

**EARNEST MONEY DISPUTE
ARBITRATION AND SETTLEMENT AGREEMENT**

THIS AGREEMENT made on the ____ day of _____, 2012 by and between _____
_____ (hereinafter referred to as "Seller"), _____
_____ (hereinafter referred to as "Buyer"), and EMD DISPUTE
SOLUTIONS, LLC, (hereinafter referred to as "Arbitrator")

RECITALS

A. Seller and Buyer entered into a Purchase and Sale Agreement (PSA) for the property (the "Property") municipally numbered and known as _____. A full and complete copy of the PSA is attached hereto and made a part hereof as "Exhibit A".

B. Buyer deposited with _____ whose address is _____ (hereinafter referred to as "Escrow Agent") the sum of \$_____ as earnest money (the "EMD") in connection with the proposed purchase of the Property.

C. The transaction contemplated by the PSA did not occur and an unresolved dispute has arisen between Seller and Buyer as to who is entitled to the EMD.

D. Seller and Buyer have selected Arbitrator to settle and resolve the EMD dispute by binding Arbitration and Arbitrator has agreed to do so upon the following terms and conditions.

NOW, THEREFORE, in consideration of the premises the parties do hereby agree as follows:

1. **Verification of Contract Terms.** Buyer and Seller hereby agree and state that the PSA attached hereto as Exhibit A represents the entire agreement between the parties including all addenda thereto.

2. **Transfer of Earnest Money Deposit.** Buyer and Seller, and their respective real estate brokers, if any, shall execute simultaneously with the execution of this Agreement, the Authorization For Transfer of Earnest Money Deposit form attached hereto as "Exhibit B", which agreement authorizes the transfer of the EMD from Escrow Agent to McNeese Title, LLC, whose address is 36468 Emerald Coast Parkway, Destin, FL 32541 ("New Escrow Agent"). New Escrow Agent shall hold the EMD in its escrow account subject to the terms of this agreement.

3. **Arbitration and Settlement.** Simultaneously with the execution of this Agreement Seller and Buyer shall also furnish to Arbitrator a written statement setting forth the nature of the dispute and the reason(s) why the EMD should be delivered to the party submitting the

statement. Upon receipt by Arbitrator of all of the above referenced documents Arbitrator shall schedule a telephone or video conference arbitration hearing to be conducted by its President, Richard S. McNeese, at a time mutually agreeable to all parties. The parties agree that the Arbitration proceeding is not governed by the provisions of Chapter 682, Florida Statutes (Florida Arbitration Code) or any other statutory procedure, but rather upon principles of common law.

Arbitrator shall hear and determine the controversy based upon the PSA, applicable law, the evidence submitted to Arbitrator at and before the hearing, and shall determine the relevancy and admissibility of the evidence. Arbitrator shall allow a reasonable amount of time for one representative for each party to set forth that party's position and for each representative of a party to ask questions or cross-examine the other party's representative. During said hearing the parties agree that Arbitrator may also ask questions of the representative of each party and each such representative shall agree to answer responsively. Upon the completion of the presentation of the evidence, Arbitrator shall declare the hearing closed and shall allow no further proof to be presented. At the conclusion of the hearing Arbitrator may enter a verbal decision ("Award") followed by a written Award sent to each of the parties, or may defer the decision for further review by Arbitrator not exceeding ten working days, at which time Arbitrator shall furnish the parties the written Award. Once the Award has been made by Arbitrator, Arbitrator shall direct New Escrow Agent to disburse the EMD funds remaining in its escrow account to the party entitled to same pursuant to the Award.

4. **Binding Effect of Arbitrator's Award—Complete Settlement and Release.** Seller and Buyer agree that the Award is final, binding, and conclusive upon each party and is not subject to appeal or review by any judicial or administrative process. In consideration of the Award, the parties mutually waive, release and discharge each other from all claims or causes of action, whether known or unknown, that may have accrued to the date of the Award, including all claims or causes of action arising from the transactions or occurrences set forth in this Agreement and/or presented at the arbitration hearing. All claims, rights and remedies of the parties against each other are merged into the Arbitrator's Award such that only the Award survives the settlement of this action.

5. **Arbitrator's Fee.** The Arbitrator's fee is \$1250.00 which and Seller and Buyer agree shall be deducted from the EMD and paid by New Escrow Agent upon receipt thereof to Arbitrator. The fee shall not be refunded for any reason except for Arbitrator's failure or refusal to make an Arbitration Award as required by this Agreement. The Arbitrator's fee shall be deemed to be earned even if Seller and Buyer agree between themselves to cancel the Arbitration or settle the dispute between them at any time prior to the hearing or entry of the Award.

6. **Release of Arbitrator and New Escrow Agent.** It is the nature of an arbitration proceeding that a ruling be made in favor of one party over the other. In consideration of

Arbitrator's agreement to act as Arbitrator hereunder and New Escrow Agent's agreement to act as such new escrow agent, Seller and Buyer agree (so long as Arbitrator and New Escrow Agent perform as provided in this Agreement) that Arbitrator, its officers and employees, Richard S. McNeese, individually, and McNeese Title, LLC (collectively "Releasees") shall not be liable to either of them for any act in connection with the services being performed, the Award made by Arbitrator, and the transfer of the EMD by New Escrow Agent in accordance with the Award. Seller and Buyer covenant for themselves and for their respective heirs, legal representatives, and assigns to refrain from making any such claim or demand, or to commence, cause, or permit to be prosecuted, any action in law or suit in equity against Releasees, on account of any such claim; and further agree to indemnify, save and hold Releasees harmless for all resulting costs incurred by Releasees, or any of them, in defending any such claim or demand, including Releasees' attorney's fees.

7. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original but all of which shall together constitute one and the same instrument.

8. **Governing Law; Venue.** The terms and conditions of this Contract shall be construed and controlled in accordance with the laws of Florida. Venue for any legal proceeding shall be in Okaloosa County, Florida.

IN WITNESS WHEREOF, the parties have executed this agreement as of the date first above written.

SELLER:

Print Name: _____

Print Name: _____

BUYER:

Print Name: _____

Print Name: _____

ARBITRATOR:

EMD DISPUTE SOLUTIONS, LLC

By: _____

Richard S. McNeese, President