



REAL ESTATE PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS
WHITE HAWK AT CAMP VERDE

1. EFFECTIVE DATE: The latest date signed by Seller or Buyer as shown below.

2. SELLER. NEXSTAR HOMES, LLC, an Arizona limited liability company ("Seller")

Address: 2350 E. Germann Road, Suite 25, Chandler, AZ 85286

Phone: e-mail:

3. BUYER.

Address:

Phone: e-mail:

BUYER.

Address:

Phone: e-mail:

4. AGREEMENT TO SELL AND PURCHASE. Seller agrees to sell to the Property (as defined below) to Buyer, and Buyer agrees to buy the Property from Seller, subject to the terms, conditions and provisions of this Real Estate Purchase and Sale Agreement (this "Agreement").

5. PROPERTY. The "Real Property" means the real property described below.

Address:

Legal Description: See Exhibit A attached hereto.

Assessor's Parcel No. (APN):

The "Property" means the Real Property together with all improvements thereon, including the House (defined in Section 12.1 below), all fixtures and appliances affixed to or installed on the Property by Seller prior to the Closing.

6. PURCHASE PRICE. Buyer shall pay Seller the following amount as the "Purchase Price" for the Property as provided below:

Purchase Price: \$

Earnest Money: \$ Due to Escrow Agent within three business days after Effective Date.

Down Payment: \$ Due at Closing (defined in Section 9)

Cash Balance: \$ Due at Closing (defined in Section 9)

Form of Payment: [ ] Cash [ ] Conventional Loan

7. ESCROW AGENT. Seller and Buyer appoint Empire West Title Agency, Attn: Jennifer Thornton, 830 South Main Street, Suite 11, Cottonwood, AZ 86326 (Phone: 928-473-1503; e-mail: jthorton@ewtaz.com) to act as the escrow agent for this transaction ("Escrow Agent").

8. EARNEST MONEY.

8.1 Deposit Deadline. Buyer shall deposit the Earnest Money with Escrow Agent within two business days following the Effective Date. Escrow Agent shall hold the Earnest Money in the Escrow until the Closing or termination of this Agreement.

8.2 Delivery. If this Agreement is terminated for any reason other than Buyer's default, Escrow Agent shall return the Earnest Money to Buyer. If this Agreement is terminated as a result of Buyer's default, Escrow Agent shall deliver the Earnest Money to Seller as provided in Section 18.3.1 below.

9. CLOSING DATE. Buyer and Seller shall close the Escrow (the "Closing") on the date that is seven days after Seller gives Buyer notice that the city or county in which the Property is located has issued a certificate of occupancy or its equivalent (the "Certificate of Occupancy") allowing the House to be occupied for residential use (the "Closing Date").

10. BUYER CONTINGENCIES.

10.1 Condition of Property.

**10.1.1 Due Diligence Period.** Buyer shall have from the Effective Date to 11:59 p.m., Mountain Standard Time ("MST"), on the that is five days after the Effective Date (the "Due Diligence Period") to conduct such due diligence as Buyer desires regarding the Property. Buyer acknowledges the House may not be complete during this period. During the Due Diligence Period, Buyer, at Buyer's expense, shall: (a) conduct all desired physical, environmental, and other types of inspections and investigations to determine the value and condition of the Property; (b) make inquiries and consult government agencies, lenders, insurance agents, architects, and other appropriate persons and entities concerning the suitability of the Property and the surrounding area; (c) investigate applicable building, zoning, fire, health, and safety codes to determine any potential hazards, violations or defects in the Property; and (d) verify any material information including, without limitation, property corners, utility locations and grade conditions. Anything in this Agreement to the contrary notwithstanding, neither Buyer nor any of Buyer's agents, contractors or consultants shall enter onto the Property prior to Closing or at any time enter any construction site on other real property being development by Seller or direct, encourage or suggest that any other person do so without Seller's prior approval. If Buyer, Buyer's Agent or any person related to or affiliated in any way with Buyer enters the Property without Seller's prior approval such entry shall be a default by Buyer under this Agreement.

**10.1.2 Restoration and Indemnification.** Buyer shall and does indemnify and shall defend Seller from and against and holds Seller and the Property harmless from and against, any and all costs, expenses (including, without limitation, attorneys' fees), damages, claims, liabilities, liens, encumbrances and charges arising from any entry onto or inspection of the Property by Buyer or Buyer's agents or contractors. Buyer shall repair any damage to the Property as a result of or caused by the entry onto or inspection of the Property by Buyer or Buyer's agents or contractors, and Buyer shall restore the Property promptly to substantially its condition existing immediately prior to such entry or inspection. Buyer's obligations under this Section 10.1.3 shall survive the Closing or termination of this Agreement.

## 10.2 Condition of Title.

**10.2.1 Approval of Title Commitment.** As soon as reasonably possible after the opening of Escrow, Escrow Agent shall prepare and deliver to Buyer and Seller a commitment of title for the issuance of the Title Policy (the "Title Commitment"). If Buyer disapproves any title exceptions in the Title Commitment or any new title exceptions on an amendment to the Title Commitment, Buyer shall give Seller and Escrow Agent notice of such objections by 6:00 p.m., MST, on the date that is five days immediately following Buyer receipt of the Title Commitment. Buyer shall be deemed to have approved all title matters in the Title Commitment and any amendment not objected to in a title objection notice. Seller shall not have any obligation to correct or cure any title matters objected to by Buyer. Seller, in its sole discretion, may elect to cure any title matter objected to by Buyer within five days after receiving Buyer's title objection notice. If Seller does not cure all items objected to by Buyer within such five-day period, Buyer may terminate this Agreement by giving notice of such termination to Seller and Escrow Agent within five days immediately following the end of Seller's five-day cured period. If Buyer does not give a termination notice within such five-day period, Buyer shall be deemed to have approved all title exceptions in the Title Commitment and any amendments thereto not previously cured by Seller.

**10.2.2 Title Policy.** Buyer's obligation to purchase the Property under this Agreement shall be conditioned on Escrow Agent (acting for itself or as agent of a title insurer) committing at the Closing to issue a standard owner's policy of title insurance naming Buyer as insured in the amount of the Purchase Price, effective on the date of the Closing, insuring Buyer's fee simple title to the Property, subject only to the terms and conditions of such policy and such title exceptions as contained in the Title Commitment and any amendments thereto (the "Title Policy").

## 10.3 Financing.

**10.3.1 Financing Contingency Period.** Buyers shall have until 6:00 p.m., MST, on the date that is 30 days immediately following the Effective Date (the "Finance Contingency Period") to obtain financing for Buyer's purchase of the Property. Buyer shall bear the costs of obtaining the financing, including, without limitation, the costs of obtaining an appraisal required, if required, satisfying any other conditions of such financing. Seller shall not have any obligation to take any action or incur any expense or liability with respect to the financing or Buyer's efforts to obtain the financing. If Buyer is unable to obtain such financing by the end of the Finance Contingency Period, Buyer may terminate this Agreement by giving notice of such termination to Seller and Escrow Agent prior to the expiration of the Finance Contingency Period. If Buyer does not terminate this Agreement before the end of the Finance Contingency Period, Buyer shall be deemed to have waived its right to terminate this Agreement under this Section 10.3 and Buyer's obligation to purchase the Property under this Agreement shall not be conditioned on Buyer's ability to obtain financing for such purchase. Buyer is aware and acknowledges that the Property may not qualify for FHA or VA financing. In the event the Property does not qualify for FHA or VA financing, Seller shall not be required to make any changes to the Property to meet FHA or VA guidelines.

**PLEASE NOTE THE PROPERTY MAY NOT QUALIFY FOR FHA OR VA FINANCING.**

**10.3.2 Preferred Lender Program.** If Buyer elects to use Joel Terril of Bell Bank or Nathan Jensen of Waterston Mortgage ("Seller's Preferred Lenders") to finance the Property, Seller shall provide a \$1500 credit to be applied towards Buyer's closing costs. Buyer acknowledges that Buyer has no obligation to use one of Seller's Preferred Lenders to finance Buyer's purchase of the Property; however, any incentives related to Seller's preferred lender program will not apply if Buyer does not obtain financing from one of Seller's Preferred Lenders.

