

LAKE MICHIGAN VIEW AT DIAMOND POINT
New Buffalo, Michigan

UNIT PURCHASE AGREEMENT

THIS AGREEMENT made this ____ day of _____, 2005, by and between **LAKE MICHIGAN VIEW TOWNHOMES & COTTAGES, LLC, a/k/a LAKE MICHIGAN VIEW AT DIAMOND POINT, a Michigan limited liability company**, of 135 S. Whittaker Street, New Buffalo, Michigan 49117, hereinafter referred to as "DEVELOPER", and _____, of _____, hereinafter referred to as "PURCHASER".

WHEREAS, Developer has established a residential condominium project known as LAKE MICHIGAN VIEW AT DIAMOND POINT, hereinafter referred to as the "Project", in the City of New Buffalo, Berrien County, Michigan, pursuant to the provisions of Act No. 59 of the Public Acts of 1976, as amended, hereinafter called the "Act;"

WHEREAS, Purchaser wishes to purchase a unit in the Project and to reserve the right to subscribe for participation in the association of co-owners;

NOW, THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Description of the Project.** Developer has established a residential condominium project. The Project is located in the City of New Buffalo, Berrien County, Michigan and Phase I consists of 13 townhomes and 17 single-family home site "units" and common elements appurtenant. Phase II consists of 13 townhome "units" and common elements appurtenant; Phase III consists of 18 townhome units.
2. **Description of Unit Purchased.** Developer agrees to sell and convey and Purchaser agrees to purchase, on the terms and conditions hereinafter stated, the unit in the above-referenced project designated as Unit ____ on Condominium Subdivision Plan (Exhibit D of the Project Master Deed).
3. **Purchase Price.** Purchaser hereby agrees to purchase the above-referenced unit located and numbered as indicated on the Condominium Subdivision Plan which Purchaser acknowledges he has examined, together with an undivided interest in the common elements appertaining to the Project for the price of _____ (\$_____).

The unit shall include the standard features described on Exhibit A hereto. The unit shall also consist of the upgrades or addition and landscaping (where applicable) as agreed to by the Purchaser and Developer, and the price of said upgrades and additions shall be added to the Purchase Price.

Purchaser agrees that, in addition to the purchase price above mentioned, he will be liable for his proportionate share of the Association's assessment for maintenance, repair, replacement and other expenses of administration as outlined in the Condominium By-Laws of the Project.

4. **Financing Agreement.** Purchaser agrees that he will pay the above-referenced purchase price as follows (strike all but that which applies):
 - 4.1 The sum of \$_____ [total of 5% of the Purchase Price, including any Preliminary Reservation deposit] upon the execution of this Agreement; and
 - 4.2 At the time of closing the remaining purchase price balance in the sum of \$_____ shall be paid by Purchaser as follows (place an "X" below in appropriate blank, other unmarked terms of purchase do not apply):

_____ (1) Cash: The full remaining balance of the purchase price upon execution and delivery of a warranty deed.

_____ (2) New Mortgage: The full remaining balance of the purchase price upon execution and delivery of a warranty deed, contingent upon Purchaser's ability to obtain a standard first mortgage of 80% of the Purchase Price in accordance with the terms and conditions set forth below.

If Purchaser elects to finance under a mortgage, he shall make good faith application for a mortgage commitment at the interest rate service charge then being offered by the proposed lender to comparable borrowers for a comparable mortgage no later than fifteen (15) days after execution of the Unit Purchase Agreement. If, after making all reasonable efforts, Purchaser fails, or is unable to obtain a mortgage commitment within forty-five (45) days, this Agreement shall be null and void; provided, however, that Developer may, but need not, assist in obtaining mortgage financing for Purchaser on terms not less favorable than those mentioned within a like time period, and Purchaser shall be obligated to accept and execute such mortgage and pay the cost of obtaining it or extend the time period for obtaining a mortgage commitment, in which case this Agreement shall remain in full force and effect.

Purchaser must advise Developer in writing whether he has obtained a mortgage commitment within 45 days after execution of this Agreement. If Purchaser fails to provide such notice, then Purchaser shall have waived this mortgage contingency and is obligated to close the transaction and pay the full purchase price with or without a mortgage.

- 5. Escrow of Payments.** Developer hereby agrees to deposit all funds received from Purchaser pursuant to this Agreement in an escrow account maintained by Developer with METROPOLITAN TITLE COMPANY, by and through its agent, METROPOLITAN TITLE COMPANY, pursuant to an Escrow Agreement dated the 10th day of May, 2005. Purchaser hereby acknowledges receipt of a copy of said Escrow Agreement.

In addition, Developer hereby acknowledges that pursuant to the provisions of Section 84(4)(c) of Act No. 59 of the Public Acts of 1978, as amended, that after the expiration of Purchaser's withdrawal period as provided in Paragraph 6 below, Developer shall retain sufficient funds in escrow or provide sufficient security to assure completion of only those uncompleted structures and improvements labeled under the terms of the condominium documents as "Must be Built".

In the event Purchaser shall withdraw from this Agreement in accordance with Paragraph 6 below, all amounts deposited with the Escrow Agent under this Agreement shall be returned to Purchaser, without interest, as provided in said Paragraph 6 below.

- 6. Purchaser's Right of Withdrawal.** Pursuant to the provisions of Section 84(2) of the Act, this Agreement shall not become binding upon Purchaser AND Purchaser may withdraw from this Agreement WITHOUT CAUSE AND WITHOUT PENALTY before:

6.1 Developer's conveyance of the unit to Purchaser; AND

6.2 Within nine (9) business days after the receipt of the recorded Master Deed, the Escrow Agreement, the Condominium Association Bylaws, a Disclosure Statement relating to the Project, and a copy of this Agreement.

PLEASE NOTE that the conjunction "AND" is used above. Thus as a potential purchaser you have, prior to the conveyance of the unit or nine (9) business days from the receipt of the documents in Subparagraph 6.2 above, WHICHEVER LAPSES SOONER, to withdraw from this Unit Purchase Agreement.

The calculation of the nine (9) business day period shall include the day on which the documents are received if such day is a business day. The Act defines a business day as a day of the year excluding Saturday, Sunday, or legal holiday.

In the event that Purchaser shall exercise his right to withdraw from this Agreement, all sums paid Developer and deposited in escrow pursuant to Paragraph 5 above shall be returned to Purchaser WITHIN THREE (3) BUSINESS DAYS AFTER ACTUAL RECEIPT OF WRITTEN NOTICE OF WITHDRAWAL from this Agreement is given to Developer. Written notice of withdrawal shall be made on the form attached hereto and incorporated herein as Exhibit B; and shall provide such form to Developer either by certified mail return receipt or personal delivery at the following address:

Lake Michigan View at Diamond Point
135 S. Whittaker Street
New Buffalo, Michigan 49117

Attn: David E. Montayne

The above-referenced right of withdrawal may be knowingly and voluntarily waived in writing by the Purchaser provided that such Purchaser has received the documents listed in Subparagraph 6.2 above.

In the event that there is no unit owner other than the Developer, and the Developer determines in its sole discretion not to establish the condominium project referred to herein, the Developer may unilaterally terminate the condominium project. All sums paid pursuant to this Agreement and placed in escrow pursuant to Paragraph 5 above shall be returned to Purchaser by Developer's escrow agent within three (3) business days of Developer's notice of termination.

7. **Conveyance of Title.** Developer agrees to convey to Purchaser good and merchantable title to the unit by warranty deed subject to: (1) general real estate taxes for the year of the conveyance; (2) any installments of any special or supplemental assessments that are not at the time of the conveyance due and payable; (3) easements, covenants, restrictions and building lines of record; (4) applicable zoning and building laws or ordinances; (5) acts done or suffered by Purchaser; (6) the Michigan Condominium Act; (7) the Master Deed for the Project and all amendments and exhibits thereto; and (8) liens and other matters over which the title insurer provided for herein commits to insure.
8. **Title Evidence.** At or prior to closing, Developer shall provide Purchaser at Developer's expense with a standard form commitment for issuance of a policy of title insurance showing title in Purchaser subject to (a) the general printed exceptions contained in the policy and (b) the title exceptions set forth in Paragraph 7 above, and shall cause to be issued and delivered to Purchaser an owner's policy of title insurance based upon such commitment in the full face amount of the purchase price. The title policy or commitment therefore shall be conclusive evidence that a good and marketable title is being conveyed to Purchaser, and shall be in the amount of the purchase price designated in this Agreement.

If the title insurance commitment shows a defect in Developer's title, Purchaser shall provide written notice of the defect to Developer within fifteen (15) days of its receipt of a commitment for title insurance. Upon receipt of said notice of defect, Developer shall have a reasonable time not exceeding forty-five (45) days to cure said defect. If Developer fails to clear the title defect within forty-five (45) days, then, at the option of Purchaser, this Agreement shall become null and void and all amounts deposited with the Escrow Agent under this Agreement shall be returned to Purchaser. If Purchaser fails to provide written notice of defect of title as required herein, Purchaser shall have accepted the condition of title as set forth in the commitment for title insurance, and waived any objection thereto.

9. **Taxes and Prorations.** Rents, taxes and all assessments to be prorated as of date of closing this sale, it is assumed that all taxes and assessments are based on the calendar year in which they are billed with the Purchaser being responsible for the day of closing.

For proration purposes, all tax bills shall be added together, using the last tax bill(s) issued and prorated accordingly, unless there has been a change in the assessed valuation or assessments on the property, in which case the proration shall be on that basis. If the Developer has paid taxes in advance, the Developer shall be credited by the Purchaser at the time of closing for the taxes paid in advance from the date of closing to the end of the calendar year.

In addition, those sums assessed against the Developer by THE DIAMOND POINT CONDOMINIUM ASSOCIATION, INC., which pertain to the Purchaser's residential unit shall be prorated at the time of closing.

In the event the Developer has, prior to closing, paid assessments pertaining to the Purchaser's residential unit, a portion of which are currently being held in the reserve for insurance, working capital, etc. by the Association, the Purchaser shall be required to purchase such reserve amounts from the Developer at closing; and the Developer shall provide the Purchaser with an assignment of the Developer's right, title and interest in such reserve amounts.

10. **Working Capital Deposit and Monthly Assessments.** The Purchaser shall pay to the Association at time of closing an amount equivalent to two-twelfths (2/12), to-wit: two (2) months, of its projected annual share of the Residential Condominium Association assessment as a working capital deposit; and this payment shall not act as a credit against any future assessment.

Thereafter on the first of each month following the date of closing, each co-owner shall pay an amount equivalent to one-twelfth (1/12), to-wit: one (1) month of the respective Condominium Association's assessment upon the co-owner's unit, unless otherwise provided in the Condominium Documents.

11. **Date of Closing.** Purchaser agrees to consummate the purchase of said unit ten (10) days after notice from the Developer that the unit is ready to be conveyed to the Purchaser **and** a Certificate of Occupancy has been issued for said unit, unless otherwise agreed in writing by the parties, at Metropolitan Title Company in Union Pier or St. Joseph, Michigan.

12. **Closing Costs.** It is understood, that Purchaser will, at the time title is conveyed to him, pay all mortgage costs and lender title insurance costs, and such other closing costs that are customarily paid by purchasers of comparable real estate in Berrien County.

In addition, at the time the closing Purchaser shall pay to the Treasurer of The Diamond Point Condominium Association, Inc. those reserve and working capital requirements provided in Paragraph 10 above.

13. **Possession.** Developer agrees to deliver possession of the unit at the time of closing unless otherwise mutually agreed by Purchaser and Developer.

14. **Membership in Association.** THE DIAMOND POINT CONDOMINIUM ASSOCIATION, INC. has been established as a Michigan non-profit corporation for the purposes of operating and maintaining the common elements of the condominium. Each co-owner shall be a member of the Association and will be subject to the By-Laws and regulations thereof. Each co-owner will be entitled to vote pursuant to the provisions of the Master Deed and Condominium By-Laws. Purchaser hereby subscribes to and agrees to pay all assessments of the Association and to abide by the terms, provisions, declarations, covenants and restrictions contained in the Master Deed, Condominium By-Laws and Condominium Subdivision Plan of LAKE MICHIGAN VIEW AT DIAMOND POINT, and the Articles of Incorporation, By-Laws and Rules and Regulations, if any, of the Association (hereinafter collectively referred to as the "Condominium Documents"), the contents

of which are as Developer, at his sole discretion, has determined appropriate, but which are in compliance with the Act.

15. **Cancellation of Rights.** It is understood that Purchaser's credit is subject to the approval by Developer and by any proposed mortgagee. If Developer and such mortgagee determine that Purchaser does not have adequate credit for participation in this Project, then the Developer may terminate this Agreement and all amounts deposited with the Escrow Agent under this Agreement shall be returned to Purchaser in full satisfaction of any rights of Purchaser, and all rights and liabilities of Purchaser and Developer hereunder shall be terminated.

16. **Purchaser Default.** At any time after this Agreement has become binding upon Purchaser pursuant to the provisions of Paragraph 6 above, if Purchaser shall default in any of the payments or obligations called for in this Agreement and such default shall continue for ten (10) days after written notice sent by Developer to Purchaser, then, forthwith, at the option of Developer, all rights of Purchaser under this Agreement shall terminate.

