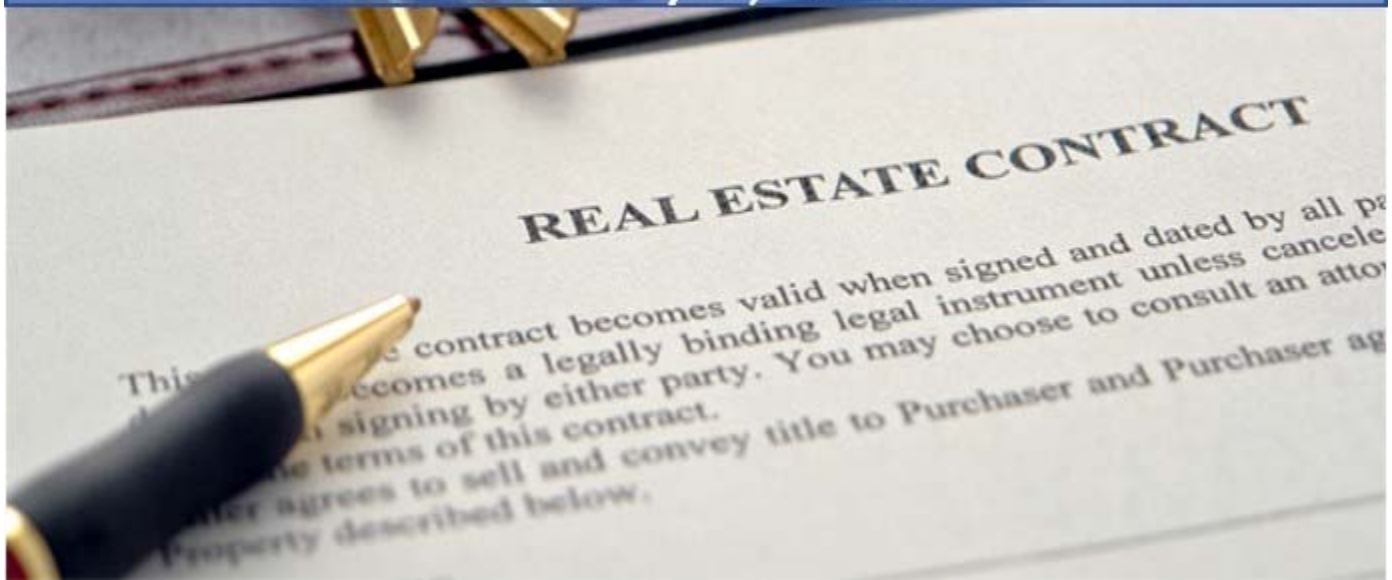


# Contract Updates January 8, 2018



## Keith Barrett



Presented here are the January 2018 Contract/Form changes:

### NEW HOME CONSTRUCTION CONTRACT

*Background:* This new contract form was created to provide a legal document appropriate for the structure of transactions involving the lot acquisition and construction of a new home. Urban sprawl and limited land in certain areas create situations in which buyers who are looking to live in those areas must acquire lots (with or without homes on them) with plans to build new homes. In many cases, the smaller builders involved in these transactions do not have their own contracts and accept contracts submitted by buyer agents that do not properly account for some of the unique structures these deals present. The foundation of this new form is the Virginia Residential Sales Contract. The following provisions have been added or substantively modified:

1. *Preamble:* Identifies Seller as owner of property and licensed Virginia contractor.
2. *Provision 2/Improvements, Options, and /or Equipment Included:* Speaks to Seller obligation to construct all Improvements in compliance with plans and specifications which should be attached to Contract. Also requires inclusion of any and all standard features and options and an active radon remediation system. Also speaks to how subsequent changes to plans will be handled (Changes and Additional Work request paragraph).
3. *Provision 3/Price and Specified Financing:* modified to include Lot Price, Base Price, Option Selections, First Deposit and Additional Deposits. Paragraph B (First Deed of Trust), an option for Construction Addendum is included.
4. *Provision 5/Utilities, Water, Sewage, etc.:* Other as provided in plans, Seller does not represent the location of utility transformers/pedestals because this is generally determined by utility company.
5. *Provision 6/Construction:* New paragraph that identifies timing for permitting/approvals, start of construction, Substantial Completion and the fact that delays caused by certain events are beyond Seller's control. If the project is not substantially complete within 24 months of ratification, Buyer may void. Finally, Seller will name Settlement Agent's title insurance underwriter as Mechanic's Lien agent on all permits.
6. *Provision 8/Occupancy:* Occupancy occurs only after Buyer receives Notice of Substantial Completion. Also, delivery of property at Settlement and Completion of Project are not severable.

7. *Provision 10/Model Home*: Illustrative purposes only and does not create a contract or commitment to deliver property in exact accordance with model.
8. *Provision 12/Changes and Additional Work Requests*: First paragraph allows changes to project because of unforeseen site conditions or unavailability of materials as long as certain conditions are met.  
Second paragraph allows changes to certain things (water flow, grading, utilities, plantings, etc.) in Seller's good faith judgment as required by site conditions. This paragraph also identifies that the driveway shall not be a shared driveway.
9. *Provision 13/Insulation*: As required by federal law, this provision identifies characteristics and location of insulation.
10. *Provision 14/Warranty*: Two parts, (A) Express Warranty [Free from structural defects, constructed in workmanlike manner and fit for habitation] and (B) Third Party Homeowners Warranty [Seller shall pay for a new home warranty for at least 10 years].
11. *Provision 15/Risk of Loss*: Discusses loss burden and responsibility for insurance for both buyer (hazard insurance at or after settlement) and seller (Builder's Risk and Liability Policy after settlement).
12. *Provision 25/Access to Property*: Release of liability and indemnification of seller in the event buyer enters property after settlement and prior to project completion date without seller's permission or as outlined in "Inspections" paragraph.
13. *Provision 26/Inspections*: This provision is separated into 4 parts.
  - a. Progress Inspection: Identifies benchmarks permitting inspections to ensure improvements are being done in accordance with the Contract.
  - b. Buyer Private Final Inspection: An optional inspection for buyer. Pay careful attention to timing procedures and requirements. Buyer must deliver Private Final Inspection Report to Seller and any agreed upon items shall be included in Seller's Final Inspection Report.
  - c. Seller Final Inspection: Scheduling will depend on whether Buyer opts for a Final Inspection. The agreed upon final inspection report is buyer's assurance that any incomplete work will be done as promptly as weather and work permit. Buyer and Seller may combine their inspections to occur at same time.
  - d. Walkthrough Inspection: Buyer may conduct inspection within 2 days prior to Project Completion Date.
14. *Provision 34/Contract Subordinate to Construction Loan*. Subordinates contract to any current or future construction loan liens.
15. *Provision 37/Definitions*: Introduces new definitions for terms used specific to this contract.  
- "Project" means Property and all Improvements including any changes of additional work requests.

-“Substantially Complete” or “Substantial Completion” means that a certificate of occupancy has been issued and the Project is fit for habitation and functional for ordinary dwelling use . . .

-“Notice of Substantial Completion” means written notification from seller to buyer that the Project is Substantially Complete.

-“Mechanics Lien Agent” is a representative of a title insurance company, lender’s agent or attorney who collects notices from sub-contractors and service/material providers associated with the Project.

-“Project Completion Date” is 15 business days from delivery of Notice of Substantial Completion or as otherwise mutually agreed. (15 business days was chosen to accommodate the inspections as provided in provision 26.).

16. *Provision 45/Additions*: Options addendum added.

17. *Provision 47/Cancellation Rights*: See Virginia Home Solicitation Sales Act which provides a buyer a right of cancellation for what is defined as a “home solicitation sale.”

18. *Provision 48/Recovery Fund*: Notification to buyer of existence of the Virginia Contractor Transaction Recovery Fund, which provides relief to eligible consumers who have incurred losses through the improper or dishonest conduct of a licensed residential contractor.

### **Construction Financing and Appraisal Contingencies Addendum**

-The substance of this form, particularly how the financing and appraisal contingencies work is the same as the current financing contingency addenda. Some minor adjustments were made, including:

1. Adding a paragraph identifying the type of financing rather than having separate forms for each financing type.

2. Adjusting the appraisal contingency paragraph to include all contingency options depending of which type of financing is selected.

3. Paragraph 5/Further Assurances: This paragraph was added to ensure that seller and buyer fully cooperate with the lender providing the financing because there is generally more detail and paperwork involved in construction loans.

### **Options Addendum**

This new form is provided for use with the New Home Construction Contract for the parties to identify in writing what options are included in the base price and what options are included as additional items.

### **Exclusive Right to Represent Buyer Agreement**

1. Provision 4/Term and Termination: This paragraph clarifies that any termination fee paid to broker is in addition to any other fees buyer may owe – see Compensation paragraph – 8.
2. Provision 5/Broker's Duties: Language modified at end of provision to clarify that the existence, terms or conditions of offers are not confidential unless required by a written agreement between the parties.
3. Provision 6/Buyer's Duties: Separated from provision 5 to highlight the parties' duties. Language added (a) advising buyer not to take, post, publish or display photo or video recording of any property without first obtaining seller's prior written consent, (b) providing hold harmless statement for the benefit of the broker and (c) whereby buyer acknowledges that the seller may have video/audio recording system in the property even if prior disclosure not made.
4. Provision 8(B)(1)/Compensation: This provision was modified to clarify that in the event of expiration or early termination of the Agreement, broker's fee is earned in the event buyer enters into a contract to acquire any real property of the type discussed in the Purpose paragraph.
5. Provision 14/Disclaimers: Headings were added for the disclaimers and a new disclaimer was added regarding wire fraud.

### **Pre- and Post-Settlement Occupancy Agreement**

Both forms were modified to harmonize with the language of the Property Maintenance and Condition paragraph in the standard contract regarding delivery of keys, key fobs, codes and digital keys, if any, as well as noting specific systems of the property.

### **Well and Septic Contingency and Exclusive Right to Sell Listing Agreement**

Both forms only had administrative changes to correct a wrong paragraph reference (Well/Septic) and renumbering a paragraph (Listing Agreement).

**NEW HOME CONSTRUCTION CONTRACT**  
**(To Be Used for Purchase of Lot and New Construction)**

SEEK LEGAL ADVICE BEFORE EXECUTING THIS DOCUMENT

This NEW HOME SALES CONTRACT ("Contract") is made on \_\_\_\_\_  
 ("Date of Offer") between \_\_\_\_\_  
 \_\_\_\_ ("Buyer") and \_\_\_\_\_  
 \_\_\_\_ ("Seller"), owner of Property (identified below), and who is a licensed Virginia contractor  
 (license number \_\_\_\_\_, class \_\_\_\_\_, classification/specialty \_\_\_\_\_) in the business  
 of building and/or selling new dwellings, with an address of \_\_\_\_\_

Buyer and Seller hereby confirm and acknowledge by their initials and signatures herein that by  
 prior disclosure in this real estate transaction \_\_\_\_\_  
 ("Listing Brokerage") represents Seller, and \_\_\_\_\_  
 ("Cooperating Brokerage") represents  Buyer or  Seller. Listing Brokerage and Cooperating  
 Brokerage are collectively referred to as Broker. (If the brokerage firm is acting as a dual  
 representative for both Seller and Buyer, then the appropriate disclosure form is attached to and  
 made a part of this Contract.) In consideration of the mutual promises and covenants set forth  
 below, and other good and valuable consideration the receipt and sufficiency of which is  
 acknowledged, the parties agree as follows:

- 1. REAL PROPERTY** Buyer agrees to buy and Seller agrees to sell the land and all  
 Improvements to be constructed and/or located in the County/City/Town of \_\_\_\_\_  
 \_\_\_\_\_ Virginia and described as follows: ("Property").  
 TAX Map/ID # \_\_\_\_\_ County/Municipality \_\_\_\_\_  
 Section \_\_\_\_\_ Subdivision \_\_\_\_\_  
 Model Name: \_\_\_\_\_ Phase: \_\_\_\_\_  
 Legal Description: Lot(s) \_\_\_\_\_  
 Deed Book/Liber # \_\_\_\_\_ Page/Folio # \_\_\_\_\_  
 Street Address \_\_\_\_\_  
 Unit # \_\_\_\_\_ City \_\_\_\_\_ VA ZIP Code \_\_\_\_\_

- 2. IMPROVEMENTS, OPTIONS, AND/OR EQUIPMENT INCLUDED** (collectively, the  
 "Improvements"). The Seller agrees to construct and/or install all Improvements in  
 compliance with the drawings, specifications and plans created by the Seller, which are  
 attached hereto (collectively, the "Plans"), including providing and installing all standard  
 features and options listed on a separate addendum (See Option Addendum attached). Seller  
 shall include an active radon remediation system as part of the Plans. Subsequent changes to  
 the Plans or to the Options Addendum will be handled as stated in the CHANGES AND  
 ADDITIONAL WORK REQUESTS Paragraph of this Contract.

**3. PRICE AND SPECIFIED FINANCING**

**A. Price.**

Lot Price:	\$ _____
Base Price:	\$ _____
Option Selections (see above):	\$ _____
<b>TOTAL PURCHASE PRICE:</b>	<b>\$ _____</b>

First Deposit This Date: Check # \_\_\_\_\_ \$ \_\_\_\_\_  
 Additional Deposit due by: \_\_\_\_\_ \$ \_\_\_\_\_  
 Additional Deposit due by: \_\_\_\_\_ \$ \_\_\_\_\_  
**TOTAL DEPOSIT:** \$ \_\_\_\_\_  
 Loan Amount (See below) \$ \_\_\_\_\_ or % \_\_\_\_\_

**DOWN PAYMENT:** \$ \_\_\_\_\_ or % \_\_\_\_\_

**B. First Deed of Trust.** Buyer will obtain a  **Fixed** OR an  **Adjustable** rate First Deed of Trust loan amortized over \_\_\_\_\_ years. The interest rate for this loan is at an (initial) interest rate not to exceed \_\_\_\_\_% per year of the following type:

- USDA** See Addendum attached       **Construction** See Addendum attached  
 **VA** See Addendum attached       **This Contract is not contingent on financing.**

**4. DEPOSIT** Buyer's deposits stated in the PRICE AND SPECIFIED FINANCING Paragraph ("Deposit") shall be held by \_\_\_\_\_ ("Escrow Agent"). Buyer  has delivered the First Deposit OR  will deliver the First Deposit to Escrow Agent by \_\_\_\_\_ days after Date of Ratification. All additional deposits shall be delivered to the Escrow Agent as outlined in the PRICE AND SPECIFIED FINANCING Paragraph.

If the Escrow Agent is a Virginia Real Estate Board ("VREB") licensee, the parties direct the Escrow Agent to place the Deposit in an escrow account by the end of the 5<sup>th</sup> business banking day following receipt or following the Date of Ratification whichever is later. If the Escrow Agent is not a VREB licensee, Deposit will be placed in an escrow account of Escrow Agent after Date of Ratification in conformance with the laws and regulations of the appropriate jurisdiction and/or, if VA financing applies, as required by Title 38 of the U.S. Code. This account may be interest bearing and all parties waive any claim to interest resulting from Deposit. Deposit will be held in escrow until: (i) Credited toward the Sales Price at Settlement; (ii) All parties have agreed in writing as to its disposition; (iii) A court of competent jurisdiction orders disbursement and all appeal periods have expired; or, (iv) Disposed of in any other manner authorized by law. Seller and Buyer agree that Escrow Agent will have no liability to any party on account of disbursement of Deposit or on account of failure to disburse Deposit, except in the event of Escrow Agent's gross negligence or willful misconduct.

**5. UTILITIES WATER, SEWAGE, HEATING AND CENTRAL AIR CONDITIONING**  
 Except as otherwise depicted in the Plans and any attachment or addendum hereto, Seller makes no representations as to the location of utility transformers and utility pedestals on Property, as the location of these facilities is determined solely by the utility companies and not by Seller, but Seller shall meet all such utility installers and offer preferred locations which minimize the disruption of the intended use of Property and take into account the aesthetics of the Project. (Check all terms that apply)

- Water Supply:  Public    Private Well    Community Well  
 Sewage Disposal:  Public    Community Septic  
                            Septic for # BR \_\_\_\_\_  Alternative Septic for # BR \_\_\_\_\_  
 Hot Water:        Gas        Elec.    Other  
 Air Conditioning:  Gas        Elec.    Heat Pump    Other    Zones # \_\_\_\_\_  
 Heating:  Gas    Elec.    Heat Pump    Other        Zones # \_\_\_\_\_



6. **CONSTRUCTION** Within 5 business days following the Date of Ratification, Seller shall seek all appropriate permits and approvals for the construction of the Improvements to complete the Project. Seller shall name the Settlement Agent's title insurance underwriter as its Mechanics Lien Agent on all permit applications and Seller shall post all permits at Property at all times and in accordance with law.

Construction will begin within \_\_\_\_\_ days after Settlement and Seller will Deliver Notice of Substantial Completion on or about \_\_\_\_\_ ("Substantial Completion Date"). Buyer is aware that delays caused by events beyond the control of Seller, such as: work stoppages, municipal approvals and permits, strikes, lockouts, weather, availability of labor, materials, craftsmen, acts of God, terrorism, and anything unanticipated and unforeseen are not included in the calculation of time estimates. Notwithstanding the above, in the event the Project is not Substantially Complete within 24 months from the Date of Ratification, then this Contract may be voidable at the sole option of the Buyer. Any such termination shall be without penalty to Buyer, and any Deposit shall be promptly returned to Buyer.

Delays caused by such events do not constitute abandonment or constitute a default on Seller's part and are not included in calculating time frames for payment or performance.

7. **SETTLEMENT** Seller and Buyer will make full settlement in accordance with the terms of this Contract ("Settlement") on, or with mutual consent before, \_\_\_\_\_ ("Settlement Date"). Buyer and Seller agree to provide in a prompt manner such documentation as lender may require to process and complete the Specified Financing.

8. **OCCUPANCY** Occupancy may occur only after Buyer has received Seller's Notice of Substantial Completion. Delivery of Property at Settlement, and completion of the Project are not severable and Seller's obligation of performance requires that the Project be Completed and delivered to the Buyer under the terms and conditions of this Contract.

9. **NOTICE TO BUYER REGARDING THE REAL ESTATE SETTLEMENT AGENTS ACT ("RESAA")** Choice of Settlement Agent: Buyer has the right to select a Settlement Agent to handle the closing of this transaction. The Settlement Agent's role in closing this transaction involves the coordination of numerous administrative and clerical functions relating to the collection of documents and the collection and disbursement of funds required to carry out the terms of the contract between the parties. If part of the purchase price is financed, Buyer's lender will instruct the Settlement Agent as to the signing and recording of loan documents and the disbursement of loan proceeds. No Settlement Agent can provide legal advice to any party to the transaction except a Settlement Agent who is engaged in the private practice of law in Virginia and who has been retained or engaged by a party to the transaction for the purpose of providing legal services to that party.

**Variation by Contract:** The provisions of the Real Estate Settlement Agents Act may not be varied by Contract, and rights conferred by this chapter may not be waived. The Seller may not require the use of a particular settlement agent as a condition of the sale of the property.

**Escrow, closing and Settlement service guidelines:** The Virginia State Bar issues guidelines to help Settlement agents avoid and prevent the unauthorized practice of law in connection with furnishing escrow, Settlement or closing services. As a party to a real estate transaction, Buyer is entitled to receive a copy of these guidelines from the



Settlement Agent, upon request, in accordance with the provisions of the Real Estate Settlement Agents Act.

Buyer selects \_\_\_\_\_ ("Settlement Agent") to conduct Settlement. Either party may retain their own legal counsel. Buyer agrees to contact Settlement Agent within 10 Days of Date of Ratification to schedule Settlement. Settlement agent shall order the title examination and, if required, a survey.

**10. DOWN PAYMENT** The balance of the down payment will be paid on or before Settlement Date by certified or cashier's check or by bank-wired funds. An assignment of funds shall not be used without prior written consent of Seller.

**11. MODEL HOME** Any model home is displayed for illustrative purposes only and such display shall not constitute a contract or commitment on the part of Seller to deliver Property purchased in exact accordance with any model home. None of the items or furnishings shown in any model home site are included in this Contract unless Seller specifically agrees in writing to deliver same as part of the Purchase Price.

**12. CHANGES AND ADDITIONAL WORK REQUESTS** Seller reserves the right to make changes to the Project at Seller's cost and expense with advance written notice to the Buyer if such changes are necessary as a result of unforeseen site conditions or the unavailability of materials specified in the Plans provided (a) such unavailability is not due, in whole or in part, to Seller's failure to timely order such material; and (b) Seller obtains Buyer's prior written approval for substitution of design finishes or materials (such as specified underlayment systems, hardware, countertops, flooring, doors, specialized siding, and all windows) which are substantially similar in quality, duration, warranty, and appearance to the unavailable design finishes or materials specified in the Plans, which approval shall not be unreasonably withheld, conditioned or delayed by Buyer.

The location of the driveways, walks and patios, grading, planting and landscaping, including the disposition of existing trees and the control of water flow, the inclusion or exclusion of retaining walls, septic fields, and other site details, including utilities, electric transformers, catch basins, cable television or telephone service boxes, and the manner in which Property is graded are subject to change in the exercise of Seller's good-faith professional judgment as required by site conditions. The driveway shall not be a shared driveway and shall permit a continuous turn entry into and exit from any garage. The parties recognize and agree that it may be necessary to adjust such items to accommodate specific field conditions, governmental requirements, and other reasonable causes.

**13. INSULATION** Insulation characteristics:

- A. Exterior walls in conditioned areas will be insulated with \_\_\_\_\_ to a thickness of \_\_\_\_\_ inches, which thickness, according to the manufacturer, will yield an R-Value of \_\_\_\_\_.
- B. Ceilings in the attic over living areas will be insulated with \_\_\_\_\_ to a thickness of \_\_\_\_\_ inches, which thickness, according to the manufacturer, will yield an R-value of \_\_\_\_\_.
- C. Basement walls (subterranean) will be insulated with \_\_\_\_\_ to a thickness of \_\_\_\_\_ inches, which thickness, according to the manufacturer, will yield an R-value of \_\_\_\_\_.

#### 14. WARRANTY

- A. Express Warranty.** In addition to any other warranty implied by law, the Seller warrants that, as of Occupancy, the Improvements shall be (i) free from structural defects, so as to pass without objection in the trade; (ii) constructed in a workmanlike manner, so as to pass without objection in the trade; and (iii) fit for habitation. Seller shall assign all manufacturer warranties to Buyer on Project Completion Date. Unless otherwise agreed to in writing, no other warranty is provided. Buyer may wish to pursue obtaining a separate warranty.
- B. Third Party Homeowners Warranty.** Seller shall provide Buyer at Seller's cost a new home warranty of at least 10 years issued by a nationally recognized third-party homeowner's warranty insurance company. Buyer acknowledges that before signing this Contract, Buyer has received and reviewed information concerning the terms and conditions of such third-party homeowner's warranty insurance. Seller shall pay the premium associated with such insurance, thereafter Buyer's rights and responsibilities under such policy of insurance shall be governed and controlled by the terms thereof.
- 15. RISK OF LOSS** The risk of damage or loss to Property by fire, act of God, or other casualty remains with Seller until Settlement Date. In the event of substantial loss or damage to Property before Settlement Date, Buyer shall have the option of either (a) terminating this Contract and recovering Deposit or (b) affirming this Contract, in which event Seller shall assign to Buyer all of Seller's rights under any policy or policies of insurance applicable to Property. After Settlement, Buyer shall be responsible for purchasing and maintaining hazard and liability insurance and, at Buyer's option, may maintain such insurance as will protect against claims which may arise from operations under the Contract. After Settlement, Seller shall maintain a Builder's Risk and Liability Policy until Project Completion Date.
- 16. TITLE** The title report and survey, if required, will be ordered promptly and, if not available on Settlement Date, then Settlement may be delayed for up to 10 business days to obtain the title report and survey, after which this Contract, at the option of Seller, may be terminated and Deposit will be refunded in full to Buyer according to the terms of the DEPOSIT paragraph. Fee simple title to Property, and everything that conveys with it, will be sold free of liens except for any loans assumed by Buyer.

Seller will convey title which is good, marketable, and insurable by a licensed title insurance company with no additional risk premium. If action is required to perfect the title, such action must be taken promptly by Seller at Seller's expense. Title may be subject to commonly acceptable easements, covenants, conditions and restrictions of record, if any, as of Settlement Date. If title is not good, marketable, and insurable by a licensed title insurance company with no additional risk premium on Settlement Date, Buyer may at Buyer's option either (a) declare the Contract void in writing or (b) pursue all available legal and equitable remedies. Nothing herein shall prohibit the parties from mutually agreeing to extend Settlement Date under terms acceptable by both parties.

Seller will convey Property by general warranty deed with English covenants of title ("Deed"). The manner of taking title may have significant legal and tax consequences. Buyer is advised to seek the appropriate professional advice concerning the manner of taking title. At Settlement, Seller shall deliver (a) the Deed; (b) a mechanics lien affidavit acceptable to Buyer's title insurance company as to parties in possession and mechanics liens; (c) such certificates or contracts as may be required by state and federal authorities for tax and residency purposes; and (d) such affidavits, lien waivers, tax certifications, and other

documents as may be required by the lender, title insurance company, Settlement Agent, or government authority. Seller authorizes Settlement Agent to obtain pay-off or assumption information from any existing lenders. Unless otherwise agreed to in writing, Seller will pay any special assessments and will comply with all orders or notices of violations of any county or local authority, homeowners' or property owners' association, or actions in any court on account thereof, against or affecting Property on Settlement Date. Broker is hereby expressly released from all liability for damages by reason of any defect in the title.

Buyer may purchase title insurance at either "standard" or "enhanced" coverage and rates. For purposes of owner's policy premium rate disclosure by Buyer's lender(s), if any, Buyer and Seller require that enhanced rates be quoted by Buyer's lender(s). Buyer understands that nothing herein obligates Buyer to obtain any owner's title insurance coverage at any time, including at Settlement, and that the availability of enhanced coverage is subject to underwriting criteria of the title insurer.

**17. DELIVERY** This paragraph specifies the general delivery requirements under this Contract. Delivery ("Delivery", "delivery", or "delivered") methods may include hand-carried, sent by professional courier service, by United States mail, or by facsimile or email transmission. The parties agree that Delivery will be deemed to have occurred: on the day delivered by hand, on the day delivered by a professional courier service (including overnight delivery service) or by United States mail, return receipt requested, or on the day sent by facsimile or email transmission, either of which produces a tangible record of the transmission.

Deliveries will be sent to the following:

A. Addressed to Seller by  United States mail, hand delivery or courier service OR  fax OR  email (check all that apply):

To Seller: \_\_\_\_\_

B. Addressed to Buyer by  United States mail, hand delivery or courier service OR  fax OR  email (check all that apply):

To Buyer: \_\_\_\_\_

No party to this Contract will refuse Delivery in order to delay or extend any deadline established in the Contract.

**18. VIRGINIA RESIDENTIAL PROPERTY DISCLOSURE ACT** The Virginia Residential Property Disclosure Act requires Seller to deliver a disclosure statement prior to the acceptance of this Contract unless the transfer of Property is exempt. The law requires Seller, on a disclosure statement provided by the Real Estate Board, to state that Seller makes no representations or warranties concerning the physical condition of Property and to sell Property "as is", except as otherwise provided in this Contract.

If the disclosure statement is delivered to Buyer after Date of Ratification, Buyer's sole remedy shall be to terminate this Contract at or prior to the earliest of (a) 3 days after delivery of the disclosure statement in person or by electronic delivery; (b) 5 days after the postmark if the disclosure statement is sent by United States mail, postage prepaid, and properly addressed to Buyer; (c) settlement upon purchase of Property; (d) occupancy of Property by Buyer; (e) Buyer making written application to a lender for a mortgage loan where such application contains a disclosure that the right of termination shall end upon the application for the mortgage loan; or (f) the execution by Buyer after receiving the disclosure statement of a written waiver of Buyer's right of termination separate from this Contract.

Written Notice of termination may be (a) hand delivered; (b) sent by United States mail, postage prepaid, provided that Buyer retains sufficient proof of mailing, which may be either a United States postal certificate of mailing or a certificate of service confirming that such mailing was prepared by Buyer; (c) sent by electronic means to the facsimile number or electronic mailing address provided by Seller in the DELIVERY paragraph, provided that Buyer retains sufficient proof of the electronic delivery, which may be an electronic receipt of delivery, a confirmation that the notice was sent by facsimile, or a certificate of service; (d) overnight delivery using a commercial service or the United States Postal Service.

Any such termination shall be without penalty to Buyer, and any deposit shall be promptly returned to Buyer.

- 19. VIRGINIA PROPERTY OWNERS' ASSOCIATION ACT** Seller represents that Property  is OR  is not located within a development that is subject to the Virginia Property Owners' Association Act ("POA Act" or "Act" solely in this Paragraph). Section 55-509.4(A) requires the following contract language:

Subject to the provisions of subsection A of § 55-509.4, a person selling a lot shall disclose in the contract that (i) the lot is located within a development that is subject to the Virginia Property Owners' Association Act (§ 55-508 et seq.); (ii) the Act requires the seller to obtain from the property owners' association an association disclosure packet and provide it to the Buyer; (iii) the Buyer may cancel the contract within three (3) days after receiving the association disclosure packet or being notified that the association disclosure packet will not be available; (iv) if the Buyer has received the association disclosure packet, the Buyer has a right to request an update of such disclosure packet in accordance with subsection H of § 55-509.6 or subsection C of § 55-509.7, as appropriate; and (v) the right to receive the association disclosure packet and the right to cancel the contract are waived conclusively if not exercised before settlement.

- 20. FIRPTA – WITHHOLDING TAXES FOR FOREIGN SELLER** Seller is a US citizen or a Lawful Permanent Resident as defined by the Immigration and Nationality Act (Green Card Holder).  Yes OR  No (If No, FIRPTA Addendum Attached).

- 21. FINANCING APPLICATION** If this Contract is contingent on financing, Buyer will make written application for the Specified Financing and any lender-required property insurance no later than 7 Days after the Date of Ratification. Buyer grants permission for Cooperating Brokerage and the lender to disclose to Listing Brokerage and Seller general information available about the progress of the loan application and loan approval process. If Buyer fails to settle except due to any Default by Seller, then the provisions of the DEFAULT paragraph shall apply. Seller agrees to comply with reasonable lender requirements.

- 22. ALTERNATIVE FINANCING** Alternative Financing means any change to the financing terms provided in the PRICE AND SPECIFIED FINANCING paragraph, including but not limited to, Down Payment amount, financing, including amount financed, loan type (i.e., USDA, Construction, or other), term of any loan, interest rate, or loan program (i.e., assumption, fixed or adjustable rate).

Buyer may substitute Alternative Financing for the Specified Financing. If Buyer wishes to retain the protection of a financing contingency, Buyer shall execute a new financing addendum (if applicable) and obtain Seller's written consent. Should Buyer pursue Alternative Financing without Seller's written consent, Buyer shall waive the protection of any financing contingency.

Buyer may substitute alternative financing and/or an alternative lender for Specified Financing provided: (a) Buyer is qualified for alternative financing; (b) there is no additional expense to Seller; (c) Settlement Date is not delayed; and (d) if Buyer fails to settle except due to any Default by Seller, then the provisions of the DEFAULT paragraph shall apply.

**23. BUYER'S REPRESENTATIONS** Buyer  will OR  will not occupy Property as Buyer's principal residence. Unless specified in a written contingency, neither this Contract nor the financing is dependent or contingent on the sale and settlement or lease of other real property. The Cooperating Brokerage  is OR  is not authorized to disclose to Listing Brokerage, Seller, and any lender the appropriate financial or credit information provided to Cooperating Brokerage by Buyer. Buyer acknowledges that Seller is relying upon all of Buyer's representations, including without limitation, the accuracy of financial or credit information given to Seller, Broker, or the lender by Buyer.

**24. TARGET LEAD-BASED PAINT HOUSING** Seller represents that any residential dwellings or parts of any residential dwellings at Property  were OR  were not constructed before 1978. If the dwellings were constructed before 1978, then, unless exempt under 42 U.S.C. 4852d, Property is considered "target housing" under the statute and a copy of the "Sale: Disclosure and Acknowledgment of Information on Lead-Based Paint and/or Lead-Based Paint Hazards" has been attached and made a part of the Contract as required by law.

**25. ACCESS TO PROPERTY**

After Settlement and prior to Project Completion Date, Buyer is not authorized to enter Property, except with the express consent of Seller or as outlined below. In the event that Buyer enters Property prior to Project Completion Date, Buyer agrees and understands that Buyer is doing so without permission of Seller and at Buyer's own risk. Buyer releases and agrees to indemnify and hold Seller harmless from and against any and all claims for damage(s) to Buyer's person or property and to any person or property accompanying Buyer.

**26. INSPECTIONS**

**A. Progress Inspections.** For each Benchmark (defined below), Buyer and/or Buyer's representative shall have the right to conduct progress inspections of Property for purposes of assuring that the Seller is constructing the Improvements in accordance with this Contract. Seller shall Deliver Notice to Buyer of each Benchmark no less than 2 Days in advance of the Benchmark. The following times shall be a "Benchmark" permitting such inspections:

- a) After foundation cure and waterproofing but prior to backfilling;
- b) After rough-ins for electrical and plumbing (where Buyer can select locations not already identified in the Plans for finishes and outlets) and prior to close-in; and
- c) Prior to Substantial Completion, as part of the Inspection processes, identified herein

Buyer shall Deliver Notice to Seller of any discrepancy with the Plans within 2 Days following the Benchmark. Prior to Project Completion Date, Seller shall Deliver written assurance that the discrepancies have been cured and such assurance shall survive Project Completion Date and is not part of any disclaimer of warranty.

**B. Buyer Private Final Inspection.**

1. Buyer and/or Buyer's representative will have the right to conduct a Private Final Inspection. If Buyer wishes to conduct a Private Final Inspection, Buyer must Deliver to Seller Notice of Private Final Inspection with the date and time of such inspection no more than 2 business days after receipt of the Notice of Substantial Completion. The Buyer Final Inspection shall occur no less than 2 business days after the Notice of Private Final Inspection is Delivered to Seller but no later than 5 business days after Buyer's receipt of the Notice of Substantial Completion.
2. Buyer must Deliver a copy of the Private Final Inspection Report to Seller within 2 business days of the Inspection. Seller will include the agreed upon items from the Private Inspection Report, if any, on the Seller's Final Inspection Report, but reserves the right to deny items. Any items from the Private Final Inspection Report that are denied by Seller will be explained in writing and Delivered to Buyer in a separate report prior to Project Completion Date.

### C. Seller Final Inspection

1. Scheduling if Buyer Conducts Private Final Inspection. If Buyer conducts a Private Final Inspection, as defined above, then Seller will schedule the Seller's Final Inspection within 2 business days of receipt of Buyer's Notice of Private Inspection. The Seller Final Inspection will be set for a time no sooner than 1 business day, and no later than 2 business days after the Buyer Private Final Inspection.
2. Scheduling if Buyer Does Not Conduct Private Final Inspection. If Buyer elects not to conduct a Private Final Inspection, then the date and time of the Seller Final Inspection to be set by Seller no sooner than 2 business days after Seller's Delivery to Purchaser of Notice of Substantial Completion.
3. At a date and time scheduled pursuant to 1 or 2 above, Buyer and Seller shall, during normal business hours, inspect Property. Seller shall prepare a Seller Final Inspection Report, which includes an itemized list which Buyer shall sign at the time of this inspection. The Seller Final Inspection Report is Buyer's assurance that any incomplete work duly noted thereon will be done as promptly as weather and work load permit. It is further understood and agreed that no funds shall be held in escrow in the event that any of the items on the Seller's Final Inspection Report are not completed at Project Completion Date. Items noted on Seller's Final Inspection Report will be corrected only if Buyers are entitled to the items under this Contract or the warranty. Nothing contained herein shall prevent the parties from mutually agreeing to combine the Buyer Private Final Inspection and the Seller Final Inspection to be concurrently conducted. The provisions of this paragraph shall survive Project Completion Date.

**D. Walkthrough Inspection** Buyer and/or Buyer's representative will have the right to make walk-through inspection(s) within 2 days prior to Project Completion Date unless otherwise agreed to by Buyer and Seller. Seller shall be responsible for providing all utilities required for such inspection.

**27. WOOD-DESTROYING INSECT INSPECTION** Unless otherwise required by Buyer's lender, Seller at Seller's expense will furnish a written report from a pest control firm dated not more than 90 days prior to Project Completion Date showing that all dwelling(s) and/or garage(s) within Property (to include fences or shrubs abutting garage(s) or dwelling(s)) are free of visible evidence of live wood-destroying insects, and free from visible damage. Any treatment and repairs for damage identified in the inspection report will be made at Seller's



expense and Seller will provide written evidence of such treatment and/or repair prior to Project Completion Date, which shall satisfy the requirements of this Paragraph.

**28. NOTICE OF POSSIBLE FILING OF MECHANICS LIEN** Virginia law (Section 43-1 et seq.) permits persons who have performed labor or furnished materials for the construction, removal, repair or improvement of any building or structure to file a lien against Property. This lien may be filed at any time after the work is commenced or the material is furnished, but not later than the earlier of (a) 90 Days from the last day of the month in which the lienor last performed work or furnished materials or (b) 90 Days from the time the construction, removal, repair or improvement is terminated. AN EFFECTIVE LIEN FOR WORK PERFORMED PRIOR TO THE DATE OF SETTLEMENT MAY BE FILED AFTER SETTLEMENT. LEGAL COUNSEL SHOULD BE CONSULTED.

**29. MEGAN'S LAW DISCLOSURE** Buyer should exercise whatever due diligence Buyer deems necessary with respect to information on sexual offenders registered under Chapter 9 of Title 9.1 of the Code of Virginia. Such information may be obtained by contacting the local police department or the Department of State Police, Central Records Exchange at (804) 674-2000 or <http://sex-offender.vsp.virginia.gov/sor/>

**30. FEES** Fees for the preparation of the deed, that portion of Settlement Agent's fee billed to Seller, costs of releasing existing encumbrances, Seller's legal fees and any other proper charges assessed to Seller, will be paid by Seller. Fees for the title exam (except as otherwise provided), survey, recording (including those for any purchase money trusts) and that portion of Settlement Agent's fee billed to Buyer, Buyer's legal fees, Mechanics Liens Agent Fees, construction loan draw fees and any other proper charges assessed to Buyer will be paid by Buyer. Fees to be charged will be reasonable and customary for the jurisdiction in which Property is located. Grantor's tax and Regional Congestion Relief Fee (for Alexandria City, Arlington, Fairfax, Loudoun, and Prince William Counties and all cities contained within) shall be paid by Seller. Buyer shall pay recording charges for the deed and any mortgage liens or deeds of trust.

**31. BROKER'S FEE** Seller irrevocably instructs Settlement Agent to pay Broker compensation ("Broker's Fee") at Settlement as set forth in the listing Contract and to disburse the compensation offered by Listing Brokerage to Cooperating Brokerage in writing as of the Date of Offer, and the remaining amount of Broker's compensation to Listing Brokerage.

**32. ADJUSTMENTS** Rents, taxes, water and sewer charges, homeowners' and/or property owners' association regular periodic assessments (if any), and any other operating charges, are to be adjusted to the Date of Settlement. Taxes - supplemental, general and special - are to be adjusted according to the most recent property tax bill(s) for Property issued prior to Settlement Date, except that recorded assessments for improvements completed prior to Settlement, whether assessments have been levied or not, will be paid by Seller or allowance made at Settlement.

**33. DEFAULT** If Buyer fails to complete Settlement for any reason other than Default by Seller, Buyer shall be in Default and, at the option of Seller, the Deposit may be forfeited to Seller as liquidated damages and not as a penalty. In such event, Buyer shall be relieved from further liability to Seller. If Seller does not elect to accept the Deposit as liquidated damages, the Deposit may not be the limit of Buyer's liability in the event of a Default. Buyer and Seller knowingly, freely, and voluntarily waive any defense as to the validity of liquidated damages under this Contract, including Seller's option to elect liquidated damages or pursue



actual damages, or that such liquidated damages are void as penalties or are not reasonably related to actual damages.

If the Deposit is forfeited, or if there is an award of damages by a court or a compromise Contract between Seller and Buyer, the Broker may accept, and Seller agrees to pay the Broker, one-half of the Deposit in lieu of Broker's Fee (provided Broker's share of any forfeited Deposit will not exceed the amount due under the listing Contract).

If Seller fails to perform or comply with any of the terms and conditions of this Contract or fails to complete Settlement for any reason other than Default by Buyer, Seller shall be in Default and Buyer will have the right to pursue all legal or equitable remedies, including specific performance and/or damages.

If either Seller or Buyer refuses to execute a release of Deposit ("Release") when requested to do so in writing and a court finds that such party should have executed the Release, the party who so refused to execute the Release will pay the expenses, including, without limitation, reasonable attorneys' fees, incurred by the other party in the litigation. Seller and Buyer agree that Escrow Agent will have no liability to any party on account of disbursement of the Deposit or on account of failure to disburse the Deposit, except in the event of Escrow Agent's gross negligence or willful misconduct. The parties further agree that Escrow Agent will not be liable for the failure of any depository in which the Deposit is placed and that Seller and Buyer each will indemnify, defend, and save harmless Escrow Agent from any loss or expense arising out of the holding, disbursement, or failure to disburse the Deposit, except in the case of the Escrow Agent's gross negligence or willful misconduct.

If either Buyer or Seller is in Default, then in addition to all other damages, the defaulting party will immediately pay the costs incurred for the title examination, Appraisal, survey, and the Broker's Fee in full.

- 34. CONTRACT SUBORDINATE TO CONSTRUCTION LOAN** This contract is subordinate and subject to any current and future construction loan liens.
- 35. ASSIGNABILITY** This Contract may not be assigned without prior written approval of the parties. In the event it is assigned, the original parties to the Contract remain obligated hereunder until Settlement.
- 36. ATTORNEYS' FEES**
- A. If any Party breaches this Contract and a non-breaching Party retains legal counsel to enforce its rights hereunder, the non-breaching Party shall be entitled to recover against the breaching Party, in addition to any other damages recoverable against any breaching Party, all of its reasonable Legal Expenses incurred in enforcing its rights under this Contract, whether or not suit is filed, and in obtaining, enforcing and/or defending any judgment related thereto. Should any tribunal of competent jurisdiction determine that more than one party to the dispute has breached this Contract, then all such breaching Parties shall bear their own costs, unless the tribunal determines that one or more parties is a "Substantially Prevailing Party", in which case any such Substantially Prevailing Party shall be entitled to recover from any of the breaching parties, in addition to any other damages recoverable against any breaching Party, all of its reasonable Legal Expenses incurred in enforcing its rights under this Contract, whether or not suit is filed, and in obtaining, enforcing and/or defending any judgment related thereto.

B. In the event a dispute arises resulting in the Broker (as used in this paragraph to include any agent, licensee, or employee of the Broker) being made a party to any litigation by the Buyer or by the Seller, the Parties agree that the Party who brought the Broker into litigation shall indemnify the Broker for all of its reasonable Legal Expenses incurred, unless the litigation results in a judgment against the Broker.

### 37. DEFINITIONS

- A. "Date of Ratification" means the date of Delivery of the final acceptance in writing by Buyer and Seller, of all the terms of this Contract (not the date of expiration or removal of any contingencies).
- B. "Appraisal" means a written appraised valuation of the Project.
- C. "Day(s)" or "day(s)" means calendar day(s) unless otherwise specified in this Contract.
- D. All reference to time of day shall refer to the time of day in the Eastern Time Zone of the United States.
- E. For the purpose of computing time periods, the first Day will be the Day following Delivery and the time period will end at 9 p.m. on the Day specified. If the Settlement Date falls on a Saturday, Sunday, or legal holiday, then the Settlement will be on the prior business day.
- F. For "Delivery" see DELIVERY paragraph.
- G. For "Specified Financing" see PRICE AND FINANCING paragraph.
- H. The masculine includes the feminine and the singular includes the plural.
- I. "Legal Expenses" means attorney fees, court costs, and litigation expenses, if any, including, but not limited to, expert witness fees and court reporter fees.
- J. Notice ("Notice", "notice", or "notify") means a unilateral communication from one party to another. All Notices required under this Contract will be in writing and will be effective as of Delivery. For the purposes of computing time periods, the first Day will be the Day following Delivery and the time period will end at 9 p.m. on the Day specified. Written acknowledgment of receipt of Notice is a courtesy but is not a requirement.
- K. "Buyer" and "Buyers" may be used interchangeably in this Contract and any accompanying addenda or notices.
- L. "Project" means Property and all Improvements including any changes of additional work requests as provided herein.
- M. "Substantially Complete" or "Substantial Completion" means that a certificate of occupancy (CO) has been issued and the Project is fit for habitation and is functional for ordinary dwelling use, with all appliances and all fixtures installed, including all finishes necessary to occupy Property without material inconvenience.
- N. "Notice of Substantial Completion" means written notification from Seller to Buyer that the Project is Substantially Complete.
- O. "Mechanics Lien Agent" is a representative of a title insurance company, a lender's agent, or an attorney licensed to practice in Virginia. A Mechanics Lien Agent collects notices from sub-contractors and service /material providers associated with The Project.
- P. "Project Completion Date" shall be 15 business days from Delivery of Notice of Substantial Completion or as otherwise mutually agreed to by the parties.

38. MISCELLANEOUS This Contract may be signed in one or more counterparts, each of which is deemed to be an original, and all of which together constitute one and the same instrument. Documents obtained via facsimile machines will also be considered as originals. Typewritten or handwritten provisions included in this Contract will control all pre-printed provisions that are in conflict.

**39. VOID CONTRACT** If this Contract becomes void and of no further force and effect, without Default by either party, both parties will immediately execute a release directing that the Deposit be refunded in full to Buyer according to the terms of the DEPOSIT paragraph.

**40. UNREPRESENTED SELLER COMPENSATION OF BUYER BROKER** Upon Seller's irrevocable instruction, it is understood and agreed by all parties that \_\_\_\_\_ (Cooperating Broker's name) of \_\_\_\_\_ (Cooperating Broker's firm) is acting as an agent solely representing Buyer in this transaction ("Buyer's Broker"). Seller agrees to pay Buyer's Broker a payment of \$ \_\_\_\_\_  in cash OR  \_\_\_\_\_ % of the total sales price at Settlement. Settlement Agent is hereby irrevocably directed to deduct Buyer's Broker fee from Seller's proceeds of the sale at Settlement. The parties acknowledge that Buyer's Broker relationship was disclosed to Seller and/or Seller's agent prior to showing Property to Buyer.

