

1.0 Advertising Listing Agreement. This advertising listing agreement (the “Listing Agreement”) together with any printed listing order executed by the parties or as set out in any electronic listing order form made available by BHI on the Web Site and submitted electronically by Builder to BHI (each a “Listing Order”) constitutes a binding agreement for the provision of advertising services to Builder by BHI. The terms and conditions contained in this Listing Agreement along with any terms found in any Listing Order(s) executed or submitted by the Builder (such Listing Order(s) and the Listing Agreement are collectively called the “Agreement”) govern the relationship between Builder and BHI (the “Parties” or, individually, a “Party”). By executing a printed Listing Order or submitting an electronic Listing Order to BHI, the Builder represents that it has reviewed and thereby accepts and agrees to be bound by all of the terms and conditions of this Agreement.

2.0 The Web Site. BHI shall use commercially reasonable efforts to maintain, support or affiliate with one or more web sites that, together, will constitute the Web Site. Generally, the Web Site permits consumers to perform searches of Listings of New Homes by home specifications, builder, Community or other criteria over the Internet using commercially available browsing software, such as Internet Explorer or Mozilla Firefox. As between the Builder and BHI, BHI has the sole discretion to determine the design, architecture, functionality and content of, and the timing and order of development of any revisions or enhancements to, the Web Site. At BHI’s option and in BHI’s sole discretion, BHI or other third parties may provide additional functionality and content for the Web Site. BHI may modify, alter or discontinue the functionality or content of the Web Site at any time. BHI also may offer additional products or services to the Builder from time to time and the prices and terms thereof will be determined in BHI’s sole discretion at the time each such product or service is offered. The Builder shall be under no obligation to purchase any such products and services.

3.0 Builder Obligations. (a) Listings. Unless otherwise specified in the applicable Listing Order, within 20 business days after the execution of a Listing Order, the Builder shall List on the Web Site all Communities of the Builder in such format and by such means as may be reasonably specified by BHI, including without limitation, by electronic data interchange. The Builder shall use commercially reasonable efforts to update such Listings no less frequently than biweekly. The Builder shall use commercially reasonable efforts to ensure that all such Listings are accurate and complete. Builder, not community, listings appearing only on any BHI custom homebuilder website are required to be updated within a reasonable timeframe after any material change to the Builder’s provided information. All Listings must comply with the Federal Fair Housing Act, 42 U.S.C. 3600, *et seq.*, and any applicable state and local fair housing laws, and all other laws and regulations that may apply and the Builder represents and warrants that they do. (b) Electronic Data Interchange. The Builder shall export Listings and other content via an electronic data interchange between the Builder’s computer system and the Web Site. In the event that the Builder does not possess the capability to export Listings via an electronic data interchange, the Builder may elect either to use BHI’s web-based data-entry tool or to request that BHI provide additional professional services for manual collection of Listing data at such prices and on such terms as may be mutually agreed. (c)

Quality Control; Privacy; Terms of Use. The Builder shall use commercially reasonable efforts to develop internal systems and procedures to provide reasonable assurances that all data and other content supplied to BHI by the Builder is accurate, timely and complete. The Builder shall cooperate with BHI's reasonable quality control procedures from time to time in effect. The Builder shall comply with the privacy policy and terms of use to be established from time to time by BHI or as otherwise agreed to by the consumer as a condition to using the Web Site. (d) Firewall. The Builder shall comply at all times with the business procedures and security infrastructure intended to protect competitive information, shall further comply with any antitrust guidelines and directives established by BHI and shall not seek any information subject to such procedures, infrastructure, guidelines or directives.

4.0 Fees and Invoicing. Builder shall pay the fees set out in the Listing Order(s) pursuant to any terms laid out therein. Unless immediately charged to the Builder at the time the Listing Order is executed or submitted by Builder or otherwise indicated on the applicable Listing Order, fees begin to accrue on the date 35 calendar days after the execution or submission of the Listing Order by Builder (whether or not the Builder has complied with its obligations set forth in Section 3.0). BHI may modify the pricing set forth in a particular Listing Order from time to time, upon 30 days' prior notice to the Builder. Except for custom homebuilder Listings (which are charged via the schedule set out on the electronic Listing Order) or as otherwise provided in the applicable Listing Order, BHI will invoice the Builder monthly (including, as applicable, a prorated amount with respect to the first calendar month of service). Any and all federal, state or local taxes that may be imposed on any any Listing published or distributed pursuant to this Agreement shall be paid by the Builder and BHI may bill and collect such amounts in addition to the amounts otherwise payable hereunder. The Builder shall pay the amounts owing to BHI within 30 days after receipt of BHI's invoice. **Any amounts not paid by the Builder within 30 days after the date of BHI's invoice shall bear interest from the date of such invoice at the lesser of 1.5% per month or the maximum rate permitted by applicable law. Failure to timely pay fees due hereunder shall give BHI the right to stop providing services under any active Listing Order, and BHI's doing so or the Builder's payment of interest on late payments of fees shall not prevent BHI from exercising any other rights under this Agreement or applicable law.**

5.0 Editorial Control; Legal Compliance; Fair Housing Notice. BHI (or, in some circumstances, the relevant third party provider of the Web Site) shall retain sole editorial control over all content, artwork, graphics, text, and other information presented on the Web Site. The Federal Fair Housing Act and state and local fair housing laws prohibit discrimination in the sale, rental, leasing and financing of housing, as well as discriminatory advertising, on the basis of race, sex, color, religion, national origin, mental or physical disability, or familial status. Certain state and local jurisdictions may also have specific applicable regulations prohibiting discrimination based on marital status, sexual orientation and source of income or other rules or regulations related to advertising new homes for sale. These laws not only prohibit advertisements which clearly restrict access to housing based on the protected categories, but also prohibit

advertisements which indicate a preference for or against a person based on a protected category or otherwise do not comply. It is the intent and goal of BHI to have each person who wishes to publish or distribute a Listing through the Web Site comply with all laws and regulations, including but not limited to the fair housing laws. BHI may reject or edit any Listing that it perceives to contain language contrary to the law in its sole discretion.

6.0 Rights to Data. As between BHI and the Builder, the Builder shall retain all of its right, title and interest in the Listing data ; *provided*, however, that the Builder hereby grants to BHI a nonexclusive, worldwide, perpetual, royalty free license to use, store, display, perform, reproduce, modify, distribute, transfer, market, sublicense and transmit such Listing data. As between BHI and the Builder, BHI shall retain all of its right, title and interest in any user data(including without limitation all data on use patterns and user demographics) derived from the Web Site.

7.0 Licenses. The Builder hereby grants to BHI a nonexclusive, royalty-free, worldwide license to use, store, display, perform, reproduce, distribute, transfer, market, sublicense and transmit the copyrighted content and images and the trademarks and trade names supplied to BHI for the sole purpose of permitting BHI to perform its obligations hereunder and to advertise and otherwise notify users of the availability of the Builder's products and services on the Web Site. The Builder shall supply BHI with such trademarks and trade names in such format as reasonably requested by BHI.

8.0 Limitation of Liability/ Indemnification.

8.1 BHI EXPRESSLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE, EXPRESS OR IMPLIED, AS TO THE CONDITION, VALUE OR QUALITIES OF ANY PRODUCTS OR SERVICES PROVIDED HEREUNDER, AND SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR AS TO THE CONDITION OR WORKMANSHIP THEREOF, OR THE ABSENCE OF ANY DEFECTS THEREIN, WHETHER LATENT OR PATENT, INCLUDING ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE, OR THE NON-INFRINGEMENT OR ABSENCE OF VIOLATION OF ANY PATENT, COPYRIGHT, TRADE SECRET, TRADEMARK OR OTHER INTELLECTUAL PROPERTY OR PROPRIETARY RIGHT. BHI EXPRESSLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES THAT THE USE OF THE WEB SITE AND ANY OTHER PRODUCTS OR SERVICES PROVIDED HEREUNDER WILL BE CONTINUOUS, UNINTERRUPTED OR ERROR-FREE, THAT ANY DATA OR MATERIALS CONTAINED THEREIN WILL BE SECURE, ACCURATE OR COMPLETE. In the event that an injunction or restraining order is obtained against the use of the Web Site by Builder in any way provided in this Agreement because of any violation by BHI of any patent, copyright, trade secret, trademark or other intellectual property or proprietary right, or in BHI's judgment the Web Site is likely to become the subject of a successful claim of such violation, BHI may, at BHI's option terminate this Agreement without any liability therefor. BHI SHALL NOT BE LIABLE TO THE BUILDER FOR

INCIDENTAL, INDIRECT, CONSEQUENTIAL, SPECIAL, PUNITIVE OREXEMPLARY DAMAGES OF ANY KIND (INCLUDING LOST REVENUES OR PROFITS, LOSS OF BUSINESS OR LOSS OF DATA) IN ANY WAY RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT OR IN TORT, REGARDLESS OF WHETHER THE BUILDER WAS ADVISED OF THE POSSIBILITY THEREOF. IN NO EVENT SHALL THE TOTAL LIABILITY OF BHI TO THE BUILDER, WHETHER IN RESPECT OF A BREACH OF THIS AGREEMENT, AN INTELLECTUAL PROPERTY INFRINGEMENT CLAIM OR OTHERWISE, EXCEED THE SUM OF ALL FEES OR OTHER AMOUNTS PAID BY THE BUILDER UNDER THIS AGREEMENT.

8.2 The Builder shall indemnify and hold BHI and its shareholders, members, managers, partners, officers, employees, agents, representatives, successors, and affiliates harmless from and against any and all claims, suits, actions, liabilities, losses, costs, reasonable attorney fees, expenses, judgments or damages resulting from any third party claim made or suit brought against such party or such persons, to the extent such result from any claim from a New Home buyer or potential buyer, consumer group, governmental entity, real estate broker or agent, surveyor, appraiser, mechanic, material man, supplier, lender, contractor, subcontractor or other person relating to the Listings, the accuracy of any data supplied by the Builder, the Listing of any New Home or Community, or the sale of any New Home and from any claim of copyright, trademark or intellectual property infringement related to any content, artwork, graphics, link, or other information or materials supplied by the Builder.

