

PURCHASE AGREEMENT FOR THE ORCHARDS OF FLAT ROCK

(herein "Purchase Agreement")

STATE OF NORTH CAROLINA, COUNTY OF HENDERSON

_____, as Buyer, hereby offers to purchase from, **The Orchards, LLC**, as Seller, upon acceptance of said offer, agrees to sell and convey all that parcel of land described below, together with all improvements located thereon (collectively referred to as the "Property") upon the following terms and conditions:

1. **REAL PROPERTY:** Located in the County of Henderson, State of North Carolina, and being known as and more particularly described as **Lot # _____ of Phase _____** of The Orchards of Flat Rock, as referenced by the attached site plan addendum, as well as the home model to be constructed by Seller as described herein below. The above mentioned property is a portion of **PIN _____** described in **Deed Book(s) 1260, Page 573**. The address of the property is, _____, Flat Rock, NC 28731.

2. **PURCHASE PRICE:** The purchase price is \$ _____ and shall be paid as follows:

a. \$ _____ **EARNEST MONEY DEPOSIT** by cash, personal check, bank check, or certified check to be deposited and held in escrow by Prudential Lifestyle Realty, as escrow agent, until the sale is closed, at which time it will be credited to Buyer, or until this contract is otherwise terminated. Any earnest monies deposited by Buyer may be placed in the interest bearing trust account of the Escrow Agent named in this Purchase Agreement. Any interest earned thereon shall belong to the Escrow Agent in consideration of the expenses incurred by maintaining such account and records associated therewith. In the event (1) the offer contained in this Purchase Agreement is not accepted; or (2) any of the conditions hereto are not satisfied, then all earnest monies shall be returned to Buyer. In the event of breach of this contract by Seller, upon Buyer's request, all earnest monies shall be returned to Buyer. In the event this offer is accepted and Buyer breaches this contract, then all earnest monies shall be forfeited upon Seller's request, but receipt of such forfeited earnest monies shall not affect any other remedies available to Seller for such breach.

NOTE: In the event of a dispute between Seller and Buyer over the return or forfeiture of earnest money held in escrow by a broker, the broker is required by state law to retain said earnest money in the broker's trust or escrow account until a written release from the parties consenting to its disposition has been obtained or until disbursement is ordered by a court of competent jurisdiction.

b. \$ _____ **ADDITIONAL EARNEST MONEY DEPOSIT** to be paid to escrow agent no later than _____.

c. \$ _____ **BALANCE** of the purchase price in cash at closing.

3. **FINANCING CONDITIONS:** (State N/A in each blank that is not a condition to this contract.)

a. **Loan:** Buyer must be able to obtain a ____ FHA; ____ VA (attach FHA/VA Financing Addendum); ____ Conventional; or ____ Other: _____ loan at a ____ Fixed Rate; ____ Adjustable Rate; or ____ Other: _____ in the principal amount of \$ _____ (plus any financed VA Funding Fee or FHA MIP) for a term of _____ year(s), at an interest rate not to exceed _____ % per annum, with mortgage loan discount points not to exceed _____ % of the loan amount ("Loan"), that is effective through the date of closing.

b. **Loan Obligations:** The Buyer agrees to:

(i) Make written application for the Loan, authorize any required appraisal and pay any necessary fees no later than the ____ day of _____, 20 ____;

(ii) Promptly furnish Seller written confirmation from the Lender of having applied for the Loan. If Buyer fails to furnish Seller written confirmation from the Lender of having applied for the Loan, Seller may make written demand for compliance. If Buyer does not furnish Seller written confirmation from the lender of application within five (5) days after such demand, then Seller may terminate this Contract by written notice to Buyer at any time thereafter, provided Seller has not received either written evidence of the application or a waiver of the Loan Condition, and all Earnest Money shall be immediately forfeited to Seller as liquidated damages. Buyer further agrees to:

(iii) Pursue qualification for and approval of the Loan diligently and in good faith;

(iv) Continually and promptly provide requested documentation to lender.

c. **Inability to Obtain Loan Approval:** If Buyer has complied with Buyer's Loan Obligations (iii) and (iv) above, then on or before the ____ day of _____, 20 ____ (herein the "Loan Approval Deadline"), or any agreed-upon written extension of this deadline, **TIME BEING OF THE ESSENCE**, Buyer shall have the right to terminate this contract for inability to obtain Loan approval by delivering to Seller written notice of termination prior to said deadline. If Buyer has timely delivered such notice, this contract shall be null and void and all Earnest Money shall be refunded to Buyer. **If Buyer fails to deliver such notice prior to the expiration of the deadline herein, then Buyer will be deemed to have waived the condition.** Thereafter, if Buyer fails to close based upon inability to obtain the Loan, then all Earnest Money shall be immediately forfeited to Seller as liquidated damages. (**WARNING:** Buyer is advised to obtain Loan pre-qualification prior to tendering this contract, or to consult with Buyer's lender to assure that the number of days allowed for Buyer to obtain the Loan is sufficient to allow Buyer's lender time to take all reasonable steps necessary to provide reliable loan approval.)

NOTE: Buyer acknowledges that Seller will not begin any construction or place any orders relating to upgrades, custom or change orders until the Loan Approval Deadline has expired.

Buyer specifically acknowledges that these loan terms may necessitate an interest rate lock in excess of thirty (30) days prior to the closing date, and that a failure to lock said rate may result in the Buyer being unable to obtain a loan on the stated terms after waiver of the loan condition. Buyer specifically acknowledges that the actual closing date is estimated and may be delayed beyond the date Buyer elects to lock their interest rate. In the event that Buyer's interest rate lock shall expire prior to the actual closing date, Seller shall not be liable for any expenses or damages relating to any expired interest rate lock.

d. All deeds of trust, liens, and other charges against the Property, not assumed by Buyer, must be paid and satisfied by Seller prior to or at closing such that cancellation may be promptly obtained following closing. Seller shall remain obligated to obtain such cancellations following closing.

e. Title must be delivered at closing by GENERAL WARRANTY DEED unless otherwise stated herein, and must be fee simple insurable title, free of all encumbrances except: ad valorem taxes for the current year (prorated through the date of closing); utility easements and unviolated restrictive covenants that do not materially affect the value of the Property; and such other encumbrances as may be assumed or specifically approved by Buyer.

4. **RECEIPT ACKNOWLEDGEMENT:** Buyer acknowledges that Seller has disclosed and or given to buyer the following:

a. The Orchards of Flat Rock is a Deed Restricted Community and Buyer(s) are required to follow The Declaration of Covenants, Conditions, Restrictions, Bylaws and Community Rules and Regulations for The Orchards of Flat Rock. A copy of both recorded documents has been provided.

b. Homeowner's Manual, which includes all warranty information and a sample Certificate of Acceptance.

5. **PRORATIONS AND ADJUSTMENTS:** Unless otherwise provided, the following items shall be prorated and either adjusted between the parties or paid at closing: (a) Ad valorem taxes on real property shall be prorated on a calendar year basis through the date of closing; (b) All late listing penalties, if any, shall be paid by Seller; (c) Owners' Association dues, and other like charges shall be prorated through the date of closing as permitted in the Covenant & Restrictions; (d) **Buyer shall tender an Owners' Association capital contribution equal to two months of Owners' Association Dues, payable at day of closing. Seller represents that the current owners' association dues, if any, are \$_____ per month.** Payment of the Owners' Association dues may be paid monthly, quarterly or yearly as determined by the Covenant & Restriction, Bylaws or Board Officers of the Homeowners' Association.

6. **CLOSING EXPENSES:**

a. Seller agrees to pay for preparation of the deed and all other documents necessary to perform Seller's obligations under this Agreement, and for excise tax (revenue stamps) required by law.

b. In addition, Seller agrees to pay \$150.00 of the Attorney closing fee when said services are supplied by the law firm Coiner, Harrelson & Shelton, P.A. In addition the approved lender will pay up to \$ 500.00 of Buyer's closing cost when said services are supplied by the approved Lender listed below. Should the Buyer select a different Lender, the \$500.00 in closing costs will not be paid. If no mortgage, Seller will pay \$150.00 of the attorney closing cost if the law firm of Coiner, Harrelson & Shelton, P.A. is used.

