

REAL ESTATE PURCHASE AGREEMENT

The Villas at Sienna Hills

1. **PARTIES.** Dry Canyon Homes, LLC, a Utah limited liability company, ("**Seller**"), agrees to sell and convey to _____ ("**Buyer**"), and Buyer agrees to buy from Seller the Property described below.

2. **PROPERTY.** Lot ____, in Phase ____, of the Villas at Sienna Hills, a planned unit development located at _____, in Washington City, Washington County, Utah, which Lot contains or will contain Unit _____, in Building _____, all as shown on the plat for the Villas at Sienna Hills and described in the Declaration of Covenants, Conditions, and Restrictions for the Villas at Sienna Hills, and hereafter referred to as the "**Property**."

3. **PURCHASE PRICE.** The Purchase Price for the Property is \$ _____. The Purchase Price will be paid as follows:

\$ _____

Earnest Money Deposit. Under certain conditions described in this Agreement, this deposit may become non-refundable.

\$ _____

Financing. Buyer agrees to apply for a new loan as provided for in **Section 5** below.

\$ _____

Other: _____

\$ _____

Balance of Purchase Price in Cash on or before Settlement.

\$ _____

Total Purchase Price

4. **EARNEST MONEY DEPOSIT.** Upon execution of this Agreement by both parties, Buyer shall provide the above referenced Earnest Money Deposit with **ERA Brokers Consolidated**, a licensed Utah real estate broker, at 201 East, St George Blvd, St George UT 84770, for deposit with **Atlas Title Company**, 192 East 200 North, St. George, Utah 84770 ("**Escrow Agent**"). If Buyer fails to deposit the earnest money as required by this Agreement, Buyer will be in default.

5. **FINANCING.**

(a) If Buyer intends to finance any part of the Purchase Price, Buyer shall provide to Seller satisfactory evidence of loan pre-approval from a lender acceptable by Seller on or before the Loan Application Deadline and shall provide Seller with a loan commitment from the lender within on or before the Loan Commitment Deadline. If Buyer does not intend to finance the

Purchase Price, Buyer shall provide Seller with satisfactory evidence of Buyer's ability to pay the Purchase Price and Buyer's share of the closing costs on or before the Loan Application Deadline. If Buyer fails to comply with the foregoing, as applicable, Seller may terminate this Agreement. For purposes of this **Section 5**, any federal or state chartered bank or savings and loan association is considered an "acceptable lender". Seller may, from time to time, furnish Buyer with names of lenders as an accommodation only. Buyer acknowledges that Seller is not an agent of any such lender, Buyer is free to choose any other acceptable lender, and that Seller has not agreed to obtain any loan for Buyer.

(b) In the event of Buyer's failure to satisfy any of the conditions set forth in this **Section 5** within the stated time period, Seller shall have the right, but not the obligation, (i) to give Buyer written notice of an additional period of time, in Seller's sole discretion, to satisfy any of the conditions set forth in this section, which notice may state, in Seller's sole discretion, that if Buyer has not satisfied the applicable condition(s) within the stated time period, this Agreement shall be deemed to be terminated without further notice to Buyer, or (ii) to terminate this Agreement effective immediately upon giving written notice of such termination to Buyer, and without the granting of any such period in which to satisfy the applicable condition(s).

(c) **Appraisal Condition.** Buyer's obligation to purchase the Property [] is [] is not conditioned upon the Property appraising for not less than the Purchase Price. This condition is referred to as the "**Appraisal Condition**". If the Appraisal Condition applies Buyer shall obtain the Appraisal on or before the Appraisal Deadline. If the Appraisal Condition applies and the Buyer receives written notice from the lender that the Property has appraised for less than the Purchase Price (a "**Notice of Appraised Value**"), Buyer may cancel this Agreement by providing a copy of the appraiser's written notice to Seller no later than three (3) days after Buyer's receipt of such written notice. In the event of a cancellation under this **Section 5(c)**: (i) if the Notice of Appraised Value was received by Buyer no later than the Appraisal Deadline, the Earnest Money Deposit shall be returned to Buyer; (ii) if the Notice of Appraisal Value was received by Buyer after the Appraisal Deadline, the Earnest Money Deposit shall be released to Seller, and, as Seller's exclusive remedy, Seller agrees to accept the Earnest Money Deposit as liquidated damage. A failure to cancel as provided in this **Section 5(c)** shall be deemed a waiver of the Appraisal Condition by Buyer. Cancellation pursuant to the provisions of any other section of this Agreement shall be governed by such other provisions.