**10.4 Effect of Termination.** On the delivery of a notice of termination by Buyer under any provision of this Section 10: (a) this Agreement shall be deemed terminated and of no further force or effect; (b) Escrow Agent shall return the Earnest Money to Buyer as provided in Section 8.2 above; and (c) Seller and Buyer shall not have any further obligations or liabilities under this Agreement except those that are specifically provided to survive a termination of this Agreement.

## 11. SELLER CONTINGENCIES.

**11.1 Buyer's Financial Information.** To assure Seller that Buyer has or by the Closing will have the financial ability to purchase the Property, Buyer shall provide Seller with the following items by 6:00 p.m., MST, on the date that is three business days immediately following the Effective Date for Seller's review and approval ("Buyer's Financial Information"): (a) with respect to any portion of the Purchase Price Buyer intends to pay with third-party financing, a "prequalification letter" or its equivalent issued by Nexstar Homes' preferred lender, \_\_\_\_\_, showing Buyer is prequalified for a loan equal to or greater than the amount of the intended financing; and (b) with respect to the portion of the Purchase Price Buyer intends to pay with its personal funds, a completed "Proof of Funds" (using a form provided by Seller) showing that Buyer has funds or by the Closing will have funds equal to or greater than the amount of personal funds needed to pay the portion of the Purchase Price not being financed. If Seller, in its sole discretion, disapproves of Buyer's Financial Information, Seller may terminate this Agreement by giving notice of such termination to Buyer and Escrow Agent by 6:00 p.m., MST on the date that is three business days immediately following Seller's receipt of Buyer's Financial Information. If Seller does not give notice of termination by such

deadline, Seller shall be deemed to have approved Buyer's Financial Information. If Buyer fails to deliver Buyer's Financial Information to Seller by the deadline above, Seller may terminate this Agreement by giving notice of such termination to Buyer and Escrow Agent.

- 11.2 **Prior Sale.** This Agreement is subject to any prior agreement entered into by Seller to sell the Property. In the event of such prior agreement, Seller may terminate this Agreement at any time prior to Closing by giving notice of such termination to Buyer and Escrow Agent. Seller shall have the power and authority to determine, in Seller's sole discretion, which of two or more sales agreement shall be deemed to have occurred first in time if Seller's written records do not conclusively indicate which agreement was first in time. Further, Seller receives another offer to purchase the Property before Seller has executed and delivered this Agreement to Buyer, Seller may elect to accept that new offer and reject this Agreement.
- 11.3 **Seller's Right to Terminate.** At any time prior to the Closing, Seller, in its sole discretion, may terminate this Agreement if any of the following events or circumstances occur: (a) a dispute arises between Buyer and Seller concerning boundaries, consideration, construction of improvements or any matter relating to the Property or the interpretation of this Agreement, and such dispute cannot in good faith be resolved completely and to the satisfaction of both Seller and Buyer within ten days after such dispute has arisen; (b) Seller determines, in its sole discretion, that Buyer has engaged or is engaging in harassing, abusive, threatening, offensive or otherwise inappropriate behavior towards Seller or Seller's agents, employees, subcontractors or representatives, including, without limitation, using profane or inappropriate language; (c) Seller determines, in its sole discretion, that Buyer will be unreasonable, difficult, troublesome or unaccommodating to work with prior to and after Close of Escrow; (d) Seller determines, in its sole discretion, that Buyer is not currently satisfied or will not be satisfied after Close of Escrow with the construction of improvements, including, but not limited to, materials, color selections, substituted materials or any matter relating to the Property. Seller shall exercise such termination right by giving notice of such termination to Buyer and Escrow Agent. On the delivery of a termination notice under this Section 11.3: (i) this Agreement shall be deemed terminated and of no further force or effect; (ii) Escrow Agent shall return the Earnest Money to Buyer as provided in Section 8.2 above; and (iii) Seller and Buyer shall not have any further obligations or liabilities under this Agreement except those that are specifically provided to survive a termination of this Agreement.
- 11.4 **MATERIAL TERMS. BUYER ACKNOWLEDGES AND AGREES THAT: (A) THE TERMINATION PROVISIONS IN THIS SECTION 11 ARE AND SHALL BE DEEMED MATERIAL TERMS OF THIS AGREEMENT FOR THE BENEFIT OF SELLER; AND (B) SELLER WOULD NOT HAVE ENTERED INTO THIS AGREEMENT OR AGREED TO SELL THE PROPERTY TO BUYER WITHOUT SUCH TERMINATION PROVISIONS.**

BUYER'S INITIALS: \_\_\_\_\_

BUYER'S INITIALS: \_\_\_\_\_

- 11.5 **Effect of Termination.** On the delivery of a notice of termination by Seller under any provision of this Section 11: (a) this Agreement shall be deemed terminated and of no further force or effect; (b) Escrow Agent shall return the Earnest Money to Buyer as provided in Section 8.2 above; and (c) Seller and Buyer shall not have any further obligations or liabilities under this Agreement except those that are specifically provided to survive a termination of this Agreement.

**12. CONSTRUCTION PROVISIONS**

- 12.1 **Construction of House.** Seller has built or intends to build a house on the Real Property (the "House"). As of the Effective Date, Seller intends to build the House substantially in accordance with plans and specifications referred to in Exhibit B attached hereto (the "Plans and Specifications"). However, due to the nature of construction, Buyer understands and acknowledges that deviations and variations from the Plans and Specifications will exist in the House as constructed. Seller, in its sole discretion, may deviate, alter or replace the Plans and Specifications, including, without limitation, changing: (a) materials, equipment and appliances; (b) style, lot orientation and colors; (c) room and space dimensions and window, door and other improvement locations; and (d) any other aspect of the Plans and Specifications. Seller shall not have any liability to Buyer for any deviations from the Plans and Specifications. In addition, Seller shall not have any obligation to commence construction of the House or to finish construction of the House. If Seller does not commence or finish construction of the House, Buyer's sole option and remedy shall be to terminate this Agreement by giving notice of such termination to Seller and Escrow Agent and receive a full refund of the Earnest Money. On the delivery of such termination notice: (i) this Agreement shall be deemed terminated and of no further force or effect; (ii) Escrow Agent shall return the Earnest Money to Buyer as provided in Section 8.2 above; and (iii) Seller and Buyer shall not have any further obligations or liabilities under this Agreement except those that are specifically provided to survive a termination of this Agreement
- 12.2 **Loan Status Update.** Buyer authorizes Seller to obtain requested information and status updates from any lender providing construction and/or permanent financing to Buyer. Buyer authorizes Seller and any lender providing construction and/or permanent financing to share information with each other. Buyer shall execute promptly such documents as Seller or Buyer's lender may request to confirm such authorization.
- 12.3 **Utilities.** As of the Effective Date, Seller intends that the following utilities will be provided to the Property by the Closing:

Water Provider: Camp Verde Water System, Inc. (928-567-5281)

Sewer Provider: Camp Verde Sanitary District (928-554-0872)

Electricity: Arizona Public Service ("APS") (602-371-7171)

Seller shall have no obligation to cause any utility services provided by third parties to be activated prior to the Closing. Buyer shall arrange directly with the utility service providers to active the utilities services following the Closing.

- 12.4 **No Representation Regarding Construction Schedule.** Because of disruptions and shortages of construction labor and materials and other conditions and events beyond Seller's control, Seller cannot and does not make any representations or warranties to Buyer regarding the schedule of construction of the House or the date on which construction of the House will be completed. Buyer acknowledges any statements or estimates made previously or hereafter by Seller or its representatives are provided as a courtesy to Buyer and are simply guesses based on information available at the time. Buyer shall not and shall not have any right to rely on such statements or estimates, and neither Seller nor its representatives shall be liable for such statements or estimates.
- 12.5 **Substantial Completion; Final Walk Through; Punch List Items.** Seller shall be deemed to have substantially completed construction of the House when the Certificate of Occupancy by the applicable city or county. Seller shall schedule a walkthrough with Buyer prior to the Closing Date to create "punch list" of items to be corrected or repaired. Seller shall correct all items that are mutually agreed to in writing by both parties ("Punch List Items") and shall correct all items that are not in conformance with Arizona Register of Contractors Workmanship Standards. Seller shall not have any obligation to correct the Punch List Items before the Closing, and the Closing shall not be delayed because of the existence Punch List Items. Within a reasonable period of time following the Closing, Seller shall correct "punch list" items, and Buyer shall give Seller access to the Property and the House to make such corrections. After Closing,

Seller shall have no further responsibility for periodic inspection, replacement, maintenance or repair of improvements except for punch list items identified before the Closing or as may be covered by Seller's warranty described in [Section 12.6](#) below.

- 12.6 Construction Warranty.** Seller warrants that all work performed by Seller in connection with the construction of the House will conform with the requirements of the Arizona Registrar of Contractors (the "AROC") in effect at the time of the Closing. Seller warrants all such work against defective workmanship and materials for a period of one year from the Closing. Seller shall be granted reasonable access to the Property during normal business hours to make repairs. Seller obligations under this warranty are limited to repair and replacement. This warranty is applicable only to matters reported in writing to Seller before the expiration of the one-year warranty period. This warranty shall not apply to defects caused by: (a) normal wear and tear; (b) insubstantial variances or defects; (c) effects of the element, natural disasters, or other acts or events beyond the control of Seller; (d) faulty maintenance, operation or abusive use and/or introduction of environmental pollutants or contaminants by Buyer or any party other than Seller; (e) environmental conditions; or (f) settling caused from an adverse change by Buyer to grading and drainage and/or water intrusion caused from landscaping or irrigation. This warranty is the only warranty applicable to this purchase. All other express or implied warranties or merchantability, fitness for particular purpose, habitability and workmanship which exceed the foregoing obligations are hereby disclaimed and the same are excluded from this Agreement. Additionally, any implied warranty imposed by law despite the above disclaimer is hereby limited to the two year duration of the express warranty. Seller shall have no obligation to provide any other third-party warranty to Buyer.
- 12.7 New Home Insulation Addendum.** Seller will install insulation in the House according to the standards of the AROC. Prior to the Closing, Seller and Buyer shall execute a new home insulation addendum (the "Insulation Addendum") disclosing the R-Values, thickness and form of insulation installed in the House to the extent required by the Federal Trade Commission and the AROC. All thicknesses and R-Values disclosed in the addendum will be approximate, and R-Values do not include the R-Value of other wall or ceiling materials. Buyer acknowledges that insulation may be of lesser thickness and R-Value than indicated in the addendum in certain areas where the design of the House does not permit greater thickness. Examples of locations where thickness and R-Value may vary include locations where studs are placed in walls, at corners and windows and where roof trusses attached to outside walls. The R-Values are based on the representation of the manufacturer and/or installer of the insulation. Seller does not warrant or represent that these R-Values are correct.
- 12.8 Consumer Products.** Seller makes no warranty concerning "Consumer Products" equipment, appliance or other item defined as such in the Magnuson-Moss Warranty Act, including, without limitation, a dishwasher, garbage disposal, range, oven, range hood, microwave oven, refrigerator, trash compactor, hot water heater, thermostat, washer or dryer and garage door opener. However, Buyer shall be entitled to any Consumer Product warranty that may be provided by the product manufacturer.
- 12.9 No Buyer Work Before Closing.** Prior to the Closing, Buyer shall not provide materials, subcontractors, labor or supplies to the Property or work on or make modifications to the Property.
- 12.10 Insurance.** Buyer acknowledges that, following the Closing, Buyer will bear the risk of any loss or damage to the Property, including, without limitation, the House and all improvements. Seller recommends that, prior to the Closing, Buyer obtain homeowners insurance covering damage or destruction to the Property, including, without limitation, the House and other improvements, and make sure such insurance is in effect as of the Closing.
- 12.11 Completion Deadline.** If for any reason whatsoever a Certificate of Occupancy has not been issued for the House by 11:59 p.m., MST, on that date that is        days immediately following the Effective Date, Seller and Buyer shall each be entitled to terminate this Agreement by giving notice of termination to the other party and Escrow Agent. On the delivery of a notice of termination by Buyer under this [Section 12.10](#): (a) this Agreement shall be deemed terminated and of no further force or effect; (b) Escrow Agent shall return the Earnest Money to Buyer as provided in [Section 8.2](#) above; and (c) Seller and Buyer shall not have any further obligations or liabilities under this Agreement except those that are specifically provided to survive a termination of this Agreement.
- 12.12 Termites.** A licensed pest control company applied or will apply a termite treatment to the land. The Buyer and Seller understand that current governmental regulations limit the types and concentration of chemicals and the methods of application that can be used in attempting to prevent or eradicate termites and consequently, termites may appear at the Property. Buyer agrees to look solely to the pest control company providing the original pretreatment and any pest control company who has been providing periodic treatments for costs and expenses associated with investigating and remedying any termite infestation and buyer waives all claims of liability against the seller for losses, costs and expenses in connection with the existence of termites in, under or in the vicinity of the property.
- 12.13 Promotional Materials.** Buyer is aware that any other property and/or promotional materials of Seller which Buyer may have viewed prior to execution of this Contract may have extra design features, decorations, floor coverings, decorator light fixtures, wall coverings, window treatments, mirrors, furniture, furnishings or appliances which will not be included in the Property unless specifically provided for in this Agreement or evidenced by a written Change Order approved by Seller.

### 13. DISCLOSURES AND ACKNOWLEDGMENTS.

- 13.1 Affidavit of Disclosure.** Buyer acknowledges receiving a copy of an Affidavit of Disclosure executed by Seller as required in A.R.S. § 33-422. Buyer shall sign the acknowledgement of receipt provided in the Affidavit of Disclosure and return the executed receipt to Seller or Escrow Agent. At the Closing, Escrow Agent shall record the Affidavit of Disclosure in the official records of the county in which the Property is located.
- 13.2 Property Documents.** Buyer acknowledges and agrees that Seller makes no representation or warranty regarding the accuracy or correctness of any information contained in any documents, reports or materials provided by Seller to Buyer regarding the Property and construction of the House (collectively, the "Property Documents") or any opinions expressed therein. Buyer shall independently verify all information in the Property Documents that Buyer deems material. Any reliance by Buyer on the contents of the Property Documents shall be at Buyer's own risk, and Seller shall not be liable for any inaccuracies in any of the Property Documents.
- 13.3 SPDS or CLUE.** Buyer is aware and acknowledges that Seller has never occupied the Property and therefore will not be providing an AAR Seller's Property Disclosure (SPDS) or CLUE Report.
- 13.4 Landscaping.** Buyer is aware and acknowledges that landscaping shall not be installed by builder or contractor and shall be the responsibility and cost of the Buyer.

