

**NEW HOME CONTRACT  
J. MOORE & ASSOCIATES**

J. Moore & Associates (Hereinafter called "BUILDER" hereby agrees to sell and convey to

\_\_\_\_\_ ,  
presently residing at \_\_\_\_\_ (address).

Home phone ( ) \_\_\_\_\_ - \_\_\_\_\_ (work) ( ) \_\_\_\_\_ - \_\_\_\_\_, (work) ( ) \_\_\_\_\_ - \_\_\_\_\_, (Hereinafter called "PURCHASER"), and PURCHASER hereby agrees to purchase from BUILDER the following described real property situated in the city of \_\_\_\_\_, County of \_\_\_\_\_, State of

Tennessee to-wit: Lot \_\_\_\_\_, Subdivision, commonly known as \_\_\_\_\_ (property address), together with a residential dwelling constructed or to be constructed thereon (hereinafter called the "Residence") substantially in accordance with the plans and specifications prepared for BUILDER as Plan Number \_\_\_\_\_ Elevation, which are available for inspection by PURCHASER at BUILDER'S Office and not in strict conformity with any model home. The purchase price shall include any variations, optional items and BUILDER allowances (if applicable) listed on the addendum attached hereto and incorporated herein by reference. BUILDER reserves the right to make such changes or substitutions in the construction of the Residence (i) as may be required, authorized or approved by governmental agencies having jurisdiction there over, (ii) as BUILDER may deem appropriate so long as materials of equal or better quality are used, or (iii) as BUILDER deems appropriate so long as the change does not affect the value of the home. BUILDER also has the right to reverse floor plans if BUILDER deems it necessary. PURCHASER acknowledges that BUILDER may not own the above referenced lot at the time this contract is executed. If BUILDER does not acquire title to said lot, then this contract shall, at BUILDER'S option, be declared null and void and neither party shall have any further liability to the other with the earnest money being refunded in full to PURCHASER.

**1. TOTAL SALES PRICE:**

The purchase price is, to be paid to BUILDER by PURCHASER in cash at closing.

(\$ \_\_\_\_\_ ) \_\_\_\_\_

**2. EARNEST MONEY:**

\_\_\_\_\_ acknowledges receipt of  
(\$ \_\_\_\_\_ ) \_\_\_\_\_ DOLLARS (in the form of

) as earnest money. Said amount is to be held in escrow by \_\_\_\_\_

at \_\_\_\_\_ (address) and will be applied to the purchase price at closing. The Earnest Money may be deposited with Listing Broker with the understanding that Listing Broker (a) is not a party to this contract and does not assume or have any liability for performance or non-performance by BUILDER or PURCHASER (b) has the right to require from BUILDER and PURCHASER a written release of liability of the Listing Broker which authorizes the disbursement of the Earnest Money (c) is not liable for interest or other charges on the funds held, and if Earnest Money is held in an interest bearing account, the interest is to be used to help offset cost of maintaining and operating the Escrow Account (d) is not liable for any losses of escrow funds caused by the failure of any banking institution in which such funds have been deposited, and (e) may choose to place Earnest Money with a court of competent jurisdiction in the event of any dispute regarding the disposition of such Earnest Money. If BUILDER or PURCHASER unreasonably fails to deliver promptly the document described in (b) above, then such party shall be liable to the other party as provided in paragraph 25. At closing, the Earnest Money shall be applied first to any overages and extras, then to cash down payment required, then to PURCHASER'S closing costs and excess refunded to PURCHASER. Any refund or payment of the Earnest Money under this contract shall be reduced by the amount of any actual expenses incurred on behalf of the party holding the Earnest Money.

**3. A. FINANCING:**

This Contract is contingent upon PURCHASER securing a loan commitment from a local designated lending institution ("Lender") for a (\_\_\_\_\_) FHA; (\_\_\_\_\_) VA; (\_\_\_\_\_) Conventional; (\_\_\_\_\_) Maximum Loan at \_\_\_\_\_% interest, or whatever the prevailing rate, with monthly payments of principal and interest amortized over a period of \_\_\_\_\_ years. FHA Mortgage Insurance or VA Funding fee is to be added to loan amount.

**B. LOAN APPLICATION:**

PURCHASER agrees to make written loan application with Lender within Five (5) days of Effective Contract date. PURCHASER is to pay for credit report and appraisal at time of loan application. In the event the appraisal fee has been paid by BUILDER prior to Contract, then PURCHASER shall reimburse BUILDER at time of closing, unless otherwise specified herein. The PURCHASER hereby authorizes the Lender to release PURCHASER'S financial information (written or verbal) to BUILDER, to BUILDER'S representative or construction lender, and requests that Lender do so as soon as such information is available. PURCHASER shall cooperate with BUILDER and Lender. PURCHASER shall diligently and timely pursue loan approval in good faith, execute all documents and furnish all information and documents required by Lender and timely pay the costs of obtaining such loan. Failure to do so shall constitute a breach. PURCHASER'S failure to make loan application, cancellation of the loan, or failure to obtain spouse's signature, co-borrower's signature, or co-signer's signature on loan application or other loan documents if applicable, shall also constitute a breach. Subsequent to the execution of this contract and pending closing, PURCHASER shall: Not enter into any loan or credit agreement or other encumbrance that would diminish or alter PURCHASER'S financial status; Not voluntarily change or quit employment from PURCHASER'S present employer; Not deplete any of PURCHASER'S funds on deposits that are necessary for use in completing the purchase of the Property.

