



THE EVIA TOWN COTTAGES

SALES AGREEMENT

BY THIS AGREEMENT, EVIA PARTNERS, LTD., a Texas limited partnership ("SELLER") and _____ ("BUYER", whether one or more) agree as follows:

1. **Property Purchased.** SELLER agrees to sell and BUYER agrees to buy the following described property, together with all improvements thereon or to be constructed thereon by SELLER (sometimes collectively referred to hereinafter as the "Property"), subject to the terms and conditions hereinafter set forth:

Lot ____, Block __, otherwise known as _____, of Evia Subdivision, Galveston County, Texas (the "Lot") together with a three (3) bedroom two and one half (2.5) bathroom townhome and two (2) car garage (the "Improvements").

2. **Purchase Price.** The price and terms are as follows:

Town Cottage Price..... \$ _____
Option Package.....\$ _____
Total Purchase Price..... \$ _____

3. **Earnest Money Deposit.** BUYER has deposited with South Land Title Company, 6710 Stewart Road, Galveston, Texas 77551, Attn: Marla Gibbons ("Escrow Agent") the sum of Two Thousand Five Hundred and No/100 Dollars (\$2,500.00) as non-refundable Earnest Money, which shall be applied to the Purchase Price at Closing or otherwise held or distributed as required herein. Neither the Earnest Money nor the deposit for Change Orders, described below, shall be returned to BUYER if BUYER fails to purchase the above described Property, even if BUYER's loan (the "Loan") is declined by the lender or the BUYER cannot meet the lender's conditions of Loan approval.

4. **Financing.** BUYER shall make application for the Loan, including payment of any required fees, within ten (10) business days of the date hereof. If BUYER fails to make an application for the Loan within the ten (10) business day time period, SELLER may, at SELLER's option, declare this Agreement to be void, in which event SELLER shall retain BUYER's Earnest Money. After BUYER makes application for the Loan, BUYER shall use its best efforts to furnish any and all information and verifications requested by the lender within forty-eight (48) hours of BUYER's receipt of such request, whether written or oral. BUYER's failure to provide the required information and verifications to the lender shall be a breach of this Agreement by BUYER. BUYER acknowledges that neither SELLER nor any employee, agent or representative of SELLER has made any representation of any kind regarding financing the purchase price or any portion thereof, including but not limited to, the availability of such financing, sources of such financing, availability of any specific terms of such financing or BUYER's ability to qualify for such financing.

5. **Changes and Modifications.** If BUYER desires changes or modifications to the plans and specifications for the Improvements and subject to the approval of the Change Order by SELLER, a Change Order shall be completed for the same, and executed by both SELLER and BUYER as an Amendment to this Agreement. The Change Order must be completed within 10 working days of this agreement. At such time, the purchase price will be adjusted accordingly and BUYER shall deposit with SELLER, as additional non-refundable Earnest Money, an amount equal to ___percent (___%) of the increased costs, or \$_____, for the requested changes or modifications, if any. All additional monies reflected in a Change Order shall be treated as additional non-refundable Earnest Money and shall be credited against the adjusted Purchase Price at Closing. As of the date hereof, BUYER has paid to Seller, \$_____ for changes or modifications with SELLER as described in the attached Change Orders (if any).

6. **Disclosures.** The Improvements contain or will contain insulation in exterior walls consisting of Polyurethane Foam Insulation and contain or will contain insulation in ceilings consisting of Polyurethane Foam insulation. The manufacturer of the insulation has represented to SELLER herein that the insulation in exterior walls to a thickness of 3.5 inches will yield an R-value of 13, and insulation in ceilings installed are sprayed on the rafters to a thickness of 6 inches will yield an R-value of 30. If,

in the course of construction, the insulation material specified is not reasonably available, SELLER will verify to the BUYER the type of substituted material, the revised thicknesses and the R-values of the substituted material used at the time it is determined.