- 13.5 Home Prices.** Buyer acknowledges that Seller has not made, and Buyer is not relying on, any guarantee or representation regarding the stability of home pricing. Seller reserves the right to increase or reduce prices of unsold homes without notice.
- 13.6 Sale of Existing Home.** Buyer's obligation to purchase the Property under this Agreement is not contingent upon the sale or lease of Buyer's present home or any other property owned or under contract by Buyer.
- 13.7 No Recording.** Buyer shall not record or cause or request a third-party to record this Agreement or any memorandum or other document specifically referring to this Agreement in the official records of any county in the State of Arizona. Any such recording shall be deemed a default and breach of this Agreement by Buyer.
- 13.8 Real Estate Taxes.** Buyer acknowledges that full home value is typically not reflected in the current real estate taxes records for the property on a new home. Seller is not representing any information regarding real estate taxes (current or future) and cannot predict what the taxes on the home may be.
- 13.9 Grading and Drainage.** Seller has graded or will grade the Property to drain in accordance with a city/County approved grading and drainage plan. Any future construction on the Property by Buyer, including, without limitation, the construction or installation of swimming pools, spas and landscaping,, can disrupt the drainage and cause flooding if not properly engineered. Seller is responsible for the drainage of the Property as delivered to Buyer at Closing in accordance with the approved grading and drainage plan. Buyer must maintain positive drainage away from the foundation. Any subsequent changes in the grade or soil condition that causes improper drainage or flooding and any damage or loss resulting therein shall be the Buyer's sole responsibility. Buyer does and shall indemnify, defend, hold harmless and release Seller, its agents, subcontractors, employees, and affiliates from any and all actual or alleged claims, actions, losses, damages, liabilities, penalties, awards costs or expenses of any kind (collectively, "Claims") that may arise from such changes. In addition and due to the effect of moisture on soil and on a home's foundation, Seller strongly advises that all plant material that requires watering, including turf, be kept a minimum of 36" from the foundation and all exterior concrete areas such as driveways, sidewalks and patios and shall not be responsible for any damaged caused by such watering.
- 13.10 Erosion.** Following the Closing, Buyer shall be responsible for periodic maintenance and repair to grading and driveways due to erosion, which is common in desert surroundings, especially with excess rain/monsoons. Buyer acknowledges that settling and erosion at septic tanks, water tanks, and propane tanks may continue after the completion of the House as these areas are not able to be compacted. Buyer acknowledges that, after the Closing, periodic dirt work/fill may be required until these areas have fully settled.
- 13.11 Flood Zone.** Seller discloses that a portion of or all of the Property may be located in a FEMA designated regulatory floodplain. If the Property is in a floodplain, it may be subject to floodplain regulation and/or additional insurance requirements. Buyer should undertake additional investigation if this is a material matter to the Buyer.
- 13.12 Waiver of Environmental and Other Conditions.** Buyer acknowledges the House and/or its occupants may now or in the future be exposed to various environmental conditions in or near the Property, including, without limitation, radon gas in the soil, electromagnetic fields from power lines and appliances, the presence of surface and underground utility facilities, and the possibility of air, water, and soil pollution. In addition, Buyer acknowledges and agrees that: (a) the Property and the House may be (or may have been) exposed or subjected to adverse environmental conditions, including, but not limited to, mold or other potential toxins and other naturally occurring or man-made contaminants; (b) such adverse environmental conditions might not be discoverable even in the exercise of reasonable due diligence; (c) Seller has not made any representations or warranties regarding either the presence or absence of such adverse environmental conditions; and (d) Buyer has had or by the Closing will have had the opportunity to undertake such investigation of environmental conditions of the Property as Buyer deems appropriate in its sole discretion. Buyer waives and releases Seller from any Claims Buyer might have against Seller arising out of or in any way connected to such adverse environmental conditions, including, but not limited to, Claims for personal injury, property damage, or the diminution in value of the Property, and further releases, discharges, and agrees to indemnify, defend (with counsel reasonably acceptable to Seller), and hold harmless Seller for, from, and against any and all actual or alleged Claims arising out of or relating to any such adverse environmental conditions. For additional information regarding soil and environmental conditions, Buyer should contact the local state and/or federal environmental agencies or other available sources. The terms of this Section shall survive completion of the House, the Closing and/or termination of this Agreement.
- 13.13 Construction Activity.** Buyer understands and agree that construction activity on adjacent properties or within a close proximity of the Property may continue after the Closing and occupancy by Buyer. Such construction activity may cause inconvenience to Buyer, including, without limitation, noise and the transportation of labor, material and equipment. Buyer agrees to make not any claim against Seller or its agents or contractors as a result of such construction activity. Additionally, Buyer shall inform each member of his family and each guest, visitor, and invitee of Buyer, that he enters the neighborhood or area at his own risk and that if he suffers personal injury or property damage while going into an area under construction, then Seller shall not be liable for such injury, and Buyer does and shall indemnify and hold Seller harmless from Claims by any member of Buyer's family or any guest, visitor or invitee of Buyer who attempts to make a claim against Seller or its agents or contractors for such personal injury or property damage. The provisions of this Section shall survive the Closing.
- 13.14 Utilities and Services.** Buyer acknowledges the Buyer has had or by the Closing will have had the opportunity to undertake investigation into various utility sources and miscellaneous services, including, but not limited to, sewer, septic/alternative septic, and the House's water source, including, but not limited to, a private well, shared well, city water, county water and hauled water. Buyer is responsible for investigating and setting up any desired services including, but not limited to, power, water, trash, fire, cable, and internet. Seller has not made and does not make any representations or warranties regarding such sources of utilities, and Buyer shall be responsible for all due diligence associated with such sources.
- 13.15 Well.** If the primary source of water for the Property comes from a private/shared well, Buyer shall be fiscally responsible for maintaining the well per any shared well agreement. Components may be new or used and Seller makes no warranty regarding such components after Close of Escrow. Seller does not guarantee the capacity or production of water and makes no representation on the quality of the water production. Buyer acknowledges that well water most likely contains iron, particulates or other impurities which may require additional filters and/or softeners to be installed at Buyer's expense to further purify the water. Buyer is encouraged to undertake any further testing to the extent Buyer desires. Seller does not provide a Domestic Well Water Disclosure Addendum. Any well water test requested or required by Buyer's lender shall be at the sole cost and expense of Buyer.
- 13.16 Hauled Water.** With respect to water transported from an off-site source to the Property by truck, tank or bottle for on-site use ("Hauled Water"), Buyer acknowledges that Seller makes no representations or warranties of any kind whatsoever regarding such Hauled Water. Without limiting the generality of the foregoing, Seller specifically makes no representations or warranties regarding: (a) the amount of Hauled Water that may be needed for Buyer's use of



the Property; (b) the average or projected consumption rates of water usage by individuals or families in general or as related to the Property; (c) the current or future availability of Hauled Water; (d) the current or future cost of Hauled Water; (e) the quality or safety of any Hauled Water; or (f) whether Hauled Water currently meets or will meet Arizona or federal drinking water standards. Buyer shall conduct its own investigation into such matters prior to purchasing the Property and shall not rely on or be entitled to rely on any statements by Seller or any of Seller’s agents, employees or contractors regarding such matters.

**13.17 On-Site Wastewater Treatment Facility.** Intentionally deleted.

**13.18 Phone, Internet and Mail Service.** Buyer is aware and acknowledges that Seller is not installing or paying for and makes no representations or warranties to the availability of phone, internet, or mail service. Seller does not install, set up, or transfer United States Postal Services, which shall be the sole responsibility of Buyer. Buyer should contact the local Post Office for assignment of the mailbox.

**13.19 Utility Transfer.** Buyer is aware and acknowledges that Seller will cancel all utilities to Property, including, but not limited to, power, water, and trash services at the Closing. Following the Closing, Buyer shall immediately transfer all utilities into Buyer’s name or bear the risk of utility disruption. If for any reason utilities are not transferred to Buyer, Buyer shall be responsible for all utilities bills and outstanding invoices beyond the Closing.

**13.20 Roadway/Streets.** Buyer acknowledges the Property may be located on a private street and, accordingly, Buyer may have to share in the expense of ongoing/future maintenance and/or repairs of the street. Private streets, roads, and/or easements are not maintained by county or municipal agencies. See Private Road Agreement if applicable.

**13.21 Fire.** Seller makes no warranties regarding fire protection. The Property may be located outside the designated city fire protection jurisdiction which may require Buyer to arrange for private fire protection (i.e., Rural Metro Fire Protection).

**13.22 Exhibit Waiver.** Buyer understands any exhibits showing the specific locations of utilities, septic tanks, water tanks, vegetation, meters or other items are solely for illustrative purposes only, do not constitute actual plans and may differ from final approvals, specifications, and/or features included with the Property. Additionally, such exhibits may show walls/fences, landscaping, gas locations and other items that may not be included with the actual Property. Seller reserves the right to change any specification in the field.

