**PURCHASE AND SALE AGREEMENT**

**With Limited Warranty**

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| **DISCLAIMER: This document and the exhibits and attachments are not final or complete instruments, they include several options which may be included or deleted, and should not be executed in their present form. The HBAA and its local chapters do not assume any liability for damages arising from the use of this document and the exhibits and attachments thereto and give no opinion that any of the terms and conditions in this document and the exhibits and attachments should be accepted by the parties in a particular transaction. Terms and conditions should be negotiated between the parties based upon the respective interests, objectives, and bargaining positions of all interested parties. Seek specific legal advice from your lawyer.** |

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| **OVERVIEW OF AGREEMENT: This Purchase and Sale Agreement covers three scenarios: (1) a turnkey sale by the Seller/Contractor of the Land with a completed Dwelling, (2) a sale by the Seller/Contractor of the Land with a partially completed Dwelling, or (3) a sale by the Seller/Contractor where construction of the Dwelling has not yet commenced. As to the Dwelling Construction, it incorporates the terms and conditions of (a) a standard Limited Warranty Agreement (which is attached).** **Pertinent provisions include Paragraph 2 which provides several options for payment of the Earnest Money (either up front or on or before a date certain) and that the Earnest Money or Deposits may be utilized by the Seller/Contractor towards the project prior to Closing and a provision for Change Orders in Paragraph 4 which leaves it in the Seller/Contractor’s discretion as to whether such changes will be made and upon what conditions. Buyer is advised to conduct such investigations as Buyer deems necessary of the condition of the Land in Paragraph 6, obtain a survey in Paragraph 10 and a Termite Contract/Bond in Paragraph 11 as the Buyer shall deem necessary but waives claims against the Seller/Contractor for such matters as may be revealed by such inspections and reports. The Seller/Contractor agrees to provide and pay the costs of a Title Commitment (Paragraph 9) and share the costs of the Closing Attorney/Settlement Agent if so indicated in Paragraph 14 and the parties agree to pay the remainder of the Closing Costs as provided for in Paragraph 12 (which is to be completed by the parties). If the parties so elect, the Agreement provides alternative remedies in Paragraph 20 providing for dispute resolution by either Arbitration (with Mediation to precede such Arbitration) or standard remedies of each party availing themselves of the available remedies under applicable law; provided, however, the dispute resolution mechanism in the Limited Warranty Agreement is Arbitration (with Mediation to precede such Arbitration). The Limited Warranty attached is the HBAA standard Limited Warranty Agreement (typically a one year warranty) for latent defects.**  |

This PURCHASE AND SALE AGREEMENT (hereinafter “this Agreement”) is hereby bargained for, made, and entered into on the \_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_\_\_\_\_, by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter referred to as “Seller”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter, whether one or more, referred to as “Buyer”).

W I T N E S S E T H:

Buyer desires to purchase from Seller, and Seller has agreed to sell to Buyer, the following described real property (the “Land”) situated in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ County, Alabama, and more particularly described as follows:

Address:

Legal description:

 (See attached Exhibit I for legal description of the Land if not inserted in the above space.)

together with all improvements thereon, if any (the Land and said improvements hereinafter referred to together as the “Property”). The Property either has been or will be improved with a residential dwelling (the “Dwelling”) in accordance with the provisions of this Agreement. As a part of the negotiation of the terms and provisions of this Agreement, Buyer and Seller have negotiated between themselves the terms and provisions of (i) a Limited Warranty Agreement and (ii) either the Preoccupancy Inspection Agreement or Acknowledgment of Acceptance as described herein below and as attached to the Limited Warranty Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals, the agreements contained herein and attached hereto, the provisions of the Limited Warranty Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Buyer and Seller do hereby agree as follows:

1. Purchase and Sale. Buyer hereby agrees to purchase the Property from Seller, and Seller hereby agrees to sell the Property to Buyer on the terms and conditions provided for herein.
2. Purchase Price. The purchase price to be paid by Buyer to Seller for the conveyance of the Property, as improved with the Dwelling, shall be the sum of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Dollars (the “Purchase Price”) and shall be payable as follows:

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| Earnest Money, payable upon the execution of this Agreement, in the amount of | $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Additional Earnest Money, payable on or before \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ in the amount of | $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| The balance of the Purchase Price, in immediately available funds, payable upon the conveyance of the Property in the amount of | $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Total Purchase Price | $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

All payments of Earnest Money and Additional Earnest Money (the Earnest Money and any Additional Earnest Money are sometimes hereinafter referred to collectively as the “Earnest Money”) shall be paid to Seller, shall be held by Seller without interest and may be immediately expended by Seller toward the costs of constructing or completing the construction of the Dwelling or other improvements on the Property or for any other purpose that Seller deems appropriate, unless provided otherwise in this Agreement.

1. The Dwelling. The Property either has been or will be improved with the Dwelling. **(The parties should select one, but only one, of the following subparagraphs by initialing the subparagraph which is applicable.)**

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| Dwelling Completed. As of the execution of this Agreement, the Dwelling has been completed and Buyer has inspected and accepted the Dwelling, as completed, subject to the preoccupancy inspection to be made by Buyer and Seller pursuant to the Limited Warranty Agreement and either the Preoccupancy Inspection Agreement or Acknowledgment of Acceptance attached to the Limited Warranty Agreement**,** both of which are described in greater detail elsewhere in this Agreement. |  | Seller:  Buyer:   |

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| Construction Commenced but Partially Complete. The construction of the Dwelling has been commenced and, as of the date of this Agreement, is only partially complete. Buyer has caused such inspections to be performed on the portion of the Dwelling which has been commenced to make its own determination that the portion constructed is acceptable to Buyer and Buyer hereby accepts the work to date in AS IS condition without warranties express or implied. The construction of the Dwelling shall be completed by Seller in accordance with the provisions of this Agreement and the Limited Warranty Agreement and in general conformity with the plans and specifications (the “Plans and Specifications”) described on Exhibit A and incorporated herein, except that, to the extent that the portion of the Dwelling which has been constructed as of the date of this Agreement is different from the Plans and Specifications, then the Plans and Specifications shall be deemed modified to be consistent with the actual construction. |  | Seller:  Buyer:   |

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| Construction of Dwelling Not Yet Commenced. The construction of the Dwelling has not yet been commenced. Seller agrees that the Dwelling shall be constructed in accordance with the provisions of this Agreement and the Limited Warranty Agreement and in general conformity with the Plans and Specifications attached hereto as Exhibit A and incorporated herein. |  | Seller:  Buyer:   |

The Plans and Specifications, if applicable, have been signed and dated simultaneously with the execution of this Agreement by both Seller and Buyer and any changes in the Plans and Specifications which have been agreed upon by both Seller and Buyer have been clearly shown and initialed by both Seller and Buyer. The construction of the Dwelling shall be deemed completed upon the issuance of a certificate of occupancy by the applicable governmental building inspection department, if there is such a department in the jurisdiction in which the Property is located, and, if no such department exists, then upon the reasonable determination by Seller that the construction of the Dwelling is substantially complete.

1. Changes to Plans and Specifications. If Seller has agreed to construct the Dwelling or complete the construction of the Dwelling in general conformity with Plans and Specifications pursuant to the preceding paragraph, Seller shall be under no obligation to make any changes, additions or alterations to the Plans and Specifications. Seller may elect to make changes, additions or alterations to the Plans and Specifications upon the request of Buyer; however, Seller shall not be obligated to do so. In the event that Seller and Buyer agree upon changes, additions or alterations to the Plans and Specifications, then such agreement shall become effective only upon the execution by both Seller and Buyer of a written change order, in a form which is acceptable to Seller and which sets forth the changes to be made and the additional consideration to be paid by Buyer to Seller in connection therewith, and the payment by Buyer to Seller of such portion of said additional consideration as shall be required by Seller. Any such additional consideration shall be in addition to the Purchase Price and any payments of said additional consideration by Buyer to Seller shall not be a credit against the Purchase Price and shall be non-refundable. Seller shall not be obligated to agree to any such changes, additions or alterations to the Plans and Specifications and may condition any such agreement upon such matters as Seller shall, in sole discretion of Seller, determine, including, but not limited to, the payment of additional consideration by Buyer, the approval of such changes by Buyer’s lender and the local building inspection officials, if any. In the event that Seller agrees to such changes and has not received all of the additional consideration to be paid in connection therewith, then the balance of said consideration shall be paid at the closing of the sale of the Property, unless the Seller and Buyer agree to the payment of the balance of said consideration at a later date in which case the payment shall be due and payable under such written terms as may be acceptable to Seller. Notwithstanding the foregoing, Seller shall have the right to make such changes, additions, or alterations to the Plans and Specifications as shall be required by any governmental officers who have jurisdiction or authority over the construction of the Dwelling, or to cause the construction of the Dwelling to be in compliance with any applicable building codes or other applicable governmental laws, rules, or regulations, without notice to or approval by Buyer.
2. Decorating Allowance. Seller may allow Buyer to select some or all of the decorating items to be incorporated into the Dwelling, provided that same have not already been incorporated therein. Such items may include brick, paint colors, roof colors, light fixtures, wall paper, and floor covering for which Seller shall establish allowances. Buyer shall make such selections within seven (7) working days after the request by Seller. If selections of Buyer exceed the amount of allowances established by Seller, then Buyer shall pay such portion of any such excess as shall be required by Seller at the time of making the selections, and the balance, if any, shall be paid upon the Closing, in addition to the Purchase Price. The allowances established by Seller and which are included in the Purchase Price are attached hereto as Exhibit B. In no event shall the Purchase Price be reduced as the result of the expenditure of less than the allowance for any particular item.
3. Condition of the Land.
	1. Buyer hereby affirms that, before signing this Agreement, Buyer has personally walked upon and inspected the Land. Buyer acknowledges that Buyer and its representatives have had an opportunity to enter the Land for the purpose of conducting such engineering studies, site investigations and analyses (including soil tests) as Buyer deems desirable to determine whether the soil or other conditions of the Land are acceptable to Buyer. Buyer agrees that Buyer is acquiring the Land “AS-IS” without any representation or warranty on the part of Seller other than as to the title.
	2. Buyer waives all claims, present and future, against Seller and Seller’s agents, employees, successors, assigns, members, owners, managers, partners, officers and contractors based upon or connected with the condition of the Land and hereby releases Seller and Seller’s agents, employees, successors, assigns, members, owners, managers, partners, officers and contractors from any liability whatsoever therefor. Buyer, for themselves and on behalf of their heirs, administrators, executors, successors, assigns, contractors, permitees, licensees and lessees, agree that by acceptance of the Deed to the Property, Buyer shall be deemed to have released and forever discharged Seller from any and all liability, claims and causes of action, whether arising at law (by contract or in tort) or in equity with respect to damage or destruction of property and injury to or death of any person located in, on, or under the surface of or over the property herein conveyed, as the case may be, which are caused by, or arise as a result of, past, present, or future soil, subsoil, or other conditions (including, without limitation, sinkholes, underground mines, subsurface waters, expansive clay, and limestone formations) under or on the subject property, whether contiguous or non-contiguous. Buyer acknowledges that they have made their own independent inspections and investigations of the subject Property and are purchasing the subject Property in reliance upon such inspections and investigations. For purposes of this paragraph, Seller shall mean and refer to the members, managers, agents, employees, successors, assigns, members, owners, managers, partners, officers and contractors of Seller and any successors and assigns of Seller. This provision shall survive the closing of this sale.
	3. Buyer acknowledges that Buyer has been advised to investigate the purchase of insurance for protection in the event of earthquakes or sinkholes; provided, however, and notwithstanding anything to the contrary contained herein, Seller has made no representation or warranty with respect to the availability of such insurance coverage.
	4. The Purchase Price does not include any costs or contingencies for rock, soil conditions or other abnormal surface conditions, and Buyer shall be responsible for the costs of correcting any such conditions. Should such abnormal conditions be encountered on the building site in connection with foundations and footing excavation or installation of sewer lines, on-site sewage disposal systems, water lines, or other utility services, Seller shall promptly inform Buyer of same and the estimated costs of the additional work. Such costs may include, but are not necessarily limited to, blasting expenses, jack hammer and drill operations. The actual costs will be reflected in an increase in the Purchase Price at Closing.
4. Maintenance and Prevention of Moisture-Related Conditions.
	1. Whether Buyer experiences mold growth depends largely on how Buyer manages and maintains the Property and Buyer agrees to take actions after the closing to prevent conditions that might cause mold or mildew. Buyer hereby acknowledges and agrees that, upon the closing and occupancy of the Property by Buyer: (i) it shall be the responsibility and obligation of Buyer to maintain the Property, including the Dwelling and all components thereof, in good condition and repair, including all caulking, water seals, exterior surfaces and finishes, mortar, water pipes, drainage systems, HVAC pipes and systems, basement and crawl space areas, gutters, roofs, and landscaping, for the prevention of water penetration, mildew, mold, spores, fungi, damage to wood and other materials, and other moisture-related conditions; (ii) the failure to do so could result in health-related problems and/or damage to Buyer and to the Property; (iii) Seller shall have no liability or responsibility with respect to same and will not be liable for any actual, special, incidental, or consequential damages based on any legal theory whatsoever, including, but not limited to, strict liability, breach of express or implied warranty, negligence or any other legal theory with respect to the presence and/or existence of molds, mildew, and/or microscopic spores caused by the acts or omissions of Buyer; and (iv) Buyer hereby waives and disclaims any claims against Seller arising out of any such condition and any loss, damage, or injury resulting therefrom.
	2. Buyer further acknowledges and agrees that: (i) if Buyer becomes aware of water intrusion into the Property, Buyer should respond immediately; (ii) in cases of serious water damage, Buyer should hire construction and indoor air quality consultants to assess the damage and determine what remediation is needed; (iii) inadequate remediation, even if well-intentioned, will only create more problems; (iv) water damaged materials may need to be removed, and the source of the water intrusion should be addressed; (v) the Property may have to be vacated while remediation work is in progress; and (vi) a certified industrial hygienist experienced with testing for molds in indoor environments should be retained to determine whether the water damage has caused a source of mold growth and amplification.
	3. Buyer further acknowledges and agrees that: (i) unusual odors should also be investigated promptly; (ii) unusual odors may be indicative of water intrusion and mold growth; and (iii) chronic complaints of illness (especially respiratory, breathing, or allergy-type problems), headaches or nausea may indicate indoor air quality problems and should be taken seriously and investigated promptly.
5. The Closing. The closing of the purchase and sale of the Property (the “Closing”) shall occur on or before the \_\_\_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_\_\_ (the “Closing Date”); provided that the Closing Date may be extended by Seller for such additional time as Seller shall determine to be reasonably necessary (a) as the result of any delay in the approval of Buyer’s Loan; or (b) to complete the construction of the Dwelling, if applicable, as the result of any delays in the progress of construction due to items such as, but not limited to, inclement weather, acts of war or terrorism, changes in the Plans and Specifications agreed upon between the parties, requirements of any building officials or other governing authorities, work stoppages, delays in the delivery of materials, delays in the approval of Buyer’s Loan, contingencies under this Agreement, the completion of the preoccupancy inspection and any additional work required as the result thereof, and any other matters which might delay the completion of construction of the Dwelling; (c) to provide Seller a reasonable time within which to perfect title or cure title defects, or (d) as a result of any damage or destruction to all or any portion of the Property as the result of fire, storm, or other casualty. In the event of the delay of the Closing Date pursuant to the foregoing provisions, then the Closing Date shall be that date which has been established in a written notice from Seller to Buyer provided that such date is no more than ten (10) days after the date of such notice. At the Closing, Seller shall convey title to the Property to Buyer by statutory warranty deed (with survivorship if requested by Buyer) subject to current ad valorem taxes; all matters set forth in the title insurance commitment to be provided pursuant to paragraph 9 of this Agreement; any additional easements, restrictions, rights-of-way, or other such exceptions as Seller deems appropriate to impose upon the Property pending the closing of the subject purchase and sale; easements, restrictions, rights-of-way, covenants, building setback lines, reservations, and other matters of record; all matters which would be revealed by an accurate survey or inspection of the Property; applicable subdivision, zoning and other applicable governmental regulations and restrictions; less and except any minerals and any mineral, mining or other subsurface rights previously conveyed or otherwise not owned by Seller and together with such acknowledgements and agreements as may be provided for in this Agreement. Possession of the Property shall be delivered to Buyer upon the Closing. The Closing shall be held at such time of day and at such location as shall be reasonably agreed upon between Seller and Buyer; provided, if the parties cannot agree, then the closing shall be held at such time of day as shall be established by Seller at either the office of Seller or the office of Seller’s attorney. Buyer shall pay to Seller, at the Closing, the Purchase Price plus any additional consideration owing with respect to changes in the Plans and Specifications, change orders, allowance item overages, other costs owing by Buyer as provided herein and less any Earnest Money previously paid by Buyer and received by Seller.
6. Title Insurance. A commitment for the issuance of an owner’s title insurance policy in the amount of the Purchase Price, subject to all of the matters set forth in this Agreement with respect to the status of title to the Property and subject to such other matters as are customarily included in such commitments, shall be furnished by Seller at the Closing.
7. Survey. Buyer does [ ]  does not [ ]  (check one) require a survey by a registered Alabama land surveyor of Buyer’s choosing. Unless otherwise agreed herein, the survey shall be at Buyer’s expense. (NOTE: It is recommended that a new survey by a registered Alabama land surveyor of Buyer’s choosing be obtained to verify the boundaries of the Property and property lines, building lines, easements, setback and other survey matters which are not visible without obtaining such a survey or that may have occurred since the date of a prior survey.)
8. Termite Contract/Termite Bond. Buyer shall be responsible for purchasing such termite or wood infestation reports, termite treatment contracts, or termite bonds as Buyer deems appropriate, if any, at the expense of Buyer. Any such report, contract, or bond, if any, which is provided by Seller shall be accepted by Buyer without representation, obligation, or warranty from Seller, and Buyer hereby acknowledges and agrees that Buyer shall determine whether any such report, contract, or bond provides sufficient protection of Buyer’s interests, and Buyer shall look solely to the issuer of any such report, contract, or bond with respect to any representations, agreements, or obligations therein contained. Seller shall have no liability or obligation with respect to any matter which may be or might have been revealed in such termite or wood infestation reports, termite treatment contracts, or termite bonds obtained or waived by Buyer.
9. Closing Costs. At the Closing, Seller shall pay the following Closing Costs: **[TO BE COMPLETED BY PARTIES]**. Buyer shall pay any and all other Closing Costs including but not limited to loan closing costs, discount points, title insurance premiums, mortgage insurance premiums, prepaid items and recording fees. Ad valorem taxes, any association dues, district dues and the like shall be prorated as of the date of closing between Seller and Buyer. Unless otherwise agreed herein, all ad valorem taxes except municipal are presumed to be paid in arrears for purposes of proration, and municipal taxes, if any, are presumed to be paid in advance.
10. Utilities. Seller agrees that the utility meters when installed will be in Seller’s name through the Closing Date, at which time Buyer is obligated to transfer such utility services to Buyer.
11. Selection of Attorney/Settlement Agent. Buyer and Seller hereby do □ do not □ agree to share the fees of a closing attorney or settlement agent. The parties hereto acknowledge and agree that, if they have agreed to share the fees of a closing attorney hereunder, such fee-sharing may involve a potential conflict of interest and they may be required to execute an affidavit at closing acknowledging their recognition and acceptance of same. The parties further acknowledge that they have a right to be represented at all times in connection with this Agreement and the closing by an attorney of their own choosing, at their own expense.
12. Time Is Of The Essence. TIME IS OF THE ESSENCE with respect to the obligation of Buyer to close the purchase of the Property and pay the Purchase Price within the time required pursuant to this Agreement.
13. Agency Disclosure/Disclaimer/Commissions. The listing company is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. The selling company is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

The LISTING COMPANY is: (Two blocks may be checked)

[ ]  An Agent of Seller

[ ]  An Agent of Buyer

[ ]  An Agent of both Seller and Buyer and is acting as a Limited Consensual Dual Agent

[ ]  Assisting Buyer as a Transaction Broker

 Seller as a Transaction Broker

The SELLING COMPANY is: (Two blocks may be checked)

[ ]  An Agent of Seller

[ ]  An Agent of Buyer

[ ]  An Agent of both Seller and Buyer and is acting as a Limited Consensual Dual Agent

[ ]  Assisting Buyer as a Transaction Broker

 Seller as a Transaction Broker

 Seller: Buyer:

Buyer acknowledges that the listing agent has undertaken no duty to Buyer, whether fiduciary or otherwise, and Buyer affirms that Buyer has not relied upon said listing company or any representation by it or its agents, servants, or employees in entering into this Agreement, and Seller shall not be bound or obligated pursuant to any such representation, nor by any representation made by the selling company or its agents, servants, or employees, unless same shall have been set forth fully in this Agreement.

In the event of the closing and funding of this purchase and sale, Seller agrees to pay a commission in the amount of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ percent (\_\_\_\_\_\_\_%) of the Purchase Price of $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ payable as follows: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ percent (\_\_\_\_\_\_\_%) to the listing company and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ percent (\_\_\_\_\_\_\_%) to the selling company.

1. Disclaimer. Buyer acknowledges that Buyer has not relied upon any advice or representations of Seller, any listing company, any selling company, or any sales person associated therewith relative to (i) the legal or tax consequences of this Agreement and the sale, purchase, or ownership of the Property; (ii) except as provided in the Limited Warranty Agreement (as defined herein), the structural condition of the Property; (iii) the character of the neighborhood; (iv) the investment or resale value of the Property; (v) the use or condition of adjoining or neighboring property; (vi) subsurface conditions, including radon and other potentially hazardous materials and/or gases; (vii) the flood zone, (viii) the school zone, or (ix) any other matters affecting Buyer’s willingness to purchase the Property on the terms and price herein set forth. Buyer acknowledges that if such matters are of concern to Buyer in the decision to purchase the Property, Buyer has sought and obtained independent advice relative thereto. Buyer further acknowledges that the promotional brochures and drawings, if any, with respect to the Property may not be exact depictions of the Property, the Dwelling, or surrounding areas and have not been relied upon by Buyer in the determination to enter into this Agreement.
2. Insulation. Living area ceilings will be installed with blown fiberglass type insulation to a thickness of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (\_\_\_\_\_) inches or batt fiberglass type insulation to a thickness of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (\_\_\_\_\_) inches, which thickness, according to its manufacturer, will (in either case) result in an R-Value of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (\_\_\_\_\_). Living area exterior walls will be insulated with batt fiberglass type insulation to a thickness of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (\_\_\_\_\_) inches, which thickness, according to the manufacturer, will result in an R-Value of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (\_\_\_\_\_). Buyer acknowledges and agrees that, in accordance with Federal Trade Commission Regulations, this information has been supplied by the installer of the insulation and has not been determined by Seller. Buyer acknowledges and agrees that Seller shall have no liability or obligation with respect to the accuracy of the information included in this paragraph.
3. Casualty Loss. In the event of any damage or destruction to all or any portion of the Property as the result of fire, storm, or other casualty, then Seller shall have the right, at the election of Seller, to either (a) extend the Closing Date as necessary to permit Seller to remedy any such damage and complete the construction of the Dwelling or (b) terminate this Agreement, whereupon the Earnest Money shall be refunded to Buyer and Seller shall be relieved of any obligation to complete the Dwelling or close the sale of the Property.
4. Arbitration. **NOTE: The provisions of this paragraph shall be applicable only if initialed by both Seller and Buyer. Notwithstanding the failure of the parties to choose arbitration as an alternative method of dispute resolution, the parties do choose to mediate and arbitrate any dispute over the Limited Warranty Agreement, as provide therein**. Seller and Buyer acknowledge and agree that all claims, disputes or other matters in question arising out of or relating in any way to this Agreement or the breach thereof ("Claim"), shall be submitted to mediation with a mutually agreed upon mediator within forty-five (45) days of notice of the Claim. In the event no mediated resolution is reached within sixty (60) days of the party's notice of the Claim, all Claims shall be resolved by binding arbitration as provided for herein. Seller and Buyer acknowledge and agree that this transaction substantially affects interstate commerce by virtue of the materials and components contained in the Dwelling. Any controversy, claim, or dispute arising out of or relating to this Agreement, or the breach thereof, or the transaction contemplated hereby, shall be settled by binding arbitration pursuant to the Federal Arbitration Act, 9 USC § 1, et seq., and shall be administered in accordance with the Construction Industry Rules of the American Arbitration Association. Judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. 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.

