

## Real Estate Contract

(Unimproved Lot Sale-Eagle Pointe)

This Real Estate Contract (this "Contract") is made and entered into effective the date last signed below ("Effective Date") by and between "Seller" and "Buyer" defined below.

1. **Definitions.** For the purposes of this Contract, the following capitalized words and phrases are defined:

**Seller** EP SCV, LLC, a Missouri limited liability company.  
**Seller's Address** 244 W. Mill, Ste. 101, Liberty, MO 64068.  
**Buyer** \_\_\_\_\_  
**Buyer's Address** \_\_\_\_\_  
**Subject Property** All of Lot \_\_, Eagle Pointe \_\_ Plat, a subdivision in Kansas City, Clay County, Missouri, according to the recorded plat thereof.  
**Purchase Price** \$ \_\_\_\_\_ .  
**Earnest Money Deposit** \$1,000.00 \_\_\_\_\_ .  
**Escrowee** Thomson-Affinity Title, LLC.  
**Title Company** Thomson-Affinity Title, LLC.  
**Title Company Address** 1000 Middlebrook, Ste. C, Liberty, MO 64068.  
**Review Period** A period beginning on the Effective Date of this Contract and ending on \_\_\_\_\_, 2020 \_\_\_\_\_.  
**Closing Date** 30 \_\_\_\_ days after expiration of the Review Period, provided however, if the date so computed is a Saturday, Sunday or legal holiday in the State of Missouri, the Closing Date will be the next day thereafter which is not a Saturday, Sunday or legal holiday in the State of Missouri.

2. **Special Notices to Buyer.** All provisions of this Contract are important as they create numerous rights and liabilities for both Seller and Buyer. However, by signing this Contract, Buyer also specifically acknowledges the following special rights and liabilities which Buyer should carefully consider before expiration of the Review Period: a) The Subject Property is subject to:

i) The Community Charter for Shoal Creek Valley (the "Charter") recorded with the Clay County Recorder of Deeds, in Book 3514 at Page 368, as amended and supplemented (including, without limitation, that certain Supplement to Community Charter recorded in Book 8651 at Page 69 which annexed the Eagle Pointe into the Charter); and ii) The "Design Guidelines" being the aggregate of:

- a) Design Guidelines for The Estates at Shoal Creek (promulgated under authority of the Charter), dated November 2011, as amended (the terms of which are incorporated herein, and made a part hereof, by this reference); and  
b) General Supplemental Design Guidelines for Shoal Creek Valley (promulgated under authority of the Charter), dated March 2012, as amended (the terms of which are incorporated herein, and made a part

hereof, by this reference).