7. **Property Owners' Associations.** As a purchaser of property in the residential community in which this property is located, Buyer will automatically become a member of The Evia Congress, a Texas nonprofit corporation, the homeowners' association which governs the entirety of the Evia Subdivision. Restrictive covenants governing the use and occupancy of the property and a dedicatory instrument governing the establishment, maintenance, and operation of this residential community and of the Evia Congress have been recorded in the real property records of Galveston County, Texas. Copies of the restrictive covenants and dedicatory instrument(s) may be obtained from Seller, upon request. The Evia Congress shall be governed by its Articles of Incorporation, Bylaws and Rules and Regulations, copies of which may also be obtained from Seller. As an owner of an Evia Town Cottage and a member of the Congress, you will be obligated to pay two monthly assessments, as described more particularly in the Declaration and in the Bylaws of the Congress. The total first-year general assessments for the Evia Congress are currently estimated to be \$504.00, but are subject to change, as set forth in the Declaration of Covenants, Conditions and Restrictions and Bylaws of the Congress. Owners of Evia Town Cottages will be assessed an additional monthly amount by the Evia Town Cottage Committee (the "Committee"), a subcommittee of the Congress comprised solely of the owners of Town Cottages within the subdivision (generally, these assessments will cover exterior/structural insurance for property, flood and windstorm coverage, landscape maintenance for the grounds surrounding the Town Cottages along with the irrigation system and for the establishment of a reserve-fund for future improvements and repairs such as possible roofing repair/replacement, power washing/exterior cleaning, or such other repairs as approved by the Committee). These Specific Area Assessments (described more fully in the Declaration and Bylaws of the Congress) are currently estimated to be \$289.00 per month, and are also subject to change. Both assessments shall be payable to the Committee annually, on January 31st. As with the General Assessment by the Congress, non-payment of the Specific Area Assessments levied by the Committee will result in a lien being placed against the property. By signing below, BUYER acknowledges receipt of a copy of the Declaration of Covenants, Conditions and Restrictions of at Evia, and acknowledges Buyer's obligation as an owner, to remit the two assessment payments described in this Section 7.

8. **Option Package:** SEE ATTACHED EXHIBIT "B" FOR DETAILED DESCRIPTION OF OPTION PACKAGES.

9. **Supplemental Provisions.**

10. **Closing.** Closing will take place on or before _____ . BUYER's failure to close within the thirty (30) working day period shall constitute a breach of this Agreement, at which time SELLER may (i) terminate this Agreement and retain the Earnest Money and any other sums paid to SELLER hereunder as liquidated damages and BUYER shall have no further rights and SELLER no further obligations hereunder; or (ii) SELLER may extend the Closing and reserve the right to increase the Purchase Price of the Property for each day beyond the Closing Period until Closing occurs, in an amount equal to SELLER'S costs of owning the Property including, but not limited to, the accrued amount of SELLER'S costs for interest, insurance, taxes, and utilities (the "Per Diem Amount"). The Per Diem Amount shall be One Hundred and No/100 Dollars (\$100.00) for each of the ten (10) days following the expiration of the Closing Period set forth in this Section 10. The Per Diem Amount shall increase to Two Hundred Fifty and No/100 Dollars (\$250.00) per day, should the Closing take place more than ten (10) days after the expiration of the Closing Period. The Per Diem amounts set forth in this Paragraph shall be payable at Closing and will be reflected as additional cash due from purchaser on the Title Company closing statement.

11. **Prorations.** Taxes, maintenance or homeowners association fees or assessments assessed against the Lot and Improvements for the year in which the Closing occurs shall be prorated as of the date of Closing. All closing costs not specifically designated herein as SELLER's obligation shall be paid by BUYER. BUYER shall be responsible for all costs and expenses associated with the Loan including, without limitation, all fees, points, expenses and prepaid items required by the lender. BUYER acknowledges that SELLER'S estimated date of substantial completion of the Improvements is only an estimate and the failure of SELLER to complete the Improvements by such date shall not constitute a default under this contract or subject SELLER to any penalties or charges.

12. **Title.** At Closing, SELLER shall furnish to BUYER, at BUYER'S expense, an owner's policy of title insurance in the amount of the Purchase Price, in the standard form, subject to the standard title exceptions, the easements, reservations, restrictions and covenants of record, and the reservation of all oil, gas and other minerals as heretofore reserved by SELLER or its predecessors in title. The title insurance policy provided is being procured concurrently with and as a part of the Closing of this transaction by and for the benefit of SELLER to insure its warranty of title to the Lot. SELLER shall furnish BUYER a General Warranty Deed to the Lot and Improvements, subject to the exceptions made in the title insurance policy.

