

STATE OF TEXAS

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AGREEMENT OF SALE & PURCHASE

COUNTY OF WILLIAMSON

§

ESTRELLA SUBDIVISION

This *Agreement of Sale & Purchase* ("Agreement") is made and entered into between

OAKLAND HILLS, L.P., a Texas limited partnership ("Seller"), and

_____ ("Buyer").

1. PROPERTY. Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller, subject to the terms and conditions below, the following property (the "Property"). The Property consists of the residential lot (the "Lot") shown in **Exhibit A** attached hereto. The Property includes all easements, rights-of-way, permits, approvals, privileges and entitlements appurtenant thereto and all Seller's right, title and interest in and to all streets and water courses adjacent to, abutting or serving the real property.

2. EARNEST MONEY. Within three (3) business days of the execution of this Agreement, Buyer shall deposit with Seller, the sum of **TEN THOUSAND AND NO/100 DOLLARS (\$10,000)** as Earnest Money to bind the sale. If Buyer fails to deposit the Earnest Money within the time allowed, Seller may, at its sole discretion, cancel this Agreement with no further obligations to the Buyer. Upon execution of this Agreement and the delivery of the Earnest Money to Seller, the Earnest Money shall immediately be deemed earned by the Seller, and non-refundable to the Buyer in any instance, except only in the event of Seller's inability, or refusal, to close, or the non-satisfaction of any Condition Precedent (set out in § 4 below) to Buyer's obligations hereunder. The Earnest Money paid to Seller will be credited to the Purchase Price at the Closing. If the Closing of the Lot does not occur, through no fault of Seller, this Earnest Money shall be distributed as provided herein.

3. PURCHASE PRICE. The price ("Purchase Price") for which Seller agrees to sell and convey the Property to Buyer, and which Buyer agrees to pay to Seller, subject to the terms hereof, is shown in **Exhibit A**. The sum due at the Closing may be increased or decreased, as set forth in this Agreement, by the allocation of closing costs, prorations to be paid by or credited to Buyer and credit for the Earnest Money paid to Seller. The entire Purchase Price, adjusted in accordance with this agreement, shall be paid by Buyer to Seller in cash at closing.

4. CONDITIONS TO CLOSING. This Agreement, and the obligations of both Buyer and Seller, including Buyer's obligations to Close, are expressly contingent upon all of the following occurring or being satisfied prior to each Closing:

4.1. SELLER'S IMPROVEMENTS. Seller will, at Seller's expense, construct subdivision improvements serving the Property consisting of streets, street signs, street lights, and

utilities consisting of water, waste water, natural gas, telephone, electric, and cable television (the "Improvements").

4.2. **FEASIBILITY STUDY.** Buyer shall not be entitled to a feasibility study period.

4.3. **CLOSING AGREEMENT.** At the Closing, Seller and Buyer will execute a Closing Agreement, which contains the following general terms and conditions: (1.) attorney representation; (2.) waiver of warranties; (3.) proration of ad valorem taxes; (4.) No clearing or construction prior to written approval of plans by the Architectural Design and Review Committee; (4.) Impervious cover of the lot is limited to a maximum of 7,600 square feet; and (5) If the lot is resold then.....

4.4. **SELLER'S REPRESENTATIONS.** Each of Seller's representations and warranties set forth in § 5 shall be true as of the date of the Closing.

4.4. **ENVIRONMENTAL CONDITIONS.** The environmental, health, and ecological condition of the Lot will be such that the Lot will not be in violation of any environmental, health, or ecological law, ordinance, rule, or regulation applicable to the Property.

5. **SELLER'S REPRESENTATIONS.** Seller hereby represents to Buyer that the following facts are true and correct and that if prior to Closing Seller discovers that one or more of such facts are materially untrue or inaccurate, it will inform Buyer in writing of the discovery. Buyer's obligation to consummate this transaction shall be contingent upon the lack of any material variance with respect to the truth and accuracy of all such facts as of the day of Closing. Each of the following representations shall also be deemed to be made at Closing and shall survive Closing.

5.1. **TITLE.** Seller will have at the Closing Date good and indefeasible title in fee simple to the Property, subject to the matters reflected in the title report, free and clear of all liens (any present liens to be released at Closing), and no party, except as set forth in this Contract, has any rights in, or to acquire, the Property;

5.2. **PROCEEDINGS.** To Seller's current, actual knowledge, there are no actions, suits, claims, assessments, or proceedings pending or threatened that could materially adversely affect the ownership, operation, or maintenance of the Property or Seller's ability to perform hereunder;

5.3. **AUTHORITY.** Seller has full right, power, and authority to execute, deliver, and perform this Agreement. All requisite probate, partnership, corporate or trust actions necessary to authorize each Seller to enter into this contract and perform its obligations hereunder have either been taken or will be taken prior to closing;

5.4. **POSSESSION.** To Seller's current, actual knowledge, there are no adverse parties in possession of the Property;

5.5. **ENVIRONMENTAL.** To Seller's current, actual knowledge, the Property and the property owned by Seller adjoining or near the Property is not being used, and Seller has no actual knowledge that it has ever been used, for the storage and disposal of any hazardous or toxic materials nor, to the best of Seller's knowledge without investigation, are such materials present thereon. As used herein, "hazardous or toxic materials" shall mean any such materials as so defined by any federal, state, county, or local governmental authorities having jurisdiction thereof, including, but not limited to, the *Resource Conservation & Recovery Act* (42 U.S.C. §§ 6901, *et seq.*), the *Federal Comprehensive Environmental Response Compensation & Liability Act* (42 U.S.C. §§ 9601, *et seq.*), and the *Clean Water Act* (33 U.S.C. §§ 1251, *et seq.*), or any successor or modified statute or act.

5.6. **ASSESSMENTS.** To Seller's current, actual knowledge, there are no pending or threatened governmental proceedings, lawsuits, investigations, bond issuances, or proposals for public improvement assessments, payback agreements, road extension or improvement agreements, utility moratoriums, use moratoriums, or improvement moratoriums affecting all of any portion of the Property for the use and operation of the Property.

5.7. **CONDEMNATION.** To Seller's current, actual knowledge, there is no pending or threatened condemnation or similar proceedings or assessments affecting the Property, or any part thereof, nor to the best knowledge and belief of Seller is any such proceeding or assessment contemplated by any governmental authority.

5.8. **LITIGATION.** To Seller's current, actual knowledge, there is no pending lawsuit pertaining to the Property.

6. **HOMEOWNER'S ASSOCIATION / CCR's.** Buyer acknowledges that the Property shall be encumbered by a uniform set of covenants, conditions, and restrictions, including regular assessments which will be set out in a *Declaration of Covenants, Conditions, & Restrictions* to be recorded in the Official Records, Williamson County, Texas, as amended.

7. **TITLE.**

7.1. **TITLE COMMITMENT.** Within ten (10) days of the Effective Date of this Agreement, Seller, at its sole cost and expense, shall deliver to Buyer a Commitment for Title Insurance ("Title Commitment") from GEORGETOWN TITLE COMPANY ("Title Company"), setting forth the status of the title of the Property; and, if requested by Buyer, a true, complete, and legible copy of all documents referred to in the Title Commitment.

7.2. **ENCUMBRANCES.** Buyer shall have fifteen (15) days from the receipt of the Title Commitment in which to examine same and to specify in writing to Seller those items which Buyer finds objectionable (the "Encumbrances"). Seller, at its sole cost and expense, may, but shall not be obligated to cure or remove all Encumbrances, give Buyer written notice thereof, and deliver to Buyer prior to Closing an amended Title Commitment reflecting the cure of such matters. If Buyer does not deliver to Seller a

written notice specifying those items which are Encumbrances within fifteen (15) days after the receipt by Buyer of the information referred to above, then all of the items reflected on the Title Commitment (other than liens) shall be considered to be Permitted Exceptions. However, in no event shall any exception contained on Schedule C of the Title Commitment be considered a Permitted Exception because of the failure to provide Seller with the fifteen (15) day notice. Liens affecting the Property shall be Encumbrances, and Seller shall cause the same to be released at or prior to Closing.

7.4. BUYER'S REMEDIES. If Seller does not cause the Encumbrances to be removed or cured (or agree in writing to their removal or cure at or prior to Closing) within fifteen (15) days from the date of Buyer's notice specifying Encumbrances, Buyer shall elect to pursue one of the following, as its sole and exclusive remedy:

7.4.1. TERMINATION. Buyer may terminate this Agreement by giving Seller written notice thereof on or before the tenth (10th) day after the date Buyer receives Seller's notice of which Encumbrances will, and will not, be cured, in which event the Earnest Money shall be returned to Buyer, and neither party shall have any further rights, duties, or obligations hereunder related to the Property; or

7.4.2. WAIVER OF OBJECTIONS. Buyer may elect to purchase the Property subject to the Encumbrances not so removed or cured, thereby waiving its objection and deeming all such Encumbrances to be Permitted Exceptions. In the event Buyer has not elected its remedy under § 7.4.1 above by a written notice delivered to Seller within the time specified, then it shall be deemed that Buyer has elected its remedy under this § 7.4.2.

8. NO OTHER WARRANTIES BY SELLER. SAVE AND EXCEPT Seller's representations and warranties as set forth in § 5 of this Agreement and elsewhere in this Agreement, Buyer represents and warrants that it is relying on its own investigation and inspection of the Property, and that Buyer will take the Lot in its "as is, where is" condition based solely on its own investigation, verification, and inspection. SAVE AND EXCEPT Seller's representations and warranties as set forth in § 5 of this Agreement and elsewhere in this Agreement, Buyer acknowledges and agrees that neither Seller nor any of Seller's agents, employees, or representatives has made any warranty or representation, express or implied, written or oral concerning the Property.

9. BUYER REPRESENTATIONS. The Buyer represents to Seller that:

9.1. AUTHORITY TO EXECUTE. The execution of this Agreement, the delivery by Buyer to Seller or Escrow Agent of all monies, items, and documents provided for herein, Buyer's performance hereof and the transactions contemplated hereby have been duly authorized by the requisite action on the part of Buyer. This Agreement constitutes valid and binding obligation of Buyer and is enforceable against Buyer in accordance with its terms.

- 9.2. ORGANIZATION.** Buyer is in good standing under the laws of the State of Texas, and is authorized to do business in Texas.
- 9.3. NO ENCUMBRANCE.** Buyer shall neither encumber nor cause any liens to be created against any Lot prior to its closing, nor record this Agreement or a memorandum hereof.
- 9.4. LOT MAINTENANCE.** After closing Buyer will maintain their Lot in a neat and orderly manner and free of all trash and debris, and will require their contractor to conduct its construction activities without excessive trash and debris on the Lot.
- 9.5. FINANCIAL PREQUALIFICATION.** Within thirty (30) days after the Effective Date of this Agreement, Buyer must provide written confirmation of his/her/their ability to purchase the lot in the form of (i) a federally chartered bank's prequalification letter evidencing Buyer's approval to buy this Lot; or (ii) a certified financial statement demonstrating the Buyer's ability to close the lot in the form of cash equity.
- 10. ESTRELLA OWNERS ASSOCIATION.** Persons purchasing residential lots within the Estrella Subdivision shall be members of the mandatory ESTRELLA OWNERS ASSOCIATION, INC. Upon the Closing, Buyer shall assume all of the rights, benefits, duties, and obligations pertaining to membership.
- 11. CLOSING.** The Closing of the Lot (the "Closing") shall occur at the offices of Georgetown Title Co., on the date set forth in **Exhibit A** attached hereto.
- 12.1. BUYER'S PERFORMANCE.** At the Closing, Buyer, at its sole cost and expense, shall deliver or cause to be delivered to Seller:
- 12.2.1. GOOD FUNDS.** A cashier's check, certified check or wired funds in the amount of the cash portion of the Purchase Price as set forth herein, with adjustments being made for credits, prorations, and closing costs;
- 12.2.2. AUTHORITY.** Evidence satisfactory to Seller and the Title Company that the person executing the Closing documents on behalf of Buyer has full right, power, and authority to do so;
- 12.2.3. MISCELLANEOUS.** Other documents and instruments required herein or as reasonably required by Seller or the Title Company as appropriate to close the transaction.
- 12.3. SELLER PERFORMANCE.** At the Closing, Seller shall deliver or cause to be delivered to Buyer the following:
- 12.3.1. DEED.** Special Warranty Deed, fully executed and acknowledged by Seller, conveying to Buyer the Property being acquired, subject to the Permitted

Exceptions, in form and substance according to this Agreement, and otherwise as is customary in Williamson County, Texas;

12.3.2. OWNER'S TITLE POLICY. An Owners Title Policy in the amount of the Purchase Price issued by the Title Company insuring that Buyer is the owner of the Property subject only to any Permitted Exceptions, and the standard printed exceptions included in a Texas standard form Owner Policy of Title Insurance (subject to Title Company approval, Buyer agrees to allow Seller to "pass-through" the premium paid for Sellers Owners Title Policy);

12.3.3. AUTHORITY. Evidence satisfactory to Buyer and the Title Company that the person or persons executing the Closing documents on behalf of Seller have full right, power, and authority to do so; and

12.3.4. MISCELLANEOUS. Such other instruments as are required herein or which are customarily executed in Texas to affect the conveyance of the Property.

12.4. PRORATIONS. All real estate taxes and assessments relating to the Lot shall be prorated-as of the date of the Closing between Seller and Buyer. If the amount of taxes for that year are not known at the time of Closing, the prorations shall be based on an estimate of the taxes, and when the tax information becomes available, Seller or Buyer may request reimbursement from the other party for any excess amount charged to that party at the Closing. Likewise, any other amounts normally prorated between Seller and Buyer shall be prorated between Seller and Buyer as of the date of the Closing. In making *ad valorem* tax calculations under this section, if the Lot is not taxed as a separate parcel, the *pro rata* portion of the taxes will be calculated based on a fraction, the numerator of which is the number of acres in the Lot and denominator of which is the number of acres in the tax parcel of which the Lot is a part. Seller agrees to furnish tax certificates evidencing the payment of all *ad valorem* taxes on the Property for all prior years and the year of Closing if the taxes are then due and payable. If the Property has been assessed as "open space" or "agricultural" land, Seller agrees to pay all subsequent *ad valorem* tax assessments and penalties for any period prior to Closing due to any change in ownership or usage of the Property. This agreement shall continue after the Closing.

12.5. CLOSING EXPENSES. Seller and Buyer each agree to pay the following costs at closing:

12.5.1. PAID BY SELLER. Seller agrees to pay the cost of preparing the Warranty Deed, its own attorney fees, the cost of preparing and recording any releases and other documents necessary to convey the Property in accordance with the parties' understandings, the premium for a basic Owner's policy of Title Insurance, one-half (1/2) of any escrow or closing fee and any other similar closing costs customarily paid by a seller of real property.

12.5.2. PAID BY BUYER. Buyer agrees to pay the recording fees for the Warranty Deed, the cost of preparing and recording any new lien instruments, its own attorney fees, one-half (½) of any escrow or closing fee, the cost of the premium of any endorsements to (or deletions from) the title policies, the premium for any Mortgagee's Policy of Title Insurance, and any other similar closing costs customarily paid by a purchaser of real property.

12.6. UTILITY FEES. Buyer acknowledges that it shall be responsible for the payment of all normal and customary connection and tap-in fees payable to the governmental authority that may be charged to provide the Lot with electrical, water, waste water and other similar utility services.

13. NOTICES. Any notice provided or permitted to be given under this Agreement must be in writing and may be served by depositing same in the United States mail, addressed to the party to be notified, postage prepaid, and registered or certified with return-receipt requested; or by delivering the same in person to such party; or by telecopying such notice to the party at its telecopier number shown below. If notice is mailed in accordance herewith, it shall be deemed received two (2) business days after postmarked. For purposes of notice, the addresses of the parties shall be as shown on the signature page hereof.

14. COMMISSIONS. Seller and Buyer each represent and warrant to the other that no real estate brokerage commission is payable to any person or entity in connection with the transaction contemplated hereby and each agrees to and does hereby indemnify and hold the other harmless against the payment of any commission to any person or entity claiming by, through or under Seller or Buyer, as applicable.

15. ASSIGNS. This Agreement shall inure to the benefit of and be binding on the parties hereto and their respective heirs, legal representatives, and successors. Buyer may not assign its rights hereunder without the prior written approval of the other party, which approval may be granted or denied, at that party's sole discretion.

16. GOVERNING LAW. This Agreement shall be governed and construed in accordance with the laws of the State of Texas.

16.1. WAIVER OF APPLICABILITY. The parties to this Agreement desire to avoid the applicability of the *Deceptive Trade Practices Act* ("DTPA") of Texas to the full extent permitted by law. In order to avoid applicability of the DTPA for the mutual benefit of the parties, Buyer and Seller each represent that neither is in a significantly disparate bargaining position with respect to this transaction. Specifically, but without limitation, Buyer knows that it is free to acquire the goods which are the subject of this transaction from others and that it is under no compulsion or duress whatsoever to enter into this transaction. Buyer waives all of the provisions of the DTPA other than § 17.55.

17. DEFAULT & REMEDIES.

17.1. SELLER'S REMEDIES. If Buyer defaults on any of its obligations in this Agreement, or otherwise fails to consummate the purchase of the Property pursuant to this Agreement for any reason other than termination hereof pursuant to a right granted to Buyer to do so, or a default or breach by Seller and if Buyer remains in default under this Agreement, following written notice to Buyer of the default and thirty (30) days opportunity to cure the default and the default remains uncured, Seller shall have the following remedies:

17.1.1. SPECIFIC PERFORMANCE. Seller may: (a) cancel this Agreement upon written notice to Buyer, whereupon Seller shall be entitled to retain the Earnest Money; or (b) Seller may enforce specific performance of this Agreement.

17.2. BUYER'S REMEDIES. If Seller defaults on any of its obligations in this Agreement and if Seller remains in default under this Agreement, following written notice to Seller of the default and thirty (30) days opportunity to cure the default and the default remaining uncured, Buyer may, at Buyer's option, do one of the following:

17.2.1. SPECIFIC PERFORMANCE. Enforce specific performance of this agreement; or

17.2.2. TERMINATION. Terminate this Agreement by written notice delivered to Seller, and Seller shall return to Buyer the Earnest Money as liquidated damages (Buyer hereby waives all rights to sue Seller for damages. Buyer acknowledges that the amount of damages resulting from a breach of this Agreement by Seller would be difficult or impossible to accurately ascertain); or

17.2.3. WAIVER OF DEFAULT. Waive Seller's default and accept the Property subject to the default.

18. CONDEMNATION. If more than ten percent (10.0%) of the Property is condemned prior to the Closing Date, Seller shall promptly give Buyer written notice of such condemnation and Buyer shall have ten (10) days after the receipt of such notice within which to notify the Seller in writing of its election to either: (a) proceed to consummate this sale and take the Property subject to such condemnation with all condemnation proceeds to be delivered to Buyer; or (b) declare this Agreement terminated and the Earnest Money shall be refunded to Buyer by Seller with no broker's fee due to any person. If less than ten percent (10%) of the Property is condemned, this sale shall proceed without delay, and all condemnation proceeds shall belong to Buyer after closing unless the taking of such ten percent (10%) renders the remainder of any Lot unfit for Buyer's intended use and development, in which event the provisions of clause (a) apply.

19. ASSIGNS. Buyer acknowledges and agrees that Seller shall have the right to assign this Contract to an entity to be formed by Seller, without the consent of Buyer, but with written

notice to Buyer. This Agreement shall inure to the benefit of and be binding on the parties hereto and their respective heirs, legal representatives, and successors.

20. **ENTIRE AGREEMENT.** This Agreement is the entire agreement between Seller and Buyer concerning the sale of the Property and no modification hereof or subsequent agreement relative to the subject matter hereof shall be binding on either party unless reduced to writing and signed by the party to be bound.

21. **SURVIVAL.** The obligations, covenants, warranties and representations expressly made by a party hereto, or at Closing, if any, shall survive Closing.

22. **FURTHER ACTS.** In addition to the acts recited in this Agreement to be performed by Seller and Buyer, Seller and Buyer agree to perform or cause to be performed at the Closing or after the Closing any and all such further acts as may be reasonably necessary to consummate the transaction contemplated hereby.

23. **ACCESS TO PROPERTY.** It is agreed that Buyer, its agents and representatives, shall have the right, from time to time after the Effective Date of this Agreement, to enter upon the Property for inspection and examination, provided Buyer shall repair any damage to the Property caused thereby and shall indemnify and hold Seller harmless from and against any and all claims, demands, damages, costs, and expenses which may be incurred by Seller arising out of Buyer's activities and shall fully comply with Buyer's covenant of confidentiality set out above.

24. **TIME.** Time is of the essence for all matters in this Agreement.

25. **NON-FOREIGN AFFIDAVIT.** Buyer shall deduct and withhold from the amount realized by Seller upon the Closing, a tax equal to ten percent (10%) of the amount realized in accordance with the provisions of Section 1445 of the *Internal Revenue Code of 1954*, as amended, unless Seller shall, on or before Closing, deliver to Buyer either: (a) an affidavit of Seller stating Seller's United States taxpayer identification number and that Seller is not a foreign person, as that term is defined in such Section 1445; or (b) a "qualifying statement" as that term is defined in such Section 1445.

26. **CONFIDENTIALITY.** The existence and terms of this Agreement shall be strictly confidential, and shall not be disclosed by either party hereto without the prior written consent of all other parties hereto. Neither party may record this contract, or a memorandum or notice hereof. This shall not be construed to prevent the parties giving such information as is necessary to the Surveyor, the Title Company, financial institution, accountant, or legal counsel.

27. **SIGNS.** As addressed in the Restrictions to be filed against the Property.

28. **HOLIDAYS.** If any of the deadlines in this Agreement ends on, or if any event is to occur on, a Saturday, Sunday, or legal holiday, the deadline or the date for performance shall automatically be extended to the next day which is not a Saturday, Sunday, or legal holiday.

29. **EFFECTIVE DATE.** The Effective Date of this Agreement shall be the date the Seller receipts the earnest money.
30. **MULTIPLE ORIGINALS.** This Agreement may be executed in more than one original, and each such original shall have the same force and effect as any other original. Facsimile copies of an original shall have the same force and effect as an original.
31. **EXHIBITS.** These are the Exhibits to this Agreement:
Exhibit "A" The Lot, Purchase Price and Closing date.

DRAFT

EXECUTED this _____ day of _____, 200____,

SELLER:

OAKLAND HILLS, L.P.
a Texas limited partnership

By: RR/BANDON DUNES COMPANY, LLC,
a Texas limited liability company, general partner

By: _____
Robert D. Wunsch, President

Address for Notice:

Robert D. Wunsch
4314 W. Braker Lane, Suite 250
Austin, Texas 78759
Telephone Number: 512 / 381-1280
Telecopier Number: 512 / 381-1282

A copy of all Notices to Seller
shall also be sent to:

J. Winston Chapman, Jr.
RASH CHAPMAN SCHREIBER & PORTER, L.L.P.
2112 Rio Grande Street
Austin, TX 78705-5526
Telephone Number: 512 / 477-7543
Facsimile Number: 512 / 474-0954

BUYER:

PRINT NAME/TITLE: _____

PRINT NAME/TITLE: _____

Address for Notice:

Telephone Number: _____ / _____
Facsimile Number: _____ / _____



EXHIBIT A

The Lot: Lot __, Block ____, Estrella Subdivision, Williamson County, Texas

Purchase Price: _____
(\$_____.00)

Closing Date: Closing shall take place:
(Check one)

Ten (10) days from Sellers written notice to Buyer that both of the following have occurred:

- 1.) The Design Engineer has issued a letter stating the water, waste water, paving and drainage improvements are substantially complete; and
- 2.) The Final Plat of the Estrella Subdivision has been recorded in the records of Williamson County, Texas.

On or before the _____ day of _____, 200_____.

DRRAFT

Buyer _____
Seller _____

EARNEST MONEY RECEIPT

I hereby acknowledge receipt of a fully executed copy of the Agreement of Sale and Purchase pertaining to Lot ____ Block _____, Estrella Subdivision, Williamson County, Texas and the Earnest Money in the amount of \$10,000.00, which shall be distributed in accordance with the Agreement.

Received this _____ day of _____ 200__.

OAKLAND HILLS, L.P.

By: _____
NAME: _____

DRAFT