- b) The Subject Property is also subject to a certain Declaration of Covenants, Restrictions and Easements for Eagle Pointe (the "Declaration") recorded with the Clay County Recorder of Deeds, in Book 8747 at Page 91, as amended.
  - c) As Buyer (and the Subject Property) shall be subject to the terms and provisions of the Declaration, the Charter and the Design Guidelines, Buyer should confirm, before expiration of the Review Period, that the design of all improvements on the Subject Property conforms to the Declaration and the Charter and the Design Guidelines.
3. **Sale and Purchase.** Seller agrees to sell and Buyer agrees to buy, upon the terms and conditions, and for the consideration set forth below, the Subject Property.
4. **Fixtures and Personal Property.** The aforesaid purchase and sale of the Subject Property shall include all (if any) "fixtures" as defined by the common law of the State of Missouri.
5. **Purchase Price and Payment.** The Purchase Price shall be payable in the following manner:
- a) The Earnest Money Deposit shall be paid by Buyer's personal check (payable jointly to Seller and Title Company), the receipt of which is hereby acknowledged by Seller. Within 3 days after the execution hereof, Seller shall cause such check to be endorsed and deposited with Escrowee which shall thereupon hold, pay and disburse same on the following terms and conditions:
    - i) If closing of this transaction shall fail to occur for reasons which do not arise out of Buyer's breach hereof, then said Earnest Money Deposit shall be forthwith returned to Buyer. ii) If closing of this transaction shall fail to occur for reasons which do arise out of Buyer's breach hereof, Seller and Buyer agree that Escrowee shall disburse the entire Earnest Money Deposit to Seller as **liquidated damages**, inasmuch as actual damages for Buyer's breach in such event are difficult, if not impossible, to ascertain on the date hereof. iii) If closing of this transaction shall fail to occur and if Seller and Buyer shall be unable to agree upon the disposition of the Earnest Money Deposit within 30 days after the Closing Date hereinafter specified, Escrowee may deem such failure to agree as an instruction to it to institute an action in interpleader in the Circuit Court of Clay County, the purpose of which is to seek an adjudication of the relative rights of Seller and Buyer to the Earnest Money Deposit. Escrowee shall be entitled to recover any reasonable costs (including its attorneys fees) incurred in so interpleading the Earnest Money Deposit, provided however, the party (either Seller or Buyer) who or which substantially prevails in the ultimate judgment in such interpleader proceeding shall be entitled to recover, from the other party, the substantially prevailing party's reasonable attorney's fees incurred in such proceedings.
  - b) The balance of the Purchase Price (subject to customary and contractual closing adjustments) shall be paid by Buyer in cash or certified funds at the Closing Date.
  - c) All (if any) interest earned on the Earnest Money Deposit shall be credited to Buyer.
6. **Review Period.**
- a) For the entire Review Period, Buyer may:
    - i) Cause to be made by agents or contractors of Buyer's choosing, any and all physical inspections, reviews of title information and documents, review of surveys and survey information, and review of feasibility and cost of making improvements to the Subject Property based upon requirements of governmental authorities; and

- ii) Attempt to secure all required approval of Buyer's detailed plans and specifications for the single family residence which Buyer intends to construct on the Subject Property; and
    - iii) Conduct such environmental, engineering and soil audits of and with respect to the Subject Property, including, without limitation, standard "Phase I" and "Phase II" environmental inspections, as Buyer deems appropriate.
  - b) Seller agrees that Buyer, Buyer's employees, agents and contractors will have access to the Subject Property at reasonable times for purposes of conducting such physical inspections, and will have the right to conduct such testing, including core drillings and soil sampling, surveying, and flood plan analysis as Buyer's consultants deem necessary for purposes of the such inspections.
  - c) Buyer shall indemnify and save harmless Seller from any claims or demands that may be made by Buyer or any third party against the Seller by virtue of the privilege of access extended to Buyer hereunder (such as, but not limited to, liability or damage to any persons or property suffered as a result of Buyer's said inspections, including, without limitation, attorneys' fees and court costs). Also, if closing shall not occur hereunder for any reason whatsoever, Buyer shall restore the Subject Property to the condition is was prior Buyer's performance of such physical inspections. The obligations set forth in this subparagraph are in addition to payment of liquidated damages as herein provided, in the event Buyer fails to close and consummate the transaction herein contemplated, and such obligations shall specifically survive expiration or termination of this Contract.
  - d) If, based upon inquiries as are hereinabove permitted, or for any other reason whatsoever in Buyer's sole discretion, Buyer determines that the physical condition of the Subject Property is unsatisfactory to Buyer or that the purchase of the Subject Property is not advantageous to Buyer, Buyer may, by written notice given to Seller not later than expiration of the Review Period, terminate this Contract and receive refund of any Earnest Money Deposit theretofore paid to or for the account of Seller. If Buyer does not terminate this Contract as provided herein, this Contract shall remain in full force and effect in accordance with its terms and there shall be no contingencies or conditions to Buyer's obligation to close and consummate except for Seller's performance of its obligations hereunder.
7. **Warranty Deed.** At the Closing Date, Seller shall convey the Subject Property to Buyer, in accordance with this contract, by Special Warranty Deed customary form. The title to be so conveyed shall be marketable in fact, free and clear of all interests, liens and encumbrances except for such interests, liens and encumbrances as are stated herein (including the "Permitted Exceptions" set forth below).
8. **Title Exceptions.** The Subject Property shall be conveyed subject to the following exceptions ("Permitted Exceptions") to good and marketable title:
- a) General state, county and municipal real estate taxes for the fiscal tax year in which closing occurs, and subsequent years ; and
  - b) Installment payments of special assessments becoming due after the Closing Date; and
  - c) Portions (if any) of the Subject Property in roads, roadways, streets and streams; and
  - d) Ordinances in effect on the date of this Contract as well as at the Closing Date; and
  - e) The terms and provisions of the Declaration (defined above); and
  - f) The terms and provisions of the Charter (defined above); and
  - g) The terms and provisions of the Design Guidelines (defined above); and
  - h) Building lines, easements and other matters as shown on the recorded plat for the plat in which the Subject Property is located; and

- i) Easements, reservations and restrictions of record; and
- j) General and special assessments levied and assessed for the year in which closing occurs, and subsequent years, by the Shoal Creek Valley Community Association, Inc.; and
- k) Such other matters as are reflected in the "Title Commitment" defined below.

9. **Title Commitment.**

- a) Seller shall, within 15 days after the Effective Date, deliver to Buyer a preliminary commitment to issue an owner's policy of title insurance ("Title Commitment") in the amount of Purchase Price, naming Buyer as the insured.
- b) Such Title Commitment shall be issued by Title Company.
- c) Delivery of the Title Commitment shall be accompanied by copies of all documents identified in the Title Commitment as Schedule B exceptions (excluding mortgages, deeds of trust and other encumbrances, all of which are to be released and discharged at closing by Seller, at Seller's expense). If the Title Commitment, as issued, embeds Schedule B exceptions therein by the means of so-called "hyperlinks", Seller shall not be required to deliver hard copies of the Schedule B exceptions so hyperlinked.
- d) Seller, at its expense, shall cause the final owner's title policy to have the mechanic's lien exception deleted therefrom.

10. **Survey.** If the boundaries to the Subject Property are not established to Buyer's satisfaction, Buyer may, at Buyer's option, survey same at Buyer's sole cost and expense prior to expiration of the Review Period. If such survey secured by Buyer shall reveal any adverse encroachment, visible/apparent easement not of record, survey defect, overlap, boundary line dispute or other servitude which, in Buyer's sole discretion, would impair or could impair Buyer's present or future use of the Subject Property, Buyer may nullify this contract by written notice given to Seller at any time prior to expiration of the Review Period, but if not so nullified by Buyer (or if Buyer shall elect to not cause such survey to be so made of the Subject Property), Buyer shall be deemed to have waived, as against Seller, any action or right of action which Buyer (or any successor to Buyer) has or may have had against Seller arising out of such material and adverse encroachment, visible/apparent easement not of record, survey defect, overlap, boundary line dispute or other servitude.

11. **Taxes and Assessments.**

- a) General real estate taxes (including state, county and city) with respect to the Subject Property shall be prorated as of the Closing Date (Seller shall also, at the Closing Date, pay all said real estate taxes for all fiscal tax years prior to the fiscal tax year in which the Closing Date occurs). If the actual amount of current general real estate taxes is not known, the amount to be prorated shall be the amount of general real estate taxes for the next preceding fiscal tax year, regardless of the actual amount of said taxes for the year of closing, and such proration at the Closing Date shall be final and conclusive even if the taxes for the fiscal year of closing are either more or less than the taxes for the fiscal year on which the proration is based. If the Subject Property is part of a larger tax or assessment parcel ("Parent Parcel"), Buyer's prorated share of taxes and assessments allocable to the Subject Property, for the fiscal tax year in which the Closing Date occurs, shall be based on the following formula: total taxes/assessments allocable to the Parent Parcel for such fiscal tax year times a fraction, the numerator of which is the square foot area of the Subject Property and the denominator of which is the square foot area of the entire Parent Parcel.
- b) Installment payments of special assessments (if any) which become due and payable with respect to the Subject Property during the fiscal period within which the Closing Date occurs shall be prorated as of the Closing Date.
  - i) Seller shall, at the Closing Date, pay all said installments of special assessments

for all prior fiscal periods which do not encompass the Closing Date.

- ii) Buyer shall pay all said installments of special assessments for all fiscal years from and after the Closing Date.
- c) Any other impositions with respect to the Subject Property (such as but not limited to impositions arising from restrictions, covenants or community contracts applicable to the Subject Property) shall likewise be prorated at the Closing Date.

12. **Warranty Disclaimer.**

- a) Except as otherwise provided herein to the contrary, Buyer agrees that, by closing and consummating hereunder:
  - i) Buyer will be deemed to have carefully inspected and examined the physical condition of the Subject Property, and
  - ii) Buyer will be deemed to agree that neither Seller nor any other person on Seller's behalf has made any representations, agreements or warranties as to the value, condition, quality or suitability of the Subject Property and any improvements therein or thereon
- b) Buyer agrees to accept the physical condition of the Subject Property **“as is”, “where is”, “with all faults”, and without express or implied warranties of any nature whatsoever.** The warranties being **disclaimed** include, without limitation, **implied warranties of merchantability, habitability, tenantability and fitness for a particular purpose.**

13. **Executory Waiver and Release.**

- a) Seller encourages Buyer to thoroughly inspect all physical portions of the Subject Property for the existence of any hidden defects which may exist.
- b) Buyer (for itself and its successors and assigns) hereby waives and releases any and all claims or causes of action which Buyer may have or acquire against Seller from and after the date hereof relative to the physical condition of the Subject Property. Such agreement on the part of Buyer constitutes a material consideration for the transaction herein contemplated and shall survive closing.

14. **Closing, Possession, Breach and Remedies.**

- a) This sale shall be closed at the offices of the Title Company, at the Title Company Address, at 10:00 A.M. on the Closing Date; and
- b) At the Closing Date, all monies and papers shall be delivered, and all other things, called for by this Agreement at the Closing Date, shall be done; and
- c) Seller shall pay for and bear the following costs of closing:
  - i) 100% of the cost of recording Seller's Deed, to the Subject Property, to Buyer; and
  - ii) 100% of Seller's share of prorated items, as hereinabove provided; and
  - iii) 100% of the premium cost for the owner's policy of title insurance to be provided to Buyer by Seller at the Closing Date (standard coverage only, without any special endorsements); and
  - iv) 50% of any escrow charges or fees charged by the Title Company so as to close the transaction herein contemplated (the other 50% of such escrow charges or fees to be paid by Buyer).
  - v) All other reasonable and customary costs and expenses of closing, if any, shall be paid and discharged by Buyer.

- d) Possession of the Subject Property shall be delivered to Buyer immediately after the Closing Date.
- e) In the event Seller has performed Seller's obligations hereunder as of and through the Closing Date but Buyer fails to close and consummate hereunder (unless Buyer's closing and consummation obligations are relieved or suspended under the provisions of this contract), the parties acknowledge that Seller shall suffer damage which is difficult if not impossible to ascertain. Therefore, in the event Seller has performed Seller's obligations hereunder as of and through the Closing Date but Buyer fails to close and consummate hereunder when Buyer is required to do so, this Contract shall be automatically terminated whereupon Buyer agrees that the Earnest Money Deposit shall be paid to Seller as liquidated damages, in lieu of all other damages (except as otherwise provided herein to the contrary) and in lieu of any specific performance remedies which Seller might otherwise have against Buyer.