**41. TIME IS OF THE ESSENCE AS TO ALL TERMS OF THIS CONTRACT UNLESS OTHERWISE SPECIFIED.**

**42. ARBITRATION** Nothing in this Contract shall preclude arbitration under the Code of Ethics and Standards of Practice of the National Association of REALTORS®.

**43. REAL ESTATE LICENSED PARTIES** Broker may from time to time engage in general insurance, title insurance, mortgage loan, real estate settlement, home warranty, and other real estate-related businesses and services, from which they may receive compensation during the course of this transaction, in addition to real estate brokerage fees. The parties acknowledge that Broker is retained for their real estate brokerage expertise, and neither has been retained as an attorney, tax advisor, appraiser, title advisor, home inspector, engineer, surveyor, nor other professional services provider.

The parties acknowledge that \_\_\_\_\_ is an  active OR  inactive licensed real estate agent in  VA and  Other \_\_\_\_\_ and is either the  Buyer  Seller OR  is related to one of the parties in this transaction.

**44. ENTIRE CONTRACT** This Contract will be binding upon the parties, and each of their respective heirs, executors, administrators, successors, and permitted assigns. The provisions not satisfied at Settlement will survive the delivery of the deed and will not be merged therein. This Contract, unless amended in writing, contains the final and entire Contract of the parties and the parties will not be bound by any terms, conditions, oral statements, warranties, or representations not herein contained. The interpretation of this Contract will be governed by the laws of the Commonwealth of Virginia.

**45. ADDITIONS** The following forms, if ratified and attached, are made a part of this Contract. (This list is not all inclusive of addenda that may need to be attached).

- Yes     No    Financing Contingency Addendum \_\_\_\_\_
- Yes     No    Appraisal Contingency All Cash \_\_\_\_\_
- Yes     No    FIRPTA Addendum
- Yes     No    Lead-Based Paint Disclosure
- Yes     No    Option Addendum

**46. DISCLOSURE OF SALES PRICE TO APPRAISER** Listing Brokerage and Cooperating Brokerage are hereby authorized to release the Sales Price listed in PRICE AND SPECIFIED FINANCING Paragraph to any appraiser who contacts them to obtain the information.

**47. CANCELLATION RIGHTS** This Contract has not been procured by door-to-door solicitation and cannot be canceled.

**48. RECOVERY FUND**

The Buyer is hereby notified of the existence of the Virginia Contractor Transaction Recovery Fund. For more information, Buyer may call (804) 367-1559, go to: [www.dpor.virginia.gov/Boards/Contractors\\_Recovery\\_Fund](http://www.dpor.virginia.gov/Boards/Contractors_Recovery_Fund), or email: [RecoveryFund@dpor.virginia.gov](mailto:RecoveryFund@dpor.virginia.gov).

**49. OTHER TERMS** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date of Ratification (See DEFINITIONS)  
\_\_\_\_\_

**SELLER:**

**BUYER:**

\_\_\_\_\_/\_\_\_\_\_  
Date Signature Date Signature  
\_\_\_\_\_/\_\_\_\_\_  
Date Signature Date Signature

\*\*\*\*\*

**For information purposes only:**

Listing Brokerage's Name and Address:

Cooperating Brokerage's Name and Address:

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

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

Brokerage Phone #: \_\_\_\_\_

Brokerage Phone #: \_\_\_\_\_

MRIS Broker Code: \_\_\_\_\_

MRIS Broker Code: \_\_\_\_\_

VA Firm License #: \_\_\_\_\_

VA Firm License #: \_\_\_\_\_

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

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

Agent Email: \_\_\_\_\_

Agent Email: \_\_\_\_\_

Agent Phone #: \_\_\_\_\_

Agent Phone #: \_\_\_\_\_

MRIS Agent ID # \_\_\_\_\_

MRIS Agent ID # \_\_\_\_\_

VA Agent License #: \_\_\_\_\_

VA Agent License #: \_\_\_\_\_

Team Leader Name: \_\_\_\_\_

Team Leader Name: \_\_\_\_\_



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Educational Version

## CONSTRUCTION FINANCING AND APPRAISAL CONTINGENCIES ADDENDUM

This Addendum is made on \_\_\_\_\_, to a sales contract ("Contract") offered on \_\_\_\_\_, between \_\_\_\_\_ ("Buyer") and \_\_\_\_\_ ("Seller") for the purchase and sale of Property: \_\_\_\_\_

1. **DEED(S) OF TRUST** Buyer shall pay upfront and/or monthly mortgage insurance premiums as required by lender guidelines.

### 2. FINANCING CONTINGENCY

This Contract is Contingent on the following type of financing:

USDA       Conventional       VA       FHA

A. This Contract is contingent until 9 p.m. \_\_\_\_\_ Days after Date of Ratification ("Financing Deadline") upon Buyer obtaining and delivering to Seller a written commitment(s) or conditional commitment(s), as the case may be, for the financing described in the PRICE AND SPECIFIED FINANCING paragraph of this Contract.

B. If this contingency has not been satisfied by the Financing Deadline, this contingency will continue up to and including Settlement Date. However, upon expiration of the Financing Deadline, Seller may at Seller's option Deliver Notice to Buyer that Buyer has 3 Days to void the Contract. If Buyer does not void the Contract within 3 Days following Delivery of Seller's Notice, this contingency is removed and the Contract will remain in full force and effect with no Financing Contingency.

C. This Contract will become void if, prior to satisfaction of this contingency, Buyer receives a written rejection from the lender or lenders to whom Buyer has applied pursuant to Paragraph 3 for the Specified Financing and Delivers a copy of the written rejection to Seller on or before Settlement Date.

D. Buyer will be in Default whether or not this Contingency has been removed if Settlement does not occur on Settlement Date for any reason other than Default by Seller.

E. If this Contingency has expired, or has not been removed or satisfied, any delay of the Settlement Date necessary to comply with Buyer's lender's obligations pursuant to the TILA-RESPA Integrated Disclosure rule, is not a Default by Buyer; but Seller may declare the Contract void in writing.

F. Nothing herein shall prohibit the parties from mutually agreeing to terms acceptable to both parties in writing.

3. **APPRAISAL CONTINGENCY** This Contract  is contingent OR  is not contingent upon an Appraisal pursuant to this paragraph. Buyer shall have until 9 p.m. \_\_\_\_\_ Days (minimum of 21 days recommended) following the Date of Ratification to obtain an Appraisal ("Appraisal Deadline"). In the event that neither box is checked, this Contract is contingent upon an Appraisal pursuant to this paragraph and the Appraisal Deadline is the Financing Deadline set forth above. Buyer shall provide Notice to Seller by the Appraisal Deadline, as follows:

**A. Conventional Financing.**

1. The Appraisal is equal to or greater than the Total Purchase Price. This contingency has been satisfied and removed. The parties shall proceed to Settlement; **OR**
2. The Appraisal is equal to or greater than the Total Purchase Price. However, Buyer elects not to proceed with consummation of this Contract because Property does not satisfy the lender(s) requirements, the Appraisal does not allow for the Specified Financing or Property is inadequate collateral. Such Notice must be accompanied by a written denial of the financing showing written evidence of the lender(s)'s decision concerning Property. Buyer must provide such written evidence concurrently with Buyer's Notice of election not to proceed; **OR**
3. The Appraisal is not equal to or greater than the Total Purchase Price and Buyer elects not to proceed with consummation of this Contract unless Seller elects to lower the Total Purchase Price to the appraised value. Buyer's Notice shall include a copy of the written statement setting forth the appraised value of Property. It will be Seller's option to lower the Total Purchase Price to the appraised value and the parties shall proceed to Settlement at the lower Total Purchase Price. If Seller does not make this election, the parties may agree to mutually acceptable terms. Each election must be made by Notice within three Days after Notice from the other party. The parties will immediately sign any appropriate amendments. If the parties fail to agree, this Contract will become void; **OR**
4. Buyer elects to proceed with consummation of this Contract without regard to the Appraisal. The parties shall proceed to Settlement.
5. If Buyer fails to give Seller Notice by the Appraisal Deadline, this contingency will continue, unless Seller at Seller's option gives Notice to Buyer that this Contract will become void. If Seller delivers such Notice, this Contract will become void at 9 p.m. on the third day following Delivery of Seller's Notice, unless prior to such date and time Buyer delivers the required Notice.

**OR**

**B. FHA, VA or USDA Financing**

1. **Amendatory Clause:** It is expressly agreed that notwithstanding any other provisions of this Contract, Buyer shall not be obligated to complete the purchase of Property or to incur any penalty by forfeiture of deposit or otherwise unless Buyer has been given, in accordance with HUD/FHA or VA requirements, a written statement by the Federal Housing Commissioner, Department of Veterans Affairs, or a Direct Endorsement Lender setting forth the appraised value of Property of not less than \$ \_\_\_\_\_. Buyer shall have the privilege and option to proceed with consummation of this Contract without regard to the amount of the appraised value. The appraised value is arrived at to determine the maximum mortgage the Department of Housing and Urban Development ("HUD") will insure. HUD does not warrant the value or the condition of Property. Buyer should satisfy himself/herself that the price and condition of Property are acceptable.

**NOTICE:** The dollar amount to be inserted in the Amendatory Clause is the Total Purchase Price as stated in this Contract. If Buyer and Seller agree to adjust the purchase price in response to an appraised value that is less than the Total Purchase Price, a new Amendatory Clause is not required.



2. **Procedure in the event of a low appraisal:** In the event that the written statement setting forth the appraised value of Property ("Written Statement") indicates a value less than the Total Purchase Price, Buyer shall Deliver Notice to Seller (1) stating that Buyer elects to proceed to Settlement at the Total Purchase Price in the Contract; or (2) requesting that Seller change the Total Purchase Price to a specified lower amount of not less than the appraised value ("Buyer's Notice"); or (3) voiding this Contract based on the low appraisal. Buyer's Notice shall include a copy of the Written Statement. In the event Buyer's Notice requests a price reduction, Notices delivered subsequent to the delivery of Buyer's Notice shall be treated as follows:

Within 3 Days after Notice Delivery from one party, the other party may

- a) Deliver Notice accepting the terms contained in the other party's Notice. OR
- b) Deliver Notice continuing negotiations by making another offer. OR
- c) Deliver Notice that this Contract shall become void at 9:00 p.m. on the 3<sup>rd</sup> Day following Delivery, unless the recipient Delivers to the other party Notice of acceptance of the last Delivered offer prior to that date and time, in which case this Contract will remain in full force and effect.

Failure of either party to respond within 3 Days of Notice Delivery will result in this Contract becoming void.

4. **SELLER SUBSIDY** Seller will pay at Settlement \$ \_\_\_\_\_ toward Buyer's charges (including but not limited to loan origination fees, discount points, buy down or subsidy fees, prepaids or other charges) as allowed by lender(s). It is Buyer's responsibility to confirm with the lender(s) that the entire credit provided herein may be utilized. If lender(s) prohibits Seller from the payment of any portion of this credit, then said credit shall be reduced to the amount allowed by lender(s).

5. **FURTHER ASSURANCES** At or prior to Settlement, Seller and Buyer, upon request from Lender, shall sign all further documents, do, or cause to be done, all further acts and provide all assurances as may reasonably be necessary or desirable to secure the Specified Financing.

**SELLER:**

**BUYER:**

\_\_\_\_\_/

\_\_\_\_\_/

Date Signature

Date Signature

\_\_\_\_\_/

\_\_\_\_\_/

Date Signature

Date Signature

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**OPTIONS ADDENDUM  
(NEW HOME SALES CONTRACT)**

This Addendum is made on \_\_\_\_\_, to a new home sales contract ("Contract") offered on \_\_\_\_\_,  
between \_\_\_\_\_,  
("Buyer") and \_\_\_\_\_  
("Seller") for the purchase and sale of Property: \_\_\_\_\_

Buyer and Seller agree that the following are options included in the Base Price.

Option #/Code	Description	Color/Location	QTY	Deposit	Price

Buyer and Seller agree upon the following additional options:

Option #/Code	Description	Color/Location	QTY	Deposit	Price

Watermark: Educational Version

This Addendum shall not alter, modify, or change in any other respect this Contract, and except as modified herein, all of the terms and provisions of this Contract are expressly ratified and confirmed and shall remain in full force and effect.

**SELLER:**

**BUYER:**

\_\_\_\_\_/\_\_\_\_\_  
Date                      Signature

\_\_\_\_\_/\_\_\_\_\_  
Date                      Signature

\_\_\_\_\_/\_\_\_\_\_  
Date                      Signature

\_\_\_\_\_/\_\_\_\_\_  
Date                      Signature

\_\_\_\_\_/\_\_\_\_\_  
Date                      Signature

\_\_\_\_\_/\_\_\_\_\_  
Date                      Signature

\_\_\_\_\_/\_\_\_\_\_  
Date                      Signature

\_\_\_\_\_/\_\_\_\_\_  
Date                      Signature



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Education Version

**EXCLUSIVE RIGHT TO REPRESENT BUYER AGREEMENT**

This Exclusive Right to Represent Buyer Agreement ("Agreement") is made on \_\_\_\_\_ (Date) by and between \_\_\_\_\_ ("Buyer") and (Insert Firm Name) \_\_\_\_\_ ("Broker").

- 1. **APPOINTMENT OF BROKER** In consideration of services and facilities, Broker is hereby granted the right to represent Buyer in the acquisition of real property.
- 2. **BUYER'S REPRESENTATIONS** Buyer represents that as of the commencement date of this Agreement, Buyer is not a party to a buyer representation agreement with any other brokerage firm. Buyer further represents that Buyer has disclosed to Broker information about any properties that Buyer has previously visited at any new homes communities or resale open houses; or that Buyer has been shown by any other real estate sales associate(s) in any area where Buyer seeks to acquire property under this Agreement.
- 3. **NOTICES** All notifications and amendments under this Agreement shall be in writing and shall be delivered using the contact information below.

**Buyer**

Mailing Address: \_\_\_\_\_

City, State, and ZIP Code: \_\_\_\_\_

Phone: (H) \_\_\_\_\_ (W) \_\_\_\_\_ (Cell) \_\_\_\_\_

Email: \_\_\_\_\_

**Broker (Firm)**

Mailing Address: \_\_\_\_\_

City, State, and ZIP Code: \_\_\_\_\_

Phone: (W) \_\_\_\_\_ (Cell) \_\_\_\_\_

Email: \_\_\_\_\_

- 4. **TERM AND TERMINATION** This Agreement commences when signed and, subject to the COMPENSATION paragraph, expires at 11:59 p.m. on \_\_\_\_\_ ("Expiration Date"). Either party may terminate this Agreement prior to the Expiration Date by notice to the other. In the event Buyer wishes to terminate this Agreement prior to the Expiration Date, without good cause, Buyer shall compensate Broker \$ \_\_\_\_\_ ("Early Termination Fee") in addition to any compensation otherwise due pursuant to this Agreement.

