**AGREEMENT FOR THE CONSTRUCTION**

**OF A RESIDENTIAL DWELLING**

[Owner’s Land, Cost-Plus Basis, Guaranteed Maximum Price Option, 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 Agreement provides for the construction of a residential dwelling on Property owned by the Owner in conformity with Plans and Specifications for the Work. The Commencement Date is provided for in Paragraph 2 and Completion is upon issuance of a Certificate of Occupancy or if there is no municipal building inspection department, then the reasonable determination by the Contractor that the Renovation Work is substantially complete. The Job Cost is provided for in Paragraph 3 and this form provides for a Cost-Plus Basis. If the parties agree, the job is at a Guaranteed Maximum Price. Payment terms are provided for in Paragraph 8 and Change Orders are provided for in Paragraph 10. If the parties so elect, there are alternative remedies provisions in Paragraph 22 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. 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**. **The Limited Warranty attached is the standard Limited Warranty Agreement (typically a one year warranty) for latent defects.** |

This AGREEMENT FOR THE CONSTRUCTION OF A RESIDENTIAL DWELLING (hereinafter “this Agreement”) is hereby bargained for, made, and entered into on the \_\_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter referred to as "Contractor" and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ hereinafter, whether one or more, referred to as “Owner”).

W I T N E S S E T H :

Owner holds legal title to 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”). Owner has requested that Contractor construct a residential dwelling (the “Dwelling”) on the Property in accordance with the provisions of this Agreement. As a part of the negotiation of the terms and provisions of this Agreement, Owner and Contractor have negotiated between themselves the terms and provisions of a Limited Warranty Agreement and **a Preoccupancy Inspection Agreement or Acknowledgment of Acceptance as attached to the Limited Warranty Agreement attached hereto as Exhibit “C” 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, Owner and Contractor do hereby agree as follows:

1. Construction of the Dwelling/Plans and Specifications. Contractor hereby agrees to construct the Dwelling on the Property in accordance with provisions of this Agreement and the Limited Warranty Agreement and in general conformity with the Plans and Specifications attached hereto as, or identified on, the attached Exhibit A and incorporated herein by reference. The Plans and Specifications have been signed and dated simultaneously with the execution of this Agreement by both Contractor and Owner. Any changes in the Plans and Specifications which have been agreed upon by both Contractor and Owner have been clearly shown and initialed by both Contractor and Owner.
2. Date of Commencement and Substantial Completion. Contractor shall commence construction of the Dwelling on or before the \_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_\_ (the “Commencement Date”) and shall cause the construction of the Dwelling to be substantially complete on or before the \_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_\_ (hereinafter the “Completion Date”), subject to such extensions of the Completion Date as might occur pursuant to the provisions of this Agreement. 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 Contractor that the construction of the Dwelling is substantially complete and ready for occupancy.
3. Consideration. Owner shall pay to Contractor in current funds for the construction of the Dwelling by Contractor the Consideration (hereinsocalled) which shall consist of the Cost of the Construction (as defined in paragraph 5) and Contractor’s Fee (as defined in this paragraph 3). Contractor’s Fee shall be determined as follows: (*state a lump sum, percentage of Cost of the Construction or other provisions for determining Contractor’s Fee, and explain how Contractor’s Fee is to be adjusted for changes in the Plans and Specifications.*)

1. Guaranteed Maximum Price. (The provisions of this paragraph 4 are applicable only if completed and initialed by both Contractor and Owner.)

The sum of the Cost of the Construction and Contractor’s Fee is guaranteed by Contractor not to exceed                                                                                                                                           Dollars ($                                    ), subject to increase as the result of any changes in the Plans and Specifications as permitted by the provisions of this Agreement. Such maximum sum, if applicable, may hereinafter sometimes be referred to as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by Contractor without reimbursement by Owner. In the event that the Consideration paid by Owner to Contractor is less than the Guaranteed Maximum Price, then Owner shall pay to Contractor, in addition to the Consideration, the sum equal to                                                    percent (               %) of the amount by which the Consideration is less than the Guaranteed Maximum Price.

Contractor’s initials: Owner’s initials:

1. Cost of the Construction. The term “Cost of the Construction” shall mean costs necessarily incurred by Contractor in the construction of the Dwelling. Such costs shall be at rates which Contractor has reasonably determined to be not higher than the standard paid in the community in which the Property is located except with the prior consent of Owner. The Cost of the Construction shall include the following items:
   1. Wages of construction workers directly employed by Contractor to perform the construction of the Dwelling, including welfare, unemployment compensation, worker’s compensation, social security, and other benefits.
   2. Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completion of the construction; all discounts for cash or prompt payment shall accrue to Contractor.
   3. Payments made by Contractor to all subcontractors in accordance with the requirements of the subcontracts.
   4. Cost of all materials, temporary facilities, equipment, and hand tools not customarily owned by the construction workers, which are provided by Contractor at the site and fully consumed in the performance of the construction of the Dwelling.
   5. Reasonable rental costs for necessary temporary facilities, machinery, equipment, and hand tools used at the site of the Dwelling, whether rented from Contractor or others.
   6. That portion directly attributable to this Agreement of premiums for insurance and bonds.
   7. Losses and expenses not compensated by insurance or otherwise, sustained by Contractor in connection with the construction of the Dwelling, provided they have resulted from causes other than default or neglect of Contractor.
   8. Costs of removal of debris from the site.
   9. Costs incurred in taking action to prevent threatened damage, injury, or loss in case of any emergency affecting the safety of persons and property.
   10. Costs of building permits, fees for access to and consumption of water, sewer, electric power, gas, telephone, and other utilities and costs of any other governmental or private licenses or permits necessary to the construction of the Dwelling.
   11. Costs of surveys of the Property and with respect to the location of the Dwelling during construction.
   12. Administrative expenses allocated by Contractor for construction of the Dwelling for salaries and other compensation of Contractor’s personnel stationed at Contractor’s principal office or offices other than the site office and other overhead of Contractor’s office allocated to construction of the Dwelling.
   13. Other costs incurred in the performance of the construction of the Dwelling.
   14. Other costs:

The term “Cost of the Construction”, unless specifically provided otherwise in this Agreement, shall not include the following:

* + 1. Salaries and other compensation of Contractor’s personnel stationed at Contractor’s principal office or offices other than the site office, except as may be otherwise specifically provided in this Agreement, and except for the actual time spent, if any, by such personnel in the performance of this Agreement.
    2. Expenses of Contractor’s principal office and offices other than the site office.
    3. Overhead and general expense, except as may be expressly included above in this paragraph or elsewhere in this Agreement.
    4. Contractor’s capital expenses, including interest on Contractor’s capital employed in connection with the construction of the Dwelling.
    5. Rental costs of machinery and equipment, except as specifically provided above in this paragraph or elsewhere in this Agreement.
    6. Other costs:

1. Discounts, Rebates, and Refunds. Cash discounts obtained on payments made by Contractor shall accrue to Contractor. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to Owner. Amounts which accrue to Owner in accordance with the provisions of this paragraph shall be credited to Owner as a deduction from the Cost of the Construction.
2. Records. Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Agreement. Owner shall be afforded reasonable access to the records of Contractor relating to this Agreement, upon advance request during normal business hours. Said records shall be maintained by Contractor for a period of eighteen (18) months after the substantial completion of construction of the Dwelling.
3. Payment of Consideration. Owner shall pay to Contractor, on or before the            day of                                        , 20      ,the sum of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Dollars ($                                  ) (the “Advance Payment”) toward the Consideration. The Advance Payment shall be credited against the final payment to be made by Owner to Contractor as described later in this paragraph. Contractor shall send an invoice to Owner on a weekly, bi-monthly, or monthly basis, as determined by Contractor, setting forth the Cost of Construction incurred since the most recent prior invoice to Owner, together with the portion of Contractor’s Fee applicable to the Cost of Construction as determined by Contractor and included in the invoice. Owner shall make payment to Contractor in the amount of the invoice no later than three (3) days after the delivery of same by Contractor to Owner. Payments not made on or before said due date shall bear interest from the due date at the rate of                                                    percent (               %) per annum together with a late penalty equal to                                                    percent (               %) of the amount of the delinquent payment. The final payment of the entire unpaid balance of the Consideration shall be paid by Owner to Contractor 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 Contractor that the construction of the Dwelling is complete, except for the responsibilities of Contractor pursuant to the provisions of the Limited Warranty Agreement. If Contractor incurs additional Cost of Construction subsequent to the receipt of the final payment from Owner, for the purpose of completing any portion of the construction of the Dwelling or performing any corrective work pursuant to the Limited Warranty Agreement, and if said additional work has been requested by Owner, then Owner shall pay to Contractor the amount of such Cost of Construction together with Contractor’s Fee applicable thereto on the same basis as if such Cost of Construction had been incurred prior to the final payment; provided, however, that no such payment shall cause the total of the Consideration paid by Owner to Contractor to exceed the Guaranteed Maximum Price, if any. The increase in the Cost of Construction will be reflected in an increase in the Consideration; provided, however such increase in Consideration shall not exceed the Guaranteed Maximum Price, if any. Any such additional payment to be made by Owner to Contractor shall not be calculated in determining the reduction of any savings in which Contractor may have participated if the provisions regarding the Guaranteed Maximum Price of this Agreement are applicable.
4. Owner’s Representations and Warranties. Owner hereby represents and warrants unto Contractor as follows:
   1. Owner has good, clear, free, unencumbered fee simple title (unless otherwise described herein) to the Property and the unrestricted right and authority to enter into this Agreement;
   2. If there is a mortgage or other such lien on the Property, Owner, if so requested by Contractor, shall obtain a written consent from the lender or holder thereunder acknowledging Contractor’s rights in the Property to the extent of amounts unpaid and owning by Owner to Contractor and that such lender or holder shall allow insurance proceeds to be utilized towards rebuilding in the event of damage or destruction of the Property.
   3. There are no parties other than Owner in possession of any portion of the Property and there are no disputes with respect to the boundary line or title to the Property;
   4. There are no pending or threatened condemnation proceedings with respect to the Property or any portion thereof;
   5. Owner has obtained such inspection reports, due diligence reports and certifications from architects, engineers and surveyors regarding the construction of the Dwelling to make the representations and warranties contained herein and based on same hereby warrants and represents that the construction of the Dwelling on the Property in accordance with the Plans and Specifications will not violate any applicable governmental laws, rules or regulations or any private restrictions, covenants, or other such agreements affecting the Property and will not encroach outside the boundary lines of the Property or within any applicable building setback lines, easements, or rights-of-way;
   6. The Property is free of any environmental hazards or materials or substances which would cause the Property to be in violation of any federal, state, or local environmental laws, rules, or regulations.

Owner hereby acknowledges that Contractor is relying upon the representations of Owner contained herein and that Contractor shall not be held responsible for any damages, costs or expenses arising out of the matters herein represented by Owner to be true and correct in the event such representations are not true and correct.

1. Changes to Plans and Specifications. If Contractor has agreed to construct the Dwelling or complete the construction of the Dwelling in general conformity with Plans and Specifications pursuant to this Agreement, Contractor shall be under no obligation to make any changes, additions or alterations to the Plans and Specifications. Contractor may elect to make changes, additions or alterations to the Plans and Specifications upon the request of Owner; however, Contractor shall not be obligated to do so. In the event that Contractor and Owner agree upon changes, additions or alterations to the Plans and Specifications, then such agreement shall become effective only upon the execution by both Contractor and Owner of a written change order, in a form which is acceptable to Contractor and which sets forth the changes to be made and the additional consideration to be paid by Owner to Contractor in connection therewith, and the payment by Owner to Contractor of such portion of said additional consideration as shall be required by Contractor. Any such additional consideration shall be in addition to the Consideration and any payments of said additional consideration by Owner to Contractor shall not be a credit against the Consideration and shall be non-refundable. Contractor 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 Contractor shall, in sole discretion of Contractor, determine, including, but not limited to, the payment of additional consideration by Owner, the approval of such changes by Owner’s lender and the local building inspection officials, if any. In the event that Contractor 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 as a part of the final payment of the Consideration in accordance with the provisions of paragraph 8. Notwithstanding the foregoing, Contractor shall have the right to make such changes, additions, or alterations to the Plans and Specifications as shall be required by any governmental officials 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 Owner.
2. Decorating Allowance. Contractor may allow Owner to select some or all of the decorating items to be incorporated into the Dwelling. Such items may include brick, paint colors, roof colors, light fixtures, wall paper, and floor covering for which Contractor shall establish allowances. Owner shall make such selections within seven (7) working days after the request by Contractor. If selections of Owner exceed the amount of allowances established by Contractor, then Owner shall pay such portion of any such excess as shall be required by Contractor at the time of making the selections, and the balance, if any, shall be paid together with the final payment of the Consideration, and said additional payments shall not be limited in any manner by the Guaranteed Maximum Price, if any. The allowances established by Contractor and which have been used to determine the Guaranteed Maximum Price, if any, are attached hereto as Exhibit B. In no event shall the Guaranteed Maximum Price, if any, be reduced as the result of the expenditure of less than the allowance for any particular item.
3. Condition of the Land.
   1. Owner hereby affirms that, before signing this Agreement, Owner has personally walked upon and inspected the Land, or if not, has had such inspections performed regarding the condition of the Land to make the representations and warranties contained herein. Owner represents that Owner or its representatives have conducted such engineering studies, site investigations and analyses (including soil tests) as Owner deems desirable to determine whether the soil or other conditions of the Land are acceptable to Owner. Owner acknowledges and agrees that Owner has received no representation or warranty from Contractor with respect to the condition of the Land and that Contractor shall not in any manner be responsible for the condition thereof.
   2. Owner waives all claims, present and future, against Contractor and Contractor’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 Contractor and Contractor’s agents, employees, successors, assigns, members, owners, managers, partners, officers and contractors from any liability whatsoever therefor. Owner hereby acknowledges that Contractor is relying upon the representations of Owner contained herein and that Contractor shall not be held responsible for any damages or costs arigins out of any condition pertaining to the Land in the event such representations are not true and correct.
