

BUILDER'S AGREEMENT

THIS AGREEMENT is made this ____ day of _____, 2004 by and between **BUTLER FARMS DEVELOPMENT, LLC, an Indiana Limited Liability Company** ("Seller") and _____ ("Builder"), under the following conditions:

BACKGROUND

- A. Seller is the Owner of 108 lots to be developed in Tippecanoe County, Indiana, in Butler Meadows (the "Subdivision"), as shown on Exhibit A.
- B. Seller shall develop the Subdivision in multiple phases. Phase I will consist of 50 lots.
- C. Builder desires to purchase lots in Phase I and Seller is willing to sell such lots, subject to their availability, on the terms and conditions of this Agreement.
- D. It is understood and agreed that there are other building companies purchasing lots in Phase I. Signage requirements/benefits are extensively described in Item 16(B).

It is agreed and understood that this Agreement in its entirety is subject to the availability of unsold lots at the date of notification of intent to purchase, as lots will be offered on a first come, first sold basis.

AGREEMENT

NOW THEREFORE, Seller and Builder agree as follows:

- 1. **Purchase and Sale.** Seller agrees to sell and convey and Builder agrees to purchase and pay for, on the terms and conditions set forth herein.

- A. For a Lot option of \$1,000.00 per lot (first option payment), Builder shall have full and exclusive option to purchase selected lots for a period of two (2) months. This option may be extended for one (1) additional two (2) month period with an additional \$1,000.00 per selected lot (second option payment).

No deposits will be applied to the purchase price of the lots until Seller has accumulated a \$5,000.00 escrow. This escrow will be released when the improvements of the Subdivision are released from bond by the County.

After the \$5,000.00 escrow has been accumulated, the first and second option payments will be applied to the purchase price of each selected lot.

Options may be extended for two (2) additional 2-month periods (i.e., options 3 and 4), however, a maximum of \$2,000.00 shall be applicable toward the purchase of any single lot; any option monies over \$2,000.00 per lot will be to compensate Developer for option.

In the event Builder does not close on the purchase, all option monies will be retained by Seller after the option time has expired and there shall be no further obligation on either Seller or Builder.

Subject to Seller's approval, non-expired options may be transferred to another lot within the Subdivision; however, a transfer shall not extend the option period. Builder agrees to track the dates of options and agrees to keep them current.

Option monies received will be placed as "active" ten (10) days after the initial telephone hold by the Builder.

After plans have been approved by Seller and Builder has closed, construction may commence.

2. **Purchase Price.** The purchase prices shall be as enumerated on Exhibit B, "Tentative Price List." The purchase price may be increased on any lots not optioned without notice.

3. **Models and Spec Homes.** Models and/or spec homes are not required to maintain eligibility for a Builder to construct homes in the Subdivision; however, certain Lot discounts may be available for any Builder who constructs and maintains a model within the Subdivision. Builders of spec homes are not eligible for any discounted Lot prices.

Preferred Builder shall keep one or more model homes open at all times or shall keep one or more spec homes under construction at all times ("model" and "spec" are as defined below):

A. **Model:** A model is defined as a home that is staffed and open to the public for viewing, but not for sale on the "Model Lot" until that time that the lots in all the Phases of the Subdivision are ninety percent (90%) sold.

Model Lots are designated as Lots 22, 23, 24, 25, 26, 27, 28, 29 and 30. A lottery will be held for selection of location of models by the Preferred Builders, at a time and place to be scheduled by the Seller.

Model Lots must be purchased no later than thirty (30) days after notification that building permits are available. The model home constructed on the Model Lot must be completed within one hundred twenty (120) days of closing.

"Preferred Builder" status will be granted to Builders that maintain models under these terms. Preferred Builders shall receive a One Thousand Dollar (\$1,000.00) discount per lot purchased for the term of this Agreement. Preferred Builders shall be allowed to have specific advantages regarding signage (see Item 16(B)).

B. **Spec:** A spec is defined as a home that is NOT located on a "Model Lot" and is available for sale to a homebuyer.

Spec Lots must be purchased no later than thirty (30) days after notification that building permits are available or no later than thirty (30) days after this Agreement is signed.