**GIFT FUNDS:** PURCHASER represents the following to BUILDER: (MARK THE APPROPRIATE BOX)

? PURCHASER'S ability to complete this transaction is NOT contingent upon PURCHASER'S receipt of any gift funds from any third party.

? PURCHASER anticipates receiving \$ \_\_\_\_\_ in gift funds from \_\_\_\_\_ in order to complete this transaction. However, PURCHASER'S duty to close this transaction is not contingent upon PURCHASER'S receipt of said gift funds and PURCHASER shall be obligated to close without regard as to

PURCHASER'S receipt of said funds. A failure to obtain loan approval due to any failure to receive such gift funds shall not release PURCHASER from PURCHASER'S obligation to close.

If, after all good faith efforts, such loan cannot be obtained by PURCHASER, except for reasons as otherwise provided herein, then this contract shall become null and void and the Earnest Money shall be refunded in full to PURCHASER. However, if a written commitment from the lender evidencing approval of said loan with reasonable conditions satisfactory to BUILDER is not provided by PURCHASER to BUILDER within 15 days from the effective date of this contract, then the BUILDER may, at BUILDER'S option, elect to cancel this contract, in which case the Earnest Money shall be refunded in full to PURCHASER.

**C. LOAN COMMITMENT:**

BUILDER is not obligated to obtain construction financing or start construction until PURCHASER or PURCHASER'S Agent has delivered to BUILDER a written "Permanent and Final Loan approval and Commitment" with no conditions other than a clear final inspection by FHA, VA or Mortgage and such other conditions as may be acceptable to BUILDER. However, BUILDER reserves the right to start construction at any time. If such loan commitment cannot be obtained within forty-five (45) days of the Effective Contract Date, then this Contract shall become null and void at the option of BUILDER only. If PURCHASER shall have fully complied with LOAN APPLICATION paragraph and Lender denies the loan application, the Earnest Money, less costs incurred in attempting to obtain PURCHASER'S loan, shall be refunded by mail within thirty (30) days after BUILDER receives Lender's denial letter and the Contract shall be considered terminated. If the loan commitment letter is not available due to PURCHASER'S failure to comply with LOAN APPLICATION paragraph, then it shall constitute a breach. PURCHASER'S failure to possess funds to qualify; failure to obtain a gift letter or funds, if applicable; or receipt of loan denial due to a change in marital status, in job status, or in Debt Ratio status; or filing for bankruptcy or similar relief, shall also constitute a breach.

**4. APPRAISAL:**

PURCHASER shall pay for appraisal at time of loan application. In the event the appraisal fee has been paid by the BUILDER prior to this contract, then the PURCHASER shall reimburse BUILDER at time of closing, unless otherwise specified herein. If the initial appraised value is not sufficient to enable PURCHASER'S lending institution to make the loan specified above, then BUILDER shall have fourteen (14) days from BUILDER'S receipt of a copy of the initial appraisal to obtain another appraisal, acceptable to PURCHASER'S lender, or to obtain an amendment to the initial appraisal, to increase the appraised value to the amount necessary to obtain the loan specified. If BUILDER elects not to attempt to obtain a new appraisal or an amendment of the initial appraisal and so notifies PURCHASER of such election, or if BUILDER is unable to obtain a new appraisal or amendment for the amount required to obtain the specified loan within the 14 day period noted above, then PURCHASER shall have forty-eight (48) hours thereafter within which to make an election, in writing to BUILDER, to declare this contract null and void and receive a refund of the Earnest Money. If PURCHASER fails to make such election, PURCHASER shall proceed to close without regard to the appraised value. If this contract is contingent upon PURCHASER'S obtaining an FHA or Conventional loan, then PURCHASER agrees to notify BUILDER of the name of the appraiser selected to perform the appraisal. BUILDER shall have forty-eight (48) hours from receipt of such notice in which to reject such appraiser. If BUILDER rejects the initial appraiser, then PURCHASER shall select another. BUILDER shall have such 48-hour right to reject an appraiser as to the initial appraiser and any substitutions. Any appraisers selected by PURCHASER must be selected from those on PURCHASER'S lender's approved list of appraisers.

**5. DISCOUNTS:** Discounts on the loan, if any, shall be paid by \_\_\_\_\_ and shall not exceed \$ \_\_\_\_\_.

**LOCK-IN OF INTEREST RATE:**

The duty and responsibility to lock-in the interest rate shall be as follows: (i.) if the BUILDER is designated to pay any discount points according to the preceding paragraph or any Buy down Fees according to the next succeeding paragraph, then BUILDER shall be responsible for the lock-in agreement with the Lender. (If the Specified Interest Rate shown in Item number 3 above together with discount points not exceeding the ceiling stated above are available at any time subsequent to the Contract Effective Date of this agreement, provided loan application has been made by PURCHASER, should BUILDER elect not to lock-in the above rate and the discount then exceeds the amount agreed to herein, then the BUILDER shall pay the additional discount necessary to obtain the Specified Interest Rate hereinabove.); OR (ii) if the BUILDER is not designated to pay any points according to the preceding paragraph or any Buy down Fees according to the next succeeding paragraph, then the PURCHASER shall be responsible for the lock-in agreement with the Lender and the PURCHASER shall bear all risk of movement of the interest rate and/or discount points.

**6. CLOSING:**

Closing to be on or about \_\_\_\_\_, but no later than 48 hours after the appropriate Code Enforcement Office provides a clear final inspection. Possession shall be given to PURCHASER with Deed upon the completion of final closing. It is understood and agreed at BUILDER'S option, the closing date may be extended for up to two (2) forty-five (45) day periods from the above-mentioned closing date. PURCHASER acknowledges that delivery of the house is approximate due to construction delays, weather, and lot acquisition and that said closing is an estimate. The parties further understand that the closing date is projected based upon an assumption of good weather, no construction delays, and prompt acquisition of the lot. PURCHASER understands that in the event that there are delays in construction beyond those set forth herein, BUILDER shall have no liability to PURCHASER for damages resulting from failure to close beyond a refund of earnest money.

**7. CLOSING AGENT/ATTORNEY AND TITLE COMPANY:**

The Closing Agent or Attorney shall be Dale Jamison for BUILDER and \_\_\_\_\_ for PURCHASER, using Chicago Title Company.

**8. LIMITED WARRANTIES:**

BUILDER agrees to provide in written form, a One Year BUILDER Warranty or such other comparable warranty as designated by BUILDER. PURCHASER and BUILDER agree to the terms and conditions of this warranty and agree that this limited warranty is BUILDER'S sole warranty and that it limits the liability of BUILDER. PURCHASER acknowledges the terms and conditions of this warranty, which is incorporated herein and agree to follow the procedures enumerated therein. In addition to the terms contained in such warranty, PURCHASER agrees that BUILDER shall have the right to be given reasonable written notice of any warranty claim, an opportunity to inspect

the claimed defect, and an opportunity to repair the defective condition. BUILDER may use the methods, materials, laborers and subcontractors of BUILDER'S choosing, so long as the repairs result in the condition being brought within the standards set forth in the said warranty. **THE EXPRESS LIMITED WARRANTIES CONTAINED THEREIN ARE IN LIEU OF ALL OTHER WARRANTIES, STATUTORY OR OTHERWISE, EXPRESSED OR IMPLIED, ALL OTHER REPRESENTATIONS MADE BY BUILDER AND ALL OTHER OBLIGATIONS OR LIABILITIES WITH RESPECT TO SAID PROPERTY INCLUDING ANY CLAIM FOR BREACH OF CONTRACT. WORKMANLIKE CONSTRUCTION, DESIGN CONDITION, QUALITY, MERCHANTABILITY HABITABILITY OR FITNESS FOR A PARTICULAR USE. THIS AGREEMENT AND WARRANTY LIMITS PURCHASER'S REMEDIES AND BUILDER'S LIABILITIES. IN NO EVENT SHALL BUILDER'S OBLIGATION EXCEED ITS OBLIGATION SET FORTH IN SAID WARRANTY. IN NO EVENT SHALL BUILDER BE LIABLE FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES.**

\_\_\_\_\_ PURCHASER'S INITIALS

#### 9. DISPUTES OR CLAIMS:

A. It is mutually agreed that all disputes and controversies between the parties arising out of or in connection with this Real Estate Sales Contract as to the existence, construction, validity, interpretation or meaning, performances, nonperformance, enforcement, operation, breach, continuance, or termination thereof or any claim whatsoever, including, without limitation, alleged misrepresentation, unjust enrichment, fraud, negligence and violations of the Tennessee Consumer Protection Act shall be submitted to non-binding mediation in accordance with the rules and procedures of Resolute Systems, Inc. and by using the following procedure. Any warranty claims shall first be submitted to any dispute resolution procedure as set forth in the warranty program called for herein. Thereafter, either party may demand mediation by setting forth such claims in such detail as shall give the other party notice and by submitting the claim to mediation in accordance with the rules and procedures of Resolute Systems, Inc.

1. Within thirty (30) days after the demand, the other party shall prepare a response to the allegations set forth in the Statement setting forth such other matters the other party considers pertinent.
2. Each party shall bear [her or his or its] own mediation costs and expenses and shall equally bear the cost of the mediation.