 Seller: \_\_\_\_\_\_\_\_\_\_\_ Buyer: \_\_\_\_\_\_\_\_\_\_

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

1. Notices. All notices and other communications hereunder, or in connection herewith, will be in writing and deemed to have been duly given and received when (i) delivered personally, or (ii) 3 days after being deposited in the US mails (via registered or certified mail, return receipt requested with postage prepaid), or (iii) delivered by a nationally recognized over-night delivery service, to the following addresses, or to such other address as a party may designate to the other parties in accordance herewith:

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| When to Seller: |  |      |
|  |  |  |
| When to Buyer: |  |      |

The address of a party may be changed by written notice to the other party in the manner described above.

1. Default.
	1. By Seller: If this transaction is not concluded because of the material default of Seller in the performance of the obligations of Seller pursuant to this Agreement, and if said default is not remedied within thirty (30) days after written notice from Buyer to Seller setting forth the details of the default and demanding that the default be remedied (or within such reasonable period of time as may be necessary to remedy the default in the event that thirty (30) days is not a sufficient time, provided that Seller is diligently pursuing the remedy of any such default), then Buyer shall have as its sole remedies either (i) the Earnest Money and any other sums received by Seller from Buyer with respect to changes in the Plans and Specifications or with respect to allowance overages, shall be refunded to Buyer, without interest, and thereupon this Agreement shall be deemed terminated and both Seller and Buyer shall be relieved of any further obligations hereunder or (ii) the right to pursue specific performance. These shall be the sole remedies available to Buyer in the event of a default by Seller.
	2. By Buyer: In the event of default by Buyer in the performance of the obligations of Buyer under this Agreement, and should said default not be remedied within ten (10) days after written notice from Seller to Buyer setting forth the details of the default and demanding that the default be remedied, then, at the election of Seller, (i) Seller shall retain all sums paid to Seller by Buyer pursuant to this Agreement including, but not limited to, the Earnest Money, any sums with respect to changes in the Plans and Specifications, any sums with respect to allowance overages, and any other sums, as liquidated damages, whereupon this Agreement shall be deemed terminated and both Seller and Buyer shall be relieved of any further obligations hereunder; or (ii) Seller shall have the right to retain all sums paid to Seller, as aforesaid, by Buyer, which sums shall be applied toward the actual damages of Seller, and Seller shall be entitled to recover from Buyer the balance of any damages incurred by Seller; or (iii) Seller shall have the right to retain all sums paid to Seller, as aforesaid, by Buyer, and Seller shall have the right to pursue, in addition to the retainage of said sums, equitable relief against Buyer, including the remedy of specific performance together with the recovery of Seller’s attorney’s fees and costs; or (iv) Seller shall have the right to pursue any one or more of the foregoing or any other remedies available to Seller under applicable law together with the recovery of Seller’s attorney’s fees and costs. The pursuit of any one or more of said remedies shall not be deemed a waiver of the right to pursue any other remedies.
2. General Provisions.
	1. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable, that determination will not affect the enforceability of the remaining portions.
	2. This Agreement shall be binding upon Seller and Buyer, and their respective heirs, executors, administrators, successors and assigns.
	3. This Agreement shall be governed by and construed in accordance with the laws of the State of Alabama.
	4. The titles or headings to the paragraphs included herein are for convenience only and shall not add to, reduce, limit or modify in any manner the content thereof.
	5. The use of one gender shall include all other genders, the use of singular shall include the plural, and the use of the plural shall include the singular, all as may be appropriate to the context in which they are used.
	6. The rights of Buyer hereunder may not be assigned by Buyer without the written consent of Seller, which consent may be withheld in the sole discretion of Seller.
	7. There shall be no inference or rule of construction which shall apply based on the fact or circumstance that either party or their counsel drafted any or all of the provisions of this Agreement.
	8. No person shall be deemed to possess any third-party beneficiary right pursuant to this Agreement. It is the intent of the parties hereto that no direct benefit to any third party is intended or implied by the execution of this Agreement.
3. Limited Warranty/Preoccupancy Inspection. Buyer and Seller agree to the terms and conditions of the Limited Warranty Agreement attached hereto as Exhibit C and made a part of this Agreement. The terms and provisions of the Limited Warranty Agreement have been fully negotiated between Buyer and Seller as a part of the negotiation of the terms and provisions of this Agreement. The Limited Warranty Agreement has been fully executed, as of the date of this Agreement, and the terms and provisions thereof are an integral part of the terms and provisions of this Agreement. Buyer and Seller agree to affirm the terms and conditions of the Limited Warranty Agreement by re-executing a copy of the Limited Warranty Agreement and delivering duplicate originals of same at the Closing. Notwithstanding the foregoing, Buyer’s or Seller’s failure to re-execute the Limited Warranty Agreement at the Closing shall not affect the enforceability of such agreement as attached hereto and made a part hereof and the Limited Warranty Agreement attached hereto shall survive the Closing. Buyer and Seller agree to be fully bound by the terms and provisions of the Limited Warranty Agreement and agree that the Limited Warranty Agreement shall survive the Closing and the conveyance of title to the Property. Pursuant to the Limited Warranty Agreement, Buyer and Seller shall make a preoccupancy inspection of the Dwelling and shall either complete and execute the Preoccupancy Inspection Agreement or execute, prior to the Closing, the Acknowledgment of Acceptance which is attached as an exhibit to the Limited Warranty Agreement.
4. Duration of Limited Warranty. Seller and Buyer have negotiated and agreed upon the Limited Warranty Period, as defined in paragraph 1 of the Limited Warranty Agreement, and acknowledge that the duration of the Limited Warranty Period, as negotiated between Seller and Buyer, has been material to the amount of the Purchase Price and the other terms and conditions set forth in this Agreement. In the event Seller has offered to agree to a Limited Warranty Period of greater duration than that which is set forth in paragraph 1 of the Limited Warranty Agreement, Buyer acknowledges that rather than accepting the longer duration of the Limited Warranty Period, Buyer has preferred to reduce the amount of the Purchase Price to the amount thereof which is set forth in this Agreement, and accept the Limited Warranty Period of the duration set forth in paragraph 1 of the Limited Warranty Agreement.
5. WAIVER OF WARRANTIES AND CLAIMS. BUYER AGREES THAT THE LIMITED WARRANTY AGREEMENT IS GIVEN IN LIEU OF ANY AND ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, HABITABILITY AND WORKMANSHIP, AND IS ALSO IN LIEU OF ANY CLAIMS FOR INCIDENTAL DAMAGES, CONSEQUENTIAL DAMAGES, COMPENSATORY DAMAGES, MENTAL ANGUISH OR DISTRESS, AND FOR DAMAGES BASED UPON NEGLIGENCE, AND BUYER HEREBY EXPRESSLY WAIVES AND DISCLAIMS ALL SUCH OTHER WARRANTIES AND CLAIMS WITH RESPECT TO BOTH THE DWELLING AND THE PROPERTY.

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| --- | --- | --- |
| **Buyer acknowledges that Buyer has read, understood, and accepted the foregoing.** |  | Buyer:   |

1. Entire Agreement. This Agreement and the Limited Warranty Agreement, together with all of the other exhibits and attachments to this Agreement and the Limited Warranty Agreement, constitute the entire agreement of the parties, and Buyer acknowledges that Buyer has not relied upon any oral or written statements, undertakings, or representations and that no prior agreement or understanding shall be valid or of any force or effect, unless the same have been fully set forth in this Agreement, the Limited Warranty Agreement, or the attachments and exhibits thereto. The covenants and agreements contained in this Agreement and the Limited Warranty Agreement cannot be altered, changed, modified, or added to, except in a written instrument signed by Buyer and Seller. No representation, inducement, understanding, or anything of any nature whatsoever made, stated, or represented by Seller or on Seller’s behalf, either orally or in writing (except as specifically set forth in this Agreement or in the Limited Warranty Agreement), has induced Buyer to enter into this Agreement or shall be enforceable in any manner against Seller.
2. Home Inspectors   If Buyer chooses to have a private home inspection performed prior to the Closing, Buyer shall provide Seller, prior to the inspection, with the inspector’s current State of Alabama Home Inspectors License, proof of general liability and workers compensation insurance, and proof of current membership with a professional trade organization such as the American Society of Home Inspectors.  Any items noted on the inspection report may be repaired or replaced at Seller’s sole discretion; however, in no event will Seller be obligated to repair or replace any items noted on the inspection report which in Seller’s determination exceed or are not in accordance with applicable local building code.

1. Electronic Transaction**.**  All parties hereby agree and consent that a manually or electronically signed copy of this Agreement delivered by facsimile, email or other means of electronic transmission to the parties to this Agreement shall be deemed to have the same legal effect as delivery of an original manually signed copy of this Agreement, all in accordance with and governed by the Alabama Uniform Electronic Transaction Act. It is the intent of the parties to this Agreement that an electronic signature to this Agreement shall be treated the same as a original manual signature to this Agreement and shall be deemed an original signature
2. Counterparts: This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same contract. Each counterpart of the Agreement may be transmitted by fax, emailed by pdf file and shall be considered legally binding on the Parties if the signatures pages are fully executed and dated as provided thereon.

THIS IS A LEGALLY BINDING CONTRACT. IF NOT UNDERSTOOD, SEEK COMPETENT LEGAL ADVICE.

[Signatures are on the Following Page]

IN WITNESS WHEREOF, the undersigned parties have set their hands and seals to this Agreement on this the \_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_\_\_\_\_.

 SELLER:

 By:

 Witness Its:

 BUYER:

 Witness

 Witness

**The HBAA and its local chapters do not assume any liability for damages arising from the use of this document and give no opinion that any of the terms and conditions in this document should be accepted by the parties in a particular transaction. Terms and conditions should be negotiated between the parties based upon the respective interests, objectives and bargaining positions of all interested parties. Seek specific legal advice from your lawyer.** **Copyright 2017 by the Home Builders Association of Alabama.**

**EXHIBIT I**

**Description of Land (if not provided in body of Agreement)**

**EXHIBIT A**

**Plans and Specifications**

The Plans have been prepared by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ dated the \_\_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_\_\_\_\_\_, include \_\_\_\_\_\_\_\_\_\_ pages, and have been signed and dated by Seller and Buyer.

The Specifications have been prepared by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ dated the \_\_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_\_\_\_\_\_, include \_\_\_\_\_\_\_\_\_\_ pages, and have been signed and dated by Seller and Buyer.

**EXHIBIT B**

**Decorating Allowance**

**Allowance Item** **Allowance Amount**

**EXHIBIT C**

**Limited Warranty Agreement**

**LIMITED WARRANTY AGREEMENT**

This Limited Warranty Agreement is hereby entered into on this the \_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_\_, by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ hereafter (whether one or more) referred to as Buyer, and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ hereafter referred to as Seller.

WHEREAS, Seller and Buyer on this same day entered into a Purchase and Sale Agreement ( the “Contract”) of which this Limited Warranty Agreement is a part, for the sale by Seller and the purchase by Buyer of a house (the “Dwelling”) located upon that certain parcel of real property located in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ County, Alabama, the address of which is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_; and

WHEREAS, Seller has agreed in the Contract to provide to Buyer and Buyer has agreed to accept this Limited Warranty Agreement, in lieu of all other warranties and claims whatsoever, whether implied by law or otherwise.

NOW, THEREFORE, in consideration of the premises, the agreements herein, the agreements set forth in the above mentioned Contract, the payment of the purchase price as set out in the Contract, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree to the terms and conditions of this Limited Warranty Agreement as follows:

1. Warranty Period. Seller does hereby provide to Buyer this Limited Warranty Agreement on the Dwelling for a period of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Limited Warranty Period”) beginning on the date of conveyance of title to Buyer or the date of initial occupancy of the Dwelling, whichever occurs first (the “Limited Warranty Commencement Date”), and Buyer does hereby agree to the terms of this Limited Warranty Agreement and further agrees to accept this Limited Warranty Agreement as the only warranty given, in lieu of all other warranties of any kind, expressed or implied, with respect to the Dwelling and the sale thereof to Buyer.

Seller and Buyer have negotiated and agreed upon the Limited Warranty Period and acknowledge that the duration of the Limited Warranty Period, as negotiated between Seller and Buyer, has been material to the amount of the Purchase Price and the other terms and conditions as set forth in the Contract.

Buyer hereby acknowledges that Seller has offered to agree to a Limited Warranty Period of greater duration than that which is set forth in this paragraph 1 and that, rather than accepting the longer duration of the Limited Warranty Period, Buyer has chosen to reduce the cost of the Property as reflected by the amount of the Purchaser Price and to accept the Limited Warranty Period of the duration set forth in this paragraph 1.

1. Limited Warranty. Seller hereby warrants to Buyer that, for and during the Limited Warranty Period, the Dwelling will be free from Latent Defects, as hereinafter defined. If a Latent Defect occurs in an item which is covered by this Limited Warranty Agreement, Seller will repair, replace, or pay to Buyer the reasonable cost of repairing or replacing any such item in accordance with the Guidelines described herein. Seller shall in its sole discretion determine whether to repair, replace, or pay the reasonable cost of repairing or replacing any such item. THE LIABILITY OF SELLER IS STRICTLY LIMITED TO THE OBLIGATION TO REPAIR, REPLACE, OR PAY THE REASONABLE COST OF REPAIRING OR REPLACING ANY SUCH ITEM IN ACCORDANCE WITH THE GUIDELINES DESCRIBED HEREIN, AND ANY RIGHT THAT BUYER MIGHT HAVE TO RECOVER ANY OTHER OR ADDITIONAL DAMAGES IS HEREBY WAIVED AND EXCLUDED. BUYER ACKNOWLEDGES THAT THE SOLE REMEDY AVAILABLE TO BUYER HEREUNDER IS THE RIGHT TO REQUIRE SELLER TO REPAIR, REPLACE, OR PAY THE REASONABLE COST OF REPAIRING OR REPLACING ANY SUCH ITEM IN ACCORDANCE WITH THE GUIDELINES DESCRIBED HEREIN. Steps taken by Seller to correct any Latent Defect under this Limited Warranty Agreement shall not extend the Limited Warranty Period.

3. Latent Defect Defined. For the purposes of this Limited Warranty Agreement, a Latent Defect is defined as and limited to a defect in a necessary component in the Dwelling which (i) is not apparent at the Limited Warranty Commencement Date but which becomes apparent during the Limited Warranty Period; (ii) is not otherwise excluded in this Limited Warranty Agreement; (iii) results in actual physical damage to the Dwelling; (iv) is the direct result of the failure by Seller to construct the Dwelling in accordance with **[Insert here any applicable Guidelines to be used such as (i) the *Residential Construction Performance Guidelines for Professional Builders and Remodelers*, published by National Association of Homebuilders or (ii) the Building Quality Standards a copy of which has been provided by Seller to Buyer, (iii) such other Guidelines for construction as may be provided by Seller to Buyer, or if there are no Guidelines, then applicable building codes]**(defined herein as the “Guidelines”); and (v) has been set forth in detail by Buyer in a written notice to Seller prior to the expiration of the Limited Warranty Period. The responsibility of Seller to repair or replace certain items with respect to which there might be a Latent Defect shall be as set forth in the Guidelines. If a specific Latent Defect is not addressed in the Guidelines, then the applicable codes adopted by the local governing body with respect to residential construction standards (or if no such codes have been adopted, then the standards of construction prevailing in the geographical area of the Dwelling) will be used in lieu of the provisions of the Guidelines. The Guidelines lists specific defects that might occur within specified categories of the construction and the responsibilities of Seller and Buyer with respect thereto.

1. LIMITATION UPON LIABILITY. THE SOLE REMEDY AVAILABLE TO BUYER UNDER THIS LIMITED WARRANTY AGREEMENT IS THE RIGHT TO REQUIRE SELLER TO REPAIR, REPLACE, OR PAY THE REASONABLE COST OF REPAIRING OR REPLACING LATENT DEFECTS AS HEREIN DEFINED, IN THE DWELLING AS PROVIDED FOR IN THE GUIDELINES. SELLER’S TOTAL LIABILITY UNDER THIS LIMITED WARRANTY AGREEMENT SHALL NOT EXCEED THE ORIGINAL PURCHASE PRICE PAID TO SELLER UNDER THE CONTRACT, LESS THE VALUE OF THE REAL PROPERTY UPON WHICH THE DWELLING IS LOCATED. THIS LIMITED WARRANTY AGREEMENT DOES NOT EXTEND TO OR INCLUDE LIABILITY FOR INCIDENTAL, INDIRECT, COMPENSATORY OR CONSEQUENTIAL DAMAGES.
2. Pre-Closing Inspection. Prior to closing the purchase of the Dwelling, Buyer and Seller will inspect the Dwelling and Buyer will either complete and execute the Preoccupancy Inspection Agreement as provided for on Exhibit Iand any exceptions, omissions, or malfunctions agreed upon and noted thereon will be corrected promptly by Seller,or execute the Acknowledgment of Acceptance in accordance with the form attached hereto as Exhibit II. Seller may elect, at the discretion of Seller, to correct all exceptions, omissions, or malfunctions and document, with Buyer, such corrections of exceptions, omissions, or malfunctions, prior to proceeding with closing, and may extend the Closing as necessary to complete said corrections.
3. Assignment of Insurance and Warranties to Seller. In the event Seller repairs, replaces, or pays to Buyer the reasonable cost of repairing or replacing any Latent Defect covered by this Limited Warranty Agreement which is covered by insurance or other warranties, Buyer will, upon the request by Seller, assign the products or proceeds of such insurance or warranties to Seller to the extent of the cost to Seller of such repair, replacement, or payment and cause any lender with a lien or right to such products or proceeds of such insurance to release its interest therein.
4. Exclusions and Disclaimers.

This Limited Warranty Agreement shall not extend to, include, or be applicable to (a) defects in garages, storage buildings or other outbuildings not attached to the Dwelling; swimming pools; other recreational facilities; driveways; walkways; retaining walls; fences; landscaping (including sodding, seeding, shrubs, trees, and plantings); or items furnished or installed by Buyer or by parties who have dealt directly with Buyer; or (b) defects which are the result of characteristics common to the materials used, such as (but not limited to) warping and deflection of wood; the presence of mildew, mold, spores, fungi, or other moisture-related conditions; fading, chalking, and checking of paint due to sunlight; cracks due to drying and curing of concrete, stucco, plaster, bricks, and masonry; shrinking and cracking of caulking and weatherstripping; or non-uniformity of appearance of brick and mortar; or (c) defects resulting from failure to perform general maintenance, including but not limited to the presence or growth of mildew, mold, spores, fungi, or other moisture-related conditions; negligence; normal wear and tear; improper maintenance; or improper operation of the Dwelling or any part of the systems in the Dwelling; and Buyer hereby waives and disclaims any claim arising out of any such defects.

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| **Buyer acknowledges that Buyer has read, understood, and accepted the foregoing paragraph.** |  | Buyer:   |

This Limited Warranty Agreement shall not extend to, include or be applicable to any loss, damage, or injury caused by or resulting from any events, conditions or circumstances not within the complete control of Seller; riots; civil commotion; fire; explosion; smoke; accidents; water escape; mildew, mold, spores, fungi, or other moisture-related conditions; falling objects; aircraft; vehicles; acts of God; lightning; windstorm; hail; flood; mud slides; damage to personal property; earthquakes; volcanic eruptions; wind driven water; radon gas; the presence of fiberglass (also known as rock wool) as a component in the construction of the Dwelling; infestation from termites or other insects; sink holes; subsurface conditions; or changes in the underground water table; including, but not limited to, any mental anguish or bodily injury and any incidental, consequential, or secondary damages caused or claimed to be caused thereby; and Buyer hereby waives and disclaims any claim arising out of any such loss, damage or injury.

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| **Buyer acknowledges that Buyer has read, understood, and accepted the foregoing paragraph.** |  | Buyer:   |

This Limited Warranty Agreement does not limit or enhance any manufacturer’s warranty that is given on any appliance, fixture, equipment, or material included within the Dwelling (“Manufacturer’s Warranted Items”). The warranties supplied by the manufacturers, either directly or indirectly, to Buyer, on some Manufacturer’s Warranted Items, may be greater in both scope and time than warranties provided in this Limited Warranty Agreement. These warranties are the property of Buyer, and Seller shall deliver all such warranties at the pre-occupancy inspection and transfer the rights that Seller has in such warranties, if any, to Buyer. Buyer will file with the manufacturer any forms contained in these manufacturer’s warranties that are necessary to activate such warranties. These Manufacturer’s Warranted Items are specifically not covered by this Limited Warranty Agreement, and Buyer shall rely on the manufacturers to correct any deficiencies with respect to these Manufacturer’s Warranted Items.

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| **Buyer acknowledges that Buyer has read, understood, and accepted the foregoing paragraph.** |  | Buyer:   |

1. Access to the Dwelling. Buyer must provide Seller with reasonable workday access to the Dwelling in order to perform any warranty service required under this Limited Warranty Agreement. Failure or refusal of Buyer to provide such access to Seller will relieve Seller of its obligations under this Limited Warranty Agreement.
2. Opportunity to Perform. Prior to filing any action under this Limited Warranty Agreement, Buyer must give to Seller reasonable notice of and a reasonable opportunity to repair, replace, or pay the reasonable cost of repairing or replacing any Latent Defect covered hereunder. SUCH NOTICE MUST, IN ANY EVENT, BE GIVEN IN THE MANNER DESCRIBED IN PARAGRAPH 13 OF THIS LIMITED WARRANTY AGREEMENT AND MUST BE GIVEN PRIOR TO THE EXPIRATION OF THE LIMITED WARRANTY PERIOD. Buyer acknowledges that the right of Buyer to require Seller to repair, replace, or pay the reasonable cost of repairing or replacing any Latent Defect covered hereunder is the sole and exclusive remedy available to Buyer.
3. Arbitration. Seller and Buyer acknowledge and agree that all claims, disputes or other matters in question arising out of or relating in any way to this Agreement or the breach thereof ("Claim"), shall be submitted to mediation with a mutually agreed upon mediator within forty-five (45) days of notice of the Claim. In the event no mediated resolution is reached within sixty (60) days of the party's notice of the Claim, all Claims shall be resolved by binding arbitration as provided for herein. Seller and Buyer acknowledge and agree that this transaction substantially affects interstate commerce by virtue of the materials and components contained in the Dwelling. Any controversy, claim, or dispute arising out of or relating to this Agreement, or the breach thereof, or the transaction contemplated hereby, shall be settled by binding arbitration pursuant to the Federal Arbitration Act, 9 USC § 1, et seq., and shall be administered in accordance with the Construction Industry Rules of the American Arbitration Association. Judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. 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.
4. No Assignment. This Limited Warranty Agreement is provided to Buyer only and is not transferable or assignable by Seller or Buyer nor enforceable by any subsequent owner or occupant of the Dwelling.
5. General Provisions.
	1. If any provision of this Limited Warranty Agreement is determined by a court of competent jurisdiction to be unenforceable, that determination will not affect the enforceability of the remaining portions.
	2. This Limited Warranty Agreement shall be binding upon Seller and Buyer and their respective heirs, executors, administrators, successors and assigns.
	3. This Limited Warranty Agreement shall be governed by and construed in accordance with the laws of the State of Alabama.
	4. The titles or headings to the paragraphs included herein are for convenience only and shall not add to, reduce, limit, or modify in any manner the content thereof.
	5. The use of one gender shall include all other genders, the use of singular shall include the plural, and the use of the plural shall include the singular, all as may be appropriate to the context in which they are used.
	6. No person shall be deemed to possess any third-party beneficiary right pursuant to this Limited Warranty Agreement. It is the intent of Seller and Buyer that no direct benefit to any third party is intended or implied by the execution of this Agreement.
6. Notice to Seller. Buyer shall notify Seller in writing before the expiration of the Limited Warranty Period of any alleged defect covered by this warranty. Such notice and any other notices to be given to Seller hereunder must be sent by certified mail to Seller at the following address:

 Attention:

 FAILURE OF BUYER TO GIVE SUCH WRITTEN NOTICE TO SELLER BEFORE THE EXPIRATION OF THE LIMITED WARRANTY PERIOD SHALL BAR ANY RIGHT TO RECOVERY BY BUYER PURSUANT TO THIS LIMITED WARRANTY AGREEMENT.

1. Consumer Products. This Limited Warranty Agreement does not extend to or cover any appliance, piece of equipment, or any item defined as a consumer product for purposes of the Magnusson-Moss Warranty Act (15 USC 2301-2312, as amended).
2. WAIVER OF WARRANTIES AND CLAIMS. THIS LIMITED WARRANTY AGREEMENT IS GIVEN IN LIEU OF ANY AND ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, HABITABILITY AND WORKMANSHIP AND IS ALSO IN LIEU OF ANY CLAIMS FOR CONSEQUENTIAL DAMAGES, MENTAL ANGUISH OR DISTRESS, AND FOR DAMAGES BASED UPON NEGLIGENCE, AND BUYER HEREBY EXPRESSLY WAIVES AND DISCLAIMS ANY SUCH WARRANTIES AND CLAIMS WITH RESPECT TO BOTH THE DWELLING AND THE REAL PROPERTY UPON WHICH THE DWELLING HAS BEEN CONSTRUCTED.

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| **Buyer acknowledges that Buyer has read, understood, and accepted the foregoing paragraph.** |  | Buyer:   |

1. SOLE WARRANTY/ENTIRE AGREEMENT. IT IS SPECIFICALLY AGREED BY THE PARTIES HERETO THAT THIS LIMITED WARRANTY AGREEMENT IS ACCEPTED BY BUYER AS THE SOLE WARRANTY GIVEN BY SELLER. BUYER ACKNOWLEDGES THAT THIS LIMITED WARRANTY AGREEMENT IS THE ENTIRE AGREEMENT OF THE PARTIES RELATED TO WARRANTIES. BUYER FURTHER AGREES THAT BUYER HAS NOT RELIED UPON ANY ORAL OR WRITTEN STATEMENTS, UNDERTAKINGS, OR REPRESENTATIONS EXCEPT AS SPECIFICALLY SET FORTH IN THIS LIMITED WARRANTY AGREEMENT AND THAT NO PRIOR AGREEMENT OR UNDERSTANDING PERTAINING TO WARRANTIES SHALL BE VALID OR OF ANY FORCE OR EFFECT. THE COVENANTS AND AGREEMENTS OF THIS LIMITED WARRANTY AGREEMENT CANNOT BE ALTERED, CHANGED, MODIFIED, OR ADDED TO, EXCEPT IN A WRITTEN INSTRUMENT SIGNED BY BUYER AND SELLER. NO REPRESENTATION, INDUCEMENT, UNDERSTANDING, OR ANYTHING OF ANY NATURE WHATSOEVER MADE, STATED, OR REPRESENTED BY SELLER OR ON SELLER’S BEHALF, EITHER ORALLY OR IN WRITING, (EXCEPT AS SPECIFICALLY SET FORTH IN THIS LIMITED WARRANTY AGREEMENT) HAS INDUCED BUYER TO ENTER INTO THIS LIMITED WARRANTY AGREEMENT OR SHALL BE ENFORCEABLE IN ANY MANNER AGAINST SELLER.

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| **Buyer acknowledges that Buyer has read, understood, and accepted the foregoing paragraph.** |  | Buyer:   |

1. Bargained-For Exchange / Survival. The terms and provisions of this Limited Warranty Agreement have been fully negotiated between Buyer and Seller as a part of the negotiation of the terms and provisions of the Contract, and the terms and provisions hereof are an integral part of the terms and provisions of such Contract. Buyer and Seller agree to be fully bound by the terms and provisions of this Limited Warranty Agreement and agree that this Limited Warranty Agreement shall survive the Closing and the conveyance of title to the Property, as described in the Contract.

[Signatures are on the Following Page]

IN WITNESS WHEREOF the parties hereto have set their hands and seals on this the \_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_.

 SELLER:

 By:

 Witness Its:

 BUYER:

 Witness

 Witness

**The HBAA and its local chapters do not assume any liability for damages arising from the use of this document and give no opinion that any of the terms and conditions in this document should be accepted by the parties in a particular transaction. Terms and conditions should be negotiated between the parties based upon the respective interests, objectives and bargaining positions of all interested parties. Seek specific legal advice from your lawyer.** **Copyright 2017 by the Home Builders Association of Alabama.**

**[Use as Exhibit either this Preoccupancy Inspection Agreement or the Acknowledgment of Acceptance (Exhibit II)]**

*Exhibit I to Limited Warranty Agreement*

**PREOCCUPANCY INSPECTION AGREEMENT**

DATE: TIME:

BUYERS:

ADDRESS: CITY:

We the Buyers have inspected the Dwelling, including the items listed below, and find it to be in good physical condition, free from damage such as holes, chips, cracks, exceptions, omissions, malfunctions or other defects of materials or workmanship, except as noted in the applicable “comments” sections below. A check mark or other similar notation in the space beside an item indicates acknowledgment by the Buyers that the item is in good physical condition and free from damage.

If an item is not applicable, please mark through it.

 **GENERAL**

Foyer Living Room Hall Bath Full Bath

Dining Room Kitchen Bed Rooms Utility Room

Breakfast Rm. Laundry Rm. Closets Porch

Patio Deck Garage Other Areas

Drives Walks Yard Exterior of

 Home

Comments:

 **DOORS**

Verify that the weather-stripping, locking mechanism, thresholds and stops are correctly installed and function smoothly and properly.

Foyer Living Room Hall Bath Full Bath

Dining Room Kitchen Bed Rooms Utility Room

Breakfast Rm. Laundry Rm. Closets Porch

Patio Deck Garage Other Areas

Comments:

 **WINDOWS/SCREENS**

Verify that the weather-stripping and locking mechanisms are correctly installed and function smoothly and properly.

Foyer Living Room Hall Bath Full Bath

Dining Room Kitchen Bed Rooms Utility Room

Breakfast Rm. Laundry Rm. Closets Porch

Patio Deck Garage Other Areas

Comments:

 **ELECTRICAL SWITCHES/OUTLETS/SAFETY SWITCHES**

Verify that switches and outlets are tested for electric current (hot), proper grounding and proper polarity.

Foyer Living Room Hall Bath Full Bath

Dining Room Kitchen Bed Rooms Utility Room

Breakfast Rm. Laundry Rm. Closets Porch

Patio Deck Garage Other Areas

Comments:

 **SMOKE DETECTOR**

Verify that the smoke detectors are functioning properly.

Comments:

 **LIGHT FIXTURES**

Verify that fixtures are hung straight and level and that bulbs are installed and burn.

Foyer Living Room Hall Bath Full Bath

Dining Room Kitchen Bed Rooms Utility Room

Breakfast Rm. Laundry Rm. Closets Porch

Patio Deck Garage Other Areas

Comments:

 **HVAC UNIT**

Verify that heating and cooling systems, including thermostat, insulation, and filter are correctly installed and operating properly. Verify that unit turns on. Verify that air flow is at each vent and that vent opens and closes.

Comments:

 **HOT WATER HEATER**

Check the pop-off valve and drain to make sure they are functioning properly. Verify that hot water flows out of all faucets. \_\_\_\_\_\_\_\_\_

Comments:

 **BREAKER BOX**

Check to make sure door opens and closes properly, all circuits are labeled properly, and the breakers are functioning properly. \_\_\_\_\_\_\_\_\_

Comments:

 **BASEBOARDS/TRIM**

Inspect baseboards and trim for proper installation and appearance.

Comments:

 **WALLS/CEILINGS**

Check all walls and ceilings to verify that appearance is acceptable.

Comments:

 **CLOSETS**

Inspect shelves and rods for proper installation and appearance.

Hall Bath Full Bath Other Areas

Bed Rooms Utility Room

Laundry Room Closets

Comments:

 **FLOOR COVERING**

Inspect all carpet for proper installation and appearance. Inspect all vinyl, ceramic tile and wood flooring for proper installation and appearance.

Comments:

 **COUNTERTOPS**

Inspect all countertops for proper caulking, level and anchors, and check for the presence of scratches, nicks, and burns. \_\_\_\_\_\_\_\_\_\_\_

Comments:

 **CABINETS**

Inspect doors, drawers, shelves and hardware for proper installation and operation. Check that all drawers and doors open properly.

Comments:

 **PLUMBING**

Inspect for proper fittings, water draining freely, hot and cold water, proper washer/dryer hook ups and the presence of any leaks. Check and record water pressure.

Hall Bath Full Bath Kitchen Utility Room

Laundry Room Other Areas

Comments:

 **KITCHEN PLUMBING FIXTURES**

Inspect for proper installation and operation of sink, sprayer, stopper and dishwasher. Check for leaks under sink. Check dishwasher door for correct closing. Run dishwasher through cycle and check for leaks around door and under sink. \_\_\_\_\_\_\_\_\_\_\_\_

Comments:

 **BATHROOM FIXTURES**

Inspect for the correct installation and operation of bathroom fixtures. Check for leaks and presence of any damage to fixtures. Place a double hand full of toilet tissue in commode and test flush.

Comments:

 **TOWEL BARS/PAPER HOLDERS/SOAP DISH/TOOTHBRUSH HOLDERS/TUMBLER**

Inspect for proper installation and location.

Comments:

 **MIRRORS**

Verify that mirrors are plumb and square and there are no factory defects in the silvering and no cracks or chips on glass edges.

Comments:

 **VENT FANS**

Check for proper installation and operation.

Comments:

 **APPLIANCES**

Check for proper installation and operation of:

**Range** **Hood** **Refrigerator**

turn on light gasket

temperature control fan ice maker

oven light light

broiler pan **Garbage Disposal** shelves

oven elements turn on and run temperature control

burner eyes reset button

oven racks seal **Dishwasher**

stopper arm

**Microwave** proper drainage basket

light controls

fan drainage system

 door

 run full cycle

Comments:

 **FIREPLACE**

Inspect for proper installation, operation and appearance.

Hearth Surround Unit Screens

Glass Damper

Doors

Comments:

 **CLEANLINESS**

Inspect for thoroughness of cleaning.

Comments:

 **EXTERIOR OF HOME**

**Painting** **Roof** **Trim**

full coverage all shingles in place matched in place

caulking at joints valleys appear normal fitting properly

 ridge shingles in place sofit vent open

**Gutters**  **Brick** **Patio/Walk/Drive**

**Heating & A/C Unit** level (no bird baths)

installed level in drains

workman like manner no cracks or

 separations

Comments:

 **YARD**

**Bushes**  **Sod** **Lawn**

alive & healthy in place level

 rolled raked

 seeded

Comments:

**ADDITIONAL COMMENTS**

This Preoccupancy Inspection Agreement is part of the Limited Warranty Agreement which is to be resigned at closing and attached hereto. This Preoccupancy Inspection Agreement shall survive closing and remain in full force and effect.

We the Buyers have inspected each item contained in this Preoccupancy Inspection Agreement as well as an inspection of our own and we find the Dwelling to be in good condition except as specifically described above. We the Buyers do hereby agree that the construction of the Dwelling is complete and do hereby accept all workmanship and material in this Dwelling as being free from defect except as specifically described above and except any Latent Defect (as defined in the Limited Warranty Agreement) not apparent at this time.

IN WITNESS WHEREOF the parties hereto have set their hands and seals on this the            day of                              , 20      .

WITNESS BUYER

WITNESS BUYER

WITNESS SELLER

WITNESS SELLER

**Please have utilities changed to your name.**

**[Use as Exhibit either the Preoccupancy Inspection Agreement (Exhibit I) or this Acknowledgment of Acceptance]**

 ***Exhibit II to Limited Warranty Agreement***

STATE OF ALABAMA )

 :

COUNTY OF )

**ACKNOWLEDGMENT OF ACCEPTANCE**

We, the undersigned Buyers, are consummating the purchase from \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Seller”) of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Land”).

We hereby acknowledge that we have inspected the Land and the Dwelling, driveway, and other improvements located thereon (collectively, the “Property”) and that, without any reservations, we accept the Property as to the condition thereof. Specifically, and without limited the foregoing, we accept the Property as to the condition of the  wall finish, paint, and decoration,  finished floors,  bath tile and fixtures,  kitchen tile, sink, and cabinets,  woodwork, trim, and paneling,  doors and windows,  caulking and weatherstripping,  lighting fixtures,   brick and paneling on exterior walls,   concrete, stucco, plaster, bricks, mortar, and masonry,  garages, storage buildings, or other outbuildings not attached to the Dwelling,  swimming pools and other recreational facilities,  concrete work of driveway, walks, porches, and carports,  roofing,  drainage around Dwelling and ditches within easements,  basement or crawl space under Dwelling, and  driveways, walkways, retaining walls, fences, and landscaping (including sodding, seeding, shrubs, trees, and plantings). To the extent any of the foregoing described components were not included in the Property covered hereby, nothing contained herein shall be deemed to infer or imply that such component parts are included in such Property.

We hereby acknowledge receipt of the Limited Warranty Agreement for a period of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ executed by Seller and us and understand the responsibilities of Seller thereunder.

By closing the purchase of the Property, we acknowledge that Seller has performed its contract with us, the improvements upon the Property have been completed according to the plans and specifications agreed upon, and the improvements upon the Property have been completed according to the decoration plans made part of the contract.

Dated the \_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_\_\_\_\_.

BUYERS: