

**PURCHASE AGREEMENT**

THIS DOCUMENT IS SUBJECT TO ARBITRATION AS PROVIDED IN SECTION 11 OF THIS AGREEMENT. THE PROVISIONS OF THIS DOCUMENT HAVE IMPORTANT LEGAL CONSEQUENCES AND SHOULD BE READ THOROUGHLY AND UNDERSTOOD PRIOR TO SIGNING. PLEASE CONSULT AN ATTORNEY REGARDING YOUR RIGHTS AND RESPONSIBILITIES UNDER THIS DOCUMENT.

**TRANSACTION SUMMARY**

**PURCHASER:**

\_\_\_\_\_  
Name Name

\_\_\_\_\_ Check here if there are two or more co-purchasers. See *Exhibit "A"* attached.

**PROPERTY:**

Lot \_\_\_\_\_, Block \_\_\_\_\_ plat of \_\_\_\_\_, according to the map or plat thereof, recorded in Document Number \_\_\_\_\_ of the Official Public Records of Real Property of Calhoun County, Texas.

Street Address: \_\_\_\_\_

**PURCHASE PRICE:**

Purchase Price Amount: \$\_\_\_\_\_

**DEPOSIT:**

Deposit (due upon your execution of the Agreement) Amount: \$\_\_\_\_\_

**MAKE DEPOSIT CHECK PAYABLE TO: BLACKBERRY ISLAND, LP**

Balance of Purchase Price due at Closing Amount: \$\_\_\_\_\_

**\*Note: If the check for the Deposit is written on the account of an individual or entity other than the named "Purchaser", documentation authorizing the use of such check for Purchaser's account must be delivered to the Seller within 3 days of the Deposit. All amounts are subject to collection.**

**SELLER (also referred to as "we" or "us" or derivatives of those words):**

**BLACKBERRY ISLAND, LP**

Street/Mailing Address: Three Riverway, Suite 120, Houston, Texas 77056-1909  
Telephone: (713) 871-9200  
Facsimile: (713) 960-8128

**Your Contact Information: [Complete this section if the Purchaser is a Person or Persons]**

\_\_\_\_\_  
 Last First Middle Initial  
 \_\_\_\_\_  
 Street Address City State Zip Code  
 Home Telephone: \_\_\_\_\_ Business Telephone: \_\_\_\_\_  
 Facsimile: \_\_\_\_\_ E-mail Address: \_\_\_\_\_

**Co-Purchaser Contact Information:**

\_\_\_\_\_  
 Last First Middle Initial  
 \_\_\_\_\_  
 Street Address City State Zip Code  
 Home Telephone: \_\_\_\_\_ Business Telephone: \_\_\_\_\_  
 Facsimile: \_\_\_\_\_ E-mail Address: \_\_\_\_\_

**Purchaser:** [Complete this section only if the Purchaser, or Co-Purchaser, is a Corporation, LLC, Trust or Other Entity]:

\_\_\_\_\_  
 Name  
 Type of Entity: \_\_\_\_\_ State of Organization: \_\_\_\_\_  
 \_\_\_\_\_  
 Street Address City State Zip Code  
 Contact Name: \_\_\_\_\_ Telephone: \_\_\_\_\_  
 Facsimile \_\_\_\_\_ E-mail Address: \_\_\_\_\_

\_\_\_\_\_ Check here if there are two or more co-purchasers. Any additional Co-Purchasers are listed on attached *Exhibit "A"*. The Purchaser and all Co-Purchaser(s) are collectively referred to as "**Purchaser**" or as "**You**" or derivatives of "**You**".

**Name(s) of Purchaser to Appear on Title:** \_\_\_\_\_

**SETTLEMENT AGENT.** We have selected Texas Title to act as the Settlement Agent for the purposes of this Agreement.

Company Name:	Texas Title
Contact Name:	Ceanne Hons
Address:	131 N. Virginia Street, Port Lavaca, Texas 77979
Telephone:	(361) 552-9251
Facsimile:	(361) 552-3965
Email:	ceanne@texastitleco.com

**COOPERATING BROKER. [You are to initial the applicable provision]**

<b>INITIALS</b>	<b>SELECT APPROPRIATE STATEMENT</b>
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	You hereby represent that the following brokerage company was involved in procuring this agreement: (name of “ <b>Broker</b> ”), represented by (name of Agent).
	You hereby represent that no broker was involved in procuring this Agreement.
Name of Seller’s Sales Executive: _____	

**NO INVESTMENT OR OTHER REPRESENTATIONS.** By initialing the space provided below, you expressly acknowledge that:

1. Neither Blackberry Island, LP nor any of our employees or agents have represented or offered the Lot as an investment opportunity for appreciation of value or as a means of obtaining income from the rental thereof; and
2. Neither Blackberry Island, LP nor any of our employees or agents have made any statements or representations as to rental or other income that may be derived from the Lot or as to any other economic benefit, including possible advantages under federal or state tax laws, to be derived from the purchase and/or ownership of the Lot.

Your Initials \_\_\_\_\_

**SIGNIFICANT DATES.**

Submission Date: See Purchaser’s Signature Page (the date Purchaser submits the offer to purchase to Seller)

Effective Date: See Seller’s Signature Page (the date Seller accepts Purchaser’s offer to purchase)

Closing Date: See Section 6

**ACKNOWLEDGMENT OF CONTRACT DOCUMENTS.** We have delivered to you a copy of each of the following documents listed below, each of which is attached hereto and incorporated herein by this reference:

Information about Brokerage Services

Estimated Taxes, Assessments and Closing Costs Disclosure

**DELIVERY OF GOVERNING DOCUMENTS.** As owner of the Lot, you will be a member of the Caracol Community Association, Inc. (the “*Association*”), and membership in the Association is mandatory for all owners. Seller shall deliver to Purchaser prior to closing copies (i) Declaration of Covenants, Conditions, and Restrictions for Caracol, together with all amendments and supplements thereto (the “*Declaration*”), and (ii) Design Guidelines (the “*Guidelines*”) created by the Association or the Design Review Committee for Caracol (the “*DRC*”) (hereinafter referred to as the “*Governing Documents*”).

**RECREATIONAL AMENITIES.** We may develop recreational facilities within Caracol, although we are under no obligation to do so, including but not limited to some or all of the following: tennis courts and pool(s). All or some of the amenities, if constructed, may be for private and/or exclusive use by less than all owners within Caracol. Your agreement to purchase the Lot is not contingent upon the construction or subsequent use of any of the recreational facilities within Caracol. If constructed, these recreational facilities may be owned and/or maintained

by the Association as common areas for use by members of Caracol Yacht Club, owners and their guests, subject to the fees, rules and regulations adopted by the Association.

**MARINA FACILITIES/YACHT CLUB.** We may construct, and thereafter enlarge or reconfigure, yacht club facilities in Caracol, although we are under no obligation to do so, or we may construct additional marina space, boat docks or boat storage facilities elsewhere in Caracol. Ownership of property in Caracol does not guarantee the right to use of, or ownership of, a boat slip, boat dock, boat storage facility or any part of any yacht club facilities. The purchase of the Lot does not convey any vested right, license or easement, prescriptive or otherwise, to use any yacht club facilities or any future yacht club expansion, boat docks or boat storage facilities, or any ownership or other interest in any boat slip, boat dock or boat storage facilities, if constructed. Your agreement to purchase the Lot is not contingent upon ownership or use of a boat slip in any proposed yacht club facilities, marina, boat dock or boat storage facilities.

We may choose to own and operate any yacht club as a private facility, or we may transfer the yacht club to another third party to operate as a club facility or private facility, or we may transfer the yacht club to the Association as common area for use by members of the Association. Yacht club members and their guests who do not own property within Caracol will have access rights to use the yacht club facilities and the yacht club parking lot. Use of any yacht club facilities will be subject to the rules and regulations set forth in the separate written boat slip agreement that must be entered into with the Caracol Yacht Club, L.L.C., separate and independent from this Agreement in order to lease a boat slip. Any proposed yacht club facilities and/or any expansion or reconfiguration thereof will generate traffic, noise, light and odors from boating activities, all of which may be detectable from the Lot, and neither we, nor the Association, nor the Caracol Yacht Club, L.L.C. shall be liable to you on account of any such conditions, or the actions of boat operators or others using the marina.

The seller/developer owns property adjacent to a portion of the platted sections of the Caracol subdivision, which is currently planned for establishment of the Caracol Yacht Club. Memberships to the Caracol Yacht Club will be open to the general public to qualified applicants. Memberships to the Caracol Yacht Club will also be open to qualified owners of property within Caracol at a discounted rate. Members of the Caracol Yacht Club will be entitled to use the recreational facilities located within Caracol.

