

## **ESCROW AGREEMENT (Condominium Project)**

THIS ESCROW AGREEMENT is made as of January 17, 2014, by and between **FIRST AMERICAN TITLE COMPANY, INC.**, a Hawaii corporation, whose principal place of business and post office address is 1177 Kapiolani Boulevard, Honolulu, Hawaii 96814, hereinafter called "Escrow", and **GENTRY HOMES, LTD.**, whose address is P.O. Box 295, Honolulu, Hawaii 96809-0295 hereinafter called "Seller."

### **1. Background**

1.1 Information about Project. Seller is the developer of the condominium project known as "PARKSIDE BY GENTRY" (herein called the "Project") located on land in the City and County of Honolulu, State of Hawaii and designated as Tax Map Key (1) 9-1-69:024. The Project consists of 235 detached condominium homes in 22 phases.

1.2 Purpose of Agreement. Seller intends to enter into sales contracts ("Sales Contracts") with purchaser(s) for the sale of units in a condominium project established or to be established under a Declaration of Condominium Property Regime created pursuant to the Condominium Property Act, Hawaii Revised Statutes ("HRS") **Chapter 514B**, as amended (the "Act"). Escrow has agreed to act as the escrow agent for the Project in accordance with the terms of this Escrow Agreement, as amended and/or supplemented.

1.3 Escrow Agreement. This Agreement provides for the payment of the purchase price and closing costs under the Sales Contracts, such purchase price and closing costs to be paid to Escrow and to be held and disbursed by Escrow pursuant to the provisions herein.

### **2. Sales Contracts and Purchaser's Funds.**

2.1 Sales Contracts Deposited in Escrow. As and when Seller shall enter into a Sales Contract for the sale of a unit, Seller shall deliver an executed copy of such Sales Contract to Escrow. Each Sales Contract shall specify the correct name(s) and address(es) of the purchaser(s), shall require that all payments to be made thereunder shall be made to Escrow and shall be accompanied by the initial deposit required thereunder.

## 2.2 Funds Paid to Escrow.

(a) Public Report. Prior to Escrow accepting any funds from purchaser(s), Seller shall provide to Escrow a true and correct copy of the Public Report issued by the Real Estate Commission of the State of Hawaii (herein called the "Real Estate Commission") with an effective date listed. **In the event a Public Report is not issued and/or an effective date is not listed, Escrow will not accept any funds from purchaser(s) and shall return to purchaser(s) any funds submitted to Escrow.**

(b) Deposit of Funds By Seller. Seller shall pay over to Escrow any monies received by Seller from purchasers under Sales Contracts covering units in the Project, including all disbursements made on loan commitments, if any, from lending institutions, to individual purchasers. Escrow shall receive and hold in escrow and disburse as herein set forth: (a) all payments received by Escrow under Sales Contracts made by Seller; (b) all sums received by Escrow hereunder from Seller; (c) all funds from any lending institution pursuant to a mortgage loan for the purchase of any unit by individual purchasers; and (d) all sums received by Escrow from any other source on account of Sales Contracts for units in the Project. In accordance with written instructions from Seller that are acceptable to Escrow, Escrow shall deposit all funds so received, within a reasonable time of their receipt by Escrow and in reasonably convenient sums, in a federally insured, interest-bearing account at a bank, savings and loan association, or trust company authorized to do business in the State of Hawaii; provided, however, if Escrow is instructed to make such deposits more frequently than once each calendar week, Seller shall pay to Escrow a reasonable service charge for each additional deposit made during such week.

(c) Interest Earned On Funds In Escrow. Unless otherwise provided in this Agreement, any interest earned on funds deposited in escrow under this Agreement shall accrue as specified in the applicable Sales Contract. If the Sales Contract does not specify to whom interest is to accrue, any interest earned on funds deposited in escrow under this Agreement shall accrue to the credit of Seller; except that if Escrow is requested to establish a separate account for a purchaser in accordance with the Sales Contract and Escrow receives the necessary documentation and information Escrow needs in order to establish the account, Escrow shall do so, the purchaser shall furnish to Escrow the purchaser's social security or federal identification number, the purchaser shall pay Escrow a fee of \$50.00 plus general excise tax for such separate account and any interest earned on funds deposited in such account shall accrue to the credit of the purchaser. Escrow shall not be liable to either Seller or any purchaser for loss or diminution in funds invested in accordance with instructions given to Escrow. Furthermore, Escrow shall not be liable to any purchaser for any delay in establishing

an interest bearing account in the event purchaser fails to provide the necessary documentation and/or information to Escrow.

2.3 Disbursement of Funds In Escrow Prior to Closing. Escrow shall not disburse funds held in escrow prior to closing except:

(a) Use of Purchaser's Funds - Payment of Project Costs. A purchaser's funds may be taken out of the trust fund and used by Seller to pay project costs only if all the following have occurred and Escrow is provided sufficient documentation evidencing said occurrence:

(1) The State of Hawaii Real Estate Commission has issued an effective date for the Public Report;

(2) The purchaser has been given a copy of (a) the Public Report, together with a receipt and notice form which complies with Section 514B-87 of the Condominium Law, (b) the recorded Declaration and Bylaws of the Project, (c) the Project Rules and (d) the Condominium Map;

(3) The purchaser has signed the receipt and notice form and waived the purchaser's right to cancel or thirty (30) days have elapsed since the purchaser received a copy of the Public Report and receipt and notice form;

(4) Seller has submitted to the Real Estate Commission:

a. a project budget showing all costs that are required to be paid in order to complete the Project, including lease payments, real property taxes, construction costs, architectural, engineering and legal fees, and financing costs;

b. evidence satisfactory to the Real Estate Commission of the availability of sufficient funds to pay all costs required to be paid in order to complete the Project, that may include purchaser funds, equity funds, interim or permanent loan commitments, and other sources of funds; and

c. (1) a copy of the executed construction contract, (2) a copy of the building permit for the Project, and (3) satisfactory evidence of security for the completion of construction, which evidence may include, a completion or performance bond issued by a surety licensed in the State of Hawaii in an amount equal to one hundred per cent of the cost of construction, an irrevocable letter of credit issued by a federally-insured financial institution in an amount equal to one hundred per cent of the cost of construction, in each case, in form and content approved by the Real Estate

Commission, or other substantially similar instrument or security approved by the Real Estate Commission;

(5) Seller advises Escrow that the Sales Contract has become binding under Section 514B-86 of the Act, and the requirements of Section 514B-92 or Section 514B-93 of the Act, as applicable, have been met, as provided for in Section 514B-91 of the Act. Seller's instructions to Escrow to proceed with closing, or to otherwise disburse the purchaser's funds in accordance with this Section 2.3(a), shall constitute Seller's notification and advice to Escrow that the Sales Contract has become binding and the requirements of Section 514B-92 or Section 514B-93 of the Act, as applicable, have been met. Escrow shall not be responsible for the validity or sufficiency of any written certification provided by the Seller, if any, that the requirements of Section 514B-92 or Section 514B-93 of the Act, as applicable, have been met;

(6) The money is used to pay costs set forth in the project budget referenced in Section 2.3(a)(4) that are approved for payment by Seller's mortgagee or an otherwise qualified, financially disinterested person and the money to pay construction costs is disbursed in proportion to the valuation of the work completed by the contractor, as certified by a licensed architect or engineer;

(7) Seller shall have delivered to Escrow a certificate from Seller's architect stating that the Project is in compliance with the Federal Fair Housing Amendment Act of 1988, if applicable; and

(8) If the Project is registered with the Office of Interstate Land Sales Registration ("OILSR"), (a) OILSR has issued an effective date for the Property Report for the Project (the "Property Report"), (b) the purchaser has been given a copy of the Property Report for the Project, together with a receipt, agent certification and cancellation page which complies with 24 C.F.R. § 1710.118, and (c) the thirty (30) day period for rescission of the Sales Contract has lapsed.

Seller, or Seller's attorney, agrees to inform Escrow immediately in writing of the development of any event or occurrence which renders the statements and/or documents delivered by Seller, or Seller's attorney, pursuant to Section 2.3(a) untrue.

(b) Use of Purchaser's Funds – Material House Bond. Notwithstanding anything in this Agreement to the contrary, if Seller has submitted to the Real Estate Commission a material house bond securing the construction of improvements in the Project, the following provisions shall apply:

(1) The purchaser's money shall not be disbursed to pay for construction costs or other expenses of the Project until the unit to be conveyed has been completed and the Deed to purchaser has been recorded; and

(2) If closing is to occur prior to the expiration of the applicable mechanic's lien period, Seller shall provide the purchaser with a mechanic's lien endorsement to purchaser's owner's title insurance policy that protects the purchaser against all future mechanic's and materialmen's liens. Further, Seller shall confirm to Escrow that Seller has provided the Real Estate Commission with a release by the general contractor of the contractor's lien rights.

