

**PURCHASE AGREEMENT  
FOR THE CANOPIES OF FREEPORT**

**THIS PURCHASE AGREEMENT** (herein the Agreement or "Contract") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2006 by and between The Canopies of Freeport, L.L.C., 216 Mountain Drive, Unit 100, Destin, Florida 32541 (hereinafter Seller); and \_\_\_\_\_, whose address and information is as follows (hereinafter "Purchaser and/or Buyer").

**PURCHASER(S)**

\_\_\_\_\_  
Printed Name  
\_\_\_\_\_  
Address  
\_\_\_\_\_  
City, State, Zip Code  
Telephone \_\_\_\_\_ Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

**WHEREAS**, Seller owns the following real property situated in Walton County, Florida, to wit: Lot No. \_\_\_\_\_, Block \_\_\_\_\_, Plan \_\_\_\_\_, The Canopies of Freeport, a single family residential subdivision as recorded in Plat Book 17 at Page 33A in the Public Records of Walton County, Florida (the "Lot").

**WHEREAS**, Purchaser desires that Seller engage and hire a general contractor, at Seller's sole discretion, to supply all labor and materials (the "Work") to construct a single family residence upon the Lot according to the plans and specifications set forth in **Exhibit A**, attached hereto and incorporated herein (the "Residence");

**WHEREAS**, Seller desires to sell and Purchaser desires to purchase the Lot and Residence to be constructed thereon. The "Lot" together with the "Residence" to be constructed thereon is hereinafter referred to collectively as the "Subject Property"; and

**WHEREAS**, the parties desire to enter this Agreement to set forth the terms, conditions, duties and obligations of the parties hereafter.

**NOW THEREFORE**, in exchange of the mutual covenants and valuable consideration herein, the receipt and sufficiency of which is hereby acknowledged, and subject to the terms and conditions herein, the parties agree as follows:

- 1. **RECITALS INCORPORATED.** The above-referenced Recitals are true, correct and incorporated herein by reference.
- 2. **SALE AND PURCHASE OF THE SUBJECT PROPERTY.** Subject to the terms and conditions of this Agreement, Seller agrees to sell and Purchaser agrees to purchase the Subject Property.
- 3. **PURCHASE PRICE.** Purchaser shall pay Seller as follows:

Full Purchase Price..... \$ \_\_\_\_\_  
Earnest Money Deposit..... \$ \_\_\_\_\_  
Balance to Close..... \$ \_\_\_\_\_

**EARNEST MONEY DEPOSIT.** Simultaneously with the execution of this Agreement, Purchaser shall deliver a non-refundable earnest money deposit in the amount of \_\_\_\_\_ AND 00/100 DOLLARS (\$\_\_\_\_\_.00) (herein "EMD") to Destin Land & Title, Inc., 4475 Legendary Drive, Destin, Florida 32541 (herein the "Escrow Agent"). The EMD shall be non-refundable to Purchaser, except as expressly provided otherwise in this Agreement. Neither Purchaser nor Seller shall be due interest on the EMD. The balance of the Purchase Price, plus Purchaser's share of closing costs shall be due at Closing.

- 4. **FINANCING.** This Paragraph 4 is:
  - (a) **NOT APPLICABLE** (Initials \_\_\_\_\_) If this paragraph 4(a) is checked, this paragraph 4 shall be deemed deleted from this Agreement in its entirety and this Agreement shall not be contingent on Purchaser obtaining financing
  - (b) **APPLICABLE** (Initials \_\_\_\_\_). If this paragraph 4(b) is checked, this Agreement is conditioned upon and subject to the following terms, conditions and requirements for financing. In the event the conditions set forth below in this paragraph 4 are not met, then this Agreement may be terminated pursuant to paragraph 4(d) below.
  - (c) **Financing Approval Period.** On or before TWENTY-ONE (21) DAYS from the Effective Date of this Agreement ("Financing Approval Period") Purchaser shall obtain and provide Seller with a written loan commitment signed by a third-party lender (in a form satisfactory to Seller, in their sole discretion) agreeing to provide financing for the Purchase Price (herein the "Loan Commitment").
  - (d) **Agreement Contingent on Loan Commitment; Right To Terminate.** Purchaser acknowledges that this Agreement is contingent upon and subject to Purchaser providing Seller the Loan Commitment on or before expiration of the Financing Approval Period. Purchaser expressly understands that Purchaser may rescind this Agreement and have Purchaser's EMD returned only if Purchaser cannot obtain a Loan Commitment within 21 days from the Effective Date and Purchaser notifies Seller of same on or before 21 days from the Effective Date hereof. If Purchaser fails to provide the Loan Commitment prior to expiration of the