\_\_\_\_\_ PURCHASER'S INITIALS

A. If the parties are unable to settle or resolve the dispute or controversy by mediation, the claim shall be submitted to binding arbitration in accordance with the rules and procedures of Resolute Systems, Inc., in which event the decision of the arbitrator shall be final and binding upon both Parties and may be entered in any Court having jurisdiction. Demand for arbitration shall be made in writing with the other party to the claim and with the arbitrator. A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen, but in no event later than the date for the institution of legal proceedings based upon the law of the state where the property is located. The cost of the arbitrator shall be paid by the non-prevailing party or as determined by the arbitrator.

\_\_\_\_\_ PURCHASER'S INITIALS

B. The parties stipulate that the provisions of this agreement shall be a complete defense to any suit, action, or proceeding instituted in any federal, state, or local court or before any administrative tribunal with respect to any controversy or dispute arising during the period of this agreement. The mediation and arbitration provisions shall, with respect to the controversy or dispute, survive the termination or expiration of this Real Estate Sales Contract.

\_\_\_\_\_ PURCHASER'S INITIALS

C. Said Warranty provides for final and binding arbitration regarding any controversy, claim or complaint arising under said Warranty, which is not resolved by mutual agreement between PURCHASER and BUILDER.

PURCHASER'S sole remedy for any such unresolved Warranty matter is the final Choose one, Option A or Option B and binding arbitration stated herein, the right to sue the BUILDER in court being expressly waived.

\_\_\_\_\_ PURCHASER'S INITIALS

#### 10. FINAL SURVEY:

Final survey shall be paid for at time of closing by PURCHASER.

#### 11. THE JOB SITE & BUILDER'S SUBCONTRACTORS/WORKERS:

PURCHASER agrees that the direction and supervision of the workers on the RESIDENCE, including subcontractors, rests exclusively with the BUILDER, and PURCHASER agrees not to issue any instruction to or otherwise interfere with such workers. PURCHASER further agrees not to contract with BUILDER'S subcontractors or to engage any other builders, subcontractors, or workmen for work on or about the RESIDENCE except after closing.

A house under construction can be a dangerous place. Therefore, if PURCHASER, or anyone else brought or sent to the PROPERTY by PURCHASER, should visit the PROPERTY prior to its completion, BUILDER shall not be liable to PURCHASER or any such other person(s) for any damage to person or property incurred at the PROPERTY, as any such visit to the PROPERTY prior to its completion shall be at the risk of such parties. BUILDER reserves the right to prohibit PURCHASER from entering any part of the PROPERTY prior to closing except with the written permission of BUILDER. This shall in no way affect PURCHASER'S right to perform a final walk-thru orientation prior to closing with BUILDER or BUILDER'S representatives.

#### 12. TITLE RESTRICTIONS:

Title is to be conveyed subject to all restrictions, easements and covenants of record, and applicable zoning laws, and taxes falling due after closing.

If applicable to the property, the PURCHASER acknowledges that PURCHASER has been given the opportunity to read all Homeowner Association documents and subdivision covenants and restrictions and that PURCHASER has received a copy of such documents.

\_\_\_\_\_ PURCHASER'S INITIALS

**13. SETTLEMENT WITH VALID TITLE:**

Settlement and payment of balance, if any, of cash payment shall be made upon presentation of a good and valid warranty deed or other proper means of conveyance with the usual covenants and conveying a good and merchantable title, after allowing reasonable time for examination of title. At PURCHASER'S election, BUILDER agrees promptly to furnish for examination only, either title search or adequate abstracts of title, taxes and judgments covering property or, at BUILDER'S option, a policy of title insurance for the amount of the above purchase price, insuring marketability of title and paid for by BUILDER. Adequate abstracts of title, taxes and judgments are those required by a title insurance agency as the basis for the issuance of a title insurance policy. In the event of controversy regarding title, a title insurance policy covering property for the above purchase price shall constitute and be accepted by PURCHASER as conclusive evidence of good and merchantable title. In each case, the title insurance agency must be one with a local office.

**14. FAILURE TO CLOSE:**

If the title is good and merchantable and PURCHASER shall fail to pay for the Property as specified herein, then it shall constitute a breach. The PURCHASER canceling the closing, refusing to close after a clear final inspection and acceptance by VA, FHA, mortgage, or applicable Code Enforcement Department, failing to possess funds to close, or failing to obtain the required signatures to close if applicable, or failing to satisfy the conditions set forth in LOAN APPLICATION OR LOAN COMMITMENT paragraph, shall constitute a BREACH BY PURCHASER as set forth in Paragraph 30. If BUILDER cannot convey a good and merchantable title or should BUILDER fail to close, the PURCHASER shall be limited to the remedies as stated in BREACH BY BUILDER as set forth in paragraph 31. PURCHASER understands and agrees that by closing, PURCHASER is not waiving the right to have the home completed in accordance with this Contract. PURCHASER does, however, acknowledge PURCHASER'S duty to close in accordance with the Contract. PURCHASER agrees to pay BUILDER, upon demand, a fee of \$ 50.00 per day for every day after the said forty eight (48) hours set forth in paragraph 6 as compensation to BUILDER for additional costs incurred by BUILDER. This per diem penalty is not BUILDER'S sole remedy for PURCHASER'S failure to close, but is in addition to any other rights or remedies BUILDER may have under the terms of this contract, or otherwise, all of which are specifically reserved by BUILDER. POSSESSION of the PROPERTY will be given to PURCHASER immediately after closing AND disbursement of the purchase price to BUILDER. BUILDER is under no obligation to grant any occupancy of the PROPERTY to PURCHASER in advance of the closing.

**15. COMPLETION AND INSPECTION:**

**A. INSPECTION BY PURCHASER:** PURCHASER agrees that the direction and supervision of the workers on the Residence, including subcontractors, rests exclusively with BUILDER, and PURCHASER agrees not to issue any instruction to or otherwise interfere with such workers. PURCHASER further agrees not to contract with BUILDER'S subcontractors or to engage other builders or subcontractors for any work on or about the Residence except after closing. PURCHASER shall at a designated time set prior to Closing Date, completely inspect the Residence with BUILDER or BUILDER'S Agent. The parties agree and understand that Purchaser may engage the services of a home inspector for the purpose of conducting the inspection of the subject property. Purchaser may select the home inspector subject to Builder's approval. Purchaser agrees to provide to Builder the name of the proposed home inspector no less than five (5) days prior to the inspection. The parties further understand and agree that the Builder's obligation to make repairs shall in no way be expanded by the inspector's findings. PURCHASER and BUILDER shall agree in writing, those items that will be repaired or completed by BUILDER within a reasonable time after Closing Date, and upon execution of said Agreement, PURCHASER will have accepted the Residence and acknowledged that the Residence was constructed pursuant to this Contract except as set out in said Agreement.

**B. COMPLETION:** It is understood and agreed between parties that BUILDER shall be deemed to have performed this Contract as to construction of the residence hereinabove described when it shall have obtained the final inspection from VA and/or FHA and/or applicable Code Enforcement Department. Time being of the essence, PURCHASER agrees to immediately close said loan and purchase the above-described property within twenty-four (24) hours of being notified, or at a time designated by BUILDER, if later. Possession shall be given to PURCHASER immediately after closing. BUILDER shall not be held responsible for any delay in construction of the Residence by the act, neglect, failure or default of subcontractors, workmen, or suppliers; by alterations, changes or additions to the Residence, public laws, or act of public officials, strikes, lock-outs, actions of the elements, acts of war, inability to obtain materials, or by any cause beyond BUILDER'S control. BUILDER shall make a reasonable effort to construct this Residence in conformance with models and house plans, however, BUILDER specifically reserves the right to make such modifications or substitutions in the construction of Residence as may be required, authorized or approved by governmental agencies having jurisdiction there over, or as BUILDER deems appropriate. BUILDER reserves the exclusive right to reverse the plan's orientation on the lot and to choose substitute selections for any selections that have not been submitted or are unavailable to BUILDER within ten (10) days of the Effective Date of the Contract. PURCHASER agrees that construction of said residence shall not be delayed to wait for PURCHASER'S selections. Should construction of the house plan herein be started and selections have been made, PURCHASER agrees to accept said house plan, its location on the Property, elevation and finish of the Residence and all selections chosen by BUILDER or others. If for any reason, the Residence is not completed as approved on the final VA, FHA, mortgage or applicable Code Enforcement Department within eighteen (18) months from the Effective Date of the Contract, then the Contract may be terminated at the option of BUILDER or PURCHASER and Earnest Money shall be returned.

**16. PRORATIONS AND TAXES:**

All taxes and applicable assessments shall be prorated as of closing.

All prorations shall be based upon the last known assessment, and if no lot assessment is available, then there shall be no prorations. BUILDER shall not be responsible for any supplemental taxes which may be assessed after closing or any tax liabilities after closing.

**17. SETTLEMENT AGENT FEES:**

PURCHASER and BUILDER are to pay their own Settlement Agent fees.

**18. PURCHASER'S COSTS:**

PURCHASER is to pay for the preparation of note or notes, trust deed, purchase money trust deed, if any, notary fee on trust deed or deeds, recording of the deed of conveyance, and if one is used, recording of the purchase money trust deed, state transfer taxes and Register's fee on all deeds; expense of title examination and title insurance, and all other legally chargeable loan expenses incident thereto.