   3. Owner acknowledges that Owner 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, Contractor has made no representation or warranty with respect to the availability of such insurance coverage.
   4. The Consideration does not include any costs or contingencies for rock, soil conditions, or other abnormal surface conditions, and Owner 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, Contractor shall promptly inform Owner 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 Consideration, which increase shall not be subject to the Guaranteed Maximum Price, if any.
4. Maintenance and Prevention of Moisture-Related Conditions.
   1. Whether Owner experiences mold growth depends largely on how Owner manages and maintains the Property and Owner agrees to take actions after the closing to prevent conditions that may cause such mold or mildew as provided for herein. Owner hereby acknowledges and agrees that, upon the completion of the construction of the Dwelling and occupancy of the Property by Owner: (i) it shall be the responsibility and obligation of Owner 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) Contractor 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 mold, mildew, and/or microscopic spores caused by the acts or omissions of Buyer; and (iv) Owner hereby waives and disclaims any claims against Contractor arising out of any such condition and any loss, damage, or injury resulting therefrom.
   2. Owner further acknowledges and agrees that: (i) if Owner becomes aware of water intrusion into the Property, Owner should respond immediately; (ii) in cases of serious water damage, Owner 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. Owner 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. Extension of the Completion Date/Delivery of Possession. The Completion Date may be extended by Contractor for such additional time as Contractor shall determine to be reasonably necessary (a) as the result of any delay in the approval of Owner’s construction or permanent loan, if any, or (b) to complete the construction of the Dwelling as the result of any delays in the progress of the construction of the Dwelling due to items such as, but not limited to, inclement weather, acts of war or terrorism, changes in the Plans and Specifications, requirements of any building officials or other governing authorities, work stoppages, delays in the delivery of materials, delays in the approval of Owner’s loan, contingencies under this Agreement, if any, 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; or (c) as the result of any delay caused by the failure or interruption of systems used by Contractor or systems used by third parties upon whom Contractor relies or any other system where such failures or interruptions are caused, in whole or in part, directly or indirectly, by the inability of such systems to accurately calculate, compare, extract, sequence, display, accept, process, store, reserve, and provide date data in a manner that is consistently correct and accurate, regardless of the date data input, the functions requested, the date data output requested, or the date upon which the date data is input, processed, or output; or (d) as the 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 Completion Date pursuant to the foregoing provisions, then the Completion Date shall be that date which has been established in a written notice from Contractor to Owner provided that such date is no less than ten (10) days after the date of such notice. Pending the substantial completion of the construction of the Dwelling and the payment in full by Owner to Contractor of the Consideration, possession of the Dwelling shall be maintained by Contractor. Possession of the Property shall be delivered to Owner upon the payment in full of the entire amount of the Consideration and any other sums payable by Owner under this Agreement.
6. Insurance. Contractor shall be responsible for a policy of insurance for protection from claims under Workers’ or Workmen’s Compensation Acts and other employee benefit acts which are applicable, claims for damages because of bodily injury, including death, and from claims for damages to property (other than to the Dwelling) which may arise out of or result from Contractor’s operations under this Agreement, whether such operations be by Contractor or by a subcontractor or anyone directly or indirectly employed by either of them, shall be purchased and maintained by Contractor, and the cost thereof shall be included in the Cost of Construction. The limits of liability under said policy of insurance shall be not less than

Dollars ($                                  ).Owner shall be responsible for purchasing and maintaining a policy of insurance with respect to the Dwelling and the Property insuring both Owner and Contractor against general liability in the amount of not less than

Dollars ($                               ), and against the perils of fire and all other hazards and physical loss or damage including, without limitation, theft, vandalism, and malicious mischief, said policy to be on an all risk policy form and to include extended coverage in the full insurable value of the Dwelling and the Property. Owner and Contractor shall each provide to the other copies of certificates from the insurance companies evidencing the existence of the policies to be purchased pursuant to this paragraph.

1. Evidence of Title. A report of the status of the title to the Property, in such form as might be acceptable to Contractor, shall be provided by Owner, at the expense of Owner. Said title report shall reflect the status of record title to the Property and shall include legible copies of all easements, restrictions, rights-of-way, exceptions, encumbrances and other matters affecting title to the Property. A copy of said report together with legible copies of said exceptions and other such matters shall be delivered to Contractor on or before the Commencement Date. The obligations of Contractor hereunder are subject to the approval by Contractor of the form and substance of the title report.
2. Termite Contract/Termite Bond. Owner shall be responsible for purchasing such termite or wood infestation reports, termite treatment contracts, or termite bonds as Owner deems appropriate, if any, at the expense of Owner. Any such report, contract, or bond, if any, which is provided by Contractor shall be accepted by Owner without representation, obligation, or warranty from Contractor, and Owner hereby acknowledges and agrees that Owner shall determine whether any such report, contract, or bond provides sufficient protection of Owner’s interests, and Owner shall look solely to the issuer of any such report, contract, or bond with respect to any representations, agreements, or obligations therein contained. Contractor 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 Owner.
3. Time Is Of The Essence. TIME IS OF THE ESSENCE with respect to the obligation of Owner to make payments to Contractor toward the Consideration within the time required pursuant to this Agreement.
4. Disclaimer. Owner further acknowledges that Owner has not relied upon any advice or representations of Contractor or any person associated therewith relative to relative to (i) the legal or tax consequences of this Agreement and the sale, purchase, or ownership of the Property; (ii) except as may be provided for in the Limited Warranty Agreement (as defined herein), the structural condition of the Property; (iii) the investment or resale value of the Property as the result of the renovations to be made pursuant to this Agreement; (iv) the character of the neighborhood; (v) the investment or resale value of the Property; (vi) the use or condition of adjoining or neighboring property; (vii) subsurface conditions, including radon and other potentially hazardous materials and/or gases; (viii) the flood zone, (ix) the school zone, or (x) any other matters affecting Owner’s willingness to enter into this Agreement for construction of the Dwelling. Owner acknowledges that if such matters are of concern to Owner in the decision to enter into this Agreement, Owner has sought and obtained independent advice relative thereto. Owner 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 Owner in the determination to enter into this Agreement.
5. Insulation. Living area ceilings will be installed with                                         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                                         type insulation to a thickness of                                         inches, which thickness, according to the manufacturer, will result in an R-Value of                                        . Owner 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 Contractor. Owner acknowledges and agrees that Contractor shall have no liability or obligation with respect to the accuracy of the information included in this paragraph.
6. 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 Contractor shall have the right, at the election of Contractor, to either (a) extend the Completion Date as necessary to permit Contractor to remedy any such damage and complete the Dwelling, in which event Contractor shall be paid the additional costs and fees (including an additional Contractor’s Fee) as shall be determined by Contractor to be necessary to remedy such damage, or (b) terminate this Agreement, whereupon Owner shall pay to Contractor the balance of the Consideration owing to Contractor for the portions of the construction of the Dwelling completed as of the occurrence of the damage, including costs incurred by Contractor for materials, supplies, and other items ordered, acquired, or delivered to the Property, including the Contractor’s Fee associated therewith, and Contractor shall be relieved of any obligation to complete the construction of the Dwelling. If there is a mortgage lender with a lien on the Property or the insurance proceeds payable resulting from damage or destruction to the Property, prior to commencement of construction of the Dwelling, if requested by Contractor, Owner shall obtain an agreement from such lender recognizing Contractor’s rights to the proceeds of such insurance for work done to the time of such damage or destruction and recognizing Contractor’s rights in such proceeds in the event a determination is made by Contractor to remedy such damage and complete construction of the Dwelling.
7. Arbitration. **NOTE: The provisions of this paragraph shall be applicable only if initialed by both Contractor and Owner. 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.** Contractor and Owner 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. Contractor and Owner 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.

Contractor: \_\_\_\_\_\_\_\_\_\_\_ Owner: \_\_\_\_\_\_\_\_\_\_

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

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 Contractor:

When to Owner:

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

1. Default.
   1. By Contractor: If this transaction is not concluded because of the material default of Contractor in the performance of the obligations of Contractor pursuant to this Agreement, and if said default is not remedied within thirty (30) days after written notice from Owner to Contractor 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 Contractor is diligently pursuing the remedy of any such default), then Owner shall have as its sole remedies either (i) the right to terminate this Agreement upon payment by Owner to Contractor for all work performed and all costs incurred by Contractor as of the date of termination, whereupon this Agreement shall be deemed terminated and both Contractor and Owner shall be relieved of any further obligations hereunder, or (ii) the right to pursue specific performance. These shall be the sole remedies available to Owner in the event of a default by Contractor.
   2. By Owner: In the event of default by Owner in the performance of the obligations of Owner under this Agreement, and should said default not be remedied within ten (10) days after written notice from Contractor to Owner setting forth the details of the default and demanding that the default be remedied, then, at the election of Contractor, (a) Contractor shall retain all sums paid to Contractor by Owner pursuant to this Agreement including, but not limited to, the Advance Payment, 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 Contractor and Owner shall be relieved of any further obligations hereunder; or (b) Contractor shall have the right to retain all sums paid to Contractor, as aforesaid, by Owner, which sums shall be applied toward the actual damages of Contractor, and Contractor shall be entitled to recover from Owner the balance of any portion of the Consideration owing for Costs of Construction incurred by Contractor and the entire balance of the Contractor’s Fee, together with damages incurred by Contractor; or (c) Contractor shall have the right to retain all sums paid to Contractor, as aforesaid, by Owner, and Contractor shall have the right to pursue, in addition to the retainage of said sums, equitable relief against Owner, including the remedy of specific performance together with the recovery of Contractor’s attorney’s fees and costs; or (d) Contractor shall have the right to pursue any one or more of the foregoing or any other remedies available to Contractor under applicable law together with the recovery of Contractor’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 Contractor and Owner, 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 Owner hereunder may not be assigned by Owner without the written consent of Contractor, which consent may be withheld in the sole discretion of Contractor.
   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. Owner and Contractor 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 Owner and Contractor 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. Owner and Contractor agree to re-execute the Limited Warranty Agreement and to deliver duplicate originals of same at the time of the payment of the final payment of the balance of the Consideration. Owner and Contractor 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 final payment of the Consideration. Pursuant to the Limited Warranty Agreement, Owner and Contractor shall make a preoccupancy inspection of the Dwelling and shall either **either complete and execute the Preoccupancy Inspection Agreement or execute the Acknowledgment of Acceptance** which is attached as an exhibit to the Limited Warranty Agreement.
4. Duration of Limited Warranty. Contractor and Owner have negotiated and agreed upon the Limited Warranty Period, as defined in the Limited Warranty Agreement, and acknowledge that the duration of the Limited Warranty Period, as negotiated between Contractor and Owner, has been material to the amount of the Consideration and the other terms and conditions set forth in this Agreement. In the event Contractor 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, Owner acknowledges that rather than accepting the longer duration of the Limited Warranty Period, Owner 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 the Limited Warranty Agreement.
5. WAIVER OF WARRANTIES AND CLAIMS. OWNER 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 INCIDENTIAL DAMAGES, CONSEQUENTIAL DAMAGES, COMPENSATORY DAMAGES, MENTAL ANGUISH OR DISTRESS, AND FOR DAMAGES BASED UPON NEGLIGENCE, AND OWNER HEREBY EXPRESSLY WAIVES AND DISCLAIMS ALL SUCH OTHER WARRANTIES AND CLAIMS WITH RESPECT TO BOTH THE DWELLING AND THE PROPERTY.

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

1. Additional Provisions. Additional Provisions, if any shall be described herein. If there are none, this Section is Intentionally Deleted.
2. 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 Owner acknowledges that Owner 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 Owner and Contractor. No representation, inducement, understanding, or anything of any nature whatsoever made, stated, or represented by Contractor or on Contractor’s behalf, either orally or in writing (except as specifically set forth in this Agreement or in the Limited Warranty Agreement), has induced Owner to enter into this Agreement or shall be enforceable in any manner against Contractor.
3. 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 an original manual signature to this Agreement and shall be deemed an original signature.
4. Home Inspectors   If Owner chooses to have a private home inspection performed of the Dwelling, Owner shall provide Contractor, 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 Contractor’s sole discretion; however, in no event will Contractor be obligated to repair or replace any items noted on the inspection report which in Contractor’s determination exceed or are not in accordance with applicable local building code.
5. 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      .

CONTRACTOR:

By:

Witness Its:

OWNER:

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 Contractor and Owner.

The Specifications have been prepared by

dated the                           day of                                                  , 20      , include                 pages, and have been signed and dated by Contractor and Owner.

**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: