

## MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT (this "Memorandum of Agreement") is entered into and is effective this the 3<sup>rd</sup> day of November, 2014 by ROCKWELL HOMES, LLC, an Alabama limited liability company, maintaining a principal mailing address at \_\_P. O. Box 660943, Birmingham, AL 35266, and its successors and assignees ("Purchaser"), to and for the benefit of Daniel Senior Living of Inverness II, LLC, maintaining an address at 3660 Grandview Parkway, Suite 100, Birmingham, Alabama 35243 ("Seller"), and its successors and assignees.

A. Purchaser and Seller have heretofore entered into a Danberry Lot Purchase Agreement dated March 18, 2014 (the "Purchase and Sale Agreement") pursuant to which Purchaser has agreed to purchase from Seller and Seller has agreed to sell to Purchaser the following described real property located in Shelby County, Alabama (the "Property"):

Lots 26B, according to the Survey of The Cottages of Danberry, Resurvey No. 3 (the "Subdivision Plat") recorded in Map Book 41, Page 80 in the Office of the Judge of Probate of Shelby County, Alabama (the "Probate Office").

B. Capitalized terms not otherwise defined herein shall have the same meanings given to them in the Purchase and Sale Agreement.

C. Pursuant to the Purchase and Sale Agreement, Purchaser has agreed to construct a specific single family home on the Property (the "Home") in compliance with all of the following criteria (collectively, the "Performance Criteria"):

(a) All plans and specifications for the Home must be approved in the manner set forth in the Declaration and the Inverness Declaration.

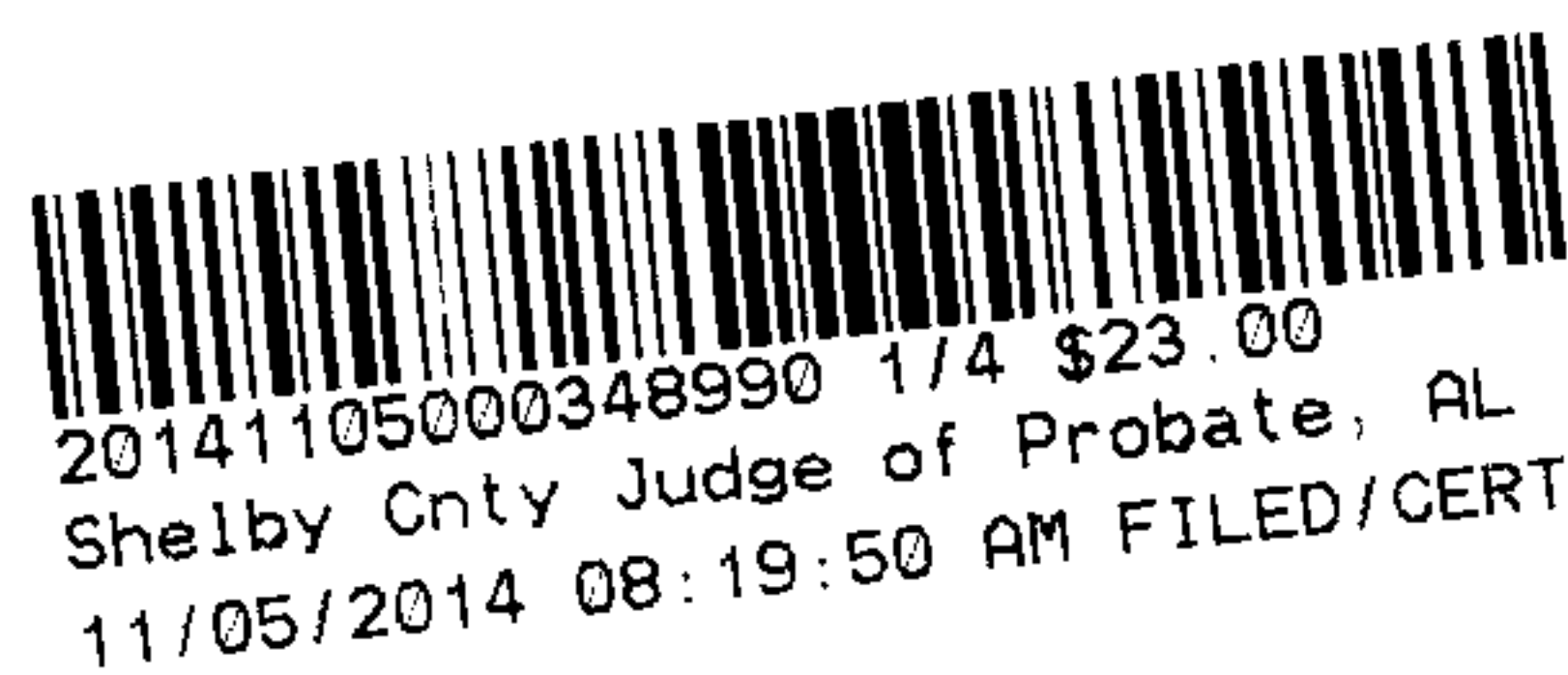
(b) All exterior materials to be used in the construction of the Home must be approved by Seller *prior to the commencement of any construction activities on the Property*. All such materials shall be consistent in quality, grade and style as used on the existing homes within the Development.