Approved Lender
Wells Fargo

Contact
Whitney Lang

Phone Number
(828) 687-5175

The Buyer has the right to employ separate counsel; however, if the Buyer does employ separate counsel, the Buyer shall be responsible for all expenses and fees charged by such separate counsel. Buyer acknowledges that the law firm of Coiner, Harrelson & Shelton, P.A. has performed legal services to the Seller, including preparing the Seller's deed, drafting of Restrictive Covenants and drafting other development related documents. Buyer acknowledges that in the event the Buyer elects to employ the services of Coiner, Harrelson & Shelton, P.A. and a conflict develops between Buyer and Seller, the law firm of Coiner, Harrelson & Shelton, P.A. must withdraw from the representation of all parties and may not continue to represent either Buyer or Seller with respect to such conflict.

7. **LABOR AND MATERIAL:** Seller and general contractor shall furnish, at closing, an affidavit and indemnification agreement showing that all labor and materials, if any, furnished to the Property within 120 days prior to the date of closing have been paid for and agreeing to indemnify Buyer against all loss from any cause or claim arising therefrom.
8. **INSULATION:** Insulation shall be installed in the heated areas of the home as follows:
 - a. All exterior frame walls shall be composite R-Value of insulation to be R-13.
 - b. All attic insulation over living areas shall be R-Value of insulation, excluding R-Value of the roof, air space, etc., shall be R-38.
 - c. Chateau plan, second story ceiling is R-38 in the flat ceiling, R-30 in the sloped ceiling and R-19 in the knee wall section
9. **PROPERTY INSPECTIONS & REPRESENTATIONS:**
 - a. Property Inspection: **Upon completion of construction, Buyer shall inspect the property in the presence of Seller's representative and shall provide Seller with a signed Certificate of Acceptance Form that identifies any punch-list items to be completed that have been agreed upon by the parties to this Agreement. Buyer(s) should read and become familiarized with the Homeowner manual given to Buyer(s) and made an exhibit to this Purchase Agreement.** It is understood that Seller shall assign to Buyer all rights under manufacturer's warranties on appliances, equipment, fixtures, and consumer products included with the property. Seller provides no warranties relating to the manufacturer or consumer products. The property, including materials and labor, except as may be limited by any express limited warranty of Seller or as may be covered by the warranty of another, including but not limited to any manufacturer's warranty or the warranty of another contractor or subcontractor or any other express or implied warranty, shall be guaranteed for the period of one (1) year, commencing on the date of closing. During such one (1) year period, the Seller, at its own expense, unless limited by its express limited warranty or any other such warranty of another as may be described above or herein, shall correct any defect arising from work performed by the Contractor.
 - b. Wood-Destroying Insects: Seller will provide a soil treatment certification at closing.
 - c. Radon: Buyer shall have the option, at Buyer's expense, to have the Property tested for radon on or before the date of completion of inspections as set forth in Paragraph 9a herein. This

test cannot delay closing. The test results shall be deemed satisfactory to the Buyer if it indicates a radon level of 3.99* pico curies per liter of air or less. If the test exceeds the above-mentioned level, Seller shall have the option of (a) completing necessary corrective measures to bring the radon level within the satisfactory range; or (b) refusing to complete any corrective measures. Upon completion of corrective measures, Buyer may have a radon test performed at Seller's expense, and if the test results indicate a radon level at or below the level listed above, it shall be deemed satisfactory to the Buyer. If Seller elects not to complete necessary corrective measures, or if corrective measures are attempted but fail to bring the radon levels within the satisfactory range, Buyer shall have the option of (a) accepting the Property with its then current radon level; or (b) terminating the contract, in which case all earnest monies shall be refunded. Closing shall constitute acceptance of the radon level in existence at that time.

*Current EPA guidelines reflect an "acceptable" level as anything less than 4.0 pico curies per liter of air (January 1, 1997).

d. Mold: Seller shall employ standard building practices during construction to minimize the occurrence of mold within the structure, however, Buyer acknowledges that it is impossible to eliminate all occurrences of mold, and that Seller shall not be liable for the presence of mold within the structure except for what may be determined gross negligence.

10. **REASONABLE ACCESS:** Seller will provide reasonable access to Buyer or Buyer's representatives for the purposes of appraisal, inspection, and/or evaluation. Buyer may conduct a walk-through inspection of the Property prior to closing but said inspections can not delay the established closing date. **In order to ensure Safety on the site, and to comply with Insurance and Seller policy requirements, all on-site inspections must be prescheduled with and accompanied by a representative of the Seller.**
11. **BUYER INTERFERENCE:** Seller reserves the right to terminate this agreement in its exclusive discretion, if in its opinion, Buyer has: (i) substantially interfered with the construction process; (ii) made unreasonable demands of Seller; (iii) unreasonably delayed closing, or (iv) has failed to provide information or cooperate with the Seller in any way affecting the construction or closing under this agreement. **In the event that the Seller shall elect to terminate hereunder, all earnest money and other sums paid to Seller hereunder (not including any interest earned thereupon) shall be refunded to Buyer, and Buyer shall have no further recourse for such termination.**
12. **CONSTRUCTION SPECIFICATIONS:** The appliances, equipment, fixtures and materials installed may deviate from those specified in the applicable plans for the home. The Seller shall, to the extent reasonably possible, ensure that all improvements installed shall conform in quality to those identified in the plans and specifications. Seller reserves the exclusive right to modify the plans and specifications for any home, and Buyer specifically agrees that minor changes, including but not limited to the following may be made by Seller: (i) changes in dimensions of balconies, patios/porches, doors, hallways and rooms; (ii) changes in the layout and placement of rooms in the event that the plans are "mirrored" or "flipped"; (iii) changes in locations of doors, HVAC registers and vents, lights, outlets, partitions, utility connections, walls and windows; and (iv) minor changes or reconfiguration of Common Elements, landscaping and surface finishes. Buyer further acknowledges, agrees and understands that items seen in models or shown in illustrations of homes may not be included with the sale of the home, or may be available as upgrades to the home.

13. **SELECTIONS AND UPGRADES:** All color and optional upgrade selections are to be completed, with signature approval of ALL selections, no later than the ___ day of _____, 20___. Failure to complete all selections by this date will cause the Seller to default to a standard color package to be applied to the home and will not include any upgrades. **At the time of completion of the Selection Guide, the additional costs associated therewith, if any, shall be deposited with Seller, will be used and applied toward the cost of the upgrade, and will be non-refundable. In the event that the Seller shall authorize upgrades without pre-payment from the Buyer, the cost of such upgrades shall be added to the purchase price and collected at closing by cash payment. In the event that the Buyer shall order upgrades, Buyer shall be specifically liable for the costs associated therewith, in addition to any other costs, expenses or liabilities upon default by Buyer.**
14. **CONSTRUCTION AND COMPLETION DATE:** The Seller estimates that the construction on the above-referenced unit will be completed approximately in the **two week period dated; Weeks of _____, 20__**; however, it is understood that specific closing date may be modified by the Seller, in Sellers exclusive discretion. Once construction is at the drywall installation stage, Seller shall notify Buyer of the date of anticipated completion of construction and of the scheduled closing date in writing to be delivered by first class mail, facsimile or electronic mail to the address of the Buyer as provided herein. Seller shall issue such notice at least thirty (30) days prior to such anticipated closing date, however, in the event the closing date is modified to a date later than the original anticipated closing date, Buyer shall be prepared to be “on stand by” for such modified date. In the event closing is delayed by Seller beyond the original anticipated closing date, Seller shall only be required to give Buyer notice twenty four (24) hours prior to such modified closing date. Once Buyer has been notified in writing by Seller of the closing date, or a revised closing date, and provided a Certificate of Occupancy has been issued, then Buyer must be prepared to close upon such date. In the event that Buyer is not able to close on the closing date established by Seller, Buyer shall pay a penalty of \$100 for each day thereafter, resulting from Buyers delay in closing. All parties agree to execute any and all documents and papers necessary in connection with closing and transfer of title on the closing date established by Seller, or such other date as may be modified by Seller. In the event Buyer shall delay closing more than fourteen days, Seller may declare such delay as a breach of this Agreement by Buyer, and thereupon, Escrow Agent shall release Earnest Money to Seller without Notice to Buyer. Notice from Seller to Buyer shall be deemed delivered when it is deposited with the United States Postal Service, transmission by facsimile or electronic mail. **Time shall be of the essence with regard to any closing date or modified closing set forth herein.**
15. Buyer acknowledges and authorizes Prudential Lifestyle Realty (Escrow Agent) to rely upon any statements supplied to Prudential Lifestyle Realty from Seller as to revised closing date. Furthermore, Buyer agrees to hold Prudential Lifestyle Realty harmless from any and all liability, including attorney’s fees, which may be incurred by Prudential Lifestyle Realty by virtue of releasing the aforesaid earnest money to Seller pursuant to the terms of this Agreement. If completion is delayed due to written change orders authorized by the Buyer, strikes, unavailability of materials, or natural disasters, or other circumstances beyond the reasonable control of Seller, then the closing of the transaction will be postponed until said Home is completed. **Buyer has selected the _____ floor plan.**

Construction of the residential Home may not be commenced, in Seller's exclusive discretion, until Buyer has completed the Selection Guide (or defaulted to the standard color package) and paid an amount equal to 10% of the purchase price (or agreed upon amount) into escrow as earnest money provided for in Paragraph 2 above, along with additional costs associated with the selections provided for in Paragraph 12. Commencement of construction for the home will follow a relevant timeline as reflected by completion date stated herein.

16. **CLOSING:** Closing shall take place in accordance with the Notice provided to Buyer as set forth in Items 13 & 6 (b), above. The closing will take place at the offices of **Coiner, Harrelson & Shelton P.A., 206 3rd Avenue West,--Hendersonville, North Carolina,** Buyer(s) must notify Seller in writing, (30) thirty days prior to the established closing date, if another attorney has been selected. The deed shall to be made to Buyer and shall read respectfully as follows
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a. **Utilities:** All new home mechanical systems must be inspected and tested prior to your new home orientation, walk-through and closing, therefore, Buyer agrees to:

Option 1. Initial(s) _____, _____ Buyer(s) agree to make application for and pay any deposits for power, gas and water/sewer to commence under buyer(s) name(s) 10 days prior to established closing date. In the event that the Buyer shall fail to apply for such utilities, Seller may apply for such utilities in its own name, and Buyer shall reimburse Seller for all expenses related thereto, including but not limited to a utility coordination fee in the amount of \$350.00 and will be collected at closing.

Option 2. Initial(s) _____, _____ Seller will have the power, gas and water/sewer turned on in it's name (Seller) prior to the new home orientation and closing date(s) for a fee of \$350.00. Buyer(s) agrees to make application for and pay deposits for all utilities to commence under Buyer(s) name no later than the day of closing. This fee will be charged, added to the purchase price, shown in Section 2 of this Purchase Agreement.

In the event any utilities are listed in the name of Seller, all such utilities will be disconnected and cancelled by Seller on the day following closing, and Seller shall not be responsible for any damages caused thereby, including but not limited to condensation or frozen/burst pipes. ****BUYER INITIAL:** _____

b. In preparing for closing, insure that you have funds to close in the form of Certified Bank Draft Funds, and insure that you have a proper photo identification card (i.e., driver's license, passport or other government issued identification).

c. Buyer agrees to secure homeowner's insurance at least 24 hours prior to the date of closing, and shall insure that a copy of the declarations page is forwarded to the closing agent prior to closing, who shall forward a copy of the same to the Homeowner's Association and/or to the Property Management Company. Seller shall terminate any Seller provided insurance coverage effective on the closing date, and Buyer shall be responsible for any damage or loss thereafter.

17. **POSSESSION:** Unless otherwise provided herein, possession shall be delivered at closing.