13 **Miscellaneous.**

(a) Any home or model home shown to the BUYER is shown for illustrative purposes only and such display does not constitute an obligation on the part of the SELLER to deliver the Improvements herein purchased in exact accordance with any such home or model home exhibited. SELLER shall be obligated only to construct and deliver Improvements in substantial conformity with the plans, specifications and materials applicable for the particular Plan and Elevation selected by BUYER. SELLER shall complete the Improvements in accordance with its normal construction schedule. In the event SELLER is unable to furnish any specified material due to shortages, unavailability, acts of God, labor strike, war, civil riot, and other causes beyond the control of SELLER, SELLER shall be permitted to choose alternate material, or SELLER may cancel this Agreement and refund all deposits to BUYER. To the extent made available by SELLER, BUYER shall select colors and designs of some items at the time BUYER signs this Agreement. None of the furnishings or landscaping shown in any home or model home displayed to the BUYER are included in this Agreement unless the SELLER herein or hereafter specifically agrees in writing to deliver same. The Property may be located adjacent to or near high voltage electric lines, or may be serviced by a utility system which utilizes asbestos concrete piping, or may have fiberglass insulation installed into the Property.

(b) It is acknowledged and stipulated that this instrument constitutes the entire Agreement between the parties hereto and that all prior agreements and undertakings, both written and verbal, are merged herein, SELLER and BUYER are not bound by any prior representations, promises or assurances whatsoever or by whomsoever made other than those specifically set forth herein. This Agreement shall not be changed or modified except by agreement in writing executed by the BUYER and SELLER. No salesperson, employee, or agent of the SELLER has authority to modify the terms of this Agreement, or make any representation or agreement not contained in this Agreement, and anything to the contrary shall not be binding upon SELLER.

(c) Except as otherwise specified herein, it is agreed and stipulated that time is of the essence in the performance of all obligations of BUYER and SELLER hereunder for which a time of performance is specified.

(d) BUYER acknowledges that the Property is located adjacent to the Moody Gardens Golf Course on Galveston Island (the "Golf Course"), and expressly assumes all risks associated therewith. Further, SELLER has made no representations or warranties regarding damage that may occur to the Property as a result of its proximity to the Golf Course, including but not limited to damage resulting from errant golf balls, and SELLER assumes no responsibility for any damages or injuries resulting from the location of the Project or the Property, with respect to the Golf Course.

(e) IN ACCORDANCE WITH SECTION 61.025, TEXAS NATURAL RESOURCES CODE, THE FOLLOWING STATEMENT IS INCLUDED AS PART OF THE CONTRACT:

The real property described in this contract is located seaward of the Gulf Intracoastal Waterway to its southernmost point and then seaward of the longitudinal line also known as 97 degrees, 12', 19" which runs southerly to the international boundary from the intersection of the centerline of the Gulf Intracoastal Waterway and the Brownsville Ship Channel. If the property is in close proximity to a beach fronting the Gulf of Mexico, the purchaser is hereby advised that the public has acquired a right of use or easement to or over the area of any public beach by prescription, dedication, or presumption, or has retained a right by virtue of continuous right in the public since time immemorial, as recognized in law and custom. The extreme seaward boundary of natural vegetation that spreads continuously inland customarily marks the landward boundary of the public easement. If there is no clearly marked natural vegetation line, the landward boundary of the easement is as provided by Sections 61.016 and 61.017, Natural Resources Code. State law prohibits any obstruction, barrier, restraint, or interference with the use of the public easement, including the placement of structures seaward of the landward boundary of the easement.