**13.23 PUBLIC REPORT.** BUYER ACKNOWLEDGES RECEIPT OF THE PUBLIC REPORT AND REPRESENTS TO SELLER THAT THEY HAVE RECEIVED, REVIEWED AND APPROVED THE PUBLIC REPORT AND ALL OTHER MATTERS AFFECTING TITLE TO THE PROPERTY.

BUYER’S INITIALS: \_\_\_\_\_

BUYER’S INITIALS: \_\_\_\_\_

**13.24 CONDITION AND DEVELOPMENT OF SURROUNDING AREAS.** Buyer acknowledges that neither Seller nor its representatives have made or are making any representations or warranties regarding any neighboring or surrounding properties or the future development of any such properties, including, without limitation, any representations or warranties regarding: (a) the current or future lack of obstructions to views from the Property; (b) the nature of any homes or development adjacent to or near the Property, including, without limitation, the height, size, design or nature of any houses or other improvements; (c) the continuation of the nature, character or uses of properties adjacent to or near the Property; (d) the amount or level of noise from nearby roadways, airports, property or equipment; (e) the development of any vacant or undeveloped property adjacent to or near the Property; or (f) the boundaries of any schools or school districts in relation to the Property.

**13.25 PROPERTY SOLD “AS IS”.** BUYER ACKNOWLEDGES THAT, EXCEPT FOR THE SPECIFIC REPRESENTATION AND WARRANTIES SET FORTH IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THE CORRECTION OF THE PUNCH LIST ITEMS AND THE CONSTRUCTION WARRANTY, AND IN THE DOCUMENTS TO BE EXECUTED BY SELLER AT THE CLOSING (COLLECTIVELY, THE “SELLER REPRESENTATIONS”): (A) BUYER IS PURCHASING THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE HOUSE AS CONSTRUCTED, SOLELY IN RELIANCE ON BUYER’S OWN INVESTIGATION AND INSPECTION OF THE PROPERTY; (B) NO REPRESENTATIONS, CLAIMS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, CONCERNING THE PROPERTY OR ITS FITNESS, CONDITION OR SUITABILITY FOR ANY USE OR PURPOSE HAVE BEEN MADE BY SELLER OR ANY PARTY ACTING ON BEHALF OF SELLER; AND (C) BUYER IS PURCHASING THE PROPERTY “AS IS” AND “WHERE IS” WITH ANY AND ALL DAMAGE, FAULTS AND DEFECTS. BUYER ACKNOWLEDGES THAT SELLER MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING THE SIZE OF OR NUMBER OF SQUARE FEET IN THE HOUSE.

BUYER’S INITIALS: \_\_\_\_\_

BUYER’S INITIALS: \_\_\_\_\_

**13.26 RELEASE OF SELLER.** EXCEPT FOR THE SELLER REPRESENTATIONS, BUYER HEREBY RELEASES AND FOREVER DISCHARGES SELLER FROM ANY AND ALL LIABILITY, LOSS, CLAIMS, DEMANDS, DAMAGES AND CAUSES OF ACTION OR CLAIMS FOR RELIEF (INCLUDING, WITHOUT LIMITATION, CLAIMS FOR CONTRIBUTION), IF ANY, THAT BUYER EVER HAD, NOW HAS OR MAY HAVE, KNOWN OR UNKNOWN, LIQUIDATED OR UNLIQUIDATED, OR THAT ANYONE CLAIMING THROUGH OR UNDER BUYER MAY HAVE OR CLAIM TO HAVE AGAINST SELLER, ARISING BY REASON OF OR WITH RESPECT TO THE CONDITION OF THE PROPERTY AND THE APPLIANCES. EXCEPT FOR THE SELLER REPRESENTATIONS, THE FOREGOING RELEASE INCLUDES THE RELEASE OF ALL CLAIMS OR CAUSES OF ACTION NOW EXISTING OR HEREAFTER CREATED OR ENACTED, WHETHER BY COMMON LAW OR BY FEDERAL, STATE, COUNTY OR MUNICIPAL LAW, REGULATION OR ORDINANCE. THIS RELEASE SHALL SURVIVE THE CLOSING.

BUYER’S INITIALS: \_\_\_\_\_

BUYER’S INITIALS: \_\_\_\_\_

**14. CLOSING.**

**14.1 Definition of Closing.** As used in this Agreement, “Closing” shall mean Escrow Agent’s receipt of Purchase Price in immediately available funds in accordance, satisfaction of all other terms and conditions of this Agreement with respect to the purchase and sale of the Property and the recordation of the Deed (as defined in Section 14.2.1 below) in the official records of the county in which the Property is located.

**14.2 Seller’s Closing Deliveries.** At or before the Closing, Seller shall deliver to Escrow Agent the original of each of the following, executed and properly acknowledged, as necessary: (a) a special warranty deed using Escrow Agent’s standard form (the “Deed”) conveying the Property to Buyer; (b) an affidavit of property value in the form required by A.R.S. Section 11-1133 (the “Affidavit of Value”); (c) a non-foreign certification in the form required by I.R.C. Section 1445; (d) the Notice of Transfer; and (e) such other instruments or documents as may be reasonably required by Escrow Agent to close the Escrow.

**14.3 Buyer’s Closing Deliveries.** At or before the Closing, Buyer shall deliver to Escrow Agent the balance of the Purchase Price and the Late Closing Fee (as defined in Section 18.1.1), if applicable, in immediately available funds and the original of each of the following, executed and properly acknowledged,

as necessary: (a) the Affidavit of Value; (b) a completed ADEQ Notice of Transfer of Ownership of an On-Site Wastewater Treatment Facility form (the "Notice of Transfer"); and (c) such other funds, instruments or documents as may be reasonably required by Escrow Agent to close the Escrow.