In the event of termination by Developer pursuant to the above provision, any amount paid toward the purchase shall be retained by Developer as liquidated damages; provided, however, that such liquidated damages shall in no event exceed ten percent (10%) of the purchase price specified in this Agreement. In addition, this provision shall in no way prevent Developer from recovering any and all actual damages incurred as a result of such default.

If Purchaser's rights terminate before this Agreement becomes binding upon him in accordance with the terms of Paragraph 6 above, or if Developer or Purchaser terminates this Agreement pursuant to the provisions of Paragraph 15 above, all sums paid by Purchaser shall be returned to Purchaser without interest, and all rights and liabilities of Purchaser and Developer under this Agreement shall be terminated.

17. **Assignment.** Purchaser shall not assign, set over or transfer this Agreement or any of Purchaser's rights or interests hereunder without the prior written consent of Developer. Developer may reject any request for assignment at its sole and absolute discretion. In the event the Developer approves an assignment, the Assignor shall remain primarily and absolutely liable and responsible to comply with all terms and conditions of this Agreement.

Developer may assign or transfer this agreement at its sole discretion, but in the event of such assignment, Developer shall remain liable for performance of this Agreement in the event that the assignee fails to perform.

18. **Notices.** All written notices required or permitted hereunder and all notices of change of address shall be deemed sufficient if personally delivered or sent by registered or certified mail return receipt, addressed to the recipient party at the addresses set forth in the heading hereto. For purposes of calculating time periods under the provisions of this Agreement, notice shall be deemed effective upon receipt of mailing or personal delivery, whichever is applicable.

19. **Limited Warranty.** THIS WARRANTY IS GIVEN IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED. THERE IS NO GUARANTY OF WARRANTY OF THE UNIT OR THE COMMON ELEMENTS OF THE CONDOMINIUM OTHER THAN AS SPECIFIED HEREIN, INCLUDING, BUT NOT LIMITED TO, A WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY. IN NO CASE SHALL DEVELOPER BE LIABLE FOR LOST PROFITS OR CONSEQUENTIAL OR INCIDENTAL DAMAGES OF ANY KIND. The limitations on liability for lost profits, incidental damages or consequential damages shall survive any failure of essential purpose of this limited warranty.

As to the units, Developer warrants to Purchaser that all utilities provided to the Project by Developer have been installed and approved by the public body or utility company having jurisdiction thereover.

The developer warrants each unit for Material and Workmanship for one year pursuant to a standard one year limited construction warranty which shall be delivered and executed at closing.

20. **Usage of Terms.** The pronouns and relative words herein used shall be construed respectively to include the masculine, feminine, the neuter genders and the singular and plural numbers unless the context indicates a contrary intention.
21. **Laws of Michigan.** The interpretation of the terms and provisions of this Agreement shall be governed by the laws of the State of Michigan.
22. **Captions.** Captions of sections are inserted as a matter of convenience only and do not define, limit or extend the scope or intent of this Agreement or any provision thereof.
23. **Risk of Loss.** Risk of loss shall be borne by the Seller until the date of closing.
24. **Complete Agreement.** This Agreement constitutes the entire Agreement between the parties and there are no other agreements, oral or written, relating to this transaction. No oral representations or statements shall be considered a part hereof. This Agreement may not be amended, modified or changed except by written agreement signed by both Developer and Purchaser.
25. **Partial Invalidity.** The invalidation of any portion of this Agreement shall not affect the validity of the remainder.
26. **Term of Construction.** Developer agrees to use its best efforts to complete construction of the unit within _____ months after the execution of this contract.
27. **Binding Effect.** This Agreement shall supersede any and all previous agreements between Developer and Purchaser with respect to the unit and bind the Developer and Purchaser and its respective heirs, personal representatives, administrators, executors, assigns and successors.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

“DEVELOPER”

LAKE MICHIGAN VIEW TOWNHOMES &
COTTAGES, LLC a/k/a LAKE MICHIGAN VIEW
AT DIAMOND POINT,
a Michigan limited liability company
135 S. Whittaker Street
New Buffalo, MI 49117

By: _____

Its: _____

“PURCHASER”

[THIS UNIT PURCHASE AGREEMENT CONSISTS OF 9 PAGES, INCLUDING EXHIBITS A AND B.]

**LAKE MICHIGAN VIEW AT DIAMOND POINT
NEW BUFFALO, MI 49117**

EXHIBIT A

Unit: _____ Purchaser: _____

The following is a list of the standard features included in the unit:

