



New Home Contract

THIS CONTRACT IS INTENDED TO BE ONLY A FORMAT FOR A REAL ESTATE SALES CONTRACT AND IS DISTRIBUTED FOR USE ONLY BY THOSE PERSONS AUTHORIZED BY LAW TO PREPARE REAL ESTATE SALES CONTRACTS

Date _____ Plan Number _____ Garage _____ Bonus/Expandable (finished or unfinished) _____

Creekside Homes, LLC, 7390 Highway 64, Oakland, TN 38060 (hereinafter called "Seller") hereby agrees to sell and to convey to:

_____ presently residing at (address) _____

Home Phone _____ His Work _____ His Cell _____ Her Work _____ Her Cell _____

(hereinafter called "Purchaser") and Purchaser hereby agrees to purchase from Seller the following described real property situated in the

City of _____, County of _____, State of Tennessee, to wit: Lot _____,

Subdivision _____, Commonly known as (address) _____,

together with a residential dwelling constructed thereon (hereinafter called the "Residence") in accordance with the plans and specifications prepared for Seller, which are available for inspection by Purchaser at Seller's office and not in conformity with any model home or artist rendering. The purchase price shall include any variations and/or optional items, and Seller allowances (if applicable) listed on the addendum attached hereto and incorporated herein by reference. Seller reserves the right to make such changes or substitutions in the construction of the Residence (1) as may be required, authorized or approved by governmental agencies having jurisdiction there over, or (2) as Seller may deem appropriate so long as materials of equal or better quality are used.

1. **TOTAL SALES PRICE:** The purchase price to be paid to the Seller by the Purchaser in cash at closing is \$ _____, _____ Dollars.

2. **EARNEST MONEY:** _____ acknowledges receipt of \$ _____, _____ Dollars, in the form of _____, as earnest money. Said amount is to be held in escrow by **Coldwell Banker Lakeside Realtors (615) 824-5920** at 530 W. Main Street, Hendersonville, TN 37075 and will be applied to the purchase price at closing.

NON-REFUNDBALE EARNEST MONEY: _____ acknowledges receipt of \$ _____, _____ Dollars, in the form of _____, as **Non-Refundable Earnest Money**. Said amount is to be made payable to and held by **Creekside Homes, LLC (901) 465-1675** at 7390 Highway 64, Oakland, TN 38060 and will be applied to the purchase price at closing. In the event Purchaser fails to close the sale for any reason, Seller shall retain all non-refundable earnest money without reimbursement to Purchaser.

3. **LOAN CONTINGENCY:** This contract is contingent upon Purchaser obtaining a loan. **Purchaser agrees to apply for loan within five (5) days** of the effective date of this contract. Purchaser agrees to execute all necessary forms and/or legal instruments required by Lending Institution and/or Seller. 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 Seller to retain all monies previously paid to Seller as liquidated damages. If a loan contingency applies, Purchaser shall forfeit earnest money in the event that he/she/they willingly make a job or career change or make any major purchases, or make any other purposeful financial decisions that would adversely affect his/her/their ability to maintain loan approval status and prevent the consummation of this agreement.

4. **APPRAISAL:** Purchaser to pay for appraisal at the time of loan application.

5. **DISCOUNTS:** Discounts on the loan, if any, shall be paid by purchaser.

6. **CLOSING:** Closing to be on or about _____ ("Closing Date"), but no later than forty-eight (48) hours after completion of property, loan approval, and preparation of closing documents. Possession with Deed. Purchaser acknowledges that new construction closing dates are subject to variables beyond seller's control, and delays to closing date may be made at seller's discretion.

7. **CLOSING AGENT AND TITLE COMPANY:** Unless otherwise stated herein, closing agent/attorney for Purchaser's lender shall be _____, and for the Seller shall be **Trustland Title (Trustland Title, Tina Hawkins (615) 230-6587 (fax 615-230-9556) is the preferred Closing Agent of Creekside Homes, LLC but is in no way affiliated with Seller)**. Title search abstract, and/or title insurance obtained from First American Title Insurance Company.
8. **KEYS:** Following closing, keys will not be released to Purchaser until **Trustland Title** has funds in hand. If Purchaser elects to close transaction elsewhere, delivery of keys may not take place until a "Cash for Deed" swap has been completed between **Trustland Title** and the Purchaser's closing agent. Purchaser shall pre-arrange to have utilities transferred upon closing. Utilities must be transferred within 48 hours of closing. Various communities have differing utility providers and it shall be purchaser's responsibility to co-ordinate all utility transfers including water, gas and electric services.
9. **WARRANTY:** The Seller agrees to furnish a **2-10 Home Buyers Warranty** ("Warranty"). Purchaser agrees that said Warranty is in lieu of all other warranties, statutory or otherwise, expressed or implied, all other representations made by Seller and/or Seller's agent and all other obligations or liabilities with respect to said property. Implied warranties of merchantability and fitness are specifically excluded, and the Seller's obligation shall not exceed its obligation as set forth in said Warranty. Certain financing programs require Seller to furnish an extended structural warranty. In the event of a conflict between the provisions of this sales agreement and the provisions of the "Structural Defect Warranty", the provisions of the "Structural Defect Warranty" shall prevail.
10. **ARBITRATION:** Any and all claims, disputes and controversies by or between the Purchaser, the Seller, the Seller's Warranty Insurer and/or Home Buyers Warranty Corporation, or any combination of the foregoing, arising from or related to the Warranty, to the subject Residence, to any defect in or to the subject Residence or the real property on which the subject Residence is situated, or the sale of the subject Residence by the Seller, including without limitation, any claim of breach of contract, negligent or intentional misrepresentation or nondisclosure in the inducement, execution or performance of any contract, including this arbitration clause, and breach of any alleged duty of good faith and fair dealing, shall be settled by binding arbitration. Agreeing to arbitration means you are waiving your right to a jury trial.
11. **BROKERAGE:** Seller agrees to pay Listing Broker and/or Selling Broker at closing the commission specified by separate agreement. The Listing Broker will direct the closing agent/attorney to pay the Selling Broker, from the commission received, an amount in accordance with the terms and provisions specified by separate agreement between Listing Broker and Selling Broker.
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 and/or Subdivision Restrictions.
13. **SETTLEMENT WITH VALID TITLE:** Settlement and payment of balance, if any, of the cash payment shall be made upon presentation of a good and valid warranty or 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, Seller agrees promptly to furnish for examination only, either title search or adequate abstracts of title, taxes and judgments covering property.
14. **FAILURE TO CLOSE:** If the title is not good and cannot be made good within a reasonable time after written notice has been given that the title is defective, specifically pointing out the defects, then the above earnest money shall be returned to Purchaser. If the title is good and Purchaser shall fail to pay for the property as specified herein, Seller shall have the right to elect to declare this contract null and void, and upon such election, the earnest money shall be retained by Seller as liquidated damages. The right given the Seller to make the above election shall not be Seller's exclusive remedy, and either party shall have the right to elect to affirm this contract and enforce its specific performance or recover full damages for its breach. Seller's retention of such earnest money shall not be evidence of an election to be credited against damages actually sustained.
15. **COMPLETION AND INSPECTION:** Purchaser agrees that the direction and supervision of all workers on the Residence, including subcontractors, rests exclusively with Seller, and Purchaser agrees not to issue any instruction to or otherwise interfere with workers. Purchaser further agrees not to contract with Seller'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 Seller or Seller's Agent. Purchaser and Seller shall agree in writing, those items that will be repaired or completed by the Seller within a reasonable time, 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.

It is understood and agreed between the parties that Seller shall be deemed to have performed this contract as to construction of the improvements herein above described when it shall have obtained the final inspection thereon from the VA and/or FHA and/or the applicable code enforcement department. Time being of the essence, Purchaser agrees to immediately close the said loan and purchase the above described property within forty-eight (48) hours after all conditions listed in Paragraph Number 6 (CLOSING) have been met and the Seller advises Purchaser that the property is ready for closing. A charge of \$100.00 (one hundred dollars) per day shall be assessed against the Purchaser for every day after the forty-eight (48) hours Purchaser fails to close this sale in order to reimburse Seller for the cost of holding this property by the Seller for the Purchaser. In no case shall closing be delayed for cosmetic issues. Further, it is the Purchaser's responsibility to maintain close contact with Purchaser's lender and provide lender with updated financial information and give lender updated information with regard to any changes in estimated completion and closing dates.

16. **PRORATIONS:** All taxes and applicable assessments, Homeowner's Association dues, and rents, if any, shall be prorated as of the date of closing. All prorations for tax purposes shall be based upon the last known assessment, and if a lot assessment is unavailable, then there shall be no prorations. **All prorations made at closing shall be considered FINAL prorations.**
17. **PURCHASER'S COSTS:** Purchaser is to pay for the preparation of notes, trust deed, purchase money 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 costs.
18. **SELECTIONS, CHANGES AND EXTRAS:** To the extent there are options and color choices to be made in completion of the Residence, final selections must be made within ten (10) days of signing this New Home Contract and are to be from Seller's pre-approved items. If Purchaser shall fail to make selections within the stated time frame, Seller shall have the right to make selections as needed to ensure the efficient completion of the Residence. Request for changes and/or extras beyond this ten (10) day period are subject to a change order fee of \$150.00 (one hundred fifty dollars). Changes may not be possible due to scheduling or ordering deadlines. Changes are at seller's discretion and are discouraged. No verbal changes made with seller or seller's agents or building superintendents shall be valid- all selections or changes must be in writing and signed by purchaser and seller with date of change. In no event shall seller guarantee any selection of materials and all changes and extras must be paid for in full by Purchaser at time of written agreement. In the event Purchaser fails to close the sale for any reason, Seller shall retain all funds paid for said extras without reimbursement to Purchaser. Highly customized features/selections will be subject to additional fee.
19. **SELLER'S COST:** Seller is to pay for preparation of warranty deed, or deed of conveyance, notary fee on deed, and title search or abstract, document preparation fees, recording costs and/or attorney fees.
20. **LENDER FEES:** THE SELLER 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 SELLER.
21. **TERMITE PROVISION:** Seller agrees to furnish, at closing, a "New Construction Subterranean Termite Soil Treatment Record" from a licensed and bonded termite control operator as may be required by the Lender.
22. **RISK OF LOSS:** It is understood and agreed between Seller and Purchaser that risk of loss by fire or otherwise of the improvements located on property shall remain with Seller and shall only pass to Purchaser at closing of the transaction; and further, that in the event of destruction by fire or otherwise, Seller's liability shall in no event be more than the appraised value of the improvements so destroyed.
23. **COSTS AND ATTORNEYS 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 Purchaser, Seller, below 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.
24. **GRADE OF LAND:** Purchaser hereby agrees that Seller has no representations regarding the final grade of the lot after the completion of the construction of the Residence, and Purchaser recognizes that the final grade and configuration of the Residence on the lot will be dictated by Seller's construction practices and may vary from that of any model viewed by Purchaser. Seller does not warrant sodding, seeding, shrubs, trees and plantings.
25. **MOLD NOTICE, DISCLOSURE AND DISCLAIMER:** Mold growth requires moisture. Moisture is the only mold growth factor that can be controlled in a residential setting. By minimizing moisture, the Purchaser can reduce or eliminate mold growth. All molds are not necessarily harmful, but certain strains of mold have been shown to have adverse health effects in susceptible people. The Purchaser can take positive steps to reduce or eliminate the occurrence of mold growth in the home, and thereby minimize any possible adverse effects that may be caused by mold. Whether or not the Purchaser experiences mold growth depends largely on how the Residence is managed and maintained. Seller's responsibility is limited to things that can be controlled. As explained in the Warranty, provided by separate instrument, Seller will repair defects in construction for a period of one year (see warranty documents for specific details, considerations, exclusions and specific terms). Seller will not be responsible for any damage caused by mold, or by some other agent, that may be associated with defects in construction, including but not limited to property damage, personal injury, loss of income, emotional distress, death, loss of use, loss of value, adverse health effects, or any other effects. Any implied warranties, including warranty of fitness for a particular use, are hereby waived and disclaimed. This notice, disclosure and disclaimer agreement is hereby appended to and made part of the contract of sale and shall survive closing.

VA AMENDATORY CLAUSE
(Valid only when Purchaser is acquiring VA loan)