(c) Remaining Monies of Purchaser. Any purchaser's money that is left in the trust fund after the construction costs have been paid, as well as any money paid by the purchase at closing as required in the Sales Contract, shall be paid to Seller or Seller's mortgagee as provided in Section 2.3(d) ("Seller's funds") when:

(1) The deed conveying the unit to purchaser has been recorded at the Bureau of Conveyances of the State of Hawaii; and

(2) The building or buildings have been completed and a title insurance company has given Escrow, in Escrow's reasonable discretion, satisfactory proof that all mechanics' and materialmen's liens have been cleared or Escrow holds one hundred fifty percent (or a reasonable amount satisfactory to Escrow and the title insurance company) of the amount needed to cover any mechanics' or materialmen's liens that may be filed.

(d) Seller's Funds. Subject to the limitation on the disbursement of Seller's funds contained in this Agreement, Escrow shall pay Seller's funds to Seller and Seller's mortgagee in those proportions and at those times specified in the instructions from Seller's mortgagee. Any disbursement of Seller's funds to Seller shall be approved in writing by Seller's mortgagee.

#### 2.4 Return of Purchaser's Funds and Documents.

(a) Cancellation, Termination or Rescission. Unless otherwise provided in this Agreement, a purchaser shall be entitled to a return of such purchaser's funds held in escrow under a Sales Contract, and Escrow shall pay such funds to such purchaser, together with any interest which may have accrued to the credit of such purchaser, if any one of the following has occurred:

(1) Seller and purchaser shall have requested Escrow in writing to return to purchaser the funds of purchaser held hereunder by Escrow; or

(2) Seller or purchaser shall have notified Escrow of Seller's or purchaser's exercise of an option to cancel the Sales Contract pursuant to any right of cancellation provided therein or otherwise available to Seller or purchaser; or

(3) The purchaser shall have notified Escrow of purchaser's exercise of purchaser's right to cancel or terminate the Sales Contract pursuant to HRS Section 514B-90; or

(4) The purchaser shall have notified Escrow of purchaser's exercise of purchaser's right to rescind the Sales Contract pursuant to HRS Section 514B-87.

(b) Refund; Cancellation Fee.

(1) In the event escrow receives notice of cancellation or termination of the Sales Contract pursuant to Section 2.4(a)(1), (2) or (3), Escrow shall, unless the purchaser has waived or has been deemed to have waived the right to a refund, pay said funds to said purchaser (less a cancellation fee commensurate with the work done by Escrow prior to such cancellation and other costs associated with the purchase, up to a maximum of \$250.00); provided, however, that no refund shall be made to a purchaser at the purchaser's request prior to receipt by Seller of written notice from Escrow of Escrow's intent to make such refund.

(2) In the event Escrow receives notice of purchaser's election to rescind the Sales Contract pursuant to HRS Section 514B-87, Escrow shall return said funds to purchaser; provided, however, that no refund shall be made to a purchaser at the purchaser's request prior to receipt by Seller of written notice from Escrow of Escrow's intent to make such refund.

2.5 Unclaimed Funds. Escrow shall give each purchaser entitled to a return of funds notice thereof by regular mail, postage prepaid, addressed to such purchaser at the purchaser's address shown on the Sales Contract or any address later made known in writing to Escrow by such purchaser. If such purchaser shall not have claimed such refund within sixty (60) days, Escrow shall deposit such funds into a special account in a bank or other depository selected by Escrow, in the name of Seller, as trustee for the benefit of such purchaser. After notifying the purchaser of all such facts at the purchaser's address as described herein and delivering all partially executed conveyance documents to Seller, Escrow shall thereupon be released from any further

duties or liability hereunder with respect to such funds and such purchaser. The terms of this provision shall be included in the escrow agreement entered into between Escrow, Seller and any purchaser in connection with a Sales Contract between Seller and such purchaser for a unit in the Project.

