

**THIS AGREEMENT IS SUBJECT TO MANDATORY ARBITRATION PURSUANT TO THE FEDERAL ARBITRATION ACT OR, IF THE FEDERAL ARBITRATION ACT IS INAPPLICABLE, THE UNIFORM ARBITRATION ACT, SECTION 15-48-10, ET SEQ., CODE OF LAWS OF SOUTH CAROLINA 1976 AS AMENDED.**

**THE POINTE  
REAL ESTATE PURCHASE AGREEMENT**

THIS REAL ESTATE PURCHASE AGREEMENT (this "Agreement") made by and between The Pointe LLC, a South Carolina limited liability company ("Seller"), and the Purchaser(s) identified in Part I hereof (collectively if more than one "Purchaser").

**PART I – IDENTIFICATIONS**

**A. Purchaser.**

NAME: _____	NAME: _____
SS#: _____	SS#: _____
ADDRESS: _____	ADDRESS: _____
_____	_____
CITY: _____	CITY: _____
STATE: _____ ZIP: _____	STATE: _____ ZIP: _____
HOME PHONE: _____	HOME PHONE: _____
BUSINESS PHONE: _____	BUSINESS PHONE: _____
FAX #: _____	FAX: _____
MOBILE PHONE #: _____	MOBILE PHONE #: _____
E-MAIL ADDRESS: _____	E-MAIL ADDRESS: _____

**B. The Villa and Purchase Price.**

Villa Number: \_\_\_\_\_ (the "Villa")  
Address of Villa: \_\_\_\_\_ Purchase Price: \$ \_\_\_\_\_

- (a) Payment of Purchase Price. Purchaser will pay the Purchase Price set forth above in installments as follows:
- (i) Earnest Money Deposit. Purchaser agrees to pay an "Earnest Money Deposit" in the amount of 15% of the Purchase Price in two installments:
  - (ii) Earnest Money already on deposit with Drake Development Company USA (if applicable) \$ \_\_\_\_\_
  - (iii) Earnest Money due with delivery to Seller of this Agreement. \$ \_\_\_\_\_
  - (iv) Balance at Closing. The balance of the Purchase Price (not including all of Purchaser's Closing costs, prepaids, and escrow deposits required hereunder) in cash or certified funds. \$ \_\_\_\_\_
- Total Purchase Price** \$ \_\_\_\_\_

**AS SET FORTH IN PART B, THE EARNEST MONEY DEPOSIT MAY BE USED BY SELLER TO PAY COSTS OF ACQUISITION, DEVELOPMENT AND CONSTRUCTION OF THE PROJECT.**

**C. Definitions:**

- (a) "Association" means the The Pointe Owners Association for the Project, a non-profit corporation, which will be established pursuant to the Master Deed.
- (b) "Construction Lender" means the bank or other lender which will make the construction loan for the construction of The Pointe.
- (c) "Effective Date" means the date on which Seller or Purchaser, whichever is later, dates its execution of this Agreement.
- (d) "Escrow Agent" means Drake Development Seller USA. Purchaser acknowledges that Escrow Agent is affiliated with Seller.
- (e) "Master Deed" means the Master Deed that Seller will record to establish the condominium regime for The Pointe. If this agreement is for purchase of a villa in an additional phase of the Project, "Master Deed" means the Master Deed for phase 1 of the Project and all amendments thereto, including the amendment which will add the Villa to the Project.
- (f) "Plans" means the preliminary plans and specifications for the Project, prepared by Seller's architect and available at Seller's office. The Plans are subject to modification as set forth in Part II.
- (g) "Project" means the The Pointe condominium project to be constructed by Seller, including the Villa.
- (h) "Project" means the horizontal property Project for the Project, which will be established by the recording of the Master Deed.
- (i) "Seller's Designated Lender" means a lender that Seller may identify as willing to make loans to qualifying purchasers of Villas. Purchaser is not required to obtain financing from Seller's Designated Lender. Seller's Designated Lender is not required to provide financing to Purchaser if Purchaser does not qualify.

**D. Real Estate Commission.** Purchaser warrants and represents that, other than Drake Development Company USA, Purchaser has not dealt with any real estate agent who may be entitled to claim a real estate commission in this transaction, other than the following (if left blank, there are none):

Company: \_\_\_\_\_

Agent: \_\_\_\_\_

**THIS AGREEMENT IS NOT INTENDED AS AN OFFER TO SELL NOR A SOLICITATION OF OFFERS TO BUY REAL ESTATE IN SOUTH CAROLINA BY RESIDENTS OF CONNECTICUT, HAWAII, IDAHO, ILLINOIS, NEW YORK, NEW JERSEY, NORTH CAROLINA, OREGON OR ANY OTHER JURISDICTION WHERE PROHIBITED BY LAW OR WHERE REGISTRATION OF THE PROJECT OR INCORPORATION OF ADDITIONAL CONTRACT PROVISIONS WOULD BE REQUIRED.**

## PART II – TERMS & CONDITIONS

The rights and obligations of Seller and Purchaser are determined solely by reference to the terms and conditions set forth in this Part II.

1. **The Purchase Price.** Purchaser will pay to Seller at Closing the Purchase Price of the Villa set forth in Paragraph B of Part I of this Agreement, plus Purchaser's closing costs.

1.1 **Earnest Money Deposit.** Escrow Agent will receive the Earnest Money Deposit and any additional deposit to be made, as set forth in Paragraph B of Part I of this Agreement, and will deposit said sums in its escrow account, to be held by the Escrow Agent as an earnest money deposit and disbursed in accordance with this Part II. All interest earned on the Earnest Money Deposit shall be paid to Seller and not credited against the Purchase Price. **SELLER RESERVES THE RIGHT TO UTILIZE THE EARNEST MONEY DEPOSIT OF PURCHASER FOR PAYMENT OF COSTS RELATED DIRECTLY TO THE ACQUISITION, DEVELOPMENT AND CONSTRUCTION OF THE PROJECT; PROVIDED, HOWEVER, THAT NO EARNEST MONEY DEPOSIT SHALL BE UTILIZED UNTIL THE CONSTRUCTION LOAN FOR THE PROJECT HAS BEEN CLOSED AND ALL MATERIAL CONDITIONS PRECEDENT TO FUNDING UNDER SUCH LOAN (INCLUDING ISSUANCE OF A BUILDING PERMIT) HAVE BEEN SATISFIED. AFTER CLOSING OF THE CONSTRUCTION LOAN, ESCROW AGENT SHALL DELIVER THE EARNEST MONEY DEPOSIT TO SELLER FOR USE AS SET FORTH ABOVE.** Escrow Agent shall be entitled to rely upon the building permit and other reasonable evidence as authority to transfer the Earnest Money Deposit to Seller for the purposes stated above. At closing, the principal amount of the Earnest Money Deposit shall be credited toward the purchase price of the Villa. Purchaser acknowledges that Purchaser's interest in the Earnest Money Deposit shall be subordinate to the Construction Lender's construction loan and to the mortgage granted to the Construction Lender in connection therewith. Further, Seller may, subject to the rights of Purchaser, assign its interest in the Earnest Money Deposit to the Construction Lender.

