

NEW CONSTRUCTION - BUILDER/PURCHASER AGREEMENT

STATE OF ALABAMA
COUNTY

1. PARTIES AND PROPERTY

In accordance with the terms of the Agreement, _____ (hereinafter called "Seller"), agrees to sell to _____ (hereinafter, either individually or jointly, called "Buyer"), and Buyer agrees to purchase from Seller the following real property and improvements currently constructed or to be constructed thereon, situated in _____ County, Alabama, (hereinafter called the "Property"):

Lot _____, Block _____, according to the Plat of _____ as recorded in Plat Book _____ at Page _____, also known by the street address as _____, Alabama, or known by other legal description: _____

Home Plan No. _____ or House Plan Name _____ Pre-sale _____ Existing Model _____

2. PURCHASE PRICE

The purchase price of the subject property to be paid by Buyer to Seller is \$ _____, which shall be payable as follows: \$ _____ earnest money, which Buyer this day deposited with The Prudential Ballard Realty, and additional earnest money of \$ _____, due and payable on or before loan approval and prior to construction. Said earnest money may be held by the Seller in an interest bearing or non interest bearing accounts and may be held separately or commingled with other funds of Seller and Seller shall be entitled to receive and retain any interest earned on said deposited funds, until the closing or until the funds are otherwise refunded or forfeited, as the case be, in accordance with the provisions hereof. The balance of the purchase price shall be paid by Buyer to Seller in cash at closing.

3. FINANCING

- A. To apply to _____ ("Lender") within three working days from the date hereof for a permanent loan in the amount of \$ _____ at the interest rate available at the time of closing; and
- B. To provide Lender, within seven (7) days thereafter, all information required by Lender in connection with Buyer's Loan Application. If Buyer complies with the requirements of Subsections (A) and (B) above, and Buyer's loan has not been approved by the Lender within _____ (_____) days from the date of loan application, this Agreement shall terminate at option of Seller or Seller may grant Buyer an extension of time to complete loan approval. If Seller options to terminate this Agreement either at the end of the original term set out above or the end of any extension term granted to Buyer, Buyer shall receive a refund of all earnest money paid to Seller, upon the execution of a release of both parties from this Agreement. Should Buyer fail to comply with the terms of Subsections (A) and (B) above, or if Buyer does not use his, her or their best efforts to obtain financing in accordance with said subparagraphs, then in that event Seller may terminate this Agreement and retain the earnest money previously paid as liquidated damages at Seller's option or Seller may choose to pursue any other remedies available to Seller at law or in equity including specific performance or seeking damages for breach of contract.
- C. If this is a cash sale with Buyer's purchase not contingent upon outside financing, then prior to the commencement of the construction Buyer agrees to provide evidence (written verification of funds within five (5) working days of contract acceptance date), satisfactory to Seller, that the balance of the purchase price will be available to Buyer for payment to Seller at closing.

4. CLOSING COSTS, COMMISSIONS AND ATTORNEYS FEES

- (a) Seller to pay _____% of _____ Mortgage Amount _____ Sales Price Amount (check one) **OR**
(b) Seller to pay \$ _____ flat fee

to apply to _____ Closing Cost _____ Loan Discount Points (check all that apply). Purchaser to pay prepaid items and any closing costs over the builders maximum cost stated herein.

Seller agrees to pay the listing agency, The Prudential Ballard Realty, a real estate commission of _____% of the sales price.

_____ Seller _____ Buyer (check one) agrees to pay to the selling agency, _____, a real estate commission of _____% of the sales price.

On completed models, closing shall be on or before _____ with possession to be _____

5. CHANGE ITEMS OR EXTRAS

Seller is under no obligation to make changes, additions or alterations to Seller's plans and specifications for the residence constructed upon the subject property. Seller may elect to make changes, additions or alterations to the property, upon request of Buyer, but shall not in any event do so until the parties have executed a written change order, which shall become part of this contract, and until Lender has approved such changes, additions or alterations, and Seller has received payment for the additional labor and materials required. Any change after plans are complete and decorator sheets are signed will be \$50,00 plus cost of the change. All costs for changes and extras will be paid on the date the change order is signed. If items are added to the builder's plans, these items

may not be given value in the appraisal. In such cases, any difference between contract price and appraised value will be paid for by the purchaser prior to or at closing.

6. ALLOWANCES

Seller may allow buyer to select some or all of the interior decorating items to be incorporated into the improvements. Such items may include light fixtures, wall papers, vinyl floor coverings, carpet, hardware and appliances (hereinafter called "decorating items"), for which Seller shall establish allowances. Buyer shall make such selections within _____ working days of the request of Seller's decorator. If the cost of decorating items chosen by Buyer exceeds the allowances established therefore by Seller, Buyer shall pay such excess costs, or such deposit as Seller may require, immediately upon making such selections. Buyer shall pay the balance of the amount of such excess expenditures at the closing of this transaction.

7. DEED, ABSTRACT OF TITLE, RESTRICTIONS AND EASEMENTS

At closing Seller shall furnish Buyer a title insurance policy or an abstract of title disclosing a good and merchantable title and at closing, Seller shall convey the property to Buyer by Warranty Deed subject to all usual restrictions, easements, reservations or zoning ordinances to which the property may be subject and/or which are common to the subdivision or addition in which the property is situated, which shall not be considered defects or objections to title.

8. TIME OF CLOSING

The sale and sale closing contemplated hereunder shall be consummated within ten (10) days after completion. Said sale and sale closing shall be approximately _____ consecutive days after the building permit is issued for subject property of this agreement, subject to paragraphs 13, 14 and 15 hereof.

9. SELLER'S REPRESENTATION AND WARRANTIES

This Agreement contains all of the representations, warranties, guarantees and promises of Seller. No agent or representatives of Seller is authorized to make any representations or promise on behalf of Seller other than those contained herein. With this purchase, and at the time of closing, Buyer will receive a written limited Builder's Warranty available for Buyer's review at Seller's office, at any time. Individual mechanical items may have separate manufacturer's warranty and in such event Buyer will receive same and will be fully entitled to the benefits thereof. Seller makes no other warranties or guarantees, either expressed or implied. Furthermore, the express written Limited Builder's Warranty of Seller shall be of no force and effect unless and until Seller has received payment in full of the purchase price stated above.

10. DEFAULT/LEGAL REMEDIES

If Buyer fails, in any respect, to comply herewith, other than as provided in 3 above, Seller may terminate this Agreement and retain the earnest money as liquidated damages, or at the opinion of Seller, Seller may proceed specific performance, or in the alternative, Seller may sue for Seller's actual damage incurred due to Buyer's breach, or may Pursue any other legal remedies available to Seller. If Seller fails to comply herewith for any reason, Buyer may demand the earnest money thereby releasing Seller from this contract, as Buyer's sold and exclusive remedy. The parties agree that Seller shall have earned, for services performed at the request of buyer any amounts received by Seller from Buyer for cash extras, change items, or allowance items when Seller initials work with respect to such cash extras, change items or allowance items. Therefore, if Buyer fails to close for any reason other than the default of Seller, then (whether or not Seller is required to return to Buyer the earnest money) Seller shall be entitled to retain as reasonable compensation for services performed, any amounts received by Seller for cash extras, change items which have been initialed, installed or included to, on or in the property. In the event that Seller defaults, then Seller shall return to Buyer the earnest money and any amounts received by plans, cost of such plans will be deducted from thr binder. If binder is not sufficient to cover cost of plans, purchaser will reimburse builder for the difference. Binder disbursement form must be executed by both parties according to Alabama Real Estate License Law Rule 790-X-3-03. (4).

If Seller's default by wrongfully refusing to sell, or otherwise breaching this agreement, and the property does not close, Seller/s agree (i) to pay said full brokerage fee due Broker/s had the sale been consummated and (ii) Purchaser/s may either pursue all remedies available to purchaser/s at law or in equity including but not limited to Specific Performance or in the event of a breach, Purchaser/s may waive such breach and elect to purchase said property. If Purchaser/s default by wrongfully refusing to purchase, or by breaching this agreement, and the property does not close, Purchaser/s agree (i) to pay said full brokerage fee due broker/s had sale been consummated and (ii) Seller/s may pursue all remedies available to Seller/s at law and equity including but not limited to Specific Performance and may elect that the earnest money be forfeited by Purchaser/s as liquidated damages which shall be equally divided between (1) Seller/s and (2) listing broker (the sum to listing broker not to exceed the full commission). Should Purchaser's default and is Specific Performance is enforced, Seller/s shall pay said full brokerage fee due broker/s had sale been consummated. In the event of default by either Seller/s or Purchaser/s, all reasonable attorney fees and court costs may be recoverable against the defaulting party.

11. PRORATIONS

Taxes for the year of closing shall be prorated to the date of closing.

12. NOTICES

Any notice required to be delivered hereunder shall be deemed received when sent by United States postage prepaid, certified mail, return receipt requested and properly addressed to the respective party to be notified.

13. DAMAGE OR DESTRUCTION OF IMPROVEMENTS

Should all or any portion of the improvements constructed on the property be damaged or destroyed prior to closing by fire, windstorm, hail, explosion or other casualty, Seller may, at its sole option, elect to terminate this Agreement upon written notice to Buyer, in which event Seller shall immediately refund all sums theretofore paid by Buyer, including sums paid for change items or allowance items. If Seller options to complete the contract, then construction must be completed within 120 days after the event causing damage or destruction.

14. OTHER TERMS AND PROVISIONS

15. DELAY IN CONSTRUCTION

Seller shall use its best efforts to complete construction of the improvements prior to closing date. However, if Seller is delayed at any time in the progress of construction because of unavailability of materials, inclement weather, strikes, changes in government regulations, acts of governmental agencies or their agents or employees, act of God, any of the causes listed in paragraph 13 above, or Buyer's failure or refusal to make decorator selections, or other delays caused by fault of the Buyer, then Seller may, in its sole options, extend the closing for a period equal to the time of such delays.

16. INSULATION

- A. Exterior walls of all living areas will be insulated with fiberglass batt which according to the manufacturers will yield an R-Value of _____.
- B. Attic over living areas in insulated with blown and/or batt fiberglass which according to the manufacturers will yield an R-Value of _____.

17. HOMEOWNERS ASSOCIATION REQUIREMENT

If the residence which is the subject of this Agreement is within a subdivision where a Homeowners Association is applicable, membership by Buyer in said Association shall be required, dues and assessments shall be required, and the prorated dues or assessments shall be paid by Buyer at time of closing and will be billed _____ (monthly, semi-annually, annually) thereafter. Homeowners Association fees for _____ subdivision are currently \$ _____ annually.

18. ARCHITECTURAL REVIEW BOARD, COMMON MAILBOXES

If the residence, which is the subject of this Agreement, is within a subdivision where an Architectural Review Board is provided in the Protective Covenants, then Buyer understands and agrees that Buyer is specifically bound by the requirement of said Protective Covenants as they relate to the Architectural Review Board and Architectural Review Board approval of all types of construction, renovations, additions, landscaping, and other matters that Buyer might wish to construct, change or improve on or about the subject premises. Likewise, if common/uniform mailboxes are required either in the Protective Covenants or by the Architectural Review Board, Buyer understands and agrees that at the time of original construction and at all times thereafter Buyer's mailbox must conform with these uniform requirements for mailboxes within the subdivision. Cost of mailbox \$ _____.

19. REAL ESTATE CONSUMER'S AGENCY AND DISCLOSURE ACT (RECAD) AGENCY DISCLOSURE:

The listing company is: _____

The selling company is: _____

The listing company is: (Two blocks may be checked)

- An agent of the seller.
 - An agent of the buyer.
 - An agent of both the seller and buyer and is acting as a limited consensual dual agent.
- Assisting the buyer seller as transactional broker.
- The selling company is: (Two blocks may be checked)

- An agent of the seller.
 - An agent of the buyer.
 - An agent of both the seller and buyer and is acting as a limited consensual dual agent.
- Assisting the buyer seller as a transactional broker.

Seller's initials _____

Purchaser's initials _____

20. DISCLAIMERS BY REAL ESTATE LICENSEES

Seller/s and Purchaser/s acknowledge that they have not relied upon any advice or representations of any real estate licensees involved in this sale relative, but not limited to, (i) the legal or tax consequences of this contract and the sale, purchase, or ownership of the property; (ii) the structural condition of the property including the condition of the roof, foundation, and basement; (iii) construction materials; (iv) the nature and operating condition of the electrical, gas, heating, air conditioning, plumbing and water heating systems, and appliances; (v) the age and square footage of the improvement, and the size of the property; (vi) the availability and condition of utilities, sewer service and septic system(s); (vii) the character of the neighborhood; (viii) the investment or resale value of the property (ix) flood zone, (x) school zone, (xi) any other matter affecting their willingness to sell or purchase the property on the terms and price herein set forth. Seller/s and Purchaser/s acknowledge that if such matters are of concern to them in the decision to sell or purchase the property, they have sought and obtained independent advice relative thereto.

21. DISCLAIMERS BY SELLER/S

Neither the Seller/s nor any real estate licensee make any representations or warranties regarding the condition of the property except to the extent expressly and specifically set forth herein. Unless otherwise stated herein, said property is sold in AS IS condition without any warranties express or implied. Purchaser/s have the obligation to determine, whether personally or through, or with, a representative of Purchaser/s' choosing, any and all conditions of the property material to Purchaser/s' decision to buy the property, including without limitation, the condition of the heating, cooling, plumbing, electrical and gas systems, and any built in appliances; the roof and basement, including leaks therein; the age, size, square footage, or area of the property; construction materials including floors; structural condition, flood zone, utility and sewer or septic tank availability and condition; and any matters affecting the character of the neighborhood.

22. EFFECTIVENESS AND EFFECTIVE DATE

This agreement is of no force and effect and shall not be binding upon Seller until executed by Seller. The effective date of this Agreement shall be the date it is executed as indicated in the space provided below.

23. CONTROVERSIES, CLAIMS, COMPLAINTS, OR DISPUTES ARISING IF PROPERTY IS CLOSED, AND DEED HAS BEEN DELIVERED TO PURCHASERS/ BINDING ARBITRATION AGREEMENT.

The parties agree that the property sold has been involved in, and necessarily involves, interstate commerce, and that any controversy, claim, complaint or dispute arising between the parties, or between either of the parties and any real estate licensees, if the property has been closed, and the deed has been delivered to purchaser/s is to be settled exclusively by binding arbitration. Purchaser/s and Seller/s specifically waive any rights they have to commence an action other than arbitration against each other or any real estate licensees. Any controversies, claims, complaints, or disputes arising if the property has been closed, and the deed has been delivered to purchaser/s, evolving out of or relating to this contract or breach thereof, shall be settled under the Commercial Arbitration Rules then in force of the American Arbitration Association, and all parties agree to be bound by the decision of this arbitration. The decision of the Arbitrator shall be a final and binding resolution, which may be entered as a judgment by a court of competent jurisdiction; and may then be enforced by use of legal remedies. Furthermore, in all events, no parties shall be liable for any indirect, special, consequential or punitive damages or loss of anticipated profits.

24. REAL ESTATE SETTLEMENT PROCEDURES ACT (RESPA) / CONTROLLED BUSINESS ARRANGEMENT DISCLOSURE:

The real estate company/s involved in this transaction is/are full service real estate company/s. In an effort to offer complete service to the public, Seller/s and Purchaser/s acknowledge and understand that the Broker potentially received enumeration, referral fees and commissions from other affiliations in real estate related fields including, but not limited to, home building/remodeling, home warranties, property management, relocation, consulting, and computerized loan origination. All parties to this contract are advised to seek other services or compare cost of services in these related fields and do business with whomever or wherever is most desirable.

25. ORAL STATEMENTS NOT BINDING

NO ORAL STATEMENT, REPRESENTATION PROMISE OR INDUCEMENT SHALL HAVE ANY VALIDITY NOR SHALL BE A PART OF THIS AGREEMENT. All covenants, promises and understandings written herein survive the closing. All rights, privileges, obligations and duties hereby granted or assumed shall inure to the benefit of and shall be binding upon successors, assigns, heirs, administrators and executors of the parties hereto.

26. **RECEIPT OF DOCUMENTS** Purchaser hereby acknowledges receipt of copies of the following documents, Which Purchaser agrees to adhere to and be bound by the terms thereof and all amendments thereto: (1) Declaration of Covenants, Conditions and Restrictions - established with respect to the Plat; (2) Selected Builder Agreement (if applicable); and (3) Architectural/Design Review Board Guidelines.

27. **ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement of the parties and it may not be changed except by written agreement duly executed by the parties hereto and appropriately dated. All parties to this Agreement acknowledge that they have read all provisions in this Agreement and agree to be bound by the same.

This Agreement made and entered into on this _____ day of _____, 19 ____.

Buyer (Full Name) _____ Seller _____

Buyer (Full Name) _____ By: _____
Its _____

Buyer's Street Address _____ City _____ State _____ Zip _____

Witness _____ Witness _____

DATE OF ACCEPTANCE BY ALL PARTIES _____ day of _____, 19 ____.

Revised 3/23/98
Revised 8/3/98
Revised 9/18/98
Revised 5/13/99