

# DAVID MOORE CONSTRUCTION, LLC TENNESSEE NEW HOME CONTRACT

## Lot with No Public Water and/or Sewer

Date: \_\_\_\_\_, 20\_\_\_\_

DAVID MOORE CONSTRUCTION, LLC, (hereinafter called "DMC") hereby agrees to sell and convey to \_\_\_\_\_, presently residing at \_\_\_\_\_ (address) Phone \_\_\_\_\_ (home) \_\_\_\_\_ (his work) \_\_\_\_\_ (her work), (hereinafter called "Purchaser"), and Purchaser hereby agrees to purchase from DMC the following described real property situated in the City of \_\_\_\_\_, County of \_\_\_\_\_, State of Tennessee, to-wit:

Lot \_\_\_\_\_, Subdivision \_\_\_\_\_, commonly known as \_\_\_\_\_ (property address), together with a residential dwelling constructed or to be constructed thereon (hereinafter called the "Residence") substantially in accordance with the plans and specifications prepared for DMC as Plan Number \_\_\_\_\_, Elevation \_\_\_\_\_, and approved for \_\_\_\_\_ bedrooms or square footage per the Fayette County Division of Ground Water Protection or any other governmental body who has jurisdiction over ground water control for the subject property, which are available for inspection by Purchaser at DMC's Office and not in strict conformity with any model home. The purchase price shall include any variations and/or optional items, and builder allowances (if applicable) listed on the addendum attached hereto and incorporated herein by reference. DMC reserves the right to make such changes or substitutions in the construction of the Residence (i) as may be required, authorized or approved by governmental agencies having jurisdiction thereover, (ii) as DMC may deem appropriate so long as materials of equal or better quality are used, or (iii) as DMC deems appropriate so long as the change does not affect the value of the home. DMC also has the right to reverse floor plans if DMC deems it necessary. Purchaser acknowledges that DMC may not own the above referenced lot at the time this contract is executed. If DMC does not acquire title to said lot, then this contract shall, at DMC's option, be declared null and void and neither party shall have any further liability to the other with the earnest money being refunded in full to Purchaser.

**1. TOTAL SALES PRICE:** The purchase price is \_\_\_\_\_, to be paid to DMC by Purchaser in cash at closing.

**2. EARNEST MONEY:** \_\_\_\_\_ acknowledges receipt of (\$ \_\_\_\_\_) DOLLARS (in the form of \_\_\_\_\_) as earnest money. Said amount is to be held in escrow by \_\_\_\_\_ at \_\_\_\_\_ (address) and will be applied to the purchase price at closing.

**3. A. FINANCING:** This Contract contingent upon Purchaser securing a loan commitment from a local designated lending institution ("Lender") for a (\_\_\_) FHA; (\_\_\_) VA; (\_\_\_) Conventional; (\_\_\_) Maximum Loan at \_\_\_\_\_% interest, or whatever the prevailing rate, with monthly payments of principal and interest amortized over a period of \_\_\_\_\_ years. FHA Mortgage Insurance or VA Funding fee to be added to loan amount.

**B. LOAN APPLICATION:** Purchaser agrees to make written loan application with Lender within Five (5) days of Ratified Contract date. Purchaser to pay for credit report and appraisal at time of loan application. In the event the appraisal fee has been paid by DMC prior to Contract, then Purchaser shall reimburse DMC at time of closing, unless otherwise specified herein. The Purchaser hereby authorizes the Lender to release Purchaser's financial information to DMC, to DMC's representative, or construction lender (written or verbal), and requests that Lender do so as soon as available. Purchaser shall cooperate with DMC and Lender. Purchaser shall diligently and timely pursue loan approval in good faith, execute all documents and furnish all information and documents required by Lender and timely pay the costs of obtaining such loan. Failure to do so shall constitute a breach. Purchaser failing to make loan application, canceling the loan, or failing to obtain spouse's signature, co-borrower's signature, or co-signer's signature on loan application or other loan documents if applicable, shall also constitute a breach.

**C. LOAN COMMITMENT:** DMC is not obligated to obtain construction financing or start construction until Purchaser or Purchaser's Agent has delivered to DMC a written "Permanent and Final Loan approval and Commitment" with no conditions other than a clear final inspection by FHA, VA or Mortgagee. However, DMC reserves the right to start construction at any time. If such loan commitment cannot be obtained within forty-five (45) days of the Ratified Contract Date, then this Contract shall become null and void at the option of DMC only. If Purchaser shall have fully complied with LOAN APPLICATION paragraph and Lender denies the loan application, the Earnest Money shall be refunded by mail within thirty (30) days after DMC receives Lender's denial letter, less costs incurred in attempting to obtain Purchaser's loan, and the Contract shall be considered terminated. If the loan commitment letter is not available due to Purchaser's failure to comply with LOAN APPLICATION paragraph, then it shall constitute a breach. Purchaser failing to possess funds to qualify, failing to obtain a gift letter or funds if applicable, or receiving a loan denial due to a change in marital status, a change in job status, a change in the Debt Ratio status, or filing for bankruptcy or similar relief, shall also constitute a breach.

**4. APPRAISAL:** Purchaser to pay for appraisal at time of loan application. In the event the appraisal fee has been paid by the DMC prior to this contract, then the Purchaser shall reimburse DMC at time of closing, unless otherwise specified herein.

**5. DISCOUNTS:** Discounts on the loan, if any, shall be paid by \_\_\_\_\_ and shall not exceed \$\_\_\_\_\_.

**6. CLOSING:** Closing to be on or about \_\_\_\_\_, but no later than 48 hours after completion of property, loan

approval, and preparation of closing documents. Possession with Deed. It is understood and agreed at DMC's option, the closing date may be extended for up to two (2) forty-five (45) day periods from the above-mentioned closing date. Purchaser acknowledges that delivery of the house is approximate due to construction delays, weather and lot acquisition and that said closing is an estimate. The parties further understand that the closing date is projected based upon an assumption of good weather, no construction delays and prompt acquisition of the lot. Purchaser understands that in the event that there are delays in construction beyond those set forth herein, DMC shall have no liability to Purchaser for damages resulting from failing to close beyond a refund of earnest money.

**7. CLOSING AGENT/ATTORNEY AND TITLE COMPANY:** The Closing Agent or Attorney shall be Nashoba Escrow Company, Inc. and Mark B. Miesse, using Chicago Title Insurance Company.

**8. LIMITED WARRANTIES:** DMC agrees to provide in written form, a DMC One Year Builder Warranty or such other comparable warranty as designated by DMC. Purchaser and DMC agree to the terms and conditions of this warranty and agree that this limited warranty is DMC's sole warranty and that it limits the liability of DMC. Purchaser acknowledges the terms and conditions of this warranty which is incorporated herein and agree to follow the procedures enumerated therein. THE EXPRESS LIMITED WARRANTIES CONTAINED THEREIN ARE IN LIEU OF ALL OTHER WARRANTIES, STATUTORY OR OTHERWISE, EXPRESSED OR IMPLIED, ALL OTHER REPRESENTATIONS MADE BY DMC AND ALL OTHER OBLIGATIONS OR LIABILITIES WITH RESPECT TO SAID PROPERTY INCLUDING ANY WARRANTIES OF HABITABILITY, WORKMANLIKE CONSTRUCTION, DESIGN, CONDITION, QUALITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE AND LIMIT PURCHASER'S REMEDIES AND DMC'S LIABILITIES. IN NO EVENT SHALL DMC'S OBLIGATION EXCEED ITS OBLIGATION SET FORTH IN SAID WARRANTY. IN NO EVENT SHALL DMC BE LIABLE FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES. (Purchaser(s) initials) \_\_\_\_\_.

**9. ARBITRATION CLAUSE:**

**A.** All disputes and controversies between the parties arising out of or in connection with this Real Estate Sales Contract, as to the existence, construction, validity, interpretation or meaning, performances, nonperformance, enforcement, operation, breach, continuance, or termination thereof shall be submitted to arbitration pursuant to the following procedure:

1. Either party may demand arbitration in writing within one hundred twenty (120) days after the controversy arises; this demand shall include the name of the arbitrator appointed by the party demanding arbitration, together with a statement of the matter in controversy.

2. Within sixty (60) days after the demand, the other party shall name [his or her or its] arbitrator and the two arbitrators so selected shall name a third arbitrator within thirty (30) days.

3. Each party shall bear [her or his or its] own arbitration costs and expenses.

4. The arbitration hearing shall be held at the Home Builders Association of Memphis on five days= notice to the parties; the arbitration rules and procedures of the American Arbitration Association shall be incorporated by reference, and the law of evidence of the State of Tennessee shall govern the presentation of evidence in the hearing.

5. The arbitration hearing shall be concluded within two (2) days, unless otherwise ordered by the arbitrators and the award shall be made within thirty (30) days after the close of the submission of evidence. An award rendered by a majority of the arbitrators appointed pursuant to this agreement shall be final and binding on all parties to the proceeding during the period of this agreement, and judgment on the award may be entered by either party in the highest court, state or federal, having jurisdiction.

**B.** The parties stipulate that the provisions of this agreement shall be a complete defense to any suit, action, or proceeding instituted in any federal, state, or local court or before any administrative tribunal with respect to any controversy or dispute arising during the period of this agreement. The arbitration provisions shall, with respect to the controversy or dispute, survive the termination or expiration of this Real Estate Sales Contract.

**C.** Nothing contained in this agreement shall be deemed to give the arbitrators any authority, power, or right to alter, change, amend, modify, add to, or subtract from any of the provisions of this Real Estate Sales Contract.

**D.** This agreement is made pursuant to the provisions of the Tennessee Uniform Arbitration Act, Title 5, Chapter 29 Tennessee Code Annotated.

**10. FINAL SURVEY:** Final survey provided by DMC shall be paid for at time of closing by Purchaser.

**11. BROKERAGE:** DMC agrees to pay \_\_\_\_\_ at closing, the fee specified by separate agreement. The Listing Broker shall direct the Closing Agent to pay the Real Estate Selling Company, from the commission received, an amount in accordance with the terms and conditions specified by agreement between the Listing Broker and the Real Estate Selling Company.

**12. TITLE RESTRICTIONS:** Title is to be conveyed subject to all restrictions, easements and covenants of record, and applicable zoning laws, and taxes coming due after closing.

If applicable to the property, the Purchaser acknowledges that he has been given the opportunity to read all Homeowner Association documents.

**13. SETTLEMENT WITH VALID TITLE:** Settlement and payment of balance, if any, of cash payment shall be made upon presentation of a good and valid warranty deed or other proper means of conveyance with the usual covenants and conveying a good and merchantable title, after allowing reasonable time for examination of title. At Purchaser's election, DMC agrees promptly to furnish for examination only, either title search or adequate abstracts of title, taxes and judgments covering property or, at DMC's option, a policy of title insurance for the

amount of the above purchase price, insuring marketability of title and paid for by DMC. Adequate abstracts of title, taxes and judgments are those required by a title insurance agency as the basis for the issuance of a title insurance policy. In the event of controversy regarding title, a title insurance policy covering property for the above purchase price shall constitute and be accepted by Purchaser as conclusive evidence of good and merchantable title. In each case, the title insurance agency must be one with a local office.