9.0 Term and Termination. The term of this Agreement begins on the date of its execution or electronic submission by the Builder and continues in force so long as any Listing Order remains in effect. BHI may terminate this Agreement (and thus all Listing Orders) at any time upon 120 days prior written notice to the Builder. Upon termination or expiration of this Agreement, the obligations of the parties set forth herein shall cease and the licenses granted in **Section 7.0** shall terminate without any further notice; *provided*, however, that **Sections 8.0** and **11.0** and the licenses granted in Section 6.0 shall survive such termination. No fees previously paid by the Builder hereunder will be refundable, in whole or in part, as a result of any termination or expiration of this Agreement or any Listing Order.

10.0 Definitions. As used in this Agreement, and in addition to any other terms defined within this Agreement, the following terms have the following meanings. “**Community**” means a neighborhood, subdivision, development, community or phase or subset thereof, whichever is the smallest identifiable marketing unit, in which the Builder offers New Homes for sale, whether or not the Builder is the exclusive residential home builder in such neighborhood, subdivision, development or community or phase or subset thereof. “**List**” means to provide BHI with the current and updated Listing data for each Builder Community in such format and by such means as may be reasonably specified by BHI. “**Listing**” means the reasonably available descriptive and pricing information for each Community, including the addresses, descriptions, available floor plans, elevation renderings and photos for each New Home offered for sale by the

Builder within such Community, and current Builder contact information and link to the Builder's web site, each in such format and by such means as may be reasonably specified by BHI. "**New Home**" means any (i) new, speculative or model home (regardless of the state of completion) offered for sale by the Builder or (ii) residential lot offered for sale by the Builder for the construction or sale of a new home. "**Web Site**" means the internet website or sites created, maintained or supported by BHI or a third party affiliate of BHI that host the Listings and other housing-related products and services that may be developed by or in conjunction with BHI. The Web Site may be accessed through one or more uniform resource locators.

11.0 Miscellaneous.

11.1 Assignment. This Agreement and any benefits derived hereunder may be assigned in whole or in part by BHI. The Builder may not assign this Agreement in whole or in part without the prior written consent of BHI. Any assignment in violation of this Section shall be void and of no effect. This Agreement shall be binding upon and inure to the benefit of the parties and their successors and permitted assigns.

11.2 General. BHI shall perform this Agreement solely as an independent contractor, and not as the Builder's partner, co-venturer, agent or employee. Unless otherwise expressly agreed in writing, BHI shall not act as the Builder or any other party's real estate broker or real estate "agent." The use of the term "Listing" herein does is not intended to create or imply a brokerage or agency relationship or the provision of service normally provided by a real estate agent or broker. This Agreement constitutes and contains the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes any and all prior written and oral negotiations, correspondence, agreements, understandings, duties or obligations between the parties respecting the subject matter hereof. To the extent that any provision of a Listing Order executed or submitted by the Builder conflicts with any provision the Listing Agreement, the provision of the Listing Order prevails, but only in relation to the advertising services set out in that particular Listing Order. No party hereto shall be liable to the other parties for any loss or damage due to delays or failure to perform resulting from an event of "Force Majeure," including without limitation: act of God, accident, war, fire, lockout, strike or labor dispute, acts or omissions of the other party, or any other event beyond the reasonable control and without the fault or negligence of such party. This Agreement shall be construed and enforced in accordance with the laws of the State of Texas without regard to principles of conflict of laws that would cause the laws of any other jurisdiction to apply. No modification, extension or waiver of or under this Agreement shall be valid unless made in writing and signed by the Web Site Representative or an authorized executive officer of the party sought to be charged therewith. BHI may, at any time, set-off any amounts due to the Builder against any amounts owed by the Builder to BHI, whether pursuant to this Agreement or otherwise. In case any one or more of the provisions of this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby, so long as the economic or legal

substance of the transactions contemplated hereby is not affected in any manner adverse to any party.

11.3 Notices, Payments, Statements, etc. Except as otherwise provided herein, any notice or other communication to be given hereunder shall be in writing and shall be (as elected by the party giving such notice): (i) personally delivered; (ii) transmitted by postage prepaid registered or certified mail, return receipt requested; (iii) transmitted by facsimile (with a confirmation of receipt); or (iv) deposited prepaid with a nationally recognized overnight courier service. Notices shall be deemed to have been duly given on the date of receipt (or if delivery is refused, the date of such refusal). All notices and other communications shall be addressed to the Builder's address indicated on the most recent Listing Order. All notices and other communications shall be addressed to BHI as follows:

Builder Homesite, Inc.
11900 Ranch Road 620 N
Austin, TX 78750-1345
Attn: Chief Financial Officer
Fax: (512) 371-9552