

OFFER TO PURCHASE AND CONTRACT
WINDFARE TOWNHOMES
NEW CONSTRUCTION

_____, (hereinafter referred to as "Buyer") agrees to purchase and WINDFARE TOWNHOMES, LLC, (hereinafter referred to as "Seller") agrees to sell and convey all of that certain townhouse lot to be constructed as described below, together with improvements located thereon or to be located thereon and such fixtures and personal property as are listed below (collectively referred to as the "Residence"), all upon the following terms and conditions:

1. Lot _____ Located in Atlantic Beach, Carteret County, North Carolina, being known and more particularly described as follows Lot _____ of Windfare Townhomes, which has been constructed or will be constructed in accordance with the provisions of Paragraph 1A below, together with the privileges and obligations as set out or to be set out in the Declaration of Windfare Townhomes, a proposed copy of which is attached to this addendum.(hereinafter "Declaration").

1A. **Construction.** All Townhomes will be either a "Type 1" or a "Type 2" model. A "Type 1" model (also referred to either as "Shackleford Plan" or "Sand Dollar Plan") is a three-story townhome containing two (2) bedrooms, a living room, kitchen and three and one-half (3 1/2) bathrooms. A "Type 2" model (also referred to either as "Bird Shoal plan" or "Wade Shore Plan") is a three-story townhome containing two (2) bedrooms, a living room, kitchen and three and one-half (3 1/2) bathrooms. Both types have optional elevators. The project will be constructed in Phases and it is anticipated that the subdivision will consist of 18 Lots with 9 separate townhouse buildings, each with 2 townhouses; approximate Square footages exterior wall to middle of shared wall are 2,220, Type 1 and 1,917, Type 2.

The Buyer agrees to purchase Lot _____ which is or will have built upon it a single-family residence (hereinafter "residence") in accordance with 1. **Shackleford Plan, 2 Sand Dollar Plan, 3. Bird Shoal Plan or Wade Shore Plan** (strike through name of plans that do not apply), which will be built according to those drawings attached and initialed to this Offer on said lot as depicted on the site plan also attached, both of which are incorporated herein by reference, (the "Plans and Specifications"). (Any change or difference in square footage by 5% or less shall not be deemed to be a material change). Seller shall construct the Residence (i) in compliance with all laws, regulations, codes, and ordinances applicable to the construction of the improvement, and (ii) in a good workmanlike manner with new, good quality materials and components. Seller shall provide and pay for all labor, materials, equipment, tools, clean-up, utilities, transportation, facilities, permits, fees, licenses, and other costs, charges and expenses whatsoever in connection with or related to the construction. Seller shall further be responsible for all costs, charges, and other expenses of any nature whatsoever, for Seller's construction financing of the improvements. Seller shall diligently pursue the construction of the improvements and shall complete construction as a "turn-key" job. The construction shall be deemed completed when (i) the Residence has been completed in accordance with the Plans and Specifications and is broom-clean, and (ii) a certificate of compliance and occupancy has been issued by the Town of Atlantic Beach, NC. Seller reserves the right, from time to time, to make adjustments to the Plans and Specifications as it deems proper in its sole discretion. Seller shall not be required to obtain the consent of Buyer for any change, modification or alteration to the Plans and Specifications. However, in the event a change, modification, or alteration to the Plans and Specifications affects the square footage or general layout in a material respect, Seller shall notify Buyer, upon which notice Buyer shall have ten (10) days in which to elect to terminate this contract and be refunded all earnest monies. In the event Buyer fails to elect to terminate within the allotted time period or otherwise consents to such change, this contract shall remain in full force and effect. The Seller shall not be required to wait for the notice period to expire before implementing the change to the Plans and Specifications.

Buyer Changes: Buyer may request changes in the construction of the residence within the general scope of the Plans and Specifications, consisting of additions, deletions or other revisions but any such changes shall be made only by a Change Order, which shall be in writing and signed by both Buyer and Seller ("Change Order"). Any adjustments in the Purchase Price, Building Deposit and Settlement date shall be as set forth in the Change Order. Seller is not required to make any changes to the plans if such changes are deemed to be inappropriate or not suitable to the development plan of Windfare Townhomes.

Delay in Construction: If Seller is delayed at any time in the progress of construction by (i) any act or neglect of Buyer; (ii) written Change Orders; (iii) shortages of materials, adverse weather conditions, or delays in transportation which were not reasonably anticipated; or (iv) acts of God, Seller shall give as much notice as possible of the delay to Buyer and the time for Substantial Completion of construction of the Dwelling and the Settlement Date shall be extended by a reasonable time to account for the delay(s) experienced. BUYER ACKNOWLEDGES AND UNDERSTANDS THE IMPORTANCE OF COOPERATING FULLY WITH

Buyer initials _____ Seller initials _____

SELLER IN ORDER TO HELP EXPEDITE THE CONSTRUCTION OF THE DWELLING AND TO AVOID OR MINIMIZE ANY DELAY IN SETTLEMENT, INCLUDING BUT NOT LIMITED TO TIMELY COMMUNICATION OF ANY REQUESTED CHANGES IN THE CONSTRUCTION OF THE DWELLING IN ACCORDANCE WITH THIS SECTION 1(A) AND MAKING PROMPT DECISIONS ON ANY ALLOWANCE ITEMS.

1B. **Construction of Amenities.** Seller shall construct all amenities designated in the Declaration i.e. utilities, entrance sign, parking, landscaping, mail pick-up area, and any additional amenities indicated on the plat referenced in Paragraph 1A above prior to closing on the first lot within the Townhouse Project. The construction of such amenities shall be (i) in compliance with all laws, regulations, codes, and ordinances applicable to the construction of the improvement, and (ii) in a good workmanlike manner with new, good quality materials and components.

1C. **Personal Property.** The following items, if any, are included in the purchase of the Residence: over the range microwave, range, dishwasher, counter depth refrigerator. **If an elevator is included it is indicated on the attached plans.**

2. **Purchase Price.** The purchase price is \$ _____, and shall be paid as follows:

- (a) \$ _____, (10% of Purchase Price), representing Buyer's earnest money deposit which shall be held by White & Allen, P.A., as escrow agent.
- (b) \$ _____, BALANCE of the Purchase Price in cash at Closing.

NOTE: ALL EARNEST MONEY DEPOSITS SHALL BE NONREFUNDABLE EXCEPT AS SPECIFICALLY SET FORTH IN THIS CONTRACT. IN THE EVENT BUYER IS ENTITLED TO A REFUND OF ITS EARNEST MONEY DEPOSIT, ESCROW AGENT OR SELLER, AS THE CASE MAY BE, SHALL REFUND SUCH MONIES TO BUYER UPON RECEIPT OF A WRITTEN REQUEST FOR THE SAME.

"Earnest Money Deposit": The Initial Earnest Money Deposit, the Additional Earnest Money Deposit and any other earnest monies paid or required to be paid in connection with this transaction, collectively the "Earnest Money Deposit", shall be deposited and held in escrow by Escrow Agent until Closing, at which time it will be credited to Buyer, or until this Contract is otherwise terminated. In the event: (1) this offer is not accepted; or (2) a condition of any resulting contract is not satisfied, then the Earnest Money Deposit shall be refunded to Buyer. In the event of breach of this Contract by Seller, the Earnest Money Deposit shall be refunded to Buyer upon Buyer's request, and such return shall be considered liquidated damages and Buyer shall have no other remedies available to Buyer for such breach. In the event of breach of this Contract by Buyer, then without limiting any other remedies available to Seller for such breach, the full Earnest Money Deposit shall be paid to Seller without notice to Buyer and applied as liquidated damages. If legal proceedings are brought by Buyer or Seller against the other to recover the Earnest Money Deposit, the prevailing party in the proceeding shall be entitled to recover from the non-prevailing party reasonable attorney fees and court costs incurred in connection with the proceeding.

NOTE: In the event of a dispute between Seller and Buyer over the disposition of the Earnest Money Deposit held in escrow, the Escrow Agent hereby agrees to retain the Earnest Money Deposit in the Escrow Agent's trust or escrow account until Escrow Agent has obtained a written release from the parties consenting to its disposition or until disbursement is ordered by a court of competent jurisdiction. Alternatively, if a Broker or an attorney licensed to practice law in North Carolina ("Attorney") is holding the Earnest Money Deposit, the Broker or Attorney may deposit the disputed monies with the appropriate clerk of court in accordance with the provisions of N.C.G.S. §93A-12.

3. **Conditions.** Buyer's obligation to proceed with closing shall be conditioned on the following:

- a. There must be no restriction, easement, zoning or other governmental regulation that would prevent the reasonable use of the Residence for residential purposes.
- b. All deeds of trust, liens and other charges against the Residence, not assumed by Buyer, must be paid and satisfied by Seller prior to or at closing.
- c. Title must be delivered at closing by GENERAL WARRANTY DEED unless otherwise stated herein, and must be fee simple marketable title, free of all encumbrances except: ad valorem taxes for the current year (prorated through the date of closing); utility easements and unviolated restrictive covenants; and such other encumbrances provided for herein or as may be assumed or specifically approved by Buyer.
- d. The Residence must have legal access to a public right of way. Pursuant to NC General Statutes Section 136-102.6(f) (the "Statute") the Buyer acknowledges that the Declaration provides that streets within the townhouse project will be private

Buyer initials _____ Seller initials _____

and commonly owned through the Association and the Association assessment to be paid by Buyer as a lot owner will cover any present or future street maintenance and the Declaration and this contract shall be deemed to be the disclosure required by said above referenced statute.

4. **Special Assessments.** Seller warrants that there are no governmental special assessments, either pending or confirmed, for sidewalk, paving, water, sewer, or other improvements on or adjoining the Residence.

5. **Warranties.**

a. **Limited Warranty of Construction.** Seller hereby warrants that, for a period of one (1) year from the date of closing or the date Buyer occupies the Residence, whichever comes first, Seller will make all necessary repairs and corrections to the Residence, either interior or exterior, structural, nonstructural, that shall become necessary by reason of faulty construction, labor or materials, or non-conformity of construction with the Plans and Specifications. At Seller's sole option, Seller may either (i) make such repairs and corrections, (ii) replace any faulty or non-conforming item or condition or (iii) pay to Buyer the reasonable cost of such repair, correction or replacement. **This limited warranty: (1) is for the benefit of Buyer only and may not be assigned nor shall it inure to the benefit of any other person or entity, (2) shall survive closing and the delivery of the deed, and (3) is in lieu of all other warranties, oral or written, express or implied, except such other express written warranties as Seller may provide to Buyer and the warranties described in sub(b) below.**

b. **Warranties of Components.** Seller shall assign and deliver to Buyer at closing all guaranties and warranties of components comprising the Residence to the extent the same are assignable. Buyer shall be responsible for compliance with any notice and claims procedures.

6. **Prorations and Adjustments.** Unless otherwise provided, the following items shall be prorated and either adjusted between the parties or paid at closing: (a) Ad valorem taxes on Residence shall be prorated on a calendar year basis through the date of closing; (b) Ad valorem taxes on personal property for the entire year shall be paid by the Seller unless the personal property is conveyed to Buyer, in which case, the personal property taxes shall be prorated on a calendar year basis through the date of closing; (c) Owners' association dues, and other like charges shall be prorated through the date of closing (d) , the Buyer shall pay the Association the sum of \$2,000.00 for each Lot acquired as a contribution to the capital of the Association (the "Capital Contribution"), (e). Buyer will reimburse the Seller for the remainder of the first year's insurance premimium allocation to the residence.

7. **Closing.** The completion of the legal process which results in the transfer of title to the Property from Seller to Buyer. Closing includes the following steps: (1) the Settlement (defined above); (2) the completion of a satisfactory title update to the Property following the Settlement; (3) the closing attorney's receipt of authorization to disburse all necessary funds; and (4) recordation in the appropriate county registry of the deed(s) and deed(s) of trust, if any, which shall take place as soon as reasonably possible for the closing attorney after Settlement. Upon Closing, the proceeds of sale shall be disbursed by the closing attorney in accordance with the settlement statement and the provisions of Chapter 45A of the North Carolina General Statutes. If the title update should reveal unexpected liens, encumbrances or other title defects, or if the closing attorney is not authorized to disburse the lender's funds, then the Closing shall be suspended and the Settlement deemed delayed.

All parties agree to execute any and all documents and papers in connection with the closing and transfer of title within fourteen (14) days of notice being given to the Buyer that the Residence has been completed. Buyer shall be required to notify Seller within three (3) days of its receipt of such notice of its selected closing date. Failure by Buyer to notify Seller of its selected closing date within said three (3) day period shall be deemed an election to have the closing date on the tenth day measured from Buyer's receipt of the notice. In the event such date falls on a weekend or holiday (federal or state), closing shall be deemed to be on the following non-holiday weekday. At closing, Seller shall deliver fee simple marketable title to Buyer by General Warranty Deed, free of all monetary liens and encumbrances but subject to the specific encumbrances set forth in Paragraph 3.

Should Buyer fail to close within fourteen (14) days of its receipt of notice of the issuance of a Certificate of Occupancy for the Residence, Buyer shall be deemed in default and Seller shall have the right, in addition to other remedies available to it under law, including specific performance, to terminate the contract and keep all previously paid earnest monies.

8. **Closing Expenses.** Seller shall pay for the preparation of a deed and all other documents necessary to perform Seller's obligations under this agreement, and for excise tax (revenue stamps) required by law. Buyer shall pay for the recording the deed and for preparation and recording of all instruments required to secure the balance of the purchase price unpaid at closing.

9. **Evidence of Title.** Seller agrees to use its best efforts to deliver to Buyer as soon as reasonably possible after notification of closing date as provided above, copies of all title information in the possession of or available to Seller, including but not limited to: title insurance policies, surveys, covenants, deeds, notes and deeds of trust and easements relating to the Residence.

10. **Labor and Materials.** Seller shall furnish at closing an affidavit and indemnification agreement in form satisfactory to Buyer showing that all labor and materials, if any, furnished to the Residence within 120 days prior to the date of closing having been paid for and agreeing to indemnify Buyer against all loss from any cause or claim arising therefrom.

11. **Property Disclosure and Inspections.**

a. Buyer acknowledges having received, reviewed, understood (coupled with the opportunity to ask questions), the plans and marketing materials for “Windfare Townhomes” and certifies that he has reviewed all information provided. Seller reserves the right to alter, modify or otherwise change the above referenced Declaration (including plats referenced therein) prior to their recording without requirement of consent from Buyer unless such alteration, modification, or other change alters the square footage of the Residence by 5% and/or materially devalues the Residence. In either case, Buyer shall have a period of ten (10) days from its receipt of notice of such changes in which to elect to have all of its earnest monies returned or continue with the purchase of the Residence subject to the modifications. Failure to notify the Seller within said ten (10) day period shall be conclusively deemed as Buyer’s consent to such change. Should Buyer elect to receive a refund of all earnest moneys paid it shall be deemed complete liquidated damages and shall be the sole remedy of Buyer upon termination. Specific performance or an action for damages is specifically waived by Buyer upon a refund of earnest money.

b. Association Dues Disclosure. Windfare Townhomes Development is a planned community project, as defined by North Carolina law, which is subject to regulation and assessment by an owners’ association. Attached to this Offer to Purchase is a copy of the proposed DECLARATION OF COVENANTS AND RESTRICTIONS for WINDFARE TOWNHOMES. It will be recorded prior to the first conveyance of a Lot in the development. Minor changes in the Declaration may be made that do not affect the value of the property or substantial property rights of the Buyer prior to closing and such changes shall not affect this offer.

Also attached is a copy of the initial proposed annual budget and estimated monthly assessments of Windfare Townhomes Owners Associations, Inc, the Association that will manage the development. The regular monthly assessment will include an amount that includes the annual insurance on the structure, including flood insurance. The Buyer shall be required to provide at their own expense a contents insurance policy for the residence upon the lot.

c. Inspections. Unless otherwise stated herein, Buyer shall have the option of inspecting or, obtaining at Buyer's expense, inspections to determine the condition of the Residence. As this is new construction, Buyer must schedule a “walk through” inspection. Such inspections may not be scheduled until after such time as a Certificate of Occupancy has been issued by the Town of Atlantic Beach and must be completed at least five (5) days prior to the closing date set forth below. Within two (2) days of completion of the inspection, Buyer shall provide Seller with a “punch list” of any items it believes needs to be completed. Seller shall have the option of (i) completing the repairs, (ii) providing for their completion, or (iii) refusing to complete them. If Seller elects not to complete or provide for the completion of the repairs, then Buyer shall have the option of (i) accepting the Residence in its present condition, or (ii) terminating this contract, in which case all earnest monies shall be refunded as complete and final liquidated damages. Failure to schedule a “walk-through” inspection as provided for herein and within the time parameters set forth above shall constitute a waiver of such right to inspect the Residence and Buyer shall be required to proceed with closing.

AFTER SUBSTANTIAL COMPLETION, SELLER’S FAILURE TO CORRECT A PUNCH LIST ITEM PRIOR TO SETTLEMENT WILL NOT BE GROUNDS FOR DELAYING SETTLEMENT OR THE IMPOSITION OF ANY CONDITIONS ON SETTLEMENT; PROVIDED, SETTLEMENT SHALL NOT RELIEVE SELLER FROM THE OBLIGATION TO CORRECT ANY PUNCH LIST ITEM.

d. Closing shall constitute acceptance of each of the Residence in its then-existing condition unless provision is otherwise made herein i.e. warranty coverage, uncompleted but seller agreed items to be completed after closing from the “punch list”.

e. Mineral and Oil and Gas Rights Mandatory Disclosure Statement: Buyer has received a signed copy of the N.C. Mineral and Oil and Gas Rights Mandatory Disclosure Statement prior to the signing of this offer.

12. **Limitation of Remedies.** In the event of a breach of this Agreement by Seller, Buyer shall be limited in its remedies to the return of the earnest monies only which all parties agree shall be reasonable liquidated damages.

13. **Reasonable Access.** Seller will provide reasonable access to Buyer or Buyer's representatives for the purposes of appraisal, inspection, and/or evaluation. Buyer may conduct a walk-through inspection of the Residence prior to closing pursuant to Section 11(c) above.

14. **Possession.** Possession shall be delivered at closing.

15. **Risk of Loss.** The risk of loss or damage by fire or other casualty prior to closing shall be upon the Seller. If the improvements to the Residence are destroyed or materially damaged prior to closing, this contract shall terminate and all deposits shall be returned to Buyer.

16. **Time is of the Essence and "Effective Date":** Upon the completion of construction of the Residence, time shall be of the essence in regards to the performance of Buyer's obligations relating to closing.

"Effective Date": The date that: (i) the last one of Buyer and Seller has signed or initialed this offer or the final counteroffer, if any, and (ii) such signing or initialing is communicated to the party making the offer or counteroffer, as the case may be. The parties acknowledge and agree that the initials lines at the bottom of each page of this Contract are merely evidence of their having reviewed the terms of each page, and that the complete execution of such initial's lines shall not be a condition of the effectiveness of this Agreement.

17. **Assignments.** This contract may not be assigned without the written consent of all parties, but if assigned by agreement, then this contract shall be binding on the assignee and his heirs and successors.

18. **Parties.** This contract shall be binding upon and shall inure to the benefit of the parties, i.e. the Buyer and Seller and their heirs, successors and assigns. As used herein, the words in the singular include the plural and the masculine includes the feminine and the neuter genders, as appropriate.

19. **Survival.** If any provision herein contained which by its nature and effect is required to be observed, kept or performed after the closing, it shall survive the closing and remain binding upon and for the benefit of the parties hereto until fully observed, kept or performed.

20. **Entire Agreement.** Except as identified herein or below, this contract contains the entire agreement of the parties and there are no representations, inducements or other provisions other than those expressed herein. All changes, additions or deletions hereto must be in writing and signed by all parties.

Identify other attorney or party drafted addenda: _____

21. **CONDUCT OF TRANSACTION:** The parties agree that any action between them relating to the transaction contemplated by this Contract may be conducted by electronic means, including the signing of this Contract by one or more of them and any notice or communication given in connection with this Contract. Any written notice or communication may be transmitted to any mailing address, e-mail address or fax number set forth in the "Notice Information" section below. Any notice or communication to be given to a party herein, and any fee, deposit or other payment to be delivered to a party herein, may be given to the party or to such party's agent. Seller and Buyer agree that the "Notice Information" and "Acknowledgment of Receipt of Monies" sections below shall not constitute a material part of this Contract, and that the addition or modification of any information therein shall not constitute a rejection of an offer or the creation of a counteroffer.

22. **COMPUTATION OF DAYS/TIME OF DAY:** Unless otherwise provided, for purposes of this Contract, the term "days" shall mean consecutive calendar days, including Saturdays, Sundays, and holidays, whether federal, state, local or religious. For the purposes of calculating days, the count of "days" shall begin on the day following the day upon which any act or notice as provided in this Contract was required to be performed or made. Any reference to a date or time of day shall refer to the date and/or time of day in the State of North Carolina.

PRIOR TO SIGNING THE OFFER TO PURCHASE AND CONTRACT, BUYER IS ADVISED TO REVIEW, THE PROPOSED DECLARATION OF COVENANTS AND RESTRICTIONS OF WINDFARE TOWNHOMES AND THE PLANS ATTACHED THERETO ALONG WITH THE BUDGET. IF YOU DO NOT UNDERSTAND THIS OFFER TO PURCHASE AND CONTRACT OR FEEL THAT IT DOES NOT PROVIDE FOR YOUR LEGAL NEEDS, YOU SHOULD CONSULT WITH A NORTH CAROLINA REAL ESTATE ATTORNEY BEFORE SIGNING. BUYER ACKNOWLEDGES

Buyer initials _____ Seller initials _____