**14. FAILURE TO CLOSE:** If the title is good and merchantable and Purchaser shall fail to pay for the Property as specified herein, then it shall constitute a breach. The Purchaser canceling the closing, refusing to close after a clear final inspection and acceptance by VA, FHA, mortgagee, or applicable Code Enforcement Department, failing to possess funds to close, or failing to obtain the required signatures to close if applicable, or failing to satisfy the conditions set forth in LOAN APPLICATION OR LOAN COMMITMENT paragraph, shall constitute a breach. If DMC cannot convey a good and merchantable title or should DMC fail to close, the Purchaser shall be limited to the remedies as stated in BREACH BY SELLER paragraph #31. Purchaser understands and agrees that by closing, Purchaser is not waiving the right to have the home completed in accordance with this Contract. Purchaser does, however, acknowledge Purchaser's duty to close in accordance with the Contract.

**15. COMPLETION AND INSPECTION:**

**A. INSPECTION BY PURCHASER:** Purchaser agrees that the direction and supervision of the workers on the Residence, including subcontractors, rests exclusively with DMC, and Purchaser agrees not to issue any instruction to or otherwise interfere with such workers. Purchaser further agrees not to contract with DMC's subcontractors or to engage other builders or subcontractors for any work on or about the Residence except after closing.

Purchaser shall at a designated time set prior to Closing Date, completely inspect the Residence with DMC or DMC's Agent. If Purchaser should decided to have the property inspected by a professional home inspector it shall be preformed with DMC or DMC's agent present at a designated time set seven to ten days before the final walk through inspection referred to above. While the choice of having the property inspected by a professional home inspector is solely the Purchaser's decision, no home inspector or any other subcontractors hired solely by the Purchaser shall be on to the property with out proof of valid general liability, workers compensation and disability insurance. The Purchaser agrees that he/she will assume all liability for the home inspector or any subcontractors the Purchaser hires themselves. Purchaser and DMC shall agree in writing, those items that will be repaired or completed by DMC within a reasonable time after Closing Date, and upon execution of said Agreement, Purchaser will have accepted the Residence and acknowledged that the Residence was constructed pursuant to this Contract except as set out in said Agreement.

**B. COMPLETION:** It is understood and agreed between parties that DMC shall be deemed to have performed this Contract as to construction of the residence hereinabove described when it shall have obtained the final inspection from VA and/or FHA and/or applicable Code Enforcement Department. Time being of the essence, Purchaser agrees to immediately close said loan and purchase the above-described property within twenty-four (24) hours of being notified, or at a time designated by DMC, if later. Possession shall be given to Purchaser immediately after closing. DMC shall not be held responsible for any delay in construction of the Residence by the act, neglect, failure or default of subcontractors, workmen, or suppliers; by alterations, changes or additions to the Residence, public laws, or act of public officials, strikes, lock-outs, actions of the elements, acts of war, inability to obtain materials, or by any cause beyond DMC's control. DMC shall make a reasonable effort to construct this Residence in conformance with models and house plans, however, DMC specifically reserves the right to make such modifications or substitutions in the construction of Residence as may be required, authorized or approved by governmental agencies having jurisdiction thereover, or as DMC deems appropriate. DMC reserves the exclusive right to reverse the plan's orientation on the lot and to choose substitute selections for any selections that have not been submitted or are unavailable to DMC within ten (10) days of the execution of the Ratified Contract. Purchaser agrees that construction of said residence shall not be delayed to wait for Purchaser's selections. Should construction of the house plan herein be started and selections have been made, Purchaser agrees to accept said house plan, its location on the Property, elevation and finish of the Residence and all selections chosen by DMC or others. If for any reason, the Residence is not completed as approved on the final VA, FHA, mortgagee or applicable Code Enforcement Department within eighteen (18) months from the Ratified Contract date, then the Contract may be terminated at the option of DMC or Purchaser and Earnest Money shall be returned.

**16. PRORATIONS AND TAXES:** All taxes and applicable assessments shall be prorated as of closing. All prorations shall be based upon the last known assessment, and if no lot assessment is available, then there shall be no prorations. DMC shall not be responsible for any supplemental taxes which may be assessed after closing or any tax liabilities after closing.

**17. SETTLEMENT AGENT FEES:** Purchaser and DMC are to pay their own Settlement Agent fees.

**18. PURCHASER'S COSTS:** Purchaser is to pay for the preparation of note or notes, trust deed, purchase money trust deed, if any, notary fee on trust deed or deeds, recording of the deed of conveyance, and if one is used, recording of the purchase money trust deed, state transfer taxes and Register's fee on all deeds; expense of title examination and title insurance, and all other legally chargeable loan expenses incident thereto.

**19. OPTIONS, CHANGES AND ADDITIONS:** Options, changes and/or additions must be agreed upon by both Purchaser and DMC to become part of this Contract. No options, changes or additions to plans and/or specifications will be made unless included with this Contract. Purchaser understands that changes are to be requested in writing on a form proscribed by DMC together with the non-refundable change order review fee of \$100.00. DMC will review the requested change and submit a proposed estimate of cost. The parties understand that no change must be made by DMC until agreed to by all parties and the non-refundable change order review fee is paid by Purchaser. Purchaser understands that the projected cost for the option, change or addition is an estimate only, and Purchaser shall pay the actual cost once suppliers and subcontractors bills

are presented, together with a fee to DMC of \_\_\_\_\_% of the actual increased cost of construction. If Purchaser instructs a subcontractor or laborer as to specific construction without DMC approval, Purchaser agrees to become personally responsible for the cost of the work and further agrees that the DMC has no obligation whatever as to the workmanship of the specific construction, and DMC shall not warrant same. In the event Purchaser fails to close the sale for any reason, DMC shall retain all funds paid for said options, changes and/or additions without reimbursement to Purchaser. PURCHASER HAS BEEN ADVISED THAT THIS MAY RESULT IN FINANCIAL LOSS TO PURCHASER.

**20. ALLOWANCES:** PURCHASER shall have choice of the following, within DMC=s allowances and with DMC=s suppliers. Any overages are to be paid for prior to installation. PURCHASER understands that if PURCHASER fails to close, for any reason, there will be no refund for any changes or overage expenses.

Carpet.....\$ \_\_\_\_\_ .....\$ \_\_\_\_\_  
Vinyl.....\$ \_\_\_\_\_ .....\$ \_\_\_\_\_  
Wallpaper.....\$ \_\_\_\_\_ .....\$ \_\_\_\_\_  
Light Fixtures.....\$ \_\_\_\_\_ .....\$ \_\_\_\_\_

Additional allowances, if any, are set forth in Exhibit A, attached hereto and made a part hereof.

**21. DMC'S COSTS:** DMC is to pay for preparation of warranty deed, or deed of conveyance, notary fee on deed, and title search or abstract.

**22. LENDER FEES:** DMC HAS NO CONTRACT OR AGREEMENT WITH THE LENDING INSTITUTION PROVIDING LOAN TO PURCHASER AND WILL PAY NO FEES TO THE LENDER EXCEPT THOSE ALREADY SPECIFICALLY MENTIONED IN THIS CONTRACT OR UNLESS OTHERWISE AGREED UPON IN WRITING BETWEEN THE LENDER AND DMC.

**23. TERMITE PROVISION:** DMC agrees to furnish, at closing, a soil treatment guarantee from a licensed and bonded termite control operator as may be required by the Lender.

**24. RISK OF LOSS:** It is understood and agreed between DMC and Purchaser that the risk of loss by fire or otherwise of the improvements located on Property shall remain with DMC and shall only pass to Purchaser at closing of the transaction; and further, that in the event of destruction by fire or otherwise, DMC's liability shall in no event be more than the appraised value of the improvements so destroyed as determined by DMC's Builder's Risk Insurance carrier.

**25. COSTS AND ATTORNEY FEES:** Should any party to this Contract bring an action against any other party to this Contract to enforce any claim hereunder, or as the result hereof, then the prevailing party or parties shall be entitled to recover all costs of said action and reasonable attorney fees. For the purpose of this provision, party is defined as and includes the Purchaser, DMC, above indicated Real Estate Brokers and participating Agents. The term prevailing party as used in this paragraph shall be defined as the party or parties to whose favor a court shall rule for or against whom no relief is granted.

**26. GRADE OF LAND:** Purchaser agrees that DMC has made no representations regarding the final grade of the lot after the completion of construction of the Residence, and Purchaser recognizes that the final grade and configuration of the Residence on the lot shall be dictated by DMC's construction practices and may vary substantially from that of any model home or lot viewed by Purchaser. DMC shall grade the lot to satisfy any inspecting agencies. Any alteration to the swales or grade by Purchaser during the warranty period shall void limited warranty coverage, if any, of the grade, landscaping, sod and foundation.

**27. AMENITIES AND COMMON AREAS:** Purchaser understands that DMC purchases finished lots from developer and is not affiliated or responsible for any actions of that developer or current or future homeowner's association. Purchaser agrees that no representation or warranties have been made regarding the completion, maintenance, or fitness of use of these amenities and/or common areas, if applicable.

**28. NURSERY STOCK AND NATURAL TREES:** Nursery stock (including sod/seed) installed by the DMC shall be healthy and alive (or in a seasonal dormant state) on the date of closing. The type and amount of nursery stock and sod/seed will be dictated by DMC's construction practices and allowances and may vary from that of any model or market home viewed by Purchaser. Purchaser is advised that DMC only provides a "starter type" nursery stock and sod/seed. No representation is made by DMC as to the establishment or maturity of said nursery stock, sod/seed as Purchaser shall be required to care for and maintain the before-mentioned to obtain a naturally mature/established yard.

It is specifically stipulated that natural trees or other natural growth will be excluded from any warranty. However, DMC shall use reasonable care to protect the health of natural growth during construction, but if unable to do so, may remove the natural growth from the lot prior to closing. Removal of damaged or unhealthy natural growth shall only be determined and performed by DMC prior to closing or by written agreement between DMC and Purchaser at preclosing inspection.

**29. GOVERNING LAW:** Tennessee law governs this Contract. The parties agree to submit themselves to the jurisdiction of the Courts of the State of Tennessee and agree that Shelby County shall be proper venue.

**30. BREACH BY PURCHASER:** If this Contract is breached by Purchaser or if the Purchaser fails for any reason to complete his purchase of Property in accordance with the terms and conditions set forth herein, DMC shall have the following remedies. DMC shall be excused from further performance and may sell the property to a third party without in any way limiting DMC's remedies set forth below. DMC may declare

this Contract terminated and Earnest Money plus non-refundable funds shall be forfeited and an addition five thousand dollars (\$5,000.00) shall be paid by Purchaser to DMC as liquidated damages. Earnest Money, non-refundable funds, or other damages paid to DMC, shall not in any way prejudice the rights of DMC or Broker in any action for damages or specific performance, or both. Purchaser shall be obligated to pay all costs or losses which DMC may sustain, including lost profit, court costs and expenses of litigation, including attorney's fees. Purchaser shall also be obligated to pay any sales commissions that are due.

**31. BREACH BY SELLER:** If this Contract is breached by DMC or if DMC fails for any reason to complete the sale, Purchaser may terminate this Contract by written notice to DMC and receive a refund of the Earnest Money as Purchaser's sole remedy. Purchaser hereby waives the right to damages or specific performance, or both from DMC.

**32. NOTICE TO PURCHASER:** Any notice to Purchaser shall be effective when received by Purchaser or the Selling Real Estate Company.

**33. FACSIMILE SIGNATURES:** Facsimile signatures shall be deemed valid on all documents related to this Contract.

**34. ACCEPTANCE:** If DMC accepts this proposal in writing, this instrument shall become a ("Ratified") Contract between the Purchaser and DMC. A copy of this document may be executed by each party, separately, and when each party has executed a copy thereof, such copies taken together shall be deemed a full and complete Contract between the parties.

**35. SURFACE WATER:** The amount of surface water traversing a lot is subject to the intensity and duration of rainfall and other factors beyond the control of DMC, and will vary according to terrain and location. DMC makes no representation or warranty concerning the amount of surface water that will traverse the lot during periods of peak water inundation, and shall not be responsible or liable for any claims of any kind or character resulting from said inundation, except to meet the requirements of VA and/or FHA applicable Code Enforcement Department and/or as set forth in written warranty provided PURCHASER at closing.

**36. WATER, SEWER and LOT PLACEMENT:** DMC makes no warranties as to the placement of the construction of the home on the lot because the placement is determined by conditions beyond the control of DMC and are subject to the approval of various governmental bodies, such as the Fayette County Division of Ground Water Protection, to determine the location and design of the septic system prior to any lot grading or construction. DMC makes no warranties and Purchaser agrees to waive all liability for DMC and DMC's agents in regard to the installation of any septic system or well water system that is not supplied by a governmental body. Also, DMC does not warrant the result of any percolation test performed on the lot. DMC does not warrant the water quality that is supplied to the lot via ground water. DMC makes no warranties as to the number of bedrooms a home will be approved for by the Fayette County Division of Ground Water Protection on any lot provided by the Purchaser. DMC does not recommend and will not install any type of irrigation system in the septic field area, because watering of the septic field area can potential cause failure of the septic system. Please note the sensitivity of the septic field area. Caution needs to be taken as not to allow heavy machinery to cross the septic field lines. Doing so could possibly damage the septic system.

**37. POOL PLACEMNET ON LOT:** DMC makes no representations as to the ability to add a pool or any other feature planned to be placed on the lot after construction. It shall be the Purchaser's responsibility to seek approval from the local governing body, (such as the Fayette County Division of Ground Water Protection in Somerville (901) 465-7414)), as to the ability to add and the location of any additional structures after construction, such as a pool, spa, or water garden to insure the additional feature does not violate any restriction place on the lot such as infringe on the septic field area.

**38. SPRINKLER SYSTEM:** DMC warrants that it has installed any and all sprinkler systems correctly and in accordance with industry standards. DMC makes no representation or warranty concerning the effectiveness or performance of said sprinkler system, and shall not be responsible or liable for any claims of any kind or character resulting from the malfunction of said sprinkler system or its failure to extinguish any fire which may occur in the Residence.

**39. DISPUTES:** Notwithstanding any of the above, in the event that a bona fide dispute should arise between Purchaser and DMC, before the consummation of this Contract, and if such bona fide dispute cannot in good faith be resolved completely and to the satisfaction of both parties within (10) ten days after such dispute has arisen, then DMC shall have the right upon written notice to Purchaser, to terminate this Contract and return to Purchaser all monies tendered herewith including Earnest Money less costs of options, and overages on allowances, if any.

**40. ANNEXATION:** Purchaser acknowledges that the developer of the subdivision may have been required, as a condition of subdivision plat approval, to petition the a local municipality for annexation, and that said plat approval requires that said petition become a covenant or condition which would apply to all persons owning Lots within the subdivision. In such event, Purchaser agrees that the Deed to Purchaser shall contain a provision reflecting this condition and covenant.

**41. ADDENDUM/ADDITIONAL PROVISIONS:**

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**4. ENTIRE AGREEMENT:** PURCHASER REPRESENTS THAT HE/SHE HAS READ THIS AGREEMENT AND THAT SAME CONSTITUTES THE ENTIRE AGREEMENT BETWEEN DMC AND PURCHASER AND THAT NO OTHER AGREEMENTS, PROMISES, REPRESENTATIVES OR WARRANTIES, EXPRESSED OR IMPLIED, EXCEPT THOSE EXPRESSLY SET FORTH HEREIN, HAVE BEEN RELIED UPON BY PURCHASER OR HAVE BEEN MADE BY DMC OR ITS SALESPERSONS, AGENTS OR EMPLOYEES TO PURCHASER AND THAT NO MODIFICATION OF THIS AGREEMENT SHALL BE CLAIMED BY PURCHASER SUBSEQUENT TO EXECUTION HEREOF UNLESS FIRST REDUCED TO WRITING AND EXECUTED BY THE PARTIES HERETO. A RETURN OF PURCHASER'S DEPOSITS BY DMC AT ANY TIME BEFORE ACCEPTANCE OF THIS AGREEMENT BY DMC SHALL CONSTITUTE A REJECTION OF PURCHASER'S OFFER BY DMC, WHEREUPON THIS AGREEMENT SHALL BECOME NULL AND VOID. PURCHASER UNDERSTANDS AND AGREES THAT THE SALES REPRESENTATIVE WITH WHOM PURCHASER HAS DEALT IN CONNECTION WITH THIS PURCHASE HAS NO AUTHORITY TO AGREE TO CHANGES OR MODIFICATIONS IN THE PLANS OR SPECIFICATIONS OR TO MAKE REPRESENTATIONS OR AGREEMENTS WITH PURCHASER NOT EXPRESSLY CONTAINED HEREIN OR IN WRITING SIGNED BY DMC IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT. THE TERMS AND CONDITIONS SET FORTH ON THE CONTRACT DOCUMENTS AND ALL ADDENDUMS HERETO ARE EXPRESSLY INCORPORATED INTO THIS AGREEMENT AND ARE A MATERIAL AND INTEGRAL PART THEREOF

**VA AMENDATORY CLAUSE**

(Valid only when Purchaser is acquiring a V.A. loan)

It is expressly agreed that, notwithstanding any other provisions of this Contract, the Purchaser shall not incur any penalty by forfeiture of earnest money or otherwise be obligated to complete the purchase of the property described herein, if the contract price or cost exceeds the reasonable value of the property established by V.A. The Purchaser shall, however, have the privilege and option of proceeding with the consummation of this contract without regard to the amount of reasonable value established by the V.A.

**FHA AMENDATORY CLAUSE**

(Valid only when Purchaser is acquiring a F.H.A. loan)

It is expressly agreed that, notwithstanding any other provisions of this Contract, the Purchaser shall not be obligated to complete the purchase of the property described herein or to incur any penalty by forfeiture of earnest money deposits or otherwise unless the Mortgagee has delivered to the Purchaser a written statement issued by the Federal Housing Commissioner or a Direct Endorsement Lender setting forth the appraised value of the property (excluding closing costs) of not less than \$\_\_\_\_\_ which statement the Mortgagee hereby agrees to deliver to the Purchaser promptly after such appraised value statement is made available to Mortgagee. The Purchaser shall, however, have the privilege and option of proceeding with the consummation of the contract without regard to the amount of the appraised valuation. The appraised valuation is arrived at to determine the maximum mortgage the Department of Housing and Urban Development will insure. HUD does not warrant the value nor the condition of the property. The Purchaser should satisfy himself/ herself that the price and condition are acceptable.

**REAL ESTATE CERTIFICATION:** I/We hereby certify all terms stated on this New Home Contract are true to the best of my knowledge. Executed in multiple originals effective the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_. (To be filled in by Broker upon final acceptance by all parties.)

DAVID MOORE CONSTRUCTION, LLC

PURCHASER:

By: \_\_\_\_\_  
Its: \_\_\_\_\_

SS#: \_\_\_\_\_

PURCHASER

SS# \_\_\_\_\_

\_\_\_\_\_  
LISTING AGENT COMPANY: \_\_\_\_\_ COMMISSION: \_\_\_\_\_

PHONE: \_\_\_\_\_

\_\_\_\_\_  
SELLING AGENT COMPANY: \_\_\_\_\_ COMMISSION: \_\_\_\_\_

PHONE: \_\_\_\_\_