### **ORAL STATEMENTS OR REPRESENTATIONS**

**IMPORTANT: YOU MUST COMPLETE THE SPACE BELOW IN YOUR OWN HANDWRITING.** In the space provided below and, if necessary, on attached sheets, you must write all oral representations, opinions or promises made by any person that are not included in writing elsewhere in this Agreement and which are important to you. This includes statements made by any broker or any other person purporting to represent us. If you are entering into this Agreement in reliance on any oral representation or promise about (a) the Lot, (b) the investment, appreciation or rental potential of ownership of the Lot, (c) Caracol, (d) adjacent land, (e) trees or views, (f) future development, (g) price increases or decreases, (h) recreational amenities, or (i) any other statement, representation or promise that is not part of the written body of this Agreement, you must write such statements in the space provided below. If you identify oral statements, representations or promises upon which you are relying in the space below, we will either reject this Agreement, or consider acceptance of this Agreement as amended to reflect an agreement based on full consideration by both you and us of the purported oral statements or promises. In the second case, we will draft a written amendment to this Agreement, which, if acceptable to and signed by you, will be incorporated into this Agreement. Whether we do so is a decision solely for us to make, and you acknowledge that we are under no obligation to accept or ratify any oral statement or promise made by any person, and we have the right to reject this Agreement or any amendment based on your reliance on oral statements. If we reject this Agreement because of your reliance on oral statements, you shall have the right (for 3 business days after our rejection of this Agreement) to elect in writing to waive reliance on oral statements and proceed with this Agreement.

**PURCHASER PLEASE NOTE:** For any oral statements written below, you should identify the person or persons making such statements and the approximate dates on which such statements were made. If, and only if, you are satisfied that all the statements, representations and promises you are relying on are adequately and clearly set forth in writing elsewhere in this Agreement, you (including all of your Co-Purchasers) shall initial the following sentence to confirm your unqualified affirmation that you are not relying on any statements of fact, promises or opinions that are not embodied in the written text of this Agreement and our Addenda.

Your initials (including all Co-Purchasers' initials):

\_\_\_\_\_

You (including all Co-Purchasers) have initialed this sentence to confirm that you are not relying on any statement of fact or opinion that is not contained in the written text of this Agreement and our Addenda.

**Oral statement(s), opinion(s) or promise(s) on which you are relying that are not clearly and completely described elsewhere in this Agreement are to be written in the following box (and on attached sheets, if any) in your own hand. If nothing is written in the box, you are acknowledging that you are not relying on any oral statements, opinions, representations or promises that is not otherwise contained in this Agreement. You may attach additional sheets if necessary.**

## GENERAL PROVISIONS

THIS AGREEMENT HAS IMPORTANT LEGAL CONSEQUENCES AND SHOULD BE READ AND UNDERSTOOD BEFORE SIGNING. IF YOU HAVE QUESTIONS OR ARE UNSURE OF ANY PROVISION, YOU SHOULD NOT SIGN THIS DOCUMENT AND SHOULD CONSULT YOUR TAX OR LEGAL ADVISOR.

THIS LOT PURCHASE AGREEMENT (this "*Agreement*"), is between **BLACKBERRY ISLAND, LP** ("*Seller*") also referred to as "we", "our", "ours" or "us", and the Person(s) or Entity identified as the Purchaser in the Transaction Summary ("*Purchaser*") also referred to as "you", "your" or "yours", for the purchase of the Lot more particularly described in the Transaction Summary which is incorporated herein (the "*Transaction Summary*"). Seller and Purchaser are sometimes referred to herein individually as a "*Party*" and collectively as the "*Parties*." The Parties agree as follows:

PURCHASER ACKNOWLEDGES THAT THE LOT IS SUBJECT TO AND GOVERNED BY THE GOVERNING DOCUMENTS. UPON CLOSING, PURCHASER WILL BECOME A MEMBER OF THE CARACOL COMMUNITY ASSOCIATION, INC. AND WILL BE OBLIGATED TO COMPLY WITH THE GOVERNING DOCUMENTS, INCLUDING PAYMENT OF THE ANNUAL AND SPECIAL ASSESSMENTS AND OTHER FEES CHARGED BY THE ASSOCIATION.

1. **TRANSACTION SUMMARY.** All capitalized terms in this Agreement shall have the same meaning as set forth in the Transaction Summary, unless the context otherwise dictates.
2. **PROPERTY.** The real property covered by this Agreement is the Lot described in the Lot section of the Transaction Summary.
3. **PURCHASE AND SALE.** In consideration of the mutual covenants and mutual benefits herein expressed and payment of the Purchase Price, we agree to sell, and you agree to buy, the Lot.
4. **YOUR LOT.**
  - 4.1. **Lot Prices.** We establish Lot prices based upon our determination of the overall value and desirability of the Lot including, without limitation, such factors as location, orientation, and uniqueness. Arriving at a price for a Lot is a subjective decision, and we do not represent that any specific feature or characteristic of the Lot is the basis for the Lot price. We reserve the right to set Lot prices at differing amounts for other Lots. By acceptance of this Agreement, you have acknowledged that the Purchase Price shown on the Transaction Summary for the Lot is fair and reasonable, and is acceptable to you.
  - 4.2. **Closing will be Unconditional.** When you complete the Closing, you will confirm that the Lot is acceptable to you unconditionally. The responsibility to maintain the Lot shall be as provided in the Declaration.
  - 4.3. **Bulkhead and Mooring Easements.** You acknowledge that the bulkhead located between the Lot and the canal, as well as the canal itself, are owned by the Association and are not part of the Lot to be purchased by you. You will have an easement to use the bulkhead and the canal pursuant to the Governing Documents.
  - 4.4. **Utility Services and Connections.** It is your obligation to arrange for all utility service to the Lot after the Closing. We have provided the contact information for each utility provider. Typical residential service easements have been created to provide routes for underground utility services, including domestic water, irrigation water, wastewater, electricity, telephone and cable telecommunications. In most cases, these utilities are located along the front of the homesite with service lines connected to the Lot laid underground. In some cases, utilities may be installed along side or rear property lines to distribute services to other locations. The easements created for these utilities are either depicted on the recorded plat or created by separate recorded instrument.

Typically, these easements prevent installation of permanent improvements, such as decks and patios which would interfere with the underground lines. Most utilities require above-ground accessories or meters to provide service to your Lot. The above-ground accessories are usually metal boxes or meters of various sizes and colors that contain connectors, transformers or other apparatus. The locations of these accessories are chosen or prescribed by the utility companies. Utility boxes that are not attached to the Lot may provide utilities to your Lot and others nearby, so some Lots will have one or more of such boxes and others may have none. In some cases, these boxes are located at the rear of the property, and in others, they are located on the sides or in the front. Many of these boxes will not be installed until adjacent Lots are occupied. Therefore, it is possible that one or more of these boxes will be installed on or near your homesite after the Closing. The utility companies have the right to do this because of the easements. The presence of such easements, utility boxes and meters is a normal condition of residential subdivisions, and is not considered an unreasonable restriction on the use of the Lot or to have a negative impact on its value. The Governing Documents may allow us to impose additional utility easements on your homesite after the Closing which you will be obligated to grant. It would be highly unusual for us to ask you for an additional easement, but we have the right if it is deemed necessary. Any such new or additional easement would not interfere with the building envelope we have established on your Lot or homesite.

**4.5. Improvements. This is not an agreement to build a home or to construct any improvements on the Lot.** The Governing Documents provide for the establishment of the DRC. The DRC, the Association, or the Declarant (as defined in the Declaration) may create or modify the Guidelines. The DRC is vested with the right to review plans for construction and/or improvements for compliance with the Governing Documents. **Before the construction of any improvements on your Lot, you will be required to submit a plan in writing to the DRC for its prior written approval before you undertake the work.** When considering proposed plans, the DRC will be looking first for compliance with the Guidelines relating to design and materials; second for site conditions such as setback lines, drainage and grading; third for the effect or impact of the proposed improvement or change on nearby Lots; and fourth at the aesthetics of the proposed improvement. The DRC has the authority to reject an application, or to require modifications to a plan before granting approval. **The DRC has no authority over your choices for interior decorating or furnishing except that window coverings may be regulated if visible from the exterior. If you want to use unusual window coverings, it is advisable to submit a request to the DRC before installation. Typical window coverings such as neutral color draperies, Venetian blinds, vertical blinds or plantation shutters are encouraged and will need no DRC review. Bright or reflective surfaces should be submitted for DRC review along with samples. No aluminum foil, bed sheets, newspaper or other makeshift or temporary window coverings are allowed. The DRC has the authority to require removal of outdoor furnishings that are unsightly or not well-maintained (for example worn or damaged patio furniture or folding chairs that constitute an eyesore for neighbors).**

**4.6. Pre-Closing Loss.** If the Lot is materially damaged or destroyed by fire, hurricane, tornado, windstorm or other casualty before the Closing, this Agreement may be terminated by either party within 10 days from the date of the loss. If terminated, you shall receive a full refund of the Deposit. In the event you and we jointly agree to restore the Lot, then all deadlines in this Agreement will be extended by mutual agreement.

## **5. PURCHASE PRICE AND DEPOSIT.**

**5.1. Payment at Closing.** The Purchase Price to be paid at the Closing (with credit for the Deposit), will be paid in full in immediately available funds by electronic funds transfer, cashier's check or bank teller's check ("**Good Funds**").

**5.2. Deposit.** We will not sign this Agreement until you have delivered the Deposit set forth in the Transaction Summary. We will hold the Deposit as security for your performance of this Agreement until the Closing, at which time you will receive credit for the amount of the Deposit against the Purchase Price or other amounts due at Closing. **The Deposit will not accrue**

**interest, and you will not receive credit for interest, earned or imputed, to the Deposit.** If, for any reason other than receipt of the Deposit, we should choose not to execute this Agreement, you will be promptly notified that we have rejected your offer to purchase the Lot, and your Deposit will be immediately refunded in full. If you are unwilling or unable to complete the Closing on schedule, you will be in default under Section 11 of this Agreement, and we will have the right to terminate this Agreement and retain the Deposit as our liquidated damages.

- 5.3. Payment of Purchase Price.** Subject to the conditions herein set forth, you will have the right to elect either to secure a mortgage to finance the payment of the Purchase Price, or not to secure a mortgage, but rather to pay the entire amount of the Purchase Price from your cash assets at Closing. NOTWITHSTANDING YOUR ELECTION TO SECURE A MORTGAGE OR PAY CASH, THIS AGREEMENT IS NOT CONTINGENT ON YOUR FINANCING. YOUR OBLIGATION TO PAY THE PURCHASE PRICE AT CLOSING IS NOT CONTINGENT ON YOUR ABILITY TO LIQUIDATE OTHER ASSETS, SELL OTHER PROPERTY, OR SECURE ACCEPTABLE MORTGAGE FINANCING, AND IF YOU ARE UNABLE TO COMPLETE THE CLOSING ON SCHEDULE BECAUSE OF FINANCIAL PROBLEMS, WE WILL HAVE THE RIGHT TO DECLARE YOU IN DEFAULT IN WHICH CASE WE WILL BE ENTITLED TO EXERCISE THE REMEDIES SET FORTH IN SECTION 11 OF THIS AGREEMENT.

If you elect to obtain a mortgage loan to purchase the Lot, then, at least twenty (20) days before the expected Closing Date you will provide us with complete information on your chosen lender, including contact information, and you will authorize your lender to discuss your loan status with us. You acknowledge that if your lender fails to approve your loan, or fails to deliver all necessary loan documents in time for the scheduled Closing for any reason whatsoever, we will have the right to declare you in default. Therefore, it is imperative that your lender work closely with us as the Closing Date nears to assure that there are no delays. If we are contacted by a bona fide mortgage lender claiming to be working on your loan, we will cooperate with the lender unless you inform us otherwise.

If you intend to obtain a mortgage loan, we encourage you not to enter into a “lock agreement” with the lender that has an expiration date near the date of the expected Closing. If a “lock agreement” expires before we have completed the Closing, we will have no responsibility to you or to your lender.

In order to satisfy the conditions of this Agreement, the lender from which you obtain the mortgage loan must be a bona fide financial institution offering banking and/or mortgage banking services to the public. A mortgage loan from an individual, trust, foundation or other private entity that is not a bona fide financial institution will not be deemed a mortgage loan for the purpose of this Agreement.

If you elect not to obtain a mortgage loan, then within 3 business days following our request, you agree to provide financial information reasonably satisfactory to us, which will confirm your ability to purchase the Lot for the Purchase Price without a mortgage or other loan. By execution of this Agreement, you represent that you are able to make, when due, all of the payments required, including the Deposit and payment of the Purchase Price. You also represent that the personal financial information, which you give to us or any mortgage lender, will be true and accurate. You agree that we are, or any mortgage lender is, authorized to check your credit background and financial condition. You agree to confirm this authority promptly in writing upon our request.

## **6. CLOSING.**

- 6.1. Closing Date.** The Closing shall occur on the date that is thirty (30) days after the date of execution of this Agreement. The Closing may occur prior to the completion of development in Caracol and prior to the completion of utilities and landscaping in Caracol. The Closing will be conducted either in person at a traditional closing meeting held at the office of Texas Title, or at

another mutually agreeable location, or if permitted by applicable law, by mail if attendance at an in-person closing on the scheduled Closing Date is inconvenient for you.

- 6.2. Inability to Close on Time.** You are obligated under this Agreement to complete the Closing on the Closing Date. If you are unable to complete the Closing on the Closing Date due to circumstances beyond your reasonable control, and if you want to avoid being in default of this Agreement, and want to keep this Agreement in effect despite your failure to complete the Closing in a timely manner, you may request an extension of the Closing Date by delivering a written request to us before the scheduled Closing Date. We are under no obligation to grant an extension of the Closing in response to your request, and, at our sole and absolute discretion, we may either (i) grant a one-month extension of the Closing; or (ii) deny the requested extension, and, if you fail to complete the Closing in a timely manner, declare you in default, and proceed according to Section 11; or (iii) with your agreement, enter into a new Agreement for the sale and purchase of the Lot (thereby terminating this Agreement) which new Agreement may be at a different price, and contain different conditions than this Agreement. If in response to your request, we grant a one-month extension of the Closing Date, then on or before the originally scheduled Closing Date you agree to pay us a fee equal to one percent (1%) of the Purchase Price (“**Agreement Extension Fee**”) and to reimburse us for any expenses reasonably expected to be incurred by us as a result of the extension (“**Extension Costs**”). The Agreement Extension Fee and Extension Costs are paid directly to us and are non-refundable and will not be applied to any other amounts due from you, including the Purchase Price; provided, however, that the Agreement Extension Fee will be earned by us on a per diem basis and any unearned portion of the Agreement Extension Fee will be returned to you at the rescheduled Closing. If you fail to pay the Agreement Extension Fee and/or Extension Costs on time, you will be in default of this Agreement.
- 6.3. Title Matters.** The Lot will be conveyed subject to all of the covenants and provisions set forth in the form of Deed, including, but not limited to, the following: (i) the matters described in **Schedule B** of your owner policy of title insurance; (ii) all of the terms, provisions, conditions, rights, privileges, obligations, easements and liens set forth and contained in the Governing Documents; (iii) applicable zoning regulations and ordinances; (iv) real estate taxes for the year of Closing and subsequent years; (v) such facts as an accurate survey would show; (vi) all covenants, conditions, restrictions, agreements and easements of record; (vii) perpetual easement for encroachments of common area improvements, if any; (viii) rights of the United States Government and/or the State of Texas arising under the United States Government’s and State of Texas’ control over navigable waters; and (ix) any rights of adjoining riparian owners and the public (collectively, the “**Permitted Title Exceptions**”). You specifically acknowledge and accept the items identified and described as Permitted Title Exceptions, inclusive, and agree that (a) none of the Permitted Title Exceptions render title to the Lot unmarketable, and (b) the acceptance of the Deed by you will be deemed to be acceptance of full performance and discharge of every one of our agreements and obligations to be performed pursuant to the provisions of this Agreement.
- 6.4. Names on the Deed.** You acknowledge that the manner of vesting of title can have significant legal and tax consequences, and that we have made no representations or warranties with respect to such consequences. If you do not intend to hold title in the name(s) shown as Purchasers on the Transaction Summary, then at least fifteen (15) calendar days before the Closing Date you will notify us of the exact name and spelling for the vesting of title to the Lot, provided that such designation does not constitute assignment of this Agreement. If your designation of the grantee is deemed by us to be an assignment, we agree to cooperate with such assignment provided that you own or control a majority of the economic interest of the assignee, and provided further, that the assignee enters into a written assignment agreement in the form required by us.
- 6.5. Closing Procedures.** At Closing, you will deposit with the Settlement Agent the balance of the Purchase Price, all Closing costs and fees to be paid by you and all documents necessary for Closing, and we will deliver all funds and documents necessary from us for Closing, including a duly executed special warranty deed for the conveyance of fee simple indefeasible title to the Lot to you (the “**Deed**”). At Closing, the following will occur, each being a precedent to the others and all considered as occurring simultaneously:

- (i) You will deliver to Texas Title all amounts due from you in Good Funds.
- (ii) We will deliver the Deed to the Settlement Agent subject only to the Permitted Title Exceptions. The Settlement Agent will record the Deed in the public records at your expense.
- (iii) The Parties will sign other documents and will take other action if necessary to carry out their obligations under this Agreement.
- (iv) You will pay the following closing costs and expenses at Closing:
  - (a) Recording the Deed and any instruments required to secure the balance of the Purchase Price.
  - (b) Real property taxes based on the most current assessment and millage rate prorated for the year of Closing as of 12:01 a.m. on the Closing Date. If real property taxes have not been specifically assessed to the Lot as of the Closing Date, we may reasonably estimate the amount of such taxes attributable to the Lot, which estimate will be apportioned to the Closing Date with a credit to us for the period of time from the Closing Date to the end of the Closing year. Upon receipt of the actual tax bill that includes the Lot, a re-proration and adjustment will be made at the request of either Party upon presentation of actual tax bills and any payment required as a result of the re-proration shall be made within thirty (30) calendar days following demand therefor.
  - (c) The assessments and other charges levied by the Association pursuant to the Governing Documents prorated for the year of Closing as of 12:01 a.m. on the Closing Date.
  - (d) Any costs or fees required or charged by a lending institution providing mortgage financing to you.
  - (e) Cost of a mortgagee's policy of title insurance, if any, and any endorsements thereto.
  - (f) If it is necessary to deliver any Closing documents to you outside of Calhoun County, Texas, all costs incurred by us or Texas Title in delivering the items, including, without limitation, the costs of any courier service or postage.
  - (g) Any charges by a closing agent and any other charges customarily paid by purchasers in real estate transactions in Texas.
- (v) As required by the Real Estate Settlement Procedures Act of 1974, you acknowledge that we have not directly or indirectly required you, as a condition of sale, to purchase either an owner's or mortgagee's title insurance policy from any particular title company. You may elect to obtain such insurance from a company of your choice and you shall pay, at Closing, the title insurance premium for such policy.
- (vi) We will pay the cost of the Owner's title insurance policy in the amount of the purchase price of the Lot.
- (vii) Each Party shall be responsible for their own legal fees.
- (viii) You may choose, at your expense, to obtain from a professional land surveyor a survey of the Lot showing the location of the lot lines, corners, and any improvements. We hereby agree to allow your chosen surveyor access to the Lot in order to complete such survey at

any time before the Closing. We do not require a survey; therefore, the performance of a survey will not be allowed to delay any of the time periods in this Agreement, including, but not limited to, the Closing Date.

**7. WARRANTIES/MATERIALS.**

**7.1. DISCLAIMER OF OTHER WARRANTIES. AS A MATERIAL PART OF THE CONSIDERATION FOR THIS CONVEYANCE, YOU ACKNOWLEDGE AND AGREE THAT: (I) YOU HAVE CONDUCTED YOUR OWN INDEPENDENT INVESTIGATION AND INSPECTION OF ALL ASPECTS OF THE LOT, (II) YOU ARE RELYING ON YOUR OWN INDEPENDENT INVESTIGATION AND INSPECTION AND ARE NOT RELYING ON ANY REPRESENTATIONS OR STATEMENTS OF OR ANY INFORMATION PROVIDED BY US OR OUR AGENTS IN DETERMINING WHETHER TO PURCHASE THE LOT, (III) ANY INFORMATION PROVIDED BY US TO YOU WITH RESPECT TO THE LOT HAS BEEN OBTAINED FROM A VARIETY OF SOURCES AND WE HAVE NOT MADE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION, AND (IV) YOU ARE FULLY AND COMPLETELY SATISFIED THAT THE LOT IS SATISFACTORY IN ALL RESPECTS FOR ITS INTENDED USE.**

**YOU ACKNOWLEDGE AND AGREE THAT WE HAVE NOT MADE, DO NOT MAKE, AND SPECIFICALLY DISCLAIM ANY AND ALL REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, CONTRACTS, OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT, OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO THE LOT, INCLUDING, BUT NOT LIMITED TO: (A) THE NATURE, QUALITY, OR CONDITION OF THE LOT; (B) THE SUITABILITY OF THE LOT FOR ANY AND ALL ACTIVITIES AND USES WHICH YOU MAY CONDUCT THEREON; (C) THE COMPLIANCE OF OR BY THE LOT OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY, INCLUDING, BUT NOT LIMITED TO, ANY STATE OR FEDERAL ENVIRONMENTAL LAW, RULE OR REGULATION; (D) TITLE; (E) THE HABITABILITY, MERCHANTABILITY, OR FITNESS OF THE LOT FOR A PARTICULAR PURPOSE; OR (F) ANY OTHER MATTER WITH RESPECT TO THE LOT (COLLECTIVELY THE "DISCLAIMED MATTERS"). EXCEPT FOR THE WARRANTY OF TITLE CONTAINED IN THE DEED, WE ARE CONVEYING THE LOT TO YOU "AS IS" "WHERE IS," AND WITH ALL FAULTS AND SPECIFICALLY AND EXPRESSLY WITHOUT ANY WARRANTIES, REPRESENTATIONS, OR GUARANTEES, EITHER EXPRESS OR IMPLIED, OF ANY KIND, NATURE, OR TYPE WHATSOEVER FROM US OR ON OUR BEHALF.**

**8. SURROUNDING DEVELOPMENT AND CONDITIONS.**

**8.1. Ongoing Construction and Development Activities. The Lot is part of the larger Caracol development, and other areas of Caracol or other adjacent properties may be or will be developed which may cause noise, dust, mud, vibration and other temporary nuisances and inconveniencies in the area of the Lot. You agree that you will not hold us or our contractors, the Association, or any other party, responsible for noise, dust, vibration, nuisances or inconvenience resulting from development or construction of the Lot, Caracol or any other property. In addition, you agree that you will not interfere with our development, construction, sales, or marketing within Caracol either before or after Closing. For your safety, you agree that during construction of any improvements within Caracol, neither you nor your representative will enter any construction site(s) in Caracol. You agree that if you, your family, guests, employees, agents, or invitees enter into areas of Caracol during development or construction activities you do so at your own risk, and that neither we, nor our contractors, agents or employees, will be liable for any damage, loss or**

injury to such persons. Further requirements and limitations on access to Caracol during construction may be imposed by us at any time without prior notice to you.

- 8.2. Views Are Not Guaranteed.** The views of Matagorda Bay, Barroom Bay, the intracoastal waterway, trees, and other natural conditions within sight of the Lot are subject to change. We will not be liable for, and you will have no right to terminate this Agreement due to, the degradation or destruction of any view from the Lot or any loss of privacy arising from development of adjacent land or homes, other improvements and/or nearby land or from the removal of trees or shrubs. We will not be liable for any use or condition of nearby land for any purpose. Our representatives are not authorized to make oral representations or promises about any uses or non-uses of property adjacent to the Lot or Caracol, or concerning views, and you confirm that you are not relying on any such representations or promises. You acknowledge the responsibility to contact the appropriate governmental authority having jurisdiction over land use if you have questions or concerns about adjacent property.

## **9. THE ASSOCIATION/ CARACOL.**

- 9.1. Governing Documents.** The Lot is subject to and governed by the Governing Documents listed in the Transaction Summary. The Governing Documents establish, or will establish, the Caracol Community Association, Inc. (the "*Association*"); the Caracol Community Foundation, Inc. (the "*Foundation*"); and the Design Review Committee for Caracol (the "*DRC*"). As owner of the Lot, you will be required to comply with the conditions of the Governing Documents, including payment of assessments to the Association and the Foundation Fee.
- 9.2. Mandatory Memberships.** As owner of the Lot, you will automatically become a mandatory member of the Association. Owners cannot resign from membership in the Association for as long as they own property in Caracol. The Association, among other things, has the right to impose annual and special assessments and other fees, assessments and charges applicable to the Lot that you will be required to pay. The Association will enforce payment of these assessments, fees and charges by means of a lien recorded against the Lot. The Association may own and operate the recreational amenities and may charge annual membership dues.
- 9.3. The Foundation.** As owner of the Lot, you will automatically be subject to the levy of a fee by the Foundation upon any transfer of the Lot to a third party. The conveyance of the Lot from us to you is exempt from such fee.
- 9.4. Intellectual Property.** The name "Caracol", and all similar or derivative names, along with all slogans and logos associated therewith, and all names of facilities, amenities and locations within Caracol are proprietary trade names and service names of Blackberry Island, LP and our affiliates. You are not allowed to use such trade names and service marks for advertising or any other purpose in any promotional material, whether printed, audio, video, or otherwise, in any signage, or in any logo or depiction or in any other fashion or manner without our prior written consent. In addition, all sales and marketing materials provided to you in connection with the sale of the Lot are our property and may not be used by you or your agent to promote the resale of the Lot or in any other fashion or manner. Any use of such trade names, service marks and marketing and sales materials by you shall entitle us to enjoin such use and to pursue other remedies at law or in equity against you, in addition to the remedies set forth in this Agreement. Violators will also be held responsible for all costs we incur in enforcing our rights, including, but not limited to, attorneys' fees.

## **10. MISCELLANEOUS.**

- 10.1. General Disclaimer and Waiver of Liability.** You waive all claims against us for damages to property, personal injury or death arising after the date of this Agreement and relating to (a) environmental or ecological conditions or events such as weather conditions, atmospheric conditions, terrestrial conditions, acts of God, or other natural or man-made conditions or occurrences beyond our reasonable control; or (b) the presence or existence of cancer-causing or

radioactive substances, or materials suspected of causing illness unless (i) we have actual knowledge of the presence of such substance and its illness-causing potential, and (ii) we fail to advise you of the presence of the substance prior to Closing. This waiver shall be binding upon you and your heirs, successors, assigns, guests and invitees. You acknowledge that we shall be entitled to rely upon this waiver as a complete bar and defense against any claim asserted by you or anyone claiming through you. The Deed conveying the Lot to you may contain a reference to this waiver, however, failure to recite this waiver in the Deed shall not affect our right to rely on such waiver after the Closing. The provisions of this Section 10.1 shall survive the closing of the transaction contemplated by this Agreement.

- 10.2. Recording is Prohibited; Ownership Rights Limited.** Neither this Agreement nor any memorandum thereof shall be recorded in the public records. If you record this Agreement, or a memorandum or notice, such recording will be void and such act by you will, at our election, be deemed a default under this Agreement and we will have the right to the remedies set forth herein, including without limitation, the right to terminate this Agreement and retain the Deposit as liquidated damages. Our acceptance of the Deposit does not create any equitable rights in you to ownership of the Lot. Equitable title shall remain vested in us until Closing when both record title and equitable title will pass to you. Acceptance of the Deposit by us does not create a binding obligation on us until this Agreement is executed by you and final acceptance by us.
- 10.3. Entire Agreement.** This Agreement, and all exhibits and addenda attached hereto constitute the entire and exclusive agreement regarding the purchase and sale of the Lot and the warranties related to the Lot. Any prior or contemporaneous oral or written agreements or understandings are superseded by this Agreement. No amendment or modification of this Agreement will be valid unless contained in a written document executed by you and us. Our waiver of any provision or breach of this Agreement is effective only if it is in writing. Our waiver of a breach or of any provision of this Agreement will not be deemed a continuing waiver or a waiver of any other or subsequent breach. Headings in this Agreement are included for reference purposes only and will not affect the meaning of any provisions of this Agreement. Section 1455 of the Internal Revenue Code provides that a transferee of a United States real property interest must withhold tax if the transferor (i.e., the seller) is a foreign person. To inform you that withholding of tax is not required in connection with this transaction, we certify that we are not a foreign corporation, foreign partnership, foreign trust or foreign estate, and certify that our last known street address within the State of Texas is that designated above. Caracol has not been approved by VA, FHA, FNMA or any other similar entities, and we have not made and will not make any representations that we will seek such approval(s) for Caracol. Whenever the context requires, the singular will include the plural, the masculine gender will include the feminine and neuter, and vice versa. All references to times of day in this Agreement shall mean the time in Texas.
- 10.4. Agreement is not Assignable.** Any attempted assignment or transfer by you, including, without limitation, offering the Lot for sale prior to the Closing Date (with such offering including, without limitation, listing the Lot with a real estate agent or advertising that the Lot is for sale), without our prior written consent (which may be withheld at our sole discretion) shall be null and void and shall be deemed an event of default by you subject to the provisions of Section 11 of this Agreement. We will not unreasonably withhold our consent to requests by you to assign this Agreement to spouses or to tax planning entities (such as trusts), but will hold you fully responsible for that person's or entity's performance under this Agreement. Should we consent to your offering of the Lot for sale prior to the Closing Date, then as a condition precedent to our consent, we may require that you enter into an exclusive listing agreement in form and content acceptable to us or our agent that designates us as your exclusive listing agent. You hereby represent and warrant that you are not acting as an agent for any undisclosed party. Subject to the foregoing, this Agreement shall inure to the benefit of and shall be binding upon the Parties hereto and their respective heirs, legal representatives, successors and/or permitted assigns. If you are comprised of more than one person or entity, the party comprising you will be jointly and severally responsible for the performance of your obligations under this Agreement.

- 10.5. Notices.** All notices and other communications to either Party required or permitted under this Agreement shall be in writing and will be transmitted by email, facsimile, hand-delivered (including by messenger or overnight delivery service, provided that the overnight courier service includes electronic tracking of delivery), or sent by certified mail, postage prepaid, return receipt requested, to the address of the Party set forth above. All notices given will be considered effective upon receipt of the email or fax transmission confirmation by the sending Party, within 3 calendar days from deposit with the U.S. Postal Service when mailed, or on the date delivered when hand-delivered or tendered, if refused by the recipient. Either Party, by written notice so given, may change the address to which future notices will be given. This Agreement and any Exhibits, Addenda or amendments may be transmitted by facsimile transmission. The Parties agree that their signatures on the transmitted documents will be binding as if they were original signatures. This Agreement may be executed in separate counterparts. It shall be fully executed when each Party whose signature is required has signed at least one counterpart even though no one counterpart contains the signatures of all the Parties.
- 10.6. Force Majeure.** We will be excused for the period of delay in the performance of any obligations hereunder when such delay is occasioned by a cause or by causes beyond our reasonable control and the time for performance will be automatically extended for a like period. Such causes will include, without limitation, (collectively "*Force Majeure*") all labor disputes; civil commotion; acts of terrorism; war; war-like operations; sabotage; governmental or judicial regulation; legislation or controls; inability to obtain any necessary materials or services; acts of God; weather; or other conditions beyond our reasonable control. You acknowledge that time is of the essence in the performance of your obligations under this Agreement, and that any delay in your performance under this Agreement will prejudice us.
- 10.7. Cooperating Broker.** You represent and warrant to us that, except for the Broker identified in the Transaction Summary, if any, you have not used or engaged any real estate broker or finder in connection with this transaction. You will indemnify, defend, and hold us harmless against any loss, liability, damage, cost, claim or expense (including reasonable attorneys' fees and costs) incurred by reason of any brokerage fee, commission or finder's fee which is payable or alleged to be payable by us to any broker or finder, including the Broker, unless the Broker has registered with us, with respect to this sale to you, by or on the basis of any alleged acts by you. This Agreement does not create a fiduciary relationship between us or our sales representative(s) on the one hand and you on the other hand. The representations, warranties, indemnities and agreements contained in this Section will survive Closing or earlier termination of this Agreement.
- 10.8. Surviving Provisions.** The representations, warranties, covenants, agreements, waivers and indemnities specifically identified in this Agreement as surviving Closing, and those requiring performance; and/or imposing obligations that extend after Closing or the termination of this Agreement, will survive Closing.
- 10.9. Applicable Laws.** The laws of the State of Texas shall apply to this Agreement and venue shall lie in Harris County, Texas.
- 10.10. Ratification of Enforcement.** The provisions of this Agreement are intended to be independent, and in the event any provision hereof should be declared by a court of competent jurisdiction to be invalid, illegal, or unenforceable for any reason whatsoever, such declaration shall not affect the remainder of this Agreement.

## **11. DEFAULTS/ARBITRATION.**

- 11.1. Default Declaration.** If you do not comply with any of the obligations or terms of this Agreement before Closing, including your failure or refusal to close the purchase of the Lot on the scheduled Closing Date, we will have the right to declare you in default of this Agreement by delivering written notice thereof to you.

- 11.2. Defaults Before Closing.** If you violate an obligation or term of this Agreement other than your obligation to close, including, without limitation: (i) failing or refusing to complete and execute any of the instruments or any of the information required of you under this Agreement promptly or when requested to do so by us; (ii) failing or refusing to make timely payments of any amounts required under this Agreement; (iii) attempting to assign or transfer this Agreement prior to Closing without our prior consent, which may be withheld or conditioned in our absolute discretion; or (iv) disrupting or interfering with our standard and customary sales and/or construction practices (including, without limitation, refusing to deal with our designated representatives or interfering with or attempting to direct or supervise our performance and/or the performance of our contractors or material suppliers): (a) we may terminate this Agreement, be released from the obligation to sell the Lot to you, and receive as liquidated damages the Deposit you have delivered, or (b) we may exercise any remedy at law or in equity that we may have against you on account of the default. If we elect to terminate this Agreement as our remedy for your default, we will retain the Deposit as liquidated damages.
- 11.3. Default at Closing.** If you fail or refuse to complete the purchase of the Lot on the Closing Date established by us pursuant to this Agreement for any reason, we will be damaged and will be entitled to compensation for such damages. Such damages will be extremely difficult and impractical to ascertain, and you desire to limit the amount of damages for which you might be liable should you breach this Agreement by failing or refusing to complete the purchase of the Lot on the specified Closing Date. In addition, both you and we wish to avoid the costs and lengthy delays that might result if we filed a lawsuit or instituted judicial proceedings to collect damages for your default. Therefore, if you fail to complete the purchase of the Lot on the Closing Date, we may elect either (i) to terminate this Agreement and retain as liquidated damages the Deposit, or (ii) proceed in accordance with Section 6.2 of this Agreement granting you additional time to complete the Closing. The Parties further agree that the Deposit and charges imposed by us represent a reasonable estimate of damages and are not a penalty.
- 11.4. Default After Closing.** If you are in default of any of the terms or conditions of this Agreement that survive, or become effective upon Closing, we may pursue any remedy at law or in equity that we may have against you on account of the default, including, without limitation, recovery of monetary damages or injunctive relief.
- 11.5. Our Default and Your Remedies.** If we do not comply with any of our obligations pursuant to the terms of this Agreement before Closing, and such failure by us to comply is not because of reasons of *Force Majeure* or due to your default, and such failure continues for thirty (30) calendar days following written notice from you specifying the nature of the default, and if you are not also in default, then you shall have the right to declare us in default under this Agreement by delivering written notice of such default describing the event or condition of default and the actions required to cure the default; provided, however, that we shall not be in default if we cannot reasonably cure a default within thirty (30) calendar days if within the thirty (30) day period we commence to cure and thereafter diligently prosecute the cure to completion. If we fail or refuse to cure the default in accordance with your written notice you may elect either (i) to leave this Agreement in full force and effect and assert a claim for specific performance, or (ii) to terminate this Agreement, and thereby release us from the obligation to sell the Lot to you or to otherwise comply with this Agreement, in which case we will promptly refund the Deposit to you whereupon neither party shall have any further rights or obligations under this Agreement; provided that your remedies shall be limited to specific performance and we shall not be liable for any other damages at law including, without limitation, for indirect, incidental, consequential or punitive damages.
- 11.6. Arbitration Notice.** The following notice has been included in this Section for your information:
- Notwithstanding anything to the contrary contained in this Agreement, all post-Closing disputes between you and us will be resolved by BINDING ARBITRATION. THIS MEANS THAT YOU AND WE EACH GIVE UP THE RIGHT TO GO TO COURT to assert or**

**defend rights under this Agreement. Your rights and our rights will be determined by a neutral arbitrator and not by a judge and jury. You and we are entitled to a FAIR HEARING, BUT the arbitration procedures are SIMPLER AND MORE LIMITED THAN THE RULES FOLLOWED IN A COURT. Arbitrator decisions are as enforceable as any court order and are subject to VERY LIMITED REVIEW BY A COURT. You can find out more about arbitration and our approach to it by going to the website of the American Arbitration Association (“AAA”).**

**We strive to have many satisfied customers. In the unlikely event that any dispute exists after Closing relating to the purchase or ownership of the Lot, including the marketing, sale, design, development, condition, conveyance or warranty of the Lot, you and we agree to resolve the dispute exclusively through binding arbitration. The scope of this provision is broad and requires arbitration of all claims, including, for example, claims of misrepresentation or fraud in the inducement, or for personal injury, or seeking equitable remedies.**

- 11.7. Arbitration Procedures.** The arbitration will be conducted by the AAA in accordance with the rules contained in the Arbitration Rules for the Real Estate Industry (the “*Rules*”) utilizing three (3) arbitrators. Notwithstanding anything contained herein to the contrary, if the amount in controversy is less than \$10,000.00, arbitration shall be administered utilizing one (1) arbitrator. The arbitration shall be held in Harris County, Texas. AAA fast track procedures and rules for the resolution of consumer related disputes shall apply if the amount in controversy is less than \$50,000.00 and discovery shall be limited to depositions of no more than six (6) hours per party (i.e. 6 hours for depositions by the Seller and 6 hours for depositions by the Purchaser). The provisions regarding arbitration shall survive the termination of this Agreement. If the Rules have changed or been renamed by the time a disagreement or claim arises, then the successor rules identified by the AAA will apply. Also, despite the choice of the Rules (or any successor rules identified by the AAA) to govern the arbitration of any disagreement or claim, if the AAA later identifies different rules that would specifically apply to the disagreement or claim, then those rules will apply instead of the Rules. If there are preliminary steps that would have to be followed under state law before a lawsuit could be commenced, such as mediation, those steps must be followed before the arbitration can begin. Compliance with these state law provisions, and any negotiations or settlement attempts made before arbitration, do not constitute waiver of arbitration.) Whether the Rules require it or not, the arbitrator will render a written award and, if requested by either you or us, a written explanation of the reasons for the award. Judgment on the award made by the arbitrator may be entered in any court having jurisdiction over the dispute.

The consideration of the Parties to be bound by arbitration is not only the waiver of trial in a court of law and trial by jury, but also the waiver of any rights to appeal the arbitration finding.

Arbitration shall be initiated upon the filing of a notice of intention to arbitrate with the other Party, according to said Rules. Within thirty (30) days thereof, each Party shall designate one individual to serve as arbitrator, and the two so chosen shall designate a third arbitrator. An award in writing signed by any two of them shall be final (and may not be appealed), binding and enforceable in any court of competent jurisdiction; provided that, such award shall be made within ninety (90) days after the reference of the matter to the said three (3) arbitrators. If either Party shall refuse or neglect to appoint an arbitrator within thirty (30) days after the other shall have appointed an arbitrator and served written notice thereof upon the other requiring him to appoint an arbitrator, then the arbitrator so appointed by the first Party shall have power to proceed to arbitrate and determine the matters of disagreement as if he were the arbitrator appointed by both Parties hereto for that purpose, and his award in writing signed by him shall be final, provided that such award shall be made within ninety (90) days after such refusal or neglect of the other Party to appoint an arbitrator.

- 11.8. Arbitration Costs.** We and you agree to share the cost of filing fees and administrative fees charged by the AAA and any fee charged by the arbitrator. If the Rules require us to pay more than half of the filing, administrative or arbitrator’s fees, we will do so. If one of the Parties pays

more than their required share of such fees in the process of requesting or scheduling an arbitration, the other Party will reimburse the paying Party for the amount of such overpayment within thirty (30) calendar days after being requested to do so in writing.

- 11.9. Federal Arbitration Act Applies.** The Parties acknowledge that this Agreement evidences a transaction involving interstate commerce. The Federal Arbitration Act will govern the interpretation and enforcement of this provision. This provision will survive the closing of the purchase of the Lot and the default of either Party. This provision is binding on you and us and on each of our respective successors and assigns. If a Party uses litigation to enforce this provision or the arbitration award, the court will award such Party their court costs and reasonable attorneys' fees.
- 12. OTHER NOTICES.** Purchaser acknowledges that the Property is located within the boundaries of the Port O'Connor Municipal Utility District, a municipal utility district which is a political subdivision of the State of Texas. The Property is also located within Defined Area No. 1 of the Port O'Connor Municipal Utility District and will be subject to a higher tax than other land within the Port O'Connor Municipal Utility District. Purchaser acknowledges that Section 50.301 of the Texas Water Code requires any purchaser of property within a municipal utility district to sign and acknowledge a statutory notice from the seller in the form provided in Section 50.301(b) of the Texas Water code relating to the tax rate and bonded indebtedness of the municipal utility district as shown on *Exhibit "D"* attached hereto. Purchaser agrees to execute such statutory notice at Closing.

Purchaser acknowledges that the Property adjoins and shares a common boundary with the tidally influenced submerged lands of the State of Texas. Purchaser agrees to and contemporaneously with the execution of this Agreement shall execute the notice provided in *Exhibit "E"* attached hereto.

- 13. GENERAL.** YOU HEREBY REPRESENT AND ACKNOWLEDGE THAT A TRUE AND CORRECT COPY OF THIS AGREEMENT WAS DELIVERED TO YOU, WITH ALL RELEVANT SPACES COMPLETED BEFORE EXECUTION, AND THAT YOU HAVE READ AND UNDERSTAND EACH AND EVERY PROVISION HEREOF.
- 14. EXHIBITS.** The following exhibits to this Agreement are incorporated herein by reference:

**Exhibit "A" – Additional Purchaser(s)**

**Exhibit "B" – Information About Brokerage Services**

**Exhibit "C" – Estimated Taxes, Assessments and Closing Costs Disclosure for Lots**

**Exhibit "D" –MUD Notice**

**Exhibit "E" – Addendum for Coastal Area Property**

This Agreement shall not be effective until executed by one of the following authorized representatives, on behalf of the Seller: Robert E. Fondren or David A. Cannon (each, an "*Authorized Signatory*"). The Effective Date is the date on which our Authorized Signatory has executed this Agreement as evidenced below.



EACH PARTY SIGNING THIS AGREEMENT ACKNOWLEDGES THAT SUCH PARTY HAS READ, UNDERSTOOD, AND AGREES TO ALL OF THE TERMS, PROVISIONS, CONDITIONS, AND INSTRUCTIONS OF THIS AGREEMENT (INCLUDING ALL EXHIBITS AND ADDENDA ATTACHED HERETO), AND FURTHER ACKNOWLEDGES RECEIPT OF A COMPLETE COPY OF THIS AGREEMENT AND ALL DOCUMENTS IDENTIFIED HEREIN AS BEING DELIVERED.

**PURCHASER'S OFFER TO PURCHASE:**

Purchaser: \_\_\_\_\_ Co-Purchaser: \_\_\_\_\_  
Print Name: \_\_\_\_\_ Print Name: \_\_\_\_\_  
Co-Purchaser: \_\_\_\_\_ Co-Purchaser: \_\_\_\_\_  
Print Name: \_\_\_\_\_ Print Name: \_\_\_\_\_  
Date: \_\_\_\_\_ (the "*Submission Date*")

**SELLER'S ACCEPTANCE OF PURCHASER'S OFFER TO PURCHASE:**

**SELLER:**

BLACKBERRY ISLAND, LP, a Texas limited partnership

By: Blackberry Island GP, LLC, a Texas limited liability company, a general partner

By: C & O Development Corporation, a Texas corporation, its sole member and manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Date (the "*Effective Date*")

**Co-Purchaser:**

\_\_\_\_\_  
Name

Type of Entity: \_\_\_\_\_

\_\_\_\_\_  
Street Address

Contact Name: \_\_\_\_\_

Facsimile: \_\_\_\_\_

State of Organization: \_\_\_\_\_

\_\_\_\_\_  
City State Zip Code

Telephone: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

**Co-Purchaser:**

\_\_\_\_\_  
Name

Type of Entity: \_\_\_\_\_

\_\_\_\_\_  
Street Address

Contact Name: \_\_\_\_\_

Facsimile: \_\_\_\_\_

State of Organization: \_\_\_\_\_

\_\_\_\_\_  
City State Zip Code

Telephone: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

**EXHIBIT "B"**

**INFORMATION ABOUT BROKERAGE SERVICES**

Before working with a real estate broker, you should know that the duties of a broker depend on whom the broker represents. If you are a prospective seller or landlord (owner) or a prospective tenant ("You"), You should know that the broker who lists the property for sale or lease is the owner's agent. A broker who acts as a subagent represents the owner in cooperation with the listing broker. A broker who acts as your agent represents You. A broker may act as an intermediary between the parties if the parties consent in writing. A broker can assist You in locating a property, preparing a contract or lease, or obtaining financing without representing You. A broker is obligated by law to treat you honestly.

**IF THE BROKER REPRESENTS THE OWNER:**

The broker becomes the owner's agent by entering into an agreement with the owner, usually through a written listing agreement, or by agreeing to act as a subagent by accepting an offer of subagency from the listing broker. A subagent may work in a different real estate office. A listing broker or subagent can assist You but does not represent You and must place the interests of the owner first. You should not tell the owner's agent anything You would not want the owner to know because an owner's agent must disclose to the owner any material information known to the agent.

**IF THE BROKER REPRESENTS THE PURCHASER:**

The broker becomes your agent by entering into an agreement to represent You, usually through a written representation agreement. Your agent can assist the owner but does not represent the owner and must place the interest of You first. The owner should not tell your agent anything the owner would not want You to know because your agent must disclose to You any material information known to the agent.

**IF THE BROKER ACTS AS AN INTERMEDIARY:**

A broker may act as an intermediary between the parties if the broker complies with The Texas Real Estate License Act. The broker must obtain the written consent of each party to the transaction to act as an intermediary. The written consent must state who will pay the broker and, in conspicuous bold or underlined print, set forth the broker's obligations as an intermediary. The broker is required to treat each party honestly and fairly and to comply with The Texas Real Estate License Act. A broker who acts as an intermediary in a transaction:

- 1) shall treat all parties honestly;
- 2) may not disclose that the owner will accept a price less than the asking price unless authorized in writing to do so by the owner;
- 3) may not disclose that You will pay a price greater than the price submitted in a written offer unless authorized in writing to do so by You; and
- 4) may not disclose any confidential information or any information that a party specifically instructs the broker in writing not to disclose unless authorized in writing to disclose the information or required to do so by The Texas Real Estate License Act or a court order or if the information materially relates to the condition of the property.

With the parties' consent, a broker acting as an intermediary between the parties may appoint a person who is licensed under The Texas Real Estate License Act and associated with the broker to communicate with and carry out instructions of one party and the person who is licensed under the act and associated with the broker to communicate with and carry out instructions of the other party.

**IF YOU CHOOSE TO HAVE A BROKER REPRESENT YOU:**

You should enter into a written agreement with the broker that clearly establishes the broker's obligations and your obligations. The agreement should state how and by whom the broker will be paid. You have the right to choose the type of representation, if any, You wish to receive. Your payment of a fee to a broker does not necessarily establish that the broker represents You. If You have any questions regarding the duties and responsibilities of the broker, You should resolve those questions before proceeding.

The undersigned hereby acknowledge(s) receipt of the Information About Brokerage Services.

ACKNOWLEDGED BY:

**PURCHASER(S):**

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

Texas Real Estate Brokers and Salespersons are licensed and regulated by the Texas Real Estate Commission (TREC). If you have a question or complaint regarding a real estate licensee, you should contact TREC at P.O. Box 12188, Austin, Texas 78711-2188 or 512-465-3960.

**EXHIBIT "C"**

**CARACOL**

**ESTIMATED TAXES, ASSESSMENTS AND CLOSING COSTS DISCLOSURE FOR LOTS**

**DOLLAR AMOUNTS TO CHANGE – EXAMPLE ONLY**

**EFFECTIVE \_\_\_\_\_, 20\_\_\_\_**

This disclosure has been prepared as a courtesy to inform you of the estimated expenses you will incur in connection with the purchase of your Lot. We are not legally required to do this, and the following estimates are not intended to be a warranty or guaranty by Blackberry Island, LP that the amounts shown are accurate. They are subject to change from time-to-time.

I. There are certain fees and costs associated with your purchase and the conduct of the Closing by the Settlement Agent. Please refer to the chart at the end of this disclosure for estimates of the amounts you will be obligated to pay. You may also be required to pay other charges imposed by your closing agent and lender, if any, which charges will vary from lender to lender and may include, without limitation, a loan origination fee, loan points, appraisal fee, document preparation fee, inspection fee, flood certification fee, insured closing letter fee, and credit report fee.

II. As noted in the Agreement, as an owner of the Lot, you will be a mandatory member of the Association and will be obligated for assessments and other obligations to the Association. The Association and/or your lender, if any, may also require advance payment of the prorated annual assessment and/or other Association fees at Closing. You will also be required to pay a prorated portion of the real estate taxes that are or will be due for the year of the Closing. As with all amounts shown on this exhibit, they are estimates that we have prepared based on what we know or have projected for operation of Caracol. These may change from time-to-time without notice.

A. Lot Assessments

1. The Caracol Community Association Regular Annual Assessment – an annual assessment levied by the Caracol Community Association, Inc. (“*Association*”) to fund Common Expenses for the benefit of all owners in Caracol. Refer to Article VIII of the Declaration of Covenants, Conditions and Restrictions for Caracol, as amended or supplemented (“*Declaration*”).

**Annual Assessment (commencing in 2006):** \$1,890.00 per year per Lot for a Lot that does not have a structure constructed on it and Four Thousand Four Hundred Fifty and No/100 Dollars (\$4,450.00) for a Lot that has a structure constructed on it.

\* The Annual Assessment amount set forth above is based on the estimated Common Expenses budget for the Association for 2006. The above amount is only an estimate and may be adjusted or changed by the board of directors of the Association from time-to-time to reflect changes in costs and expenditures incurred by the Association. This assessment will be billed on an annual basis and will be charged upon closing of your Lot.

2. Foundation Fee. – No Foundation Fee shall be due for the transaction contemplated under this Agreement. A Foundation Fee may be due for future transfers of this Lot, which Foundation Fee shall be payable to the Foundation as provided in Article XIV of the Declaration.

**Initial Working Capital Assessment Amount:** \$ \_\_\_\_\_ \*\*\*

\*\*\* The Initial Assessment amount is collected from all initial Lot Purchasers. This amount is equal to one (1) month of the Association’s Regular Annual Assessments then in effect.

B. Estimated Real Estate Taxes and Assessments

From the time of closing on your Lot, you will be required to pay real estate taxes to Calhoun County, Calhoun Independent School District, and the Port O’Connor Municipal Utility District. To calculate the real estate taxes, multiply the estimated 2010 millage rate (Calhoun County Independent School District – 1.1331%; Calhoun County – 0.4900%; Port O’Connor Municipal Utility District – 1%, which together equal \$2.6231 per \$100 of value) by the estimated appraised value of the Lot. We are using a typical sales price as the estimated appraised value of the Lot. At the time of closing on the Lot, the property assessment may not include the value of improvements and the millage rate may have changed; therefore, we recommend that you contact the Calhoun County Tax Assessor’s office for additional real estate tax information.

**NOTE:** The costs set forth in Sections I and II above are estimates of the costs generally incurred by all Purchasers and are provided for your convenience. There may be other assessments, fees and charges payable to the Association as set forth in the Governing Documents. You will also be responsible for payment of the premium for any insurance coverage that you are required by your lender to obtain in addition to that which will be provided by the Association. Also, You may be obligated to pay a real estate commission(s) based on agreements made by You. You will also be responsible for paying your attorney’s fees, if any. All Purchasers are encouraged to contact their lender, closing agent and/or title company, attorney, and the Calhoun County Tax Assessor’s Office in order to obtain specific information regarding applicable charges, taxes and fees. Blackberry Island, LP makes no representations regarding the fees or charges of any lender, closing agent, title company, attorney or governmental authority.

THE FOLLOWING IS A HYPOTHETICAL EXAMPLE OF THE FEES AND COSTS TO BE COLLECTED AT A CLOSING, ASSUMING A CLOSING DATE OF FEBRUARY 28, 2010. WE HAVE ASSUMED A SALES PRICE OF \$500,000.00. THIS EXAMPLE IS PROVIDED FOR YOUR CONVENIENCE AND REFERENCE, AND IS NOT INTENDED TO REFLECT EXACT FEES AND CHARGES FOR SERVICES WHERE A COST RANGE HAS BEEN PROVIDED ABOVE, OR ANY ADDITIONAL FEES OR COSTS THAT MAY BE SPECIFIC TO A PARTICULAR TRANSACTION. ALSO, FEES, COSTS AND COST RANGES PROVIDED HEREIN REFLECT AMOUNTS IN EFFECT ON THE DATE OF THIS DISCLOSURE.

**NOTE: WE WILL NEED TO INCLUDE THE APPROPRIATE TAX INFORMATION FOR THE TABLE BELOW**

**EXAMPLE – CASH TRANSACTIONS CLOSING ON \_\_\_\_\_**

<b>TYPICAL CLOSING COSTS</b>
REAL PROPERTY TAX PRORATION – County Taxes <sup>1</sup> (2010 tax rate @\$0.4900/\$100) \$ _____ (annually); 307 days @ _____ per diem
REAL PROPERTY TAX PRORATION –School Taxes (2010 tax rate @ \$1.1331/\$100) \$ _____ (annually); 307 days @ \$ _____ per diem
REAL PROPERTY TAX PRORATION – Port O’Connor Municipal Utility District (2010 tax rate @ \$0.2/\$100) \$ _____ (annually); 307 days @ \$ _____ per diem
REAL PROPERTY TAX PRORATION – Port O’Connor Municipal Utility District Defined Area No. 1 (2010 tax rate @ \$0.8/\$100) \$ _____ (annually); 307 days @ \$ _____ per diem
THE CARACOL COMMUNITY ASSOCIATION ANNUAL ASSESSMENT - \$ _____ annually; \$ _____ per month
TRANSFER FEE – \$ _____
ESCROW FEE/CLOSING ADMINISTRATION FEE
OWNER’S TITLE INSURANCE PREMIUM (Assumes use of Texas Title, our affiliated title company)
DELIVERY/COURIER FEES
TAX CERTIFICATE FEE
RECORDING FEE (Deed) 2 Pages (\$ _____ 1st Page/\$ _____ each additional page)
TRANSFER FEE (Paid to Management company to set up account)
<b>TOTAL ESTIMATED PURCHASER CLOSING COSTS (EXCLUSIVE OF ANY LOAN CLOSING COSTS)</b>

<sup>1</sup> The real property tax charges indicated above reflect a proration between the parties as of the Closing Date, and is based upon an assumed assessed value for the Lot of \$500,000.00.

**PURCHASERS SHOULD REFER TO THE DOCUMENTS REFERENCED IN THIS DISCLOSURE FOR COMPLETE INFORMATION REGARDING TAXES, ASSESSMENT, FEES AND CLOSING COSTS. THIS DISCLOSURE IS PROVIDED FOR INFORMATIONAL PURPOSES, AND ONLY CONTAINS A SUMMARY OF THE PERTINENT PROVISIONS OF THE DOCUMENTS REFERENCED HEREIN.**

The undersigned hereby acknowledge(s) receipt of Caracol Estimated Taxes, Assessments and Closing Costs Disclosure.

PURCHASER:	PURCHASER:
_____	_____
Print Name: _____	Print Name: _____
Date: _____	Date: _____
 PURCHASER:	 PURCHASER:
_____	_____
Print Name: _____	Print Name: _____
Date: _____	Date: _____

**EXHIBIT "D"**

**FORM OF MUD NOTICE**

**MUD NOTICE**

Date: \_\_\_\_\_, 20\_\_

Seller: BLACKBERRY ISLAND, LP, a Texas limited partnership

Purchaser: \_\_\_\_\_

Property: More particularly described on *Exhibit A* attached hereto

The real property described above, that you are about to purchase, is located in the Port O'Connor Municipal Utility District. The real property described above, which you are about to purchase, is also located within Defined Area No. 1 of the district and your land will be subject to a higher tax than other land within the district. Your rate of taxes will be higher by \$0.80 on each \$100 of assessed valuation than land not within Defined Area No. 1 of the district. The district has taxing authority separate from any other taxing authority and may, subject to voter approval, issue an unlimited amount of bonds and levy an unlimited rate of tax in payment of such bonds. As of this date, the rate of taxes levied by the district on real property located in the district is \$0.20 on each \$100 of assessed valuation. If the district has not yet levied taxes, the most recent projected rate of tax, as of this date, is \$0.20 on each \$100 of assessed valuation. The total amount of bonds, excluding refunding bonds and any bonds or any portion of bonds issued that are payable solely from revenues received or expected to be received under a contract with a governmental entity, approved by the voters and which have been or may, at this date, be issued is \$0.00, and the aggregate initial principal amounts of all bonds issued for one or more of the specified facilities of the district and payable in whole or in part from the property taxes is \$4,466,000.00.

The district has the authority to adopt and impose a standby fee on property in the district that has water, sanitary sewer, or drainage facilities and services available but not connected and which does not have a house, building, or other improvement located thereon and does not substantially utilize the utility capacity available to the property. The district may exercise the authority without holding an election on the matter. As of this date, the most recent amount of the standby fee is \$N/A. An unpaid standby fee is a personal obligation of the person that owned the property at the time of the imposition and is secured by a lien on the property. Any person may request a certificate from the district stating the amount, if any, of unpaid standby fees on a tract of property in the district.

The purpose of this district is to provide water, sewer, drainage, or flood control facilities and services within the district through the issuance of bonds payable in whole or in part from property taxes. The cost of these utility facilities is not included in the purchase price of your property, and these utility facilities are owned or to be owned by the district.

*[Signatures appear on following pages]*

**SELLER:**

BLACKBERRY ISLAND, LP,  
a Texas limited partnership

By: Blackberry Island GP, LLC,  
a Texas limited liability company,  
a general partner

By: C & O Development Corporation, a  
Texas corporation, Managing Member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF TEXAS           §  
  §  
COUNTY OF \_\_\_\_\_ §

This foregoing instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, \_\_\_\_\_ of C & O DEVELOPMENT CORPORATION, a Texas corporation, the sole member and manager of BLACKBERRY ISLAND GP, LLC, a Texas limited liability company, a general partner of BLACKBERRY ISLAND, LP, a Texas limited partnership, on behalf of said limited partnership.

\_\_\_\_\_  
Notary Public in and for the State of Texas

**PURCHASER IS ADVISED THAT THE INFORMATION SHOWN ON THIS FORM IS SUBJECT TO CHANGE BY THE DISTRICT AT ANY TIME. THE DISTRICT ROUTINELY ESTABLISHES TAX RATES DURING THE MONTHS OF SEPTEMBER THROUGH DECEMBER OF EACH YEAR, EFFECTIVE FOR THE YEAR IN WHICH THE TAX RATES ARE APPROVED BY THE DISTRICT. PURCHASER IS ADVISED TO CONTACT THE DISTRICT TO DETERMINE THE STATUS OF ANY CURRENT OR PROPOSED CHANGES TO THE INFORMATION SHOWN ON THIS FORM.**

The undersigned purchaser hereby acknowledges receipt of the foregoing notice at or prior to execution of a binding contract for the purchase of real property described in such notice or at closing of purchase of the real property.

**PURCHASER:**

\_\_\_\_\_  
\_\_\_\_\_

STATE OF TEXAS           §  
  §  
COUNTY OF \_\_\_\_\_ §

This foregoing instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for the State of Texas

**EXHIBIT "E"**

**ADDENDUM FOR COASTAL AREA PROPERTY**

**IN ACCORDANCE WITH SECTION 33.135, TEXAS NATURAL RESOURCES CODE, THE FOLLOWING NOTICE IS INCLUDED AS PART OF THE AGREEMENT:**

**NOTICE REGARDING COASTAL AREA PROPERTY**

1. The Property described in and subject to the Agreement to which this exhibit is attached adjoins and shares a common boundary with the tidally influenced submerged lands of the state. The boundary is subject to change and can be determined accurately only by a survey on the ground made by a licensed state land surveyor in accordance with the original grant from the sovereign. The owner of the Property may gain or lose portions of such Property because of changes in the boundary.
2. The Seller, transferor, or grantor has no knowledge of any prior fill as it relates to the Property described in and subject to this contract except: filling of Zone V12 (EL10), which is a special flood hazard area and is located partially in Community Panel Number 480097 0208 D, Map Revised April 2, 1992 and partially in Community Panel Number 480097 0209 D, Map Revised April 2, 1992. The remainder of the site will be filled as the development of Caracol continues.
3. State law prohibits the use, encumbrance, construction, or placing of any structure in, on, or over state-owned submerged lands below the applicable tide line, without proper permission.
4. The Purchaser is hereby advised to seek the advice of an attorney or other qualified person as to the legal nature and effect of the facts set forth in this notice on the Property described in and subject to this contract. Information regarding the location of the applicable tide line as to the property described in and subject to this contract may be obtained from the surveying division of the General Land Office in Austin.

**PURCHASER:**

\_\_\_\_\_  
\_\_\_\_\_

STATE OF TEXAS                    §  
  §  
COUNTY OF \_\_\_\_\_       §

                  This foregoing instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by  
\_\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for the State of Texas