

PROPOSED AND UNDER CONSTRUCTION SALES CONTRACT

Form Approved by Birmingham Association of REALTORS®, Inc.
January 30, 2008 (Previous forms are obsolete and no longer approved)

Date: _____

The undersigned Buyer(s) _____ hereby agrees
(Please print exact names in which title will be taken)
to purchase and the undersigned Builder and/or Contractor (who shall hereinafter be called "Seller")
_____ hereby agrees to sell the following
described real estate, together with the Residence defined below and all other improvements now existing
or to be constructed thereon (collectively the "Property") situated in the City of _____,
County of _____ Alabama, on the terms stated below:

Address: _____ Zip Code: _____

Legal Description: Lot _____ Block _____ Survey _____
_____ MapBook _____ Page _____

1. CONSTRUCTION OF RESIDENCE: ACCEPTANCE OF PLANS AND SPECIFICATIONS: Buyer and Seller acknowledge that the Property and the Total Purchase Price set forth below, include a residential dwelling (the "Residence") under construction by the Seller or to be constructed by Seller on the above described land in accordance with the Plans as shown on Exhibit A attached hereto and the Specifications as shown on Exhibit B attached hereto, both of which have been initialed or signed by Buyer and Seller on each page. Buyer hereby confirms that he has reviewed, studied and accepts the Plans and Specifications for the Residence. In the event of a discrepancy between the Plan and Specifications, the Specifications will take precedence over the Plan.

2. PURCHASE PRICE:

BASE PURCHASE PRICE OF THE PROPERTY \$ _____
Net Extras (Credit) from Exhibit _____ \$ _____
TOTAL PURCHASE PRICE \$ _____

The Total Purchase Price shall be paid as follows:

Earnest Money to be held by Listing Broker \$ _____
Down Payment on construction paid to the Seller \$ _____
Due in cash or certified funds at Closing \$ _____

(A) FINANCING: (Check as applicable)

- (1) Buyer will pay cash or obtain a loan for the Property with no financing contingency.
- (2) This Contract is contingent on Buyer obtaining approval of a Conventional FHA VA Other _____ loan in the amount of \$ _____ or _____% of the Base Purchase Price (excluding any financed loan costs) at the prevailing interest rate and loan costs. If FHA or VA financing is utilized, the "FHA/VA Amendatory Clause Addendum" must be a part of this Contract. Buyer will apply for financing within ____ days (7 days if left blank), from the Finalized Date and will provide any and all credit, employment, financial and other information required by the mortgage lender. "Finalized Date" shall mean the date that appears under the

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signatures of the parties to this Contract. **No term of this financing contingency can be changed without written authorization of the Seller. This financing contingency shall expire on _____, 20__.** Thereafter, this Contract shall no longer be contingent upon Buyer obtaining financing of any type.

Buyer's Initials Seller's Initials

LOAN CLOSING COSTS AND PREPAID ITEMS: A loan discount not to exceed _____% of the amount of the approved loan, shall be paid by Seller Buyer. All other loan closing costs and prepaid items are to be paid by Buyer unless herein stated. Seller's obligation, if any, to pay for any loan closing costs is contingent upon the closing of the sale.

3. START OF CONSTRUCTION: If construction of the Residence has not commenced as of the date of this Contract, Seller shall commence construction of the Residence within ____ days after this Contract has been executed or within ____ days after the contingency set forth in Paragraphs 2 and ____ of this Contract have been removed or satisfied. Said Residence shall be completed within _____ work days after the date of commencement of framing of the Residence, except when Seller shall be prevented from completing the Residence by reason of change in the Plans or Specifications required by Buyer, war, fire, Acts of God, governmental regulations or decrees, strikes, acts of Buyer, or other causes beyond the control of Seller.

4. ROCK AND OTHER SUBSURFACE CONDITIONS: If this Paragraph is initialed by the Seller and Buyer below, the Total Purchase Price as stated in Paragraph 2 above does not include any costs or contingencies for rock or other abnormal subsurface conditions, and Buyer shall be responsible for the additional costs of correcting any such conditions. Should such abnormal subsurface conditions be encountered on the building site in connection with foundations and footing excavations or installation of sewer lines, on-site sewage disposal systems, water lines, or other utility services, Seller shall promptly inform the Buyer of same and provide the estimated costs of the additional work. Such costs may include, but are not necessarily limited to, blasting expenses, jack hammer operations and drill operations. At the time that such abnormal conditions are encountered, Seller shall provide in writing to Buyer a "maximum cost for additional work" for approval by Buyer prior to proceeding with construction of the Residence. Buyer must notify the Seller in writing within 7 days of the delivery of the "maximum cost for additional work" to Buyer if Buyer rejects the "maximum cost for additional work". If rejected by the Buyer within the time frame stated above, this Contract shall be terminated and all monies paid by Buyer shall be returned to Buyer within 7 days of such written rejection. Should Buyer fail to reject the "maximum cost for additional work," the Contract shall continue in full force and effect.