1.2 **Payments at Closing.** The Purchase Price, together with all of Purchaser's Closing costs, prepaids, and closing escrow deposits required hereunder, less the Earnest Money Deposit, will be paid in cash or by certified, collected funds at the Closing.

2. **Financing.**

2.1 **Purchaser's Responsibility.** Purchaser will be responsible for obtaining financing for the purchase of the Villa should it so choose. By suggesting Seller's Designated Lender or some other source of financing and/or providing the application for such financing, Seller will not be deemed to have assumed any responsibility for obtaining such financing for Purchaser or to represent or warrant that such financing will be available to Purchaser.

2.2 **Financing.** Purchaser affirms that financing is not a contingency of this Agreement. Purchaser acknowledges, however, that Seller is required to provide credit verification of all Villa purchasers to the Construction Lender. **Purchaser shall provide the financial information requested by Seller and/or the Construction Lender WITHIN 15 DAYS of the date Purchaser executes this Agreement.** Purchaser acknowledges that Seller may elect not to execute this Agreement until and unless such financial information is received by Seller and approved by the Construction Lender. If Purchaser does not provide the financial information within the required time or if the Construction Lender does not approve Purchaser's financial information, Seller may elect not to execute this Agreement, and will so notify Purchaser. In the event Seller does execute this Agreement and thereafter Purchaser does not provide Purchaser's financial information within the required time or if the Construction Lender does not approve Purchaser's financial information, Seller may elect to terminate this Agreement. Acceptance of Purchaser's financial information by Seller or the Construction Lender does not guarantee that financing will be available to Purchaser. **Purchaser understands that FNMA approval is not being sought and will not be obtained for the Project and that loans for the purchase of the Villas are not qualified for purchase by FNMA.**

2.3 Purchaser shall indicate by initialing below whether or not Purchaser intends to apply for financing referred to above (check one of the following):

- I will pay CASH at Closing and will not require financing.
- I am undecided at this time.
- I DO intend to apply for mortgage financing provided by Seller's Designated Lender.
- I DO NOT intend to apply to Seller's Designated Lender for such mortgage financing, but I will apply for other financing.

Purchaser intends to use the Villa as (check one of the following):

**primary residence**                       **secondary residence**                       **other purpose**

3. **Master Deed.** Seller will provide Purchaser at Closing and transfer of title with a copy of the executed and recorded Master Deed of the Project and of the By-Laws for the Association. A preliminary draft of the Master Deed is available for review on the internet at [www.drakedevelopment.com](http://www.drakedevelopment.com).

4. **Title.** In consideration of the conditions and covenants contained in this Agreement, Seller agrees to convey to Purchaser a marketable title in fee simple to the Villa by general warranty deed subject only to the following (the "Title Matters"):

- 4.1 All rights, covenants, conditions, restrictions and easements of record;
- 4.2 Licenses and easements for utilities serving the Villa;
- 4.3 Interests created by or limitations on use imposed by the Federal Coastal Zone Management Act or other applicable federal law or by S.C. Code Section 48-39-200, as amended, or other applicable state law, or any regulations promulgated pursuant to said state or federal laws;
- 4.4 Taxes and assessments not yet due and payable;
- 4.5 Applicable state, county and municipal laws, ordinances, regulations, building codes and development standards;
- 4.6 The Master Deed and the Association By-Laws, as amended, to be recorded on or before the Closing in the office of the Register of Deeds for the County in which the Project is located (the "ROD Office");

If a title insurance company which is a member of the American Land Title Association will issue a binder to issue an owner's title insurance policy at Purchaser's expense insuring the title to the Villa in an amount equal to the Purchase Price, which owner's title insurance policy will have as exceptions only standard exceptions and exceptions to the Title Matters, Seller will be deemed to be able to convey acceptable marketable title to Purchaser. If, at the Closing, Seller cannot deliver a general warranty deed to the Villa subject only to said matters, Seller will have the right to extend the Closing for an additional 90 days to comply with the terms of the title policy; provided that closing must occur in any event by the Outside Closing Date.

5. **Closing Costs.**

5.1 Seller will pay for the preparation of the deed and the transfer tax required for recording of the deed. Seller will pay the fees of the Designated Closing Agent (as defined below). Purchaser will pay for any and all other Closing costs, including but not limited to recording fees, prepaid items and title insurance premiums. Purchaser will also pay at the Closing: assessments and working capital contributions as are due and payable under the Master Deed and the Association By-Laws and ad valorem taxes for the pro rata portion of the calendar year during which Purchaser will hold title to the Villa. If the Villa has not been established as a separate taxable unit at the County's property tax office at the date of Closing, the property tax for the year of Closing will be billed to Seller by the County at year end. Accordingly, at Closing the settlement statement will include a credit to Seller and against Purchaser for the estimated annual property tax for the Project, divided by the number of units in the Project, and prorated as of the date of Closing. Seller will pay the property tax bill when due. Beginning the year after Closing, Purchaser's Villa will be separately taxed and Purchaser will be responsible for paying the property tax. If the Villa is already separately taxed at the date of Closing, the proration credit shall be in Purchaser's favor at the Closing, based on the estimated property tax on the Villa, and Purchaser will pay the property tax bill when due.

