

AFFIDAVIT

STATE OF ALABAMA
SHELBY COUNTY

Before me, the undersigned authority, a Notary Public in and for said County, in said State, personally appeared Todd L. McDonald, who, after being by me first duly sworn to speak the truth, deposes and says as follows:

My name is Todd L. McDonald. I reside at 2561 Tahiti Terrace, Alabaster, Alabama 35007. I am one and the same person as Todd L. McDonald who is one of the contract parties to that certain agreement for the construction and sale of real property attached hereto as Exhibit "A" and made part and parcel hereof as fully as if set out herein. Said contract involved the contract to purchase by me and my wife, Vickie C. McDonald, of Lot 20, Wynlake Subdivision, Map Book 19, Page 156, Probate Records of Shelby County, Alabama. At the time we signed this contract shown on Exhibit "A", we made a down payment to the seller, Wayne Davis Construction Co., in the amount of \$2,000. The seller was unable to construct the house for the agreed maximum cost and purchase price of \$150,000 and the transaction was not consummated. The earnest money of \$2,000 has not yet been returned to us by Wayne Davis or Wayne Davis Construction Co. although representations have been made that it would be paid at the time of another sale. My wife and I are due the refund of \$2,000 on said property and claim the same pursuant to the terms of the attached contract.

Todd L. McDonald
Todd L. McDonald, Affiant

Sworn to and subscribed to before
me on this 13th day of February, 1997.

Janice E. Culver
Notary Public

Inst # 1997-04824

Inst # 1997-04824

TODDMC.AFF021397

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SHELBY COUNTY JUDGE OF PROBATE
011 NCD 33.50

W. E. H. F.

EXHIBIT "A"

AGREEMENT FOR THE CONSTRUCTION AND SALE OF REAL PROPERTY Conventional Form

This Agreement for the construction and sale of real property (hereinafter "this Agreement") is hereby bargained for, made and entered into on this the 30th day of March, 1996 by and between Wyne Davis Construction (hereinafter referred to as the "Seller") and Vodd L. McDonald Vickie C. McDonald (hereinafter, whether one or more, referred to as the "Buyer").

WITNESSETH:

The Buyer desires to purchase from the Seller and the Seller has agreed to sell to the Buyer the following described real property (the "Property") situated in the county of Shelby, Alabama, and more particularly described as follows:

Address: 416 Wynlake Lane

Legal description: Lot 20 Block _____ Survey _____

Map Book 19 Page 156

The Property either has been or will be improved with a residential dwelling (the "Dwelling") in accordance with the provisions of this Agreement. As a part of the negotiation of the terms and provisions of this Agreement, the Buyer and the Seller have negotiated between themselves the terms and provisions of a Limited Warranty Agreement and a Preoccupancy Inspection Agreement as described herein below.

NOW, THEREFORE, in consideration of the foregoing recitals, the agreements contained herein and attached hereto, the provisions of the Limited Warranty Agreement, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the Buyer and the Seller do hereby agree as follows:

1. Purchase and Sale. The Buyer hereby agrees to purchase from the Seller and the Seller hereby agrees to sell to the Buyer the Property.

2. Purchase Price. The purchase price to be paid by the Buyer to the Seller for the conveyance of the Property, as improved with the Dwelling, shall be the sum of Amount to be agreed upon but Dollars (the "Purchase Price") and shall be payable as follows: Not to exceed \$150,000.

the risk.

5) We felt this house could be built for that price and were unsure why the estimates kept coming in so high. We felt it was probably Wayne's overhead and construction methods that were causing the price increases. Since Wayne couldn't build the house within the budget, we decided to cut our losses, knowing we would lose the \$500.00 it cost to prepare the plans, and seek the return of our earnest money as described in paragraph 15. The Realtor did not bring us the release papers until October 31, 1996 (after several weeks of asking for them) which we signed immediately.

6) Since then, I have spoken to Janice Ray's broker several times, Pat Kimbrough (987-3500). She told me that Wayne and Al were arguing over the lot because, as a condition of discounting the lot to Wayne, Al had first rights to re-purchase the lot. There was apparently a dispute over how much the lot was worth. In the end, Wayne was given the latitude to sell the lot for whatever he could get rather than the \$20,500 he bought it for from Al.

7) I have spoken to Wayne recently. He told me that he had bought the lot early on and it has been accumulating interest ever since. By the time we asked for our earnest money back, the accumulated interest was \$1600, which Wayne was not willing to pay. So he is holding our earnest money until he sells the lot and builds and sells a house. He told me that he will give us our earnest money back in two phases; when he sells the lot and when he sells the house. We think it unfair for him to force us to assume his risk. We think it unfair for him to repay us in two installments where we paid in one.

8) We didn't tell him when to buy the lot either (before the actual plans were finished). From our reading of the contract, if the seller was not able to perform (i.e. bring the house in for \$150,000), then our earnest money should be refunded after a ten day notice to him that he was in default. We sent him a certified letter to that effect on Dec. 12, 1996 (enclosed). I believe we have followed the procedures outlined in the contract in the event a default occurs. His refusal to return our earnest money is unacceptable and we have considered filing a small claim for the initial sum plus the interest we have lost.

9) Another, perhaps more serious issue rests with the manner in which JRH is handling potential purchaser's earnest money. I was told by the JRH Realtor that the money would be put in an escrow account. It didn't occur to me until later that if that was the case, the check should have been made out to JRH and not Wayne Davis Construction as she directed me to. In fact, the contract for the house which we are now building specifically places the earnest money in escrow. Many have told me that Wayne Davis has spent our money on something else.

Earnest Money, payable upon the execution
of this Agreement, in the amount of

\$2000

Additional Earnest Money payable on
or before _____
in the amount of

\$ _____

Additional Earnest Money payable on
or before _____
in the amount of

\$ _____

The balance of the Purchase Price, in spendable
funds, payable upon the conveyance of the
Property in the amount of

\$ _____

Total Purchase Price

\$ _____

* All payments of Earnest Money shall be paid to the Seller and may be spent by the Seller as Seller
deems appropriate, unless provided otherwise in this Agreement. *Not to exceed \$150,000*

3. Financing. The provisions of this paragraph shall be applicable only if initialled
by both the Seller and the Buyer. This Agreement is subject to the Buyer being able to obtain a
conventional loan in the amount of \$ _____ (the "Loan"). The Buyer agrees to make
application for the Loan within ten (10) days after the date of this Agreement and to exert all
reasonable effort and diligence to obtain approval of the Loan. The Buyer agrees to keep the Seller
fully informed of the status of the Buyer's efforts to secure the approval of the Loan. The Buyer shall
provide such evidence as may be required by the Seller, including a written commitment for the Loan,
to confirm the final Loan approval. The Seller shall have the right to delay the commencement of the
construction of the Dwelling, if applicable, or delay the completion of the construction of the Dwelling,
if applicable, until such time as the Seller has determined, to the satisfaction of the Seller, that the Loan
to the Buyer has been or is likely to be approved. Any such determination by the Seller shall be for the
sole benefit of the Seller and may not be relied upon in any manner by the Buyer.

The Seller: _____

The Buyer: _____

4. The Dwelling. The Property either has been or will be improved with the
Dwelling. (The parties should select one, but only one, of the following subparagraphs by
initialing the subparagraph which is applicable.)

Seller:

Buyer:

Seller:

Buyer:

Seller:

Buyer:

As of the execution of this Agreement, the Dwelling has been completed and the Buyer has inspected and accepted the Dwelling, as completed, subject to the preoccupancy inspection to be made by the Buyer and the Seller pursuant to the Limited Warranty Agreement and the Preoccupancy Inspection Agreement, both of which are attached hereto and both of which are described in greater detail elsewhere in this Agreement.