Buyer's Initials Seller's Initials

5. CLOSING & POSSESSION DATE: Closing shall be scheduled upon substantial completion of the Residence which shall be evidenced by receipt of a Certificate of Occupancy. The sale shall be closed and the deed delivered on or before _____, 20__. Possession is to be given upon delivery of the deed.

6. EARNEST MONEY & BUYER'S DEFAULT: Seller and Buyer hereby direct the Listing Company to hold the Earnest Money in trust until this Contract has been accepted and signed by all parties, at which time the Earnest Money will be promptly deposited into the escrow account of the Listing Company. In the event an offer or counteroffer is not accepted, the Earnest Money shall be returned to Buyer without a signed release. If the Contract is accepted and signed by all parties and the sale does not close, however, a separate mutual release signed by all parties to this Contract will be required before the Earnest Money will be disbursed. In the event either Buyer or Seller claims the escrowed funds without the

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agreement of the other party, any holder of the escrowed funds, as prescribed by Alabama Real Estate License Law Rule: 790-X-3-.03(4) & (5), must either retain the escrowed funds until there is a written mutual release among the parties or interplead the disputed portion of the funds into the appropriate court, and shall be entitled to deduct from the escrowed funds for court costs, attorney fees and other expenses relating to the interpleader; provided, however, that any Claim as defined in Paragraph 28 below shall remain subject to mediation and arbitration as set forth in said Paragraph. Seller, at Seller's option, may cancel this Contract if the Earnest Money check is rejected by the financial institution upon which it is drawn. In the event of default by Buyer, all deposits made hereunder may be forfeited as liquidated damages at the option of Seller, provided Seller agrees to the cancellation of this Contract, or alternatively, Seller may elect to pursue his or her available legal or equitable remedies against Buyer.

7. DOWN PAYMENT & BUYER'S DEFAULT: The Buyer hereby authorizes Seller to utilize and spend the Down Payment funds shown above toward expenses and costs of the Residence. In the event Buyer fails to carry out and perform the terms of this Contract, the Down Payment shall be forfeited to Seller up to the amount of actual costs incurred. Any excess of Down Payment over actual costs incurred shall be reimbursed to Buyer. Such forfeiture of Down Payment does not limit in any way Seller's other remedies available under this Contract. **The brokers and sales associates in this transaction are not responsible for and have no control over the Down Payment.**

8. AGENCY DISCLOSURE: The listing company is _____.
The selling company is _____.

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

- An agent of the seller.
- An agent of the buyer.
- An agent of both the seller and buyer and is acting as a limited consensual dual agent.
- Assisting the buyer seller *(check one or both)* as a transaction broker.

The selling company is: *(Two blocks may be checked)*

- An agent of the seller.
- An agent of the buyer.
- An agent of both the seller and buyer and is acting as a limited consensual dual agent.
- Assisting the buyer seller *(check one or both)* as a transaction broker.

Buyer's Initials Seller's Initials

9. HAZARD INSURANCE: Buyer understands that Buyer is responsible for securing acceptable hazard insurance at a premium rate acceptable to Buyer on the Property at Closing. Buyer shall obtain evidence of insurability at an acceptable premium rate within ___ days (7 days if left blank) of the Finalized Date. Should Buyer be unable to obtain evidence of insurability at an acceptable premium rate, Buyer may elect to cancel this Contract within said time period by providing written notice of such election to Seller. If the Contract is cancelled, the Earnest Money shall be returned pursuant to the terms of Paragraph 6 above. Failure to notify Seller of Buyer's election to cancel within said time period shall conclusively be deemed acceptance of any available insurance.