Construction and maintenance of a spec home DOES NOT qualify Builder for any of the discounts or signage benefits offered to the "Preferred Builders."

Should Builder fail to fulfill the Model requirements above, Seller shall have the option to replace the Builder with another "Preferred Builder" after providing Builder with written notice as required by Item 13.

4. **Developed Lots.** The term “developed lots” means all the real estate described by the lot number on Exhibit A, including pavement, water mains, and sanitary sewer with laterals in the street adjacent to the lot line, storm sewers, underground electric and gas, dedicate rights-of-way for the streets and utilities, all installed in accordance with the subdivision requirements of Tippecanoe County. Seller hereby represents:

- A. That the house site location on each lot is suitable for construction of a single-family residence.
- B. That the storm drainage systems exist in accordance with the requirements of Tippecanoe County, to dispose of surface water in Butler Meadows, for all the lots herein referenced.
- C. That easements conform to those easements set forth on the plat.
- D. That underground wiring is installed to the boundary line of each lot as part of the developed process with no separate cost to Builder. Builder shall be responsible for hook-up to the house constructed on each Lot.
- E. That each Lot is graded in accordance with the grading and utility plan and properly completed with each lot ready for construction thereon by Builder. Builder shall be responsible for any run off or other water damage during construction.
- F. The water service is installed in accordance with and approved by the City of Lafayette, Indiana and other authorities.
- G. That the improvements of the Subdivision are completed in accordance with the requirements of Tippecanoe County.
- H. That the improvements of the Subdivision include paved streets.
- I. That all costs and expenses for labor, material, and other services for development of the Lots have been paid in full, and that all work has been performed in a workman-like manner, and that the Lots being purchased are satisfactory for the construction of single-family residences and dwellings.
- J. Normal tap fees shall be the responsibility of Builder.

Lot prices include ten percent (10%) of the Participation fee for sanitary and water service by the City of Lafayette and will be paid by Seller prior to recording of Final Plat. Balance is to be included in normal tap fees.

- K. Concrete rolled curb and gutter and asphalt pavement as constructed by Seller shall conform with plans and specifications approved by the Tippecanoe County Highway Department and the City of Lafayette. No modification of the curbs is permitted.

5. **Deed.** Seller shall convey to Builder marketable title in fee simple to each Lot by transferable and recordable Company Warranty Deed, free and clear of all liens and encumbrances, except the following “Permitted Encumbrances”:

- A. Restrictive Covenants for Butler Meadows dated _____, 200____ and recorded _____, 200____ in the Office of the Tippecanoe County Recorder as Instrument Number _____.
- B. All easements, conditions, restrictions, reservations and covenants of record that do not prevent the use of the Property for residential purposes;
- C. Zoning and building laws, ordinances, resolutions, and restrictions;
- D. Real estate taxes and assessments becoming due and payable after the closing.

6. **Evidence of Title.** Seller shall furnish and pay for an Owner's Commitment of Title Insurance to each Lot in the full amount of the purchase price, less discounts if applicable. The commitment for such insurance shall be certified to within ten (10) days prior to the date requested by Builder for closing of the applicable lot.

If the commitment shows that title to all or part of any lot is unmarketable, as determined by Indiana law with reference to the Indiana State Bar Association's Standards of Title Examination, or is subject to any lien, encumbrance, easement, condition, restriction, or encroachment that is not a Permitted Encumbrance, Builder shall notify Seller prior to the date of closing and Seller shall remedy or remove any such defect, lien, encumbrance, easement, condition, restriction, or encroachment or obtain title insurance without exception therefore within ten (10) days.

7. **Closing.** Builder shall notify Seller to order Owner's Title Insurance Commitment prior to expiration of the option. Seller shall notify Builder when closing documents are ready for closing. Builder shall, at that time, set the closing date with the Seller; closing shall occur within ten (10) calendar days or Seller's notifying Builder that documents are ready.

The closing shall be held at the offices of Tippecanoe Title Services in Lafayette, Indiana. Seller will provide, at Seller's expense, the following:

- A. Owner's Title Insurance Commitment for a Title Policy to be issued after closing;
- B. Company Warranty Deed;
- C. Certification of Non-Foreign Status;
- D. Vendor's Affidavit in the form customarily used in Tippecanoe County, Indiana; and
- E. Sales Disclosure Form as prescribed by the State of Indiana.

Builder agrees to pay for the recording fees associated with the Deed and Sales Disclosure, and all other fees, including closing fees and any fees associated with or necessitated by Builder's lender.

8. **Taxes, Assessments, and Closing Costs.** Seller agrees to pay all liens, real estate taxes, and assessments due and payable prior to closing. Builder shall be responsible for all taxes due and payable after closing.

9. **Resale of Lots.** Builder may not re-sell Lots unless it has constructed a house on the Lot or has contracted with a home buyer to construct a house on the Lot, or has prior approval from the Seller

of a new builder. Builder, with Seller's prior approval, may trade lots or purchase Lots from other builders who are approved to build in the Subdivision. However, the Builder shall, regardless of the sale or trade of Lots to other Builders, still have the responsibility to satisfy the provision of Item 16 (I) herein. All improvements constructed on the Lots shall be constructed by Builder in full compliance with all applicable laws, ordinances, covenants, and regulations.

If Builder is unable to sell a Lot subject to these requirements, Builder shall provide written notice thereof to Seller. Seller shall have the right (but not the obligation) without prejudice to any other rights which Seller may have in law or in equity, to repurchase the Lot from Builder at the same purchase price paid by the Builder, with all costs to be allocated in the same manner as stated herein, as if Builder was the seller and Seller the buyer. In the event Seller has not closed upon such purchase within thirty (30) days from the date of such written notice, Builder shall have the right to sell any such Lot to another Builder in the business of constructing single-family residences subject to Seller's prior written approval, which approval may be withheld for any reason or for no reason.

10. **Right to Rescind for Sub-Surface Conditions.** If within forty-five (45) days after the date of the closing of the purchase of a Lot, Builder determines that it will be required to incur extraordinary expenses in connection with the construction of footers at standard depth below the proposed finish grade for a home on such lot due to sub-surface conditions, including, but not limited to, the presence of rock, unstable soil, sub-surface water, stump holes, or inadequately compacted fill, Builder shall give Seller written notice thereof within such 45-day period. Seller shall then elect, by delivering written notice to Builder within fourteen (14) business days after receipt of Builder's notice to either:

- A. Re-purchase the lot at the same purchase price paid by Builder, whereupon Builder shall reconvey such lot to Seller, Seller shall refund the purchase price and Builder shall, at its expense, backfill the excavation on such lot (but not replace any trees or stumps removed); or
- B. Pay to Builder the amount of the extraordinary expenses to be incurred by Builder for such footers due to such sub-surface conditions, as determined by an independent engineering consulting firm mutually acceptable to Seller and Builder.

11. **Broker.** Each party represents to the other that there is not a broker or other person entitled to a commission or similar fee in connection with this transaction. Each party covenants and agrees to defend, indemnify, and save harmless the other from and against any claim for any service rendered at its instance in connection with this transaction.

12. **Notices.** Any notice or other communication required or permitted to be given to a party under this Agreement shall be in writing and shall be deemed given when personally delivered to or when deposited in the United States mail, certified, return receipt requested, with proper postage prepaid, to the parties at the following addresses:

IF TO SELLER: BUTLER FARMS DEVELOPMENT, LLC
ATTN: James Cochran

IF TO BUILDER:

ATTN: _____

13. **Binding Effect; Assignment.** This Agreement shall be binding upon and inure to the benefit of Seller and Builder and their respective heirs, personal representatives, successors and assigns. Builder must receive from Seller prior approval of any assignment.

14. **Covenants, Easements, Restrictions and Assessments.** The covenants, easements, restrictions and assessments (collectively, "Covenants") applicable to the Lots in the Subdivision will be delivered to the Builder, and Builder hereby acknowledges that it will read the Covenants. Builder will have the obligation to approve and accept the same by signing a document so stating. This document will state that "Builder hereby represents that it has read the Covenants with respect to the Subdivision, understands such Covenants, and agrees to build in accordance with such Covenants." In the event a provision of the Covenants and this Agreement are not the same, the more restrictive provision of the two shall be followed and govern.

Should the Builder elect not to sign off on the Declaration of Covenants, Conditions, Commitments, Restrictions, Easements and Assessments ("Restrictive Covenants") of Butler Meadows, this Agreement shall be null and void with no further obligation on either party.

A copy of the Covenants will be furnished by Builder to the homebuyer during the selection process.

15. **Building Requirements.** Builder agrees to the following minimum promotional and building activity in the Subdivision, which shall commence after the first closing between Seller and Builder:

A. All house plans shall be submitted to Seller for architectural approval and must be approved by the Architectural Committee before the start of construction.

House plans shall include: front, side and rear elevations, floor plans including square footage, roof color, siding color, and a site plan.

1. All roofs are to be Owens-Corning Weathered Wood or the same color from another supplier upon approval by the Committee; the Seller shall issue a list of Committee-approved colors.

2. Roof pitch shall be a minimum of 6/12 on the main building and a minimum of 8/12 on all front gables and hips.

3. Brick and siding choices shall be limited to earthtones.

4. All foundations shall be either basement, concrete slab, or crawlspace design.

B. All signage, including any sign to advertise the source of mortgages, shall be in good taste and shall be approved by the Seller prior to installation.

All "Preferred Builders" shall submit plans for the proposed Model yard sign to Seller prior to installation for approval. A logo will be designed for Butler Meadows and Builder shall incorporate this logo into its sign.

No signage will be permitted for advertising purposes within the Subdivision other than one 24" x 24" temporary real estate type "For Sale" sign with a telephone number on spec homes. No building or company name is permitted on any signage, unless the company name is that of a "Preferred Builder."

- C. Builder shall install Committee-approved and Post Office-approved curbside rural mailboxes during original construction of the Dwelling Units.
- D. Builder shall finish grade lots to conform to the overall development plan, as approved by the Drainage Board of Tippecanoe County. Of critical importance is the grading of side yard and rear swales. Builder shall have the right to enter upon adjacent undeveloped lots to grade side yard and rear swales to meet approved plan grades. Builder shall maintain all rear swales to the line and grade as shown on the approved plans after acceptance of the Drainage Board of Tippecanoe County.
- E. Each Lot shall receive the following minimum landscaping, which must be approved by the Committee for specs, size, and location. The Builder is to install the required planting material as part of the initial construction of the Dwelling Unit on each Lot.
 - 1. At least two (2) deciduous shade (over-story) trees (one in the front yard and one in the back yard) and one (1) deciduous ornamental tree (under-story, in the front yard) shall be planted. Deciduous shade trees must be 2 ½ inch caliper.
 - 2. At least six (6) shrubs shall be installed as foundation plantings. Each shrub is to have an 18 to 24 inch spread and be 30 to 36 inches in height.
 - 3. All front yards shall be sodded; side yards of corner lots shall also be sodded to the back property line of the lot. The remainder of the yard shall be seeded and covered with straw, or seeded by an equivalent or better treatment.
 - 4. Tippecanoe County regulations prevent trees from being planted in the right-of-way of any of the streets in the Subdivision.

All landscaping shall be completed within six (6) months from the start of construction, weather permitting. In any case, landscaping delayed by winter weather shall be completed by May 1.

- E. The front elevation of all homes shall be fifty percent (50%) masonry of the first floor exterior wall area, exclusive of doors, windows, gables, and garage doors.

Side elevations of all homes on corner lots shall have a minimum masonry requirement on the side facing the street of three feet (3') side masonry.

- F. Minimum Areas: The following restrictions shall apply: The minimum square footage of finished living space of each dwelling unit constructed, exclusive of garage, carports, open porches, or basements below ground level (a) shall be 1,500 square feet of main

floor area for a one-story dwelling unit, or (b) shall be 900 square feet of main floor area if higher than one story, with any dwelling unit higher than one story having a minimum of 1,800 square feet of finished living space.

- G. Builder shall construct a concrete or gravel driveway with #2 stone prior to house construction. All construction traffic shall use the driveway for egress.

The Tippecanoe County Soil and Water Conservation District is now providing, free of charge, signs that warn individuals driving construction vehicles not to park or drive on any entrances that do not have a stone pad. The purpose of gravel construction entrance/exit pad is to do two things:

1. Provide a stable entrance/exit condition from the construction site; and
2. To keep mud and sediment off public roads.

The Tippecanoe County Soil and Water Conservation District is also willing to install this sign on your site as long as you maintain it. If you call (765) 448-1810 and let SCS know that you are interested, they will install the black and yellow sign as soon as possible.

Any mud or dirt on the streets caused by Builder and/or any subcontractors thereof is the responsibility of the Builder.

DEVELOPER SHALL CHARGE AGAINST ANY REMAINING LOT ESCROWS A \$300.00 FINE FOR EACH OCCURRENCE IF TRASH OR SEDIMENT LEAVES THE INDIVIDUAL BUILDING SITE.

- H. All driveways shall be of concrete and shall accommodate two (2) parking spaces.

A driveway shall not exceed in width the side boundaries of the garage it serves.

A driveway must be a minimum width of no less than the interior width of the garage door or doors it serves.

Side entry garages are permitted, provided that the entry side of the garage meets the width requirements immediately preceding.

Any other driveway design requires the approval of both Committee and Governmental Authorities and must be submitted with site plan.

Builders shall install driveways during the original construction of the Dwelling Units; no modification of curbs is permitted.

- I. Storm water run-off and sediment control associated with the construction of houses on lots in the Subdivision shall conform in all respects to Rule 5, Section 1, 327 IAC 15. The purpose of Rule 5 is to minimize the problem of sedimentation. Builder is responsible for the clean-up of any sediment leaving its lot, including the removal of the same from street gutters and storm structures.

Compliance with Soil Erosion Control Plan:

1. The Developer has established and implemented an erosion control plan pursuant to the requirements and conditions of Rule 5 of 327 IAC 15 relating to Storm Water Run-Off associated with construction activity. Builder acknowledges that Builder has received a copy of the plan and agrees to take all erosion control measures contained therein as the plan applies to “land disturbing activity” undertaken by Builder or Builder’s subcontractors and to comply with the Developer’s general permit under Rule 5, as well as all other applicable State, County, or local erosion control authorities. All erosion control measures shall be performed by personnel trained in erosion control practices and shall meet the design criteria, standards, and specifications for erosion control measures established by Indiana Department of Environmental Management in guidance documents similar to, or as effective as, those outlined in the Indiana Handbook for Erosion Control in Developing Areas from the Division of Soil Conservation, Indiana Department of Natural Resources.
2. The Builder shall indemnify and hold Developer harmless from and against all liability, damage, loss, claims, demands and actions of any nature whatsoever which may arise out of or are connected with, or are claimed to arise out of or connected with, any work done by Builder, Builder’s employees, agents, or subcontractors which is not in compliance with the erosion control plan implemented by the Developer.

Builder will run all sump pump drains underground to the rear swales or storm drains. In no event will any downspout, sump pump, or other storm water facility be connected to any sanitary sewer facility.

- J. All trash control and removal will be the responsibility of the Builder. Each Builder is responsible for trash control of its subcontractors. Two alternative methods of trash control are acceptable:
1. Builder agrees to install a fifteen (15) to twenty (20) foot diameter circular trash enclosure in the yard of each home under construction; OR
 2. Builder agrees to install a trash retaining fence on the front property line of each home under construction.

Dumpsters may be used during construction; however, no dumpster may be located on the street(s).

Any vacant lots accumulating trash: Each Builder is responsible for maintaining vacant lots on either side of the lot under construction. If trash, excess dirt, stone, etc. is found on said vacant lot, the Builder will be notified in writing to remove the debris. If the debris is not cleared seven (7) days after written warning, Seller will remove the debris at Builder’s expense.

DEVELOPER SHALL CHARGE AGAINST ANY REMAINING LOT ESCROWS A \$300.00 FINE FOR EACH OCCURRENCE IF TRASH OR SEDIMENT LEAVES THE INDIVIDUAL BUILDING SITE.

- K. Builder shall finish grade lots to conform with the grading plan approved by Tippecanoe County. Of critical importance is the grading of side yard and rear swales. Builder shall have the right to enter upon adjacent undeveloped lots to grade side yard and rear swales to meet approved plan grades. Builder shall maintain all rear swales to the line and grade as shown on the approved plans after acceptance of the Drainage System by Tippecanoe County.
- L. Homes, including landscaping, shall be completed within six (6) months of commencement of construction by Builder.

IF BUILDER FAILS TO DILIGENTLY PURSUE CONSTRUCTION AND HAVE THE HOME COMPLETED WITHIN SIX (6) MONTHS OF COMMENCEMENT, BUILDER SHALL PAY SELLER \$100.00 PER DAY FOR EACH DAY BEYOND THE 6-MONTH PERIOD THAT THE HOME IS NOT COMPLETED.

- M. Within twelve (12) months after transfer of title to Builder or completion of construction of the home, whichever is sooner, Builder agrees to install public concrete sidewalks and street approaches to Tippecanoe County standards to conform to the overall development plan and to meet all governmental agency requirements for acceptance for maintenance. Tippecanoe County standards will require handicap access for sidewalks from public walk to curb on all corner lots.

16. **Early Termination.** This Agreement may be terminated as follows:

- A. **By Mutual Agreement:** This Agreement may be terminated at any time by the mutual agreement of Seller and Builder, in writing, whereupon neither party shall have any further liability hereunder and this Agreement shall thereafter be of no further force or effect.

- B. **By Reason of Default:**

- 1. In the event Seller fails to deliver “Developed Lots” in Section One of the Subdivision within the times specified therein, Builder shall be entitled to terminate this Agreement and receive a refund of the initial deposit. In the event Seller fails to satisfy any of its obligations with respect to a Lot, Builder shall be entitled to terminate this Agreement with respect to that Lot and receive the prompt return of the initial deposit attributable to said Lot. Except as may be otherwise provided herein for the return of allocable portions of the initial deposit, after Seller shall have delivered the notice specified herein that the “Developed Lots” are available, Builder shall have the right of specific performance to require the conveyance of Reserved Lots. If Seller fails to transfer said Reserved Lots, Builder shall give Seller written notice and fifteen (15) days to cure any default other than the failure to convey Lots, which notice and cure period shall be thirty (30) days. Seller shall, upon ten (10) days notice from Builder, return to Builder that portion of the option deposit/escrow paid to Seller in excess of escrow and not previously returned to Purchaser or applied to the purchase price of the Lots.
- 2. In the event of a default by Builder in its obligation to maintain model/spec as described in Item 3 (A) and (B), or violate the Covenants or this Agreement in

another manner, or to purchase Lots, Seller's sole remedy shall be to terminate this Agreement and retain the entire option/escrow deposit or so much thereof as remains outstanding as liquidated damages, and Seller shall have no further rights or remedies either at law or in equity against Builder. Seller shall give Builder written notice and thirty (30) days to cure any default, including the purchase of Lots. Said default shall be deemed cured when Builder has closed on the purchase of the requisite number of Lots pursuant to the takedown schedule, started construction of the model or spec, or corrected the violation of the Covenants or this Agreement.

3. In the event of a foreclosure of any superior mortgage on the Subdivision resulting in the extinguishment of Builder's rights under this Agreement, Seller shall, upon ten (10) days notice from Builder, return to Builder that portion of the option deposit/escrow paid to Seller in excess of escrow and not previously returned to Purchaser or applied to the purchase price of the Lots.

17. **Entire Agreement.** This Agreement constitutes the entire agreement between Seller and Builder and no amendment or modification of this Agreement may be made except by instrument in writing signed by both parties.

18. **Time of Essence.** The parties agree that time is of the essence in the performance of all agreements and obligations hereunder for which specific time periods are approved.

19. **Survival.** All of the covenants and agreements of Builder contained in this Agreement and the representations and agreements of Seller set forth in the Agreement shall survive each closing and delivery of Seller's deed with respect to any lot.

IN WITNESS WHEREOF, Builder has executed this Agreement as of the ____ day of _____, 200____, and Seller has executed this Agreement as of the day and year first above written.

SELLER:

**BUTLER FARMS DEVELOPMENT, LLC,
an Indiana Limited Liability Company**

By: _____
Printed: _____
Title: _____

BUILDER:

By: _____
Printed: _____
Title: _____