STRUCTURES ERECTED SEAWARD OF THE VEGETATION LINE (OR OTHER APPLICABLE EASEMENT BOUNDARY) OR THAT BECOME SEAWARD OF THE VEGETATION LINE AS A RESULT OF NATURAL PROCESSES ARE SUBJECT TO A LAWSUIT BY THE STATE OF TEXAS TO REMOVE THE STRUCTURES. The purchaser is hereby notified that the purchaser should: (1) determine the rate of shoreline erosion in the vicinity of the real property; and (2) seek the advice of an attorney or other qualified person before executing this contract or instrument of conveyance as to the relevance of these statutes and facts to the value of the property the purchaser is hereby purchasing or contracting to purchase.

(f) 1. SUBDIVISION INFORMATION: "Subdivision Information" means: (i) the restrictions applying to the subdivision, (ii) the bylaws and rules of the Owners' Association, and (iii) a resale certificate, all of which were provided by the Owners' Association in compliance with Section 207.003 of the Texas Property Code no more than three months before the date of their delivery to Buyer (Check only one box):

A. Within 7 days after the effective date of the contract, Seller shall at Seller's expense deliver the Subdivision Information to Buyer. If Buyer does not receive the Subdivision Information, Buyer may terminate the contract at any time prior to closing and the earnest money will be refunded to Buyer. If Seller delivers the Subdivision Information, Buyer may terminate the contract for any reason within 7 days after Buyer receives the Subdivision Information or prior to closing, whichever first occurs, and the earnest money will be refunded to Buyer.

- B. Buyer has received and approved the Subdivision Information before signing the contract.
 - C. Buyer does not require delivery of the Subdivision Information. If Seller becomes aware of any material changes in the Subdivision Information, Seller shall immediately give notice to Buyer. Buyer may terminate the contract prior to closing by giving written notice to Seller if: (i) any of the Subdivision Information provided was not true; or (ii) any material adverse change in the Subdivision Information occurs prior to closing, and the earnest money will be refunded to Buyer.
2. **TRANSFER FEES:** Buyer shall pay any Owners' Association transfer fee not to exceed \$250.00, and Seller agrees to pay any excess.

NOTICE TO BUYER REGARDING REPAIRS BY THE OWNERS' ASSOCIATION: The Owners' Association may have the sole responsibility to make certain repairs to the Property. If you are concerned about the condition of any part of the Property which the Owners' Association is required to repair, you should not sign the contract unless you are satisfied that the Owners' Association will make the desired repairs.

14. **Broker's Fee.** All obligations of the parties to this Agreement for the payment of broker's fees and/or commissions are contained in separate written agreements.

15. **Casualty Loss.** If any part of the Property is damaged or destroyed by fire or other casualty during or after completion, SELLER shall have the option to either (a) terminate this Agreement whereupon the Earnest Money shall be returned to BUYER, or (b) repair, restore and complete reconstruction of such damaged Improvements whereupon the Closing shall be extended for a reasonable time in order to permit such repair, restoration and reconstruction.

16. **Default.** If BUYER fails to apply for the Loan with the time period set forth herein or fails to make every reasonable effort to obtain approval of the Loan as required herein or otherwise fails to comply with the terms and provisions of this Agreement, SELLER may terminate this Agreement and receive the Earnest Money as liquidated damages, and not as a penalty. If SELLER fails to comply with the provisions of this Agreement for any reason, unless a remedy is otherwise set forth herein, BUYER shall have as its sole remedy at law, equity or otherwise, the right to terminate this Agreement and receive the Earnest Money as liquidated damages and not as a penalty.

17. **Attorney's Fees.** Any signatory to this Agreement who is the prevailing party in any legal proceeding against any other signatory brought under or in relation to this Agreement or the transactions described herein shall be additionally entitled to recover court costs and reasonable attorneys' fees from the non-prevailing party.

