

# RANDALL DAVIS HOMEBUILDER, LLC RESIDENTIAL HOME BUILDING CONTRACT

This agreement is made on the   -   day of \_\_\_\_\_, 20\_\_ between RANDALL DAVIS HOMEBUILDER, LLC, Contractor, and \_\_\_\_\_, Purchaser.

**1. SALE.** Purchaser agrees to purchase and Contractor agrees to sell the following described real estate, located in the City of \_\_\_\_\_, County of \_\_\_\_\_, State of Tennessee, and more fully described as follows: \_\_\_\_\_

\_\_\_\_\_ (the "Property"), together with the dwelling to be constructed thereon pursuant to plans and specifications approved by Purchaser and made part hereof and known as the \_\_\_\_\_ plan, upon the following terms and conditions:

**2. EARNEST MONEY.** The Purchaser herein deposits with Randall Davis Homebuilder, LLC, the sum of \_\_\_\_\_ (\$\_\_\_\_\_) as a non-refundable deposit to secure Purchaser's performance of this Contract and to be applied as partial payment of the purchase price.

**3. METHOD OF PAYMENT.** Purchaser agrees to pay Contractor the sum of \$\_\_\_\_\_ for the lot and the dwelling constructed thereon as follows: the sum of \$\_\_\_\_\_ as a deposit to be paid to Contractor upon the signing of this contract and the balance in cash or certified funds, to be paid upon transfer of title. Should the price of the lumber package increase after the execution of this Contract, the increase shall be added to the purchase price, and an addendum to this Contract shall be executed by all parties to the Contract reflecting the new purchase price.

**4. LOAN INFORMATION.** Purchaser agrees to apply for said loan within five (5) days from the effective date of this Contract or Contractor reserves the right to void this Contract. Contractor shall receive a commitment letter from the Purchaser's Lender within \_\_\_\_\_ days from the effective date of this Contract. Purchaser agrees to act in good faith and use diligence in attempting to obtain loan approval and understands and agrees that failure to do so shall constitute default and entitle Contractor to retain all monies previously paid as liquidated damages.

**5. MORTGAGE CONTINGENCY.** Purchaser's obligations hereunder are expressly contingent upon Purchaser securing a commitment letter and delivering same to Contractor on or before \_\_\_\_\_ for a mortgage in the minimum amount of \$\_\_\_\_\_. If Purchaser is unable to obtain such commitment within the time specified after making diligent application therefore, Contractor shall have the option of declaring this contract to be void and of no effect, in which event the deposit will be forfeited to the Contractor and neither party shall have any further liability to the other.

**MORTGAGE INSPECTION:** A mortgage inspection will be at the Lender's discretion, which in turn will be at Purchaser's cost. Contractor is not responsible for re-staking property to or after closing if original stakes have been removed. Purchaser is responsible for paying an additional fee for property to be re-staked if Buyer so desires.

**6. PRIVACY RELEASE:** Purchasers hereby authorize the Contractor to inquire as to our mortgage loan status at any time until our loan is closed. This includes, but is not limited to: employment verification, credit status and credit report information, income, debts, income tax returns, ratios, etc. We further authorize the mortgage company to release this information to the Contractor, until such time as our loan has closed or been denied.

**7. CONSTRUCTION.** Contractor shall commence construction upon receipt of written notice from Purchaser that all contingencies described herein have been removed or waived, and will complete construction pursuant to the plans and specifications in a good and workmanlike manner such that the dwelling shall be ready for occupancy within approximately \_\_\_\_\_ days after Purchaser obtains mortgage commitment. Both parties acknowledge that unforeseen circumstances such as labor or supply shortages, inclement weather, etc. can delay completion. In the event of delay in the completion of construction caused by reason of strikes, walkouts, government regulations, unavailability of supplies or materials, or any other cause beyond the reasonable control of Contractor, the time for completion of construction shall be extended for a period equal to the period of delay. Upon transfer of title, construction shall be deemed to have been completed in accordance with the plans and specifications with the exception of those items which Purchaser and Contractor shall agree, in writing, are to be completed or repaired after transfer of title.

**8. EXCAVATION.** In the event Contractor encounters a subterranean rock condition which cannot be removed with standard excavating equipment, Contractor shall so notify Purchaser in writing setting forth the cost to remove such condition. Within seven days of receipt of such notice, Purchaser shall notify Contractor in writing of his option to: (a) select another available lot of equal value for the construction of the dwelling; or (b) agree to pay the additional cost for removal of such condition. In the event Purchaser fails to respond within the time specified, this contract shall, at the option of Contractor, be void and of no effect, in which event the deposit will be returned and neither party shall have any further liability to the other.

**9. CLOSING:** This transaction shall be closed within fourteen (14) days following completion of construction which shall be deemed to be the date of issuance of the certification of occupancy. The Purchaser must attend a final walk-through of the property with Contractor or his agent and sign a Purchaser's Acceptance Affidavit before closing. Walk through times are Monday through Friday from 8:00 a.m. through 3:00 p.m., preferably 48 hours prior to closing. Closing and/or occupancy of the property constitutes acceptance of dimensions, material, colors, and/or products used in construction of the house and that nothing else is lacking concerning size, shape, materials, products, colors, plans, specifications, and site conditions, with exception of items noted at closing. Failure of Purchaser to close on time will result in forfeiture of all monies paid to Contractor and this Contract becoming null and void, or, at Contractor's option, a charge of \$50.00 per day be assessed against the Purchaser for every day after the two days Purchaser fails to close this sale, in order to reimburse Contractor for its costs in holding this Property by Contractor for Purchaser. Purchaser further understands that he builder one year warranty is not transferable and only applies to the original purchaser.

**10. TITLE INSURANCE.** At Purchaser's option, Purchaser may purchase an ATLA (American Land Title Assoc.) form policy of owner's title insurance from a title insurance company of its choice. If the title examination or other available information discloses material defects not being cured routinely at closing, Contractor may attempt for 30 days to cure. If Contractor is then unable to cure, Purchaser may cancel the contract and receive refund of the earnest money, or elect to accept title with such defects.

**11. PREFERRED SETTLEMENT SERVICES PROVIDER.** Southern Title on Northfield Boulevard in Murfreesboro provides closing services and is the preferred choice of the Contractor to handle the closing of this transaction. Unless otherwise specified in any Addendum to this Contract, both Contractor and Purchaser agree that Southern Title on Northfield Boulevard in Murfreesboro will close both sides of the transaction and, if permitted by Purchaser's lender, also prepare and close any documents required by Purchaser's lender. Purchaser acknowledges that they have not been required to use Southern Title for any insurance needs in this transaction and if title insurance is requested, Purchaser may choose any title insurance provider for such services.

**12. COMPLETION.** Contractor can neither imply nor guarantee a firm completion availability date for the house, such advance projections being speculative and only estimates. Contractor will make every reasonable attempt and diligent effort to meet or exceed the estimated construction schedule.

**13. DELAYS.** Contractor may, in its sole discretion, extend the date of completion for a period equal to the time of delays caused by unavailability of materials, inclement weather, strikes, changes in governmental regulations, delays in availability of utilities and acts of God. Said list is non-exclusive list and Contractor will provide reasonable proof that said time changes are valid.

**14. PLANS, SPECIFICATIONS AND OTHER CONTRACT DOCUMENTS:**

- A. Change Order Form
- B. Limited Warranty
- C. All Addendums

Purchaser has reviewed all of the above documents and accepts them as integral parts of this Contract without exception.

**15. INSPECTIONS AND ACCEPTANCE OF WORK:** Purchaser agrees not to issue any instructions or otherwise interfere with builders, subcontractors, or suppliers. Purchasers shall completely inspect the property prior to the closing with the Contractor or Contractor's agent. Purchaser agrees that closing of this Contract will mean acceptance of all standards and specifications as seen, including deviations or changes from the original and that all items are considered complete, excepting warranties and items as noted. Purchaser and Contractor shall agree, in writing, those items that will be repaired or completed by the Contractor within a reasonable time. Contractor shall make his best effort to correct all reasonable defects; however, it may not be possible to do so prior to closing. Completion of this home shall be deemed when an appropriate Certificate of Occupancy shall be given by the governing authority. All construction will be considered done according to applicable codes when the Certificate of Occupancy is issued. Periodic inspections have been performed by a certified city or county official during the process of construction. Inspections by governing authorities shall be deemed done if a Certificate of Occupancy is issued. Should Purchaser choose to select an independent Home Inspector (at Purchaser's expense) for further inspection, then such individual must be either a licensed contractor or a professional qualified with an acceptable professional license, issued by the State of Tennessee. Then and only then will items found in non-compliance with accepted applicable codes as of the date of construction, be repaired or brought to standards. No cosmetic items will be recognized.

**16. ALLOWANCES.** A list of standard/optional items is included with this contract. Any upgrading of any item must be done through Contractor's supplier. A list of suppliers will be provided by the listing agent. The cost of the upgrades will be paid by the Purchaser at the time of the contract, or to the supplier prior to be ordered. All selections (colors, cabinets, flooring, carpet, light fixtures, fans,

etc.) must be made and paid for no later than twenty-on (21) days from the Effective Date of the Contract, or Contractor reserves the right to make selections for the Purchaser.

**17. CHANGES OR ADDITIONS.** Request for changes or additions must be made in writing to Contractor and agreed upon by Contractor. Contractor may require Purchaser to pay two hundred dollars (\$200.00) prior to the change being made for a change order fee in addition to the cost of said extras. Should the Purchaser furnish any item for the purposes of placing the item or items in the home, Contractor will not be liable nor warrant such items for the purpose of placing these items in the home. In the event that Purchaser fails to close on the property, Contractor shall retain all funds paid for changes and said changes will become a part of the real property.

**18. CONVEYANCE AND TITLE:** Contractor hereby agrees to sell and convey the Property by a good and valid warranty deed to said purchaser, or to such person he may in writing direct and Purchaser hereby agrees to purchase property from Contractor, subject to and upon the terms and conditions set forth in this Contract. Title to be conveyed subject to all restrictions, easements of record, zoning ordinances and all other laws of governmental authority.

**19. RESTRICTIVE COVENANTS:** Purchaser is in possession of the Restrictive Covenants for \_\_\_\_\_ and acknowledges that Purchaser's intended use of the Property conforms therewith.

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**20. FEES AND POINTS.** All fees, points and expenses related to the mortgage shall be paid by the Purchaser. Contractor shall not be responsible for any fees, nor shall Contractor be responsible if an interest rate lock expires due to delays in construction and the property does not close at the expected time.

**21. TERMITE INSPECTION:** Contractor agrees to provide an appropriate termite clearance letter or soil treatment letter at closing, as may be required by lender.

**22. OCCUPANY.** Occupancy shall be given at closing. Any occupancy without Contractor's written approval prior to that date shall be deemed unlawful. No furniture or appliance deliveries will be allowed until after the closing has taken place.

**23. CASUALTY LOSS.** It is understood and agreed that loss by fire or otherwise of the improvements located on the property shall remain with the Contractor and shall only pass to the Purchaser at closing of the transaction; however, Purchaser shall assume responsibility for any items placed on the property by Purchaser. Contractor's hazard insurance to be cancelled at closing.

**24. PRORATION.** All real estate taxes are to be prorated as of the closing date. Back taxes, if any, are to be paid by Contractor.

**25. BREACH OF CONTRACT BY PURCHASER:** If this contract is breached by Purchaser or if Purchaser fails, for any reason, to complete the purchase of this Property in accordance with the terms set forth herein, Contractor shall have the right to declare this Contract null and void, and upon such election, the deposit shall be retained by Contractor. Contractor shall also have the right to affirm this Contract and enforce its performance and/or recover full damages for its breach and recover attorney fees and litigation expenses.

Contractor may nullify this Contract, declare it null and void, and refund to the Purchaser the earnest money if Contractor determines that Purchaser has interfered with subcontractor's performance of their jobs or harassed Contractor during construction of this project. The effect of this nullification shall be that Purchaser has no further right to purchase the property whatsoever, and the Contractors may freely sell the property to a third party.

**26. BREACH OF CONTRACT BY CONTRACTOR:** If this Contract is breached by Contractor or if Contractor fails for any reason to complete the sale of this Property in accordance with the terms set forth herein Purchaser shall also have the right to affirm this Contract and enforce its specific performance.

**27. DISCLAIMER.** Contractor and Purchaser acknowledge that they have not relied upon the advice or representations, if any, of the Broker or Broker's agent in regard to the Contract, the structural condition of the property, the operation condition of the electrical, heating, air conditioning, plumbing, water heating systems, appliances in the Property, the availability of utilities to the property, zoning ordinances or the investment potential or resale value of the property or any other matter regarding this Contract or the condition of the Property. Contractor and Purchaser acknowledge that if such matters have been of concern to them, they have sought and obtained independent advice, expertise, or the like relative thereto.

**28. SPECIAL PROVISIONS:**

- A. Drainage of the land is not the responsibility of the Contractor. If drainage issues occur affecting the land and/or the home, Purchaser covenants not to sue the Contractor for any such defects.
- B. Contractor agrees to furnish, in writing, at closing, a Limited Warranty. Purchaser agrees that said warranty is in lieu of all warranties, statutory or otherwise, express or implied. We understand that the builder one year warranty is not transferable and only applies to the original purchaser of this transaction. Purchaser agrees to make all warranty requests in writing. **THIS EXPRESS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR HABITABILITY, ALL OF WHICH ARE DISCLAIMED BY THE CONTRACTOR AND WAIVED BY THE PURCHASER.**

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- C. **Arbitration:** Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration in accordance with the rules of Construction Arbitration Services, Inc. in effect at the time of the request for arbitration or by such other arbitration service in effect at the time of the request for arbitration. The decision of the arbitrator shall be final and binding and may be entered as a judgment in any State or Federal court of competent jurisdiction. The expenses of the arbitration for the Arbitrator solely shall be shared equally, but each party shall bear its own attorney's fees, other costs and fees, including but not limited to, the costs of experts for reports, testimony, travel, etc.

Initial Purchaser(s): \_\_\_\_\_ Initial Contractor(s): \_\_\_\_\_

**After Closing:** Any controversy or claim arising from the construction of Purchaser's home will be settled by binding arbitration, as detailed above.

**D. Radon Notice and Disclaimer:** The United States Environmental Protection Agency (EPA) and the Tennessee Department of Health or Environmental Protection has expressed concern over the presence of radon gas in homes. Prolonged exposure to high levels of indoor radon or its progeny may affect the health of residents. Although such conditions may exist, the Contractor has made no investigation to determine whether radon gas or other environmental pollutants are present in the home or affecting the premises. The Contractor has made no analysis or verification of the extent of the environmental or health hazard, if any that may affect the premises or residents. The Contractor makes no representations or warranties as to the presence or lack of radon or hazardous environmental condition, nor as to the effect of radon on any such condition on the premises or residents. The Contractor further disclaims and Purchaser waives, unless otherwise expressly provided in the Contractor's Limited Warranty, all warranties, express or implied, including, but not limited to the warranties of good workmanship, habitability, merchantability, and fitness of purpose, and including any warranties that could be construed to cover the presence of radon or other environmental pollutants. The only warranties the Contractor provides to the Purchaser are those contained in the Limited Warranty.

**E. Molds, Spores, Mildew, Vermin, Fungae and the Like; Notice and Disclaimer:** The Contractor has used all diligence, all standard accepted building practices, all standard materials and has followed the existing City or County Code as close as is humanly possible. Purchaser accepts, as the future homeowner, that the Contractor is unable to protect or treat for unforeseen items such as attacks by molds, spores, mildews, vermin, fungae or the like. This does not mean that at some point in the future, these conditions may not exist or make themselves known or even now be in a dormant state. Purchaser is also aware that some items placed in this house, by the very nature of being organic, natural, man-made, or porous, may contain molds, spores, mildew, vermin, fungae, or the like, that do not at present appear or show any signs of being present. Purchaser further states that they will hold the Contractor harmless and release Contractor from any and all liability that such items or attacks may present and will seek no further remedies. Purchaser further understands that many different conditions may or may not ever exist. The Contractor has and will use all diligence to use quality accepted materials, standards, practices, and techniques. Purchasers do not expect any warranty nor will they expect this condition to be warranted. The Contractor makes no representation or warranty as to the presence or lack thereof and these items will not be warranted, nor be covered in the Limited Warranty.

Initial Purchaser(s): \_\_\_\_\_ Initial Contractor(s) \_\_\_\_\_

**F. Conditions resulting from condensation on, or expansion or contraction of materials will not be warranted.**

**G. Hazardous Materials:** The Contractor hereby grants to the Purchaser and the Purchaser's agents and employees the right to enter the Property, or any portion thereof for thirty (30) days following the execution of this Contract for the purpose of conducting, at the Purchaser's own cost, any soil, geologic, engineering, and environmental investigations that the Purchaser may desire. If any of these investigations disclose the presence of any amount of hazardous waste or toxic substances that the Contractor is unwilling to correct to the satisfaction of the Purchaser, the Purchaser or the Contractor may cancel this Contract and all rights of both parties under the Contract shall cease.

**H. Injury Liability;** PURCHASERS ARE AWARE THAT ENTRY UPON THE CONSTRUCTION SITE IS A HAZARDOUS ACTIVITY, AND THEY SHALL BE VOLUNTARILY ENTERING UPON THE CONSTRUCTION SITE WITH THE KNOWLEDGE OF THE DANGER INVOLVED AND THEY AGREE TO ACCEPT AND

ASSUME ANY AND ALL RISKS OF INJURY, DEATH AND PROPERTY DAMAGE. *In addition, Purchasers hereby release and discharge Contractor its agents and employees, from all claims and actions that Purchasers, their heirs, invited visitors, or legal representatives now have or may hereafter have, for injury or damages arising out of or related to entry upon said lot.*

- I. Square Footage.** Contractor has or will, with all diligence, construct the improvements in substantial compliance with the plans and square footage in connection with improvements. It is the Purchaser's sole responsibility to measure the home, no stated floor plan footage shall be guaranteed. Purchaser further acknowledges that any advertising materials or floor plan information is intended for general information only.
- J. Crawl Space.** Contractor does not guarantee the crawl space, if applicable, will be absolutely dry at all times; however, a positive drain will be installed, if needed, in the sole discretion of the Contractor.
- K. Yard and Landscaping.** Contractor will finish the yard and landscaping in the usual and customary manner, consistent with his previous residential projects. Contractor does not guarantee that some rocks or gravel will not be visible on the surface of the yard and does not guarantee that grass will grow, nor can he guarantee a lawn. Lawn and landscaping are established through years of reseeded, diligent watering, and hard work. Heavily wooded lots will be cleared to the rear portion of the house, clearing limits to extend beyond the rear of the building an adequate distance to provide construction access only. Yards will be seeded and strawed once only and to the limits of the tree line. Yards are seeded during all seasons to prevent erosion. Until grass sprouts and covers the yard, some small pools of water will likely appear. There is no warranty on trees or landscaping and no trees or stumps will be removed after the lot has been cleared for footing.
- L. Concrete.** Purchaser understands that concrete will settle and occasionally crack. Contractor will not be responsible for any cracks in concrete, mortar, or brick.

**29. SEVERABILITY.** In the event any provision of this Contract shall be held invalid by a Court of competent jurisdiction, such invalid provision shall not affect the other provisions of this Contract, said provisions being severable.

**30. TIME IS OF THE ESSENCE.** Time is of the essence of this Contract and all of the conditions thereof.

**31. ENTIRE AGREEMENT:** This Contract contains the entire agreement of the parties relating to the subject matter hereof and cannot be changed except by their written consent. The following addendum(s) are part of this Contract: (List and attach or, if none, print none)

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**I CERTIFY THAT I HAVE FULLY READ, UNDERSTAND AND ACCEPT ALL OF THE PROVISIONS OF THIS CONTRACT.**

Witness our signatures on the dates below written:

RANDALL DAVIS HOMEBUILDER, LLC

by: \_\_\_\_\_  
CONTRACTOR Date

\_\_\_\_\_  
PURCHASER Date

\_\_\_\_\_  
PURCHASER Date

Purchaser's Telephone Number:  
\_\_\_\_\_