

# LAKE HEATHER ESTATES SALES CONTRACT

THIS AGREEMENT is made and entered into this the 9-11 day of SEPTEMBER, 1995, by and between LAKE HEATHER DEVELOPMENT CO., INC., an Alabama corporation (the "Seller") and SHU PONG SUN + PHU H TSENG SUN (include all joint purchaser's names as they should appear on the title, who will hereinafter collectively be referred to as the "Purchaser").

## WITNESSETH

WHEREAS, Seller is the owner of certain lots within the private subdivision project known as Lake Heather Estates (the "Project") which was established by a declaration of covenants, conditions and restrictions (the "Declaration") for Lake Heather Estates recorded in the Probate Office of Shelby County, Alabama, and by the plat for Lake Heather Estates (the "Plat"), also recorded in the Probate Office of Shelby County, Alabama; and

WHEREAS, Purchaser desires to purchase a Lot within the Project.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and conditions herein contained, the Purchaser and Seller agree as follows:

1. Agreement to Sell and Purchase. Seller agrees to sell to Purchaser, and Purchaser agrees to purchase from Seller Lot 10 (the "Lot"), as identified on the Plat for the Project which is filed for record for Lake Heather Estates, a private subdivision, on the Probate records for Shelby County, Alabama. The ownership of a Lot shall include right to the use of the Access Easement and the other common amenities for the Project. All roads, entrance ways, security gates and the like shall be provided by the Seller at its sole cost and expense.

2. The Purchase Price. The purchase price for the Lot shall be \$ 160,000.00 <sup>CS</sup> <sub>7.1</sub> payable as follows:

Earnest Money, paid by check to the order of Lake Heather Development Co.,

~~Inc., Escrow Agent for Lake Heather Estates Subdivision~~

Cash as closing this sale (payable by cashier's check)

Total Purchase Price

MARCH - 96 \$ 160,000.00 <sup>CS</sup> <sub>7.1</sub>  
AUGUST - 96 \$ 50,000.00 <sup>CS</sup> <sub>7.1</sub>

Buyer agrees to pay Prime Rate of Compass Co plus 196 interest for 6 1/2 mos. on 60,000.00 and for 12 mos on 50,000.00  
P.T.S.  
(10090 on selling side Comm)

03/18/1997-08261  
10:41 AM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
009 MCD

Inst # 1997-08261

3. Title Insurance. Seller agrees to furnish Purchaser a standard form owner's title insurance policy, issued by a company selected by Seller and qualified to insure title in Alabama, in the amount of the purchase price, insuring Purchaser against loss on account of any defect or encumbrance in the title, unless herein excepted; otherwise, the earnest money shall be refunded. If the Purchaser obtains a mortgage loan at the time of Closing, secured by the Lot, the cost of title insurance shall be equally divided. The Lot is sold and is to be conveyed subject to the Declaration, utility easements of record, mineral and mining rights not owned by Seller and the present City of Hoover zoning classification. The Lot is not located in a flood plain.

4. Closing/Purchaser's Right to Cancel. Closing shall take place on AUG. 96 except that the Seller shall have a reasonable time to cure any defects in title.

5. Conveyance. Seller agrees to convey the Lot to Purchaser by statutory warranty deed free of all encumbrances, except as herein set forth and current and future ad valorem taxes, library district dues and fire district assessments, and Seller and Purchaser agree that any encumbrance not herein excepted or assumed may be cleared at the time of closing. Ad valorem taxes (municipal in advance, others in areas) shall be prorated between Seller and Purchaser as of the date of delivery of the deed.

6. Closing Costs and Documents. Seller shall pay for the preparation of the deed. Each party shall bear their own attorney's fees. Except for the title insurance to be provided and paid for pursuant to Paragraph 3 above, Purchaser shall pay all other closing costs. At Closing, Purchaser shall execute a consent form acknowledging any title exceptions to the Lot, that Purchaser has physically inspected the Lot and that the Lot is subject to the restrictive covenants described in the Declaration. Possession of the Lot shall be given on the date of delivery of the deed. Seller and Purchaser agree to execute such other documents as may be reasonably required to consummate the closing contemplated by this Agreement.