10. TITLE INSURANCE: Seller agrees to furnish Buyer a standard form owner's title insurance policy at Seller's expense, issued by a company qualified to insure titles in Alabama, in the amount of the Total Purchase Price, insuring Buyer against loss on account of any defect or encumbrance in the title, subject to exceptions herein, including Paragraphs 11 & 13 below; otherwise, the Earnest Money shall be

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refunded in accordance with Paragraph 6 above. In the event owner's and mortgagee's title policies are required at closing, the total expense of procuring the two policies will be divided equally between Seller and Buyer, even if the mortgagee is the Seller. Seller shall have a reasonable length of time within which to perfect title or cure defects in the title to the Property.

11. SURVEY: Buyer does does not require a survey by a registered Alabama land surveyor. The lender may require a survey and it is recommended that a new survey be obtained on all purchases. Available information indicates that the Property is is not located in a flood plain, but this should be confirmed by a flood plain certification and/or a current surveyor's statement in the survey which shall be the responsibility of Buyer. Further, unless otherwise agreed herein, the Property is purchased subject to utility easements, residential subdivision covenants and restrictions, if any, and building lines of record. It is the responsibility of Buyer to determine, prior to closing of this Contract, whether the foregoing materially impairs the use of the Property for intended purposes. Unless otherwise agreed herein, the survey shall be at Buyer's expense.

12. PRORATIONS: Ad valorem taxes, as determined on the date of closing, and dues, fees or assessments of any homeowners association, fire district or other entity are to be prorated between Seller and Buyer as of the date of closing, and any existing escrow deposits shall be credited to Seller. Unless otherwise agreed herein, all ad valorem taxes except municipal taxes are presumed to be paid in arrears for purpose of proration; municipal taxes, if any, are presumed to be paid in advance. Buyer acknowledges that the Property is is not currently subject to Class III residential property tax.

13. CONVEYANCE: Seller agrees to convey the Property to Buyer by ____ warranty deed (check if Buyer desires that title be held as joint tenants with rights of survivorship), free of all encumbrances except as permitted in this Contract. Seller and Buyer agree that any encumbrances not herein excepted or assumed may be cleared at the time of closing from sales proceeds. The Property is sold and is to be conveyed subject to any mineral and/or mining rights not owned by Seller. Seller understands that the present zoning classification is: _____. Buyer is encouraged to verify the current zoning classification.

14. CONDITION OF THE PROPERTY: NEITHER SELLER NOR ANY BROKER OR SALES ASSOCIATE MAKES ANY REPRESENTATIONS OR WARRANTIES REGARDING CONDITION OF THE PROPERTY EXCEPT TO THE EXTENT EXPRESSLY SET FORTH HEREIN. Seller represents and warrants that: (i) Seller has not received notification from any lawful authority regarding any assessments, pending public improvements, repairs, replacements or alterations to the Property which remain outstanding; (ii) to the best of Seller's knowledge, no underground mining shafts or tunnels exist below the surface of the Property; and (iii) to the best of Seller's knowledge no underground storage tanks exist below the surface of the Property and no hazardous substances have been disposed of or released on the Property. Buyer has the obligation to determine any and all other conditions of the Property material to Buyer's decision to purchase the Property, including, without limitation, the Property access easements, any covenants, conditions, or restrictions covering the Property, homeowner association documents, or development structures, and the character of the neighborhood prior to signing this Contract.

15. PROTECTIVE COVENANTS; ARCHITECTURAL REVIEW COMMITTEE: Buyer acknowledges that the Property is is not subject to covenants, conditions, restrictions or homeowner association documents (collectively "Protective Covenants"). Buyer acknowledges that he has reviewed the Protective Covenants and agrees to be bound by the same. The Protective Covenants do do not require review and approval of the Plans and Specifications by an Architectural Review Committee ("ARC"). Buyer Seller shall be responsible for obtaining the ARC's review and approval.

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16. BUYER'S FINAL INSPECTION: Prior to the closing, it shall be the duty of Buyer to inspect the Residence in the presence of Seller's representative and to present at that time a written list of any defects in workmanship or materials, which list is to be signed by the Buyer. The failure of Buyer to inspect the Residence prior to closing shall not be a ground for deferring the closing, nor the imposition of any condition upon closing. As to those items set forth on any list that are, in the good faith judgment of Seller, truly defects in workmanship or materials, keeping in mind the standards of construction prevalent in Birmingham, Alabama, Seller shall be obligated to correct the same at its cost within a reasonable period of time; provided, however, that Seller's obligation to correct such defects shall not be grounds for deferring the closing, for imposing any condition upon the closing nor withholding funds at closing. Seller shall have no obligation to make any repairs which are not set forth on the list presented prior to or at closing. This clause shall survive the closing contemplated herein, and the delivery of the deed to Buyer. Buyer shall sign an affidavit of acceptance at closing in a form similar to the Affidavit of Acceptance attached as Exhibit "E."

17. INSULATION: Living area ceilings of the Residence have been or will be installed with _____ type insulation to a thickness of _____ inches, which thickness, according to its manufacturer, will result in an R-value of _____. Living area exterior walls have been or will be insulated with _____ type insulation to a thickness of _____ inches, with a thickness of _____ inches, which thickness, according to the manufacturer, will result in an R-value of _____. Buyer acknowledges and agrees that this information has been supplied by the installer of the insulation and has not been determined by the Seller and that Seller shall have no liability or obligation with respect to the accuracy of said information.

18. NON-ASSIGNMENT: This Contract and any interest which Buyer may have herein are non-assignable and non-transferable without the prior written consent of Seller.

19. CHANGES: No changes in the Plans or Specifications are to be made except upon written change order. Change orders must be signed by Buyer and Seller and must provide a detailed description of the change, addition or deletion and show the cost or credit to Buyer. Any additional cost shall be paid for at the time the change order is accepted by Seller. Any credits due the Buyer will be given against the amounts due at closing. Any changes, alterations, or extras from the Plans and Specifications that may be required by any public body or inspector shall constitute an extra and shall be paid for by Buyer, the same as any other extra as provided in this Paragraph.

20. SUPERVISION OF WORK: Buyer agrees that the direction and supervision of the working forces, including subcontractors, rest exclusively with the Seller and Buyer agrees not to issue any instructions to, or otherwise interfere with same. Seller shall be the authority for the proper arrangements and placement of fixtures, equipment and materials in accordance with recognized standards. Buyer further agrees not to negotiate for additional work with Seller's subcontractors nor to engage other builders or subcontractors except with the Seller's consent and in such matter as will not interfere with Seller's completion of work under this Contract.

21. SEWER/SEPTIC SYSTEMS: Seller represents that the Property is/will be is not/will not be connected to sewer, and if so, all connection fees have been/will be paid. If not on sewer, Seller represents that the Property is/will be is not/will not be connected to a septic system.

22. TERMITE AND/OR WOOD INFESTATION: Seller agrees to provide Buyer a termite service agreement at closing at Seller's expense.

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23. UTILITIES: All utility services will be in the Builder's name and will be paid for by Builder until closing unless herein excepted. Buyer agrees to have all utilities transferred to Buyer's name by the date of closing unless herein excepted.

24. DISCLAIMER: Seller and Buyer hereby acknowledge and agree that they have not relied upon any advice or representation of the Listing Broker or Company or the Selling Broker or Company or any of their sales associates ("brokers and sales associates"), and accordingly Seller and Buyer agree that no broker or sales associate shall be held responsible for any obligations or agreements that Seller or Buyer have to one another hereunder. Further, Seller and Buyer agree to discharge and release the brokers and sales associates from any claims, demands, damages, actions, causes of actions or suits at law arising in any way from this Contract related to the Property, and shall include but not be limited to the condition of the heating, cooling, plumbing, water and electrical systems and any built-in appliances; the roof and the basement, including leaks therein; the presence of asbestos, arsenic in treated wood, toxic mold or fungus; the size and area of the Property; the quality of the workmanship or construction materials, including floors; the structural condition; the condition, availability or location of utilities, sewer or septic system; the investment or resale value of the Property; subsurface or subsoil conditions such as sinkholes, mining or other soil conditions, including radon or other potentially hazardous gases or toxic materials; the existence of, or damage from, wood destroying insects and/or fungus, or vermin/pest infestation; Property access, easements, covenants, restrictions, development structure, and appurtenances thereto, and any matters affecting the character of the neighborhood; the past, present, or future financial stability of the builder or developer or the future insurability of the Property; or the compliance of the builder or developer under any warranty or any related mortgage terms and conditions; or any other matters affecting the willingness of the Seller and Buyer to sell or purchase the Property on the terms and at the Total Purchase Price herein set forth. Seller and Buyer acknowledge and agree that if such matters are of concern to them in the decision to sell or purchase the Property, they have sought and obtained independent advice relative thereto.

Buyer's Initials Seller's Initials

25. BUILDER'S WARRANTY: Seller, or the builder if different from Seller, agrees to furnish to the Buyer a Limited New Home Warranty on the Residence for a period of one year, a copy of which will be attached hereto as Exhibit C and Buyer agrees to accept the terms and conditions of said warranty as his only implied or expressed warranty. The Limited New Home Warranty extends to the Buyer only and is not transferable to subsequent owners. The commencement date of the Limited New Home Warranty shall be the closing date or the date of occupancy, whichever shall first occur.

THE LIMITED NEW HOME WARRANTY IS THE ONLY WARRANTY EXTENDED TO BUYER BY SELLER. IT IS EXPRESSLY UNDERSTOOD THAT THE WARRANTY IS IN LIEU OF ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF HABITABILITY AND WORKMANSHIP OR WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, EACH OF WHICH IS HEREBY WAIVED BY BUYER. (Buyer's Initials _____)

26. RISK OF LOSS: Seller agrees to keep in force sufficient hazard insurance on the Property to protect all interests until this sale is closed. If the Property is destroyed or materially damaged between the Finalized Date and the closing, and Seller is unable to restore it to its previous condition prior to closing, the Buyer shall have the option of canceling this Contract and recovering the Down Payment and the Earnest Money pursuant to Paragraph 6 above, provided that notice of cancellation is received prior to closing, or accepting the Property in its damaged condition. If Buyer elects to accept the Property in its

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damaged condition, any insurance proceeds otherwise payable to Seller by reason of such damage shall be applied to the balance of the Total Purchase Price or otherwise be payable to Buyer.

27. SELECTION OF ATTORNEY: Buyer and Seller hereby do do not agree to share the fees of a closing attorney, who will represent the mortgage lender, if the sale is financed. Buyer and Seller acknowledge and agree that such sharing of fees may involve a conflict of interest on the part of the attorney and the attorney will require that an affidavit be signed at closing acknowledging the conflict of interest and Buyer's and Seller's acceptance of the same. The parties further acknowledge that they have a right to be represented at all times by separate and independent counsel in connection with this Contract and the closing thereof by an attorney of their own choosing at their own expense.

28. MEDIATION AND ARBITRATION/WAIVER OF TRIAL BY JURY: All claims, disputes or other matters in question arising out of or relating in any way to this Contract or the breach thereof, including claims against any broker or sales associate, or relating to the relationship involved with, created by or concerning this Contract, including the involvement of any broker or sales associate ("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 by a single arbitrator in Birmingham, Alabama in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect. EACH PARTY ACKNOWLEDGES THAT HE OR SHE IS KNOWINGLY WAIVING THE RIGHT TO A TRIAL BY JURY RELATING TO ALL CLAIMS. All disputes concerning the arbitrability of any Claim or the enforceability or scope of this provision shall be subject to the same binding arbitration. The parties shall bear equally the cost of the arbitrator and each party shall otherwise bear their own costs; provided the arbitrator shall have the authority to award costs as a part of this award to the extent authorized by applicable law. The arbitrator shall follow the law applicable to any Claim and shall be empowered to award any damages or other relief which would be available under the law applicable to any such Claim. The determination of the arbitrator shall be final, binding on the parties and non-appealable, and may be entered in any court of competent jurisdiction to enforce it. The parties acknowledge and agree that the transactions contemplated by and relating to this Contract, which may include the use of materials and components which are obtained from out-of-state and which otherwise include the use of interstate mails, roadways and commerce, involve interstate commerce, as that term is defined in the Federal Arbitration Act, 9 U.S.C. § 2.

Buyer's Initials Seller's Initials

29. FACSIMILE OR COUNTERPART SIGNATURES: This Contract may be executed and delivered by any party hereto by sending a facsimile of the signature or by a legally recognized e-signature. Such facsimile signature or legally recognized e-signature shall be binding upon the party so executing it upon the receipt of the signature by any other party.

30. OBLIGATION FOR FEES AND EXPENSES: Buyer and Seller acknowledge that in the event this Contract is cancelled or does not close for any reason, fees or costs paid in advance may be nonrefundable.

31. BROKERAGE FEE/COMMISSION: The commission payable to the Listing or Selling Broker in this transaction is determined by a prior written agreement between the Brokers and their respective clients or customers and is not set by The Birmingham Association of Realtors®, Inc., but in all cases is negotiable between the Brokers and their respective clients or customers.

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