

# WynLake Subdivision-Phase 4C

## Agreement to Option Lots

(Option to Builder)

Buyer: (name & address)

DWC, Inc (Dan Whitman)  
5339 Hwy 11  
Pelham, AL 35124

Ph. 369-5821 Fx. \_\_\_\_\_

Buyer's Broker: (name & address)

Anita R. Latham - RE/MAX First Choice  
2711 Hwy 31 So.  
Pelham, AL 35124

Ph. 663-4402 Fx. 630-0196

Lot No's: 135, 136, 137, 138, 139 & 102

of WynLake Subdivision-Phase 4C

Dated: 7/26, 2001

**THE PARTIES.** For and in consideration of Ten and No/100 Dollars, the mutual agreements contained herein (this "Agreement"), and other good and valuable consideration, each party paid to the other, the receipt and sufficiency of which is hereby acknowledged, WynLake Development, LLC (the "Seller") hereby agrees to grant an option and hereby agrees to grant an exclusive and irrevocable option to the undersigned buyer (the "Buyer"), first set forth above, to purchase the following described real estate, together with all structures, easements, rights-of-way, improvements, fixtures and appurtenances, situated on the real estate, at any time within one (1) year from the date of the Closing, on the terms, price and conditions stated herein and in the attached form of "Agreement to Purchase Lots and Construct New Residences", (Exhibit "A") and incorporated herein by reference (the Seller and the Buyer are sometimes referred to herein as "party" or "parties"):

**THE PROPERTY** is one or more single family residential building lots located in WynLake Subdivision-Phase 4C and situated within the City of Alabaster, Shelby County, Alabama, as represented on the graphic and layout plan attached hereto (Exhibit "B") and incorporated herein by reference, and being further described as the lot number first set forth above.

**THE OPTION MONEY** for the Property shall be \$100.00 per Lot for a Total of \$ 600.00; payable as follows:

A. **Earnest Money** - The Buyer has delivered to the Seller, simultaneously with the execution of this Agreement, earnest money (the "Earnest Money") in the amount of \$10.00 per Lot for a Total of \$ 60.00; to be held by the Seller in escrow pending the Closing of this transaction.

B. **At Closing** - The Buyer shall deliver to the Seller for each Lot, the balance of the Option Money for each Lot in the amount of \$90.00 per Lot for a Total of \$ 540.00.

**FINANCE APPROVAL.** This Agreement is contingent upon a) the Seller's review of the Buyer's credit and the Seller's willingness to consider holding the Note described in Exhibit "A" based on such review and b) the Buyer furnishing to the Seller such financial and credit information as the Seller may request at least fourteen (14) days prior to the Closing. The Buyer authorizes the Seller to obtain from and release to credit bureaus, credit interchanges and other grantors of credit, such information relating to this transaction and Buyer's creditworthiness, as may be determined pertinent by the Seller.

**CLOSING.** The transaction shall be closed and option delivered (the "Closing") within thirty (30) days from the date hereof or within thirty (30) days from the date of recordation of the final subdivision plat for WynLake Subdivision-Phase 4C in the Probate Office of Shelby County, Alabama, whichever should last occur. The Seller shall select the closing agent. The Closing shall take place in the office of the Seller. The Seller shall have a reasonable length of time to perfect title or cure defects in the title to the Property.

**AGENCY; BROKERAGE COMMISSION.** The Seller has been represented in this transaction by Builder1.com, LLC (the "Seller's Broker") who has acted solely as the agent of the Seller, and the Buyer has been represented in this transaction by the real estate broker first set forth above.

(the "Buyer's Broker") who has acted solely as the agent of the Buyer. Each party shall be responsible for and pay the fees of their respective agent.

**INSPECTION; ASSUMPTION OF LIABILITY.** The Seller agrees that prior to the Closing, the Buyer, personally or through its authorized agents or representatives, shall be entitled to enter upon the Property at all reasonable times, so long as such activities do not interfere with construction or tenants in possession, to make such surveys, soil test, etc., as the Buyer deems necessary to satisfy itself of the suitability of the Property for its intended use. The Seller makes no representation or warranty that the Property is suitable for any intended use.