**19. ALLOWANCES, OPTIONS, CHANGES AND ADDITIONS:**

Options, changes and/or additions must be agreed upon by both PURCHASER and BUILDER to become part of this Contract. No options, changes or additions to plans and/or specifications must be made unless included with this Contract. PURCHASER understands that changes, if any, are to be requested in writing on a form prescribed by BUILDER together with the non-refundable change order review fee of \$100.00 for each requested change order after the first three (3). BUILDER will review the requested change and submit a proposed estimate of cost. The parties understand that no change must be made by BUILDER until agreed to by all parties (except as provided in Paragraph 15), the non-refundable change order review fee is paid by PURCHASER, and the cost of the change order is paid. If PURCHASER instructs a subcontractor or laborer as to specific construction without BUILDER approval, PURCHASER agrees to become personally responsible for the cost of the work and further agrees that the BUILDER has no obligation whatever as to the workmanship of the specific construction, and BUILDER shall not warrant same. Should PURCHASER fail to close the sale for any reason, BUILDER shall retain all funds paid for said options, changes and/or additions without reimbursement to PURCHASER. PURCHASER HAS BEEN ADVISED THAT THIS MAY RESULT IN FINANCIAL LOSS TO PURCHASER. Allowances and Options, if any, are set forth in Exhibit A, attached hereto and made a part hereof. PURCHASER(S) understands that if they fail to close, for any reason, there will be no refund for any Allowances and Options expenses. PURCHASER IS HEREBY ADVISED THAT THIS MAY RESULT IN FINANCIAL LOSS TO PURCHASER.

\_\_\_\_\_ PURCHASER'S INITIALS

**20. SELECTIONS:**

PURCHASER may select exterior brick color, shingle color, paint color, carpet color, vinyl color, countertop color, tile color, cultured marble color, cabinet color, and/or material which have not been previously ordered or installed by BUILDER. Selections are to be made from BUILDER'S selections and with BUILDER'S suppliers. Exterior brick color, shingle color, and paint color must be submitted to BUILDER within 72 hours of the Effective Date of the contract to be considered. All selections are subject to BUILDER approval and availability. If PURCHASER desires to make such choices, which are not available from BUILDER'S selections, PURCHASER may submit a change order request pursuant to Paragraph 19.

**21. BUILDER'S COSTS:**

BUILDER is to pay for preparation of warranty deed, or deed of conveyance, notary fee on deed, and title search or abstract.

**22. LENDER FEES:**

BUILDER HAS NO CONTRACT OR AGREEMENT WITH THE LENDING INSTITUTION PROVIDING LOAN TO PURCHASER AND WILL PAY NO FEES TO THE LENDER EXCEPT THOSE ALREADY SPECIFICALLY MENTIONED IN THIS CONTRACT OR UNLESS OTHERWISE AGREED UPON IN WRITING BETWEEN THE LENDER AND BUILDER.

**23. TERMITE PROVISION:**

BUILDER agrees to furnish, at closing, a soil treatment certificate from a licensed and bonded termite control operator.

**24. RISK OF LOSS:**

It is understood and agreed between BUILDER and PURCHASER that the risk of loss by fire or otherwise of the improvements located on Property shall remain with BUILDER and shall only pass to PURCHASER at closing of the transaction; and further, that in the event of destruction by fire or otherwise, BUILDER'S liability shall in no event be more than the appraised value of the improvements so destroyed as determined by BUILDER'S Builder's Risk Insurance carrier.

**25. COSTS AND ATTORNEY FEES:**

Should a party to this Contract bring an action against any other party to this Contract for the sole purpose of enforcing provisions concerning the requirements to close this transaction in a timely fashion, then the prevailing party or parties shall be entitled to recover all costs of said action and reasonable attorney fees. For the purpose of this provision, party is defined as and includes the PURCHASER and BUILDER. The term prevailing party as used in this paragraph shall be defined as the party or parties in whose favor a court shall rule or against whom no relief is granted.

**26. GRADE OF LAND:**

PURCHASER agrees that BUILDER has made no representations regarding the final grade of the lot after the completion of construction of the Residence, and PURCHASER recognizes that the final grade and configuration of the Residence on the lot shall be dictated by BUILDER'S construction practices and may vary substantially from that of any model home or lot viewed by PURCHASER. BUILDER shall grade the lot to satisfy applicable governmental Code Enforcement Departments. Any alteration to the swales or grade by PURCHASER during the warranty period shall void limited warranty coverage, if any, of the grade, landscaping, sod and foundation.

**27. AMENITIES AND COMMON AREAS:**

PURCHASER understands that BUILDER purchases finished lots from developer and is not affiliated or responsible for any actions of that developer or current or future homeowner's association. PURCHASER agrees that no representation or warranties have been made regarding the completion, maintenance, or fitness for use of these amenities and/or common areas, if applicable.

**28. NURSERY STOCK AND NATURAL TREES:**

Nursery stock (including sod/seed) installed by the BUILDER shall be healthy and alive (or in a seasonal dormant state) on the date of occupancy or closing (whichever occurs first). The type and amount of nursery stock and sod/seed will be dictated by BUILDER'S construction practices and allowances and may vary from that of any model or market home viewed by PURCHASER. PURCHASER is advised that BUILDER only provides a "starter type" nursery stock and sod/seed. No representation is made by BUILDER as to the establishment or maturity of said

nursery stock, sod/seed as PURCHASER shall be required to care for and maintain the before-mentioned to obtain a naturally mature/established yard. It is specifically stipulated that natural trees or other natural growth will be excluded from any warranty. However, BUILDER shall use reasonable care to protect the health of natural growth during construction, but if unable to do so, may remove the natural growth from the lot prior to closing. Removal of damaged or unhealthy natural growth shall only be determined and performed by BUILDER prior to closing or by written agreement between BUILDER and PURCHASER at preclosing inspection.

**29. GOVERNING LAW:**

Tennessee law governs this Contract. The parties agree to submit themselves to the jurisdiction of the Courts of the State of Tennessee and agree that Shelby County shall be proper venue.

**30. BREACH BY PURCHASER:**

If this Contract is breached by PURCHASER or if the PURCHASER fails for any reason to complete his purchase of Property in accordance with the terms and conditions set forth herein, BUILDER shall have the following remedies. BUILDER shall be excused from further performance and may sell the property to a third party without in any way limiting BUILDER'S remedies set forth below. BUILDER may declare this Contract terminated and Earnest Money plus non-refundable funds shall be forfeited and in addition five thousand dollars (\$5,000.00) shall be paid by PURCHASER to BUILDER as liquidated damages. Earnest Money, non-refundable funds, or other damages paid to BUILDER, shall not in any way prejudice the rights of BUILDER or Broker in any action for damages or specific performance, or both. PURCHASER shall be obligated to pay all costs or losses which BUILDER may sustain, including lost profit, court costs and expenses of litigation, including attorney's fees. PURCHASER shall also be obligated to pay any sales commissions that are due.

**31. BREACH BY BUILDER:**

If this Contract is breached by BUILDER or if BUILDER fails for any reason to complete the sale, PURCHASER may terminate this Contract by written notice to BUILDER and receive a refund of the Earnest Money as PURCHASER'S sole remedy. PURCHASER hereby waives the right to damages or specific performance, or both from BUILDER.

**32. NOTICE TO PURCHASER:**

Any notice to PURCHASER shall be effective when received by PURCHASER or the Selling Real Estate Company.

**33. FACSIMILE AND EMAIL SIGNATURES:**

Facsimile and email signatures shall be deemed valid on all documents related to this Contract.

**34. ACCEPTANCE:**

If BUILDER accepts this proposal in writing, this instrument shall become a ("Effective") Contract between the PURCHASER and BUILDER. A copy of this document may be executed by each party, separately, and when each party has executed a copy thereof, such copies taken together shall be deemed a full and complete Effective Contract between the parties.

**35. A. SURFACE WATER:**

The amount of surface water traversing a lot is subject to the intensity and duration of rainfall and other factors beyond the control of BUILDER, and will vary according to terrain and location. BUILDER makes no representation or warranty concerning the amount of surface water that will traverse the lot during periods of peak water inundation, and shall not be responsible or liable for any claims of any kind or character resulting from said inundation, except to meet the requirements of VA and/or FHA applicable Code Enforcement Department and/or as set forth in written warranty provided to PURCHASER at closing.

\_\_\_\_\_ PURCHASER'S INITIALS

**B. SUBSURFACE CONDITIONS:** The subsurface conditions present may vary in accordance with underground conditions including without limitation, the prior uses of the property, the surface and subsurface soil types, the subsurface movement of water and the other geological conditions present. BUILDER makes no representation or warranty concerning these conditions and the results of such conditions and expressly disclaims any responsibility or liability for subsurface conditions of the property.

\_\_\_\_\_ PURCHASER'S INITIALS

**C. FILL AND SOIL CONDITIONS:** The property may have had soil or fill brought onto the property for spread upon the property. The BUILDER makes no representation or warranties upon the condition, existence or amount of this fill and expressly disclaims any responsibility or liabilities for same.

\_\_\_\_\_ PURCHASER'S INITIALS

**36. DISPUTES:**

Notwithstanding any of the above, in the event that a bona fide dispute should arise between PURCHASER and BUILDER, before the consummation of this Contract, and if such bona fide dispute cannot in good faith be resolved completely and to the satisfaction of both parties within (10) ten days after such dispute has arisen, then BUILDER shall have the right upon written notice to PURCHASER, to terminate this Contract and return to PURCHASER all monies tendered herewith including Earnest Money less costs of options, and overages on allowances, if any.

**37. ANNEXATION:**

PURCHASER acknowledges that the developer of the subdivision may have been required, as a condition of subdivision plat approval, to petition a local municipality for annexation, and that said plat approval requires that said petition become a covenant or condition which would apply to all persons owning Lots within the subdivision. In such event, PURCHASER agrees that the Deed to PURCHASER shall contain a provision reflecting this condition and covenant.

**38. MOLD NOTICE, DISCLOSURE AND DISCLAIMER:**

Mold growth requires moisture. Moisture is the only mold growth factor that can be controlled in a residential setting. By minimizing moisture, a homeowner can reduce or eliminate mold growth. All mold is not necessarily harmful, but certain strains of mold have been shown to have adverse health effects in susceptible persons. The homeowner can take positive steps to reduce or eliminate the occurrence of mold growth in the home, thereby minimize any possible adverse effects that may be caused by mold.

Whether or not you as a homeowner experience mold growth depends largely on how you manage and maintain your home. Our responsibility as a homebuilder must be limited to things that we control. As explained in our written warranty, provided by separate instrument, we will repair or replace defects in our construction (defects defined as a

failure to comply with reasonable standards of residential construction) for a period of one year. We, the builder, will not be responsible for any damages caused by mold, or by some other agent, that may be associated with defects in our construction, to include but not be limited to property damage, personal injury, loss of income, emotional distress, death, loss of use, loss of value, and adverse health effects, or any other effects. Any implied warranties, including an implied warranty of workmanlike construction, an implied warranty of habitability, or an implied warranty of fitness for a particular use, are hereby waived and disclaimed.

This notice, disclosure and disclaimer agreement is hereby appended to and made a part of the contract of sale and shall survive closing.

\_\_\_\_\_ PURCHASER'S INITIALS

**39. ADDENDUM/ADDITIONAL PROVISIONS:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**40. ENTIRE AGREEMENT:**

PURCHASER REPRESENTS THAT HE/SHE HAS READ THIS AGREEMENT AND THAT SAME CONSTITUTES THE ENTIRE AGREEMENT BETWEEN BUILDER AND PURCHASER AND THAT NO OTHER AGREEMENTS, PROMISES, REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, EXCEPT THOSE EXPRESSLY SET FORTH HEREIN, HAVE BEEN RELIED UPON BY PURCHASER OR HAVE BEEN MADE BY BUILDER OR ITS SALESPERSONS, AGENTS OR EMPLOYEES TO PURCHASER AND THAT NO MODIFICATION OF THIS AGREEMENT SHALL BE CLAIMED BY PURCHASER SUBSEQUENT TO EXECUTION HEREOF UNLESS FIRST REDUCED TO WRITING AND EXECUTED BY THE PARTIES HERETO. A RETURN OF PURCHASER'S DEPOSITS BY BUILDER AT ANY TIME BEFORE ACCEPTANCE OF THIS AGREEMENT BY BUILDER SHALL CONSTITUTE A REJECTION OF PURCHASER'S OFFER BY BUILDER, WHEREUPON THIS AGREEMENT SHALL BECOME NULL AND VOID. PURCHASER UNDERSTANDS AND AGREES THAT THE SALES REPRESENTATIVE WITH WHOM PURCHASER HAS DEALT IN CONNECTION WITH THIS PURCHASE HAS NO AUTHORITY TO AGREE TO CHANGES OR MODIFICATIONS IN THE PLANS OR SPECIFICATIONS OR TO MAKE REPRESENTATIONS OR AGREEMENTS WITH PURCHASER NOT EXPRESSLY CONTAINED HEREIN OR IN WRITING SIGNED BY BUILDER IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT. THE TERMS AND CONDITIONS SET FORTH ON THE CONTRACT DOCUMENTS AND ALL ADDENDA HERETO ARE EXPRESSLY INCORPORATED INTO THIS AGREEMENT AND ARE A MATERIAL AND INTEGRAL PART THEREOF.

**41. SEVERABILITY:**

The invalidity, illegality, or unenforceability of any provision of this Agreement shall not render the other provisions invalid, illegal, or unenforceable.

**REAL ESTATE CERTIFICATION:** I/We hereby certify all terms stated on this New Home Contract are true to the best of my knowledge. Executed in multiple originals effective the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. (To be filled in by Broker upon final acceptance by all parties.)

\_\_\_\_\_  
PURCHASER  
SS # \_\_\_\_\_

\_\_\_\_\_  
PURCHASER  
SS # \_\_\_\_\_

\_\_\_\_\_  
BUILDER  
TITLE \_\_\_\_\_

\_\_\_\_\_  
BY

**NOTE AS TO BROKERAGE:** BUILDER agrees to pay \_\_\_\_\_ at closing, the fee specified by separate agreement. The Listing Broker shall direct the Closing Agent to pay the Real Estate Selling Company, from the commission received, an amount in accordance with the terms and conditions specified by agreement between the Listing Broker and the Real Estate Selling Company.

LISTING AGENT: \_\_\_\_\_      SELLING AGENT: \_\_\_\_\_  
PHONE: \_\_\_\_\_              PHONE: \_\_\_\_\_  
COMPANY: \_\_\_\_\_          COMPANY: \_\_\_\_\_  
COMMISSION: \_\_\_\_\_        COMMISSION: \_\_\_\_\_