



# REAL ESTATE SALES CONTRACT FOR PROPOSED OR INCOMPLETE CONSTRUCTION ON BUILDER'S LOT

The undersigned Purchaser(s) Ronald B. Brandon & Linda D. Brandon hereby agrees to  
purchase and the undersigned Builder(s) Mega Builders, Inc. hereby agrees to sell the following described  
real estate, (the "Property"), situated in the City of Birmingham, Alabama, County of Shelby  
Alabama, subject to easements and restrictions of record.  
Address 2134 Brook Highland Ridge, Birmingham, Al. 35242 and legally described as Lot 2114  
Block Survey Brook Highland 21st Sector Phase II  
Map Book 194 Page 254 on the terms stated below:

1. In consideration of the covenants and agreements herein contained, the Purchaser hereby agrees to employ the Builder to construct and erect  
on said building site a building described as residence (including lot) according to plans and specifications  
which the Purchaser has approved on the following terms and conditions: PLAN NO. 929

Basic Price of Building

Purchaser requests the following extras in addition to the basic plan and agrees to pay for the following sum in addition to the basic price stated above.

Total Price of Building and Extras

Less the following items to be deleted from the basic plan, to-wit:

\$

\$

\$

\$

Total Extras

\$

\$

Total Deletion Credits

\$

Total Price

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

2. ROCK AND OTHER SUBSURFACE CONDITIONS: If initiated by the Builder and Purchaser here (Builder \_\_\_\_\_) (Purchaser \_\_\_\_\_), the  
price above does not include any costs or contingencies for rock or other abnormal subsurface conditions, and Purchaser shall be responsible for the  
abnormal costs of correcting any such conditions. Should such abnormal subsurface conditions be encountered on the building site in connection with  
foundations and footing excavation, or installation of sewer lines, on-site sewage disposal systems, water lines, or other utility services, Builder shall  
promptly inform Purchaser of same and estimated costs of the additional work. Such costs may include, but are not necessarily limited to, blasting  
expenses, jack hammer and drill operations. Additional costs shall be billed at cost plus \_\_\_\_\_ and, at the time  
that rock or subsurface conditions are encountered, Builder shall provide a maximum cost for written approval by Purchaser prior to proceeding with  
construction.

3. The Purchase Price of \$ 475,000.00 shall be payable as follows:

Earnest Money, receipt of which is hereby acknowledged by \_\_\_\_\_ (Purchaser's Initials) \$ 71,000.00

Down Payment on construction, receipt of which is hereby acknowledged by Mega Builders, Inc. (Purchaser's Initials) \$ 71,000.00

(Builder's Initials) \_\_\_\_\_ (Purchaser's Initials) \_\_\_\_\_ \$ \_\_\_\_\_

Additional Earnest Money due upon \_\_\_\_\_ \$ \_\_\_\_\_

Down Payment due upon \_\_\_\_\_ \$ \_\_\_\_\_

This contract is subject to Purchaser being able to obtain a THIS IS A CASH SALE loan in the approximate amount of \$ 404,000.00

Cash on closing this sale (certified funds, or cashier's check) \$ 404,000.00

4. EARNEST MONEY & PURCHASER'S DEFAULT: Builder hereby authorizes the listing Agency, \_\_\_\_\_, to hold the earnest money in trust for Builder pending the fulfillment of this Contract. In the event Purchaser fails to carry out and perform the terms of  
this Contract, the earnest money shall be forfeited as liquidated damages at the option of Builder, provided Builder agrees to the cancellation of this  
Contract. Said earnest money so forfeited shall be divided equally between Builder and Agent. In the event both Purchaser and Builder claim the earnest  
money, the person or firm holding the earnest money may interplead the disputed portion of the earnest money into court, and shall be entitled to  
reimbursement from the parties for court costs, attorney fees and other expenses relating to the interpleader.

5. DOWN PAYMENT & PURCHASER'S DEFAULT: The Purchaser hereby authorizes Builder to utilize and spend the down payment funds shown  
above toward expenses and costs of the Property. In the event Purchaser fails to carry out and perform the terms of this Contract, the down payment  
shall be forfeited to the Builder up to the amount of actual costs incurred. Any excess of down payment over actual costs incurred shall be reimbursed  
to the Purchaser. Such forfeiture of down payment does not limit the Builder to any other remedies available under this Contract.

Builder's Initials \_\_\_\_\_ Purchaser's Initials \_\_\_\_\_

6. ALL LOAN CLOSING COSTS, DISCOUNTS AND PREPAID ITEMS are to be paid by Purchaser unless agreed otherwise.

7. FHA VALUATION: If F.H.A. financing is utilized, it is expressly agreed that notwithstanding any other provisions of this contract, 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 Builder has delivered to Purchaser a written statement issued by the Federal Housing Commissioner setting forth the appraised value of the  
Property (excluding closing costs) of not less than \$ \_\_\_\_\_ which statement Builder hereby agrees to deliver to Purchaser promptly  
after such appraised value statement is made available to Builder. 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 made by the Federal Housing Commissioner.  
The appraised valuation is arrived at to determine the maximum mortgage the Department of Housing and Urban Development Insure, HUD  
does not warrant the value or the condition of the Property. Purchaser should satisfy himself/herself that the price and condition of the  
Property are acceptable.

8. CONVEYANCE: Builder agrees to convey the Property to Purchase by statutory warranty deed (check here if Purchaser's  
desire title as joint tenants with right of survivorship), free of all encumbrances except as permitted in this Contract. Builder and Purchaser 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 MINING RIGHTS NOT OWNED BY BUILDER AND SUBJECT TO PRESENT ZONING CLASSIFI-  
CATION, residential AND IS ☐ IS NOT ☒ LOCATED IN A FLOOD PLAIN, AND, UNLESS OTHERWISE AGREED HEREIN, SUBJECT  
TO UTILITY EASEMENTS SERVING THE PROPERTY, RESIDENTIAL SUBDIVISION COVENANTS AND RESTRICTIONS, AND BUILDING LINES  
OF RECORD AND OTHER EASEMENTS, PROVIDED THAT NONE OF THE FOREGOING MATERIALLY IMPAIRS USE OF THE PROPERTY FOR  
RESIDENTIAL PURPOSES. IN ADDITION TO THE GENERAL EXCEPTION FOR MINERAL AND MINING RIGHTS NOT OWNED BY THE BUILDER,  
BUILDER MAKES NO REPRESENTATIONS REGARDING THE STATUS OR CONDITION OF THE PROPERTY BELOW THE SURFACE OR RELATING  
TO THE EXISTENCE OF MINING SHAFTS, TUNNELS, GASES OR OTHER CONDITIONS BELOW OR AFFECTING THE SURFACE OF SAID REAL  
PROPERTY.

9. TITLE INSURANCE: Builder agrees to furnish Purchaser a standard form owners's title insurance policy at Builder's expense, issued by a company  
qualified to insure titles in Alabama, in the amount of the purchase price, insuring Purchaser against loss on account of any defect or encumbrance in  
the title, subject to exceptions herein, including paragraph 8 above; otherwise, the earnest money shall be refunded. In the event both Owner's and  
Mortgagee's title policies are obtained at the time of closing, the total expense of procuring the two policies will be divided equally between Builder and  
Purchaser, even if the Mortgagee is Builder.

10. SURVEY: Purchaser does ☐ does not ☐ (check one) require a survey by a registered Alabama land surveyor of Purchaser's choosing. Unless  
otherwise agreed herein, the survey shall be at Purchaser's expense. (NOTE: Lender may require a survey.)

11. PRORATIONS: Ad valorem taxes, as determined on the date of closing, hazard insurance transferred, accrued interest on mortgages assumed and  
the district dues, if any, are to be prorated between Builder and Purchaser as of the date of delivery of the deed, and any existing advance escrow  
deposits shall be credited to Builder. UNLESS OTHERWISE AGREED HEREIN, ALL AD VALOREM TAXES EXCEPT MUNICIPAL ARE PRESUMED  
TO BE PAID IN ADVANCE FOR PURPOSES OF PRORATION. MUNICIPAL TAXES, IF ANY, ARE PRESUMED TO BE PAID IN ADVANCE. Builder  
will keep in force sufficient hazard insurance on the property to protect all interests until this sale is closed and the deed delivered.

2. **START OF CONSTRUCTION:** Builder agrees to commence construction or completion of said building(s) within 14 days after this agreement and/or mortgage, if required, has been executed or escrow established, and after all contingencies are cleared. Said building(s) shall be completed in good workmanlike manner in quality equal to the standard of the industry within 210 days after date of commencement, except when builder shall be prevented from completing such buildings by reason of change in plans or specifications required by Purchaser, by war, fire, Acts of God, governmental regulations or decrees, strikes, act of Purchaser, or other causes beyond the control of Builder.

13. **CLOSING AND POSSESSION DATES:** The sale shall be closed and the deed delivered on or before Nov. 15, 1994 hereinafter called Closing Date, except Builder shall have a reasonable length of time within which to complete any item required as a result of the walk-through referred to in Paragraph 22, perfect title or cure defects in the title to said Property. Possession is to be given upon delivery of the deed.

14. **CONDITION OF PROPERTY:** Builder is to provide Purchaser with a one-year Limited New Home Warranty, which is attached as Addendum Four and Purchaser agrees to accept the terms and conditions of said Warranty as his only implied or expressed warranty.

15. **BUILDER WARRANTIES** that Builder has not received notification from any lawful authority regarding any assessments, pending public improvements, repairs, replacement, or alterations to the Property which remain outstanding. These warranties shall survive the delivery of the deed.

16. **DISCLAIMER:** Purchaser acknowledges that he has not relied upon any advice or representations of Broker (or Broker's associated salespersons) relative to (i) the legal or tax consequences of this Contract and the sale, purchase or ownership of the Property; (ii) the structural condition of the Property; (iii) construction materials; (iv) the nature and operating condition of the electrical, heating, air conditioning, plumbing, water heating systems and appliances; (v) the availability of utilities or sewer service; (vi) the character of the neighborhood; (vii) the investment or resale value of the Property; or (viii) any other matters affecting his willingness to purchase the Property on the terms and price herein set forth. Purchaser acknowledges that if such matters are of concern to him in the decision to purchase the Property, he has sought and obtained independent advice relative thereto.

17. **INSULATION:** Insulation has been or will be installed in the home as follows:

- a. Exterior walls will be insulated with (type of insulation) fiberglas to a thickness of \_\_\_\_\_ inches, which, according to the manufacturer, will yield a R-value of R-11.
- b. Ceilings in all areas will be insulated with (type of insulation) fiberglas to a thickness of \_\_\_\_\_ inches, which, according to the manufacturer, will yield a R-value of R-30.
- c. Interior wall will be insulated with (type of insulation) \_\_\_\_\_ to a thickness of \_\_\_\_\_ inches, which, according to the manufacturer, will yield a R-value of \_\_\_\_\_.
- d. Exclusions: \_\_\_\_\_

18. **RISK OF LOSS:** Builder agrees to keep in force sufficient hazard insurance on the Property to protect all interests until this sale is closed and the deed is delivered. If the Property is destroyed or materially damaged between the date hereof and the closing, and Builder is unable or unwilling to restore it to its previous condition prior to closing, Purchaser shall have the option of cancelling this Contract and receiving the Earnest Money and Down Payment back or extending the closing date a sufficient time for Builder to complete construction. If Purchaser elects to extend the closing date, this contract shall continue in full force and effect.

19. **SELECTION OF ATTORNEY:** The parties hereto acknowledge and agree that, if they have agreed to share the fees of closing attorney hereunder, such fee-sharing may involve a potential conflict of interest and the parties may be required to execute an affidavit at closing acknowledging their recognition and acceptance of same. Each of the parties further acknowledges that he has a right to be represented by an attorney of his choice at all times in connection with this contract at his own expense.

20. **NON-ASSIGNMENT:** This contract and any interest which Purchaser may have herein are non-assignable and non-transferrable without the prior written consent of Builder.

21. **ACCEPTANCE:** At the time this contract is signed, Purchaser (notwithstanding any plans, specification or warranties given Purchaser or otherwise on file with VA, FHA or other governmental authority) accepts the specifications, quality, designs and appearance of the Property as it exists at the time the contract is signed. Purchaser, after a walk-through of the completed Property with Builder, further agrees to execute an acceptance statement at closing similar in content to the one attached as Addendum # \_\_\_\_\_.

22. **NON-PAYMENT:** In the event Purchaser shall fail to pay any monies due Builder under this contract, Builder may refuse to perform any further work to the premises under warranty or otherwise until Purchaser pays the full sum, plus interest at the legal rate, attorney's fees and court costs. This provision shall survive the delivery of the deed.

23. **FINANCING DELAY:** If this Contract remains subject to the loan contingency set forth herein past 10 days, Builder reserves the right to revise the Contract price to reflect any cost increases not to exceed \$ \_\_\_\_\_ per day resulting from the delay in removing said contingency. Builder shall give Purchaser written notice along with documentation supporting the nature and amount of any such proposed increase within \_\_\_\_\_ hours after said date and in any event no later than \_\_\_\_\_ days prior to the scheduled Closing, and Purchaser shall accept or reject the price as revised within \_\_\_\_\_ days of such notice. If Purchaser rejects the price revision, Builder may, at his option, cancel this contract and refund the Earnest Money. **(DOWN PAYMENT WILL NOT BE REFUNDED UNDER THE PROVISIONS OF THIS PARAGRAPH.)**  
(Purchaser's initials: \_\_\_\_\_)

24. **UTILITIES:** Purchaser agrees that the water, gas and electric meters when installed will be in his name. Builder agrees to reimburse Purchaser for all utility bills incurred, when required to complete the building, prior to occupancy.

25. **CHANGES:** No changes in the plans and specifications are to be made except upon written order prior to changes being made. Change orders must be signed by Purchaser and Builder and must provide a detailed description of the change, addition or deletion and show the cost or credit to Purchaser. Any changes, alterations, or extras from the plans or specifications that may be required by any public body or Inspector shall constitute an extra and shall be paid for by Purchaser, the same as any other extra as provided in this paragraph. Changes under \$500.00 per item may be agreed upon verbally by authorized representatives of the Builder.

26. **SUPERVISION OF WORK:** Purchaser agrees that the direction and supervision of the working forces, including subcontractors, rest exclusively with the Builder, and Purchaser agrees not to issue any instructions to, or otherwise interfere with same. The Builder shall be the authority for the proper usage, arrangements and placement of fixtures, equipment and materials in accordance with recognized standards. Slight deviations from plans and specifications shall be construed as substantial compliance with this agreement. The Purchaser further agrees not to negotiate for additional work with Builder's subcontractors nor to engage other builders or subcontractors except with the Builder's consent and in such manner as will not interfere with Builder's completion of work under this contract.

27. **AGENCY DISCLOSURE:** The listing Agency Johnson, Rast & Hays represents the Builder (unless otherwise stated), and the selling Agency Johnson, Rast & Hays represents ☐ Builder ☒ Purchaser.

Builder's initials: \_\_\_\_\_ Agent's initials: CRD Purchaser's initials: RFB

28. **ADDITIONAL PROVISIONS** set forth on any attached Addendum # 1, 2, 3, 4, if signed by all parties hereto, are hereby incorporated and made a part of this Contract by reference as though fully set forth herein.

29. **ENTIRE AGREEMENT:** This Contract constitutes the entire and complete agreement between Purchaser and Builder regarding the Property and supersedes any and all prior discussions, negotiations and agreements between Purchaser and Builder, whether oral or written. Neither Purchaser, nor Builder, nor Broker, nor any sales agent shall be bound by any understanding, agreement, promise, or representation concerning the Property, express or implied, not specified herein.

**THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT. IF YOU DO NOT UNDERSTAND THE LEGAL IMPLICATIONS OF ANY PART OF THIS CONTRACT, SEEK LEGAL ADVICE BEFORE SIGNING.**

\_\_\_\_\_  
Witness to Purchaser's Signature(s)

\_\_\_\_\_  
Witness to Builder/Seller's Signature(s)

**EARNEST MONEY:** Receipt is hereby acknowledged of the Earnest Money as herein above set forth

CASH CHECK Builder/Agent XXXX

**COMMISSION:** THE COMMISSION PAYABLE TO THE AGENT IN THIS SALE IS NOT SET BY THE BIRMINGHAM AREA BOARD OF REAL ESTATE INC., BUT IS NEGOTIABLE BETWEEN BUILDER AND THE AGENT. Builder agrees to pay Johnson, Rast & Hays

as Agent, a commission in the amount of 5% of the total purchase price. In addition, the agent certifies that he/she has not made any representations or commitments to Purchaser which have not been made a part of this contract.

\_\_\_\_\_  
Real Estate Agent

\_\_\_\_\_  
Purchaser  
\_\_\_\_\_  
Purchaser  
**MEGA BUILDERS, INC.**  
Builder/Seller  
By: \_\_\_\_\_  
Builder/Seller **Robert L. Clark,**  
President  
\_\_\_\_\_  
Builder (Seal)

The publisher is not engaged in rendering legal, accounting or other professional service. This form is published as a service to real estate professionals and an explanation of its various provisions should be obtained from the appropriate professional. Because of varying state and local laws, competent legal or other advice should be secured before using any form.