6. **SELLER'S DISCLOSURES; REPRESENTATIONS.** Seller shall provide to Buyer the following documents which are collectively referred to as the "**Seller Disclosures**" on or before the Seller Disclosure Deadline: (a) a commitment for the policy of title insurance; (b) written notice of any claims and/or conditions known to Seller relating to environmental problems and building or zoning code violations; and (c) copies of the Governing Documents (set forth in **Section 8**).

7. **BUYER'S RIGHT TO CANCEL OR OBJECT.** Within seven (7) days of the date Seller's Disclosures, Buyer may, if he/she finds any of Seller's Disclosures unacceptable, either: (a) cancel this Agreement by providing written notice to Seller, whereupon the Earnest Money Deposit shall be released to Buyer, or (b) provide Seller with written notice of objections. If Buyer does not: (a) cancel this Agreement or (b) deliver a written objection to Seller, then Buyer shall be deemed to have approved Seller's Disclosures. If Buyer provides written objections to Seller, Buyer and Seller shall have seven (7) days after Seller's receipt of Buyer's objections (the "**Response Period**") in which to agree in writing upon the manner of resolving Buyer's objections. Seller may, but shall not be required to, resolve Buyer's objections. If Buyer and Seller have not agreed in writing upon the manner of resolving Buyer's objections, Buyer may cancel this Agreement by providing written notice to Seller no later than three (3) days after expiration of the Response Period; whereupon the Earnest Money Deposit shall be released to Buyer. If this Agreement is not canceled by Buyer under this Section, Buyer's objections shall be deemed waived by Buyer.

8. **GOVERNING DOCUMENTS; COMMUNITY ASSOCIATION; ASSESSMENTS.** Buyer hereby acknowledges, and Seller hereby discloses, that the Property is located within a planned unit development that is subject to the provisions of the Utah Community Association Act and the Governing Documents of the homeowners association ("Association"). These Governing Documents include a Declaration of Covenants, Conditions, and Restrictions ("Declaration" or "CC&Rs"), bylaws of the Association ("Bylaws"), articles of incorporation for the Association ("Articles"), and any rules and regulations passed by the Association pursuant to the authority granted in the Community Association Act, the Governing Documents, or otherwise as provided by applicable law. The Governing Documents, among other things, limit the way in which Buyer may use the Property, including but not limited to the ability to lease the Property and on what terms. Additionally, Buyer acknowledges and Seller discloses that the Association levies and collects assessments and other charges as provided for in the Governing Documents. Currently, the minimum monthly assessment levied by the Association is \$_____ ; **however**, the assessments and charges may be increased as provided in the Governing Documents. Furthermore, there may be additional assessments and charges levied on a monthly, annual, or periodic basis for such things as, by way of example but not limitation, special assessments for Association improvements, an administration fee assessed to rental units, and charges and fines for violation of the Governing Documents, all as more particularly set forth in the Governing Documents. Buyer acknowledges that Buyer has received a copy of the Governing Documents and has read them prior to signing this Agreement or will otherwise review the Governing Documents as part of Seller's Disclosures. Furthermore, Buyer hereby acknowledges and Seller hereby discloses that, pursuant to their terms, the Governing Documents may be amended, supplemented, and replaced at any time by the Association or the Declarant as provided for therein.

9. **CAPITAL CONTRIBUTION.** At Settlement Buyer will pay (i) a portion of the periodic installment of the annual assessment against the Property, prorated to the date of Settlement and (ii) an initial capital contribution in an amount set forth in the Declaration. The initial capital contribution is in addition to and not in lieu of regular monthly installments of such assessments and charges as the same thereafter become due and payable and shall not be considered an advance payment of such assessment. The initial capital contribution is non-refundable.