**DEFAULT.** The Buyer shall be in default of this Agreement and the Earnest Money forfeited to the Seller if the Closing does not occur within thirty (30) days from the date hereof or within thirty (30) days from the date of recordation of the final subdivision plat for WynLake Subdivision-Phase 4C in the Probate Office of Shelby County, Alabama, whichever should last occur.

#### **MISCELLANEOUS**

**Reimbursements.** Except as specifically provided for herein to the contrary, if any adjustments or calculation pursuant to this Agreement are, subsequent to Closing, found to be erroneous, then either party hereto who is entitled to additional monies shall invoice the other party for such additional amounts as may be owing, and such amount shall be paid within ten (10) days from receipt of the invoice.

**Mutual Cooperation.** The Buyer and the Seller agree to mutually cooperate in applying to and working with all necessary governmental authorities to accomplish the purposes of this Agreement and the development of adjacent lands by the Seller, such cooperation to include, without limitation, supporting modifications to any zoning classifications, use variances, protective covenants, ADEM Permits or other regulation as may be necessary or convenient.

**Notices.** Any and all notice, election, demand, request or response, if given to the Buyer, shall be addressed to the Buyer at the address first listed above; and, if given to the Seller, shall be addressed to: WynLake Development, LLC, P.O. Box 679, 106 9<sup>th</sup> Street NE, Leeds, Alabama 35094, Ph. 205-699-5200, Fax. 205-699-8447. Any party may change the address provided hereinabove by giving written notice of such changes to the other party or parties as herein provided.

**No Waiver to Affect Another.** No waiver of any right or default hereunder shall extend to or shall affect any other right or any subsequent or any other then existing default or shall impair any rights, powers or remedies consequent thereon.

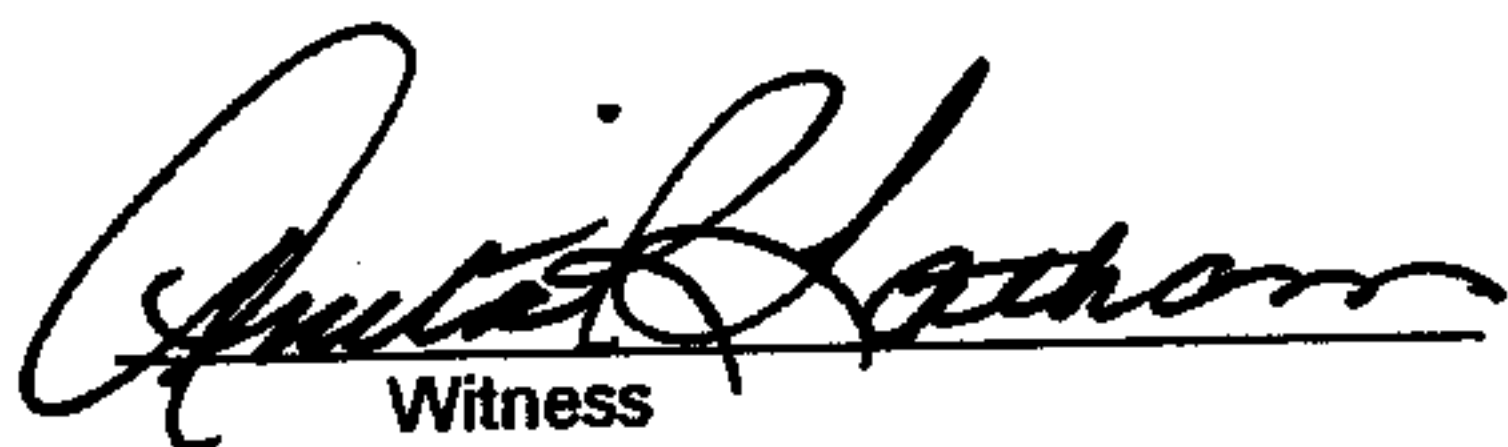
**Successors and Assigns; Parties in Interest.** This Agreement shall be binding upon and shall inure to the benefit of the undersigned parties and their respective heirs, personal representatives, executors, successors and assigns. However, the Buyer shall not assign this Agreement without the express written consent of the Seller. Nothing in this Agreement, expressed or implied, confers or is intended to confer, upon any other person, firm or corporation (other than the parties hereto or their respective successors and assigns) any rights or remedies under, or by reason of, this Agreement.