### **3. Purchaser's Default.**

If the purchaser fails to make such payment to Escrow on or before the due date thereof or if the purchaser fails to perform in any matter that is being handled by Escrow, Escrow shall promptly notify Seller of any such failure on the part of the purchaser. If Seller subsequently certifies in writing to Escrow that Seller has terminated the Sales Contract in accordance with the terms thereof and provides to Escrow copies of all such notices of termination sent to the purchaser, Escrow shall thereafter treat all funds of the purchaser paid on account of such purchaser's Sales Contract as funds of Seller and not as funds of the purchaser. Thereafter, such funds shall be free of the escrow established by this Agreement and shall be held by Escrow for the account of Seller. Upon written request by Seller, Escrow shall pay such funds to Seller, less any escrow cancellation fee. Escrow shall thereupon be released from any further duties or liability hereunder with respect to such funds and such purchaser. The terms of this provision shall be included in the escrow agreement entered into between Escrow, Seller and any purchaser in connection with a Sales Contract between Seller and such purchaser for a unit in the Project.

### **4. Closing Procedures.**

4.1 Escrow Duties. Except for the contracts and any note and mortgage that are to be closed by the mortgagee thereof, Escrow shall promptly and diligently arrange for and supervise the execution of all documents related to the Project and shall promptly and diligently close the transactions and perform such services as are necessary or proper therefor. Upon receipt by Escrow of the conveyance document, the receipt for the Public Report, all necessary releases of encumbrances (including any release(s) necessary so that the unit is conveyed free and clear of all blanket liens in accordance with HRS §514B-45, as amended, or Escrow receives a commitment by the title insurer to issue purchaser or purchaser's lender a title insurance policy (standard owner's or ALTA lender's policy) that all blanket mortgages and liens have been released from the purchaser's unit in accordance with HRS §514B-45, as amended), the full amount of the purchase price of the unit, any mortgage or other instruments securing payment by the purchaser of all or part of the purchase price of the unit and purchaser's share of closing costs, Escrow will act with diligence and dispatch to "close" the sale of the unit by performing the following:

(a) Escrow shall cause the recording of such releases, conveyance document and mortgage, if any; and

(b) After recordation, Escrow may cause a copy of said conveyance document to be delivered to the purchaser, the release or partial releases to be delivered to Seller, the mortgage, if any, to be delivered to the purchaser's lending institution; and

(c) All sums respecting the purchase of the unit shall be disbursed to Seller after deduction by Escrow of Seller's share of the closing costs, provided; however, that any amounts to be disbursed by Escrow to any third party for the benefit of Seller, shall be made only upon direction to Escrow by Seller in writing and confirmed by Seller by its approval of the Seller's Closing Statement prior to closing.

4.2 Partial Closings. It is understood that partial closings, i.e., closings for some but not all of the units, may be desired by Seller. If Seller desires to close any or all sales at different times, Escrow agrees to cooperate with Seller and shall vary its performance of the directions contained herein in such manner as agreed by Seller and Escrow to facilitate the performance of such partial closings.

4.3 Defects in Documents. Upon the closing of each sales transaction, provided that any individual mortgage in connection therewith may then be recorded, and it is legally possible to record all closing documents and none is in any way defective, Escrow shall proceed promptly and within five (5) business days (exclusive of the day of closing) record the necessary documents to effect the transfer of legal title to the purchaser. If for any reason it is determined that any document necessary to close the transaction is defective or cannot be recorded, Escrow shall promptly notify Seller of such fact and Escrow shall proceed promptly to correct such defects as are within its capacity as an escrow depository to correct. If, for any cause beyond Escrow's control, the necessary documents cannot be recorded within said five (5) day period after closing, Escrow shall file or record the same within five (5) days after learning that the reason that prevented their recording no longer exists.

4.4 Reports and Billings by Escrow. Escrow shall furnish Seller with a semi-monthly Seller's report that will cover the status of each Sales Contract in escrow. Seller shall give notice in writing to Escrow of the occurrence of each event that initiates an obligation of a purchaser to make a payment to Escrow pursuant to the applicable Sales Contract as well as notice of the amount and due date of such payment.

4.5 Compensation of Escrow. The compensation of Escrow for performance hereunder shall be \$750.00 plus tax for each unit in the Project, on the condition that all



sales of units in the Project are closed on or before two years after the date hereof. Escrow shall also arrange for the issuance of a First American Title Insurance Company title insurance policy (standard owner's or ALTA lender's policy) for the sum of \$650.00 for each unit in the Project. An additional fee of \$200.00 shall be charged to the purchaser for each mortgage obtained by the purchaser if the purchaser does not obtain a mortgage loan from a lender designated by Seller. In the event the purchaser elects not to purchase a standard owner's title insurance policy through First American Title Company, Inc., the charge for escrow services will be as set forth in First American Title Company's published rate schedule

4.6 Should Gentry decide to adjust its sales prices upward, First American Title will honor these fees up to \$550,000.00 sales price. Sale Price above \$550,000.00 will be charged at the applicable published rate; in effect at the time of purchase.

Escrow's compensation shall become due and payable with respect to a unit in the Project upon the first to occur of the following events: (1) the transfer to the purchaser of such unit of legal title thereto; or (2) final disbursement of the funds held in escrow in connection with such unit. In the event of the cancellation of any Sales Contract that has been submitted to Escrow, a cancellation fee commensurate with the services rendered by Escrow prior to such cancellation, up to a maximum of \$250.00, plus all costs incurred by Escrow, shall be charged to the purchaser, unless otherwise agreed to by Seller and the purchaser. In the event upon the cancellation of any sale where the cancellation fee is for any reason not paid by the purchaser, Seller agrees to pay said cancellation fee. If Escrow shall for any reason without fault on its part be required to change subsequent to the commencement of preclosings or closings for the Project any closing statement or document previously approved as to form and figures by Seller, Seller agrees to pay an additional charge of \$30.00 for each such statement or document that is changed.

## **5. Escrow Protection.**

5.1 Escrow Liability. In consideration of Escrow acting as escrow holder hereunder, it is agreed that Escrow is relieved from all liability for acting in accordance with the terms hereof, notwithstanding a notice to the contrary by Seller or any purchaser or third person. Escrow shall not be responsible for the validity or sufficiency of any Sales Contracts or other documents received by it and shall be entitled for all purposes to assume that the same have been signed by the persons whose signatures purport to be thereon and that any written certification or instruments from Seller are true and accurate.

5.2 Disputes; Escrow's Rights. If any dispute or difference shall arise or if any conflicting demand shall be made upon Escrow, Escrow shall not be required to determine the same or take any action in the premises, but Escrow may await settlement of the controversy by final appropriate legal proceedings or otherwise as it may require, or Escrow may file a suit in interpleader in any court having jurisdiction in the matter, for the purpose of having the respective rights of the parties adjudicated and may deposit with the court any or all monies held hereunder. Upon institution of such interpleader suit or other action, depositing such money with the court, and giving notice thereof to the parties thereto by personal service or in accordance with the order of the court, Escrow shall be fully released and discharged from all further obligations hereunder with respect to the monies so deposited.

5.3 Indemnification of Escrow. Seller agrees and shall cause each purchaser to agree to pay Escrow on demand and to indemnify and hold Escrow harmless from and against all costs, damages, judgments, attorneys' fees, expenses, obligations and liabilities of every kind and nature reasonably suffered or incurred in connection with or arising out of the transactions made in connection with this Agreement, including, but not limited to, all costs and expenses incurred in connection with the interpretation of this Agreement or with respect to any interpleader or other proceeding, and excluding all of the foregoing that is the result of any act or omission by Escrow or its agents that is not generally accepted in the Honolulu business community as a reasonable business practice. Upon payment thereof, the prevailing party will be subrogated to Escrow's right to judgment for said costs, damages, judgments, attorneys' fees, expenses, obligations and liabilities of every kind and nature against third persons.

## **6. Miscellaneous.**

6.1 Binding Effect. This Agreement shall be binding upon, shall apply to and shall inure to the benefit of the parties hereto and their respective heirs, devisees, personal representatives, successors and assigns.

6.2 Termination. This Agreement may be terminated by either party hereto upon fifteen (15) days written notice to the other; provided, however, that all transactions in process hereunder at the time of such termination shall be completed under the terms of this Agreement.

6.3 Statutory Provisions Control. This Agreement is, in all of its provisions, to be deemed and interpreted as supplementary and subject to the provisions of the Act, as now or hereafter amended, and if any conflict should arise between the provisions of this Agreement and the provisions of the Act, the provisions of the latter shall control.

6.4 Counterpart Execution. This Agreement may be executed in any number of counterparts and by different parties in separate counterparts, each of which when so executed shall be deemed to be an original, and all of which taken together shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the parties hereto have executed these presents the day and year first above written.

**FIRST AMERICAN TITLE COMPANY, INC.**

By *Patsy K. Saiki*  
Patsy K. Saiki  
Its Senior Vice President

"Escrow"

**GENTRY HOMES, LTD.**

By *[Signature]*

By *[Signature]*  
Its Richard N. Hobson, Jr., Vice President - Sales & Marketing

"Seller"