10. **UNIT MEASUREMENTS.** Buyer, by acceptance of a deed or other conveyance for the Property, understands and agrees that there are numerous methods for calculating the square footage of the unit constructed or to be constructed thereon, and that depending on the method of calculation; the square footage of the unit may vary. Additionally, as a result of in the field construction, other permitted changes to the construction of unit, and settling and shifting of improvements, actual square footage of the unit may also be affected. By accepting title to the Property, Buyer shall be deemed to have conclusively agreed to accept the size and dimensions of the unit constructed thereon, regardless of any variances in the square footage from that which may have been disclosed at any time prior to Settlement, whether included as part of Seller's promotional materials or otherwise.

11. **MODELS; MARKETING.** Any furnishings and personal property displayed in any model unit or sales facility are not part of the Property and are not included in the Purchase Price of the Property. All illustrations, models, architectural renderings and unit features shown on any promotional or other materials provided to Buyer, or exhibited in any model unit or sales facility are for display or illustrative purposes only, and may not be representative of any unit or building features. Additionally, any features of a unit shown on any floor plans, marketing, materials, plats, plans, or any other promotional materials are subject to change by Seller in its discretion due to such factors as, but not limited to, building constraints, inspections and permitting approvals. Estimated dimensions or square footages shown in any floor plan sketches or provided in other related sales materials are approximations

only, and Buyer acknowledges that the unit constructed on the Property is not being sold on a per square foot basis.

12. **COMPLETION OF CONSTRUCTION; CONSTRUCTION PERIOD.** If construction has not been completed as of the Effective Date of this Agreement, it shall be completed within one (1) year from the Effective Date, with extensions as necessary for: (i) adverse weather conditions; (ii) damage caused by fire, storm, earthquake or other casualty; (iii) any act of God or Force Majeure; (iv) strike, lockout, or labor trouble of any kind; (v) governmental controls or procedures, regulation, restrictions or moratoriums; (vi) governmental refusal or delay in issuance of any necessary permits for construction on the Property; (vii) allocation of labor, supplies or material by or under the authority of any governmental agency; (viii) acts of suppliers of labor or material; (ix) or acts of obligors or their employees (all of foregoing hereinafter referred to as "causes beyond control of Seller"). If Seller fails to complete construction within one year of the Effective Date of this Agreement, Buyer, on written notice to Seller, may terminate this Agreement. On termination, Buyer's Earnest Money Deposit shall be returned in full within fifteen (15) days of such notice and this Agreement shall be null and void. Issuance of a certificate of occupancy for the Property shall constitute conclusive evidence of satisfactory completion of construction by Seller for the purpose of meeting the construction deadline.

13. **ACCESS TO THE PROPERTY; CONSTRUCTION SITE.** In order to assure the safety of Buyer, Seller's personnel and sub-contractor's personnel, and to comply with state and federal safety regulations and insurance requirements, except to the extent Buyer is the current occupant of the Property, neither Buyer nor Buyer's agent(s) may have access or entry to the Property prior to Settlement unless accompanied by Seller's designated representative. Buyer may not perform work on or provide materials to others for installation in the Property or directly engage others to do so, nor may Buyer store any possessions in or about the Property prior to Settlement and delivery of possession to Buyer. Any violation of this provision may, at the option of Seller, be considered a material breach of this Agreement and a default by Buyer. Further, should Buyer or Buyer's agent or agents enter upon the Property at any time in violation of this section, Buyer or Buyer's agent or agents and/or Buyer's invitees will be deemed the legal equivalent of a trespasser and Seller and/or Seller's agents assume no liability or responsibility for any injuries suffered by Buyer or Buyer's agents and/or invitees while visiting the Property, and Buyer, Buyer's agents and/or invitees forever release, discharge, and hold Seller, Declarant, and each of their respective officers, directors, partners, shareholders, agents, independent contractors, employees, predecessors, successors, assigns, parents, affiliates, subsidiaries, and the agents and employees of any of them, harmless from and against any all actions, causes of action, damages, losses, claims, liabilities, and demands in any way based upon or arising from or related to or arising therefrom.

14. **OPTIONS.** No later than seven (7) days following the Effective Date, Buyer must contact the dealer authorized by Seller to decide and choose which: (i) flooring (e.g., carpet, tile, etc.); (ii) countertops; (iii) paint color; and (iv) hardware and fixtures (collectively referred to as the "**Options**") Buyer wants installed in the unit. Only those items available and offered from the authorized dealer will be available to Buyer for selection and installation in the unit. The prices for the Options shall be at the price then charged by the authorized dealer. Once Buyer has selected his/her Options, an addendum reflecting the selection and the prices for those Options must be entered into within **days** of the Effective Date, and will increase the Purchase Price accordingly. In the event Buyer fails to contact the authorized dealer or to enter into an addendum within the time frame set forth in this section, then Buyer shall be deemed to have waived his/her right to select such Options and Seller is authorized to select the Options for Buyer and the prices for such Options shall be included in the Purchase Price.

15. **PRE-SETTLEMENT INSPECTION.** As soon as possible after issuance of the certificate of occupancy for the Property, Seller shall schedule a final inspection of the Property to give Buyer or Buyer's representative the opportunity to have a pre-Settlement "walk-through" inspection of the Property. Seller shall make every reasonable effort to schedule the final inspection at a mutually convenient time, but the Settlement Deadline will not be delayed if Buyer or Buyer's representative is unable to participate

in the final inspection. If Buyer or Buyer's representative is unable to participate in the final inspection, then Buyer shall be deemed to have waived the pre-Settlement inspection.

16. **SETTLEMENT AND CLOSING.**

(a) **Settlement Deliveries and Documents.** Settlement shall take place on the Settlement Deadline referenced in **Section 43**. "**Settlement**" shall occur only when **all** of the following have been completed: (i) Buyer and Seller have signed and delivered to each other or to the escrow/closing office all documents required by this Agreement, by the lender, by written escrow instructions or by applicable law; (ii) any monies required to be paid by Buyer under these documents have been delivered by Buyer to Seller or to the escrow/closing office in the form of collected or cleared funds; and (iii) any monies required to be paid by Seller under these documents have been delivered by Seller to Buyer or to the escrow/closing office in the form of collected or cleared funds.

(b) **Closing Costs; Prorations.** Seller and Buyer shall each pay one half of the fee charged by the escrow/closing office for its services in the settlement/closing process. Taxes and assessments for the current year, rents, and interest on assumed obligations shall be prorated at Settlement as set forth in this Section or as otherwise set forth in **Section 9**. Prorations set forth in this Section shall be made as of the date of Settlement, unless otherwise agreed to in writing by the parties. Such writing may include the settlement statement.

(c) **Date of "Closing."** The transaction will be considered closed when Settlement has been completed, and when **all** of the following have been completed: (i) the proceeds of any new loan have been delivered by the lender to Seller or to the escrow/closing office; and (ii) the applicable Settlement documents have been recorded in the office of the Washington County Recorder. The actions described in parts (i) and (ii) of the preceding sentence shall be completed within four days of Settlement.

(d) **Settlement Deadline.** Settlement shall occur on or before the Settlement Deadline referenced in **Section 43**.

17. **POSSESSION.** Seller shall deliver to Buyer possession of the Property in its present or required condition, ordinary wear and tear excepted, upon execution and recording of the deed of conveyance.

18. **BROKERS' FEES.** All obligations of the parties for payment of brokers' fees are contained in separate written agreements.

19. **AGENCY.** At the signing of this Agreement:

The Listing Agent, _____, represents
 Seller Buyer both Seller and Buyer as a Limited Agent

The Listing Broker, _____, represents
 Seller Buyer both Seller and Buyer as a Limited Agent

The Selling Agent, _____, represents
 Seller Buyer both Seller and Buyer as a Limited Agent

The Selling Broker, _____, represents
 Seller Buyer both Seller and Buyer as a Limited Agent

20. **TITLE INSURANCE.** At Settlement, Seller agrees to pay for a standard-coverage owner's policy of title insurance insuring Buyer in the amount of the Purchase Price. Any additional title insurance coverage shall be at Buyer's expense.

21. **RISK OF LOSS.** The risk of loss or damage to the Property, including physical damage or destruction to the Property or its improvements due to any cause except ordinary wear and tear and loss caused by a taking in eminent domain, remains with the Seller until the execution and recording of the deed of conveyance.

22. **INSURANCE COVERAGE.** As may be required by the first mortgage or deed of trust lender and any other lender chosen by Buyer, at Settlement, a certificate of insurance shall be provided by the insurance company chosen by the Seller or the Association in accordance with the Governing Documents.

23. **ZONING.** Buyer acknowledges that Seller has not made any representations other than those herein contained as to the current or proposed zoning or use of any neighboring land.

24. **ASSIGNABILITY.** Buyer may not assign this Agreement without the prior written consent of Seller, which consent will be at Seller's sole and absolute discretion. This Agreement may be assigned by Seller without the consent of Buyer.

25. **AUTHORITY OF SIGNERS.** If Buyer or Seller is a corporation, partnership, trust, estate, limited liability company, or other entity, the person executing this Agreement on its behalf warrants his or her authority to do so and to bind Buyer and Seller.

26. **COMPLETE AGREEMENT.** This Agreement together with its addenda and attached exhibits, if any, constitutes the entire Agreement between the parties and supersedes and replaces any and all prior negotiations, representations, warranties, understandings or Agreements between the parties. This Agreement cannot be changed except by written agreement of the parties.

27. **DEFAULT.**

(a) **Seller's Remedies.** If Buyer defaults, Seller may elect either to retain the Earnest Money Deposit as liquidated damages, or to return it and sue Buyer to specifically enforce this Agreement or pursue other remedies available at law.

(b) **Buyer's Remedies.** If Seller fails to perform Seller's obligations under this Agreement and Buyer has otherwise complied with all of Buyer's obligations, then Buyer agrees, before exercising any other remedies, to deliver to Seller a written notice setting forth in detail the alleged failure of performance by Seller. Seller shall have thirty (30) days from the receipt of Buyer's notice to cure such failure of performance, if any, except that if the required performance cannot reasonably be completed by Seller within thirty (30) days, then Seller shall have a reasonable time within which to complete the remedial action, but in no event longer than sixty (60) days. If, at the expiration of said cure period, Seller shall not have cured the failure of performance, Buyer may, by further written notice to Seller, as Buyer's sole and exclusive remedy, terminate this Agreement and receive a refund of the Earnest Money and all other sums paid by Buyer to Seller to date, whereupon this Agreement shall be terminated without further liability to either party. In no event shall Seller be responsible for incidental or consequential damages.

28. **GOVERNING LAW; JURISDICTION; CHOICE OF FORUM.** This Agreement shall be governed by and construed in accordance with the laws of the State of Utah. Any action brought to enforce or interpret any provision of this Agreement or that otherwise arises under this Agreement shall

be brought in the Fifth Judicial District Court in and for Washington County, State of Utah. Buyer hereby expressly consents to the personal jurisdiction of said court and waives any objection Buyer may now or hereafter have to the laying of venue of any action brought in such court arising from or related to this Agreement.

29. **DISPUTE RESOLUTION.** Any controversy, claim, or dispute arising out of or relating to this Agreement or Buyer's purchase of the Property, whether arising prior to or after Settlement, [] SHALL [] MAY (upon mutual agreement of the parties) first be submitted to mediation. If the parties agree to mediation, the dispute shall be submitted to mediation through a mediation provider mutually agreed upon by the parties. If the parties agree to require mediation and such mediation is unsuccessful, the parties may then resort to arbitration, litigation, or another dispute resolution procedure. For purposes of this section, one party's failure to cooperate in the mediation process in a reasonable and timely manner shall constitute an unsuccessful mediation. This section does not preclude a party from seeking equitable relief from the court referenced in Section 27.

30. **ATTORNEY FEES AND COSTS.** In the event of litigation or binding arbitration to enforce this Agreement, the prevailing party shall be entitled to costs and reasonable attorney fees.

31. **NOTICES.** Any notice required to be given under this Agreement shall be served personally; mailed by registered or certified mail, postage prepaid, to the addresses specified below; or transmitted via facsimile at the number set forth below, if any, unless either party, by written notice, provides a different address or facsimile number for delivery of notices, in which case such notice shall be addressed to such different address or number. Notices shall be deemed given when deposited in the U.S. Mail; personally served in the manner provided for service by summons under Utah law; or transmitted by facsimile to the party entitled to receive notice.

If to Buyer:

Telephone: (____) _____

Facsimile: (____) _____

If to Seller:

Telephone: (____) _____

Facsimile: (____) _____

32. **ABROGATION.** Except as expressly provided for herein, the provisions of this Agreement shall not apply after Settlement.

33. **DATES.** Time is of the essence of this Agreement. If the final date of any period falls upon a Saturday, Sunday, or legal holiday under the laws of the State of Utah or United States, then in such event the expiration date of such period shall be extended to the next day which is not a Saturday, Sunday, or legal holiday under the laws of the State of Utah. Performance under each section of this Agreement which references a date shall be required by 5:00 P.M. Mountain Time on the stated date. Any extension of any deadline stated herein must be agreed to in writing by all parties.

34. **COUNTERPARTS.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same

agreement. Transmittal and receipt of a facsimile copy of this Agreement with facsimile signatures shall be binding on the parties hereto.

35. **SEVERABILITY.** Each term of this Agreement is deemed severable, in whole or in part, and if any provision of this Agreement or its application in any circumstance is found to be illegal, unlawful or unenforceable, the remaining terms and provisions shall not be affected thereby and shall remain in full force and effect.

36. **MODIFICATION.** This Agreement cannot be modified or altered except by a subsequent written agreement signed by the parties hereto.

37. **FULL AGREEMENT.** This written document, and any addenda hereto containing the signatures of both parties, contains the entire understanding and agreement of the parties on the subject matter set forth herein, and supercedes any prior agreement relating to these matters. No promises or inducements have been made other than those reflected herein, and no party is relying on any statement or representation by an person except those set forth herein, including without limitation oral or written summaries of this Agreement.

38. **GRAMMAR AND WORD USAGE.** Where the context requires, words in the singular shall be substituted for the plural and vice versa, and words in the masculine or feminine shall be substituted by the appropriate gender.

39. **DESCRIPTIVE HEADINGS.** The descriptive headings used herein are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this Agreement.

40. **WARRANTY.** A one-year standard home warranty is provided by the general contractor who constructed the Property. The terms and conditions of that warranty are solely between the Buyer and the warranty provider.

41. **ADDENDA.** There are are not addenda to this Agreement containing additional items. If there are, the terms of the following addenda are incorporated into this Agreement by reference: Addendum No. ____; Addendum No. ____ Other (specify) _____

42. **EFFECTIVE DATE.** The Effective Date of this Agreement shall be the date it is accepted by Seller in writing as set forth below.

43. **DEADLINES.** Buyer and Seller agree that the following deadlines shall apply to this Agreement (this **Section 43**, does not contain all of the deadlines referenced in this Agreement as other deadlines may be set forth elsewhere in this Agreement):

- (a) Loan Application _____ (Date)
- (b) Loan Approval _____ (Date)
- (c) Appraisal Deadline _____ (Date)
- (d) Seller Disclosure Deadline _____ (Date)
- (e) Pre-Settlement Inspection _____ (Date)
- (f) Settlement Deadline _____ (Date)

OFFER AND TIME FOR ACCEPTANCE. Buyer offers to purchase the Property on the above terms and conditions and the Addenda referenced therein. If Seller does not accept this offer by: **AM** **PM** Mountain Time on _____ (Date), this offer shall lapse; and the Brokerage shall return the Earnest Money Deposit to Buyer.

(Buyer's Signature) (Offer Date) (Buyer's Signature) (Offer Date)

The later of the above Offer Dates shall be referred to as the "Offer Reference Date"

(Buyers' Names) (**PLEASE PRINT**) (Notice Address) (Zip Code) (Phone)

ACCEPTANCE/COUNTEROFFER/REJECTION

CHECK ONE:

ACCEPTANCE OF OFFER TO PURCHASE: Seller Accepts the foregoing offer on the terms and conditions specified above.

COUNTEROFFER: Seller presents for Buyer's Acceptance the terms of Buyer's offer subject to the exceptions or modifications as specified in the attached ADDENDUM NO. . _____

(Seller's Signature) (Date) (Time) (Seller's Signature) (Date) (Time)

(Seller's Names) (**PLEASE PRINT**) (Notice Address) (Zip Code) (Phone)

REJECTION: Seller Rejects the foregoing offer.

(Seller's Signature) (Date) (Time) (Seller's Signature) (Date) (Time)