5.2 The parties acknowledge that Seller and Purchaser will benefit from having one attorney, who is familiar with title to the Property and the closing procedures for the Project, to handle the Closing. Accordingly, Seller will designate a law firm (the "Designated Closing Agent") that will conduct the Closing. Seller will pay the legal fees charged by the Designated Closing Agent for the Closing. Purchaser acknowledges and agrees that the Designated Closing Agent also may represent Seller with respect to the Project, may represent Seller in preparation of closing documents, and may represent Seller in any subsequent dispute with Purchaser concerning the Villa or the Project not related to the closing services provided by the Designated Closing Agent to Purchaser. Seller will not pay for title insurance, loan fees and other closing costs, which will be the responsibility of Purchaser. Purchaser may at its option and its expense retain an additional attorney to advise Purchaser with respect to the Closing, provided that such attorney does not delay the Closing.

6. **Closing.**

6.1 The Closing shall be conducted at a time, place and date selected by Seller and Seller shall give Purchaser not less than fifteen (15) days prior written notice thereof. Seller may, after giving such notice, extend the Closing date for a reasonable time if required by circumstances, subject to the Outside Closing Date. Purchaser must inspect the Villa with Seller and/or the Contractor for the Project, at a time designated by Seller, prior to Closing, and immediately notify Seller and Contractor of any items which are not completed in a workmanlike manner so that arrangements can be made with the Contractor to correct same. Since Seller is providing the one (1) year Limited Warranty mentioned below, the failure of the Contractor to correct these items prior to the Closing date shall not delay the Closing, so long as the Certificate of Occupancy has been issued for the Villa by the governmental authority having jurisdiction, or, if none, by the Project architect. Acceptance at the Closing by Purchaser of the Deed from Seller shall constitute full performance by Seller in accordance with the Agreement, except for items listed in the Inspection Report (defined below) and items correctable under the terms of the one (1) year Limited Warranty. The terms and conditions set out in the attached Limited Warranty, Limitation of Remedies & Disclaimer and Exclusion of All Other Warranties (the "Limited Warranty") are incorporated herein by reference. Seller and Purchaser will execute the Limited Warranty at Closing and the terms thereof, at Seller's option, shall be included in the deed from Seller to Purchaser. The terms of the Limited Warranty shall be binding on the heirs, successors, and assigns of the grantee and run with the title to the Villa.

6.2 Inspection Procedure for the Villa:

- (a) Inspection shall be made by Purchaser (or at Purchaser's option, an independent home inspector designated by Purchaser) at a time and date designated by Seller and in the company of a representative of Seller and/or the Contractor. Items to be corrected as mutually agreed will be listed in an inspection report ("Inspection Report") which is signed by Purchaser and Seller's representative and/or the Contractor.
- (b) Seller shall make every reasonable effort to correct all of the items listed in the Inspection Report.
- (c) No corrections will be made for defects not recorded on the Inspection Report or for defects first claimed or discovered after the expiration of the Limited Warranty period. Correction of defects will be made within a reasonable time after Seller is notified of such defects in writing during the Limited Warranty period.

Seller shall have the right to charge Purchaser interest on the Purchase Price at a rate equal to the highest rate Seller is paying the Construction Lender plus two percentage points ("Delay Interest Rate") per annum for each day Purchaser delays his closing or pursue all other remedies available to Seller under law or equity for said delays. In addition, prorations for all assessments and taxes shall be calculated from the originally scheduled Closing date as set by Seller pursuant to this Agreement, even if Purchaser delays Closing and closes at a later date. The acceptance of a deed by Purchaser will be deemed to be a full performance and discharge of every agreement and obligation on the part of Seller, and Purchaser will not be entitled to possession of the Villa until conclusion of Closing.

7. **Outside Closing Date.** Seller agrees to complete construction of the Villa and proceed to Closing within two (2) years of the Effective Date (the "Outside Closing Date"), provided that the Outside Closing Date shall be extended to the extent delayed by labor dispute, fire or other casualty, government or utility agency moratorium, war, act of terrorism, civil unrest or other event beyond Seller's control.

8. **Provisions Concerning Construction Lender.** Purchaser acknowledges that all actions of the Construction Lender, including review of Purchaser's financial ability to close, are solely for the benefit of Construction Lender, and not for the benefit of Seller or Purchaser. Purchaser acknowledges that all of Seller's right title and interest in this agreement will be assigned to Construction Lender as further security for the construction loan for the Project.

9. **Defaults.**

9.1 **Default by Purchaser.** In the event of a default in the performance of any obligation of Purchaser pursuant to this Agreement, Seller will have the right to specifically enforce this Agreement according to its terms and/or to pursue any and all other remedies available to Seller at law or in equity, or Seller may, at Seller's election, elect to terminate this Agreement and to be released from any further obligations to Purchaser pursuant to this Agreement, and in such event will be entitled to retain the Earnest Money Deposit and all other deposit(s) as agreed liquidated damages, it being the intention and agreement of the Parties that the amount of such Earnest Money Deposit and all other deposit(s) will act as a fair measure of compensation for actual damages incurred by Seller as a result of Purchaser's default.

9.2 **Default by Seller.** If Seller defaults in the performance of any of Seller's obligations as set forth in this Agreement and such default (other than Seller's failure to complete by the Outside Closing Date is not cured within 90 days after written notice of default is given by Purchaser to Seller, Purchaser will be entitled to, at its election, either

- (a) terminate this Agreement and receive from Seller an amount equal to Purchaser's Earnest Money Deposit; provided, however, that in the event of the nonmaterial breach of any term or condition of this Agreement, Purchaser's remedies will not include termination of this Agreement; or
- (b) seek specific performance by Seller of this Agreement, but not damages.

10. **Villa Construction Plans.**

10.1 The Villa shall be constructed to conform substantially with the Plans, subject to the following provisions. Purchaser acknowledges that in the course of construction of the Villa, certain changes, deviations or omissions may be necessary because of the requirements of governmental authorities having jurisdiction over the Villa, requests of the Construction Lender or particular conditions of the job. Further, Purchaser acknowledges that in the course of construction of the Villa certain changes, deviations or omissions may result in variation of the dimensions of the Villa and the rooms, changes in size, shape and location of doors and windows and of the common elements of the Project.

10.2 Based upon the foregoing, Purchaser hereby authorizes Seller to undertake, without the need for specific authorization, any changes, deviations or omissions required by the governmental authorities, the Construction Lender, or particular conditions of the job and to make changes and substitutions of materials of equal or greater quality than those shown in any model or specified on the Plans. Purchaser further certifies that it has not relied upon the accuracy of the representations of Seller with respect to the Plans which are on file with any governmental authority or available at Seller's office with respect to the square footage of the Villa.

10.3 Purchaser understands that certain items and improvements to the Villa may vary and differ from samples shown on the Plans or to Purchaser. In the event that materials or items to be used in the construction of the Villa or the Project become unavailable, Seller reserves the right to substitute substantially equivalent materials and items for the unavailable materials and items. Certain items in model Villas are for display only, and unless such items are shown on the Plans or listed in Seller's Standard Selections for the Villas per Paragraph 16 of this Agreement, such display items are not included in this Agreement.

10.4 A preliminary draft of the Master Deed will be posted on Seller's website and made available at Seller's offices. The preliminary draft of the Master Deed and the Bylaws may be changed during construction by Seller without notice to Purchaser and such changes may be posted on Seller's website from time to time. Such changes shall neither affect the validity or enforceability of this Agreement nor entitle Purchaser to any reduction of the Purchase Price or to terminate the Agreement.

11. **Limited Warranty.** AT CLOSING, SELLER WILL DELIVER THE ATTACHED CERTIFICATE OF "LIMITED WARRANTY, LIMITATION OR REMEDIES, DISCLAIMER AND EXCLUSION OF ALL OTHER WARRANTIES" FORM (HEREINAFTER THE "LIMITED WARRANTY"). THE LIABILITY OF SELLER IS EXPRESSLY LIMITED ONLY TO THE ONE-YEAR LIMITED WARRANTY CONTAINED THEREIN. SELLER MAKES NO WARRANTY, EXPRESSED OR IMPLIED, FOR THE VILLA OR ANY FURNISHINGS, FURNITURE OR EQUIPMENT PURCHASED ALONG WITH THE VILLA (INCLUDING, BUT NOT LIMITED TO, WARRANTY OF HABITABILITY OR FITNESS FOR PURPOSE, WARRANTY OF MERCHANTABILITY, SOUNDNESS, QUALITY, WORKMANLIKE SERVICE, VALUE, SUITABILITY, OR FITNESS), OTHER THAN THE EXPRESS WARRANTY OF TITLE CONTAINED HEREIN.

12. **Insulation.** Common party walls between Villas will contain a blanket of sound insulation with a thickness of 3.5 inches. The outside of the exterior walls will be a 10 inch poured concrete with an R-Value of 1. Attached to the exterior of the exterior walls is 1/2 inch Power Wall Finish with an R-Value of .5. The interior side of the exterior walls includes 2.5 inches batt insulation with an R-Value of 11 as well as a 5/8 Gypsum Board with an R Value of .5. The total R-Value of the exterior wall system according to the manufacturer will equal 13. The roof area will be insulated with Iso-Board to a varying thickness, which according to the manufacturer will yield an average R-Value of 19. Purchaser understands and acknowledges the data on insulation, thickness and R values may vary depending on local conditions and vagaries in construction including, but not necessarily limited to, such items as window openings in walls (which cannot carry the same R value as the rest of the wall, or plumbing or other structures within walls which displace insulation thickness, etc.). Purchaser acknowledges that information regarding R values is based solely on information given to Seller by the appropriate manufacturers based on the thickness listed. Purchaser agrees that Seller is not responsible for any manufacturer's errors.

13. **Interval Ownership Restrictions.** Purchaser acknowledges that the condominium documentation will contain restrictions prohibiting individual purchasers from enacting a timesharing or fractional interest plan for any Villa in the Project, as those terms are defined under the South Carolina Vacation Time Sharing Act.

14. **Workmanship Standard.** Subject to the terms and limitations set forth in the Limited Warranty, Purchaser agrees that the standard for workmanship and quality for the construction for all improvements subject to this Agreement, shall be those standards contained in the Residential Construction Performance Guidelines Homeowner Reference (2000) published by the National Association of Home Builders.

15. **The Pointe Horizontal Property Regime.** The Villa will be conveyed to Purchaser subject to the Master Deed and the Association Bylaws. The Master Deed provides or will provide, in part, that every owner of property within the Project will be liable for assessments, both regular and special, for the purpose of insuring, maintaining, repairing and replacing the common elements of the Project, commencing with the date Seller conveys title to the Villa. Seller reserves the right to modify the Master Deed in any manner whatsoever prior to Closing; after Closing, any amendments to the Master Deed will be undertaken as provided in the Master Deed.

16. **Selections.** The Villas include the standard fixtures, appliances and finishes provided by Seller, descriptions of which are available at the interior selection coordinator's office (the "Standard Selections"). The Standard Selections do not include furnishings, which will be Purchaser's responsibility at Purchaser's expense. Seller has contracted with an interior selection coordinator for the Project, who upon request will meet with Purchaser at the interior selection coordinator's office without charge and discuss available upgrade options for selections. Purchaser may choose an upgrade package through one of two methods:

- (a) Seller may choose to make certain upgrade packages available to Purchaser, which if selected will be paid for through an increase in the Purchase Price of the Villa. Any such upgrade must be evidenced by an addendum to this Agreement executed by Seller and Purchaser.
- (b) Purchaser may agree separately with the interior selection coordinator with respect to an upgrade, in which event Purchaser will pay for such upgrade directly with the supplier(s) and will give Seller prompt written notice of the upgrade.

Any selection upgrade must be selected in a timely manner so as not to delay the Closing or to cause cancellation of a contract of previously ordered Standard Selections or removal or modification of Standard Selections already in place.

17. **Safety Precautions.** In order to maintain safety standards, Purchaser agrees that Purchaser shall not restrict, interrupt, or in any manner interfere with the construction of the Villa and Purchaser shall not enter upon the Project prior to Closing except as permitted by the Contractor and in the company of a Seller's representative.

18. **Casualty.** Partial loss or damage to the Project by fire, storm or other casualty between the date hereof and the Closing shall not void or impair this Agreement, but all such damages prior to Closing may be repaired by Seller. In the event of total or substantial loss as a result of the hazards mentioned above, Seller shall, subject to the rights of the Construction Lender, have sole rights to all insurance proceeds payable with respect to such loss and Seller shall have the option to repair all damages at its cost or to cancel this Agreement and refund the Earnest Money Deposit without interest.

19. **Economic Advisability.** **PURCHASER REPRESENTS THAT PURCHASER IS PURCHASING THE VILLA FOR PURCHASER'S PERSONAL USE AND ENJOYMENT AND THAT NO REPRESENTATION HAS BEEN MADE TO PURCHASER BY SELLER, DRAKE DEVELOPMENT COMPANY USA AND ANY SALES AGENT OR OTHER PARTY REGARDING THE ECONOMIC ADVISABILITY OF THIS TRANSACTION, FUTURE APPRECIATION OR POTENTIAL RENTAL RETURNS. SELLER, DRAKE DEVELOPMENT COMPANY USA AND ANY SALES AGENT OR OTHER PARTY MAKE NO REPRESENTATION OR WARRANTY AS TO ANY TAX OR OTHER BENEFITS, INCLUDING APPRECIATION, WHICH PURCHASER MIGHT RECEIVE AS A RESULT OF PURCHASER'S OWNERSHIP OF THE VILLA. SELLER HEREBY ADVISES PURCHASER TO CONSULT WITH PURCHASER'S OWN LEGAL AND/OR FINANCIAL ADVISORS AS TO THE TAX BENEFITS, IF ANY, AVAILABLE TO PURCHASER AS A RESULT OF PURCHASER'S OWNERSHIP OF THE VILLA.**

20. **Agency Disclosure.** **THE LAW REQUIRES THAT PURCHASER AND SELLER RECEIVE AN AGENCY DISCLOSURE BROCHURE, ALONG WITH AN EXPLANATION OF THE AGENCY DISCLOSURE BROCHURE. THE BROCHURE DEFINES THE RELATIONSHIP BETWEEN THE PARTIES. DRAKE DEVELOPMENT COMPANY USA AND ITS AGENTS ALWAYS REPRESENT SELLER. A FULL DISCLOSURE AND AN EXPLANATION OF THE RELATIONSHIPS ARE INCLUDED IN THE AGENCY DISCLOSURE BROCHURE. SHOULD PURCHASER HAVE ANY QUESTIONS ABOUT THIS BROCHURE OR THE AGENCY RELATIONSHIP, THEY ARE DIRECTED TO THE BROKER-IN-CHARGE OF PURCHASER'S AGENT, IF APPLICABLE, OR THE**

**SOUTH CAROLINA REAL ESTATE COMMISSION OR AN ATTORNEY OF THEIR CHOICE. THE MANAGER OF SELLER IS A LICENSED REAL ESTATE BROKER/AGENT IN SOUTH CAROLINA. BY SIGNING BELOW, PURCHASER IS ACKNOWLEDGING RECEIPT OF THE AGENCY DISCLOSURE BROCHURE, ALONG WITH AN EXPLANATION OF THE DIFFERENT TYPES OF AGENCY IN SOUTH CAROLINA.**

21. **Coastal Zone Disclosure.** NOTICE AS REQUIRED BY § 48-39-330, S.C. CODE ANN., IS HEREBY GIVEN THAT THE PROPERTY WHICH IS THE SUBJECT OF THIS AGREEMENT IS OR MAY BE AFFECTED BY BASELINES, SETBACK LINES, JURISDICTION LINES, SEAWARD CORNERS OF ALL HABITABLE STRUCTURES AND EROSION RATES, AS ESTABLISHED BY THE SOUTH CAROLINA DEPARTMENT OF ENVIRONMENTAL COASTAL, OFFICE OF COASTAL RESOURCE MANAGEMENT.

22. **Option of Review by Attorney.** This Agreement has important legal consequences that should be read thoroughly prior to signing. If you have any questions about your rights or responsibilities under this Agreement, you may wish to consult an attorney.

23. **Land Acquisition and Pre-Sale Conditions.** Seller's obligation to close hereunder is contingent on Seller obtaining (1) title to the land comprising the Project from the present owner and (2) the required number of acceptable pre-sale unit purchase agreements in order to satisfy the Construction Lender. Seller may at its option cancel this Agreement on or before six (6) months from the date of the first agreement for the sale of a Villa in this building of the Project and return Purchaser's Earnest Money Deposit if either of these contingencies is not met by such time. Purchaser acknowledges that the legal description of the Villa contained in this Agreement is not legally sufficient to convey title until the proposed Master Deed is both duly recorded in the public records of the County where the Project is located, and Purchaser confirms that this transaction is contingent upon said occurrence and this transaction cannot be closed until such recording has occurred.

24. **Additional Seller Disclosures.** Purchaser acknowledges the following:

24.1 No representations are made that the Villa is or will be soundproof or that sound may not be transmitted from one Villa to another.

24.2 Purchaser understands and agrees that there are various methods for calculating the square footage of a Villa, and that depending on the method of calculation, the quoted square footage of the Villa may vary by more than a minimal amount. Accordingly, during the pre-closing inspection, Purchaser should, among other things, review the size and dimensions of the Villa. By closing, Purchaser shall be deemed to have conclusively agreed to accept the size and dimensions of the Villa, regardless of any variances in the square footage from that which may have been disclosed to Purchaser at any time prior to Closing, whether included as part of the Plans, Seller's promotional materials or otherwise. Without limiting the generality of any other provision of this Agreement, Seller does not make any representation or warranty as to the actual size, dimensions or square footage of the Villa, and Purchaser hereby waives and expressly releases any such warranty and claim for loss or damage resulting from any variances between any represented or otherwise disclosed square footage and the actual square footage.

24.3 The Villa may trap humidity created by everyday living (cooking, bathing, laundering, etc.). As a result, condensation may appear on the interior portion of windows and glass surfaces and fogging of windows and glass surfaces may occur due to temperature disparities between the interior and exterior portions of the windows and glass. If left unattended and not properly maintained by Purchaser, the condensation may increase resulting in staining, damage to surrounding seals, caulk, paint, wood work and sheetrock, and potentially mildew or mold. Further, given the climate and humid conditions in South Carolina, molds, mildew, toxins and fungi may exist and/or develop within the Villa and/or the Project. Purchaser is hereby advised that certain molds, mildew, toxins and/or fungi may be, or if allowed to remain for a sufficient period may become, toxic and potentially pose a health risk. By acquiring title to a Villa, Purchaser shall be deemed to have assumed the risks associated with molds, mildew, toxins and/or fungi and to have released the Seller and Association from any and all liability resulting from same.