**Authority; Governing Law; Gender; Headings; Survival.** Each person executing this Agreement warrants and represents that he, she or it as the case may be is fully authorized to do so. This Agreement shall be construed and interpreted in accordance with the laws of the State of Alabama. Where required for proper interpretation, words in the singular shall include the plural; the masculine gender shall include the neuter and the feminine, and vice versa. The terms "heirs, executors, administrators and assigns" shall include "successors, legal representatives and assigns". The descriptive headings of the several paragraphs contained in this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof. This Agreement shall survive the execution and delivery of the conveyance documents. The representations and warranties made shall be true and correct on the date of Closing and shall survive the Closing and continue in full force and effect, and the obligation of the Seller to close this transaction is expressly conditioned upon said representations and warranties being true and correct on the date of Closing.

**Merger; Entire Agreement; Amendment; Severance.** It is understood and agreed that all undertakings and agreements previously made between the parties and their counsel or other representatives are merged in this Agreement, which alone fully and completely expresses their entire agreement and that the same is entered into after full investigation, no party relying upon any statement or representation, or warranty not embodied in this Agreement, made by or on behalf of the other. Any other agreements not incorporated herein are void and of no force and effect. No amendment of this Agreement shall be effective unless in writing and signed by the parties hereto. Any provision hereof contrary to, prohibited by or invalid under applicable laws or regulations shall be inapplicable and deemed omitted herefrom, but shall not invalidate the remaining provisions hereof.

**Time of the Essence.** Time shall be of the essence of this Agreement and the transactions contemplated herein.

IN WITNESS WHEREOF, the Buyer, the Buyer's Broker, and the Seller have caused this Agreement to be signed and sealed effective as of the day and year first set forth above:

  
Witness

BUYER:

DWC, Inc

LS: Don Whitman 7/28/01  
Its President (date)

BUYER'S BROKER:

Kelley First Choice

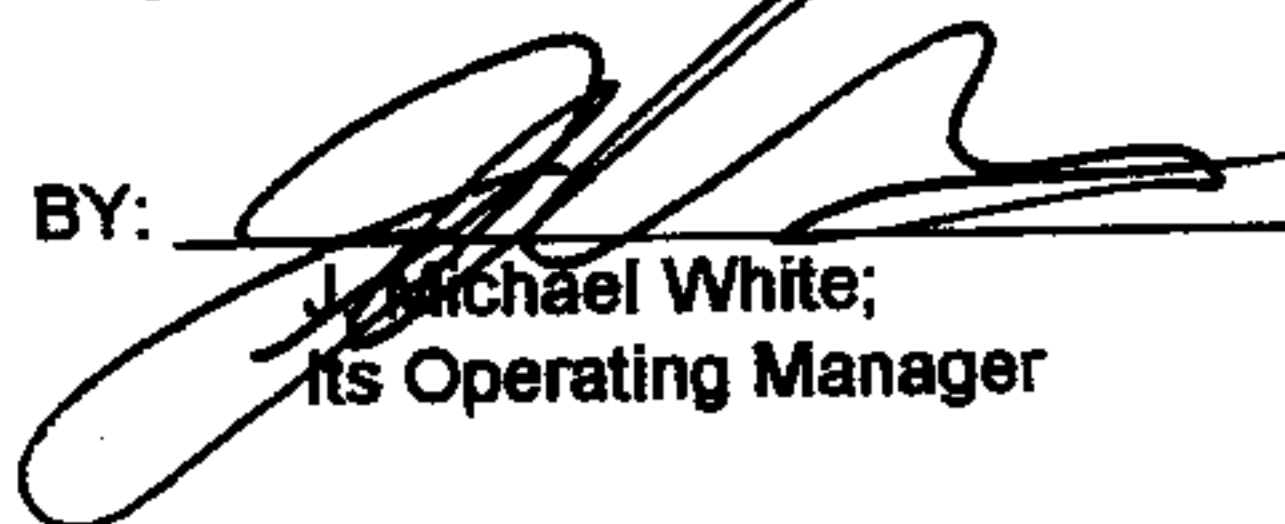
LS: Spencer Latham 7/28/01  
(date)

\_\_\_\_\_  
Witness

SELLER:

WynLake Development, LLC

By: SERMA Holdings, LLC; Its Operating Manager

BY:  7-30-01  
J. Michael White; (date)  
Its Operating Manager



## **Exhibit "A"**

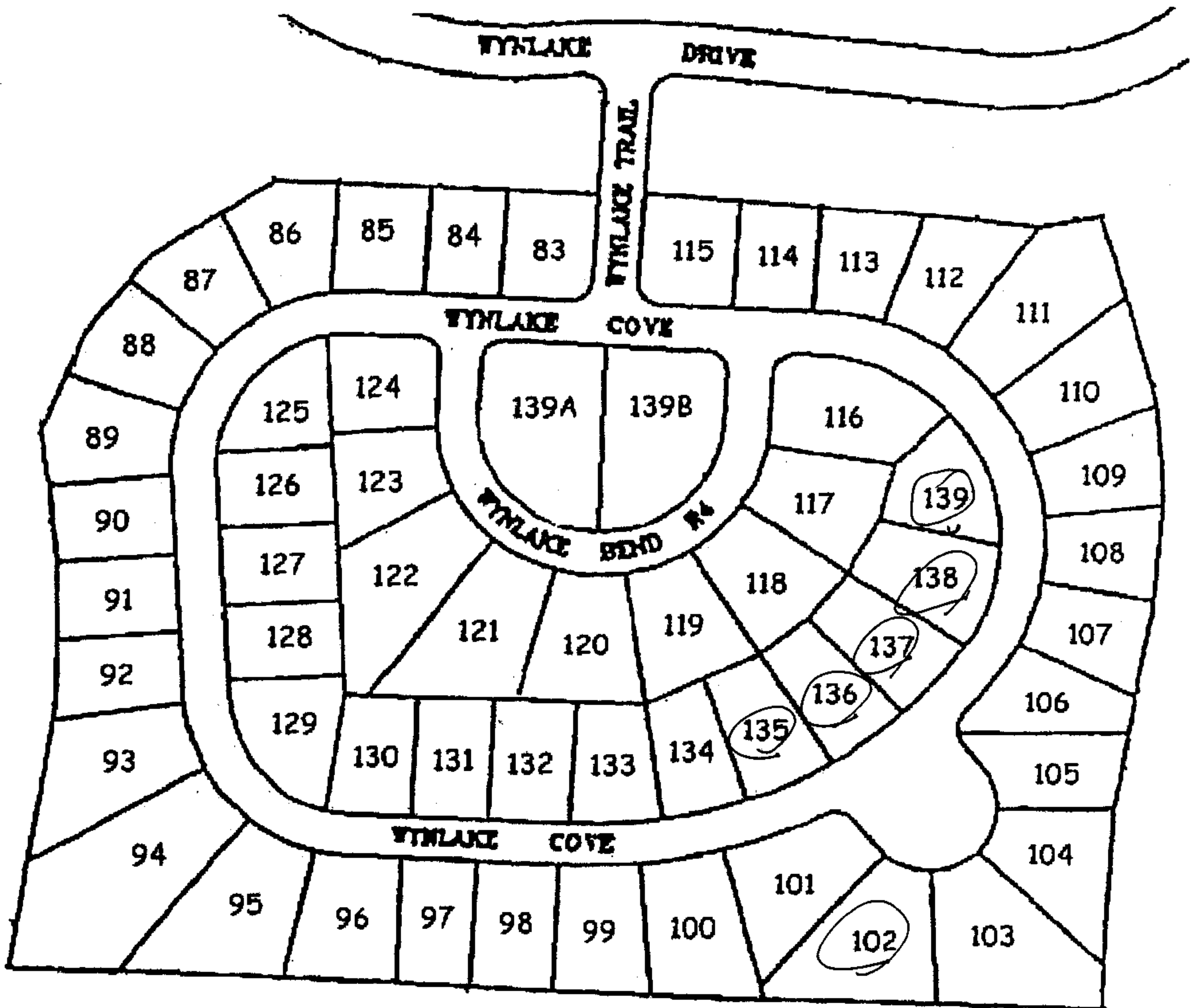
### **Agreement to Purchase Lots and Construct New Residences**

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# Exhibit "B"

## Graphic and Layout Plan

### WynLake Subdivision-Phase 4C



(Circle and Initial Lot)

**ADDENDUM "A"**

This addendum shall become a part of that certain contract dated July 26, 2001, between WynLake Development, LLC, (the "Seller") and DW LLC, Inc. (the "Purchaser") related to the sale and purchaser of Property located at Wynlake Subdivision, Phase 4-C.

1. Within Ten (10) days from the date hereof the Seller shall furnish to the Purchaser the following:
  - (a) Copies of all soil reports in its possession from Gallet Engineering related to the compacted fill on certain portions of the Property;
  - (b) Copies of notice from the City of Alabaster, dated subsequent to the date hereof, evidencing the present zoning of the Property and a copy of the Declaration of Protective Covenants affecting the Property; and
  - (c) Copies of a certificate from R. A. Farmer engineering showing if the Property, or any portion thereof, is or is not located in a flood plane.
2. The Purchaser shall not be obligated to perform under this Agreement unless the Seller shall furnish the items listed above and unless the Purchaser shall approve each such item within ten (10) days of the Purchaser's receipt of the last such item. Any item to which the Purchaser does not object by written notice delivered to the Seller within the ten (10) day period shall be deemed to be approved.
3. The Seller agrees that prior to the Closing, the Purchaser, personally or through its authorized agent or representative, shall be entitled to enter upon the Property at all reasonable times, so long as such activities do not interfere with construction or tenants in possession, to make such inspections, surveys, soil test, etc., as the Purchaser deems necessary to satisfy itself of the suitability of the Property for its intended use. The Seller agrees to make available all applicable records relating to the Property and the development thereof. Such records may be examined at all reasonable times. The Seller agrees to furnish to the Purchaser, to the extent available, legible prints or copies of all construction plans and specifications relating to the improvements, which prints or copies shall be returned to the Seller without having been copied, in the event the transaction contemplated hereunder is not closed.
4. The Purchaser shall have ten (10) days from the date hereof within which to make all inspections or investigations desired by the Purchaser. If, within such period, the Purchaser determines that it does not desire to close this Agreement, it may give notice of such fact to the Seller and the Earnest Money shall be refunded to the Purchaser. In any event the Seller shall not be obligated to correct any defects that the Purchaser might find as a result of the inspection.
5. The Seller represents and warrants that water, sewer, electricity, gas and telephone utility service will be available to each lot prior to the Closing.
6. This Agreement is contingent upon the Seller's willingness to hold the note described under the section titled "FINANCING" in the "Agreement to Purchase Lots and Construct New Residences"; should the Seller be so unwilling, then this Agreement shall be cancelled and the Earnest Money refunded to the Purchaser. ~~the option of the purchaser, this agreement shall be cancelled and the earnest money refunded within seven days.~~
7. The Purchaser's obligation to close the transactions contemplated by this Agreement is further expressly conditioned upon the certifications, statements, representations and warranties called for herein being true and

correct. Further, such certifications, statements, representations and warranties shall survive the Closing and shall continue in full force and effect for a period of one year from the date of the Closing notwithstanding the Closing and consummation of the sale contracted for herein.

8. ~~In the event the seller is unwilling to hold the note described under the section titled "FINANCING" in the "Agreement to Purchase Lots and Construct New Residences" the purchaser reserves the right to secure his own financing. In the event purchaser cannot secure financing, this Agreement shall be canceled and the earnest money refunded to the Purchaser within seven (7) days of written notification.~~ *DD gkw*

IN WITNESS WHEREOF, the Buyer and the Seller have caused this Addendum to be signed and sealed effective as of the day and year first set forth above:

BUYER:

DWC, INC.

*Patricia L. Latham*  
Witness

LS:

*Don White* 7/28/01  
Its President (Date)

SELLER:

WynLake Development, LLC

By: SERMA Holdings, LLC: Its Operating Manager

BY:

*J. Michael White* 7-30-01  
J. Michael White: (Date)  
Its Operating Manager

Inst # 2001-50554

11/21/2001-50554  
01:39 PM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE

007 MSB 29.00