18. **CERTIFICATE OF OCCUPANCY:** Seller shall obtain a certificate of occupancy from the Henderson County Inspection Department prior to closing.
19. **OTHER PROVISIONS AND CONDITIONS:** (ITEMIZE ALL ADDENDA TO THIS CONTRACT AND ATTACH HERETO. SEE LIST OF INITIAL FORM ADDENDA AVAILABLE).
- a. Construction Specifications Addendum – Features List
 - b. Site Plan Addendum
 - c. Sample Floor Plan
 - d. Wood Floor Rider
 - e. _____
 - f. _____
20. **RISK OF LOSS:** The risk of loss or damage by fire or other casualty prior to closing shall be upon Seller. If the improvements on the Property are destroyed or materially damaged prior to closing, Buyer may terminate this contract by written notice delivered to Seller or Seller's agent and all deposits shall be returned to Buyer. In the event Buyer does NOT elect to terminate this contract, Buyer shall be entitled to receive, in addition to the Property, any of the Seller's insurance proceeds payable on account of the damage or destruction applicable to the Property being purchased.
21. **ASSIGNMENTS:** This contract may not be assigned by Buyer.
22. **PARTIES:** This contract shall be binding upon and shall inure to the benefit of the parties, i.e., Buyer and Seller and their heirs, successors and assigns, however, Buyer shall not assign its interest in this Agreement. As used herein, words in the singular include the plural and the masculine includes the feminine and neuter genders, as appropriate.
23. **SURVIVAL:** If any provision herein contained, which by its nature and effect is required to be observed, kept or performed after the closing, it shall survive the closing and remain binding upon and for the benefit of the parties hereto until fully observed, kept or performed.
24. **BREACH OR TERMINATION BY SELLER:** In the event that the Seller shall terminate or breach this Agreement, Buyer specifically acknowledges and agrees that the sole and exclusive recourse shall be a refund of the earnest money and other sums advanced to the Seller. Buyer, by acceptance of this contract, specifically waives any and all claims for damages above and beyond the earnest money and other sums advanced to the Seller.
25. **WARRANTIES:** Buyer understands and agrees that Seller will or has hired Lifestyle Homes of Distinction, Inc. to construct the home to be purchased by Buyer herein. However, Buyer further understands and agrees that Seller, and not Lifestyle Homes of Distinction, Inc. shall be solely responsible and liable to Buyer for any claims regarding workmanship and for any and all warranties, express or implied, concerning the construction of the home.
26. **ENTIRE AGREEMENT:** This contract contains the entire agreement of the parties and there are no representations, inducements or other provisions other than those expressed herein. All changes, additions or deletions hereto must be in writing and signed by all parties. Nothing contained herein shall alter any agreement between a REALTOR or broker and Seller or Buyer as

contained in any listing agreement, buyer agency agreement, or any other agency agreement between them.

27. **ASHEVILLE REGIONAL AIRPORT:** Buyer acknowledges awareness of and possible noise associated with the Asheville Regional Airport which is located near I-26 in South Asheville.
28. **RELATED PARTIES:** Buyer acknowledges that the builder/Seller, Lifestyle Homes of Distinction Inc., has a business relationship with Prudential Lifestyle Realty. Lifestyle Homes of Distinction has selected Prudential Lifestyle Realty to act as the seller's Realtor regarding this transaction.
29. **EXECUTION:** This offer shall become a binding contract when signed by both Buyer and Seller. This contract is executed under seal in signed multiple originals, all of which together constitute one or the same instrument, with a signed original being retained by each party and each REALTOR or broker hereto, and the parties adopt the word "SEAL" beside their signatures below.

This space intentionally left blank, signature page to follow.

Buyer acknowledges having made an on-site personal examination of the Property prior to the executing of this Purchase Agreement.

BUYER (SEAL)

BUYER (SEAL)

DATE

DATE

The Orchards, LLC
Seller

By: _____
Manager

Date: _____

I HEREBY ACKNOWLEDGE RECEIPT OF THE EARNEST MONEY HEREIN SET FORTH AND AGREE TO HOLD AND DISBURSE THE SAME IN ACCORDANCE WITH THE TERMS HEREOF.

Prudential Lifestyle Realty
Listing Firm

By: _____
Agent Lic# _____

Date: _____

Seller(s) Agent

x: _____
Agent Lic# _____

Date: _____

x: _____
Selling Agent, Lic # _____
Acting as: ___ Buyer's Agent ___ Dual Agent

Date: _____

Agent Name: _____

Company: _____

Bus. Phone: _____ Cell: _____ Fax: _____