known or unknown at the closing. Once the closing has occurred, BUYER AGREES TO INDEMNIFY, DEFEND, HOLD HARMLESS AND RELEASE SELLER FROM LIABILITY FOR ANY LATENT DEFECTS AND FROM ANY LIABILITY (INCLUDING, WITHOUT LIMITATION, ANY STRICT LIABILITY) FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY, INCLUDING LIABILITY UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA), THE RESOURCE CONSERVATION AND RECOVERY ACT (RCRA), THE TEXAS SOLID WASTE DISPOSAL ACT, OR THE TEXAS WATER CODE. BUYER INDEMNIFIES, DEFENDS, HOLDS HARMLESS, AND RELEASES SELLER FROM ANY LIABILITY (INCLUDING WITHOUT LIMITATION, ANY STRICT LIABILITY) FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY ARISING AS THE RESULT OF SELLER'S OWN NEGLIGENCE OR THE NEGLIGENCE OF SELLER'S REPRESENTATIVES. BUYER INDEMNIFIES, DEFENDS, HOLD HARMLESS, AND RELEASES SELLER FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY ARISING AS THE RESULT OF THEORIES OF PRODUCTS LIABILITY AND STRICT LIABILITY, OR UNDER NEW LAWS OR CHANGES TO EXISTING LAWS ENACTED AFTER THE EFFECTIVE DATE THAT WOULD OTHERWISE IMPOSE ON SELLER IN THIS TYPE OF TRANSACTION NEW LIABILITIES FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY. Statements made by Seller's employees, agents or representatives regarding environmental matters are based on limited information and should not be relied upon by Buyer. The terms of this Section shall survive the closing.
- B. Buyer understands that the soils of Texas, because of their makeup, are prone to shift and adjust based on changes in temperature

and precipitation. Movement of soils can result in damage to the foundation of the home, and thus, to the home itself. Possible damage from this movement includes cracking and/or separation of building materials and finishes. Buyer agrees to minimize the potential for such damage by monitoring and maintaining the moisture condition of the soils surrounding the foundation of the home. Without waiving any disclaimers of warranties above, buyer understands and agrees that cracking of the foundation of the home and/or movement of the foundation will not constitute a construction defect or breach of any warranty, if any, on the part of Seller unless such cracking or foundation exceeds the construction standards guidelines applicable to the limited warranties as set forth in Chapter 430 of Title 16 of the Texas Property Code that Seller is otherwise liable for. BUYER ACKNOWLEDGES THAT THE FAILURE OF BUYER TO UNDERTAKE PROPER MEASURES TO MAINTAIN THE FOUNDATION MAY RESULT IN SUBSTANTIAL DAMAGE TO THE HOME. The terms of this Section shall survive the closing.

- C. A high percentage of humidity in the outside air can have a noticeable effect on a home. Such effects include, but are not limited to, excessive condensation on windows and pipes. These effects are normal, and Seller does not warrant against any damages occurring as a result of high humidity. Buyer also understands that Seller is not responsible for maintaining the air quality inside the home. The terms of this Section shall survive the closing.
- D. Seller makes no representations as to title (other than as set forth in the Special Warranty Deed) and the location of easements, or the accuracy of any applicable surveys of the Property. At the closing, Buyer will receive the Title Policy issued by an independent Title Company. Buyer before closing, should refer to the title commitment for the Title Policy, and any other documents affecting title to the Property that are available (including surveys), with regards to any possible exceptions to the Title Policy. Buyer understands that the Title Company, and, if applicable, any surveyors of the Property, are not agents of the Seller. Seller is not liable for any inaccuracies in the Title Policy provided by the Title Company, or any inaccuracies in completed surveys of the Property. Statements made by Seller's employees, agents or representatives as to title, location of easements, and/or the accuracy of any applicable surveys of the Property are based on limited information and should not be relied upon by Buyer. The terms of this Section shall survive the closing.
- E. Buyer agrees to abide by all zoning ordinances, restrictions and conditions, and homeowner's association, if applicable, requirements imposed on the subdivision and Property. Buyer understands that Seller has no control over the city or county for zoning ordinances, deed restrictions and/or changes that the city or county imposes on said subdivision and surrounding areas. Buyer understands that the condition, use, and zoning of adjacent lands can change. To determine the condition, use, and zoning of adjacent lands, Buyer should contact the owners of adjacent lands and/or the applicable governmental authority. Statements made by Seller's employees, agents, or representatives regarding the condition, use, and zoning of adjacent lands are based on limited information and should not be relied upon by Buyer. Buyer agrees to assume all risk related to a change in conditions, use, or zoning of land adjacent to or near the Property. Buyer accepts existing easement conditions and understands that Seller is not responsible for any charges made by city and county utility companies. The location of municipal structures and/or neighborhood improvements is not determined by Seller alone, if at all, Seller makes no representations as to the location of structures and/or improvements (including but not limited to, utility lines and meters, fire hydrants, mailboxes, light poles and sewers). The terms of this Section shall survive the closing.
- F. Electric power lines are located throughout the neighborhood. The dangers associated with human exposure to the electromagnetic fields caused by such power lines are unknown. Buyer agrees to assume the risk, if any, of living in an area where electric power lines are located. Buyer agrees further that Seller is not liable for any exposure to, injuries, or damages resulting from exposure to such power lines. Statements made by Seller's employees, agents or representatives regarding electric power lines are based on limited information and should not be relied upon by Buyer. The terms of this Section shall survive closing.
- G. NEITHER BUYER NOR ANY OTHER PERSON ACTING UNDER BUYER'S DIRECTION MAY ENTER THE PROPERTY WITHOUT SELLER'S PRIOR WRITTEN PERMISSION. BUYER REALIZES AND ACKNOWLEDGES THAT ENTRY UPON THE PROJECT OR THE PROPERTY DURING CONSTRUCTION CAN BE DANGEROUS AND THAT HAZARDS MAY EXIST WHICH ARE NOT OBSERVABLE. BUYER'S ENTRY SHALL BE SOLELY AT HIS OWN RISK. BUYER DOES HEREBY WAIVE ANY AND ALL CLAIMS AGAINST SELLER FOR INJURY OR LOSS TO PERSON OR PROPERTY ARISING OUT OF OR IN CONNECTION WITH SUCH ENTRY BY BUYER OR ANY OTHER PERSON ACCOMPANYING HIM OR ENTERING AT HIS DIRECTION AND BUYER SHALL INDEMNIFY, DEFEND AND HOLD SELLER HARMLESS FROM AND AGAINST ANY INJURY, LOSS, DAMAGE OR EXPENSE TO PERSONS OR PROPERTY ARISING OUT OF OR IN CONNECTION WITH ANY SUCH ENTRY, INCLUDING ANY INJURY, LOSS, DAMAGE OR EXPENSE ARISING AS A RESULT OF SELLER'S OWN NEGLIGENCE OR THE NEGLIGENCE OF SELLER'S REPRESENTATIVES OR CONTRACTORS. The terms of this Section shall survive the closing or any earlier termination of this Contract.
- H. Photographs and/or images of the home constructed on the Property may be included in Seller's advertising as Seller's option, without additional compensation to Buyer.
- I. It is understood by Buyer that the plans for the home constructed on the Property are the property of the Seller and are protected by United States copyright laws. Any modifications to such plans suggested or made by Buyer become the property of Seller, and Buyer agrees not to infringe upon Seller's copyright in any manner, including the construction of a home substantially similar to that which is the subject of this Contract. Any violation of the copyrights law by Buyer shall also constitute a breach of this Contract. The terms of this Section shall survive the closing.
- J. In the event that Buyer selects to purchase optional upgrades to the Property, Seller may require Buyer to pre-pay for such upgrades prior to their installation. Such pre-payments are non-refundable to Buyer in the event Buyer defaults under this Contract under the terms of Section 8 A of these General Terms of Contract or as provided elsewhere in this Contract.
- K. THIS CONTRACT SHALL BE GOVERNED AND CONSTRUCTED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. THIS CONTRACT SHALL BE PERFORMABLE IN THE COUNTY WHERE THE PROPERTY IS LOCATED.
- L. This Contract will be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns; but Buyer shall not assign or transfer by the operation of law or otherwise this Contract or any of Buyer's rights hereunder. Any prohibited assignment shall be null and void, and Seller may, at Seller's option, immediately terminate this Contract (except for those provisions that expressly survive the termination) and thereupon, the Earnest Money and all other deposits shall be forfeited to Seller. Buyer shall not record this Contract. Any recording shall constitute a breach of the obligations of Buyer under this Contract, and Seller may terminate this Contract (except for those provisions that expressly survive termination). Thereupon, the Earnest Money and all other deposits shall be forfeited to Seller.
- M. Whenever the context shall so require, the singular shall include the plural; the masculine gender shall include the feminine and neuter, and vice versa. Time is hereby declared to be of the essence in the performance by Buyer of each Buyer's obligations and in the exercise of any termination rights expressly granted under this Contract to Buyer. If two or more persons are named as Buyer herein, (1) any one of them is authorized to act as agent for, with the right to bind, the other(s) in all matters of every kind

or nature with respect to this Contract and (2.) the obligations of Buyer under this Contract shall be joint and several with respect to those persons. If any one of the provisions of this Contract, or the applicability of any such provision to a specific situation, shall be held invalid or unenforceable, such provision shall be modified to the minimum extent necessary to make it or its application valid and enforceable, and the validity and enforceability of all other provisions of this Contract and all other applications of any such provision shall not be affected thereby.

- N. All negotiations, dealings, correspondence and memoranda between the parties are merged in this Contract, which constitutes the entire agreement between the parties. No representation, promise or inducement not included in this Contract shall be binding upon any party hereto. No agent, representative, or salesman has authority to make any statements, agreements, or representations, either written or oral, modifying or adding to or changing the terms and conditions of this Contract. Seller is not responsible or liable for any agreement, condition or stipulation not specifically set forth in this Contract relating to or affecting the Property. No modifications of this Contract shall be binding unless the modification is in writing and signed by an officer of Seller.
- O. IT IS SPECIFICALLY UNDERSTOOD AND AGREED THAT THIS CONTRACT SHALL NOT BE CONTINGENT UPON THE SALE BY BUYER OF ANY EXISTING REAL OR PERSONAL PROPERTY UNLESS SUCH CONTINGENCY IS ACCEPTED IN WRITING BY SELLER AS AN ADDENDUM TO THIS CONTRACT.
- P. All notices and demands to be given or served pursuant to the terms of this Contract shall be given by certified or registered mail, return receipt requested, addressed to the parties at their respective addresses set forth herein and will be deemed delivered and received three days after deposit into the United States Mail with sufficient postage. The terms of this Section shall survive the closing.
- Q. The Basic Terms of Contract that immediately precede, or that appear on the reverse side of the pages comprising these General Terms of Contract are hereby incorporated into this Contract for all purposes as if fully re-stated and set forth herein. Each capitalized term used these General Terms of Contract but not otherwise defined in these General Terms of Contract shall have the meaning ascribed to that term in the Basic Terms of Contract.

7. SPECIAL PROVISIONS:

EXECUTED the _____ day of _____, _____. (Effective Date)

Buyer

Sales Consultant

Buyer

*Accepted by:

Buyers Address:

Title: Manager for Tree Hill Homes

City, State, Zip

Date

Home Telephone

Title: Manager for Tree Hill Homes

Alt. Telephone

Date

*** THIS CONTRACT IS NOT BINDING ON TREE HILL HOMES UNTIL SIGNED BY A MANAGER FOR TREE HILL HOMES HOMES.**