- 5. **BROKER'S DUTIES** Broker shall promote the interests of Buyer by: (a) performing the terms of the brokerage agreement; (b) seeking a property at a price and terms acceptable to Buyer; (c) presenting in a timely manner all written offers or counteroffers to and from Buyer; (d) disclosing to Buyer all material facts related to the property or concerning the transaction of which they have actual knowledge; (e) accounting for in a timely manner all money and property received in which Buyer has or may have an interest. Unless otherwise provided by law or Buyer consents in writing to the release of the information, Broker shall maintain the confidentiality of all personal and financial information and other matters identified as confidential by Buyer, if that information is received from Buyer during the brokerage relationship. In satisfying these duties, Broker shall exercise ordinary care, comply with all applicable laws and regulations, treat all prospective sellers honestly and not knowingly give them false information. In addition, Broker may: show the same property to other buyers; represent other buyers on the same or different properties; represent sellers relative to other properties; or provide assistance to a seller or prospective seller by

performing ministerial acts that are not inconsistent with Broker's duties under this Agreement. Buyer acknowledges that seller or seller's representative may not treat the existence, terms, or conditions of offers as confidential unless confidentiality is required by a written confidentiality agreement between the parties.

6. **BUYER'S DUTIES** Buyer shall: (a) work exclusively with Broker during the term of this Agreement; (b) pay Broker, directly or indirectly, the compensation set forth below; (c) comply with the reasonable requests of Broker to supply any pertinent financial or personal data needed to fulfill the terms of this Agreement; and (d) be available during Broker's regular working hours to view properties.

Buyer is advised against and assumes responsibility for taking, posting, publishing or displaying any photo or video recording of any property without first obtaining seller's prior written consent. Buyer hereby releases and holds harmless Broker, Broker's designated agents, sales associates and employees from any liability which may result therefrom. Buyer also acknowledges that seller may have a video and/or audio recording system in the property, even if prior disclosure is not made.

7. **PURPOSE** Buyer is retaining Broker to acquire the following type of property: \_\_\_\_\_

8. **COMPENSATION**

- A. **Retainer Fee.** Broker acknowledges receipt of a retainer fee in the amount of \$ \_\_\_\_\_ which  shall OR  shall not be subtracted from any compensation due Broker under this Agreement. The retainer fee is non-refundable and is earned when paid.
- B. **Payment.** Buyer shall pay compensation in the amount of \_\_\_\_\_ ("Broker's Fee") to Broker if Buyer enters into a contract to acquire real property during the term of this Agreement and goes to settlement on that contract any time thereafter. In most cases, seller pays Broker's Fee, but in the event seller does not pay any or all of the amount due, Buyer hereby agrees to pay any and all remaining Broker's Fee due to the Buyer's Broker. Broker may retain any additional compensation offered by the seller or seller's representative, even if this causes the compensation paid to Broker to exceed the fees specified above.

Broker's Fee shall also be earned, due and payable by Buyer under either of the following circumstances:

1. If within \_\_\_\_\_ days after expiration or Buyer's early termination of this Agreement, Buyer enters into a contract to acquire any real property of the type discussed in the PURPOSE paragraph, unless Buyer has entered into a subsequent Buyer Broker Agreement with another real estate broker; OR
2. If, having entered into an enforceable contract to acquire real property during the term of this Agreement, Buyer defaults under the terms of that contract.

Any obligation incurred under this Agreement on the part of Buyer to pay Broker's Fee shall survive the term of this Agreement.

9. **RELOCATION PROGRAM** Buyer is participating in any type of relocation program  Yes OR  No.

If "Yes": (a) the program is named: \_\_\_\_\_  
Contact Name: \_\_\_\_\_ Contact Information: \_\_\_\_\_

and (b) terms of the program are: \_\_\_\_\_

If "No" or Buyer has failed to list a specific relocation program, then Broker shall have no obligation to cooperate with or compensate any undisclosed program.

#### 10. TYPES OF REAL ESTATE REPRESENTATION - DISCLOSURE AND INFORMED CONSENT

**Seller representation** occurs when sellers contract to use the services of their own broker (known as a listing agent) to act on their behalf.

**Buyer representation** occurs by virtue of this Agreement. (Note: Broker may assist a seller or prospective seller by performing ministerial acts that are not inconsistent with Broker's duties as Buyer's agent under this Agreement.)

**Designated representation** occurs when a buyer and seller in one transaction are represented by different sales associate(s) affiliated with the same broker. Each of these sales associates, known as a designated representative, represents fully the interests of a different client in the same transaction. Designated representatives are not dual representatives if each represents only the buyer or only the seller in a specific real estate transaction. In the event of designated representatives, each representative shall be bound by client confidentiality requirements, set forth in the BROKER'S DUTIES paragraph. The broker remains a dual representative.

Buyer does not consent to designated representation thus Buyer does not allow Broker to show properties owned by a seller represented by this Broker through another designated representative associated with the firm. OR

Buyer consents to designated representation and the Buyer allows Broker to show properties owned by a seller represented by this Broker through another designated representative associated with the firm.

**Dual representation** occurs when the same Broker and the same sales associate represent both the buyer and seller in one transaction. In the event of dual representation, Broker shall be bound by confidentiality requirements for each client, set forth in the BROKER'S DUTIES paragraph.

Buyer does not consent to dual representation thus Buyer does not allow Broker to show properties owned by a seller represented by this Broker through the same representative OR

Buyer consents to dual representation and thus Buyer allows Broker to show properties owned by a seller represented by this Broker through the same representative.

An additional disclosure is required before designated or dual representation is to occur for a specific transaction.

11. **COMPLIANCE WITH FAIR HOUSING LAWS** Property shall be shown and made available without regard to race, color, religion, sex, handicap, familial status or national origin as well as all classes protected by the laws of the United States, the Commonwealth of Virginia and applicable local jurisdictions, or by the REALTOR® Code of Ethics.

12. **ATTORNEYS' FEES** If any Party breaches this Agreement and a non-breaching Party retains legal counsel to enforce its rights hereunder, the non-breaching Party shall be entitled to recover against the breaching Party, in addition to any other damages recoverable against any breaching Party, all of its reasonable Legal Expenses incurred in enforcing its right under this Agreement, whether or not suit is filed, and in obtaining, enforcing and/or defending any



judgment related thereto. Should any tribunal of competent jurisdiction determine that more than one Party to the dispute has breached this Agreement, then all such breaching Parties shall bear their own costs, unless the tribunal determines that one or more of the Parties is a "Substantially Prevailing Party", in which case any such Substantially Prevailing Party shall be entitled to recover from any of the breaching Parties, in addition to any other damages recoverable against any breaching Party, all of its reasonable Legal Expenses incurred in enforcing its rights under this Agreement, whether or not suit is filed, and in obtaining, enforcing and/or defending any judgment related thereto. "Party" as used in this paragraph includes any third party beneficiary identified herein. "Legal Expenses" as used in this paragraph includes attorney fees, court costs, and litigation expenses, if any, including, but not limited to, expert witness fees and court reporter fees.

13. The Buyer  does OR  does not hold an active or inactive real estate license.

#### 14. DISCLAIMERS

**Professional Services** Buyer acknowledges that Broker is being retained solely as a real estate agent and not as an attorney, tax advisor, lender, appraiser, surveyor, structural engineer, mold or air quality expert, home inspector or other professional service provider. Buyer is advised to seek professional advice concerning the condition of the property or concerning legal and tax matters.

**Megan's Law** Buyer should exercise whatever due diligence Buyer deems necessary with respect to information on any sexual offenders registered under Chapter 9 of Title 9.1 of the Code of Virginia. Such information may be obtained by contacting the local police department or the Department of State Police, Central Criminal Records Exchange, at (804)674-2000 or <http://sex-offender.vsp.virginia.gov/sor/>.

**Wire Fraud** Buyer should never transmit nonpublic personal information, such as credit or debit card, bank account or routing numbers, by email or other unsecured electronic communication. There are numerous e-mail phishing scams that involve fraudulent requests to wire funds in conjunction with a real estate transaction. If Buyer receives any electronic communication directing the transfer of funds or to provide nonpublic personal information, even if that electronic communication appears to be from a representative of Broker, do not respond. Such requests, even if they may otherwise appear to be from Broker, could be part of a scheme to defraud Buyer by misdirecting the transfer of funds or using Buyer's identity to commit a crime. If Buyer should receive wiring instructions via electronic means that appear to be from a legitimate source involved in Buyer's real estate transaction, Buyer should verify - using contact information other than that provided in the communication - that the instructions were sent by an actual representative of the requesting company. Conversely, if Buyer has provided wiring instructions to a third party, it is important to confirm with the representative of said company that the wire instructions are not to be substituted without Buyer's verified written consent. When wiring funds, never rely exclusively on an e-mail, fax or text communication.

**Service Provider Referrals.** Broker or one of Broker's sales associates may refer a service provider to assist Buyer in this transaction. This referral is not an endorsement, guarantee or warranty as to the quality, cost and/or timeliness of the services to be provided. Buyer is advised to independently investigate all options for service providers and consider whether any service provider will work effectively with Buyer. Buyer is free to reject any referred service provider for any or no reason.

15. **MISCELLANEOUS** This Agreement, any exhibits and any addenda signed by the parties constitute the entire agreement between the parties and supersede any other written or oral agreements between the parties. This Agreement can only be modified in writing when signed by both parties. The laws of Virginia shall govern the validity, interpretation and enforcement of the Agreement.

16. OTHER PROVISIONS \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(NOTE: Buyer should consult with Buyer Agent before visiting any resale or new homes or contacting any other Real Estate Agents representing sellers, to avoid the possibility of confusion over the brokerage relationship and misunderstandings about liability for compensation.)

\_\_\_\_\_/\_\_\_\_\_  
Date Buyer

\_\_\_\_\_/\_\_\_\_\_  
Date Broker/Sales Manager

\_\_\_\_\_/\_\_\_\_\_  
Date Buyer

\_\_\_\_\_/\_\_\_\_\_  
Date Buyer

\_\_\_\_\_/\_\_\_\_\_  
Date Buyer

\*\*\*\*\*

**Buyer Agent Contact Information**

Buyer's Agent: \_\_\_\_\_

Phone: (W) \_\_\_\_\_ (Cell) \_\_\_\_\_

Email: \_\_\_\_\_ Fax: \_\_\_\_\_

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Education Version

## BUYER'S PRE-SETTLEMENT OCCUPANCY AGREEMENT

This Agreement is made on \_\_\_\_\_, as part of a sales contract ("Contract") offered on \_\_\_\_\_, between \_\_\_\_\_ ("Buyer") and \_\_\_\_\_ ("Seller") for the purchase and sale of Property: \_\_\_\_\_ with a Settlement Date of \_\_\_\_\_

In consideration of the mutual terms of this Agreement, Seller grants and Buyer accepts occupancy of Property on \_\_\_\_\_ ("Date of Occupancy") on the following terms and conditions:

1. **DEPOSIT** Buyer deposits \$ \_\_\_\_\_ (Occupancy Deposit") by electronic transfer or cashier's or certified check paid to the  Selling Company OR  Settlement Agent OR  Seller to serve as security for this Agreement. Any funds remaining after satisfaction of the obligations set out below shall be credited toward the Sales Price and Buyer's closing costs at Settlement.
2. **OCCUPANCY CHARGE** Buyer agrees to pay an "Occupancy Charge" as follows:
  - A. If the pre-Settlement occupancy period is less than one month, Buyer shall pay Seller, in advance, a total of \$ \_\_\_\_\_ calculated at the rate of \$ \_\_\_\_\_ per day for the period between Date of Occupancy and Settlement Date, OR
  - B. If the pre-Settlement occupancy period is greater than one month, Buyer shall pay an Occupancy Charge for the period between Date of Occupancy and Settlement Date, monthly, in advance, at the rate of \$ \_\_\_\_\_ per month beginning on Date of Occupancy and continuing on the same date of each month.

If Settlement does not occur by Settlement Date, Buyer shall pay the additional Occupancy Charge monthly, in advance, as per paragraph B above. Occupancy Charge will adjust on a pro rata basis to the actual date of Settlement OR of Buyer vacating Property.

Only the unused part of Occupancy Charge is a credit toward the Sales Price and Buyer's closing costs. The parties agree the Occupancy Charge is not rent, and this Agreement is not a lease, but a temporary right to use not subject to the Virginia Residential Landlord Tenant Act ("VRLTA") and all of the statutory provisions of the residential rental laws that are otherwise exempt from the VRLTA are hereby waived. This means that the terms of this Agreement control, and the common law of Virginia applicable to non-residential rentals applies to this Agreement.

This temporary right of use is exclusively for \_\_\_\_\_ (number of occupants) and the following pets: \_\_\_\_\_.

3. **PROPERTY MAINTENANCE AND CONDITION** Buyer shall conduct the walk-through inspection(s) of Property, as provided in the Contract, before Date of Occupancy. Any exceptions shall be governed by the terms of the Contract. Unless Buyer immediately Delivers to Seller written exceptions from the walk-through inspection(s), Buyer accepts the condition of Property. After occupancy, Buyer shall maintain and repair Property, including electrical, plumbing, existing appliances, heating, air conditioning, equipment and fixtures, in

substantially the same condition as of Date of Occupancy. Occupancy, without Delivering written objection to defects, satisfies the property condition provisions of the Contract.

4. **ALL CONTINGENCIES REMOVED** Buyer warrants that Buyer has the ability to settle in accordance with the Contract terms. Buyer's occupancy satisfies and removes any contingencies in the Contract except the following:

- Financing                                       Property Owners Disclosures  
 Appraisal                                       Other: \_\_\_\_\_

5. **ALTERATIONS AND RISK OF LOSS** Buyer shall not alter Property without written approval of Seller. Alterations shall remain with Property unless agreed otherwise in writing. Buyer accepts responsibility for any costs of redecorating, material and labor incurred in advance of Settlement. Buyer shall not detract from or devalue the marketability or value of Property.

Buyer shall maintain adequate insurance covering personal property and liability prior to Date of Occupancy. Buyer's personal property, placed on the premises, shall be at Buyer's own risk. The risk of loss or damage to Property by fire, act of God, or other casualty remains with Seller until the execution and delivery of the deed of conveyance. Seller shall maintain homeowner's insurance adequate to protect Property during the period of this Agreement. Buyer shall hold Seller harmless from loss or damage to any personal property or bodily injury to any persons.

Seller and Seller's agents shall have access to Property at reasonable times and on reasonable notice for inspections and emergencies.

6. **UTILITIES** Buyer shall transfer and pay all utilities beginning as of Date of Occupancy.

7. **FAILURE TO SETTLE AND DEFAULT** If Contract does not settle in accordance with the terms of the Contract, except for Seller's default, or if Buyer is otherwise in default of the Contract, Buyer shall vacate in a peaceable manner within 5 business days of Notice. Except as otherwise specified herein, Buyer will deliver Property free and clear of trash and debris, broom clean and in substantially the same physical condition as of the Date of Occupancy, and return all keys, key fobs, codes and digital keys, if any. At the time of Notice, Buyer will permit Seller to place an electronic lockbox on Property for access and will permit showing Property during reasonable hours.

Buyer authorizes Seller to charge against Occupancy Deposit any unpaid Occupancy Charges and all costs to restore Property to its original condition as of Date of Occupancy. If Buyer does not vacate as requested, Occupancy Charge specified above will double on a pro rata basis. Buyer authorizes Seller to charge those amounts against Occupancy Deposit. If Occupancy Deposit is insufficient, Buyer shall pay the difference immediately upon demand. The Contract Deposit shall also serve as additional security for Buyer's obligations. Buyer shall also be liable for the costs of enforcing this Agreement.

In the case of Seller's default, Buyer has the option, without prejudicing any other legal rights, to continue to occupy Property at the stated Occupancy Charge for up to 90 days or to vacate Property and receive a return of any remaining Occupancy Deposit and unused Occupancy Charges.

**8. OTHER TERMS:** \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**SELLER:**

\_\_\_\_\_  
 Date                      Signature

\_\_\_\_\_  
 Date                      Signature

\_\_\_\_\_  
 Date                      Signature

\_\_\_\_\_  
 Date                      Signature

**BUYER:**

\_\_\_\_\_  
 Date                      Signature

\_\_\_\_\_  
 Date                      Signature

\_\_\_\_\_  
 Date                      Signature

\_\_\_\_\_  
 Date                      Signature



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Educational Version

## SELLER'S POST-SETTLEMENT OCCUPANCY AGREEMENT

This Agreement is made on \_\_\_\_\_, as part of a sales contract ("Contract") offered on \_\_\_\_\_, between \_\_\_\_\_ ("Buyer") and \_\_\_\_\_ ("Seller") for the purchase and sale of Property: \_\_\_\_\_

In consideration of the mutual terms of this Agreement, Buyer permits Seller to occupy Property after the time of Settlement under the following terms and conditions:

1. **OCCUPANCY CHARGE** Seller agrees to pay an "Occupancy Charge" at Settlement as follows: the actual amount of the Occupancy Charge will be:  the carrying costs of Buyer (defined as Principal, Interest, Taxes, and any Mortgage Insurance of the Specified Financing and the Hazard Insurance, HOA or Condo fees, if applicable, pro-rated accordingly) as calculated by the Settlement Agent at Settlement; OR  \$ \_\_\_\_\_ per day; OR  a flat fee in the amount of \$ \_\_\_\_\_.

The parties agree the Occupancy Charge is not rent and this Agreement is not a lease, but a temporary right to use not subject to the Virginia Residential Landlord Tenant Act ("VRLTA"), and all of the statutory provisions of the residential rental laws that are otherwise exempt from the VRLTA are hereby waived. This means that the terms of this Agreement control, and the common law of Virginia applicable to non-residential rentals applies to this Agreement.

### 2. OCCUPANCY DEADLINE

A. **Deadline** Seller must vacate and give possession of Property and keys to Buyer on or before 9 p.m. \_\_\_\_\_ ("Deadline"). If Seller vacates before Deadline, Buyer  will refund any unused part of Occupancy Charge and thereby agrees to accept the date of vacating as Deadline OR  will not refund any unused part of Occupancy Charge. If vacating before Deadline, Seller must give Buyer at least 3 Days written Notice before vacating.

B. **Default** If Seller fails to vacate Property by Deadline, Seller shall pay Buyer double the daily Occupancy Charge OR, if checked,  \$ \_\_\_\_\_ per day. Seller shall also be responsible for any reasonable expenses incurred by Buyer as a result of Seller's failure to vacate, such as but not limited to, temporary accommodations, furniture storage, added moving costs, attorney's fees, and other costs of enforcing this Agreement.

3. **PROPERTY MAINTENANCE AND CONDITION** Seller shall maintain and repair Property, including electrical, plumbing, existing appliances, heating, air conditioning, equipment and fixtures, in substantially the same condition as of Settlement Date. Except as otherwise agreed in writing, Seller will deliver Property in substantially the same physical condition as on Settlement Date and broom clean with all trash and debris removed and deliver to Buyer all keys, key fobs, codes and digital keys, if any.

4. **SECURITY DEPOSIT** Seller will escrow at Settlement \$ \_\_\_\_\_ as a security deposit to be held by: \_\_\_\_\_ ("Escrow Agent"). Buyer may, without prejudicing other legal rights and remedies, use all or any part of the security deposit to defray any costs incurred because of Seller's non-compliance with this Agreement. Buyer must conduct a post-occupancy inspection of Property and Deliver to Seller and

Escrow Agent a list of deficiencies within 3 business days after Deadline, or waive any claim to the security deposit. If Escrow Agent does not receive this list of deficiencies within the specified time, Escrow Agent may release funds to Seller and will be held harmless by the parties for any future claim, action, or demand. Should a dispute arise regarding the security deposit, Escrow Agent may require agreement of the parties before disbursing these funds.

5. **UTILITIES** Seller will keep all utilities registered in Seller's name and pay the costs until Deadline.
6. **RISK OF LOSS** Any personal property not included in the sale and kept on Property by Seller shall be at Seller's risk. Seller shall hold Buyer harmless from loss or damage to any personal property or bodily injury to any persons having access to Property and shall maintain adequate insurance. Seller is responsible for maintaining insurance to cover Seller's personal property, if desired, during the period of this Agreement until Seller vacates Property in accordance with the OCCUPANCY DEADLINE paragraph above. Buyer will maintain homeowner's insurance adequate to protect Buyer's interest in Property after the time of Settlement and during the period of this Agreement.
7. **ACCESS** Seller will permit Buyer reasonable access to Property and will deliver 1 set of keys to Buyer at Settlement. If Property is to be offered for rent, Buyer or Buyer's agent shall have the right to show Property during reasonable hours 30 days before termination of this Agreement. Authority is granted to Buyer's agent to: (i) place a "For Rent" sign on Property and (ii) place an electronic lockbox on the Property containing keys necessary to obtain full access to Property.

8. **OTHER TERMS** \_\_\_\_\_  
 \_\_\_\_\_

**SELLER:**

**BUYER:**

\_\_\_\_\_  
 Date Signature

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 Date Signature

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## PRIVATE WELL AND/OR SEPTIC CONTINGENCY ADDENDUM

This Addendum is made on \_\_\_\_\_, to a sales contract ("Contract") offered on \_\_\_\_\_, between \_\_\_\_\_ ("Buyer") and \_\_\_\_\_ ("Seller") for the purchase and sale of Property: \_\_\_\_\_

### 1. WELL

**A. Water Potability Test** If Property is on a private well as indicated in the UTILITIES WATER, SEWAGE, HEATING AND CENTRAL AIR CONDITIONING paragraph of this Contract, then  Seller at Seller's expense OR  Buyer at Buyer's expense, shall Deliver to the other party, on or before Settlement, a report prepared by a Virginia certified laboratory dated not more than 90 Days prior to Settlement, ordered through the local health department or an insured private company, indicating that the well water is free from contamination by coliform bacteria. Any such contamination indicated shall be remediated by Seller at Seller's expense and the well water shall be re-tested at Seller's expense after remediation. Seller shall Deliver to Buyer on or before Settlement a report issued by a Virginia certified laboratory indicating that the well water is free from contamination by coliform bacteria dated not more than 90 Days prior to Settlement.

### B. Well and Well Water Inspection Contingency

1. **Inspection Period.** This Contract  is OR  is not contingent ("Well Inspection Contingency") until 9 p.m. \_\_\_\_ Days after the Date of Ratification ("Well Inspection Deadline"). Buyer, at Buyer's discretion, expense and sole risk of damage to the well and/or Property, shall retain a professional and insured inspector to inspect the well and/or the well water ("Well Inspection").

If the results of such Well Inspection are unsatisfactory to Buyer, in Buyer's sole discretion, Buyer shall Deliver to Seller, prior to the Well Inspection Deadline:

- a) An entire copy of the report and a written addendum listing the specific existing deficiencies of the well and/or well water that Buyer would like Seller to remedy together with Buyer's proposed remedies ("Inspection Addendum") OR
- b) An entire copy of the report and Notice voiding Contract.

If Buyer fails to obtain a Well Inspection, fails to Deliver a copy of the report to Seller, or fails to Deliver Inspection Addendum or Notice voiding this Contract prior to Well Inspection Deadline, this Contingency will expire and this Contract will remain in full force and effect with no Well Inspection Contingency.

2. **Negotiation Period.** In the event of B.1 above, the parties shall have until 9 p.m. \_\_\_\_ Days after Buyer's Delivery of Inspection Addendum ("Negotiation Period") to negotiate a mutually acceptable written addendum addressing the deficiencies.

At any time during Negotiation Period, Buyer or Seller may make, modify, rescind, or alter as many offers and counter-offers as desired to reach mutually acceptable terms. Buyer and Seller may agree on terms by signing a written addendum describing agreed upon deficiencies and remedies within Negotiation Period.

3. **Buyer's Election.** If, at the end of Negotiation Period, the parties are unable to reach an agreement, Buyer shall have the option to void this Contract by Delivering Notice to Seller by 9 p.m. \_\_\_\_\_ Days following the end of Negotiation Period, otherwise the Well Inspection Contingency shall be removed and this Contract will remain in full force and effect.

**2. SEPTIC**

- A. **Alternative System Maintenance Contract.** Seller  does **OR**  does not have a maintenance contract. If Seller does have a maintenance contract, Seller will provide a copy to Buyer within 15 Days after the Date of Ratification. Maintenance contract  shall (subject to contractor approval) **OR**  shall not convey to Buyer.

**B. Septic Inspection Contingency.**

1. **Inspection Period.** This Contract  is **OR**  is not contingent ("Septic Inspection Contingency") until 9 p.m. \_\_\_\_ Days after the Date of Ratification ("Septic Inspection Deadline"). Buyer at Buyer's expense and sole risk of damage to Property shall retain a Virginia licensed and insured septic system installer, operator, onsite soil evaluator or professional engineer to inspect the private conventional septic system ("Conventional System") or private alternative sewage disposal system ("Alternative System") ("Septic Inspection").

Such Septic Inspection shall include a walk-over visual inspection and probing of the drain field area to check for saturation for a Conventional System, or a visual inspection of the alternative treatment unit(s) for an Alternative System. In addition, the following inspections will be conducted (check all that apply):

- Pumping and inspection of all treatment tanks (excluding pump and recirculation tanks).
- Excavation as necessary to visually inspect all distribution boxes (if present), test all pumps and controls and evaluate the function of pumping or pressure dosed dispersal systems.

If the certified inspection report ("Septic Inspection Report") indicates that there is any evidence of malfunction of the Conventional System or Alternative System, Buyer shall Deliver to Seller, prior to the Septic Inspection Deadline:

- a) An entire copy of Septic Inspection Report and a written addendum listing the specific existing deficiencies of the Septic System that Buyer would like Seller to remedy together with Buyer's proposed remedies ("Septic Inspection Addendum"). **OR**
- b) An entire copy of the Septic Inspection Report and Notice voiding Contract.

If Buyer fails to obtain a Septic Inspection, fails to Deliver a copy of the Septic Inspection Report to Seller, or fails to Deliver Septic Inspection Addendum or Notice voiding this Contract prior to Septic Inspection Deadline, this Contingency will expire and this Contract will remain in full force and effect with no Septic Inspection Contingency.

2. **Negotiation Period.** In the event of B.1 a) above, the parties shall have until 9 p.m. \_\_ Days after Buyer's Delivery of Septic Inspection Addendum

("Negotiation Period") to negotiate a mutually acceptable written addendum addressing the deficiencies.

At any time during Negotiation Period, Buyer or Seller may make, modify, rescind, or alter as many offers and counter-offers as desired to reach mutually acceptable terms. Buyer and Seller may agree on terms by signing a written addendum describing agreed upon deficiencies and remedies within Negotiation Period.

3. **Buyer's Election.** If, at the end of Negotiation Period, the parties are unable to reach an agreement, Buyer shall have the option to void this Contract by Delivering Notice to Seller by 9 p.m. \_\_\_\_\_ Days following the end of Negotiation Period, otherwise the Septic Inspection Contingency shall be removed and this Contract will remain in full force and effect.

In the event Buyer voids this Contract, Property will be restored to substantially the same physical condition as it was prior to the Septic Inspection.

**SELLER:**

\_\_\_\_\_/\_\_\_\_\_  
Date                      Signature

\_\_\_\_\_/\_\_\_\_\_  
Date                      Signature

\_\_\_\_\_/\_\_\_\_\_  
Date                      Signature

\_\_\_\_\_/\_\_\_\_\_  
Date                      Signature

**BUYER:**

\_\_\_\_\_/\_\_\_\_\_  
Date                      Signature

\_\_\_\_\_/\_\_\_\_\_  
Date                      Signature

\_\_\_\_\_/\_\_\_\_\_  
Date                      Signature

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Date                      Signature

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**EXCLUSIVE RIGHT TO SELL LISTING AGREEMENT**

This Exclusive Right to Sell Listing Agreement ("Agreement") is made on \_\_\_\_\_ ("Date") by and between \_\_\_\_\_ ("Seller") and (Insert Firm Name) \_\_\_\_\_ ("Broker").

**1. APPOINTMENT OF BROKER** In consideration of the services provided by Broker and described in this Agreement, Seller hereby appoints Broker as Seller's sole and exclusive listing agent and grants Broker the exclusive right to sell the real property described below ("Property").

**2. PROPERTY**

Street Address \_\_\_\_\_ Unit # \_\_\_\_\_  
City \_\_\_\_\_, Virginia ZIP Code \_\_\_\_\_  
TAX Map/ID # \_\_\_\_\_  
Parking Space # \_\_\_\_\_ Storage Unit # \_\_\_\_\_ Mailbox # \_\_\_\_\_  
Historic District Designation \_\_\_\_\_

Legal Description:

Lot/Block/Subdivision:

Lot(s) \_\_\_\_\_ Block/Square \_\_\_\_\_ Section \_\_\_\_\_ Phase \_\_\_\_\_  
Subdivision or Condominium \_\_\_\_\_  
County/Municipality \_\_\_\_\_ Deed Book/Page # \_\_\_\_\_

Metes/Bounds: see attached description or survey.

MLS Description:

No. of Levels: \_\_\_\_\_ Basement:  Yes  No Basement Entrance Type: \_\_\_\_\_  
Basement Type: \_\_\_\_\_ Attic Type: \_\_\_\_\_  
Architectural Style: \_\_\_\_\_ Type of Exterior: \_\_\_\_\_  
Disability Access:  Yes  No

**3. NOTICES** All notifications and amendments under this Agreement shall be in writing and shall be delivered using the contact information below.

Seller

Mailing Address: \_\_\_\_\_  
City, State, and Zip Code: \_\_\_\_\_  
Phone: (H) \_\_\_\_\_ (W) \_\_\_\_\_ (Cell) \_\_\_\_\_  
Email: \_\_\_\_\_ Fax: \_\_\_\_\_

Broker (Firm)

Mailing Address: \_\_\_\_\_  
City, State, and Zip Code: \_\_\_\_\_  
Phone: (W) \_\_\_\_\_ (Cell) \_\_\_\_\_  
Email: \_\_\_\_\_ Fax: \_\_\_\_\_

**4. TERM OF AGREEMENT** This Agreement shall run for the period commencing upon signature by all parties and expiring at 11:59 p.m. on \_\_\_\_\_ ("Listing Period"). If a sales contract for Property is ratified during Listing Period which provides for a settlement date beyond Listing Period, this Agreement shall be extended automatically until final disposition of the sales contract.

5. **LISTING PRICE** Seller instructs Broker to offer Property for sale at a selling price of \$ \_\_\_\_\_, or such other price as later agreed upon by Seller, which price includes Broker's compensation. (Note: Broker does not guarantee that Property will appraise or sell at the price stated herein, nor does Broker guarantee any net amount Seller might realize from the sale of Property).

6. **CONVEYANCES**

A. **Personal Property and Fixtures.** Property includes the following personal property and fixtures, if existing: built-in heating and central air conditioning equipment, plumbing and lighting fixtures, built-in electronics, sump pump, attic and exhaust fans, storm windows, storm doors, screens, installed wall-to-wall carpeting, window shades, blinds, window treatment hardware, smoke and heat detectors, TV antennas, exterior trees and shrubs.

Unless otherwise agreed to in writing, all surface or wall mounted electronic components/devices **DO NOT** convey.

If more than one of an item conveys, the number of items is noted. The items marked YES below are currently installed or offered:

Yes	No	#	Items	Yes	No	#	Items	Yes	No	#	Items
<input type="checkbox"/>	<input type="checkbox"/>	___	Alarm System	<input type="checkbox"/>	<input type="checkbox"/>	___	Freezer	<input type="checkbox"/>	<input type="checkbox"/>	___	Satellite Dish
<input type="checkbox"/>	<input type="checkbox"/>	___	Built-in Microwave	<input type="checkbox"/>	<input type="checkbox"/>	___	Furnace Humidifier	<input type="checkbox"/>	<input type="checkbox"/>	___	Storage Shed
<input type="checkbox"/>	<input type="checkbox"/>	___	Ceiling Fan	<input type="checkbox"/>	<input type="checkbox"/>	___	Garage Opener	<input type="checkbox"/>	<input type="checkbox"/>	___	Stove or Range
<input type="checkbox"/>	<input type="checkbox"/>	___	Central Vacuum	<input type="checkbox"/>	<input type="checkbox"/>	___	w/ remote	<input type="checkbox"/>	<input type="checkbox"/>	___	Trash Compactor
<input type="checkbox"/>	<input type="checkbox"/>	___	Clothes Dryer	<input type="checkbox"/>	<input type="checkbox"/>	___	Hot Tub, Equip. & Cover	<input type="checkbox"/>	<input type="checkbox"/>	___	Wall Oven
<input type="checkbox"/>	<input type="checkbox"/>	___	Clothes Washer	<input type="checkbox"/>	<input type="checkbox"/>	___	Intercom	<input type="checkbox"/>	<input type="checkbox"/>	___	Water Treatment System
<input type="checkbox"/>	<input type="checkbox"/>	___	Cooktop	<input type="checkbox"/>	<input type="checkbox"/>	___	Playground Equipment	<input type="checkbox"/>	<input type="checkbox"/>	___	Window A/C Unit
<input type="checkbox"/>	<input type="checkbox"/>	___	Dishwasher	<input type="checkbox"/>	<input type="checkbox"/>	___	Pool Equip. & Cover	<input type="checkbox"/>	<input type="checkbox"/>	___	Window Fan
<input type="checkbox"/>	<input type="checkbox"/>	___	Disposer	<input type="checkbox"/>	<input type="checkbox"/>	___	Refrigerator	<input type="checkbox"/>	<input type="checkbox"/>	___	Window Treatments
<input type="checkbox"/>	<input type="checkbox"/>	___	Electronic Air Filter	<input type="checkbox"/>	<input type="checkbox"/>	___	w/ ice maker	<input type="checkbox"/>	<input type="checkbox"/>	___	Wood Stove
<input type="checkbox"/>	<input type="checkbox"/>	___	Fireplace								
<input type="checkbox"/>	<input type="checkbox"/>	___	w/ Screen/Door								
<input type="checkbox"/>	<input type="checkbox"/>	___	w/ Gas Log Insert								

Other: \_\_\_\_\_

B. **As-Is Items.** Seller will not warrant the condition or working order of the following items and/or systems: \_\_\_\_\_

C. **As-Is Marketing.** Seller  does OR  does not authorize Broker to offer the entire Property in "As-Is" condition.

D. **Leased Items, Systems, and/or Service Contracts.** Any leased items, systems, or service contracts (including, but not limited to, termite or pest control, home warranty, fuel tanks, water treatment systems, lawn contracts, security system monitoring, and satellite contracts) **DO NOT CONVEY** absent an express written agreement by buyer and Seller. The following is a list of the leased items within Property:

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

7. **HOMEOWNER WARRANTY** Seller has the option to purchase a homeowner warranty, which can be in effect during the Listing Period and will transfer to the buyer upon settlement. Seller should review the scope of coverage, exclusions and limitations.

Cost not to exceed \$ \_\_\_\_\_ Warranty provider to be \_\_\_\_\_

8. **UTILITIES** (Check all that apply)

Hot Water:  Oil  Gas  Electric  Other \_\_\_\_\_ Number of Gallons \_\_\_\_\_

Air Conditioning:  Oil  Gas  Electric  Heat Pump  Other \_\_\_\_\_  Zones \_\_\_\_\_

Heating:  Oil  Gas  Electric  Heat Pump  Other \_\_\_\_\_  Zones \_\_\_\_\_

Water Supply:  Public  Private Well  Community Well

Sewage Disposal:  Public  Septic Approved for \_\_\_\_\_ Bedrooms

Type of Septic System:  Community  Conventional  Alternative  Experimental

Section 32.1-164:1 of the Code of Virginia requires Seller to disclose whether the onsite septic system serving Property is operating under a waiver of repair and/or maintenance requirements imposed by the State Board of Health. If the septic system is operating pursuant to a waiver, then Seller must provide the buyer with the "Disclosure Regarding Validity of Septic System Permit" prior to contract ratification. Such waiver is not transferable to the buyer.

Seller represents that the septic system  is OR  is not operating under a waiver from the State Board of Health.

9. **BROKER DUTIES** Broker shall perform, and Seller hereby authorizes Broker to perform, the following duties. In performing these duties, Broker shall exercise ordinary care, comply with all applicable laws and regulations and treat all parties honestly.

A. Broker shall protect and promote the interests of Seller and shall provide Seller with services consistent with the standards of practice and competence that are reasonably expected of licensees engaged in the business of real estate brokerage. Seller acknowledges that Broker is bound by the bylaws, policies and procedures, and rules and regulations governing the Multiple Listing Service (MLS), the Code of Ethics of the National Association of REALTORS®, the Code of Virginia, and the Regional Rules and Regulations for the electronic lockbox system.

B. Broker shall use reasonable efforts and act diligently to seek buyers for Property at the price and terms stated herein or otherwise acceptable to Seller, to negotiate on behalf of Seller to establish strategies for accomplishing Seller's objectives, to assist in satisfying Seller's contractual obligations, and to facilitate the consummation of the sale of Property.

C. Broker shall market Property, at Broker's discretion, including without limitation, description, interior and exterior photographs in appropriate advertising media, such as publications, mailings, brochures and internet sites; provided, however, Broker shall not be obligated to continue to market Property after Seller has accepted an offer.

D. Broker shall present all written offers or counteroffers to and from Seller in a timely manner, even if Property is already subject to a ratified contract of sale, unless otherwise instructed by Seller in writing.

E. Broker shall account, in a timely manner, for all money and property received in trust by Broker, in which Seller has or may have an interest.

- F. Broker shall show Property during reasonable hours to prospective buyers and shall accompany or accommodate, as needed, other real estate licensees, their prospective buyers, inspectors, appraisers, exterminators and other parties necessary for showings and inspections of Property, to facilitate and/or consummate the sale of Property.

Broker agrees that the showing instructions to be shared in the MLS with other real estate licensees and their prospective buyers are as follows: \_\_\_\_\_

Broker  shall OR  shall not install an electronic lockbox on Property to allow access and showings by persons who are authorized to access Property.

- G. Broker  shall OR  shall not install "For Sale" signs on Property, as permitted. Seller is responsible for clearly marking the location of underground utilities, equipment or other items that may be damaged by the placement of the sign.

#### 10. MARKETING/MLS/INTERNET ADVERTISING

- A. Broker shall disseminate information regarding Property including listing price(s), final sales price, all terms, and all status updates via the MLS during and after the expiration of this Agreement.

Broker shall enter the listing information into the MLS database:

Within 48 hours (excluding weekends and holidays) of commencement of the Listing Period OR  on or before: \_\_\_\_\_

- B.  Seller authorizes OR  Seller does not authorize Broker to conduct pre-marketing activities. If Seller authorizes Broker to conduct pre-marketing activities, a Pre-Marketing (Coming Soon) Addendum to the Listing Agreement is attached and made part of this Agreement.

- C. The parties agree and understand that internet advertising includes:

- 1) Broker's internet website.
- 2) The internet websites of licensed real estate salespersons or associate real estate brokers affiliated with Broker or other brokers participating in the MLS;
- 3) Any other internet websites (such as syndicated websites) in accordance with applicable MLS rules and regulations; and/or
- 4) Printed media.

Seller authorizes OR  Seller does not authorize Broker to market Property through the MLS to be made available to third party websites. Seller understands that the listing data may get disseminated to third party websites through means other than the MLS regardless of the selection above. Seller acknowledges that the accuracy of the listing data is controlled by the third party websites and is outside of Broker's control.

- D. In the event Seller has opted into marketing Property in the MLS in C. above, Broker is hereby authorized by Seller to submit and market Property as follows:

Seller authorizes OR  Seller does not authorize the display of Property address on any internet website. In the event Seller does not authorize the display of the property address, only the ZIP code will be displayed.

Seller authorizes OR  Seller does not authorize the display of unedited comments or reviews of Property (or display a hyperlink to such comments or reviews) on MLS participants' internet websites. This provision does not control the display of such comments on third-party websites such as syndicated websites.

Seller authorizes OR  Seller does not authorize the display of an automated



estimate of the market value of Property (or a hyperlink to such estimate) on MLS participants' internet websites. This provision does not control the display of such estimated value of Property on third-party websites such as syndicated websites.

- E. During the term of this Agreement, Seller may, by written notice to Broker, authorize Broker to enable or disable use of any feature as described above. Broker agrees to update the MLS database accordingly.

## 11. TYPES OF REAL ESTATE REPRESENTATION - DISCLOSURE AND INFORMED CONSENT

**Seller representation** occurs by virtue of this Agreement with Seller's consent to use Broker's services and may also include any cooperating brokers who act on behalf of Seller as subagent of Broker. (Note: Broker may assist a buyer or prospective buyer by performing ministerial acts that are not inconsistent with Broker's duties as Seller's listing agent under this Agreement.)

**Buyer representation** occurs when buyers contract to use the services of their own broker (known as a buyer representative) to act on their behalf.

**Designated representation** occurs when a buyer and seller in one transaction are represented by different sales associate(s) affiliated with the same broker. Each of these sales associates, known as a designated representative, represents fully the interests of a different client in the same transaction. Designated representatives are not dual representatives if each represents only the buyer or only the seller in a specific real estate transaction. In the event of designated representatives, each representative shall be bound by client confidentiality requirements, set forth in the CONFIDENTIAL INFORMATION paragraph. The broker remains a dual representative.

Seller does not consent to designated representation and does not allow Property to be shown to a buyer represented by this Broker through another designated representative associated with the firm. **OR**

Seller consents to designated representation and allows Property to be shown to a buyer represented by this Broker through another designated representative associated with the firm.

**Dual representation** occurs when the same broker and the same sales associate represent both the buyer and seller in one transaction. In the event of dual representation, the broker shall be bound by confidentiality requirements for each client, set forth in the CONFIDENTIAL INFORMATION paragraph.

Seller does not consent to dual representation and Seller does not allow Property to be shown to a buyer represented by this Broker through the same sales associate. **OR**

Seller consents to dual representation and allows Property to be shown to a buyer represented by this Broker through the same sales associate.

**An additional disclosure is required before designated or dual representation is to occur for a specific transaction.**

Broker will notify other real estate licensees via the MLS whether Seller consents to designated or dual representation.

## 12. BROKER COMPENSATION

- A. **Payment.** Seller shall pay Broker in cash total compensation of \_\_\_\_\_ ("Compensation") if, during the term of this Agreement, anyone produces a buyer ready, willing and able to buy Property.

Compensation is also earned if, within \_\_\_\_\_ days after the expiration or termination of this Agreement, a contract is ratified with a ready, willing, and able buyer to whom Property had been shown during the term of this Agreement; provided, however, that Compensation need not be paid if a contract is ratified on Property while Property is listed with another real estate company.

- B. Cooperating Broker.** Broker shall make a blanket unilateral offer of cooperation and compensation to other brokers in any MLS that Broker deems appropriate. To that end Broker shall offer a portion of Compensation to the cooperating broker as indicated:

Buyer Agency Compensation: \_\_\_\_\_ OR

Other Compensation: \_\_\_\_\_

*Note: Compensation may be shown by a percentage of the gross selling price, a definite dollar amount or "N" for no compensation.*

*Broker's compensation and the sharing of compensation between brokers are not fixed, controlled, recommended or suggested by any multiple listing service or Association of REALTORS®.*

- C. Variable Rate Commission.** If applicable, the Broker and Seller agree to a variable rate commission to be paid as follows: \_\_\_\_\_
- D. Retainer Fee.** Broker acknowledges receipt of a retainer fee in the amount of \_\_\_\_\_ which  shall OR  shall not be subtracted from Compensation. The retainer fee is non-refundable and is earned when paid.
- E. Early Termination.** In the event Seller wishes to terminate this Agreement prior to the end of Listing Period, without good cause, Seller shall pay Broker \_\_\_\_\_ before Broker's execution of a written release.

**13. CONFIDENTIAL INFORMATION** Broker shall maintain the confidentiality of all personal and financial information and other matters identified as confidential by Seller which were obtained by Broker during the brokerage relationship, unless Seller consents in writing to the release of such information or as otherwise provided by law. The obligation of Broker to preserve confidential information continues after termination of the brokerage relationship. Information concerning latent material defects about Property is not considered confidential information.

**14. AUTHORIZATION TO DISCLOSE OTHER OFFERS** In response to inquiries from buyers or cooperating brokers, Broker may not disclose, without Seller's authorization, the existence of other written offers on Property. If Seller does give such authorization, Seller acknowledges that Broker and sales associate(s) must disclose whether the offers were obtained by the listing agent, another member of the listing Broker's firm, or by a cooperating broker.

Seller  does OR  does not authorize Broker and sales associate(s) to disclose such information to buyers or cooperating brokers.

**15. COMPLIANCE WITH FAIR HOUSING LAWS** Property shall be shown and made available without regard to race, color, religion, sex, handicap, familial status, or national origin as well as all classes protected by the laws of the United States, the Commonwealth of Virginia, and applicable local jurisdictions, or by the REALTOR® Code of Ethics.

**16. RELOCATION PROGRAM** Seller is participating in any type of relocation program:

Yes OR  No

If "Yes": (a) the program is named: \_\_\_\_\_  
Contact Name \_\_\_\_\_ Contact Information \_\_\_\_\_  
and (b) terms of the program are: \_\_\_\_\_

If "No" or if Seller has failed to list a specific employee relocation program, then Broker shall have no obligation to cooperate with or compensate any undisclosed program.

**17. CONDOMINIUM ASSOCIATION** Seller represents that Property  is OR  is not located within a development which is a Condominium or Cooperative. Condominiums or Cooperatives being offered for sale are subject to the receipt by buyers of the required disclosures, and Seller is responsible for payment of appropriate fees and for providing these disclosure documents to prospective buyers as prescribed in the Condominium Act, Section 55-79.39 et seq., and the Cooperative Act, Section 55-424, et seq., of the Code of Virginia.

Seller OR  Broker shall order the association disclosure documents at Seller's expense  at the time of listing OR  within 3 days following the date of contract ratification OR  \_\_\_\_\_

The Condominium or Cooperative dues are \$ \_\_\_\_\_ per \_\_\_\_\_ (frequency of payment).

Special Assessment \$ \_\_\_\_\_ for \_\_\_\_\_

Condominium or Cooperative Association Name: \_\_\_\_\_

Management Company: \_\_\_\_\_ Phone #: \_\_\_\_\_

Seller represents that Seller  is OR  is not current on all condominium association dues and/or special assessments.

**18. PROPERTY OWNERS' ASSOCIATION** Seller represents that Property  is OR  is not located within a development(s) which is subject to the Virginia Property Owners' Association Act, Sections 55-504 through 55-516 of the Code of Virginia. If Property is within such a development, Seller is responsible for payment of the appropriate fees and for providing these disclosure documents to the buyers.

Seller OR  Broker shall order the association disclosure documents at Seller's expense  at the time of listing OR  within 3 days following the date of contract ratification OR  \_\_\_\_\_

The Property Owners' Association dues are \$ \_\_\_\_\_ per \_\_\_\_\_ (frequency of payment).

Special Assessment \$ \_\_\_\_\_ for \_\_\_\_\_

Property Owners' Association Name: \_\_\_\_\_

Management Company: \_\_\_\_\_ Phone #: \_\_\_\_\_

Seller represents that Seller  is OR  is not current on all property owners' association dues and/or special assessments.

**19. PROPERTY CONDITION** Seller acknowledges that Broker has informed Seller of Seller's rights and obligations under the Virginia Residential Property Disclosure Act. Property  is OR  is not exempt from the Act. If not exempt, Seller has completed and provided to Broker a Residential Property Disclosure Statement, or any other applicable disclosures as may be required.

Seller acknowledges Broker is required to disclose to prospective buyers all material adverse facts pertaining to the physical condition of Property actually known by Broker. Broker shall not, however, be obligated to discover latent defects in Property or to advise on property condition matters outside the scope of Broker's real estate license. Seller shall indemnify, save, and hold Broker harmless from all claims, complaints, disputes, litigation, judgments and attorney's fees arising from any incorrect information supplied by Seller or from Seller's failure to disclose any material adverse facts.

- 20. LEAD-BASED PAINT DISCLOSURE** Seller represents that the residential dwelling(s) at Property  were OR  were not constructed before 1978. If the dwelling(s) were constructed before 1978, Seller is subject to Federal law concerning disclosure of the possible presence of lead-based paint at Property, and Seller acknowledges that Broker has informed Seller of Seller's obligations under the law. If the dwelling(s) were constructed before 1978, unless exempt under 42 U.S.C. 4852(d), Seller has completed and provided to Broker the form, "Sale: Disclosure And Acknowledgment Of Information On Lead-Based Paint And/Or Lead-Based Paint Hazards" or equivalent form.
- 21. CURRENT LIENS** Seller represents to Broker that the below information is true and complete to the best of Seller's information, knowledge, and belief and Seller understands that any loans identified below will be paid off at Settlement: *(Check all that are applicable)*
- A.  Property is not encumbered by any mortgage or deed of trust *(if box is checked, skip to item G).*
  - B.  Property is security for a first mortgage or deed of trust loan held by (Lender Name): \_\_\_\_\_ with an approximate balance of \$ \_\_\_\_\_.  
This loan is a  Conventional OR  FHA or  VA or  \_\_\_\_\_.
  - C.  Property is security for a second mortgage or deed of trust loan held by (Lender Name): \_\_\_\_\_ with an approximate balance of \$ \_\_\_\_\_.
  - D.  Property is security for a line of credit or home equity line of credit held by (Lender Name): \_\_\_\_\_ with an approximate balance of \$ \_\_\_\_\_.
  - E.  Seller is current on all payments for the loans identified above.
  - F.  Seller is not in default and has not received any notice(s) from the holder(s) of any loan identified above, or from any other lien holder of any kind, regarding a default under any loan, threatened foreclosure, notice of foreclosure, or the filing of foreclosure.
  - G.  There are no liens secured against Property for Federal, State, or local income taxes; unpaid real property taxes; or unpaid condominium or homeowners' association fees or special assessments.
  - H.  There are no judgments against Seller (including each owner for jointly held property). Seller has no knowledge of any matter that might result in a judgment that may potentially affect Property.
  - I.  Seller has not filed for bankruptcy protection under Federal law and is not contemplating doing so during the term of this Agreement.

In the event Property is encumbered by a loan, Seller further agrees that Seller shall promptly disclose the name and contact information for the lender and account number to the Settlement Agent identified in a contract for the sale of the Property.

During the term of this Agreement, should any change occur with respect to answers A. through I. above, Seller shall immediately notify Broker and sales associate/listing agent, in writing, of such change.

22. **SELLER FINANCING** Seller  does **OR**  does not agree to offer seller financing by providing a \_\_\_\_\_ deed of trust loan in the amount of \$ \_\_\_\_\_ with further terms to be negotiated.

23. **CLOSING COSTS** Fees for the preparation of the deed of conveyance, that portion of the settlement agent's fee billed to Seller, costs of releasing existing encumbrances, Seller's legal fees, Grantor's Tax, and any other proper charges assessed to Seller will be paid by Seller unless provided otherwise in the sales contract.

The "Seller's Estimated Cost of Settlement" form  is **OR**  is not attached. These estimates are for informational purposes only and will change based upon the terms and conditions of the purchase offer.

**Seller's Proceeds:** The Seller acknowledges that Seller's proceeds may not be available at the time of settlement. The receipt of proceeds may be subject to the **Virginia Wet Settlement Act**, and may be subject to other laws, rules and regulations (e.g. Virginia estate statutes and the **Foreign Investment Real Property Tax Act - FIRPTA**).

**Seller is advised to seek legal and/or financial advice concerning these matters.**

24. **IRS/FIRPTA** Section 1445 of the Internal Revenue Service (IRS) Code may require the settlement agent to report the gross sales price, Seller's federal tax identification number and other required information to the IRS. Seller will provide to the settlement agent such information upon request. In certain situations, the IRS requires a percentage of the sales price to be withheld from Seller's proceeds if Seller is a Foreign Person for purposes of U.S. income taxation. Foreign Persons include, but are not limited to, non-resident aliens, foreign corporations, foreign partnerships, foreign trusts or foreign estates.

Seller is a US citizen or a Lawful Permanent Resident as defined by the Immigration and Nationality Act (Green Card Holder).  Yes **OR**  No

## 25. **SELLER DUTIES**

### A. **Seller Representations and Warranties.**

Seller is aware that seller may be responsible for failing to disclose information and/or misrepresenting the condition of Property. Seller certifies the accuracy of the information provided to the Listing Broker and Seller warrants:

- 1) Seller has capacity to convey good and marketable title to Property by general warranty deed and represents that Property is insurable by a licensed title insurance company with no additional risk premium.
- 2) Seller is not a party to a listing agreement with another broker for the sale, exchange, or lease of Property.
- 3) No person or entity has the right to purchase, lease or acquire Property, by virtue of an option, right of first refusal or otherwise.
- 4) Seller  is **OR**  is not a licensed (active/inactive) real estate agent/broker.
- 5) Seller  has **OR**  has no knowledge of the existence, removal or abandonment of any underground storage tank on Property.
- 6) Property  is **OR**  is not tenant-occupied.
- 7) Seller  has **OR**  does not have a recording system in Property. In the event Seller has a recording system in Property which records audio, Seller understands that

recording of audio may result in violation of state and/or federal wiretapping laws. Therefore, Seller hereby releases and holds harmless Broker, Broker's designated agents, sub-agents, sales associates and employees from any liability which may result from the recording of audio in Property.

**B. Access to Property.** Seller shall provide keys to Broker for access to Property to facilitate Broker's duties under this Agreement.

Seller shall allow Broker's unlicensed assistants in Property to perform ministerial acts as defined by 18VAC135-20-165.

If Property is currently tenant-occupied, Seller shall provide Broker with any current lease documents and contact information for current tenant, and shall use best efforts to obtain the full cooperation of current tenants, in connection with showings and inspections of Property.

**C. Seller Assumption of Risk.**

1) Seller retains full responsibility for Property, including all utilities, maintenance, physical security and liability until title to Property is transferred to buyer. Seller is advised to take all precautions for safekeeping of valuables and to maintain appropriate property and liability insurance through Seller's own insurance company.

Broker is not responsible for the security of Property or for inspecting Property on any periodic basis. If Property is or becomes vacant during the Listing Period, Seller is advised to notify Seller's homeowner's insurance company and request a "Vacancy Clause" to cover Property.

2) In consideration of the use of Broker's services and facilities and of the facilities of any MLS, Seller and Seller's heirs and assigns hereby release Broker, Broker's designated agents, sub-agents, sales associates and employees, any MLS and the directors, officers and employees thereof, including officials of any parent Association of REALTORS®, except for malfeasance on the part of such parties, from any liability to Seller for vandalism, theft or damage of any nature whatsoever to Property or its contents that occurs during the Listing Period. Seller waives any and all rights, claims and causes of actions against them and holds them harmless for any property damage or personal injury arising from the use or access to Property by any persons during Listing Period.

**26. MISCELLANEOUS PROVISIONS**

**A. Appropriate Professional Advice.** Broker can counsel on real estate matters, but if Seller desires legal advice, Seller is advised to seek legal counsel. Seller is advised further to seek appropriate professional advice concerning, but not limited to, the condition of Property or tax and insurance matters.

**B. Service Provider Referrals.** Broker or one of Broker's sales associates may refer a service provider to assist Seller in this transaction. This referral is not an endorsement, guarantee or warranty as to the quality, cost and/or timeliness of the services to be provided. Seller is advised to independently investigate all options for service providers and consider whether any service provider will work effectively with Seller. Seller is free to reject any referred service provider for any or no reason.

**C. Wire Fraud** Seller should never transmit nonpublic personal information, such as credit or debit card, bank account or routing numbers, by email or other unsecured electronic communication. There are numerous e-mail phishing scams that involve fraudulent



requests to wire funds in conjunction with a real estate transaction. If Seller receives any electronic communication directing the transfer of funds or to provide nonpublic personal information, even if that electronic communication appears to be from a representative of Broker, do not respond. Such requests, even if they may otherwise appear to be from Broker, could be part of a scheme to defraud Seller by misdirecting the transfer of sale proceeds or using Seller's identity to commit a crime. If Seller should receive wiring instructions via electronic means that appear to be from a legitimate source involved in Seller's real estate transaction, Seller should verify - using contact information other than that provided in the communication - that the instructions were sent by an actual representative of the requesting company. Conversely, if Seller has provided wiring instructions to a third party, it is important to confirm with the representative of said company that the wire instructions are not to be substituted without Seller's verified written consent. When wiring funds, never rely exclusively on an e-mail, fax or text communication.

- D. Subsequent Offers After Contract Acceptance.** After a sales contract has been ratified on Property, Broker recommends Seller obtain the advice of legal counsel prior to acceptance of any subsequent offer.
- E. Governing Law.** The laws of Virginia shall govern the validity, interpretation, and enforcement of this Agreement.
- F. Binding Agreement.** This Agreement will be binding upon the parties, and each of their respective heirs, executors, administrators, successors and permitted assigns. The provisions hereof will survive the sale of Property and will not be merged therein. This Agreement, unless amended in writing by the parties, contains the final and entire agreement and the parties will not be bound by any terms, conditions, oral statements, warranties or representations not herein contained.

**27. ATTORNEYS' FEES.** If any Party breaches this Agreement and a non-breaching Party retains legal counsel to enforce its rights hereunder, the non-breaching Party shall be entitled to recover against the breaching Party, in addition to any other damages recoverable against any breaching Party, all of its reasonable Legal Expenses incurred in enforcing its rights under this Agreement, whether or not suit is filed, and in obtaining, enforcing and/or defending any judgment related thereto. Should any tribunal of competent jurisdiction determine that more than one Party to the dispute has breached this Agreement, then all such breaching Parties shall bear their own costs. However, if the tribunal determines that one or more of the Parties is a "Substantially Prevailing Party", any such Substantially Prevailing Party shall be entitled to recover from any of the breaching Parties, in addition to any other damages recoverable against any breaching Party, all of its reasonable Legal Expenses incurred in enforcing its rights under this Agreement, whether or not suit is filed, and in obtaining, enforcing and/or defending any judgment related thereto. "Party" as used in this paragraph includes any third party beneficiary identified herein. "Legal Expenses" as used in this paragraph includes attorneys' fees, court costs, and litigation expenses, if any, including, but not limited to, expert witness fees, and court reporter fees.

**28. ADDITIONAL TERMS.** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



\_\_\_\_\_/\_\_\_\_\_  
Date Seller

\_\_\_\_\_/\_\_\_\_\_  
Date Broker/Sales Manager

\_\_\_\_\_/\_\_\_\_\_  
Date Seller

\_\_\_\_\_/\_\_\_\_\_  
Date Seller

\_\_\_\_\_/\_\_\_\_\_  
Date Seller

\*\*\*\*\*

**Sales Associate Contact Information**

Sales Associate (Listing Agent): \_\_\_\_\_

Phone: (W) \_\_\_\_\_ (Cell) \_\_\_\_\_

Email: \_\_\_\_\_ Fax: \_\_\_\_\_

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Educational Version

## NVAR Standard Forms Changes: Effective January 1, 2018

The NVAR Board of Directors has approved the following forms changes, as proposed by NVAR's Standard Forms Committee:

### 1. K1338 – Exclusive Right to Represent Buyer Agreement

- a. **Paragraph 4, Term and Termination:** This paragraph was modified to clarify the Buyer's responsibility for payment of the Termination Fee. This means that any Termination Fee paid by the Buyer to the Broker is in addition to any other fees paid by Buyer to Broker during the term of the Agreement.
- b. **Paragraph 5, Broker's Duties:** This paragraph was modified to clarify that any agreement between Buyer and Broker regarding the existence, terms, or conditions of offers must be in writing.
- c. **Paragraph 6, Buyer's Duties:** This paragraph was separated from Paragraph 5 for clarity, and to highlight the separation of the parties' duties. This paragraph was modified to advise Buyer not to take, post, publish or display photos or video recordings of the property without Seller's prior written consent. The term sub-agent was removed to make this paragraph consistent with the residential standard agency statute. The revisions to this paragraph also streamline the language regarding the existence of a recording system in the property and the possibility of video and/or audio recording.
- d. **Paragraph 8(B)(1):** This paragraph was modified to clarify that the Broker's Fee is owed to Broker after termination only if the Buyer later acquires real property of the same type as discussed in the Purpose Paragraph 7.
- e. **Paragraph 14:** This paragraph was modified to include headings for each of the three disclaimers for purposes of clarity. This paragraph was also modified to include a new disclaimer with respect to wire fraud. Since wire fraud is a significant risk to Realtors® and consumers, the Buyer is being warned of its possibility and instructed about precautions to take in order to avoid becoming a victim of wire fraud. Buyers are being advised not to rely exclusively on electronic communications, and to orally verify any changes to wiring instructions with the Broker or with any third-party vendor before transmitting funds by wire transfer.

### 2. K1208 – New Home Sales Contract

This form was created to accommodate the needs of the membership, and should be **used only in instances where the Buyers will buy a lot and then build a home**. This contract is not intended to be used when:

- the owner already owns the lot;
- the builder owns the lot and will be building a house; or
- the builder owns the lot and has already begun building a house.

This contract was drafted to follow the Residential Sales Contract as closely as possible. However, some provisions, such as the inspection paragraph, differ significantly from the Residential Sales Contract.

### 3. K1382 – Construction Financing and Appraisal Contingencies Addendum

This financing contingency was created to be used with the New Home Sales Contract. This contingency can be used for all types of financing.

**4. K1373 – Options Addendum (New Home Sales Contract)**

This addendum ensures that the parties to the New Home Sales Contract reduce to writing the options which are included in the base price, as well as those the Buyer wishes to add.

**5. K1020 – Seller’s Post Settlement Occupancy Agreement and K1225 – Buyer’s Pre-Settlement Occupancy Agreement**

The changes to these two forms were administrative in nature to match the language which was recently updated in the Sales Contract, addressing the Property Maintenance and Condition.

**6. K1360 – Well and Septic Contingency**

This change was administrative in nature. Paragraph 2B2 was amended to reflect a wrong reference to a previous paragraph. The old version incorrectly referred to paragraph A1. It has been amended to refer to paragraph B1.

**7. K1336 – Exclusive Right to Sell Listing Agreement**

This change was administrative in nature. The second paragraph 26 was renumbered to 27.

# Questions?

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