

STATE OF ALABAMA )

SHELBY COUNTY )

Revised 12-5-00

AMENDED and RESTATED OPTION AGREEMENT  
BY AND BETWEEN  
FARMER, LLC. AND THORNTON CONSTRUCTION COMPANY, INC.  
REGARDING HOLLAND LAKES

THIS OPTION AGREEMENT (the "Agreement") is made and entered into this 2<sup>nd</sup> day of August, 2000 by and between FARMER, LLC., an Alabama limited liability company ("Developer") and THORNTON CONSTRUCTION COMPANY, INC. an Alabama corporation ("Contractor").

WITNESSETH:

WHEREAS, on or about 22 February 2000, Developer and Contractor made and entered into the Option Agreement regarding HOLLAND LAKES (the "Original Agreement"); and

WHEREAS, in that circumstances and conditions have changed since the Original Agreement, Developer and Contractor desire to Amend and restate the Original Agreement in order to modify certain terms and provisions thereof; and

WHEREAS, Developer and Contractor intend to hereby amend and restate the Original Agreement so that this agreement restates in its entirety and replaces the original Agreement; and

WHEREAS, Developer owns approximately ninety five (95) acres, more or less, of unimproved real property situated in the City of Pelham, Shelby County, Alabama, which Property is legally described in Exhibit A attached hereto and made a part hereof (the "Property"). Developer desires to improve and develop the Property into a planned residential community known as HOLLAND LAKES, pursuant to a development plan mutually agreed upon by the parties (as amended from time to time, the "Development Plan"); and

WHEREAS, the Development Plan and Construction Plan, as defined herein below, contemplate the installation of roads, utilities, amenities, common areas and other infrastructure (the "Work", as further defined and described in Section 3 below) necessary

Dominick Fletcher

and desirable for the development of the Property into approximately two hundred sixty two (262) Finished Lots, as defined in Section 2 below; and

**WHEREAS**, Developer desires to give Contractor the exclusive option to purchase the Finished Lots.

**NOW THEREFORE**, in consideration of the premises and the mutual promises, covenants and agreements of the parties set forth herein, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

### **AMENDED and RESTATED OPTION AGREEMENT**

#### **1. The Development Plan.**

As set forth on the preliminary lot layout attached hereto as Exhibit B (the "Development Plan"), Developer intends to develop the Property into a planned residential community known as **HOLLAND LAKES** with a total of approximately two hundred sixty two (262) forty five (45') and sixty five (65') foot wide x one hundred (100') foot deep Finished Lots.

#### **2. Definition of Finished Lot.**

A lot shall be deemed a "Finished Lot" upon completion of the following:

(a) The clearing of all vegetation and organic material from the lot to the pre-determined limits established for each house plan, specifically varying as to slab-on-grade or basement construction; and

(b) The grading of each lot to an elevation that provides positive drainage to a dedicated outfall area (drainage swale at the rear or valley gutter at the front) at a minimum of 1":10' so as not to pond or trap surface water on the lot. The maximum deviation across the lot shall not exceed 6". If a lot cannot be graded to surface drain to a dedicated outfall area as described in this paragraph, an artificial drain (underground piping) shall be installed. Subject to the drainage requirements of this paragraph, lots designated as basement lots shall be graded with the basement cut in place. Backfill and perimeter drainage to any basement wall is not part of the lot grading required of Developer hereunder; and

(c) Compaction of any fill material used to at least 98% proctor density as evidenced by tests performed by an industry recognized geo-technical testing laboratory. Upon completion of the grading, the lot shall be cohesive and have bearing and geo-technical



characteristics suitable to support the footing design and loads of the slab-on-grade or basement plan designated for that lot. After completion of grading to such standards, Contractor shall be responsible for any further work necessary to prepare the lot for construction; provided however that Developer shall be responsible for the installation and removal of any erosion control measures (e.g. hydro-seed and the repair of any surface drainage damage (e.g. storm water runoff damage) upon any lot prior to the conveyance of the lot from Developer to Contractor; and

(d) Developer shall create a building pad upon the Finished Lot large enough to accommodate the designated house plan for the Finished Lot, and such house plan's clearance limits, and create a drainage channel in order to avoid surface water drainage problems originating from a neighboring or adjacent lot. Developer shall be responsible for any grading and/or clearing beyond lot lines in order to provide a smooth grade change transition between and among lots and to provide view into valleys beyond the treeline. No slope between houses or toward streets shall be greater than 2:1. Developer does not anticipate a need for site walls but in areas where slopes cannot be graded as required herein or the grade transition may be more economically made by vertical cut, site walls may be constructed. The material, height, location and distribution of cost of such walls shall be subject to the mutual agreement of Developer and Contractor. Contractor shall be responsible for the cost of any walls used as load bearing support for the house to be constructed upon the lot ; and

(e) Curb and gutter, asphalt binder and all utilities, including but not limited to electricity, cable television, gas, telephone, water including fire protection, sanitary sewer and storm sewer, shall be in place and available for connection to each Finished Lot.

### **3. The Work.**

Pursuant to the mutually agreed upon Development Plan for the Property, Developer agrees to perform the Work (the "Work") described as follows:

(a) Developer shall cause engineers, surveyors and/or architects to prepare plans, drawings and specifications for the development and improvement of the Property (the "Construction Plan") which, subject to the rights, if any, of engineers, surveyors or architects who draft and prepare the Construction Plan, the Construction Plan shall be the property of Developer and shall be subject to the approval of Developer and the applicable governing entities. Such Construction Plan shall include (i) final site and road grading plans and paving plans and specifications for the construction of roadways on the Property for access to the Property and to each Finished Lot, (ii) utility and infrastructure plans for the construction of underground utility lines(power , gas, telephone and cable



television), storm sewer and sanitary sewer installation, and domestic and fire protection water service, (iii) plans for entrance walls and entrance gates, if any, (iv) landscaping plans for entrances and areas outside of the boundaries of the Finished Lots to be conveyed, (v) plans for the development and construction of common areas and amenities, if any, and (vi) preparation of final recordable lot layouts and subdivision plats; and

(b) Developer shall perform the Work and the improvement and development of the Property in accordance with the Construction Plan until the work described in the Construction Plan is completed, a subdivision plat has been approved by the governing authorities and recorded in the Office of the Judge of Probate, and the Finished Lots are ready and available for sale to Contractor; and

(c) Pursuant to and in accordance with the Construction Plan, Developer shall perform any and all other duties and services necessary to improve and develop the Property so that the Property, as subdivided, will be ready for construction of single-family residential dwellings as Finished Lots, and

(d) Developer expects to have Finished Lots complete and ready to convey no later than ~~1 February 2001~~. Upon completion of the Work by Developer, Contractor shall have ten (10) ~~days~~ <sup>the</sup> "Inspection Period") to conduct any and all studies, tests, inspections, assessments and evaluations, including but not limited to the quality and timeliness of the Work, environmental and title inspections (the "Inspections") of the Property, any and all covenants, conditions and restrictions to the Property and shall otherwise have the right to enter upon the Property to perform such inspections. If, at any time on or before the expiration of the Inspection Period, Contractor determines, in Contractor's sole discretion, that the results of the inspections are unsatisfactory, then Contractor shall notify Developer of such defects and the Developer shall have a reasonable period of time, not to exceed 30 days ("Remedy Period"), to correct those defects itemized by Contractor. If Developer fails to make those corrections within the Remedy Period, Contractor shall have the right to cancel and terminate this Option upon written notice to Developer, in which event Developer shall refund to Contractor the Option Money paid by Contractor hereunder and both parties shall thereafter be released from all obligations hereunder.

#### 4. The Cost of the Work.

Developer hereby covenants and agrees to pay for and be obligated for all costs (the "Costs") arising out of or related to the Work. The Costs shall include but not be limited to the following:

(a) the costs and expenses for subcontractors, engineers, material suppliers, service providers, and any and all other costs of the Work or costs associated with the development and improvement of the Property pursuant to the Development Plan and Construction Plan, as the same are amended from time to time, or as may become necessary to properly complete development of the Finished Lots, from the time the Work is commenced until each Finished Lot is sold and conveyed by Developer; and

(b) erosion control, removal of material eroded from a Finished Lot and cleaning of streets, gutters and storm drainage systems due to erosion from a Finished Lot which has not yet been conveyed to Contractor; and

(c) all real estate ad valorem taxes and roll back taxes, if any, library and fire district dues, title insurance premiums for the sale of Finished Lots, and any other assessments, if any, levied against the Property and the Finished Lots until conveyed by Developer.

## **5. Contractor's Exclusive Option.**

(a) GRANT OF OPTION. In consideration of fifty thousand dollars (\$50,000.00) (the "Option Money") and other good and valuable consideration previously received, Developer hereby grants to Contractor the sole and exclusive right and option to purchase each Finished Lot for the Lot Price, as defined hereinafter (the "Option"). In the event Contractor exercises its Option, in accordance herewith, the Option Money, plus accrued interest, shall be credited back to Contractor at the closing of the purchase of the last group of seventy two (72) Finished Lots, Phase 3. In the event Contractor forfeits the Option, in accordance with paragraph 5 (d) below and as may be further described herein, the Option Money, plus accrued interest, shall be forfeited by Contractor and such forfeiture shall be Developer's sole and exclusive remedy against Contractor under this Agreement.

(b) EXERCISE OF OPTION. Contractor may exercise the Option granted hereby by giving Developer written notice at least five (5) days prior to the closing of the Finished Lots with respect to which the Option is being exercised.



(c) CONVEYANCE. For each Finished Lot with respect to which Contractor exercises its Option, Developer shall convey to Contractor clear title by statutory warranty deed, free of all liens and encumbrances, other than easements, covenants and restrictions of record reasonably satisfactory to Contractor which do not materially impair use of the Finished Lot for its intended purposes. Possession of the Finished Lot is to be given to Contractor upon delivery of the deed, free of any encumbrances, tenancies and leases. At the closing of each conveyance of a Finished Lot to Contractor, ad valorem taxes, library dues, fire dues and other assessments due to any governmental entity, if any, shall be prorated between the parties as of the date of closing. Developer agrees to furnish to Contractor at the closing of each Finished Lot, a commitment for a title insurance policy issued by a company qualified to insure titles in Alabama in the amount of the Lot Price. Furthermore, Developer agrees to furnish duly executed lien releases and/or lien waivers for Developer and Developer's contractors and subcontractors prior to or at the closing of the purchase of each Finished Lot. At the closing of each Finished Lot, Developer shall also deliver to Contractor an owner's affidavit and other evidence and documents required by the title insurance company providing the title insurance and such other documents as may be reasonable and necessary to consummate and close the purchase and sale contemplated hereby.

(d) FORFEITURE OF OPTION. Contractor agrees to purchase one hundred nine (109) Finished Lots, Phase I, initially after the Inspection Period and Remedy Period, eighty one (81) Finished Lots, Phase II, no later than nine (9) months after the initial lots purchase and the balance of seventy two (72) Finished Lots, Phase III, no later than nine (9) months after the Phase 2 lots purchase. Failure of Contractor to close the initial purchase of one hundred nine (109) Finished Lots, Phase I, after the Inspection Period and Remedy Period or to close the purchase of the eighty one (81) Finished Lots, Phase II, no later than nine (9) months after the initial lots purchase or to close the purchase of the balance of seventy two (72) Finished Lots, Phase III, no later than nine (9) months after the Phase II lots purchase shall terminate Contractor's exclusive right and Option to purchase Finished Lots under this Agreement for **HOLLAND LAKES**.

(e) LOT PRICE. The "Lot Price" for each Finished Lot shall be as set forth in Exhibit C attached hereto and made a part hereof.

(f) TERM OF OPTION. Contractor's exclusive Option shall commence upon execution of this Agreement by the parties. The parties hereby agree that, so long as neither party has breached its obligations as defined hereunder, Contractor's exclusive Option shall continue throughout the performance of the Work until the improvement and development of the Property is complete and each and every Finished Lot has been sold and conveyed to Contractor by Developer.



(g) **OPTION MONEY.** Developer and Contractor mutually consent that the Option Money shall be held in trust with Cahaba Title Company, pending the fulfillment of this Agreement. In the event Contractor fails to carry out and perform the terms of this Agreement for any reason other than Developer's default as described in paragraph 7 below and as may be further described herewith, the Option Money plus accrued interest shall be forfeited by Contractor to Developer as liquidated damages and both parties shall thereafter be released from all obligations hereunder. The Option Money plus accrued interest shall be returned to Contractor if (i) Developer fails to deliver to Contractor at any closing of a Finished Lot good and marketable title free of defects and encumbrances, except as provided herein, or (ii) if Contractor notifies Developer of termination of this Agreement before the end of the Remedy Period.

**6. Representations and Warranties.** Developer warrants that through the date of closing of each Finished Lot, Developer has not received notification from any lawful authority regarding any condemnation, assessments, pending public improvements, repairs or alterations to the Property that have not been satisfactorily made. Developer warrants that Developer is the fee owner of the Property and is authorized to execute this Agreement. Developer warrants that to the best of its knowledge, no underground mining shafts or tunnels, limestone formations or sinkholes exist below the surface of the Property. Developer further warrants that Developer has not installed any underground storage tanks on the Property and that, to the best of Developer's knowledge, no such tanks are or have ever been located on the Property. Developer further warrants that Developer has not participated in or approved any production, disposal or storage on the Property of any hazardous waste or any toxic substance regulated under any applicable local, state or federal law, nor has Developer received notice of any proceeding or inquiry by any governmental authority with respect to the presence of such waste or substance on the Property or the migration of such waste or substance from or to adjoining property. Further, Developer represents that Developer has no knowledge of any production, disposal or storage on the Property of any regulated hazardous waste or toxic substance, or the migration of such waste or substance from or to adjoining property. **THESE WARRANTIES AND REPRESENTATIONS SHALL SURVIVE THE CLOSINGS AND DELIVERY OF EACH DEED.**

**7. Developer's Default.** Upon expiration of the Remedy Period and If all conditions precedent to a closing have been satisfied or waived by the parties and Developer fails to close for any reason other than Contractor's default, then Contractor may elect to (i) treat this Agreement as terminated and obtain a refund of the Option money, plus accrued interest, or (ii) treat this Agreement as being in full force and effect and Contractor shall have a right to an action for specific performance. Time is of the essence with regard to this Agreement.



## **8. Indemnification.**

(a) Contractor does hereby indemnify, agree to defend and hold Developer harmless from and against any claim, cost, liability or expense, including reasonable attorneys' fees, incurred by Developer arising out of or resulting from any injury or damage to person or property caused by Contractor's performance of any obligation or the failure to perform any obligation of Contractor hereunder, or caused by any negligent, willful or deliberate act or omission of Contractor, its agents, employees or contractors, except to the extent that any such loss or damage was caused by any negligent, willful or deliberate act of Developer, its agents, employees or contractors.

(b) Developer does hereby indemnify, agree to defend and hold Contractor harmless from and against any claim, cost, liability or expense, including reasonable attorneys' fees, incurred by Contractor arising out of or resulting from any injury or damage to person or property caused by Developer's performance of any obligation or the failure to perform any obligation of Developer hereunder, or caused by any negligent, willful or deliberate act or omission of Developer, its agents, employees or contractors, except to the extent that any such loss or damage was caused by any negligent, willful or deliberate act of Contractor, its agents, employees or contractors.

**9. Marketing.** Contractor and Developer agree that Ingram and Associates, Inc. (IA) shall be the exclusive marketing and sales agents for the sale of the houses to third party purchasers. No commission shall be due and payable to IA upon sale of the Finished Lots from Developer to Contractor and Contractor shall pay any commissions due to IA upon sale of the houses to third party purchasers. Contractor reserves the right, at its sole discretion, to replace IA as the exclusive marketing and sales agents of **HOLLAND LAKES**. Contractor and Developer further agree that IA shall be responsible for the marketing of **HOLLAND LAKES** and Developer shall contribute zero dollars (\$0.00) for each Finished Lot sold by Developer as its sole marketing contribution and responsibility. Any marketing contribution set out above is payable at the time of conveyance of each Finished Lot.

## **10. Miscellaneous.**

(a) **TOPSOIL** Developer shall maintain an on-site topsoil stockpile for the Contractor's exclusive use in the construction of houses on the Finished Lots described herein. The topsoil shall be of sufficient quantity to satisfy the landscaping and finish grade needs of all the Finished Lots.



(b) REMOVAL OF WASTE. Contractor shall keep the Property in as neat, clean and safe condition as reasonably possible and, upon completion of construction of each house, shall remove all tools, machinery, equipment, unused materials and supplies and all rubbish or debris relating thereto. During the duration of this Option, Contractor may maintain a spoils area for the dumping of non-hazardous, non-toxic and inorganic waste at an on-site location assigned by the Developer. This area shall be buried and stabilized by Contractor upon Contractor's completion of construction of all houses on Finished Lots covered by this Option. The Contractor shall require an area to dispose of material cut from the Finished Lot due to patio, driveway and /or slab excavations. This material would be suitable for fill and would be hauled to a non-site location assigned by the Developer. Additionally during the duration of this Option (but subject to local ordinances and recorded covenants), Contractor may maintain a burn site for the burning of waste and trash allowed to be burned under a burn permit to be provided by Developer. Furthermore, during the duration of this Option, Contractor may use dumpsters for typical non-burnable construction debris and pay for the removal of such dumpsters from the Property. Such dumpsters, the spoils area and the burn site are to provide for the disposal of all waste relating to the construction of houses on the Finished Lots covered by this Option Agreement.

(c) COVENANTS. Developer has prepared and Contractor does hereby acknowledge existence of certain restrictive covenants relative to **HOLLAND LAKES** Subdivision. These covenants and restrictions are to be recorded in the office of the Judge of Probate of Shelby County, Alabama. Contractor shall review the covenants and restrictions and, if in agreement once prepared, warrants that Contractor will fully and substantially abide by all covenants and restrictions, and rules and regulations of the Architectural Review Committee. In the event Contractor reviews the covenants and restrictions and is not in agreement with all covenants and restrictions, and rules and regulations set out therein, Contractor may elect not to proceed, cancel this agreement and have any Option Money paid to Developer returned in full.

(d) ARCHITECTURAL REVIEW COMMITTEE. Contractor acknowledges that all master house plans and specifications for **HOLLAND LAKES** must first be approved by the Architectural Review Committee prior to application for any building permits. Contractor agrees to submit master plans, specifications and a site plan, typical for the specific plan being represented, for approval prior to construction beginning. Once the master plans, specifications and the typical site plans have been approved, Contractor agrees to submit plans, specifications and a site plan specific for the house being built on a specific lot to Developer on Monday of any week in order to acquire Architectural Review Committee approval no later than Wednesday of the same week submitted.



(e) BINDING EFFECT. This Agreement shall inure to the benefit of and be binding on and enforceable against the parties hereto and the successors and assigns of the parties.

(f) GOVERNING LAW. This Agreement and the rights of the parties hereto shall be governed by, construed and interpreted in accordance with the laws of the State of Alabama.

(g) AMENDMENT. This Agreement may be amended or modified only in writing, duly executed by the parties hereto.

(h) CONSTRUCTION. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

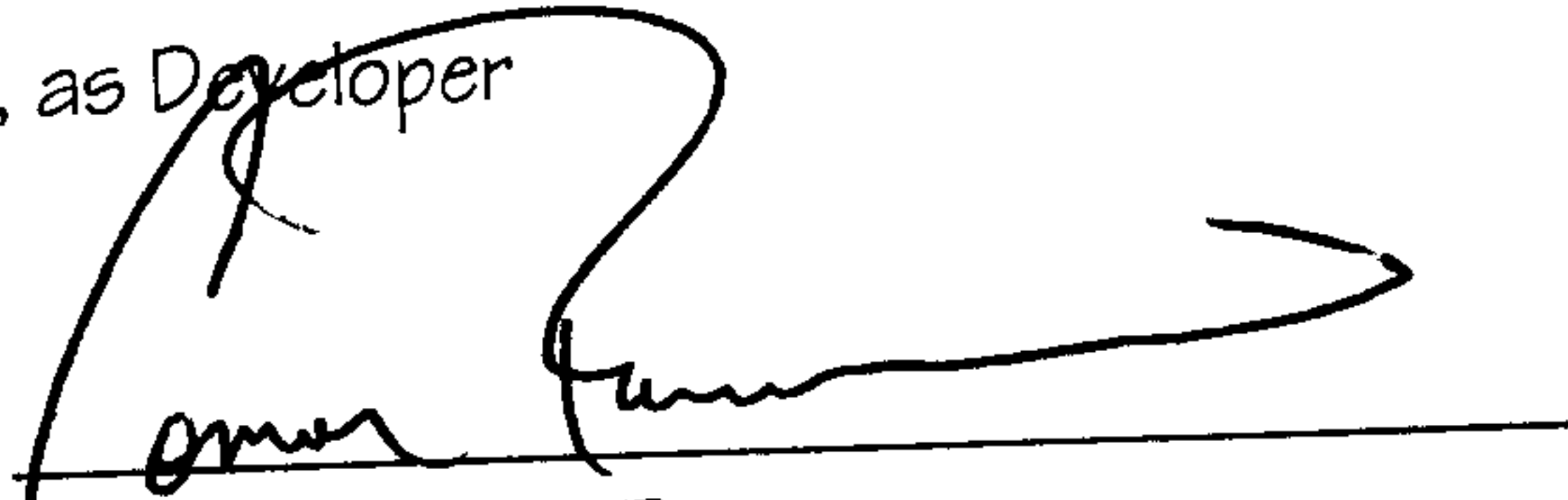
(i) NO PARTNERSHIP. Nothing contained in this Agreement is intended to create any partnership, joint venture or association between the parties and any inferences to the contrary are hereby expressly negated.

(j) ENTIRE AGREEMENT. This Agreement constitutes the entire Agreement between the parties and supersedes in its entirety all prior negotiations, proposals or stipulations, oral or written, between the parties with respect to the subject matter herein.

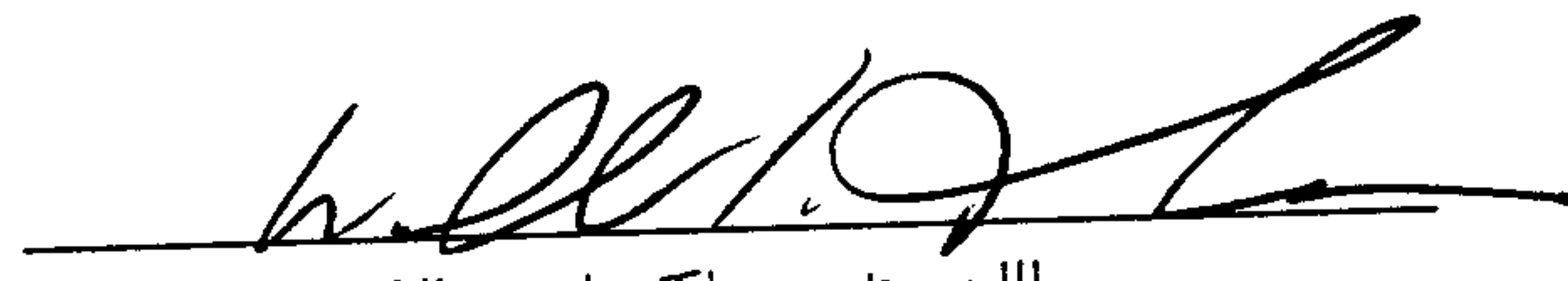


IN WITNESS WHEREOF, the parties have executed and effected this Option Agreement on the date first written above.

FARMER, LLC., as Developer

  
By: Connor Farmer  
Its: Member

THORNTON CONSTRUCTION COMPANY, INC., as Contractor

  
By: William L. Thornton III  
Its: Vice-President

F::/holland lakes/amended farmer option contract



EXHIBIT A  
LEGAL DESCRIPTION OF THE PROPERTY

To Follow by Future Attachment of Final Record Plat



EXHIBIT B  
DEVELOPMENT PLAN

To Follow by Attachment of the Final Development Plan

## EXHIBIT C LOT PRICES

90	45 ' Lots	@ \$ 25,000.00/Lot =	\$ 2,250,000.00
45	65 ' Lots	@ \$ 30,000.00/Lot =	\$ 1,350,000.00
<u>113</u>	65 ' Lots	@ \$ 37,000.00/Lot =	<u>\$ 4,181,000.00</u>
248	Total Lots	Total Lot Proceeds	\$ 7,781,000.00

The anticipated breakdown by lot size of ninety (90) - forty five (45) foot wide lots and one hundred fifty eight (158) foot wide lots may change. If the mix changes, Developer and Contractor shall mutually agree on such changes.

The specific location of the 93 Finished Lots purchased initially as Phase I, the 84 Finished Lots purchased as Phase II and the balance purchase of 71 lots as Phase III shall be as illustrated on the Plan attached as Exhibit C-1 indicating by Phase I, Phase II and Phase III designation a specific lot mix and location. The initial purchase of ninety three (93) Finished Lots in Phase I shall consist of forty eight (48) - forty five (45') foot wide lots and forty five (45) - sixty five (65') foot Finished Lots. The Phase II purchase of eighty two (82) Finished Lots shall consist of forty two (42) - forty two (42') foot wide lots and forty two (42) sixty five (65') foot wide Finished Lots. The Phase III purchase of seventy one (71) Finished Lots shall consist of seventy one (71) sixty five (65') foot wide Finished Lots.



# Holland Lakes Estimated Construction Cost & Pro-Forma

January 16, 2003

	Sector I	Sector II	Sector III
<b>Estimated Cost</b>			
Engineering	65,000.00	45,000.00	30,000.00
Clearing, Road Fill & Grade	74,000.00	48,000.00	54,000.00
Fill Flood Planes	80,000.00	55,000.00	10,000.00
Final Lot Grade	20,000.00	20,000.00	20,000.00
Sanitary Sewer	333,000.00	217,000.00	236,000.00
Domestic Water	130,000.00	120,000.00	120,000.00
Underground Power	50,000.00	45,000.00	36,000.00
Storm Water	44,000.00	37,000.00	38,000.00
Erosion Control	10,000.00	10,000.00	10,000.00
Curb & Inlets	65,000.00	59,000.00	60,000.00
Pavement	117,000.00	101,000.00	110,000.00
Entrance	30,000.00	0.00	0.00
Interest & Closing Costs	70,000.00	60,000.00	40,000.00
Permits	7,000.00	3,000.00	3,000.00
Legal	10,000.00	10,000.00	10,000.00
Blasting	45,000.00	30,000.00	30,000.00
Contingency	<u>50,000.00</u>	<u>40,000.00</u>	<u>40,000.00</u>
<b>Total Estimated Construction Cost</b>	<b>1,200,000.00</b>	<b>900,000.00</b>	<b>847,000.00</b>
<b>Total Land Cost</b>	<u><b>800,000.00</b></u>	<u><b>700,000.00</b></u>	<u><b>653,000.00</b></u>
<b>Total Estimated Cost</b>	<b>2,000,000.00</b>	<b>1,600,000.00</b>	<b>1,500,000.00</b>
<b>Current Lot Breakdown</b>			
45 - 65' Lots @ 30,000		42 - 65' Lots @ 37,000	71 - 65' Lots @ 37,000
48 - 45' Lots @ 25,000		42 - 45' Lots @ 25,000	
<b>Total Lot Sales</b>	<b>2,550,000.00</b>	<b>2,587,000.00</b>	<b>2,627,000.00</b>
<b>Net Profit</b>	<b>550,000.00</b>	<b>987,000.00</b>	<b>1,127,000.00</b>