7. Conditions of the Lot. Purchaser acknowledges that Purchaser has physically and personally inspected the Project and Lot prior to execution of this Agreement and that Seller has not made and does not make any representations, warranties, either express or implied, as to the physical condition of the Lot, the suitability of the Lot for any intended use and/or whether there exists any toxic or hazardous waste or other substances of any kind on the Lot. Furthermore, Purchaser acknowledges and agrees that Purchaser has assumed full responsibility for the investigation and determination of the suitability of the surface and subsurface of the Lot and hereby waives and releases Seller, its agents, employees, offices, directors, shareholders, partners, mortgagees and their respective successors and assigns from any liability of any nature on account of loss, damage or injury to buildings, improvements, personal property or to Purchaser or any owner, occupants or other person who enters upon any portion of the Lot as a result of any past, present or future soil, surface and/or subsurface conditions, known or unknown (including, without limitation, sinkholes, underground mines, tunnels and limestone formations and deposits) under or upon the Lot or any Lot surrounding, adjacent to or in close proximity with the Lot which may be owned by Seller.



8. Protective Covenants and Assessments. Purchaser acknowledges that the Project and the Lot is subject to and shall be conveyed subject to the protective covenants in the Declaration, which provisions include, without limitation, building setback requirements, use restrictions limiting the use of the Property to single - family residential purposes only, a requirement that all plans and specifications for all improvements be approved by the Architectural Review Committee for the Project, meet all provisions of the Design Criterion for the Project, and that each Lot owner pay assessments. If the Lot abuts Lake Heather, Purchaser further acknowledges that pursuant to the terms of the Declaration that the Purchaser and the Lot shall be subject to the lien and obligation to pay lake assessments, as defined in the Declaration, which will be in addition to the other assessments described in the Declaration. At the Closing Date, Purchaser agrees to pay an amount equal to two times the regular monthly assessment for the purpose of establishing a working capital fund. This sum deposited shall be used by the owners, association as a fund for the operation and management of the Project as provided in the Declaration and as the owners, association deems appropriate.

9. Minimum Floor Space/setbacks. Purchasers hereby acknowledges and agrees that the finished floor space in the house to be built on the Lot which is the subject of this Agreement shall not be less than 3200 square feet for a single-story home, 3400 square feet for a 1 1/2 story home or 3800 square feet for a two or more story home; provided that any home of 1 1/2 stories or more shall contain a minimum of 2400 square feet of Living Space as defined in the Declaration, on the main floor. Side yard and setback requirements shall be the more restrictive of either the Lots Zoning Category by the City of Hoover or front fifty (50) feet, back thirty-five (35) feet and each side yard ten (10) feet. The location of the home on the Lot and its layout and design shall also be subject to the approval of the Architectural Control Committee for the Project.

10. Private Subdivision and Private Roadways. Purchaser acknowledges that the Lot will be accessed by means of private roadways which will be paved and built to minimum applicable government standards. The private roadways within the Project as defined as part of the common areas for the Project, shall be maintained by the owner's association for the Project.

11. Default. If Purchaser shall fail to close hereunder, the amount of damages not being ascertainable, the Seller shall have the option to either forfeit the Earnest Money in which event the Earnest Money shall be paid to the Seller together with all accrued interest and contract cancelled upon such payment, or to sue the Purchaser for specific performance. If Seller shall fail to perform its obligations hereunder to close in accordance with the terms hereof, Purchaser as his sole remedy shall receive a return of the Earnest Money, together with accrued interest. In any dispute between the parties hereto, the party found to have breached this Agreement shall be liable for the attorney's fees and costs of the party determined not to have violated the terms of this Agreement.

12. Concerning the Escrow Agent. Seller and Purchaser hereby designate Colonial Bank as the Escrow Agent to receive and hold, subject to the provisions of this Paragraph, the Earnest Money, including any interest accruing thereon. Upon receipt by Escrow Agent of a statement executed by Seller and Purchaser that title has been conveyed under this Agreement, Escrow Agent shall promptly deliver the Earnest Money, including any interest accruing thereon, to the party designated in the joint notice. Upon receipt by Escrow Agent of a statement from either Seller or Purchaser pertaining to a controversy relating to the Earnest Money and/or demanding retention of the Earnest Money by Escrow Agent, then in the event Escrow Agent shall have the following options: (i) to retain the Earnest Money until written agreement is reached between the parties or until a final judgement has been entered by a court of competent jurisdiction and the appeal period has expired thereon, or if appealed, after the matter has finally been concluded; (ii) to place the Earnest Money with the Court having jurisdiction and to notify the parties in accordance with the notice provisions set forth herein; or (iii) to file an action in the nature of an interpleader joining the parties hereto and, thereafter, complying with the ultimate judgement of the court with regard to the disposition of the dispute. All costs and fees, including without limitation, attorney's fees, incurred by Escrow Agent acting pursuant to the terms of this paragraph shall be paid from the Earnest Money.