24.4 Exposed concrete surfaces in portions of the Project which are not heated and cooled are subject to cracking due to (A) water penetration, (B) expansion and contraction of the concrete with temperature changes, and (C) building settlement.

24.5 Concrete surfaces in heated and cooled portions of the Project are subject to cracking due to building settlement.

24.6 Radon is a naturally occurring radioactive gas that when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in South Carolina. Additional information regarding radon and radon testing may be obtained from the South Carolina Department of Health and Environmental Control. Seller makes no representation to

Purchaser concerning the presence or absence of radon gas in the Villa at any time in any quantity. Purchaser hereby expressly releases Seller from any loss, claim, liability or damages now or hereafter arising from or related to the presence or absence at any time of radon gas in the Villa.

25. **Disclaimer Concerning Drake Development Company USA and Its Agents and Brokers.** The parties acknowledge that Drake Development Company USA and its agents and brokers:

25.1 Make no guaranty, representation or warranty of any kind, express or implied, as to the physical condition of the Project or the Villa;

25.2 Make no guaranty, representation or warranty, express or implied, as to the merchantability or fitness for a particular purpose of the Project or Villa and any implied warranty is hereby disclaimed;

25.3 Make no warranty as to title;

25.4 Make no guaranty or warranty concerning (a) any certification or inspection concerning the condition of the Project or Villa, (b) any matters which would be reflected by a current survey of the Project, or (c) the accuracy of the published square footage of the Villa;

25.5 Make no guaranty, representation or warranty as to any other matters concerning the Villa or the Project.

26. **Arbitration.**

26.1 **SELLER AND PURCHASER AGREE THAT ANY "DISPUTE" (AS DEFINED BELOW) BETWEEN THE PARTIES SHALL BE SUBJECT TO MANDATORY ARBITRATION, AT THE REQUEST OF EITHER PARTY, WHETHER MADE BEFORE OR AFTER INSTITUTION OF ANY JUDICIAL PROCEEDING, PURSUANT TO THE FEDERAL ARBITRATION ACT OR, IF IT IS DEEMED NOT TO APPLY, THE SOUTH CAROLINA UNIFORM ARBITRATION ACT, SECTION 15-48-10 ET. SEQ. OF THE CODE OF LAWS OF SOUTH CAROLINA.** The term "Dispute" shall mean any dispute, claim or controversy of any nature whatsoever between Seller and Purchaser, including without limitation (i) any dispute, claim or controversy arising out of or relating to this Agreement, (ii) any dispute, claim or controversy arising out of or relating to the Villa, the condition of the Villa or any alleged defect in the Villa, or in the property on which the Villa is located, (iii) any dispute, claim or controversy concerning any aspect of the Project, including the condition of the common elements or any alleged defect in the common elements of the Project, (iv) any dispute, claim or controversy concerning the sale of the Villa by Seller, and (v) any other dispute, claim or controversy which concerns the Villa, the Project (including the common elements) or their surrounding land or environment in any manner, whether or not based on or relating to this Agreement. Without limiting the generality of the foregoing, Disputes which are subject to arbitration under this paragraph shall include disputes based on alleged breach of contract, Disputes based on alleged negligent or intentional misrepresentation or non-disclosure in the inducement of a contract or in the execution or performance of a contract, Disputes concerning alleged breach of any alleged duty of good faith and fair dealing, Disputes under the Limited Warranty provided in this Agreement, and Disputes concerning the design, construction or condition of the Villa, the Project (including the common elements) or the surrounding subdivision or environment. Disputes subject to arbitration hereunder also include all disputes, claims and controversies alleging negligence, gross negligence, reckless conduct, intentional conduct, breach of implied warranty of habitability or any other basis or theory of liability whatsoever. The parties confirm their intention that this arbitration paragraph be construed liberally to give effect to the parties' desire that all Disputes between the parties of every nature whatsoever be subject to arbitration. Institution of a judicial proceeding by a party does not waive the right of that party to demand arbitration hereunder. Disputes include disagreement as to whether a matter is subject to arbitration, claims brought as class actions, and claims arising from documents executed in the future.

26.2 Arbitration shall be conducted under and governed by the Construction Industry Arbitration Rules of the American Arbitration Association (the "AAA"). All applicable statutes of limitation shall apply to a Dispute. As a condition precedent to arbitration, the dispute shall first be mediated in accordance with the Construction Industry Mediation Rules of the AAA, or such other mediation service selected by us. The arbitration proceedings shall be conducted in the county where the Project is located, on an expedited basis before a neutral arbitrator who is a member of the Bar of the State of South Carolina, and has been actively engaged in the practice of law for at least 15 years, specializing in commercial transactions with substantial experience in the subject matter of this Agreement. The arbitrator should be of recognized standing in South Carolina and need not necessarily be an attorney who generally serves as an arbitrator for AAA or otherwise. Any attorney who serves as an arbitrator shall be compensated at a rate equal to his or her current regular hourly billing rate. Upon the request of either party, the arbitrator's award shall include findings of fact and conclusions of law provided that such findings may be in summary form. Either party may seek review of the arbitrator's award before an arbitration review panel comprised of three arbitrators qualified in the same manner as the initial arbitrator (as set forth above) by submitting a written request to the AAA. The right of review shall be deemed



29.4 **Time is of the Essence.** It is expressly understood and agreed that **TIME IS OF THE ESSENCE** as to all obligations hereunder, including Purchaser's obligation to obtain a mortgage commitment and provide the Lender with all information requested, and close.

29.5 **Modification of Agreement.** Purchaser represents and warrants that Purchaser has not modified this Agreement from the standard form of this Agreement provided by Seller. This Agreement may not be changed or modified in any manner except by written instrument executed by both parties to this Agreement.

29.6 **Interpretation Presumption.** This Agreement has been negotiated by the parties hereto and/or by the respective attorneys for each party. The parties represent and warrant to one another that each has, by counsel or otherwise, actively participated in the finalization of this Agreement, and in the event of a dispute concerning the interpretation of this Agreement, each party hereby waives the doctrine that an ambiguity should be interpreted against the party which has drafted the document.

29.7 **Binding Effect; Assignment.** This Agreement is binding upon the heirs, devisees, personal representatives, successors and assigns of the parties; provided however, this Agreement and any rights of Purchaser hereunder may not be assigned by Purchaser. Seller may freely, and without restriction or notice to Purchaser, assign this Agreement.

29.8 **Unenforceable Provisions.** Should any provision of this Agreement be void or become unenforceable at law or in equity, the remaining provisions will remain in full force and effect and will not in any manner be thereby affected or impaired.

29.9 **Survival.** This Agreement and all the terms and conditions hereof will survive the Closing of the transaction contemplated hereby and will thereafter continue to bind the parties to this Agreement.

29.10 **Governing Law.** This Agreement shall be governed by the Laws of the State of South Carolina without regard to the conflicts of laws principles thereof.

29.11 **Delays.** Seller shall have no liability for any delays in construction caused by Purchaser's change orders and/or selection of materials.

29.12 **Execution by Facsimile; Multiple Counterparts.** This Agreement may also be executed by a party signing a facsimile or Internet e-mail copy thereof and transmitting same to the other party by facsimile or e-mail. This Agreement may be executed separately by the parties on multiple counterpart signature pages.

**NOTE:**

**THIS IS A LEGALLY BINDING AGREEMENT. PLEASE READ EACH OF THE PAGES CAREFULLY AND BE SURE EACH BLANK HAS BEEN FILLED IN.**

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

29.13 **Entire Agreement of Parties.** This Agreement represents the entire agreement of Seller and Purchaser, all prior and contemporaneous agreements, understandings, representations and statements by either party being merged herein. Purchaser acknowledges that Purchaser is not relying upon, and Seller is not bound by, any promise, representation or statement of any nature made by any member, officer, employee, agent of Seller, Drake Development Company USA, Purchaser's broker, or any other broker or party not stated in writing in the body of this Agreement. Purchaser confirms, by writing "**NO ORAL STATEMENTS OR PROMISES**" or words of similar meaning below, that no promises, representations or statements have been made to Purchaser not set forth in writing in the body of this Agreement.

(Purchaser should complete this section in his or her handwriting in the space provided below; failure to complete shall mean that no promises, representations or statements have been made to Purchaser not set forth in this Agreement.)

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

The undersigned verifies that this Agreement with the attached Limited Warranty, Limitation of Remedies, Disclaimer and Exclusion of All Other Warranties was duly executed and signed in the State of South Carolina.

IN WITNESS WHEREOF, the undersigned have set their hands and seal on the date(s) indicated below. If the dates of signature differ between the parties, the later of the dates shall serve as the Effective Date of this Agreement.

**WITNESSES AS TO ALL PURCHASERS'  
SIGNATURES: (Two (2) witnesses 18 years  
old or older)**

**PURCHASER(S):**

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
Purchaser

Date: \_\_\_\_\_

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
Purchaser

Date: \_\_\_\_\_

**WITNESSES AS TO SELLER:  
(Two (2) witnesses 18 years or older)**

**SELLER:**

THE POINTE LLC

\_\_\_\_\_  
WITNESS

By: \_\_\_\_\_  
W. RUSSELL DRAKE, MANAGER

Date: \_\_\_\_\_

\_\_\_\_\_  
WITNESS

OR

By: \_\_\_\_\_  
AUTHORIZED OFFICER

Date: \_\_\_\_\_

**MAKE CHECKS PAYABLE TO DRAKE DEVELOPMENT COMPANY, USA.**

---

\_\_\_\_\_  
PURCHASER'S AGENT (PLEASE PRINT)

\_\_\_\_\_  
AGENCY NAME & ADDRESS (PLEASE PRINT)

\_\_\_\_\_  
CITY STATE ZIP PHONE NUMBER FAX NUMBER

\_\_\_\_\_  
DRAKE DEVELOPMENT COMPANY USA REPRESENTATIVE (PLEASE PRINT)

**THE UNDERSIGNED ESCROW AGENT EXECUTES THIS AGREEMENT SOLELY TO ACKNOWLEDGE RECEIPT OF PURCHASER'S EARNEST MONEY DEPOSIT IN THE SUM SET FORTH IN PARAGRAPH B OF PART I OF THIS AGREEMENT AND TO ACKNOWLEDGE THE AGREEMENT OF ESCROW AGENT TO HOLD AND DISBURSE THE ESCROW MONEY DEPOSIT IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT.**

**WITNESSES:**

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

**ESCROW AGENT:**

**Drake Development Company USA**

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

731003

Attached To and Part of  
The Pointe Real Estate Purchase Agreement

**LIMITED WARRANTY,  
LIMITATION OF REMEDIES &  
DISCLAIMER AND EXCLUSION OF ALL OTHER WARRANTIES**

Villa # \_\_\_\_\_ (the "Dwelling")

**NOTE: THIS DOCUMENT IS CONTRACTUAL IN NATURE AND LIMITS YOUR RIGHTS IN SIGNIFICANT RESPECTS.**

This document provides a LIMITED WARRANTY, a LIMITATION OF REMEDIES, and a DISCLAIMER AND EXCLUSION OF ALL OTHER WARRANTIES.

The Limited Warranty identifies the sole limited warranty provided to the Purchaser, by Seller, pertaining to the Dwelling.

The Limitation of Remedies limits the obligations of Seller to the Purchaser in case of claims by the Purchaser under the Limited Warranty. Seller's only obligation is limited to the repair or replacement, at Seller's option, of the defective condition.

The DISCLAIMER AND EXCLUSION OF ALL OTHER WARRANTIES disclaims all other warranties besides the LIMITED WARRANTY. The LIMITED WARRANTY is the Purchaser's sole warranty on the Dwelling.

The LIMITED WARRANTY, the LIMITATION OF REMEDIES, and the DISCLAIMER AND EXCLUSION OF ALL OTHER WARRANTIES, are all subject to the ADDITIONAL TERMS AND CONDITIONS described herein.

The Pointe LLC, a South Carolina limited liability company ("Seller"), assigns to Purchaser all its rights under the LIMITED WARRANTY as received from \_\_\_\_\_ (the "Contractor"), and more fully described in the Project Manual for The Pointe, Horry County, South Carolina, prepared by **Jenkins Hancock & Sides Architecture, Interiors, Engineering Inc.** (the "Architect"), dated \_\_\_\_\_. This warranty is limited to the Work performed by the Contractor pursuant to the Plans and does not apply to any portion of the Dwelling which has not been constructed by the Contractor.

The LIMITED WARRANTY is further subject to the following LIMITATION OF REMEDIES, DISCLAIMER AND EXCLUSION OF ALL OTHER WARRANTIES, and ADDITIONAL TERMS AND CONDITIONS.

Seller's sole obligation and Purchaser's sole remedy under the Limited Warranty described above, to the exclusion of all other remedies, is limited to the repair or replacement, at Seller's option, of the defective condition of the work pursuant to the Plans (the "Work"). Any portion of the buildings or other improvements not included in the Plans is sold "AS IS" without warranty. Purchaser must give written notice to Seller, specifically describing the defect to be repaired or replaced within one (1) year after the date of Closing (the "Warranty Period"). No warranty is given for matters as to which Seller does not receive written notice during the Warranty Period.

**THE "LIMITED WARRANTY" PROVIDED ABOVE IS IN LIEU OF ALL OTHER WARRANTIES OF SELLER, WHETHER EXPRESS OR IMPLIED (INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, SOUNDNESS, QUALITY, WORKMANLIKE SERVICE, VALUE, SUITABILITY, FITNESS, HABITABILITY, OR FITNESS FOR A PARTICULAR PURPOSE).**

THE "LIMITED WARRANTY" PROVIDED ABOVE IS NON-TRANSFERABLE AND IS PERSONAL ONLY TO PURCHASER WHO HAS SIGNED AND APPROVED THIS LIMITED WARRANTY, UNLESS APPROVAL IS OBTAINED FROM SELLER PRIOR TO TRANSFER.

AS TO ANY FURNITURE, FURNISHINGS, OR OTHER PERSONAL PROPERTY (INCLUDING WITHOUT LIMITATION, FAN COIL UNITS(S), MOTORIZED DAMPERS, AND HEATING, VENTILATING AND COOLING CONTROLS) CONVEYED ALONG WITH THE DWELLING BY SELLER TO PURCHASER, AND AS TO ANY "CONSUMER PRODUCT" (AS THAT TERM MAY BE DEFINED UNDER APPLICABLE FEDERAL LAW OR IMPLEMENTING REGULATIONS, OR AS A TERM OF SIMILAR MEANING MAY BE DEFINED UNDER STATE, OR LOCAL LAWS, OR THEIR IMPLEMENTING REGULATIONS), AND AS TO ANY PORTION OF THE CONDOMINIUM AND OTHER IMPROVEMENTS, NOT CONSTRUCTED BY CONTRACTOR PURSUANT TO THE PLANS, WHICH MAY BE CONTAINED IN THE PURCHASED DWELLING, OR THE COMMON AREA, SELLER NEITHER MAKES NOR ADOPTS ANY WARRANTY WHATSOEVER AND SPECIFICALLY EXCLUDES, EXPRESS OR IMPLIED, WARRANTIES OF ANY NATURE, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE. ADDITIONALLY, SELLER EXCLUDES AND DISCLAIMS ALL WARRANTIES OF SOUNDNESS, QUALITY, WORKMANLIKE SERVICE, VALUE, SUITABILITY, FITNESS, OR OF HABITABILITY.

Additional Terms and Conditions:

The Limited Warranty provided above is subject to the following terms, conditions and exclusions, all of which are a part hereof:

1. Inspection Procedure.
  - (a) Purchaser has the right to a pre-occupancy inspection of the purchased Dwelling to be made prior to the scheduled Closing. This inspection is to be made by Purchaser in Seller of a representative of Seller and/or the Contractor. Items to be corrected as mutually agreed upon are listed in an inspection report ("Inspection Report"), which is signed by Purchaser and a representative of Seller and/or the Contractor.
  - (b) Seller and Contractor shall make every reasonable effort to correct all of the items listed in the Inspection Report.
  - (c) No corrections will be made for defects in the Work not recorded on Seller's Inspection Report or for defects in the Work first claimed or discovered after the expiration of the Warranty Period. Correction of latent defects as defined above will be made within a reasonable time after Seller is notified in writing during the Warranty Period.
  
2. Warranty Exclusions. The following exclusions and limitations apply to Seller's LIMITED WARRANTY obligations set forth above:
  - (a) All chips, scratches or mars on items such as tile, walls, porcelain, glass (including breakage or cracks), plumbing fixtures, plastic laminate counter tops, granite or marble, must be noted on the Inspection Report, or else they will not be covered under Seller's LIMITED WARRANTY obligations set forth above.
  - (b) Faucet leaks, toilet door and door frame adjustments, floor and wall tile grouting are covered for a period of one (1) year after Closing. Thereafter, any repairs or corrections become the sole responsibility of Purchaser.
  - (c) Nail or screw pops or cracks in the walls and ceilings which do not result from faulty workmanship or defective materials but are the result of natural shrinkage and drying of building materials, or of normal settlement of the building, wind loads or other normal movement of the building components are not covered. To the extent that Seller may elect at its sole discretion to perform repairs for the above conditions, provided that notice of such conditions in writing is received by Seller during the Warranty Period, Seller will not be liable for repainting, wallpapering or refinishing any repaired areas.
  - (d) The LIMITED WARRANTY obligations set forth above do not cover correction of the results of ordinary wear-and-tear, or damage due to misuse or neglect, negligence, or Purchaser's or Association's failure to provide proper maintenance.
  - (e) The LIMITED WARRANTY obligations set forth above do not cover damage arising from leaks or water infiltration at perimeter walls or ceilings.
  - (f) The LIMITED WARRANTY obligations set forth above do not cover the Common Elements.
  - (g) The LIMITED WARRANTY obligations set forth above do not cover any personal property.

**SELLER:**

**PURCHASER(S):**

THE POINTE LLC

\_\_\_\_\_  
Purchaser's Signature

By: \_\_\_\_\_  
Its

\_\_\_\_\_  
Co-Purchaser's Signature