15. **Closing Escrows for Buyer's Post-Closing Performance.**

- a) Buyer (for itself and its successors and assigns with respect to the Subject Property) acknowledges its obligations, after the Closing Date, to: (y) keep the Subject Property and adjoining areas (including streets) neat and clean (and free from trash and litter) at all times during construction of the residence on the Subject Property and (z) in conjunction with such residential construction, to install landscaping and irrigation in accordance with approved construction plans under the Charter, the Declaration and the Design Guidelines.
- b) Buyer also acknowledges that its failure to timely and fully perform all obligations specified in subparagraph a) immediately above shall adversely affect the appearance of overall Eagle Pointe development and the value of lots and other residences located therein from time to time.
- c) In order to secure Buyer's performance of its obligations specified in subparagraph a) immediately above:
  - i) As a condition to Seller's obligation to close, at closing (and in addition to the balance due on the Purchase Price), Buyer shall remit to Seller the sum of \$2,000.00 (the "Lot Cleaning Deposit"), which Lot Cleaning Deposit shall be applied as follows:
    - a) If Buyer shall fail to keep the Subject Property neat and clean at all times during construction of the residence on the Subject Property or if, during construction of such residence, Buyer shall cause other parts of the Eagle Pointe development to be damaged or subjected to litter or debris (including mud on streets), Seller shall be entitled to use that portion of the Lot Cleaning Deposit for purposes of defraying the cost of performing Buyer's aforesaid obligations. If the Lot Cleaning Deposit shall be insufficient to defray the cost of performing Buyer's aforesaid obligations, Buyer shall promptly remit the deficiency to Seller.
    - b) If Buyer shall keep the Subject Property neat and clean at all times during construction of the residence on the Subject Property and shall not cause other parts of the Eagle Pointe development to be damaged or subjected to litter or debris (including mud on streets), Seller shall refund the remaining balance of the Lot Cleaning Deposit to Buyer as soon as a final and unconditional certificate of occupancy is issued, by the City of Kansas City, Missouri, for the Subject Property and the residence and other improvements constructed thereon.
  - ii) As a condition to Seller's obligation to close, at closing (and in addition to the balance due on the Purchase Price), Buyer shall also remit to Seller the sum of

\$5,000.00 (the "Landscaping Deposit"), which Landscaping Deposit shall be applied as follows:

- a) If Buyer shall fail to install landscaping and irrigation for the Subject Property (in a good and workmanlike manner) in accordance with Buyer's approved plans and in accordance with the Charter, the Declaration and the Design Guidelines, Seller shall be entitled to use that portion of the Landscaping Deposit for purposes of defraying the cost of performing Buyer's aforesaid obligations. If the Landscaping Deposit shall be insufficient to defray the cost of performing Buyer's aforesaid obligations, Buyer shall promptly remit the deficiency to Seller.
- b) If Buyer shall install all landscaping and irrigation for the Subject Property (in a good and workmanlike manner) in accordance with Buyer's approved plans and in accordance with the Charter, the Declaration and the Design Guidelines, Seller shall refund the remaining balance of the Landscaping Deposit to Buyer upon the last to occur of: (y) issuance of a final and unconditional certificate of occupancy, by the City of Kansas City, Missouri, for the Subject Property and the residence and other improvements constructed thereon or (z) actual installation of all landscaping and irrigation in accordance with the Charter, the Declaration and the Design Guidelines.
- iii) Buyer acknowledges and agrees that both the Lot Cleaning Deposit and the Landscaping Deposit shall be held by Seller in a non-interest bearing account, and Seller may co-mingle such Deposits with other funds of Seller.

16. **Real Estate Commissions.** Each party represents and warrants to the other that no realtor or real estate broker has represented them in securing the transaction contemplated by this Contract, unless otherwise noted on the Real Estate Agency Disclosure as attached to this Contract.
17. **Time of Essence.** Seller specifically declares to Buyer that closing and consummation hereunder no later than the Closing Date is of the essence.
18. **Attorney's Fees.** In the event either party shall institute suit against the other due to the performance, non-performance, mis-performance, breach or default under this Contract, then the party who or which substantially prevails in such suit shall be entitled to recover from the other party such substantially prevailing party's reasonable attorney's fees, court costs and investigative expenses.
19. **Notices.** All notices required or permitted to be given pursuant to this instrument, in order to be effective, must be mailed, if to Seller, at Seller's Address, or to such other substitute address as may be hereafter specified to Buyer by notice given pursuant hereto and, if to Buyer, at Buyer's Address, or to such other substitute address as may be hereafter specified to Seller by notice given pursuant hereto. Said notices shall be transmitted by Certified United States mail addressed to the other party's Address specified above. If either party shall so mail any notice to the other party's Address specified above, such notice shall be conclusively deemed given on the second regular postal day next following the date of mailing.
20. **Successors and Assigns.** All covenants, promises, conditions, representations and agreements herein contained shall be binding upon, apply and inure to the parties hereto and their respective heirs, executors, administrators, successors and assigns; it being understood and agreed, however, that Buyer shall have neither the right nor the power to delegate said party's duties or assign said party's rights hereunder without the express written consent of the other party, which consent may be withheld for any or no reason whatsoever.
21. **Stormwater Runoff Control.** Buyer acknowledges that the subdivision in which the Subject Property is located is or may be subject to a Missouri Water Pollution Control General

Permit and Authorization to Discharge Storm Water Run-Off From Construction Activities Under the National Pollutant Discharge Elimination System. Such permit is issued pursuant to Missouri Statutes and the Federal Water Pollution Control Act, and regulations thereunder. Such permit, laws, and regulations, together with laws and ordinances of the city and county in which the Subject Property is located, require that erosion and sediment control measures be implemented in connection with construction activities on the Subject Property, including, but not limited to, site work such as clearing, excavating, and grading the Subject Property, in order to eliminate or

substantially reduce stormwater discharge, the discharge of pollutants and water quality violations. Significant penalties may be imposed in the event activities on the Subject Property are not conducted in full compliance with the aforementioned permit, laws, regulations and ordinances. Buyer agrees to conduct activities on the Subject Property from and after the Closing Date strictly in accordance with the requirements now or hereafter in effect by reason of the aforesaid permit, regulations, rules and ordinances and hereby agrees to indemnify and defend Seller from any consequences of Buyer's, its contractors' or subcontractors' failure to so comply, including but not limited to damages, liabilities, fines, penalties and costs and expenses. Without limiting the generality of the foregoing, Buyer also agrees to maintain good and sufficient silt control devices on the downgradient sides of the Subject Property at all times until the Subject Property is sodded and otherwise fully vegetated.

22. **Captions and Construction.** Captions throughout this instrument are for convenience of reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Contract.

23. **Total Integration.** THE CONTRACT (INCLUDING ANY RIDER, ADDENDUM OR EXHIBIT ATTACHED HERETO) CONSTITUTES THE COMPLETE AGREEMENT BETWEEN SELLER AND BUYER CONCERNING THE RELATIONSHIP OF THE PARTIES. THERE ARE NO ORAL AGREEMENTS, UNDERSTANDINGS, PROMISES OR REPRESENTATIONS BETWEEN SELLER AND BUYER AFFECTING THIS CONTRACT OR THE SUBJECT PROPERTY. ALL PRIOR NEGOTIATIONS AND UNDERSTANDINGS, IF ANY, BETWEEN THE PARTIES HERETO WITH RESPECT TO THE SUBJECT PROPERTY OR THIS CONTRACT SHALL BE OF NO FORCE OR EFFECT AND SHALL NOT BE USED TO INTERPRET THIS INSTRUMENT.

**In Witness Whereof**, the parties have executed this instrument on the dates written immediately below.

**EP SCV LLC.**

("Seller")

\_\_\_\_\_ ("Buyer")

By: \_\_\_\_\_  
Timothy D. Harris, Authorized Date  
Member

\_\_\_\_\_ Date

\_\_\_\_\_  
\_\_\_\_\_ Date