18. **Acceptance of Property.** SELLER agrees that BUYER shall have the right to investigate and inspect the Property at any time, so long as such right is exercised in a manner which does not interfere with SELLER's construction of the Improvements, in order to enable BUYER to make its own determination with respect to the merchantability, quantity, quality, condition and suitability or fitness for any purpose of the Property, including the investigation for and discovery of patent and latent defects. BUYER hereby agrees that the acceptance of the deed from SELLER conveying the Property to BUYER will evidence BUYER's acknowledgment to SELLER that BUYER has relied on its own investigation of the physical condition of the Property in consummating this transaction and that the acceptance by BUYER of such deed constitutes a representation to SELLER that BUYER has made an independent inspection of the Property and is satisfied with the physical condition thereof. In this connection, prior to Closing and after the Property is substantially completed, SELLER shall send notification to BUYER requesting BUYER to inspect the Property with SELLER (the "Walkthrough"). BUYER shall complete the Walkthrough within ten (10) working days after notification by SELLER. Unless otherwise agreed to by SELLER, BUYER'S failure to complete the Walkthrough within the ten (10) working day period shall constitute a default under this Agreement and SELLER may (i) terminate this Agreement and retain the Earnest Money and any other sums paid to SELLER hereunder as liquidated damages for BUYER'S default, and BUYER shall have no further rights and SELLER no further obligations hereunder, or (ii) extend the time for BUYER to attend the Walkthrough, in which event the Per Diem Amounts described in Section 10, above, shall be assessed for each day beyond said ten (10) working day period until BUYER attends the Walkthrough. Upon completion of the Walkthrough, Seller will prepare and present to Buyer, a written list of those items identified by Buyer as requiring repair, adjustment or modification (the "Punch List"). Seller will present the Punch List to Buyer at the Walkthrough, and Buyer will be asked to verify all items contained therein and initial or sign the Punch List where indicated. Upon receipt of the initialed Punch List, Seller will commence work to repair those items identified during the Walk Through.

Furthermore, BUYER's initialing and acceptance of the Punch List shall constitute an affidavit of acceptable completion affirming to SELLER that BUYER has relied on its own investigation of the physical condition of the Property and that BUYER is satisfied with the physical condition thereof. In the event that BUYER fails or refuses to initial and return the Punch List to Seller after the Walk Through is completed, SELLER shall have the right to terminate this Agreement whereupon the Earnest Money shall be refunded to BUYER, less any amounts paid as additional Earnest Money for upgrades which shall be retained by SELLER, and thereafter the parties hereto shall have no further obligations or responsibilities hereunder.

19 **Modification.** This Agreement cannot be changed orally, and no agreement shall be effective to waive, change, modify or discharge it in whole or in part unless such agreement is in writing and is signed by the parties against whom enforcement of any waiver, change, modification or discharge is sought.

20 **Right to Terminate.** In the event that any dispute shall arise between SELLER and BUYER prior to Closing and funding concerning construction of the Improvements or any other matter relating to the interpretation or implementation of this Agreement, SELLER shall have the right, upon written notice to BUYER, to terminate this Agreement. In the event of termination of this Agreement by SELLER, SELLER shall return all Earnest Money to BUYER and, in addition, pay to BUYER an amount equal to the cost of any upgrades previously paid for by BUYER, plus the sum of \$250.00 as liquidated damages of BUYER, which the parties agree to be a reasonable estimate of the actual damages incurred by the BUYER incident to the cancellation of this Agreement (it being difficult if not impossible to ascertain those damages). Upon such termination of this Agreement by SELLER and payment of the aforesaid amounts, neither BUYER nor SELLER shall have any further rights or obligations under this Agreement or otherwise in relation to any representation or warranty related to the matters described in this Agreement.

21 **Arbitration.** All allegations, claims, disputes and other matters in controversy between SELLER and BUYER arising out of or relating to this Agreement, the breach hereof, the property, any work or Improvements performed hereunder, any warranty or representation related to the matters described in this Agreement or any work or Improvements performed hereunder, any alleged defects relating to the property and/or any claims brought under the Texas Deceptive Trade Practices Act or the Residential Construction Liability Act, shall be decided by arbitration in accordance with the construction industry arbitration rules promulgated by the American Arbitration Association ("AAA"), as in effect on the date of any demand for arbitration hereunder. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such allegation, dispute, claim or controversy would be barred by any applicable statute of limitations or similar statute. The foregoing agreement to arbitrate shall be enforceable under the prevailing Texas Arbitration Law, and the costs of any such arbitration are to be shared equally between SELLER and BUYER. The award rendered by the arbitrator shall be final and binding upon all parties and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

22 **Warranties.** SELLER warrants construction of the Improvements and fixtures located on or made a part of the property against structural defects, defective materials and workmanship for a period of one (1) year after the date of closing, but not thereafter. SELLER's warranty does not include cosmetic appearances. EXCEPT FOR THE FOREGOING EXPRESS WARRANTY, SELLER GRANTS NO OTHER EXPRESS WARRANTIES WITH RESPECT TO THE PROPERTY OR ANY IMPROVEMENTS SITUATED OR CONSTRUCTED THEREON, INCLUDING BUT NOT LIMITED TO FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY AND BUYER WAIVES AND DISCLAIMS, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ANY IMPLIED WARRANTIES. WITH RESPECT TO ALL PERSONAL PROPERTY AND EQUIPMENT INSTALLED IN THE PROPERTY, SELLER, NOT BEING THE MANUFACTURER, SUPPLIER, OR DEALER IN SUCH PERSONAL PROPERTY AND EQUIPMENT, MAKES NO WARRANTY, EXPRESS OR IMPLIED, TO BUYER AS TO FITNESS, MERCHANTABILITY, DESIGN, PERFORMANCE OR ANY OTHER ASPECT OF THE PERSONAL PROPERTY OR EQUIPMENT OR ITS MATERIAL OR WORKMANSHIP. With respect to such personal property and equipment, SELLER hereby agrees to assign to BUYER at Closing, to the extent assignable, all manufacturers' and/or suppliers' warranties with respect to the same and BUYER agrees to look solely to each manufacturer and/or supplier for Warranty claims on such products.

23 **Other Contractors.** BUYER will not contract with any person other than SELLER (a "Third Party") for any work to be performed at or material to be furnished to the Property prior to Closing without SELLER's prior written consent. SELLER may condition its consent on such Third Party furnishing evidence of insurance and payment acceptable to SELLER. In the event BUYER breaches its covenants in this Paragraph, SELLER may terminate this Agreement upon notice to BUYER and receive the Earnest Money and all other amounts previously paid to SELLER as liquidated damages. BUYER acknowledges that any warranty of SELLER or provided to BUYER by a third party pursuant to this Agreement will not cover any work performed or material supplied (or affected by such work or material) by any Third Party.

THIS CONTRACT IS SUBJECT TO CHAPTER 27 OF THE TEXAS PROPERTY CODE. THE PROVISIONS OF THAT CHAPTER MAY AFFECT YOUR RIGHT TO RECOVER DAMAGES ARISING FROM THE PERFORMANCE OF THIS AGREEMENT. IF YOU HAVE A COMPLAINT CONCERNING A CONSTRUCTION DEFECT ARISING FROM THE PERFORMANCE OF THIS AGREEMENT AND THAT DEFECT HAS NOT BEEN CORRECTED THROUGH NORMAL WARRANTY SERVICE, YOU MUST PROVIDE THE NOTICE REQUIRED BY CHAPTER 27 OF THE TEXAS PROPERTY CODE TO THE CONTRACTOR BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, NOT LATER THAN THE 60TH DAY BEFORE THE DATE YOU FILE SUIT TO RECOVER DAMAGES IN A COURT OF LAW OR INITIATE ARBITRATION. THE NOTICE MUST REFER TO CHAPTER 27 OF THE TEXAS PROPERTY CODE AND MUST DESCRIBE THE CONSTRUCTION DEFECT. IF REQUESTED BY THE CONTRACTOR, YOU MUST PROVIDE THE CONTRACTOR AN OPPORTUNITY TO INSPECT AND CURE THE DEFECT AS PROVIDED BY SECTION 27.004 OF THE TEXAS PROPERTY CODE.

By his/her signature below, BUYER acknowledges that BUYER has read and understands each and every part of this Agreement.

EXECUTED in multiple copies effective the _____ day of _____, 20____.

BUYER:

BUYER:

Buyer's Mailing Address: _____

Phone: _____

Email: _____

SELLER:

EVIA PARTNERS, LTD., a Texas limited partnership

By: Sullivan Interests, Inc., a Texas corporation,
Its: General Partner

By: _____

Title: _____

SALES REPRESENTATIVE:

ATTACHED EXHIBITS (If applicable):

**Change Order
Option Packages
Broker's Fee Addendum**