Financing Approval Period, then Seller shall have the option and right to: (1) terminate this Agreement upon notice to Purchaser and Purchaser shall be entitled to receive a refund of its EMD, and upon such notice this Agreement shall be terminated and neither party shall have any further obligations hereunder; or (2) take no action and this Agreement shall remain valid and Purchaser's obligations herein shall not be contingent upon obtaining financing.

- (e) Purchaser Responsibilities. Purchaser shall be responsible for all costs and expenses of financing. Purchaser agrees to timely meet their obligations under the Loan Commitment. It is Purchaser's responsibility to ensure that Purchaser's lender will be ready to close by the Closing Date. It is Purchaser's responsibility to give written notice to the Closing Agent at least thirty (30) days before Closing Date of the name, address, telephone, facsimile, loan amount and contact person of the Purchaser's lender. It is Purchaser's responsibility to notify its lender of the Closing Date and the name, address and telephone number of the Closing Agent. The fact that Purchaser's lender is not ready to close shall not be a cause for delay in Closing.
- (f) Failure to Meet Obligations of Loan Commitment. Failure of Purchaser to meet the terms and conditions of the Loan Commitment and close the loan on or before Closing shall be deemed a default by Purchaser, and Seller shall be entitled to the EMD as liquidated damages pursuant to paragraph 26 below.

5. **CLOSING.**

- (a) Closing shall occur on or before the date which is FIFTEEN (15) DAYS from the issuance of the "Certificate Of Occupancy" (hereinafter the "C.O.") for the Residence (herein the "Closing" or "Closing Date"), at the offices of Destin Land & Title, Inc., 4475 Legendary Drive, Destin, Florida 32541 ("Closing Agent"). Seller, and the Closing Agent, shall schedule the date and time for Closing by mailing Purchaser written notice (the Notice to Close) notifying Purchaser that the C.O. for the Residence is anticipated to be issued or has been issued by the proper governmental agency. The Notice to Close shall not be given less than thirty (30) days prior to the date specified in the Notice to Close as the Closing Date. The issuance of a Certificate of Occupancy by Walton County or any other governmental agency authorized to issue such Certificates of Occupancy shall be binding upon the parties as to whether said Residence has been completed.
- (b) Seller is not obligated to extend the Closing Date. However, in the event Closing does not occur on the Closing Date set forth in the Notice to Close due to Purchaser's or their lender's delay, the Closing Date may be unilaterally extended by Seller at its sole discretion, or in the alternative, Seller reserves the rights in its sole discretion to cancel this Agreement and retain Purchaser's EMD as liquidated damages pursuant to paragraph 26 herein. In the event Seller agrees to extend the Closing, Purchaser shall be charged an extension fee calculated at the rate equal to two percent (2%) over the effective per annum prime rate specified in the Wall Street Journal on the date Closing was to have occurred, times the balance of the Purchase Price, prorated daily, but not to exceed eighteen percent (18%) per annum. Furthermore, if Closing is extended beyond the Closing Date, prorations for taxes and any homeowner association charges, if applicable, shall be calculated based on the Closing Date established in the Notice to Close rather than the actual Closing Date. Any other extension of the Closing Date shall be only in writing signed by Seller and Purchaser.

6. **CLOSING PROCEEDS.**

- (a) At the Closing, Purchaser shall deliver to Closing Agent the balance of the Purchase Price and Purchaser's share of closing costs. All funds shall be delivered in current funds by wire transfer or cashier's check only. The Purchase Price, less Seller's share of closing costs, shall be paid by Closing Agent to Seller upon clearing of closing funds.
- (b) Closing Agent and/or Escrow Agent are hereby authorized and entitled to: (i) issue the title insurance commitment, title insurance policies, and title related services contemplated herein, and (ii) accept and disburse any funds received from Purchaser according to the terms of this Agreement.

7. **EFFECTIVE DATE.** The "Effective Date" of this Agreement shall be the date the last of either Seller or Purchaser signs this Agreement.

8. **TITLE AND CONVEYANCE OF THE SUBJECT PROPERTY.**

- (a) Title Commitment. Seller shall provide Purchaser a commitment for title insurance (the "Commitment"), at Seller's expense, with respect to the Subject Property. The Commitment shall be issued by Closing Agent, on behalf of a title insurance underwriter licensed to do business in the State of Florida (the "Title Company"). Purchaser shall examine same and notify Seller within three (3) days of Purchaser's receipt of the Commitment ("Title Inspection Period") of any objections that render title to the Subject Property unmarketable ("Purchaser's Notice") other than the Permitted Exceptions and matters to be satisfied at Closing. If Purchaser does not object to the other matters shown on the Commitment on or before the expiration date of the Title Inspection Period, then Purchaser shall be deemed to have accepted title to the Subject Property as set forth in the Commitment and all other matters set forth in the Commitment shall be considered to be included within the Permitted Exceptions.
- (b) Seller's Right to Cure Title Defects. Seller shall have the right, but not the obligation, to attempt to correct any of the defects set forth in the Commitment or Purchaser's Notice. If Seller elects not to correct said defects set forth in the Commitment or Purchaser's Notice, Seller shall notify Purchaser of same ("Seller's Notice") within ten (10) days of Seller's receipt of Purchaser's Notice and Purchaser's sole option shall be to either: (1) waive the defects in title and purchase the Subject Property on the terms and conditions herein stated, or (2) terminate its obligation to purchase the Subject Property and have the Escrow Agent return the EMD to Purchaser upon such termination, in which case the parties shall have no further liability to one another hereunder. From the date Purchaser receives Seller's Notice of election not to cure matters of title, Purchaser shall have three (3) days to make its election under this paragraph and Closing shall be extended to allow for same.
- (c) Survey. If Purchaser elects to do so, Purchaser may obtain at their own expense a boundary survey and all subsequent surveys of the Subject Property (including, without limitation any "as built" surveys) (herein collectively the "Survey") on or before FIVE (5) days prior to the Closing. The Survey shall correctly identify the legal description of the Subject Property and shall provide certifications to Purchaser, Closing Agent, the Title Company and any lender(s) designated by Purchaser. The Survey shall be in

a form acceptable to the Title Company in order to allow the Title Company to delete the survey exception from the Owner's Title Policy to be issued by the Title Company and to issue any required endorsements as required by Purchaser's lender, if any.

- (d) **Title Policy.** Following the Closing of the purchase and sale of the Subject Property, the Closing Agent shall deliver to Purchaser an ALTA Owner's Title Insurance Policy (the "Owner's Title Policy") insuring the Subject Property in face amount equal to the Purchase Price, issued by the Title Company, insuring the Purchaser as the owner of the Subject Property, subject only to the Permitted Exceptions and other title defects approved or waived by Purchaser. Seller shall, at or prior to the Closing, pay all taxes and assessments, if any, which constitute a lien upon said Subject Property. Purchaser shall furnish a Mortgagee Policy in an amount up to the loan amount to any lender that might be utilized by the Purchasers to finance a portion of the Purchase Price, together with all endorsements as might be required by the lender, all at Purchaser's expense.
- (e) **Title Defects Arising After Issuance of Commitment.** As to matters of title or title defects arising after the effective date of the Commitment that render title unmarketable and are not shown on the original Commitment ("Post Commitment Defects"), Purchaser shall be entitled to object thereto at any time on or prior to the date of Closing, and Seller shall have ten (10) days to elect whether or not to cure the same upon the same terms and conditions set forth in paragraph 8(a) and 8(b) above and the Closing Date shall be extended to allow for same.
- (f) **Permitted Exceptions.** For purposes of this Agreement, "Permitted Exceptions" shall mean and include the following: (i) building and use restrictions, applicable zoning, building and land use laws, easements, and other matters of record that do not unreasonably interfere with Purchaser's intended use of the Subject Property as a single family residence; (ii) ad valorem taxes for the year of Closing, which will be prorated at the Closing as provided herein; (iii) standard exceptions contained in Schedule B-2 of an ALTA Owner's Title Insurance Policy (these may be removed at closing upon Seller and Purchaser executing standard possession and lien affidavits and providing Closing Agent with current "as built" Survey); (iv) any conditions, covenants and restrictions contained in any Declaration of Conditions, Covenants, and Restrictions that apply to The Canopies of Freeport (whether recorded or to be recorded); (v) reservations, restrictions and easements now of record or hereafter granted by Seller, zoning, and other governmental regulations including any conservation easements and permits issued by Florida Department of Environmental Protection or the Army Corps of Engineers applicable to the Subject Property, (vii) matters of survey and matters of plat, (viii) Purchaser's mortgage, if any, and (ix) any other items that Purchaser has approved or waived through the title insurance commitment approval process.
- (g) **Liens Prior to Closing.** Any mortgage or lien now or hereafter encumbering the Subject Property will be discharged or released upon Closing, but until such discharge or release, Purchaser acknowledges and agrees that their rights hereunder are subordinate to the lien of any construction loan mortgage which now or shall hereafter encumber the Subject Property prior to Closing.
- (h) **Conveyance of Title.** At the Closing, Seller will convey title to the Subject Property to the Purchaser by warranty deed, free and clear of all liens, encumbrances, recorded or unrecorded leases and restrictions of any kind and nature, other than the Permitted Exceptions and other title defects approved or waived by Purchaser.

#### 9. **PRO-RATIONS AND CLOSING COSTS.**

- (a) **Seller shall pay the following closing costs:**
  - i. Title insurance premiums for the Commitment and Owner's Title Policy
  - ii. Closing Agent's standard title and closing fees
  - iii. Taxes that constitute a lien on the Subject Property
  - iv. Seller's attorney fees
  - v. Water and Sewer Tap fees
  - vi. Applicable Broker commissions/fees to Broker specified in paragraph 25 below
- (b) **Purchaser shall pay the following closing costs:**
  - vii. Document recording fees for the Warranty Deed,
  - viii. Documentary stamp tax on the Warranty Deed,
  - ix. All costs associated with Purchaser's financing of the Purchase Price, or any part thereof,
  - x. Mortgagee's Title Policy,
  - xi. All prepaid items and escrow amounts (prepaid insurance and prepaid property taxes) required of Purchaser's lender, if any,
  - xii. Purchaser's pro-rata share of assessments by the Association including any initial capital contribution payable to the Association
  - xiii. Survey and any elevation certificate required
  - xiv. Termite Inspection
  - xv. Appraisal
  - xvi. Courier Fees
  - xvii. Purchaser's attorney fees.
- (c) **Prorations.** Assessments of The Canopies of Freeport Purchasers' Association, Inc. (the "Association") and ad valorem real property taxes for the then-current year shall be prorated at Closing, effective as of the date of the Closing. If the Closing shall occur before the tax rate is fixed for the then-current year, the apportionment of the ad valorem taxes shall be upon the basis of the tax rate for the preceding year applied to the latest assessed valuation, but any difference in actual ad valorem taxes for the year of sale actually paid by Purchaser shall be adjusted between the parties upon receipt of written evidence of the payment thereof, and the parties shall hold Closing Agent harmless for same. This paragraph shall expressly survive the closing and shall not be merged into any of the deeds conveying the Subject Property.
- (d) **BUYER SHOULD NOT RELY ON THE SELLER'S CURRENT PROPERTY TAXES AS THE AMOUNT OF PROPERTY TAXES THAT THE BUYER MAY BE OBLIGATED TO PAY IN THE YEAR SUBSEQUENT TO PURCHASE. A CHANGE OF OWNERSHIP OR PROPERTY IMPROVEMENTS TRIGGERS REASSESSMENTS OF THE PROPERTY THAT COULD RESULT IN HIGHER PROPERTY**

**TAXES. IF YOU HAVE ANY QUESTIONS CONCERNING VALUATION, CONTACT THE COUNTY PROPERTY APPRAISER'S OFFICE FOR INFORMATION.**

10. **POSSESSION/WARRANTY.** Purchaser shall not take possession of or make improvements to the Subject Property until all amounts due Seller have been paid and title to the Subject Property has been conveyed to Purchaser.
11. **UPGRADES / CHANGE ORDERS:** Requests for upgrades/change orders to the Residence can be made by the Purchaser in writing to Seller. Any upgrade/change order request must be signed by both Purchaser and Seller and shall include any increase for said work. Purchaser will be solely responsible for any increases, including the cost of any additional architectural drawings or submittals required that is caused due to upgrade/change order. Purchaser must pay this cost difference in full prior to Seller commencing, or causing commencement of, the work to affect the change order or upgrade to the Residence. Seller retains the right, in Seller's sole discretion, to refuse any change in the Work or any change order.
12. **ACCEPTANCE; COMPLETION; FINAL PAYMENT; PUNCH LIST; WARRANTY.** The Work shall be deemed complete and accepted by Purchaser upon the issuance of a Certificate of Occupancy for the Residence by the City or County building authority ("C.O."). There will be areas of the Residence that will require "touching up" and adjusting once the Work is completed and Purchaser has taken occupancy of the Residence ("Punch List Items"). Purchaser agrees that any and all Punch List Items are not a contracted item and Closing cannot be withheld or delayed if "Punch List Items" have not been completed. Punch List Items will be given consideration by Seller and corrected, to the extent practically possible, within a reasonable time. A one year Builder's Warranty shall be furnished by SELLER at time of Closing.
13. **CONTRACT DOCUMENTS.**
  - (a) The term "Contract Documents" shall mean and refer to: this Agreement; the Plans; the Building Specifications (attached hereto as **Exhibit A**); and the disclosures (attached hereto as **Composite Exhibit B**). Two or more copies of each, as required, shall be signed by both parties and one signed copy of each retained by each party. The intent of these documents is to include all labor, materials, application, and services of every kind necessary for the proper execution of the Work, and terms and conditions of payment herein.
  - (b) Purchaser acknowledges receipt of the declaration of covenants, conditions and restrictions for The Canopies of Freeport ("Declaration"), Plat, Conservation Documents and homeowner's Association articles of incorporation and bylaws. Seller reserves the right to amend all the above documents in its sole discretion.
14. **SELECTIONS.** The Seller will make available samples for the Purchaser's selections for the Residence. The samples will be located at the Seller's office. Purchaser to make any necessary selections from the options provided by Seller within twenty-one (21) days from date of this Contract, unless otherwise extended in writing. Purchaser acknowledges there may be variations in color and consistency as many natural items such as stone and wood will be used. In the event a color/style selection becomes discontinued or otherwise is no longer available, Purchaser agrees to make a new selection within five (5) days of notification from Seller.
15. **PURCHASER'S LIABILITY INSURANCE.** The Purchaser shall be responsible for and at their option, may maintain such insurance as will protect them from their contingent liability for damages for personal injury, including death, which may arise from operations under this Contract.
16. **GOVERNING LAW.** This Contract and all the relationships between the parties hereto shall be construed and interpreted in accordance with the laws of the State of Florida.
17. **ATTORNEY=S FEES AND WAIVER OF JURY TRIAL.** In the event that it becomes necessary for either party to institute litigation to enforce the terms of this Contract, or any binding mediation agreement or arbitration award, then such litigation shall be brought in a court of competent jurisdiction in Walton County, Florida. In the event of any action or proceeding brought by either party against the other under the Contract, the prevailing Party shall be entitled to recover all costs and expenses, including the fees of its attorneys in such action or proceeding, in such amount as the court may deem reasonable. THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT ANY OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION BASED HEREON OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS CONTRACT OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY RELATING TO THE SUBJECT MATTER OF THIS CONTRACT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES TO ENTER INTO THIS CONTRACT.
18. **MEDIATION.** Prior to initiating any litigation, the parties shall submit their dispute(s) to non-binding mediation before a mutually agreed upon mediator. In the event the parties are unable to agree on a mediator, parties shall submit their dispute to the American Arbitration Association for the appointment of a mediator and non-binding mediation according to its rules.
19. **ARBITRATION.** In the event of a dispute between the parties that is not resolved by mediation as provided herein, such dispute shall be resolved by a three person arbitration committee with: one member being selected by Seller, one member being selected by Purchaser, and a third arbitrator selected by the two selected arbitrators. In the event of the failure of a party to this contract to name an arbitrator within ten (10) days after written request by the other party to do so, the person named by the party seeking the arbitration shall alone make the decision which shall be final. Each party shall pay its selected arbitrator plus one-half of the cost of any third arbitrator selected by the two arbitrators. In the event of a failure of the two selected arbitrators to name a third arbitrator within ten (10) days following their inability to agree on a resolution, the parties shall apply to the American

Arbitration Association for the appointment of the third arbitrator. The arbitration shall be conducted in accordance with the rules of the American Arbitration Association, and the arbitration panel shall be empowered to select and utilize such rules of evidence and procedure of the State of Florida as such panel deems appropriate in the conduct of the arbitration. In the event either party hereby fails to abide by the decision of the arbitrators (herein referred to as the defaulting party) within ten (10) days after being informed of such decision in writing, the non-defaulting party in whose favor the decision has been rendered shall be entitled to reasonable attorney fees expended to enforce that arbitrators decision regardless of who instituted litigation to settle such dispute.

- 20. **RADON GAS DISCLOSURE.** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities may present health risks to persons who are exposed over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.
- 21. **SEVERABILITY.** If any provision of this Contract is deemed invalid or unenforceable as against either party by a court of competent jurisdiction, the remainder of this Contract shall not be affected thereby. Each provision of this Contract, except as otherwise or therein provided, shall be valid and enforced to the fullest extent permitted by law.
- 22. **TIME IS OF THE ESSENCE.** The performance of all obligations on the precise times stated in this Contract is of absolute importance and failure to perform any of them on time is a default, time being of the essence as to all deadlines in this Agreement.
- 23. **ASSIGNMENT / BINDING EFFECT.** The Purchaser's rights and obligations under this Contract are not assignable or transferable by the Purchaser without the prior written consent of the Seller, which may be withheld by the Seller at its sole discretion. The terms and conditions hereof shall bind and the benefits inure to the parties hereto, and their respective heirs, devisees, personal representatives, successors, and permitted assigns.
- 24. **NOTICES.** All notices, demands, requests, consents, approvals and other instruments required or permitted to be given pursuant to this Contract shall be in writing, signed by the party, or officer of the party, agent or attorney, and
  - (a) shall be deemed to have been effective upon delivery if served personally (including but not limited to delivery by messenger, overnight courier service or by overnight express mail), or
  - (b) shall be deemed to have been effective upon delivery if delivered via facsimile, or
  - (c) shall be deemed to have been effective upon posting if sent by registered or certified mail, postage prepaid, return receipt requested, and addressed to the parties as follows:

If to Purchaser: \_\_\_\_\_  
\_\_\_\_\_  
FAX: \_\_\_\_\_  
(if left blank, then to Purchaser's address as set forth on page 1 of this Contract)

If to Seller: The Canopies of Freeport, LLC  
216 Mountain Drive, Unit 100  
Destin, Florida 32541  
FAX: (850) 654-9697

With copy to: Matthews & Hawkins, P.A.  
Attn: Robert A. Gilmore, Esq.  
4475 Legendary Drive  
Destin, Florida 32541  
FAX: (850) 654-1634

- 25. **REAL ESTATE BROKERS.** Seller and Purchaser hereby represent to each other that they have not discussed this Agreement or the subject matter thereof with any real estate broker, agent, salesman or consultant so as to create any legal right in any such broker, agent, salesman or consultant to claim a real estate commission, finder's fee, or other compensation with respect to the conveyance of the Property contemplated by this Agreement, except for, \_\_\_\_\_ as specified in a separate brokerage agreement. Seller shall and does hereby indemnify and hold harmless Purchaser from and against any claims for real estate sales commissions, finder's fees, consulting fees, or like compensation in connection with the sale contemplated hereby and arising out of any act or agreement of Seller, other than stated above. Likewise, Purchaser shall and does hereby indemnify and hold harmless Seller from and against any claims for real estate sales commissions, finder's fees, consulting fees, or like compensation in connection with the sale contemplated hereby and arising out of any act or agreement of Purchaser, other than stated above.

- 26. **DEFAULT.**
  - (a) **Purchaser Default.** Should the Purchaser fail to close or to pay the deposits within the time period set forth in this Agreement, such non-performance shall constitute a default under this Agreement. Upon default by the Purchaser, the Seller's sole remedy shall be to retain all EMD made by the Purchaser to the date of such default. Seller and Purchaser specifically understand and intend that (i) the foregoing remedy is intended to operate as a liquidated damages clause and not as a penalty or forfeiture

provision; (ii) the actual damages Seller may suffer if Purchaser defaults are impossible to ascertain precisely and, therefore, the deposit(s) paid at the time of termination represents the parties' reasonable estimate of such damages considering all of the circumstances existing on the date of this Contract; (iii) the earnest money deposit(s) paid at the time of termination are intended to fully compensate Seller for entering into this Contract and, therefore, Seller shall not be entitled to bring any action at law or in equity against Purchaser for an alleged default under this Contract, unless same is to recover the EMD; and (iv) this Contract shall cease and terminate and be of no further force and effect, and Seller shall have no further claims against Purchaser under this Contract.

- (b) **Seller Default.** If for any reason Seller fails to close this transaction or is unable to deliver or perform Seller's obligations under this Agreement, other than Purchaser's default, then Purchaser shall be entitled to the refund of Purchaser's EMD, without interest, and all of the parties shall be discharged from all obligations and liabilities hereunder. Alternatively, Purchaser may pursue the remedy of specific performance. These are the sole and exclusive remedies of Purchaser in the event of Seller default hereunder. In no event, however, shall Purchaser be entitled to recover consequential or special damages arising out of Seller's default under this Agreement, nor any special damages that may otherwise be available under the remedy of specific performance.
27. **FURTHER ASSURANCE.** Each of the parties agree to do such further acts and things and to exercise and deliver such additional agreements and instruments as may be reasonably required to consummate, evidence or confirm this Agreement, or any other agreement contained herein in the manner contemplated hereby.
28. **CAPTIONS AND PARAGRAPH HEADINGS.** Captions and paragraph headings contained in this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope or intent of this Agreement, nor the intent of any provision hereof.
29. **SURVIVAL.** All covenants, terms, provisions, representations and warranties set forth in this Agreement, except as specifically provided otherwise, shall survive the Closing of this transaction.
30. **INTERPRETATION.** Each party to this Agreement has reviewed this Agreement. The normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or of any amendments or exhibits to this Agreement.
31. **RECORDING OF THIS AGREEMENT.** Seller and Purchaser agree that neither this Agreement nor any short form summary hereof shall be recorded in the Public Records of Walton County, Florida.
32. **COUNTERPARTS.** This Agreement may be executed in any number of counterparts, which together shall constitute one agreement. In making proof of this Agreement, facsimile copies of signatures shall be deemed originals or all purposes.
33. **ESCROW PROVISIONS.**
- (a) Closing Agent may act in reliance upon any writing or instrument or signature which it, in good faith, believes to be genuine and may assume that any person purporting to give any written notice, advice or instructions in connection with the provisions hereof has been duly authorized to do so. Closing Agent acts hereunder merely as a depository and shall not be liable in any manner for the sufficiency and correctness as to form, manner and execution, genuineness or validity of any instrument deposited hereunder or under which it does act, or the identity or authority of any person executing or depositing same. The Closing Agent's duties hereunder shall be limited to the safekeeping of such certificates, monies, instruments or other documents received by it in its capacity as Closing Agent hereunder, and for the disposition of the same in accordance with this Agreement and the written instruments accepted by it as Closing Agent hereunder. In the event of any disagreement between the parties, the Closing Agent may, at its option, continue to hold the same without liability until the rights of all adverse claimants have been adjusted and settled between the parties and the Closing Agent has been so advised by all such interested parties in writing, or Closing Agent may file an interpleader action in a court of competent jurisdiction.
- (b) Seller and Purchaser hereby agree to jointly and severally, defend, indemnify and hold harmless Closing Agent from any and all claims, liabilities, losses, actions, suits or proceedings at law or in equity, or any other expense, fees, or charges of any character or nature, which it may incur or with which it may be threatened by reason of its acting as Closing Agent under this Agreement; and in connection therewith, to defend and indemnify the Closing Agent against any and all expenses, including attorney's fees and the cost of defending any action, suit or proceeding or resisting any claim. Closing Agent reserves the right to choose its own attorneys. The Closing Agent shall be vested with a lien on all funds, certificates, agreements and other documents and papers which are deliverable to or belong to third parties under the terms of this Agreement, as well as a lien for indemnification, for attorneys fees, court expense, fees or charges of any character or nature, which may be incurred by Closing Agent by reason of disputes arising between the parties as to the correct interpretation of this Agreement and/or instructions given to the Closing Agent hereunder, or otherwise, with the right of said Closing Agent, regardless of the instructions aforesaid, to hold the funds, certificates, agreement, papers and documents until and unless said additional expenses, fees and charges shall be fully paid.
- (c) Closing Agent may consult with attorneys of its own choice and shall have full and complete authorization and protection for any action taken or suffered by it in good faith and in accordance with the opinion of such attorneys. Closing Agent shall otherwise not be liable for any mistakes of fact or error of judgment or for any acts or omissions of any kind unless caused by its willful misconduct or gross negligence.
- (d) Closing Agent may resign upon thirty (30) days written notice to the parties. If a successor Closing Agent is not appointed within this thirty (30) period, Closing Agent may petition the Court of the appropriate jurisdiction to name a successor Closing Agent, and in any event, Closing Agent shall be entitled to its reasonable attorney fees, costs and out-of-pocket expenses.
- (e) The Closing Agent shall be reimbursed by the parties for all costs and out-of-pocket expenses, including attorney's fees, incurred in connection with administering any and all of its rights and obligations under this Agreement.

- 34. **ENTIRE AGREEMENT.** This Agreement contains the entire, final, and complete understanding between the parties hereto. No promises, representation, warranty, or covenant not included in this Agreement has been or is relied on by either party. Each party has relied on its own examination of this Agreement and the provisions hereof, and the counsel of its own advisors, and the warranties, representations, and covenants expressly contained in this Agreement itself. The failure or refusal of either party to inspect the Agreement or other documents, or the failure to obtain legal or other advice relevant to this transaction, constitutes the voluntary, knowing and intelligent waiver of any objection, contention, or claim that might have been based on such reading, inspection or advice. No modification or amendment to this Agreement shall be of any force or effect unless in writing and executed by the Purchaser and by the Seller.
- 35. **CALCULATION OF TIME.** Except as otherwise expressly provided for in this Agreement, all calculation of time shall be in calendar days. In the event the date for any performance under this Agreement falls on a Saturday, Sunday or legal holiday, the time for performance shall be deemed extended until 5:00 PM (Central Standard Time) on the next business day.
- 36. **ACKNOWLEDGEMENT RECEIPT OF DISCLOSURES & CONTRACT DOCUMENTS** By signature below, Purchaser represents and affirms to Seller that Purchaser has received a copy of Composite Exhibit B, together with all Contract Documents referenced above.

**IN WITNESS WHEREOF**, the parties hereto have set their hands and seals.

**PURCHASER(S):**

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

\_\_\_\_\_  
 DATE

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

\_\_\_\_\_  
 DATE

**SELLER:**

The Canopies of Freeport, L.L.C.

By: \_\_\_\_\_  
 Timothy L. Henderson, Its Managing Member

\_\_\_\_\_  
 DATE