

REAL ESTATE PURCHASE AGREEMENT

(Custom Home Lots)

This Real Estate Purchase Agreement (the "Agreement") between Duke Construction Limited Partnership, an Indiana limited partnership organized and existing under the laws of the State of Indiana (the "Seller"), and _____ (the "Purchaser") is hereby executed this ___ day of _____, _____ ("Effective Date") upon the following terms, covenants and conditions.

1. Property.

Purchaser agrees to purchase from Seller, and Seller agrees to sell to Purchaser, Lot number _____ in The Neighborhoods at Anson, a residential subdivision located in Whitestown, Boone County, Indiana (the "Property"), as shown on that Plat of Subdivision entitled The Neighborhoods at Anson Section 1B of Phase 1 Secondary Plat and recorded May 22, 2008 as Instrument No. 200800005214, in the records of Boone County, Indiana ("Plat").

2. Purchase Price.

The purchase price for the Property shall be _____ Dollars (\$_____ .00) (the "Purchase Price").

3. Payment of Purchase Price.

The Purchase Price for the Property, as adjusted for prorations or credits described herein, shall be paid to Seller by wired funds on the date of closing the purchase and sale transaction contemplated herein (the "Closing Date").

4. Earnest Money Deposit.

Upon the execution of this Agreement by Purchaser, Purchaser shall pay an earnest money deposit equal to **[Ten Thousand Dollars (\$10,000.00)]** (the "Deposit"). The Deposit shall be payable to and deposited with First American Title Insurance Corporation (the "Title Company") and held in escrow by the Title Company for the mutual benefit of the parties hereto, and shall be disbursed only by the joint written direction of both Purchaser and Seller. The Deposit shall be applied as a credit against the Purchase Price and released to Seller at the Closing.

In the event that Purchaser timely elects to terminate this Agreement in accordance with any such right to terminate specifically provided in this Agreement, Purchaser shall notify Seller of such termination in writing in accordance with the Notice provisions of Section 15 below and upon Seller's receipt of such timely delivered notice of termination, Seller shall promptly instruct the Title Company to return the Deposit to Purchaser, and the parties shall have no further obligation to one another and this Agreement shall be of no further force and effect. The Deposit shall become non-refundable and immediately payable to the Seller upon the expiration of the last right of Purchaser to terminate this Agreement, if any, pursuant to the terms herein.

5. Closing Date.

The Closing Date shall be a date that is no more than thirty (30) days after the Effective Date and which date is mutually agreeable by the parties hereto. The Closing shall take place at the offices of the Seller at 6290 Central Boulevard,

Whitestown, Indiana or at another location designated by Seller. Seller shall deliver possession of the Property at closing.

6. Recorded Plat and Survey.

Purchaser acknowledges receiving a copy of the Plat. Seller shall have no obligation to deliver any additional survey documents. Purchaser shall have the right to have a survey (the "Survey") of the Property completed; provided such Survey shall be completed at Purchaser's sole cost and expense and within ten (10) business days after the Effective Date.

7. Title Report.

Within seven (7) calendar days after the Effective Date, Seller, at Seller's sole cost and expense, shall cause to be issued by the Title Company a commitment to issue an ALTA owner's title insurance policy (ALTA 2006Form) insuring fee simple title to the Property (the "Title Report"). The Title Report shall set forth the state of title of the Property together with all exceptions or conditions to such title, including, but not limited to, all easements, restrictions, rights of way, covenants, reservations and all other encumbrances affecting the Property which would appear in an owner's policy of title insurance when issued. Purchaser or Purchaser's attorney shall be provided with copies of, or electronic access to view, all instruments referred to in the Title Report as conditions or exceptions to title to the Property. If the Title Report discloses unpermitted exceptions, or if the Plat shows any encroachments which are not acceptable to Purchaser ("Title Objections"), then Purchaser shall notify Seller in writing within five (5) days of receipt of the Title Report. If Purchaser notifies Seller of any Title Objections, Seller shall have thirty (30) days from the date of delivery thereof to have said exceptions removed, or to have the title insurer commit to insure against loss or damage that may be caused by such exceptions or encroachments and the closing date shall be delayed, if necessary, to allow time to have said exceptions waived, and in such case the Closing Date shall be reasonably extended to allow Seller sufficient time to cure such matters. If Seller fails, or elects not, to cure such Title Objections within the specified time, Purchaser may, by written notice to Seller within five (5) days after expiration of such period (or Seller's earlier notification to Purchaser that the Title Objections will not be cured by Seller), terminate this Agreement or may elect, upon notice to Seller or otherwise elects not to, cure, to take title as it then is and proceed to close the transaction. If Purchaser does not terminate the Agreement as provided above, the Purchaser shall be deemed to have elected to accept title as it then is and proceed to close the transaction. If Purchaser does elect to terminate this Agreement as provided in this paragraph, this Agreement shall terminate and be of no further force and effect, and the Deposit shall then be returned to Purchaser.

8. Seller's Covenants, Warranties and Representations.

Seller covenants, warrants and represents to Purchaser that the following statements are now true and that the conditions set out in each will exist on the Closing Date:

- a) On the Closing Date, Seller shall have good, marketable and indefeasible fee simple title to the Property, free and clear of all conditions, exceptions or reservations, except those disclosed in the Title Report or to which the Deed will be subject in accordance with Section 10(b) below.

- b) Sanitary sewer, potable water, natural gas, and electric lines have been extended to service the Property in accordance with the approved development plans for all of the real property described in the Plat, and the foregoing are available for hook-up to the Property at Purchaser's sole cost and expense.
- c) Seller is not a "foreign person" as that term is used in Section 1445 (b)(2) of the Internal Revenue Code of 1954, as amended, and the related regulations. If necessary, Seller agrees to execute a Certification that Seller is not a Foreign Person as of the Closing Date.
- d) Seller has full right, power and authority to sell the Property to Purchaser.
- e) Seller is not involved in any proceedings by or against Seller in any court under the Bankruptcy Act or any insolvency or debtor's relief act, whether state or federal, or for the appointment of a trustee, receiver, liquidator, assignee, sequestrator or other similar official of a substantial part of Seller's Property.

9. Real Estate Taxes.

All city, state and county ad valorem taxes and similar taxes and assessments levied or imposed upon or assessed against the Property for the calendar year during which the Closing Date occurs shall be prorated as of the Closing Date. If the actual taxes for the calendar year during which the Closing Date occurs are not known on the Closing Date, the proration shall be based upon the acreage involved and the actual taxes for the immediately preceding calendar year. Purchaser shall not be responsible for real estate taxes applicable to the Property which are due and payable prior to May/November _____. Purchaser shall be fully responsible for all real estate taxes applicable to the Property which are due and payable as of May/November _____ and thereafter.

Formatted: Font: (Default) Arial

Formatted: Font: (Default) Arial

10. Closing.

At the Closing, the Purchaser shall be furnished with the following:

- A. An Owner's Title Insurance Policy which shall be issued on the ALTA 2006 Owner's Policy Form in the amount of the purchase price issued by the Title Company which shall insure fee simple, indefeasible title to the Property in the Purchaser as legal owner (the "Title Policy"). The cost of the Title Policy shall be paid by Seller. The Title Policy shall be based upon matters disclosed in the Title Report and shall contain no exceptions to title to the Property other than those shown on the Title Report and shall include coverage over Schedule B General Exceptions in the amount of the purchase price covering the date hereof, subject only to the following; (a) permitted exceptions as set forth in the Title Report (b) title exceptions pertaining to liens or encumbrances of a definite or ascertainable amount, which may be removed by the payment of money at the time of closing, and (c) acts done or suffered by or judgments against Purchaser, or those claiming by, through or under Purchaser. If Purchaser shall require any endorsements in addition to the Title Policy, the cost of such endorsements shall be paid by Purchaser.
- B. A recordable limited warranty deed ("Deed") subject only to the following permitted exceptions described herein, if any: (a) general real estate taxes accrued, but not yet payable at the time of closing, (b) special assessments

confirmed after the Effective Date; (c) building setback lines and use or occupancy restrictions; (d) covenants, conditions and restrictions of record provided they are not violated nor contain a reverter or the right of re-entry; (e) zoning laws and ordinances; (f) easements for public utilities; (g) drainage ditches, feeders, laterals and drain tile, pipe or other conduit; and (h) all other exceptions permitted or approved and shown in the Title Policy, if any.

- C. A Certification that Seller is not a Foreign Person.
- D. A Vendor's Affidavit substantially in the form adopted by the Indianapolis Bar Association.
- E. A State of Indiana sales disclosure form.

Seller and Purchaser shall equally split the closing and/or escrow fee of the Title Company; provided that Purchaser shall pay any and all charges applicable to a lender's escrow, or lender's title policy, if any. Purchaser shall pay the recording fees related to recording the deed and any new mortgages of Purchaser. Seller shall pay the recording fees to release any mortgages of Seller, if any.

11. Real Estate Broker Commissions or Similar Fees.

Except for _____ ("Seller Broker"), and _____ (the "Purchaser Broker"), Seller and Purchaser each represents and warrants to the other that it has not engaged the services of any other real estate company, broker, agent or salesperson, so as to create any legal right to a commission or similar fee due with respect to the sale of the Property. The commission and fees due to the Seller Broker shall be paid by Seller. Seller agrees to pay a co-op broker commission to the Purchaser Broker in the amount of _____ percent (___%) of the Purchase Price, which shall be the only commission or fees payable by Seller to any real estate company, broker, agent or salesperson who is representing Purchaser or was **at the time a Lot Reservation Agreement was signed and was so designated therein.**

12. Declaration of Covenants, Conditions and Restrictions.

Purchaser acknowledges that Purchaser has received a copy of the Master Declaration of Covenants and Restrictions of Anson and the Supplemental Declaration of Covenants and Restrictions for The Neighborhoods at Anson, as recorded in the Office of the Recorder of Boone County, Indiana (collectively, the "Declarations") and a copy of the Anson Community Standards and the Anson Architectural Design Guidelines and Building Regulations for Single Family Residential Lots (collectively, the "Architectural Guidelines"). Purchaser agrees that it will comply with the Declarations including obtaining the written approval of Purchaser's proposed residence by any architectural control committee under the Declarations prior to any construction activity occurring on the Property. Purchaser acknowledges that the annual assessment due to The Neighborhoods at Anson Homeowners Association ("Association") is \$700.00 _____ for a calendar year 200___, and this amount shall be prorated per diem (with Purchaser being responsible for that portion of said assessment applicable to the Closing Date and all subsequent days remaining in the calendar year) and adjusted at closing.

Additionally, at closing, Purchaser shall pay all of that the one-time assessment due from Purchaser to the Association in the amount of \$_____.

13. Construction of Purchaser's Residence.

In connection with the construction of the single-family residence ("Residence") on the Property, Purchaser agrees that **Purchaser, Purchaser's builder and any general contractor or subcontractor of Purchaser, or any other party performing work on the Property shall abide by and comply with the Architectural Guidelines and all of the following standards:**

- a) Prior to issuance of a certificate of occupancy for the Residence constructed on the Property, Purchaser shall, at its sole cost and expense, install in a good and workmanlike manner, that portion of the public sidewalk immediately adjacent to the Property and in conformity with the requirements of Boone County, Indiana and/or the Declarations at Purchaser's cost.
- b) Prior to construction of the foundation of the Residence, stone shall be installed over the path of the driveway, in the location shown on the approved building plans of the Residence, with the stone to be level with the back of the curb.
- c) The surface and subsurface drainage systems shall not be altered in any way from the specifications of Seller's approved as-built or construction plans for The Neighborhoods at Anson subdivision and the approved building plans of the Residence.
- d) All trash generated on the Property shall be hauled away on a regular basis no less than once per week, and the Property shall be kept neat and orderly at all times.
- e) All construction activities shall be undertaken to prevent debris from entering or blocking the storm sewer inlets.
- f) Connection to the water service lateral shall be made without undermining the curb or altering the subsurface drainage system.
- g) The Property shall be sodded promptly following finish grading to minimize or prevent erosion from occurring.
- h) Prior to obtaining written approval by the architectural control committee of the proposed Residence to be built by Purchaser, Purchaser shall install silt fence behind the curb along the entire front property line except for the driveway entrance. In addition, until construction of the Residence has been fully completed, Purchaser shall comply with all other erosion control regulations of all governmental agencies having jurisdiction when constructing Purchaser's Residence and shall submit all notices and filings required by law.
- i) Purchaser agrees that any damage caused by Purchaser, Purchaser's builder and its subcontractors, or any other party performing work at the Property, to the curbs, streets, water mains, water service laterals, fire hydrants, sanitary sewer laterals, sanitary sewer manhole structures, storm sewer inlets, storm sewer manhole structures, subsurface drain lines and laterals, drainage swales, street

signs, street lights, common areas, or other lots in The Neighborhoods at Anson, shall be promptly repaired at Purchaser's sole cost and expense. Purchaser further agrees to hold harmless and indemnify Seller for any damages, claims, losses, costs or expenses (including attorneys' fees) relating to any such damage or claims therefor.

- j) Purchaser agrees that it shall not change the grade of a sanitary sewer or storm sewer manhole structure without the prior consent of Seller, and if necessary, all governmental agencies having jurisdiction.
- k) The sump pump discharge line must be connected to the subsurface drain lateral provided for the Property.
- l) Purchaser shall keep the street clean of all mud, dirt, stone, gravel and debris at all times.
- m) Only an "Approved Builder" shall be permitted to construct the Residence and other improvements on the Lot. For purposes of this Agreement, an "Approved Builder" shall be deemed to be any homebuilder set forth on the list attached hereto as **Schedule 14 m** or any builder licensed in the State of Indiana which Seller has approved in writing prior to submittal of any building plans for approval.
- n) With respect to the Property, Purchaser or an authorized successor in title to Purchaser (as approved by Seller), must commence construction within two (2) years of the Closing Date. The Residence must be substantially completed within one (1) year from the date construction is commenced, including approved landscaping. If construction or completion has not occurred as required in this paragraph, then Seller may deliver written notice to Buyer that Buyer is in default of this paragraph. If the default has not been cured within sixty (60) days of date of notice, then Seller shall have the right to repurchase the Property for the same Purchase Price listed herein above that Purchaser paid for the Property, regardless of the value of improvements made thereon. The repurchase shall take place within thirty (30) days of the expiration of the cure period, the exact date, time and location to be selected by Seller. At such closing, Purchaser shall comply with the same form of Deed and title requirements as are set forth herein, and deliver title to the Property with only those title exceptions that were excepted in Seller's Deed to Purchaser.
- o) Purchaser at its own expense, shall be responsible for purchasing and installing a mailbox approved by Seller, which installation shall be prior to the issuance of the certificate of occupancy for the Residence.
- p) [Is there a landscaping requirement?]

At the Closing, Purchaser shall pay to Seller a security deposit in the amount of **[Seven Hundred Fifty Dollars (\$750)]** (the "Security Deposit"). In the event that Seller notifies Purchaser that Purchaser has not complied with one of the standards above, Purchaser shall immediately take appropriate action to repair, clean-up or otherwise correct the noncompliant matter, and if Purchaser does not commence appropriate corrective action within five (5) days, Seller may cause such repair, clean-up or other corrective action to take place, Seller shall use the Security Deposit to pay for such costs incurred, and Purchaser shall promptly reimburse Seller for the

Formatted: Indent: Left: 0.5"

costs incurred thereof in excess of the Security Deposit. Seller shall have the right to file a lien against the Property if Purchaser does not promptly reimburse Seller for such costs incurred. Seller agrees to refund to Purchaser the unused portion of the Security Deposit within thirty (30) days subsequent to the later of (i) the date a certificate of occupancy is obtained, or (ii) the date that the lawn has been installed, grass is growing, and erosion control measures are no longer required by any government agency.

14. Termination, Default and Remedies Prior to Closing.

If Seller shall fail to consummate this Agreement for any reason except Purchaser's default or the termination of this Agreement pursuant to the terms hereof, Purchaser shall be entitled to prompt return of the Deposit.

If Purchaser shall fail to consummate or abide by any terms and conditions of this Agreement for any reason except Seller's default or the termination of this Agreement pursuant to the terms hereof, then Seller may elect to terminate this Agreement and retain the Deposit and in addition thereto exercise any other right or remedy Seller may have at law or in equity.

15. Notices.

All notices or other communications required or permitted by this Agreement from one party to another party shall be sufficiently given respectively by either mailing the same by certified mail, return receipt requested, or by facsimile with proof of confirmation to the parties at their addresses or telecopier numbers set forth below, or such other address or telecopier number as any of the parties in writing may specify from time to time. Any notice given by mail shall be deemed given on the date actually delivered as evidenced by the return receipt.

SELLER: Duke Construction Limited Partnership
600 East 96th Street, Suite 100
Indianapolis, IN 46240
Attention: _____
Telephone: (317) _____
Telecopier: (317) _____

PURCHASER: _____

Telephone: _____
Telecopier: _____

16. Parties Bound.

This Agreement shall be binding upon and inure to the benefit of Seller and Purchaser, their respective heirs, personal representatives, successors and assigns.

17. Survival of Representations and Warranties.

All provisions in Sections 11 and 13 of this Agreement shall be continuing and survive the Closing.

18. Assignment.

This Agreement may not be assigned by Purchaser without the written consent of Seller.

19. Attorney's Fees.

In any litigation between the parties to enforce any provision or right under this Agreement, the unsuccessful party covenants and agrees to pay the successful party all reasonable costs and expenses incurred by the prevailing party in connection with the litigation including, but not limited to, reasonable attorneys' fees.

20. Enforceability.

In the event that a court of competent jurisdiction determines that any one or more provisions hereof is or are unenforceable, all other provisions hereof shall be unaffected thereby and shall be fully enforceable by the parties hereto.

21. Amendment.

This Agreement may only be amended by an instrument in writing signed by both Seller and Purchaser.

22. Headings, Etc.

The Headings contained in this Agreement are for references only and shall not affect in any way the meaning or interpretation of this Agreement. This Agreement may be executed simultaneously or in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement shall be construed and enforced in accordance with the laws of the State of Indiana.

23. Right to Repurchase.

- A. As long as the Property has not been improved by construction of a Residence for which an occupancy permit has been issued, Purchaser may not sell the Property to any third party purchaser without first giving Seller the right to repurchase the Real Estate for the same Purchase Price Purchaser paid Seller in this Agreement, and upon the additional terms and conditions set forth in this Paragraph 23.
- B. If Purchaser (or an authorized successor in title to Purchaser) desires to sell the Property prior to such construction and issuance of an occupancy permit, the party proposing to sell shall deliver to Seller a written Notice of Intent, and Seller shall have thirty (30) days after receipt of such Notice of Intent to notify said party in writing that Seller will either exercise its right to repurchase the Property or consent to the sale. If Seller fails to notify Purchaser within said thirty (30) days, Seller shall be deemed to have elected to **[exercise]** its right to repurchase. If Seller elects to exercise its right to repurchase, then Purchaser shall comply with the same form of Deed and title requirements as are set forth herein, and deliver title to the Property with only those title exceptions that were excepted in Seller's Deed to Purchaser. and the closing shall take place within thirty (30) days of the date of Seller's notice of exercise, the exact date, time and location of closing of the repurchase to be selected by Seller. In the event Seller fails to close on the repurchase within

thirty (30) days, such failure shall not waive the right to repurchase, however Seller shall be responsible for Buyer's reasonable and necessary per diem expenses incurred as a result of such failure.

- C. The right to repurchase set forth in this Section 23 shall automatically terminate on completion of construction of a Residence on the Property and issuance of an occupancy permit therefore. No waiver or consent by Seller of this provision with respect to a proposed sale shall be deemed a waiver of Seller's right to enforce this provision as to any subsequent proposed sale, whether said proposed sale involves the same parties or otherwise, nor shall any such waiver or consent be deemed a waiver of Seller's right to enforce any other provision of this Agreement.
- D. For purposes of this Section 23, an inquiry by Buyer, written or otherwise, as to whether or not Seller might consent to a possible sale shall not be deemed a Notice of Intent as required under subparagraph B. Only a written Notice of Intent, clearly identified as such, shall be deemed proper notice as required under sub-paragraph B.
- E. Seller may record a memorandum of agreement or other appropriate document setting forth Seller's right to repurchase as set forth herein.

24. Addendums. The following addendums are attached to this Agreement and by this reference are incorporated herein: _____.

SELLER:

**Duke Construction Limited Partnership,
An Indiana general partnership**

**By: Duke Business Centers Corporation,
Its general partner**

By: _____

Printed: _____

Title: _____

PURCHASER:

Name:

Name: