

# **PURCHASE AGREEMENT**

## **LAS MARINAS CONDOMINIUMS South Padre Island**

THIS CONTRACT AND PURCHASE AGREEMENT is made and entered into by and between SPI LAS ANGELINAS, LTD., a Texas limited partnership, hereinafter called "Seller," and \_\_\_\_\_, and authorized assigns, hereinafter called "Purchaser."

WHEREAS, Seller proposes to construct a four story condominium project consisting of 32 residential units on the hereinafter described real property in the Town of South Padre Island, Texas, which project shall be known and designated as LAS MARINAS CONDOMINIUMS ("LAS MARINAS"); and

WHEREAS, Purchaser desires to purchase from Seller one or more units in LAS MARINAS, together with an undivided interest in and to the common elements of said project, and Seller desires to sell such hereinafter designated unit or units to Purchaser;

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained, Seller and Purchaser agree as follows:

### **ARTICLE 1 CONSTRUCTION**

1.01. Seller shall construct or cause to be constructed the LAS MARINAS Project upon the following described real property, to wit:

Lot 7, Block 196, Fiesta Isles Subdivision, South Padre Island, in Cameron County, Texas.

### **ARTICLE 2 DESCRIPTION OF CONDOMINIUM UNIT AND PRICE**

2.01. Agreement to Purchase. Purchaser agrees to purchase, and Seller agrees to sell to Purchaser, the following unit, together with the stated percentage of ownership in the common elements ("the "Condominium Unit"), for the Purchaser price stated hereby:

2.02. Purchase Price. The Purchase Price shall be \$ \_\_\_\_\_ USD ( \_\_\_\_\_ Dollars and 00/100 United States Currency), which together with all accrued interest on the Escrow Account shall be regarded as the Total Purchase Price.

2.03. Description of Unit. Unit \_\_\_\_\_, Floor: \_\_\_\_\_, said Unit comprising approximately \_\_\_\_\_ square feet of living area, together with an undivided interest in and to the Common Elements (as defined in the Condominium Declaration), including those areas reserved as Limited Common Elements appurtenant to the Unit and such other rights to use the Common Elements which have specifically been assigned to the Unit, and not less than one (1) reserved parking space in the parking area situated on the common Elements.

### **ARTICLE 3 PAYMENT OF PURCHASE PRICE**

3.01. **Earnest Money Payment.** Purchaser agrees to pay to Seller \$ \_\_\_\_\_ USD ( \_\_\_\_\_ Dollars and 00/100 United States Currency) (10% of the Purchase Price) upon execution of this Agreement, which amount shall be deemed Earnest Money to bind this sale and which amount shall be non-refundable, except as expressly provided in Article 4 herein. The Earnest Money shall be deposited in the Escrow Account referred to in Article 6.

3.02. **Final Payment.** Final payment constituting the entire unpaid balance of the Purchase Price shall be made by Purchaser on the Closing Date, as hereafter defined.

### **ARTICLE 4 TERMINATION OR DEFAULT BY SELLER RETURN OF EARNEST MONEY**

4.01. In the event that (i) Seller does not presell at least fifty percent (50%) of the units, (ii) construction does not begin by October, 2007, or (iii) Seller is otherwise unwilling or unable to proceed with the Project, then Seller may cancel this Agreement, upon written notice to Purchaser, without any further liability to either party. In the event of such cancellation by Seller, Seller shall then repay or cause to be repaid to Purchaser all Earnest Money heretofore deposited by Purchaser

under this Agreement within 30 (thirty) days after such cancellation, together with interest at the rate of 4% (four percent) per annum from date of such payment.

4.02. In the event that Substantial Completion of the Condominium Unit is not accomplished on or before 15 months after the completion of the laying of the foundation for the Condominium Units (the "Completion Date"), Purchaser, as its sole remedy, may cancel this Agreement, upon written notice to Seller, without any further liability to either party. In the event of such cancellation by Purchaser, Seller shall then repay or cause to be repaid to Purchaser all Earnest Money heretofore deposited by Purchaser under this Agreement within 30 (thirty) days after such cancellation, together with interest at the rate of 4% (four percent) per annum from date of such payment. Purchaser may exercise this remedy only in the event of the failure by Seller to substantially complete the unit by the Completion Date.

The Completion Date (i) shall be automatically extended for delays caused by acts of God (including casualty loss described in Article 8 below), fire or other casualty loss, strikes, boycotts or non-availability of materials for which no substitute of equal quality and price is available, the time of such delays will be added to the time allowed for substantial completion of the construction, or (ii) may be postponed by written agreement between Seller and Purchaser.

4.03. Other than the obligation to return the Earnest Money, together with accrued Interest at the rate of four percent per annum, Seller shall in no event be liable to Purchaser or any other person for any incidental, special or consequential damages, loss of profits or other commercial losses arising from Seller's default, termination or cancellation of this Agreement for any reason.

## **ARTICLE 5**

### **TERMINATION OR DEFAULT BY PURCHASER**

### **LOSS OF EARNEST MONEY**

5.01. In the event Purchaser defaults or fails to comply with this Agreement within the time allowed as herein specified, Seller shall, upon written notice to the Purchaser, be entitled to cancel this Agreement and receive the Earnest Money as liquidated damages for the breach of this Agreement. Upon the payment to Seller of such Earnest Money by the Escrow Agent, this Contract is released and voided by Purchaser, with no further obligation or liability thereafter on the part of either

party.

5.02. The Earnest Money described in Article 3 shall be nonrefundable, except as expressly provided in Article 4 above. The Earnest Money paid to the Escrow Agent shall be placed in a separate interest bearing account (the "Escrow Account"), with INTERNATIONAL BANK OF COMMERCE, or such other banking institution designated by Seller, and the Seller shall be entitled to such interest as is earned on said Escrow Account. Purchaser hereby irrevocably grants to Seller, a security interest in the non-refundable Earnest Money funds paid by Purchaser into the Escrow Account as security for Purchaser's fulfillment of this Contract. It is further understood and agreed that the Escrow Account will be pledged in the form of an Assignment of Deposit Account or Pledge Agreement to Seller's lender (the International Bank of Commerce) as additional security for a loan to Seller, secured by the Las Marinas Condominiums Project. Seller therefore may exercise the rights of a secured party under the Uniform Commercial Code of the State of Texas. Purchaser further agrees to execute such further documentation as may be reasonably required by Seller's lender to acknowledge the lender's security interest in Seller's interest in the non-refundable Escrow Account and its funds. Purchaser and Seller agree that in the event that the Contract has not been cancelled by either party, then upon the issuance of the Certificate of Occupancy by the Town of South Padre Island, the Escrow Agent is authorized to automatically release the escrow account to Seller for immediate credit against the Purchase Price being paid by Purchaser as the initiation of the "Closing" of the Purchase.

5.03. Purchaser acknowledges that in case of cancellation of this Agreement in accordance with Section 5.01 above, the Earnest Money shall be forfeited to Seller as liquidated damages and confirms that Seller shall be fully authorized to receive such forfeited funds from the Escrow Account (as hereinafter defined).

5.04. Other than the loss of the Earnest Money as liquidated damages, Purchaser shall in no event be liable to Seller or any other person for any incidental, special or consequential damages, loss of profits or other commercial losses arising from Purchaser's default, termination, cancellation of this Agreement for any reason.

## **ARTICLE 6 ESCROW**

6.01. It is agreed and understood that the Earnest Money and Progress Payments (if applicable) paid to the Escrow Agent shall be placed in a separate interest bearing account (the "Escrow Account"), with INTERNATIONAL BANK OF COMMERCE , 1600 FM 802, Brownsville, Texas , or such other banking institution designated by Seller, and the Seller shall be entitled to such interest as is earned on said Escrow Account.

## **ARTICLE 7 CLOSING**

7.01. (a) The initiation of the "Closing" of this transaction shall be payment by the Escrow Agent of the Escrow Account to Seller.

(b) The final Closing shall be on or before the "Closing Deadline" which date shall be designated by Seller. The "Closing Deadline" shall be within 20 days after the Substantial Completion Date, which, as used in this Agreement, shall mean the date which the Town of South Padre Island, Texas issues the Certificate of Occupancy related either to such Condominium Unit or the Condominium Project as a whole. The final Closing shall be held at the office of Closing Agent or Title Company on or before the Closing Deadline.

(c) A Closing Deadline Notice shall be provided in writing by Seller to Purchaser, which notice (the "Closing Deadline Notice") shall designate the last possible date for (i) formal inspection of the Condominium Unit by the Purchaser and (ii) the final closing (the "Closing Deadline").

(d) The Closing Deadline Notice shall be given no less than twenty (20) days prior to Substantial Completion.

(e) Purchaser and Seller designate Michele Sanchez, Attorney, of 717 N. Expressway 77, Brownsville, Texas 78520, as the "Closing Agent" for this sale and purchase. The Closing will take place at either the offices of the Closing Agent or the offices of the Title Company. Seller will attempt to accommodate the preference of Purchaser as to the location of the Closing either in Brownsville, Texas or South Padre Island, Texas.

7.02. The Parties stipulate that time is of the essence in the Closing of the sale of the Condominium Unit. Therefore, it is important that Purchaser comply with the schedule for inspection and Closing of the Condominium Unit. The Purchaser shall designate one representative only to represent Purchaser on all matters related to the inspection and acceptance of the Condominium Unit and the approval of all punch list items. In the event that Purchaser does not inspect and close the purchase of the Condominium Unit by the Closing Deadline, then the Purchase Price shall increase for each day thereafter by an amount equal to the interest which would accrue on the Purchase Price, after the deduction of any Earnest Money received by the Seller from the Escrow Agent, computed at twelve percent (12%) per annum and Purchaser shall be deemed to have accepted the Condominium Unit "As Is , Where Is." Punch List items shall not constitute a reason to delay the Closing. In the event that Purchaser does not inspect and finalize the purchase of the Condominium Unit within 30 days of Substantial Completion, then Seller may elect to either (i) terminate this contract and receive the earnest money as liquidated damages or (ii) continue this contact in full force and effect for an additional period of time established by Seller.

7.03. At the Closing, Seller shall:

- a) Execute and deliver to Purchaser a General Warranty Deed conveying the Condominium Unit Property to Purchaser, such conveyance to be made by Seller and accepted by Purchaser subject to:
  - (i) ad valorem real property taxes through the year in which the closing occurs (which taxes shall be prorated as of the date of closing or as of 20 (twenty) days from the issuance of the certificate of occupancy, whichever is sooner);
  - (ii) reservations, restrictions and conditions as set forth in the Subdivision in which the Condominium Unit Property is situated;
  - (iii) any and all easements on said Condominium Unit Property;
  - (iv) covenants, conditions and restrictions contained in that certain Declaration for Establishment of Condominium Regime and bylaws for LAS MARINAS, , including all bylaws and other exhibits related thereto; and,
  - (v) all other easements and conditions of record.

- b) Furnish to Purchaser, at Seller's expense, an Owner's Policy of Title Insurance in the form prescribed by the State Board of Insurance containing exceptions for those matters to which the aforesaid General Warranty Deed may be subject and containing also the usual printed form exceptions and the exception for rights of parties in possession;
- c) Furnish to the Title Insurance Company certificates showing no delinquent taxes for the years prior to the year of closing.

7.04. At the Closing, Purchaser shall:

- a) Pay Seller the balance of the Purchase Price (after allowing credit for amounts previously paid to the Escrow Agent), said balance to be paid in cash or certified check;
- b) Pay for Purchaser's prorata share of the first annual premium installment for blanket insurance prorated as of the date of closing or as of 20 (twenty) days from the issuance of the Certificate of Occupancy; whichever is sooner.
- c) Pay an amount equal to three (3) month's maintenance and common expense assessment, said amount to be an initial contribution to said fund and not in satisfaction of the first three monthly assessments;
- d) Pay all costs associated with any mortgage or other financing secured by Purchaser, and other usual and closing costs, as well as closing costs normally charged to the Purchaser, including the recording fee for Purchaser's Warranty Deed;
- e) Pay all utility charges incurred by the Condominium Unit from and after the date of closing or 20 (twenty) days from the issuance of the Certificate of Occupancy; whichever is sooner.
- f) Pay the real property taxes attributable to the Condominium Unit prorated as of the date of closing or from 20 (twenty) days from the issuance of the Certificate of Occupancy; whichever is sooner.
- g) Pay all reasonable attorneys and expenses incurred by Seller in responding to information requests received by Seller's Counsel/Closing Agent from Purchaser, Purchaser's agent or Purchaser's mortgage lender.

**ARTICLE 8**  
**CASUALTY OR DESTRUCTION OF PROJECT**

8.01. If any part of the Condominium Unit, the Limited Common Elements adjoining the Condominium Unit are damaged or destroyed by fire, hurricane or other casualty prior to the Closing Date, Seller shall, within thirty (30) days thereafter, advise Purchaser in writing as to whether Seller intends to repair or rebuild the damaged or destroyed improvements. If Seller (i) fails to give Purchaser such notice; or, (ii) elects not to repair or replace the damaged or destroyed improvements, then this Agreement shall terminate and all of the funds deposited by the Purchaser, including the Earnest Money and all interest accruing to the funds in the Escrow Account, shall be promptly refunded to Purchaser. If Seller elects to repair or rebuild the damaged or destroyed improvements, Seller shall, within thirty (30) days after the date such notice is given, commence and continue in good faith to restore or rebuild the damaged or destroyed improvements and the Completion Date shall be extended for the time reasonably required for Seller to repair or rebuild the damaged or destroyed improvements.

**ARTICLE 9**  
**ESTABLISHMENT OF CONDOMINIUM REGIME**

9.01. (a) The Declaration for Establishment of Condominium Regime for LAS MARINAS will contain detailed provision for Definitions, Name, Development Plans and Description, Operation of the Las Marinas Owners Association, Inc., Duties of the Co-Owners, Insurance, Repair and Reconstruction, Assessments and Liens, General Restrictions, Restrictions of Transfer, and the Bylaws of the Condominium, all pursuant to and subject to Chapter 82 of the Texas Property Code (the "Condominium Act") of the State of Texas. Purchaser does hereby acknowledge receipt of a copy of a Condominium Information Statement (hereafter CIS), which contains copies of the proposed Condominium Declaration and proposed Bylaws to be filed by Seller, copies of which are attached thereto. Seller does hereby covenant that the Condominium Declaration and Bylaws to be filed in connection with the project shall be substantially in the form and substance as contained in such proposed Declaration of Condominium and Bylaws.

(b) Seller does hereby covenant that an organizational meeting of the Las Marinas Owners Association, Inc., shall be called and held within ninety (90) days of the Completion Date, at which time, the members of the Council shall have the

opportunity to nominate and elect their Board of Directors for LAS MARINAS.

**ARTICLE 10**  
**REPRESENTATIONS, WARRANTIES AND AGREEMENTS OF PARTIES**

10.01. Seller agrees to cause the Condominium Unit to be constructed with due diligence in accordance with the Construction Documents and any change orders and in accordance with all applicable building codes. Seller agrees that the materials and equipment furnished will be of good quality and new, unless otherwise permitted or required. Seller shall be allowed to unilaterally issue change orders affecting the LAS MARINAS Project (other than the interior of Purchaser's Condominium Unit) that benefit the quality of the Project. Notwithstanding anything to the contrary contained in the Contract or this Addendum, it is the explicit intent of each party hereto that Seller is making no representation or warranty whatsoever, express or implied, except those representations and warranties contained in the Limited Warranty, a copy of which is attached hereto as Exhibit A and incorporated herein for all purposes. Seller shall assign to Purchaser at the Closing all assignable manufacturer warranties for all appliances and equipment installed within Purchaser's Condominium Unit.

10.02. During the construction of the Condominium, Seller agrees to provide full and complete information pertaining to the advancement of construction.

10.03. Purchaser hereby represents and warrants to Seller that he/she/it has been given a copy of the Condominium Information Statement (CIS) which contains copies of the proposed Declaration for Establishment of Condominium Regime for LAS MARINAS, together with the Bylaws for said Condominium, the Project Disclosure and the Proposed Budget and has read same, as evidenced by Purchaser's initials thereon; Purchaser does hereby ratify said documents and agrees to be bound by same when this transaction is consummated.

10.04. Seller shall in no event be liable to Purchaser or any other person for any incidental, special or consequential damages, loss of profits or other commercial losses.

## **ARTICLE 11 MISCELLANEOUS**

11.01 Notices. All notices, requests and other communications hereunder must be in writing and shall be given to Seller and the Purchaser at the address or facsimile numbers specified on the signature page of this Agreement. All such notices, requests and other communications shall be effective (i) if given by facsimile, when transmitted to the facsimile number referred to therein and confirmation of receipt is received, and (ii) if given by any other means, when delivered at the address referred to therein. Any party from time to time may change its address, facsimile number or other information for the purpose of notices to that party by giving written notice specifying such change to the other parties hereto.

11.02. Seller expressly has the right to assign this Agreement to Seller's lender (the International Bank of Commerce) by a Collateral Assignment as additional security for a loan to Seller secured by the Las Marinas Condominiums Project. Neither this Agreement nor any right, interest or obligation hereunder may be assigned by Purchaser without the prior written consent of Seller and any attempt to do so will be void, except (a) for assignments and transfers by operation of Law or assignments by Buyer to a trust, partnership, limited partnership, limited liability company or other entity in which Buyer (or Buyer's spouse, child, or children) have a majority interest or (b) Collateral Assignments to Seller's lender (the International Bank of Commerce) as additional security for a loan to Seller secured by the Las Marinas Condominiums Project. This Agreement is binding upon, and inures to the benefit of and is enforceable by the parties hereto and their respective heirs, successors and authorized assigns.

During the period that Seller is offering Units for sale at the Project, Seller will not approve any assignments whatsoever. After Seller has sold all of its Units in the Project, then Seller will approve the assignment of this Agreement upon the payment of Purchaser of an assignment fee in the amount of \$1,000.00 USD (One thousand dollars United States Currency). This Agreement is binding upon, inures to the benefit of and is enforceable by the parties hereto and their respective successors and authorized assigns.

11.03. This Agreement, along with its Exhibits attached hereto, supersedes all prior discussions, undertakings and agreements, both written and oral, between the

parties with respect to the subject matter hereof and thereof, and contains the sole and entire agreement between the parties hereto with respect to the subject matter hereof and thereof.

11.04. Any dispute, controversy or claim arising out of or in relation to or in connection with this Agreement, the operations carried out under this Agreement, or the relationship of the parties created under this Agreement, shall be exclusively and finally settled by confidential arbitration, and any party may submit such a dispute, controversy or claim to arbitration. The arbitration proceeding shall be held in Brownsville, Texas, and shall be governed by the rules of the American Arbitration Association (the "AAA") as amended from time to time. A single arbitrator shall be appointed by unanimous consent of the parties. If the parties cannot reach agreement on an arbitrator within 45 (forty five) days of the submission of a notice of arbitration, the appointing authority for the implementation of such procedure shall be the AAA, who shall appoint an independent arbitrator who does not have any financial interest in the dispute, controversy or claim. If the AAA is unable to appoint, or fails to appoint, an arbitrator within 90 (ninety) days of being requested to do so, then the arbitration shall be heard by 3 (three) arbitrators, one selected by each party within 39 (thirty) days of being required to do so and the third promptly selected by the 2 (two) arbitrators selected by the parties.

The arbitrators shall announce the award and the reasons therefor in writing within six months after the conclusion of the presentation of evidence and oral or written argument, or within such longer period as the parties may agree upon in writing. The decision of the arbitrators shall be final and binding upon the parties. Judgment upon the award rendered may be entered in any court having jurisdiction over the person or the assets of the party owing the judgment or application may be made to such court for a judicial acceptance of the award and an order of enforcement, as the case may be. Unless otherwise determined by the arbitrator, each party involved in the arbitration shall bear the expense of its own counsel, experts, and presentation of proof, and the expense of the arbitrator and the AAA (if any) shall be divided equally among the parties to the arbitration.

11.05. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas applicable to a contract executed and performed therein, without giving effect to the conflicts of laws principles thereof

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

**SELLER:**

SPI LAS ANGELINAS, LTD.

By Its General Partner

San Pablo Management, LLC.

**PURCHASER:**

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

Name: Martha Elena Garza de Paez

Title: President

Address: 4214 Gulf Blvd.

South Padre Island, Texas 78597

Phone: (956) 761-2727

\_\_\_\_\_

Name:

Address:

ACKNOWLEDGMENT OF ESCROW  
BY INTERNATIONAL BANK OF COMMERCE  
AND  
AGREEMENT TO RELEASE EARNEST MONEY

The undersigned acknowledges receipt of the above Earnest Money in the amount of \$ \_\_\_\_\_ USD (\_\_\_\_\_ Dollars and 00/100 United States Currency) to be held in accordance with the terms of the foregoing Agreement and pursuant to the following terms:

1. Escrow Agent is not a party to this Agreement and does not have any liability for the performance or nonperformance of any party to this Agreement. Escrow Agent does not assume and shall not be under liability for interest earned on escrow money.
2. Escrow Agent shall pay the Escrow Money and all interest earned thereon to Seller, upon the notarized written directive of Seller that (i) the Certificate of Occupancy to the Condominium Unit has been issued by the Town of South Padre Island, Texas and the Closing of the Purchase has started or (ii) Purchaser has defaulted, delayed or otherwise failed to consummate the Closing of the New Residential Condominium Contract and Addendum for any reason other than title defects.
3. Escrow Agent shall not be required to advise Purchaser, Seller, or any other party of such disbursement or make any other inquiry into the propriety of such directive.
4. Seller and Buyer acknowledge and agree that the instructions set forth herein for the Escrow Agent shall not be subject to any revision or modification or amendment unless further written instructions, which have been jointly executed by Seller and Buyer are provided to the Escrow Agent; however, no such further written and signed instructions shall become effective unless and until written consent to such further instructions is given by the Escrow Agent in writing to Seller and Buyer. Seller and Buyer also agree as to the following stipulations with regard to the Escrow Agent:
  - a. The Escrow Agent shall not be responsible for any other matter hereunder other than the contractual obligations as set forth herein.

b. The terms and conditions herein shall govern the manner under which the Escrow Agent shall hold the Earnest Money and shall control with respect to the rights, duties, liabilities, privileges and immunities of the Escrow Agent.

c. The Escrow Agent shall not be responsible for, or liable in any manner whatsoever, for the sufficiency, correctness, genuineness or validity of any instrument deposited with the Escrow Agent, or in the form of execution of any such instrument, or for the identity, authority or rights of any party executing or depositing the same.

**d. IN PERFORMING ITS DUTIES HEREUNDER, THE ESCROW AGENT SHALL HAVE COMPLETE AUTHORITY TO FOLLOW THE WRITTEN INSTRUCTIONS PROVIDED HEREIN AND, IN SO DOING, THE ESCROW AGENT SHALL INCUR NO LIABILITY OF ANY KIND FOR ANY REASON WHATSOEVER .**

e. Unless ordered by a court of competent jurisdiction, the Escrow Agent shall be under no obligation to take any legal action or enforcement thereof, or to appear in, prosecute or defend any action or legal proceeding which, in the Escrow Agent's opinion, would or might involve the Escrow Agent in any cost, expense, loss or liability, unless and until the Escrow Agent shall be furnished with such security and indemnity, which is satisfactory to the Escrow Agent, at its sole discretion, and which indemnifies it against all such costs, expenses, losses or liabilities.

5. It is understood and agreed that the terms and provisions hereunder are subject to arbitration upon the same terms and conditions as set forth in Section 11.04 of the Purchase Agreement, which terms and conditions are hereby incorporated herein by reference.

EXECUTED this \_\_\_\_ day of \_\_\_\_\_, 2006.

INTERNATIONAL BANK  
OF COMMERCE

\_\_\_\_\_  
Escrow Agents