- 14.4 Title Policy.** At the Closing and as a condition of Buyer's obligation to purchase the Property under this Agreement, Escrow Agent shall irrevocably commit to issue to the Title Policy as provided in Section 10.2 above. Seller shall pay the premium for an ALTA standard policy of title insurance. Buyer shall pay any additional premiums or charges for any endorsements or any upgrades to the Title Policy
- 14.5 Closing Costs and Prorations.** Seller and Buyer shall each bear its own costs in connection with its negotiation, due diligence, investigation and conduct of this transaction. Escrow fees shall be divided equally between Seller and Buyer. Unpaid real property taxes and assessments shall be prorated as of 12:01 a.m., MST, on the date of the Closing based on the latest information available. All other costs and fees associated with the Closing shall be borne by the parties as is customary in real estate transactions in the State of Arizona as determined by Escrow Agent.
- 14.6 Possession.** Seller shall deliver possession of the Property to Buyer immediately following the Closing subject to the matters set forth in the Title Policy and the Deed.
- 14.7 Notice of Transfer.** Promptly following the Closing, Escrow Agent shall file the Notice of Transfer with any required filing fee with the applicable governmental authority. Buyer shall pay the Notice of Transfer filing fee and any other facility transfer of ownership fees.
- 15. RISK OF LOSS.** Prior to the Closing, Seller shall bear the risk of damage, destruction or loss to the Property unless caused by Buyer or Buyer's agents or contractors. If any such damage, destruction or loss occurs prior to the Closing, Buyer shall either terminate this Agreement or proceed with the Closing without any reduction in the Purchase Price and Seller shall not have any obligation to repair or restore the Property.
- 16. BROKERAGE.**
- 16.1 Commission.** If, and only if, the Closing occurs, then at the Closing and through the Escrow, Seller shall pay a commission (the "Commission") in the amount of: (a) \_\_\_\_\_% of the Purchase Price to (Berkshire Hathaway Home Services Arizona Properties Rob Witt Agent ) ("Seller's Broker"); and (b) \_\_\_\_\_% of the Purchase Price to \_\_\_\_\_ ("Buyer's Broker"). Seller's Broker and Buyer's Broker are referred to collectively as "Brokers." If the Closing does not occur for any reason whatsoever (including the default of Seller or of Buyer), Brokers shall not be entitled to any commission, fee or payment. Brokers shall have no claim to any of the Earnest Money if forfeited to Seller. By executing this the "Broker Agreement" attached hereto, Brokers agree to and shall be bound by the terms of this Section 16.1, and the Commission shall be the only compensation to which Brokers are entitled for services rendered in connection with the sale of the Property. Brokers' execution hereof shall not be a condition to the effectiveness of this Agreement, and Brokers' consent shall not be needed for any amendment to this Agreement, including, without limitation, any amendment changing the Purchase Price.
- 16.2 No Other Brokers; Indemnification.** Seller and Buyer warrant, each to the other, that they have not dealt with any finder, broker or real estate sales person in connection with this purchase and sale transaction other than Brokers. The parties acknowledge that in this transaction Seller's Broker has acted solely as Seller's real estate broker and Buyer's Broker has acted solely as Buyer's real estate broker. If any person other than Brokers (who shall be paid in accordance with Section 16.1 above) shall assert a claim to a finder's fee or brokerage commission on account of alleged employment as a finder or broker in connection with this purchase and sale transaction, the party under whom the finder or broker is claiming shall and does hereby indemnify the other party against, and agrees to hold the other party harmless from, any such claim and all costs, expenses and liabilities incurred in connection with such claim or any action or proceeding brought on such claim, including, but not limited to, attorneys' and witness fees and court costs in defending against such claim. The indemnification obligations in this Section 16.2 shall survive the Closing and termination of this Agreement.
- 16.3 Disclosure of Real Estate Licenses.** Seller discloses, and Buyer acknowledges, that some members and managers of Seller are licensed by the State of Arizona as real estate salespersons or brokers, including, without limitation, Dallin S. Simonton, who is a member of Seller.
- 17. NOTICES.** All notices, requests, demands or other communications (collectively, "Notice") required or permitted under this Agreement shall be in writing and may be personally delivered or sent via electronic mail or transmitted by nationally recognized overnight carrier (e.g., Federal Express, UPS) or by certified mail, return-receipt requested, postage prepaid, to the addresses of Seller, Buyer and Escrow Agent provided in Sections 2, 3 and 7 above. Notice given in accordance with the terms hereof shall be deemed given and received: (a) on the date of delivery if personally delivered, delivered by electronic mail or transmitted by courier service; or (b) on the date three Business Days after posting if transmitted by U.S. mail. Any party hereto may change the address for receiving Notice by notice sent in accordance with the terms of this Section. The inability to deliver a Notice because of a changed address of which no Notice was given, or rejection or other refusal to accept any Notice, shall be deemed to be the receipt of the Notice as of the date of such inability to deliver, rejection or refusal to accept. The telephone numbers listed in Sections 2, 3 and 7 above are for convenience only and may not be used to give any Notice under this Agreement.
- 18. DEFAULT AND REMEDIES.**
- 18.1 Default.** The existence or occurrence of any one or more of the following shall constitute a default under this Agreement by the responsible party:
- 18.1.1 Failure to Perform Monetary Obligations.** A party fails to delivery any monies due under this Agreement when due;
- 18.1.2 Failure to Close Escrow.** Seller or Buyer, for any reason other than the default of the other party, fails to deliver all items required from such party for the Closing when and as required under Section 14 above or otherwise fails to fulfill its obligations for closing the Escrow;
- 18.1.3 Failure to Perform Other Obligations.** A party fails to fully and timely perform any obligations under this Agreement (other than those described in Sections 18.1.1 and 18.1.2 above) and does not cure such failure by 6:00 p.m., MST, on the date that is five days immediately following the date such party receives written notice of such failure from the other party;
- 18.1.4 Breach of Representations and Warranties.** Any of the representations or warranties made by a party in this Agreement prove to be false or misleading when made in any material respect; and
- 18.1.5 Bankruptcy; Insolvency.** A party shall: (a) voluntarily be adjudicated as bankrupt or insolvent; (b) seek, consent to or not contest the appointment of a receiver or trustee for itself or for all or any part of its property; (c) file a petition seeking relief under the bankruptcy, arrangement, reorganization or other debtor relief laws of the United States, any state or any other competent jurisdiction; (d) make a general assignment for the benefit of its creditors; (e) a petition is filed against a party seeking relief under the bankruptcy, arrangement, reorganization or other debtor relief laws of the United States, any

state or any other competent jurisdiction, and such petition is not dismissed within 60 days immediately following the date of such filing; or (f) a court of competent jurisdiction enters an order, judgment or decree appointing, without the party's consent, a receiver or trustee for a party, or for all or any part of a party's property, and such petition, order, judgment or decree is not discharged or stayed within 60 days immediately following its entry.

## **18.2 Buyer's Remedies.**

**18.2.1 Prior to Closing.** If Seller is in default under this Agreement prior to the Closing and Buyer has complied with all its obligations hereunder, Buyer shall be entitled to deliver to Escrow Agent and Seller a written notice detailing the default of Seller. Seller shall have 30 days from the receipt of such notice within which to remedy the default, except if the required performance cannot reasonably be completed by Seller within such 30-day period, then Seller shall have a reasonable time, not to exceed 60 days within which to remedy the default. If Seller had not remedied the default within the time provided in the preceding sentence, then as Buyer's sole and exclusive remedy, Buyer may elect to do any one, but only one, of the following: (a) waive the default and proceed to close the Escrow; or (b) terminate this Agreement and receive the Earnest Money in accordance with Section 8.2 above, a refund of options previously paid for by Buyer, and obtain Two Thousand and Five Hundred Dollars (\$2,500) from Seller as Buyer's liquidated damages. As partial consideration for this Agreement, Seller waives the remedy of specific performance and agrees not to record a lis pendens, this Agreement, or a memorandum of this Agreement against the property for any purpose. The Parties agree that the actual damages incurred by Buyer for Seller's failure to perform are difficult to estimate in advance and that \$2,500.00 constitutes a reasonable estimate of Buyer's damages for a default by Seller and shall constitute Buyer's liquidated damages and not a penalty. Buyer hereby expressly waives all other claims for damages or relief at law or in equity (including, without limitation, all rights Buyer may have to specific performance and/or actual consequential or incidental damages) and agrees that Buyer's sole and exclusive remedy for Seller's default under this Agreement prior to the closing shall be obtaining the liquidated damages provided above.

**18.2.2 Following Closing.** Seller's obligations under this Agreement that survive the Closing are subject to the specific limitations provided in this Agreement, except: (a) Buyer specifically waives all rights to consequential and punitive damages for any such breach and all rights to rescind; and (b) all disputes regarding alleged defects in the construction of the House and other improvements constructed by Seller on the Property shall be subject to Section 18.4 below.

## **18.3 Seller's Remedies.**

**18.3.1 Prior to Closing.** If Buyer is in default under this Agreement prior to the Closing, Seller, as its sole and exclusive remedy, shall either: (a) waive such default and proceed with the Closing and collect the Late Closing Fee, if elected by Seller; or (b) terminate this Agreement and receive the Deposit as provided Section 8.2 above, as liquidated damages, and not as a penalty. Buyer and Seller agree it would be impractical or extremely difficult to fix Seller's actual damages if Buyer defaults and that the amount of the Earnest Money and any accrued interest thereon is a reasonable estimate of Seller's damages if Buyer defaults under this Agreement. If Seller elects to proceed with the Closing despite Buyer's default, Seller, at its option, may require Buyer to pay a fee at the Closing in the amount of \$200.00 for each day following the original scheduled Closing Date through and including the day of the late Closing (the "Late Closing Fee") to help offset Seller's damage caused to Seller by Buyer's delay.

**18.3.2 Following Closing.** Following the Closing, Seller shall be entitled to pursue all remedies at law or in equity against Buyer for Buyer's breach of any representations and warranties and/or obligations under this Agreement that survive the Closing subject to the specific limitations provided in this Agreement, except: (a) Seller specifically waives all rights to consequential and punitive damages for any such breach and all rights to rescind; and (b) all disputes regarding alleged defects in the construction of the House and other improvements constructed by Seller on the Property shall be subject to Section 18.4 below.

**18.4 Resolution of Construction Claims.** ANY AND ALL DISPUTES BETWEEN OR AMONG BUYER OR SELLER OR THEIR RESPECTIVE PARENT COMPANIES, SUBSIDIARIES, AFFILIATES, OFFICERS OR AGENTS UNDER OR IN CONNECTION WITH ONE OF THE LIMITED WARRANTIES REFERENCED BELOW, THE CONSTRUCTION OR CONDITION OF THE PROPERTY INCLUDING BUT NOT LIMITED TO DISPUTES CONCERNING BREACH OF EXPRESS OR IMPLIED WARRANTIES, PERSONAL INJURIES AND/OR ILLNESS, MOLD RELATED CLAIMS AND ALL OTHER CONTRACTUAL, TORT, AND STATUTORY CAUSES OF ACTION (COLLECTIVELY, "CLAIMS") SHALL BE RESOLVED BY BINDING ARBITRATION BEFORE A THREE (3) ARBITRATOR PANEL. THE ARBITRATION SHALL OTHERWISE BE CONDUCTED IN ACCORDANCE WITH THE CONSTRUCTION RULES OF ARBITRATION OF THE AMERICAN ARBITRATION ASSOCIATION. EACH PARTY TO THE ARBITRATION SHALL PAY ITS ONE-HALF OF ALL ARBITRATION RELATED COSTS IRRESPECTIVE OF THE OUTCOME. BUYER UNDERSTANDS THAT BY SO AGREEING, BUYER IS GIVING UP ITS RIGHTS TO HAVE SUCH CLAIMS TRIED BEFORE A JURY. BUYER EXPRESSLY WAIVES ANY RIGHT TO CLASS-ACTION OR MASS-ACTION LITIGATION/ARBITRATION AND AGREES THAT BUYER'S CLAIMS MAY NOT BE JOINED WITH THE CLAIMS OF ANY OTHER BUYER OR PROPERTY OWNER. BUYER AND SELLER AGREE, HOWEVER, THAT ANY CONTRACTOR, SUBCONTRACTOR, ARCHITECT, ENGINEER, OR SUPPLIER, THAT MAY BE PARTIALLY RESPONSIBLE FOR ANY CLAIMS BROUGHT BY BUYER, MAY BE INCLUDED AT SELLER'S CHOICE AS THIRD PARTIES IN ANY ARBITRATION. THE PARTY BRINGING THE CLAIM (THE "CLAIMANT") SHALL BE RESPONSIBLE FOR FILING THE "DEMAND" AS REQUIRED BY THE AMERICAN ARBITRATION ASSOCIATION. BUYER AGREES THAT BUYER MAY NOT INITIATE ANY ARBITRATION PROCEEDING FOR ANY CLAIM(S) UNLESS AND UNTIL BUYER HAS FIRST GIVEN SELLER SPECIFIC WRITTEN NOTICE OF EACH CLAIM, AND HAS GIVEN SELLER A REASONABLE OPPORTUNITY OF NOT LESS THAN NINETY (90) DAYS AFTER SUCH NOTICE TO CURE ANY ALLEGED DEFAULT OR DEFECT, INCLUDING WITHOUT LIMITATION REPAIR OF THE PROPERTY IN ACCORDANCE WITH THE TERMS OF THE LIMITED WARRANTY REFERRED TO HEREIN. THE PROVISIONS OF THIS ARTICLE SHALL BE GOVERNED BY THE PROVISIONS OF THE FEDERAL ARBITRATION ACT, 9 U.S.C. §1, ET. SEQ. AND SHALL SURVIVE CLOSING. IF THE PROVISIONS OF THIS ARTICLE ARE IN CONFLICT WITH ANY EXISTING MEDIATION, ARBITRATION OR OTHER DISPUTE RESOLUTION PROVISIONS OF ANY CC&R'S (AS INITIALLY RECORDED AND AS AMENDED BY ANY AMENDMENTS APPROVED IN WRITING BY SELLER), THE TERMS OF THIS AGREEMENT SHALL CONTROL. EACH PARTY AGREES THAT IT WILL BE RESPONSIBLE FOR ITS OWN ATTORNEYS' FEES IN ANY ARBITRATION. THE PARTIES HEREBY WAIVE THE RIGHT TO RECOVERY LEGAL FEES AND COSTS EXCEPT AS AGREED TO HEREIN. NEITHER PARTY SHALL SEEK OR BE ENTITLED TO AN AWARD OF ATTORNEYS' FEES FROM THE OTHER PARTY. ANY CLAIMS BUYER MAY HAVE AGAINST SELLER MUST BE BROUGHT WITHIN ONE YEAR OF THE DATE OF CLOSE OF ESCROW. THIS TIME LIMITATION APPLIES TO CLAIMS MADE UNDER THE LIMITED WARRANTY AND TO ANY AND ALL OTHER CLAIMS, INCLUDING, BUT NOT LIMITED TO, CLAIMS BASED IN CONTRACT, TORT, OR EQUITY.

## **18.5 Seller's Repurchase Right After Closing.**

**18.5.1 Seller's Option to Repurchase.** If following the Closing Buyer directly or indirectly commences, initiates or institutes any Legal Proceeding (as defined below) against Seller or any affiliate, contractor or subcontractor of Seller with respect to the Property or this Agreement, including, without limitation, any actual or alleged construction defects or deficiencies with respect to the Property, Seller shall have the right and option (but not the obligation), in Seller's sole discretion, to repurchase the Property from Buyer for an amount equal to the sum of: (a) the Purchase Price; (b) closing costs incurred by Buyer in

connection with its purchase of the Property from Seller under this Agreement; (c) Buyer's out of pocket costs for any documented improvements made to the House by third-party contractors or decorators after the Closing that add ascertainable value to the Property; (e) Buyer's reasonable moving costs to vacate the Property not to exceed \$3,000; and (e) closing costs (up to but not exceeding \$3,000) paid by Buyer in connection with the purchase of another residential property for a purchase price not greater than the Purchase Price within 90 days after the closing of the repurchase of the Property pursuant to this Section 18.5. As used in this Agreement, "Legal Proceeding" means any action, suit, litigation, arbitration, proceeding (including any civil, criminal, administrative, regulatory, investigative or appellate proceeding), claim, complaint, deemed complaint, grievance, hearing, inquiry, audit, examination, investigation or other similar proceeding, commenced, brought, conducted or heard by or before, or otherwise involving, any court or other governmental body or any arbitrator or arbitration panel and shall include, without limitation, a complaint filed with the AROC.

**18.5.2 Closing of Repurchase.** The closing for Seller's repurchase of the Property shall occur through an escrow at a title company selected by Seller within 45 days immediately following the date Seller gives Buyer written notice of Seller's exercise of its repurchase rights. At the closing, Buyer shall reconvey title to the Property to Seller or Seller's designee by special warranty deed free and clear of all monetary liens and encumbrances placed on the Property by Buyer or with Buyer's consent or as the result of Buyer's actions. Seller shall pay all closing costs and, at Seller's expense, may obtain title insurance in connection with such repurchase. At the closing, Buyer shall deliver possession of the Property, including, without limitation, the House and other improvements, to Seller or Seller's designee in substantially the same condition as delivered to Buyer by Seller, reasonable wear and tear excepted.

**18.5.3 Satisfaction and Release.** The repurchase of the Property under this Section 18.5 shall constitute the full and final satisfaction, settlement and release by Buyer of: (a) all Legal Proceedings previously commenced or initiated by Buyer against Seller and any affiliate, contractor or subcontractor of Seller regarding the Property; and (b) all liabilities, obligations, losses, actions, claims, demands, damages, causes of action, suits, proceedings, costs and expenses of every kind or nature whatsoever of Buyer relating to the Property, including, without limitation, claims relating to Buyer's purchase of the Property from Seller, any actual or alleged defects and any other claims under this Agreement and the Construction Warranty. Within ten days immediately following the closing of the repurchase of the Property, Buyer shall execute and deliver to Seller and file, if required, a notice of dismissal with prejudice regarding and/or other documents that may be necessary or appropriate to confirm or evidence the full satisfaction and settlement of the Legal Proceedings and other matters described in (a) and (b) above.

**18.5.4 A.R.S. 32-1155.** UNDER ARIZONA REVISED STATUTES SECTIONS 32-1155, A BUYER OF A DWELLING HAS THE RIGHT TO FILE A WRITTEN COMPLAINT AGAINST THE HOMEBUILDER WITH THE ARIZONA REGISTRAR OF CONTRACTORS WITHIN TWO YEARS AFTER THE CLOSE OF ESCROW OR ACTUAL OCCUPANCY, WHICHEVER OCCURS FIRST, FOR THE COMMISSION OF AN ACT IN VIOLATION OF ARIZONA REVISED STATUTES SECTION 32-1154, SUBSECTION A. THE REGISTRAR OF CONTRACTORS PHONE NUMBER IS 602-542-1525 AND ITS WEBSITE CAN BE FOUND AT [WWW.AZROC.GOV](http://WWW.AZROC.GOV).

## 19. GENERAL.

- 19.1 Entire Agreement.** This Agreement and the documents to be executed in accordance with this Agreement constitute the entire agreement between Seller and Buyer with respect to the Property and shall not be modified or amended except in a written document signed by Seller and Buyer. Any prior agreements or understandings between Seller and Buyer concerning the Property are superseded and replaced by this Agreement and are hereby rendered null and void.
- 19.2 Governing Law; Venue.** This Agreement and any controversy arising out of or relating to this Agreement shall be governed by and construed in accordance with the laws of the State of Arizona, without regard to conflict of law principles that would result in the application of any law other than the law of the State of Arizona. Seller and Buyer hereby irrevocably submit to the process, jurisdiction, and venue of the courts of the State of Arizona Superior Court in Maricopa County and Pinal County and to the process for purposes of suit, action or other proceedings arising out of or relating to this Agreement.
- 19.2 Time.** Buyer and Seller expressly and specifically agree time is of the essence of this Agreement and all provisions, obligations and conditions hereof. All time periods set forth herein in terms of "days" refer to calendar days. Whenever notice must be given, documents delivered or an act done under this Agreement on a day that is not a Business Day, the notice may be given, document delivered or act done on the next following day that is a Business Day. As used in this Agreement, "Business Day" shall mean a day other than a Saturday, Sunday or a day observed as a legal holiday by the United States government; the State of Arizona; Maricopa County, Arizona; or Escrow Agent.
- 19.3 No Other Warranties or Agreements.** Except as otherwise specifically provided in this Agreement or in the additional documents to be executed under this Agreement, Seller has not made any representations, warranties or agreements as to any matters concerning the Property or otherwise. No agreements, warranties or representations not expressly contained in this Agreement and in the additional documents to be executed under this Agreement shall bind either Seller or Buyer.
- 19.4 Waiver.** The waiver by any party hereto of any right granted to it hereunder shall not be deemed to be a waiver of any other right granted hereunder. Nor shall the same be deemed to be a waiver of a subsequent right obtained by reason of the continuation of any matter previously waived.
- 19.5 Survival.** All the covenants and agreements set forth in this Agreement shall survive the Closing and shall not merge into any deed, assignment or other instrument executed or delivered pursuant hereto. If this Agreement is terminated pursuant to its terms, the parties shall have no further liabilities or obligations under this Agreement, except any other provisions of this Agreement that specifically provide that they survive a termination of this Agreement.
- 19.6 Construction.** This Agreement is the result of negotiations between the parties of roughly equivalent bargaining power, neither of whom has acted under any duress or compulsion, whether legal, economic or otherwise. Accordingly, the terms and provisions hereof shall be construed in accordance with their usual and customary meanings. Seller and Buyer hereby waive the application of any rule of law which otherwise might be applicable to the construction of this Agreement that ambiguous or conflicting terms or provisions should be construed against the Party who (or whose attorney) prepared the executed Agreement or any earlier draft of the same.
- 19.7 Interpretation.** If there is any specific and direct conflict between, or any ambiguity resulting from, the terms and provisions of this Agreement and the terms and provisions of any document, instrument or other agreement executed in connection herewith or in furtherance hereof, including any exhibits hereto, the same shall be consistently interpreted in such manner as to give effect to the general purposes and intention as expressed in this Agreement, which shall be deemed to prevail and control. All references to "Sections" shall be to the numbered sections of this Agreement unless specifically stated otherwise. In this Agreement (unless the context requires otherwise), the masculine, feminine and neuter genders and the singular and the plural shall be deemed to





**19.14 Execution.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. The partially executed signature page of any counterpart of this Agreement may be attached to any other partially executed counterpart of this Agreement without impairing the legal effect of the signature(s) on such signature page. Fax copies and electronically scanned copies of the executed signature pages of this Agreement and digital signatures to this Agreement processed through DocuSign ([www.docusign.com](http://www.docusign.com)) or another reputable online electronic signature service shall be effective and binding upon and accepted by Seller, Buyer, Escrow Agent and Brokers as original signatures. This Agreement shall be binding and enforceable when signed by Seller and Buyer below regardless of whether Seller and Buyer have initialed the spaces provided in this Agreement for the initials of Seller or Buyer. The absence of Seller’s or Buyer’s initials in any or all the spaces provided for initials shall not have any effect on the enforceability of this Agreement or the provisions by which such initial spaces are located.

**The Developer shall give a prospective purchaser a copy of the PUBLIC REPORT and provide them an opportunity to read and review it before the prospective purchaser signs this document**

**BUYER:** \_\_\_\_\_

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

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

**SELLER:** NEXSTAR HOMES, LLC,  
an Arizona limited liability company

By: \_\_\_\_\_  
Dallin S. Simonton, Authorized Agent

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

**BUYER:** \_\_\_\_\_

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

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

**ACCEPTANCE BY ESCROW AGENT**

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The undersigned Escrow Agent: (a) accepts the Escrow created by the foregoing Real Estate Purchase Agreement (the "Agreement"); (b) agrees to act in accordance with the terms thereof; (c) agrees to be the person responsible for closing the transaction within the meaning of Section 6045(e)(2)(A) of the Internal Revenue Code of 1986 (the "Code"), and to file all necessary information reports, returns, and statements (collectively, "Reports") regarding the transaction required by the Code, and promptly, upon the filing thereof, transmit copies thereof to Seller and Buyer; (d) comply with the provisions of Executive Order 13224 regarding the Specially Designated Nationals and Blocked Persons list; and (e) agrees to indemnify and hold harmless Seller, Buyer, and their respective attorneys and Brokers from and against all claims, costs, liabilities, penalties, or expenses resulting from Escrow Agent's failure to file the Reports and otherwise comply with the terms of this paragraph.

**ESCROW AGENT:**

FIRST AMERICAN TITLE INSURANCE AGENCY, INC.,  
an Arizona corporation

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

Its: \_\_\_\_\_

Escrow No.: \_\_\_\_\_

Date of Opening of Escrow: \_\_\_\_\_

**AGREEMENT OF BROKERS**

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The undersigned Brokers hereby agree to be bound by the provisions of Section 16.1 in the forgoing Real Estate Purchase and Sale Agreement.

**SELLER'S BROKER:**

**REALTY ONE GROUP, INC.,**  
a Nevada corporation

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

Its: \_\_\_\_\_

**BUYER'S BROKER:**

\_\_\_\_\_

\_\_\_\_\_

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

Its: \_\_\_\_\_

**EXHIBIT A**

Legal Description of Real Property

[Attached]

**EXHIBIT B**

Plans and Specifications