13. Risk of Loss. All risk of loss on the Lot and common improvements within the Access Easement shall be borne by the Seller until the date of Closing; thereafter, all risk of loss shall be borne by the Purchaser.

14. Time. Time is of the essence under this Agreement.

15. Assignment and Right of First Refusal. Purchaser expressly acknowledges that the rights granted hereby are personal and may not be assigned without the prior written consent of the Seller, which consent shall not be unreasonably withheld. Seller shall have a thirty (30) day right to repurchase the Lot, after the sale contemplated hereby closes, provided the Purchaser has not constructed a residence on the Lot. Seller shall exercise the option herein granted by a tender to Purchaser within thirty (30) days after notice of the amount of any bona fide offer received in writing by the Purchaser.

16. Notices. All notices shall be deemed delivered when mailed, postage prepaid, or when delivered by a courier service to the following address:

(a) If to the Purchaser:

(b) If to the Seller:

Lake Heather Development Co., Inc.  
5101 Cyrus Circle  
Birmingham, AL 35242

17. Severability. The invalidity of any provision of this Agreement shall not affect the validity or enforceability of any other provision set forth herein. Notwithstanding anything to the contrary herein contained, execution of the closing documents shall constitute Purchaser's acknowledgement of full compliance by Seller of the terms of this Contract.

18. Merger. This Agreement supersedes any and all prior understandings and agreements between the parties and constitutes the entire agreement between them. No representation, warranties, conditions or statements, oral or written, not contained herein, shall be considered a part hereof. This Agreement may not be amended, altered, modified or discharged except by an instrument in writing signed by the Purchaser and an authorized representative of Seller. The terms and conditions set forth herein shall survive closing.

19. Acceptance. Purchaser acknowledges that the acceptance of the initial deposit, does not constitute acceptance of the initial deposit, does not constitute acceptance of this Agreement by Seller. Only the execution by Seller shall constitute acceptance of this offer of Purchaser.



The following Addendum are part of this contract:

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

"Purchaser"

Carolyn Thompson  
Witness  
Carolyn Thompson

Phyllis Tseng Sun  
[Signature]

Shu-Pong Sun

Print Name(s) in which title is to be taken:

"Seller"

Lake Heather Development Co., Inc.  
an Alabama Corporation

By: C-S-V

Its PRESIDENT

### COVENANT FOR STORM WATER RUNOFF CONTROL

Grantee does, for itself, its successors and or assigns, herewith covenant and agree to take all measures to prevent sediment and other pollutants in water used in the construction process or storm water run-off from disturbed areas from leaving the boundaries of the lot herein conveyed. Grantee further covenants to exercise Best Management Practices (BMPs) for control of pollutants in storm water runoff and to comply with all city and stat regulations regarding same and more specifically to comply with the Alabama Water Pollution Control Act and the Alabama Environmental Management Act. Should Grantee fail to comply with this covenant, Grantor does reserve an easement over and across the property herein conveyed for itself, its agents, sub-contractors or assigns in order to install, erect or maintain the appropriate measures to meet or exceed Best Management Practices for the control of pollutants or siltation in storm water runoff. Grantor further reserves the right and authority to impose a lien on the property herein conveyed for the collection of cost incurred in the installation, erection or maintenance of such measures provided guarantee does not reimburse Grantor for such cost within 10 days after receipt of written demand. The foregoing shall be and is a covenant running with the land to the benefit of Grantor, it successors and or assigns.

Grantee does hereby acknowledge and agree to the matters stated herein.

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Deposit Earnest money  
FRIDAY 15 ~~Sept~~ <sup>Sept</sup>

PHYLLIS TSENG SUN  
3111 MEADOW BROOK TR.  
BIRMINGHAM, AL 35242  
205-995-0867

1051  
61-360/620

9-15 1975

Pay To The  
Order Of

Lake Heather Development, Inc.

\$ 50,000<sup>00</sup>

Fifty thousand only

Dollars



First Commercial Bank  
Birmingham, Alabama

Private  
Banking

RESPONSE

For

⑆06 2003605⑆ 06 70002082⑆ 1051



8-95 Agent who sells in Lake Heather Jr  
(10090) all of selling side of  
Comm.

# EXTRA! EXTRA!

Receive 100% commission on the selling side of  
your transaction on sales in the following new  
home communities:

**Lake Heather**  
**The Ridge**  
**St. Charles at**  
**Greystone**  
**Windchase**

This extra incentive is offered through the end  
of the year and is applicable to both lot sales  
and home sales.

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03/18/1997-08261  
10:41 AM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
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