(c) The contractor or builder (the "Home Builder") which Purchaser selects to construct the Home on the Property must be approved by Seller, which approval may be granted or withheld by Seller in its sole and absolute discretion. *Such Home Builder must be approved by Seller prior to the commencement of any construction activities on the Property*. In the event Seller does not approve Purchaser's selected Home Builder, Purchaser shall select another builder or contractor for approval by Seller.

(d) Purchaser, and its Home Builder will each execute an agreement with Seller obligating Purchaser and Home Builder to comply with Seller's construction site rules and regulations *prior to the commencement of any construction activities on any portion of the Property*.

(e) Purchaser agreed that Purchaser or its approved Home Builder will obtain from the City a building permit for the Home no later than 30 days from the date of this Memorandum of Agreement.

(f) Purchaser covenants and agrees to cause its approved Home Builder to maintain continuous construction activity on the Property without interruption lasting more than seven (7) consecutive days and will promptly cause the Home to be constructed and completed in accordance with the terms and provisions of Paragraph D below.





(g) As a material inducement to Seller to enter into the Purchase and Sale Agreement and sell the Property to Purchaser, Purchaser shall be obligated to utilize any exclusive broker designated by Seller for the sale of single-family residential homes within the Development. As of the date of this Memorandum of Agreement, the exclusive broker for the Development is Seller's Agent, which is an Affiliate of Seller. Contemporaneously herewith, Purchaser has entered into an exclusive brokerage agreement with Seller's Agent (the "Exclusive Brokerage Agreement") which requires that Purchaser and any subsequent owner of any Property (including any mortgagees or purchasers at foreclosure) be obligated to utilize Seller's Agent as the sole and exclusive real estate broker for the sale of any single-family homes constructed on the Property, which obligation shall constitute a covenant running with the land which shall be binding upon all subsequent owners (including any mortgagee or purchaser at foreclosure) of the Property; provided, however, that at such time as the Property has been developed with a completed Home thereon which is sold to a bona fide third party individual home purchaser in an arms-length transaction, then the Exclusive Brokerage Agreement shall automatically cease, terminate and be deemed null and void.

D. Furthermore, pursuant to the Purchase and Sale Agreement, Purchaser has agreed to the following regarding the construction and completion of a Home on the Property (collectively, the "Construction Obligations"):

(a) Purchaser shall obtain a building permit from the City no later than 30 days from the date of this Memorandum of Agreement and shall commence construction of a Home on the Property no later than thirty (30) days after receipt of such building permit (the "Required Commencement Date"). The construction of a Home on the Property must satisfy all of the terms, covenants, conditions and requirements set forth in the Declaration, the Inverness Declaration and this Memorandum of Agreement. As used in this Memorandum of Agreement, the terms "commence construction", "commencement of construction" or "construction commencement" shall mean the clearing of the building site of the Property and the laying of the foundation for the Home on the Property, whichever first occurs, in accordance with plans and specifications approved in accordance with the terms and provisions of the Declaration and this Memorandum of Agreement; and

(b) Purchaser does hereby represent, warrant, covenant and agree with Seller that Purchaser shall complete construction of a Home on the Property on the earlier of either (1) 180 days from the Required Commencement Date or (2) one (1) year from the date of this Memorandum of Agreement (the "Required Completion Date"). The completion of construction of a Home on the Property must satisfy all of the terms, covenants, conditions and requirements set forth in the Declaration, the Purchase and Sale Agreement and this Memorandum of Agreement. As used herein, the terms "complete construction" or "completion of construction" shall mean the date on which a final certificate of occupancy is issued by the City for the Home to be constructed on the Property and Seller has inspected the Property and the Home and has determined that the Home was completed in accordance with the Declaration, the Purchase and Sale Agreement and this Memorandum of Agreement.

E. Furthermore, the Purchase and Sale Agreement provides that if Purchaser enters into a Third Party Agreement at any time prior to the CO Date, Purchaser shall pay to Seller, in addition to the Purchase Price and the Additional Purchase Price, in lieu of the interest on the Purchase Money Note, on the Maturity Date.

F. Contemporaneously herewith, the Property has been sold, transferred and conveyed by Seller to Purchaser.

G. The parties hereto acknowledge and agree that all of the terms and provisions of this Memorandum of Agreement shall be binding upon Seller and Purchaser and their respective successors and assigns including, without limitation, all mortgagees of Purchaser and all subsequent purchasers of the Property to the extent a Home has not been commenced or completed on the Property within the time parameters set forth in this Memorandum of Agreement.

NOW, THEREFORE, in consideration of the sum of Ten and No/100 U.S. Dollars (\$10.00), the mutual covenants and obligations set forth in the Purchase and Sale Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Purchaser agrees as follows:

1. Recitals. Seller and Purchaser do hereby acknowledge and agree that all of the foregoing Recitals are true and correct and are hereby incorporated by this reference into this Agreement, which Recitals shall



continue to be binding on Seller and Purchaser from and after the date of execution of this Memorandum of Agreement.

2. Incorporation of Purchase and Sale Agreement. All of the terms and provisions of the Purchase and Sale Agreement are incorporated herein by reference and made a part hereof as if fully set forth in this Memorandum of Agreement.

3. Additional Purchase Price. Purchaser covenants and agrees to pay to Seller the Additional Purchase Price if, at any time prior to the CO Date, Purchaser enters into a Third Party Agreement regarding the sale of the Property, which Additional Purchase Price, in lieu of interest on the Purchase Money Note, shall be payable by Purchaser to Seller on the Maturity Date.

4. Enforcement. In the event Purchaser or any of Purchaser's successors and assigns fails to timely and completely satisfy the Performance Criteria or fails to timely perform and complete the Construction Obligations within the time periods set forth above, then Purchaser, or its successors and assigns, as applicable, shall be deemed in default hereunder and under the Purchase and Sale Agreement, in which event Seller shall have the right, at its option, to exercise all rights and remedies available at law or in equity to enforce the terms and provisions of the Purchase and Sale Agreement and this Memorandum of Agreement. In the event of any such default by Purchaser, Purchaser covenants and agrees to pay to Seller any and all costs and expenses paid or incurred by Seller in enforcing the Purchase and Sale Agreement and this Memorandum of Agreement, including, without limitation, reasonable attorneys' fees and expenses, and court costs.

5. Binding Effect; Successors and Assigns. All of the terms and provisions of the Purchase and Sale Agreement and this Memorandum of Agreement, including, specifically, the Repurchase Option set forth in the Purchase and Sale Agreement, shall be binding upon and inure to the benefit of Seller and Purchaser and their respective heirs, executors, successors and assigns.

6. Notices. All notices required or permitted by this Memorandum of Agreement shall be delivered in person or by overnight courier delivery service by a reputable national overnight courier delivery service (delivery charges prepaid for next business day delivery) to Purchaser and Seller at the respective addresses stated at the beginning of this Memorandum of Agreement. Notices given by overnight courier delivery service shall be effective and deemed given on the next business day following deposit of the same with the applicable reputable national overnight courier delivery service if delivery has been properly prepaid and addressed.

7. Assignment of Seller's Rights. Seller may assign any of its rights described herein in whole or in part to one or more persons or entities.

8. Definition of "Purchaser". The term "Purchaser" as used herein shall mean and include the person or entity identified as "Purchaser" at the top of the first page of this Memorandum of Agreement and all heirs, executors, successors and assigns of such Purchaser, including, without limitation, all mortgagees and subsequent purchasers of the Property.

IN WITNESS WHEREOF, Purchaser has caused the foregoing Memorandum of Agreement to be executed effective the date first dated above.

Purchaser:

ROCKWELL HOMES, LLC, an Alabama limited liability company

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

Its: \_\_\_\_\_

  
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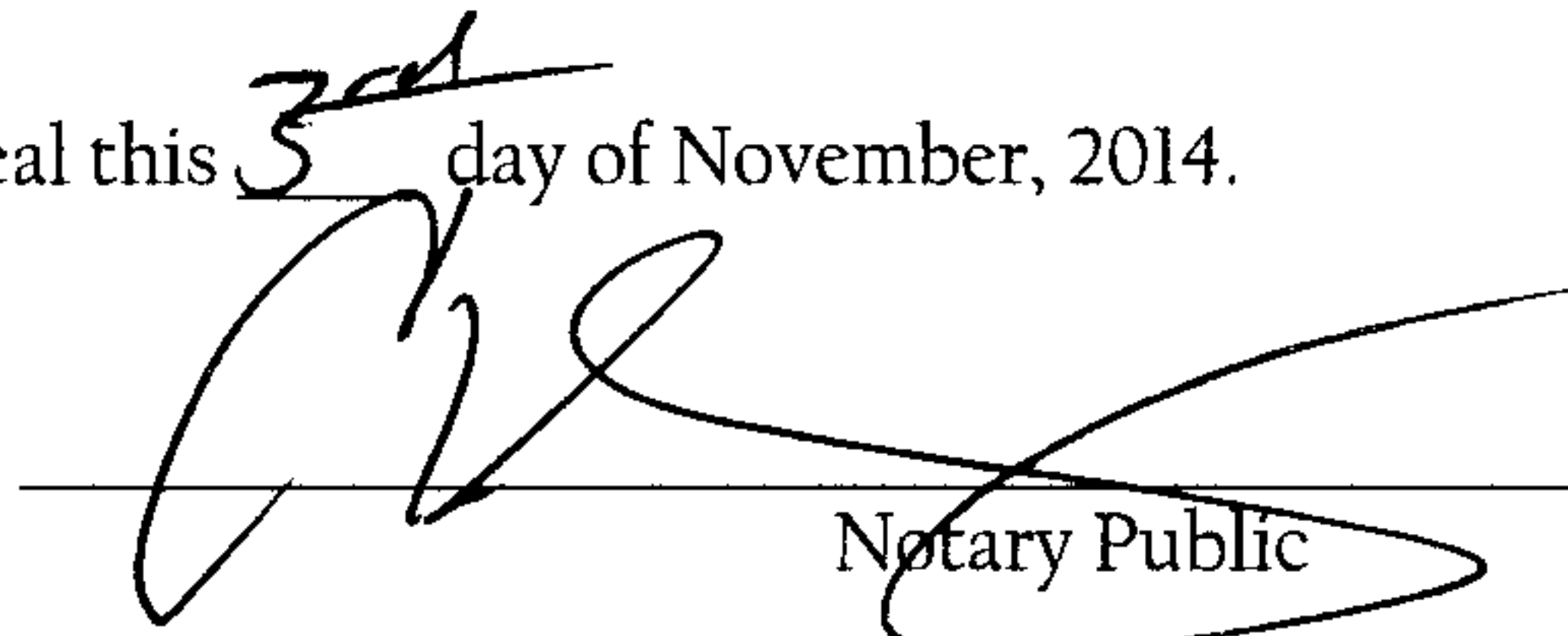
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JEFFERSON COUNTY

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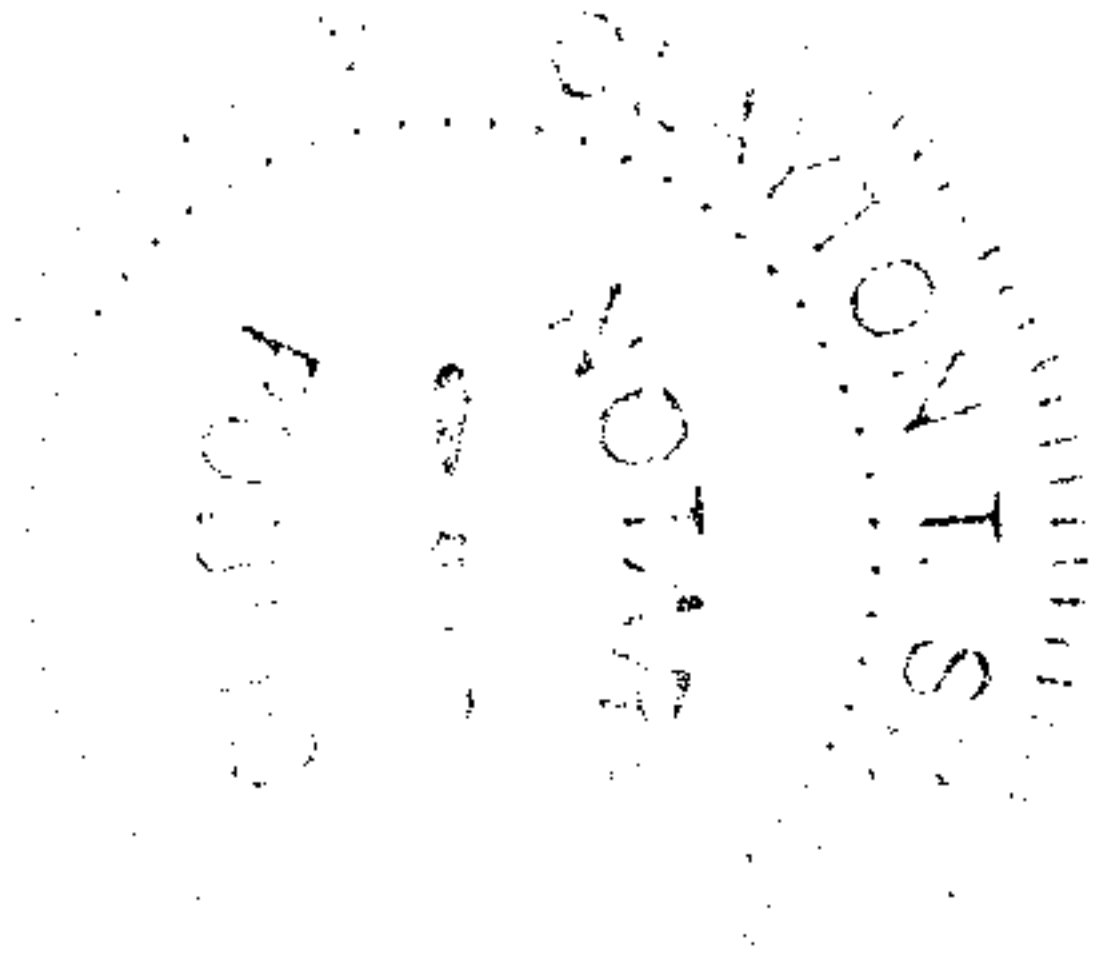
I, the undersigned, a notary public in and for said county in said state, hereby certify that Sam Dariani, whose name as President of ROCKWELL HOMES, LLC, an Alabama limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer, and with full authority executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal this 3rd day of November, 2014.

  
\_\_\_\_\_  
Notary Public

[NOTARIAL SEAL]

My commission expires: 6-5-2015



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