The construction of the Dwelling has been commenced and, as of the date of this Agreement, is only partially complete. The Buyer has inspected the portion of the Dwelling which has been constructed and finds same to be acceptable. The construction of the Dwelling shall be completed by the Seller in accordance with the provisions of this Agreement and the Limited Warranty Agreement and in general conformity with the plans and specifications (the "Plans and Specifications") attached to this Agreement as Exhibit "A" and incorporated herein, except that, to the extent that the portion of the Dwelling which has been constructed as of the date of this Agreement is different from the Plans and Specifications, then the Plans and Specifications shall be deemed modified to be consistent with the actual construction.

The construction of the Dwelling upon the Property has not yet been commenced. The Seller agrees that the Dwelling shall be constructed in accordance with the provisions of this Agreement and the Limited Warranty Agreement and in general conformity with the Plans and Specifications attached hereto as Exhibit "A" and incorporated herein.

The Plans and Specifications, if applicable, have been signed and dated simultaneously with the execution of this Agreement by both the Seller and the Buyer and any changes in the Plans and Specifications which have been agreed upon by both the Seller and the Buyer have been clearly shown and initialled by both the Seller and the Buyer. The construction of the Dwelling shall be deemed completed upon the issuance of a certificate of occupancy by the applicable governmental building inspection department, if there is such a department in the jurisdiction in which the Property is located, and, if no such department exists, then upon the reasonable determination by the Seller that the construction of the Dwelling is substantially complete.

5. Changes to Plans and Specifications. If the Seller has agreed to construct the Dwelling or complete the construction of the Dwelling, in general conformity with Plans and Specifications pursuant to the preceding paragraph, the Seller shall be under no obligation to make any changes, additions or alterations to the Plans and Specifications. The Seller may elect to make changes, additions or alterations to the Plans and Specifications upon the request of the Buyer, however, the Seller shall not be obligated to do so. In the event that the Seller and the Buyer agree upon changes, additions or alterations to the Plans and Specifications, then such agreement shall

become effective only upon the execution by both the Seller and the Buyer of a written change order, in a form which is acceptable to the Seller and which sets forth the changes to be made and the additional consideration to be paid by the Buyer to the Seller in connection therewith, and the payment by the Buyer to the Seller of such portion of said additional consideration as shall be required by the Seller. Any such additional consideration shall be in addition to the Purchase Price and any payments of said additional consideration by the Buyer to the Seller shall not be a credit against the Purchase Price. The Seller shall not be obligated to agree to any such changes, additions or alterations to the Plans and Specifications and may condition any such agreement upon such matters as the Seller shall, in sole discretion of the Seller, determine, including, but not limited to, the approval of such changes by the Buyer's lender and the local building inspection officials, if any. In the event that the Seller agrees to such changes and has not received all of the additional consideration to be paid in connection therewith, then the balance of said consideration shall be paid at the closing of the sale of the Property.

6. Decorating Allowance. The Seller may allow the Buyer to select some or all of the decorating items to be incorporated into the Dwelling, provided that same have not already been incorporated therein. Such items may include brick, paint colors, roof colors, light fixtures, wall paper, and floor covering for which the Seller shall establish allowances. The Buyer shall make such selections within seven (7) working days after the request by the Seller. If selections of the Buyer exceed the amount of allowances established by the Seller, then the Buyer shall pay such portion of any such excess as shall be required by the Seller at the time of making the selections, and the balance, if any, shall be paid upon the Closing, in addition to the Purchase Price. The allowances established by the Seller and which are included in the Purchase Price are attached hereto as Exhibit "B". In no event shall the Purchase Price be reduced as the result of the expenditure of less than the allowance for any particular item.

7. The Closing. The closing (the "Closing") shall occur on or before the 1st day of Sept., 1996 (the "Closing Date") except that the Seller shall have a reasonable time thereafter within which to perfect title or cure title defects, and further provided that the Closing Date may be extended by the Seller for such additional time as the Seller shall determine to be reasonably necessary (a) as the result of any delay in the approval of the Buyer's Loan, or (b) to complete the construction of the Dwelling, if applicable, as the result of any delays in the progress of construction such as, but not limited to, inclement weather, changes in the Plans and Specifications agreed upon between the parties, requirements of any building officials or other governing authorities, work stoppages, delays in the delivery of materials, delays in the approval of the Buyer's Loan, contingencies under this Agreement, the completion of the pre-occupancy inspection and any additional work required as the result thereof, and any other matters which might delay the completion of construction of the Dwelling. In the event of the delay of the Closing Date pursuant to the foregoing provisions, then the Closing Date shall be that date which has been established in a written notice from the Seller to the Buyer provided that such date is no more than ten (10) days after the date of such notice. At the Closing, the Seller shall convey title to the Property to the Buyer by statutory warranty deed subject to current ad valorem taxes, easements, restrictions, rights-of-way, covenants, reservations and other matters of record; all matters which would be revealed by an accurate survey or inspection of the Property; applicable subdivision, zoning and other applicable governmental regulations and restrictions; and less and except any mineral, mining or other subsurface rights previously conveyed or otherwise not owned by the Seller. Possession of the Property shall be delivered to the Buyer upon the Closing.

The Closing shall be held at such time of day and at such location as shall be reasonably agreed upon between the Seller and the Buyer, provided, if the parties cannot agree, then the closing shall be held at such time of day as shall be established by the Seller at either the office of the Seller or the office of the Seller's attorney. The Buyer shall pay to the Seller, at the Closing, the Purchase Price plus any additional consideration owing with respect to changes in the Plans and Specifications and allowance item overages, less any Earnest Money previously paid by the Buyer and received by the Seller.

8. Title Insurance. A commitment for the issue of an owner's title insurance policy in the amount of the Purchase Price, subject to all of the matters set forth in this Agreement with respect to the status of title to the Property and subject to such other matters as are customarily included in such commitments, shall be furnished by the Seller at the Closing.

9. Closing Costs. At the Closing, the Seller shall pay the cost of the preparation of the deed and the premium for the owner's title insurance policy, provided, however, in the event of the simultaneous issuance of a mortgagee's title insurance policy, the premium shall be divided evenly between the Seller and the Buyer, even if the mortgagee is the Seller. The Buyer shall pay all loan closing costs, discount points, mortgage insurance premiums, prepaid items and recording fees. Ad valorem taxes shall be prorated as of the date of closing between the Seller and the Buyer.

10. Time Is Of The Essence. TIME IS OF THE ESSENCE with respect to the obligation of the Buyer to close the purchase of the Property and pay the Purchase Price within the time required pursuant to this Agreement.

11. Agency Disclosure/Commissions. The listing agency, Johnson, represents the Seller. The selling agency, East & Thayer, represents the Buyer, unless otherwise set forth in this Agreement. The Buyer acknowledges that the listing agent has undertaken no duty to the Buyer, whether fiduciary or otherwise, and the Buyer affirms that the Buyer has not relied upon said listing agency or any representation by it or its agents, servants, or employees in entering into this Agreement, and the Seller shall not be bound or obligated pursuant to any such representation, nor by any representation made by the selling agency or its agents, servants, or employees, unless same shall have been set forth fully in this Agreement. In the event of the closing and funding of this purchase and sale, the Seller agrees to pay a commission in the amount of 5% of the Purchase Price, payable as follows: at Closing.

12. Insulation. Living area ceilings will be installed with blown type insulation to a thickness of 9-12 inches, which thickness, according to its manufacturer, will result an R-Value of 30. Living area exterior walls will be insulated with batt type insulation to a thickness of 3 1/2 inches, which thickness, according to the manufacturer, will result in an R-Value of 11. The Buyer acknowledges and agrees that, in accordance with Federal Trade Commission Regulations, this information has been supplied by the installer of the insulation and has not been determined by the Seller. The Buyer acknowledges and agrees that the Seller shall have no liability or obligation with respect to the accuracy of the information included in this paragraph.

13. Arbitration. The Seller and the Buyer acknowledge that this Agreement necessarily involves interstate commerce by virtue of the materials and components contained in the Dwelling and each of the undersigned hereby agrees to arbitrate any and all disputes arising under this Agreement and to be bound by the decision of the arbitrator which shall be conducted pursuant to the Construction Industry Rules of the American Arbitration Association.

14. Notices. Any notices to be given pursuant to the provisions of this Agreement shall be in writing and shall be deemed received by the party to whom given when deposited in the United States Mail, by certified mail, with postage pre-paid, and addressed as follows:

WHEN TO THE SELLER:

Wayne Davis Construction
731 Middle Street
Monticello, AL
35115

WHEN TO THE BUYER:

Mr. & Mrs. Jedd McDonald
2561 State Street
Alabaster, AL
35007

The address of a party may be changed by written notice to the other party in the manner described above.

15. Default. Should this transaction not be concluded because of the material default of the Seller in the performance of the obligations of the Seller pursuant to this Agreement, and should said default not be remedied within ten (10) days after written notice from the Buyer to the Seller setting forth the details of the default and demanding that the default be remedied (or within such reasonable period of time as may be necessary to remedy the default in the event that ten (10) days is not a sufficient time, provided that the Seller is diligently pursuing the remedy of any such default), then the Earnest Money and any other sums received by the Seller from the Buyer with respect to changes in the Plans and Specifications or with respect to allowance overages, shall be refunded to the Buyer, without interest, and thereupon this Agreement shall be deemed terminated and both the Seller and the Buyer shall be relieved of any further obligations hereunder. This shall be the sole remedy available to the Buyer in the event of a default by the Seller. In the event of default by the Buyer in the performance of the obligations of the Buyer under this Agreement, and should said default not be remedied within ten (10) days after written notice from the Seller to the Buyer setting forth the details of the default and demanding that the default be remedied, then the Seller shall have the option to (a) retain all sums paid to the Seller by the Buyer pursuant to this Agreement including, but not limited to, the Earnest Money, any additional Earnest Money, any sums with respect to changes in the Plans and Specifications, any sums with respect to allowance overages, and any other sums, as liquidated damages, whereupon this Agreement shall be deemed terminated and both the Seller and the Buyer shall be relieved of any further obligations hereunder, or (b) the Seller shall have the right to retain all sums paid to the Seller, as aforesaid, by the Buyer, which sums shall be applied toward the actual damages of the Seller, and the Seller shall be entitled to recover from the Buyer the balance of any damages incurred by the Seller; or (c) the Seller shall have the right to retain all sums paid to the Seller,

as aforesaid, by the Buyer, and the Seller shall have the right to pursue, in addition to the retainage of said sums, equitable relief against the Buyer, including the remedy of specific performance; or (d) the Seller shall have the right to pursue any one or more of the foregoing or any other remedies available to the Seller under applicable law.

16. General Provisions

a. Should any provision of this Agreement be deemed unenforceable by a court of competent jurisdiction, that determination will not affect the enforceability of the remaining portions.

b. This Agreement shall be binding upon the Seller and the Buyer, and their respective heirs, successors, executors or administrators.

c. This Agreement shall be governed by and construed in accordance with the laws of the State of Alabama.

d. The titles or headings to the paragraphs included herein are for convenience only and shall not add to, reduce, limit or modify in any manner the content thereof.

e. The use of one gender shall include all other genders, the use of singular shall include the plural, and the use of the plural shall include the singular, all as may be appropriate to the context in which they are used.

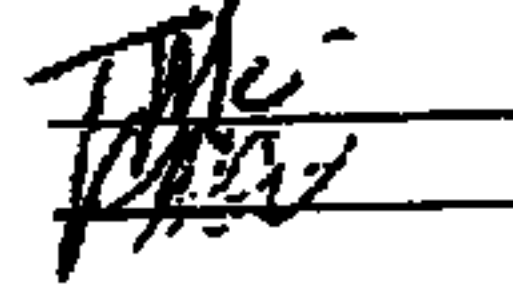
f. The rights of the Buyer hereunder may not be assigned by the Buyer without the written consent of the Seller, which consent may be withheld in the discretion of the Seller.

17. Limited Warranty/Preoccupancy Inspection. The Buyer and the Seller agree to the terms and conditions of the Limited Warranty Agreement attached hereto as Exhibit "C" and made a part of this Agreement. The terms and provisions of the Limited Warranty Agreement have been fully negotiated between the Buyer and the Seller as a part of the negotiation of the terms and provisions of this Agreement. The Limited Warranty Agreement has been fully executed, as of the date of this Agreement, and the terms and provisions thereof are an integral part of the terms and provisions of this Agreement. The Buyer and the Seller agree to re-execute the Limited Warranty Agreement and to deliver duplicate originals of same at the Closing. The Buyer and the Seller agree to be fully bound by the terms and provisions of the Limited Warranty Agreement and agree that the Limited Warranty Agreement shall survive the Closing and the conveyance of title to the Property. Pursuant to the Limited Warranty Agreement, the Buyer and the Seller shall make a preoccupancy inspection of the Dwelling and shall complete the Preoccupancy Inspection Agreement which is attached as an exhibit to the Limited Warranty Agreement.

18. WAIVER OF WARRANTIES AND CLAIMS. THE BUYER AGREES THAT THE LIMITED WARRANTY AGREEMENT IS GIVEN IN LIEU OF ANY AND ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR

PURPOSE, HABITABILITY AND WORKMANSHIP, AND IS ALSO IN LIEU OF ANY CLAIMS FOR CONSEQUENTIAL DAMAGES, MENTAL ANGUISH OR DISTRESS, AND FOR DAMAGES BASED UPON NEGLIGENCE, FRAUD OR MISREPRESENTATION, AND THE BUYER HEREBY EXPRESSLY WAIVES AND DISCLAIMS ANY SUCH WARRANTIES AND CLAIMS WITH RESPECT TO BOTH THE DWELLING AND THE PROPERTY.

The Buyer acknowledges that the Buyer has read, understood and accepted the foregoing.



19. Additional Provisions.

20. Entire Agreement. This Agreement and the Limited Warranty Agreement, together with all of the other exhibits and attachments to this Agreement and the Limited Warranty Agreement, constitute the entire agreement of the parties and the Buyer acknowledges that the Buyer has not relied upon any oral or written statements, undertakings, or representations and that no prior agreement or understanding shall be valid or of any force or effect, unless the same have been fully set forth in this Agreement, the Limited Warranty Agreement, or the attachments and exhibits thereto. The covenants and agreements contained in this Agreement and the Limited Warranty Agreement cannot be altered, changed, modified or added to, except in a written instrument signed by the Buyer and the Seller. No representation, inducement, understanding, or anything of any nature whatsoever made, stated or represented by the Seller or on the Seller's behalf, either orally or in writing, (except as specifically set forth in this Agreement or in the Limited Warranty Agreement) has induced the Buyer to enter into this Agreement or shall be enforceable in any manner against the Seller.

IN WITNESS WHEREOF, the undersigned parties have set their hands and seals to this Agreement on this the 30th day of March, 1996

WITNESS:

THE SELLER:

By: _____
Its: _____

Julie Benson

Jedd L. McDonald
BUYER

Julie Benson

Vicki C. McDonald
BUYER

Form number _____. The HBAA and its local chapters do not assume any liability for damages arising from the use of this form and give no opinion that any of the terms and conditions in this instrument should be accepted by the parties in a particular transaction. Terms and conditions should be negotiated between the parties based upon the respective interests, objectives and bargaining positions of all interested parties. Seek specific legal advice from your lawyer. Copyright 1994 by the Home Builders Association of Alabama.

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