

**WENHAM PINES CONDOMINIUM  
WENHAM, MA**

**PURCHASE AND SALE AGREEMENT**

THIS PURCHASE AND SALE AGREEMENT is made as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Effective Date") by and between WENHAM PINES, LLC, a Massachusetts limited liability company (the "Seller"), having a principal place of business at Six Kimball Lane, Suite 300, Lynnfield, Massachusetts 01940, and \_\_\_\_\_ ("Buyer"), having an address of \_\_\_\_\_.

In consideration of the mutual promises expressed in this Agreement, the Seller agrees to sell and the Buyer agrees to buy the Unit specified in Section 1(a) below (hereinafter referred to as the "Unit") in the WENHAM PINES CONDOMINIUM, a condominium (the "Condominium") to be created pursuant to Chapter 183A of the Massachusetts General Laws (the "Act") by Master Deed to be recorded with the Essex South District Registry of Deeds (as the same may be amended of record, the "Master Deed") to encompass the land and improvements located at and commonly known as 56-60 Main Street, Wenham, Essex County, Massachusetts (the "Property"), subject to the terms and conditions set forth in this Agreement. Reference is further made to the Declaration of Trust of the Wenham Pines Condominium Trust, to be recorded with the Registry of Deeds (as amended, the "Condominium Trust"), which shall establish the organization of unit owners through which the Condominium is to be managed and regulated. Buyer have received drafts of the Master Deed, the Condominium Trust and the accompanying Bylaws and Rules and Regulations, all of which are collectively referred to herein as the "Condominium Documents." Capitalized terms used herein and not otherwise defined shall have the meanings assigned to such terms in the Master Deed.

**1. Basic Information**

- (a) The Unit: Unit # \_\_\_\_, having a street address of \_\_\_\_ Pine Hill Road in Phase I of the Condominium, together with an undivided \_\_\_\_ Percentage Interest (the "Undivided Interest") in the Common Areas and Facilities of the Condominium and together with the other appurtenant rights and interests set forth in Section 5.4 of the Master Deed. The Undivided Interest will diminish as future phases are added to the Condominium in accordance with the terms of the Master Deed.
- (b) Purchase Price: \$ \_\_\_\_\_
- (c) Closing Date: \_\_\_\_\_, 20\_\_

**2. The Project.**

The Seller is the developer of the project (the "Project") consisting of a phased condominium known as Wenham Pines Condominium being constructed on certain land (the

“Land”) located at 56-60 Main Street Wenham, Massachusetts, more particularly described in Exhibit A-1 and Exhibit A-2 to the Master Deed.

The Project is intended to consist of up to twelve (12) two-unit residential buildings (the “Buildings”) being constructed on the Land as an age-restricted (over 55 years-of-age) residential community. Each phase of the Project may include one or more buildings or one or more common areas or facilities or combinations thereof, to serve as an active adult community residential cluster development condominium consisting of a total of twenty-four (24) residential units (the “Units”) and associated Common Areas and Facilities if all Phases are completed. Without limiting or modifying the Seller’s rights as Declarant as set forth in the Master Deed, the Seller as Declarant has the right to modify the order, configuration and timing of the proposed phasing plan and to not complete such plan.

The Project and Condominium are subject to the terms and conditions of the Permits and Approvals (as that term is defined in Section 3.2 of the Master Deed), including without limitation the Special Permit and Site Plan Approval Decision of the Wenham Planning Board dated March 13, 2017 to be recorded with the Registry of Deeds (as the same may from time to time be amended, the “Special Permit”), all as more particularly described in the Master Deed. By its execution of this Agreement, and its acceptance of the Deed to the Unit, the Buyer agrees to comply with the terms of the Permits and Approvals and hereby indemnifies the Seller from any loss, claim, damage or expense (including reasonable attorneys’ fees) resulting from the Buyer’s failure to do so. The provision of this paragraph shall survive the delivery of the Deed hereunder.

### **3. Specifications; Buyer Selections**

(a) The Unit shall be constructed in a good and workmanlike manner accordance with the floor plans attached hereto as Exhibit A (the “Plans”) and the standard specifications and features attached hereto as Exhibit B (the “Specifications”).

(i) Upgrades. In addition, Seller agrees that the Unit will be delivered at Closing with the additional options and upgrades specified in Exhibit B-1 (“Upgrades”) having been completed. At the time of the signing of this Agreement, Buyer shall deliver to Seller an Upgrade Deposit of \$\_\_\_\_\_, which Upgrade Deposit shall be nonrefundable, except in the case of Seller’s failure to perform its obligations under this Agreement. Buyer acknowledges and agrees that such Upgrade Deposit may be commingled with Seller’s other funds and will be used by Seller to complete the work listed on Exhibit B-1.

(ii) Buyer Selections. Buyer may select from the Seller’s published list of design selections, available colors, materials and selections for the Unit. Buyer shall make all selections and package choices no later than at the execution of this Agreement, in accordance with the Buyer Selection Information Sheet attached hereto as Exhibit C. Buyer’s selections, when submitted in writing and approved by Seller, will become a part of the approved Specifications for the Unit and will be binding on the parties. In the event Buyer fails to make any selections or choose a package in a timely manner, Seller shall have the right to make such selections and/or choices. Seller will not be responsible for delays caused by any changes made

by Buyer after the Selections Sheet is signed by the parties, unless approved as a Change Order in accordance with the next paragraph.

(b) BUYER UNDERSTANDS AND AGREES THAT TIME IS OF THE ESSENCE IN THIS AGREEMENT HAVING TO DO WITH ALL SELECTIONS AND DECISIONS REQUIRED OF THE BUYER.

(c) Buyer acknowledges that the Seller shall not be responsible for the lack of availability of products in the construction of the Unit or the discontinuance of product lines or construction materials identified in the Specifications and that the Seller has the unilateral right to substitute and/or change materials and equipment and amenities of equivalent quality and function and/or make minor modifications to the Specifications when and where necessary with notice to Buyer, in the event Seller exercises such unilateral right in connection with a Buyer Selection and/or [Change Order], Seller shall notify Buyer of such substitution or change prior to exercising such right.

(d) Certain items (or, where appropriate, upgraded versions of such items), which may be seen in the model Unit in Condominium or in illustrations, may not be included with the sale of the Unit, including, without limitation, cabinets, counter tops, door appliances and other upgrades. Items of this nature will not be included in the Unit unless such items are specifically provided for in the Sellers published list of design features (if any) or the Selections Sheet signed by Buyer and Seller. If circumstances arise which warrant changes of suppliers, manufacturers, brand names or other items, Seller may substitute equipment, material, appliances, etc., which are of equal or better quality, in its reasonable discretion, to that designated on the Plans and Specifications.

#### **4. Deed and Title Exceptions**

The Unit is to be conveyed by a good and sufficient quitclaim Unit Deed (the "Deed") running to the Buyer, or to the Buyer's nominee designated by at least seven (7) days' notice to the Seller, and said Deed shall convey a good and clear record and marketable title thereto, free from encumbrances, except:

- (a) applicable building, zoning, and other laws and regulations of any governmental authority in effect on the date of the delivery of the Deed;
- (b) such taxes for the current fiscal year as are not due and payable on the date of the delivery of such Deed;
- (c) any liens for municipal betterments assessed after the date of this Agreement;
- (d) the provisions of the Act and the Condominium Documents including without limitation all obligations of the unit owners to pay a proportionate share of the common expenses of the Condominium;

- (e) the Permits and Approvals;
- (f) all other restrictions, easements, encumbrances, and other matters listed in Exhibit A-1 of the Master Deed;
- (g) all other matters of record provided the same do not materially interfere with the use of the Unit for residential purposes; and
- (h) any contract for the management or operation of any portion of the Condominium entered into by the Seller with third persons and the obligation thereunder to pay the proportionate share attributable to the Unit of the cost and expenses arising after the delivery of the Deed, which the Buyer hereby agrees to perform by paying the Buyer's share of such common costs and expenses; provided that such contract shall not have a term of more than three (3) years.

Prior to the Closing, Seller reserves the right to grant easements and other encumbrances, reservations and/or restrictions within the Condominium premises to utility companies and others necessary and desirable in connection with the development of the Condominium, all in accordance with the provisions of the Master Deed.

**5. Purchase Price**

The agreed purchase price for the Unit is \_\_\_\_\_  
 AND 00/100 DOLLARS (\$ \_\_\_\_\_), which shall be paid as follows:

First Deposit:	\$ 2500.00	has been paid (Reservation)
Second Deposit:	\$ _____	shall be paid at the time of the execution of this Agreement <sup>1</sup> ;
Upgrade Deposit:	\$ _____	has been paid with the signing of this Agreement for Upgrades;
Balance Due at Closing:	\$ _____	shall be paid at the time of delivery of of Deed, by cashier's, treasurer's or bank check, or by wire transfer.
	\$ _____	Total

**6. Time for Performance; Delivery of Deed**

Such Deed is to be delivered at \_\_\_\_\_ o'clock \_\_.m. on the Closing Date specified hereinabove at the Essex South Registry of Deeds, unless otherwise agreed upon in writing. In

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<sup>1</sup> The First and Second Deposit shall equal Ten Percent (10.00%) of the Purchase Price.

any event, the Closing shall take place at a location within the jurisdiction of the Essex South District Registry of Deeds. It is agreed that time is of the essence of this Agreement.

## **7. Possession and Condition of the Unit; Construction Matters**

(a) The Unit is to be delivered at the time of the delivery of the Deed free of any tenants and property of Seller. The Unit shall be substantially completed in accordance with Plans and Specifications and with a validly issued occupancy permit from the Town of Wenham and shall not be in violation of any building or zoning laws or any of the provisions listed in Section 4 hereof.

(b) The Buyer or Buyer's agent shall be entitled to an inspection of said Unit prior to the delivery of the Deed in order to determine whether the condition thereof complies with the terms of this Clause and the Specifications, as may be amended in accordance with the provisions hereof. Seller will notify Buyer by telephone or as otherwise provided in this Agreement and will attempt to schedule the inspection at a mutually agreeable time no less than (ten (10) business days immediately prior to the Closing Date (the "Pre-Closing Inspection"). If the Buyer elects not to attend the Closing Date Inspection at the time and date scheduled, the Buyer will be deemed to have waived the right to an inspection of the Unit. At the Pre-Closing Inspection, the Seller and Buyer will inspect the Unit and mutually note, in writing, any items which are defective based upon the warranty standards contained in the One-Year Limited Warranty, attached hereto as Exhibit E as well as any unfinished and incomplete items (collectively referred to as the "Punch List Items"). Punch List Items shall be completed by Seller as soon as reasonably practical considering weather and other factors and conditions immediately following the Closing.

(c) The Buyer agrees that:

(i) The Closing shall not be delayed because of outstanding Punch List Items or due to matters that cannot be completed owing to their seasonal nature, such as the balancing of heating and air conditioning systems and completion of landscaping and paving, if included in the Specifications. Provided, however, Seller shall be obligated to complete such items as weather and conditions permit and such obligation shall survive the delivery of the Deed;

(ii) There shall be no escrow of funds for any Punch List Items that are estimated (for each item) to cost less than \$500.00 to complete, or if the aggregate of such items does not exceed \$5,000.00. In the event such limits are achieved then Seller shall escrow the fair market value of any Punch List Items from the Purchase Price to be paid at Closing, said fair market value to be determined based upon amounts as set forth in the Specifications; and

(iii) Following the closing, Buyer will make arrangements to provide Seller and Seller's agents access to the Unit at a mutually acceptable time so that Seller's agents may complete the Punch List Items (including all work performed by Seller pursuant to the Limited Warranty) during normal business hours. Should Buyer not allow Seller or Seller's agent reasonable access to the Unit, Buyer will be deemed to have waived Buyer's right to have the

Punch List Items completed by Seller and any money escrowed pursuant to this paragraph immediately shall be paid over to the Seller.

(d) Seller and/or Seller's agents shall have the right, both before and after the delivery of the Deed pursuant to this Agreement, to continue construction on the Condominium premises. Buyer may not refuse to close or to accept delivery of the Deed because of such construction work. Buyer understands and acknowledges that from time to time work or the construction work relating to other Units may cause noise and other types of disruption typical of roadway and infrastructure construction or home building and Buyer hereby acknowledges and accepts such facts and expressly agrees to take no action which would interfere with Seller or Seller's agents ability or right to do such work, or with the rights of other lot owners to do so. This paragraph shall survive the delivery of the Deed.

**8. Extension to Perfect Title or Make the Unit Conform**

If the Seller shall be unable to give title or to make conveyance, or to deliver possession of the Unit, all as herein provided, or if at the time of the delivery of the Deed the Unit does not conform with the provisions hereof, then the Seller shall use reasonable efforts, not to exceed \$2,500 (including reasonable attorneys' fees and excluding voluntary or governmental liens), to remove any defects in title, or to deliver possession as provided herein, or to make the Unit conform to the provisions hereof, as the case may be, in which event the Seller shall give written notice thereof to the Buyer at or before the Closing Date, and thereupon the time for performance hereof shall be extended for a period of up to thirty (30) days or for such lesser period of time as the Seller may specify by written notice to the Buyer. All references to "Closing Date" under this Agreement shall mean the original closing date as the same may be extended under this Section 8.

Notwithstanding the foregoing, if the cause of Seller's inability to deliver possession of the Unit, or to satisfy all of the terms and conditions precedent to Closing as set forth in this Agreement, is a work stoppage, material delivery delays, a natural disaster, acts of terrorism, or other causes beyond the control of Seller, or the result of delays in selections or decisions by Buyer, Buyer agrees that Seller shall have the unilateral right to extend the time to deliver the Unit for a period of time reasonably necessary to complete the Unit, which extension shall not exceed sixty (60) days.

For the purposes of this Section 8, any title defect shall be deemed cured if the Buyer is able to obtain an owner's title insurance policy for the Unit at normal rates that take no exception for such defect or which provides affirmative coverage against loss resulting from such defect.

**9. Failure to Perfect Title or Make the Unit Conform**

If at the expiration of any extension of time provided herein the Seller shall have failed so to remove any defects in title, deliver possession, or make the Unit conform, as the case may be, all as herein agreed, or if at any time during the period of this Agreement or any extension thereof, the Condominium's organization of unit owners shall fail to agree, within the time period set forth in the Act, if applicable, to proceed with such repair or restoration as may be

necessary for such purposes, or shall expressly agree not to so proceed, all payments made under this Agreement shall be forthwith refunded and all other obligations of all parties hereto shall cease and this Agreement shall be void without further recourse to the parties hereto.

**10. Buyer's Election to Accept Title**

The Buyer shall have the election, at either the original or any extended time for performance, to accept such title as the Seller can deliver to the Unit in its then condition and to pay therefor the purchase price without deduction, in which case the Seller shall convey title, except that in the event of such conveyance in accordance with the provisions of this section, if the Unit shall have been damaged by fire or casualty insured against by the organization of unit owners or by the Seller, then the Seller shall, on delivery of the Deed, unless the Unit has previously been restored to its former condition, pay over or assign to the Buyer all amounts recovered or recoverable by the Seller on account of such insurance, and give the Buyer a credit against the purchase price equal to any amounts otherwise so recoverable which are retained by the holder of a mortgage on the Unit, less any amounts reasonably expended by the Seller for any partial restoration.

**11. Acceptance of Deed**

The acceptance of the Deed by the Buyer shall be deemed to be a full performance and discharge of every agreement and obligation herein contained or expressed, except such as are, by the terms hereof, to be performed after the delivery of said Deed.

**12. Use of Purchase Money to Clear Title**

To enable the Seller to make conveyance as herein provided, the Seller may, at the time of delivery of the Deed, use the purchase money or any portion thereof to clear the title of any or all encumbrances or interests, provided that all instruments so procured are recorded simultaneously with the delivery of said Deed, or that provision for prompt recording thereof in accordance with usual conveyancing practice is made at the time of closing.

**13. Hazard Insurance**

Until the Closing, the Seller shall maintain builder's risk insurance covering the construction of the Unit and all other work in progress within the Condominium property that is being undertaken by the Seller, and ensure that the Condominium Trust (once established) maintains or will maintain insurance with respect to the Condominium and the Unit. The Condominium Trust shall maintain a master insurance policy or policies as specified in the Condominium Documents covering the entire Condominium against loss by fire and other hazards included in extended coverage and insuring the Condominium Trust and the individual unit owners against public liability for occurrences in the Common Areas and Facilities. The cost of maintaining this insurance is charged to the unit owners in accordance with their respective Undivided Interests. Such insurance coverage will be without prejudice to the right of any unit owner to purchase supplemental insurance.

At the time of the delivery of the Deed, the Seller shall deliver to the Buyer a certificate of the Condominium insurance referred to in this paragraph as then in effect, naming the Buyer as owner of the Unit and the Buyer's mortgagee, if any, as mortgagee. At the time of closing, Buyer shall reimburse Seller their proportionate share of the condominium master insurance policy premium, which share shall equal the amount of the premium attributable to such Unit through the end of the term of the policy. The procuring of any supplemental insurance will be at the option and sole expense of the Buyer.

#### **14. Adjustments; Condominium Reserves**

Taxes for the then current tax period and common expenses for the then current month shall be apportioned as of the Closing and the net amount thereof shall be added to or deducted from, as the case may be, the purchase price payable to the Seller at the time of delivery of the Deed. If the amount of said taxes is not known at the time of the delivery of the Deed, they shall be apportioned on the basis of the taxes assessed for the preceding year, with a reapportionment as soon as the new tax rate and valuation can be ascertained; and, if the taxes which are to be apportioned shall thereafter be reduced by abatement, the amount of such abatement, less the reasonable cost of obtaining the same, shall be apportioned between the parties, provided that neither party shall be obligated to institute or prosecute proceedings for an abatement unless herein otherwise agreed.

Buyer further acknowledges that the Condominium most likely will not be separately assessed for property tax purposes prior to Closing. Therefore, buyer will remain responsible for paying a pro rata share of property taxes represented by the Undivided Interest attributable to such Unit each quarter at the request of Seller as reasonably determined by Seller in its sole discretion. At Seller's discretion, the Buyer, at Closing, shall execute a real estate tax agreement reflecting this provision.

In addition, in order to fund the Condominium Reserve Account described in the Condominium Documents, at the Closing, the Buyer shall deposit with the Board of Trustees of the Condominium Association an amount equal to two (2) month's common expenses attributable to the Unit. Reimbursement for the Buyer's share of the Condominium Trust's insurance premium for the first year of the policy shall also be paid in accordance with Section 13 above.

#### **15. Deposit**

All deposits made hereunder shall be held in escrow by Seller's attorneys, Glovsky & Glovsky, LLC, as escrow agent, subject to the terms of this Agreement, and shall be duly accounted for at the time for performance of this Agreement. All deposits shall be held in a federally insured, non-interest bearing account. In the event of a dispute relating to the deposits hereunder, the escrow agent shall retain the deposit pending the receipt of written instructions agreed to and signed by Seller and Buyer or of a court order directing the distribution of the deposit. The Buyer and the Seller jointly and severally agree to indemnify and hold the escrow agent harmless from any all costs and expenses, including reasonable attorneys' fees, incurred in



connection with any such dispute, and the Buyer agrees that Glovsky & Glovsky, LLC shall not, by virtue of its serving as escrow agent, be disqualified from representing the Seller in connection with any dispute regarding the disposition of the deposit.

**16. Brokerage.**

(a) The Seller represents and warrants to the Buyer that the Seller has not dealt with any real estate broker to whom a commission is due in connection with this transaction other than \_\_\_\_\_. The Seller agrees to indemnify the Buyer against and to hold the Buyer harmless from any loss, damage, cost, or expense, including reasonable attorneys' fees, incurred by the Buyer as a result of any claim for a brokerage commission or fee which may be asserted against the Buyer in connection with this transaction by any broker with whom the Seller has dealt. The provisions of this paragraph shall survive delivery of the Deed.

(b) The Buyer represents and warrants to the Seller that the Buyer has not dealt with any real estate broker to whom a commission is due in connection with this transaction other than \_\_\_\_\_. The Buyer agrees to indemnify the Seller against and to hold the Seller harmless from any loss, damage, cost, or expense, including reasonable attorneys' fees, incurred by the Seller as a result of any claim for a brokerage commission or fee which may be asserted against the Seller in connection with this transaction by any broker with whom the Buyer has dealt. The provisions of this paragraph shall survive delivery of the Deed.

**17. Damages If Buyer Defaults**

If the Buyer shall fail to fulfill the Buyer's agreements herein, all deposits made hereunder by the Buyer shall be retained by the Seller as liquidated damages and this shall be the Seller's sole and exclusive remedy at law or equity. The Buyer and Seller agree that in the event of default by the Buyer the amount of damages suffered by the Seller will not be easy to ascertain with certainty and, therefore, Buyer and Seller agree that the amount of the Buyer's deposit represents a reasonable estimate of the damages likely to be suffered.

In the event that Seller defaults under this Agreement, all of the conditions to be met by Buyer having been satisfied, then Buyer's sole remedies at law or in equity will be to either (a) seek specific performance of the Agreement; (b) rescind this Agreement in writing, in which event the all deposits hereunder (other than advance payments for Upgrades or Change Orders under Section 3 above) will be returned to Buyer and neither party will have any further recourse, rights or duties hereunder, or (c) elect to proceed with said sale, as though all of the conditions to be met by Seller had been satisfied by the Seller without any further liability to Seller and without any reduction in the Purchase Price or credit to the Buyer. In no event will the Seller be liable beyond such remedy so elected by the Buyer, or for enhanced or consequential damages.

**18. Seller Execution of Documents; Authority Documents**

The signatory for the Seller executes this Agreement in a representative capacity, and only the named Seller shall be bound, and neither the person so executing, nor any manager, member or agent of the Seller, shall be personally liable for any obligations, express or implied, hereunder. The Deed of conveyance from the Seller shall be executed by a Manager. The Seller shall provide a Certificate of Good Standing from the Secretary of State if one has not been recorded at the Registry within ninety (90) days prior to the Closing, but need not provide either a Certificate of Legal Existence or a Certificate of Good Standing from the Massachusetts Department of Revenue.

**19. Title Matters**

Notwithstanding anything herein contained, the Unit shall not be considered to be in compliance with the provisions of this Agreement with respect to title unless:

- (a) all structures and improvements, including but not limited to any driveway(s), garage(s), and all means of access to the Condominium in which the Unit is located, shall be located wholly within the lot lines of the Condominium land and shall not encroach upon, over or under any property not within such lot lines, except to the extent that any encroachments are authorized by way of easements described in the Master Deed;
- (b) no building, structure, improvement or property of any kind belonging to another person or entity encroaches upon, over or under the Condominium from other property;
- (c) the Condominium abuts or has access to a public way, duly laid out or accepted as such by the Town of Wenham, Massachusetts;
- (d) the Condominium is serviced by all usual and customary utilities, including electric, gas (if applicable), telephone, municipal water, and any others which are brought to the Condominium directly from the street or under, across, or over land of another by means of a validly recorded unencumbered easement of record; and
- (e) title to the Unit is insurable, for the benefit of the Buyer, by a title insurance company reasonably acceptable to the Buyer, in a fee owner's policy of title insurance at normal premium rates, in the American Land Title Association form currently in use, subject only to those printed exceptions to title normally included in the "jacket" to such form or policy and the standard so-called "Schedule B" exceptions and the exceptions permitted under Section 4 above.

Any matter or practice arising under or relating to this Agreement which is the subject of a practice or title standard of the Massachusetts Real Estate Bar Association shall be governed by such standard to the extent applicable.

## **20. Seller's Closing Deliveries**

The Seller agree deliver to Buyer at Closing such documents, instruments and other materials as customarily required and/or may be reasonably requested to effectuate the purposes of this Agreement, including but not limited to the following:

- (a) Certificate of Occupancy from the Town of Wenham;
- (b) Unit Deed evidencing conveyance of the Unit to Buyer;
- (c) A certificate from the Town of Wenham fire department stating that said premises have been equipped with approved smoke and carbon monoxide detectors in conformity with applicable law;
- (d) A statement from the organization of unit owners in recordable form setting forth, in accordance with section 6(d) of the Act, that there are no outstanding common expenses assessed against the Unit as of such date;
- (e) One-Year Limited Warranty in the form attached as Exhibit C;
- (f) Certificate as to Condominium Insurance Coverage;
- (g) Certificate of Compliance for Sewage Disposal System.

At the time of the delivery of the Deed, the Seller shall execute at closing all affidavits and indemnifications to the Buyer's title insurance company and/or the Buyer's mortgage lender (if any) as reasonably required, including, without limitation, affidavits indemnifying against claims of workmen and materialmen and affidavits as to parties in possession, the purchase price and allocation of the same.

## **21. Notices**

All notices required or permitted to be given hereunder shall be in writing and delivered by hand, by certified mail, postage prepaid, return receipt requested, by express mail, express courier service or by email or facsimile transmission, in the case of the Seller to Miranda P. Gooding, Esq., Glovsky & Glovsky LLC, 8 Washington Street, Beverly, Massachusetts 01915, fax: (978) 720-3181, [mgooding@glovsky.com](mailto:mgooding@glovsky.com), and in the case of the Buyer to, \_\_\_\_\_, Esq., \_\_\_\_\_, Massachusetts \_\_\_\_\_ fax: \_\_\_\_\_, [xxxx@xxxx.com](mailto:xxxx@xxxx.com), or in the case of either party to such other address as shall be designated by notice given to the other party in compliance with this Section. Except as otherwise provided herein, all such notices shall be deemed to have been duly given on (i) the date of receipt if delivered by hand, if sent by express courier service or if sent by facsimile or email transmission or (ii) the earlier of the date of receipt and the date of first attempted delivery by the U.S. Postal Service, if transmitted by mail as aforesaid.

## **22. Seller's Reserved Rights**

The Seller shall have, and hereby reserves, the right (a) at any time before or after the delivery of the Deed hereunder to raise or lower the price of any or all unsold units in the Condominium except the price for the Unit specified in this Agreement, and (b) at any time to make such changes or modifications in the Condominium Documents, including any rules and regulations promulgated pursuant to and any exhibits attached to any of the above, as the Seller shall deem necessary in order to meet requirements of applicable laws, governmental regulations,

lending institutions or marketing considerations, provided, however, that no such change or modification shall change the Unit's percentage interest in the Common Areas and Facilities, or materially alter the size, layout, location or features of the Unit specified in this Agreement. The Seller further reserves the right to maintain a sales office and/or model space at the Property, to erect and maintain signs and other advertising and selling devices, to enter unsold units in the Condominium in order to show them to potential Buyers and to undertake all usual and customary sales action, all as more particularly set forth in the Master Deed.

### **23. Warranties and Representations**

(a) The Buyer acknowledges that the Buyer has not been influenced to enter into this transaction nor has the Buyer relied upon any warranties or representations not set forth or incorporated in this Agreement or previously made in writing. The Buyer acknowledges that no other representations or warranties have been made by the Seller, and specifically that no representations or warranties have been made with respect to property taxes and common expenses. The Seller has made a good faith estimate of the common expenses attributable to the Unit and this estimate has been provided to the Buyer.

(b) Except as set forth in the One-Year Limited Warranty attached as Exhibit C, which shall survive the delivery of the Deed for the periods therein stated, or as otherwise required by law, the Buyer agrees and acknowledges that the Unit and Undivided Interest in the Common Areas and Facilities are being sold to the Buyer "as is" without additional warranty or representation, express or implied, oral or written.

(c) THE LIMITED WARRANTY IS THE ONLY WARRANTY APPLICABLE TO THIS AGREEMENT. THERE ARE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF HABITABILITY, MERCHANTABILITY, WORKMANLIKE CONSTRUCTION OR FITNESS FOR A PARTICULAR PURPOSE, UNLESS REQUIRED BY LAW OR PROVIDED DIRECTLY TO BUYER BY SELLER. BUYER UNDERSTANDS AND AGREES THAT SELLER'S LIABILITY, WHETHER IN CONTRACT, TORT, UNDER ANY WARRANTY, OR OTHERWISE, IS LIMITED TO THE REMEDY PROVIDED IN THE LIMITED WARRANTY. THIS SECTION SHALL SURVIVE THE FULFILLMENT OF THE TERMS OF THIS AGREEMENT.

### **24. Access to Unit.**

From and after the date of this Agreement, Seller shall afford Buyer and its agents and representatives, reasonable access, during normal business hours, after reasonable notice, and subject to any conditions, which Seller may impose, to the Unit, for purposes such as conducting an appraisal, measuring and viewing the condition and construction of the Unit, provided Buyer shall not interfere with construction. Any such visit to the Unit shall be at Buyer's risk and only in the presence of Seller or Seller's representatives. Buyer recognizes that the Condominium is a construction site and is inherently dangerous. Buyer hereby releases and indemnifies Seller from any and all claims, damages, expenses, suits, costs and liabilities, of whatever nature, arising from the presence of Buyer or Buyer's representatives at the Property or the Unit. The

foregoing indemnity shall survive the delivery of the Deed hereunder or the earlier termination of the Agreement.

**25. Sewage Disposal System.**

Seller has disclosed to the Buyer that an on-site sewage disposal system (the “Sewage Disposal System”) is located on the Property, and is subject to the provisions of Title 5 of the State Environmental Code, 310 C.M.R. §§ 15.00 et seq. as it may be amended from time to time (the “Title 5 Regulations”). Prior to Closing, Seller shall deliver a Certificate of Compliance by the Town of Wenham Board of Health dated within [two (2)] years of the installation of the Sewage Disposal System. Buyer further understands and agrees that all future costs and expenses incurred in the operation, testing, maintenance, repair, upgrade and/or replacement of the Sewage Disposal System will be the responsibility of the Condominium Trust and will be assessed to Buyer along with other common area expenses in accordance with the terms of the Condominium Documents.

**26. Condominium Documents; Age Restriction.**

(a) The Buyer acknowledges that, prior to or as of the date hereof, the Seller has delivered to the Buyer, and the Buyer has read and had an opportunity to discuss with its own attorney, the Condominium Presentation, which contains a copy of the Master Deed of the Condominium, a copy of the Declaration of Trust of the Condominium Trust and the By-laws and Rules and Regulations thereto along with a current budget for the Condominium Trust. Buyer understands that the Condominium Documents may be amended as described in Section 22 herein. Buyer agrees that Buyer and all those occupying or claiming by, through or under Buyer, shall abide by the provisions of the Condominium Documents. This covenant shall survive the Closing Date.

(b) The Buyer acknowledges and agrees that Buyer has read the Master Deed and Declaration of Trust and other documents in the Condominium Presentation, and affirmatively state that Buyer understands that the Project is a condominium development to be conveyed, leased or rented only to individual grantees or tenants at least one of whom is fifty-five (55) years of age or older, and further agree(s) to all of the terms and conditions for tenancy and use of condominium as set forth in the Master Deed and Declaration of Trust. Buyer understands and agrees that it will be required to provide sufficient documentation to Seller, and subsequently to the Condominium Trust, to demonstrate compliance with the over-55 restriction.

(c) Such information as may have been or may hereafter be furnished to Buyer concerning mortgage financing, operating expenses, projected condominium fees, and/or real estate taxes for the Unit are good faith estimates only and are thought to be reasonably reliable, but the Seller does not warrant or represent the accuracy of the projections or expectations, all of which are subject to change. Seller expressly disclaims all warranties or representations regarding the costs of maintaining or operating the Unit, future condominium expenses and budgets or Unit condominium fees. Seller has no way of assuring what value or tax rate will be imposed in the future.

**27. Condominium Matters.**

The Seller represents to the best of its knowledge:

- (a) the current condominium charges for the Unit are estimated to be \$\_\_\_\_\_ per month;
- (b) there are no planned special assessments, nor will there be any special assessments prior to closing unless Buyer is so notified and consents to same;
- (c) there are no leases, licenses or occupancy agreements in force and effect for the Unit nor will Buyer be purchasing the Unit subject to any such agreements other than as set forth under Section 4 hereof;
- (d) the Seller has no knowledge of any threatened or pending litigation against the Condominium.

**28. Assignment of Warranties.**

Seller shall, at the time of the delivery of the Deed hereunder, assign to Buyer (or Buyer's nominee) all warranties for new appliances and equipment and any service contracts or agreements as to any appliance, fixtures, or other equipment or property to be conveyed as herein contemplated.

**29. Authorization to Sign Modifications and Notices.**

In order to facilitate the execution and delivery of certain documents contemplated hereby, the Seller and Buyer grant to their respective lawyer the actual authority to execute and deliver on each party's behalf any (a) agreement modifying the time for the performance of any event hereunder, or (b) any notice that may be given under this agreement. The parties may rely upon the signature of such lawyers (including scanned, e-mail and facsimile signatures) unless they have actual knowledge that a party has disclaimed the authority granted herein.

**30. Errors in Adjustments.**

If any errors or omissions are found to have occurred in any calculation or figures used in the settlement statement signed by the parties (or would have been included if not for any such error or omission) and notice thereof is given within sixty (60) days of the date of the delivery of the Deed to the party to be charged, then such party agrees to make a payment to correct the error or omission.

**31. Remedies**

With respect to any default, breach, or failure to perform by the Seller under this Agreement, the liability of the Seller shall be limited to Seller's interest in the Unit. In no event

shall the Seller ever be liable to the Buyer for any indirect or consequential damages. Without limiting the generality of the foregoing, it is expressly understood and agreed that the Buyer's sole and exclusive remedy at law or in equity for any default, breach, or failure to perform by the Seller under this Agreement shall be by the recovery of the Deposit.

**32. Arbitration**

In the event of a dispute between Seller and the Buyer regarding either party's obligations under this agreement, the parties shall voluntarily submit said dispute to arbitration or any other mutually acceptable form of mediation or alternate dispute resolution, and the parties agree to be bound by the decision of the arbitrator, mediator or ADR hearing officer, each party to bear their own costs and expenses related thereto.

**33. Assignability of Agreement**

The Buyer shall not have the right to assign the Buyer's rights and interests under this Agreement. The Seller shall have the right to assign its rights and interests hereunder and under the Condominium Documents.

**34. Recording of Agreement**

If the Buyer records this Agreement, it shall, at the option of the Seller, become ipso facto null and void and all payments made hereunder shall be retained by the Seller as liquidated damages.

**35. Construction of Agreement**

This instrument executed in duplicate is to be construed as a Massachusetts contract, is to take effect on the Effective Date as a sealed instrument, sets forth the entire contract between the parties, is binding upon and inures to the benefit of the parties hereto and their respective heirs, devisees, executors, administrators, and permitted assigns and may be cancelled, modified or amended only by a written instrument executed by both the Seller and the Buyer. If two or more persons are named herein as the Buyer, their obligations hereunder shall be joint and several. The captions used herein are used only as a matter of convenience and are not to be considered a part of this Agreement or to be used in determining the intent of the parties.

Executed as a sealed instrument by Buyer and Seller as of the respective dates set forth below.

**BUYER:**

\_\_\_\_\_

\_\_\_\_\_

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

**SELLER:**

WENHAM PINES, LLC,  
a Massachusetts limited liability company

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

, Manager

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

**EXHIBITS**

Exhibit A	Unit Floor Plan
Exhibit B	Specifications
Exhibit B-1	Construction Upgrades
Exhibit C	Buyer Selections Information Sheet
Exhibit D	Change Order Form
Exhibit E	Limited Warranty





EXHIBIT C

**BUYER SELECTION INFORMATION SHEET**

**Re: Unit \_\_\_\_\_, Wenham Pines Condominium**

**BUYER'S NAME:**

**PURCHASE AND SALE AGREEMENT DATED:** \_\_\_\_\_, 201\_

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1. Pre-construction Buyers are permitted to select certain fixtures which are to be installed in the Unit as described in the attached Specifications. The Buyers must choose these items from the Seller's selection materials or Seller's suppliers within the time allotted under this Agreement. An accounting shall be completed by the Seller at closing in which the Seller shall compute an adjustment such that the Buyer shall be responsible to pay any "overage" figure (the retail cost portion of the Buyer's selection which exceeds the applicable allowance figure) to the Seller at closing, or shall be given an offsetting credit for any selections in which the allowance amount exceeds the retail price. This "net adjustment amount" shall become a non-refundable part of the Buyer's deposit (unless the Agreement is terminated as a result of the Seller's default in which event all deposits shall be refunded to the Buyer) and shall be added or deducted from the purchase price at closing.
2. The Buyer shall bear full responsibility for notifying the Seller in writing of the selected items or colors as specified in the preceding paragraph prior to, and in advance of, the date specified below. Buyers rights under this Addendum shall be forfeited and waived in respect to any selections which is not made on or before: **[Insert Date]**
3. The Buyer's right of selection shall apply to the following standard selections:
  1. Kitchen and bathroom cabinets
  2. Cabinet pulls for kitchen and bathroom cabinets
  3. Kitchen granite countertops
  4. Fireplace hearth
  5. Ceramic tile flooring and tub surround

4. Should the Buyer fail to make any selection in a timely manner the Seller reserves the right to select and install into the premises standard fixture selections and colors of which selections and installations will be binding upon the Buyer.
5. The Seller shall have the right to deny installation of any items or color selections chosen by the Buyer which the Seller, in its sole discretion, may determine to negatively affect the marketability and value of the unit. Seller's rights pursuant to this paragraph shall terminate upon the removal of all Buyer's contingencies to this sale and the placement of a deposit amount sufficient to cover the removal and replacement of any items specially requested by the Buyer.
6. The Seller's warranty on these premises specifically excludes any warranty on any materials or fixtures which were either: a) purchased by the Buyer for installation into the unit, or; b) were selected by the Buyer against the written recommendation of the Seller. The Seller does warrant that these fixtures shall be installed in a good and workmanlike manner, but does not warrant the quality of the fixture itself.

Receipt acknowledged by the undersigned Buyer(s) this \_\_ day of \_\_\_\_\_, 201\_\_.

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BUYER

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BUYER

EXHIBIT D

**CHANGE ORDER FORM**

**Re: Unit \_\_\_\_\_, Wenham Pines Condominium**

**BUYER'S NAME:**

**PURCHASE AND SALE AGREEMENT DATED:** \_\_\_\_\_, 201\_

**DATE OF CHANGE ORDER:** \_\_\_\_\_ **CHANGE ORDER #:**

\_\_\_\_\_

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The following Change(s) to the Specifications contained in the above-referenced Purchase and Sale Agreement is hereby made and agreed to by the undersigned Buyer and Seller:

**Description:**

**AMOUNT OF CHANGE ORDER:** \$ \_\_\_\_\_

**CLOSING DATE CHANGES, IF ANY:** \_\_\_\_\_

**BUYER:**

\_\_\_\_\_

\_\_\_\_\_

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

**SELLER:**

WENHAM PINES, LLC,  
a Massachusetts limited liability company

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

, Manager

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

**NOTE: All agreed upon changes shall be paid for in advance by Buyer to Seller and shall be non-refundable unless this Agreement is terminated on account of Seller's breach or default.**