**PURCHASE AND SALE AGREEMENT**

**[Short Form]**

|  |
| --- |
| **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.** |

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 hereto and made a part hereof.

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:

Continued on the Following Page

|  |  |
| --- | --- |
| 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 as provided on Rider “1” attached hereto and being made a part hereof. 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.
2. 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.
3. THIS ITEM IS INTENTIONALLY DELETED
4. 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.
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 8 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 SELLER]**. 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. 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.
3. 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:

|  |  |  |
| --- | --- | --- |
| 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. If Rider 6 is checked below, Buyer and Seller agree to the terms and conditions of the Limited Warranty Agreement attached hereto as Rider 6 and made a part of this Agreement (the “Limited Warranty 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.

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

1. Riders. The parties agree the terms and conditions of the Riders so indicated below are attached to, incorporated into, and made a part of this Agreement.

 [ ]  Rider 1 Status of Construction of Dwelling on Property

 [ ]  Rider 2 Decorating Allowance

 [ ]  Rider 3 Financing Contingency

 [ ]  Rider 4 VA Financing Contingency

 [ ]  Rider 5 FHA Financing Contingency

 [ ]  Rider 6 Limited Warranty

 [ ]  Rider 7 Insured Warranty

 [ ]  Rider 8 Mold Addendum

 [ ]  Rider 9 Radon Addendum

 [ ]  Rider 10 EIFS Addendum

 [ ]  Rider 11 Insulation

 [ ]  Rider 12 Seller’s Termination Right

 [ ]  Rider 13 Adjustment for Escalation for Materials

 [ ]  Rider \_\_\_ Other Riders

1. Entire Agreement. This Agreement, the Riders attached hereto and the Limited Warranty Agreement, if any, 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)**