

THE ENCLAVE AT SPARKLE CREEK REAL ESTATE PURCHASE AND SALES AGREEMENT

THIS CONTRACT is executed as of the ____ day of _____, 200__ by and between Sparkle Creek Development, Inc. (hereinafter referred to as "Seller") and _____ and _____ (hereinafter referred to as "Buyer").

WHEREAS, Seller is developing a residential project known as THE ENCLAVE AT SPARKLE CREEK P.D., PHASE 2 (hereinafter referred to as the "Project" or the "Development"); and

WHEREAS, Buyer is desirous of acquiring property within the Project described as Lot ____ containing approximately _____ acres (the "Lot").

NOW, THEREFORE IN CONSIDERATION of the mutual covenants, conditions and promises set forth hereinbelow the parties hereto agree as follows:

1. Buyer has deposited with Seller the sum of FIVE THOUSAND AND NO/100 DOLLARS (\$5,000.00) representing the earnest money deposit (the "Earnest Money") which shall be applied to the purchase price of the Lot at closing.

2. The purchase price of the Lot is _____ AND NO/100 DOLLARS (\$_____) (the "Purchase Price").

3. Seller covenants and agrees to sell and convey the Lot, or cause it to be conveyed, by good and sufficient warranty deed, to Buyer or to such person or persons as Buyer may designate; Buyer, however, shall not be released from any of Buyer's agreements and undertakings as set forth herein, unless otherwise stated; and Buyer covenants and agrees to purchase and accept the Lot for the Purchase Price (as the case may be) upon terms as follows:

a. All cash at closing ("Closing") of which the Earnest Money shall be a part.

b. The conveyance shall be subject to the Declaration of Covenants, Conditions and Restrictions of The Enclave at Sparkle Creek (the "Declaration") which provides, inter alia, for approval of all architects engaged to prepare plans for improvements within the development, approval of all builders, approval of all plans and specifications for any proposed improvements (including all buildings, fencing, landscaping, pools, out buildings, etc.) prior to commencement of construction or implementation of such, and assessments to be paid by each Owner to an Association which assessment shall initially be in the amount of \$150.00 per month. The Declaration further prohibits the removal of trees or the alteration of existing grades without the approval of Seller. **Buyer acknowledges receipt of a copy of the Declaration as well as the Homeowners' Guidelines for the Project.**

c. Possession of the Lot is to be given with Deed at Closing which shall occur on or prior to _____, 200__.

d. Seller shall reserve easements for utilities, entrance walls, fencing and, at Seller's option an equestrian/trail easement as provided on the Plat, in the Declaration or at the locations shown on Exhibit A hereto.

e. ADDITIONAL TERMS AND PROVISIONS:

f. BUYER ACKNOWLEDGES THAT THE FRONT YARD BUILDING SETBACK FOR THE DEVELOPMENT IS 125 FEET. ANY REFERENCE ON THE PLAT TO A LESSER SETBACK DOES NOT REDUCE THE 125 FOOT MINIMUM SETBACK WHICH MAY ONLY BE MODIFIED IN ACCORDANCE WITH THE DECLARATION.

g. Buyer's obligation to close is contingent upon Buyer's ability to obtain a permit for a septic tank

(Buyer acknowledging that the Lot is not served by sanitary sewer). Buyer shall have a period of ten (10) days after the date of this Contract to notify Seller of its election to terminate this Contract due to the inability to obtain a permit for a septic system from the Shelby County Health Department. Failure to provide such notice and/or closing shall be deemed a waiver by Buyer of any objection to the lack of availability of such a permit.

All taxes for the current year are to be prorated as of date of closing, and all prior unpaid taxes or liens including front foot assessments are to be paid by Seller, unless otherwise specified. Seller shall have no liability for "rollback" taxes which may become due. Title is to be conveyed subject to current taxes not yet due and payable, the Declaration, restrictions, easements and covenants of record, subject to the equestrian easement and other easements which are shown on the plat for the Project and subject to zoning ordinances or laws of any governmental authority.

Settlement and payment of balance, if any, of cash payment shall be made upon presentation of a good and valid warranty deed with the usual covenants and conveying a good and marketable title, after allowing five (5) days from completion of title search or the delivery of abstracts for examination of title. Seller agrees promptly to furnish, for examination only, an abstract of title, taxes, and judgements, covering the Lot, prepared by Mid South Title Insurance Corporation, or at Seller's option, a policy of title insurance from Mid South Title Insurance Corporation for the amount of the above purchase price, insuring marketability of title and paid for by Seller. Adequate abstracts of title, taxes, and judgements are those required by Lawyers' Title Insurance Corporation as the basis for the insurance of a policy of title insurance. In the event of controversy regarding title, a title insurance policy covering the Lot, issued by Lawyers' Title Insurance Corporation for the above purchase price, shall constitute and be accepted by Buyer as conclusive evidence of good and merchantable title.

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 Earnest Money shall be returned to Buyer. If the title is good and Buyer shall fail to pay for the Lot as specified herein, Seller shall have the right to elect to declare this contract cancelled, and upon such election, the Earnest Money may be retained by Seller, and applied toward Seller's damages. The right given 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 declare this contract cancelled, as Seller shall have the right to retain his portion of earnest money to be credited against damages actually sustained.

Seller is to pay for preparation of deed, recording or purchase money trust deed, if any, state tax and Register's fee on trust deed, and notary fee on deed. Seller authorizes Agent to order title search or abstract for which Seller agrees to pay. Buyer is to pay for preparation of note, or notes and trust deed, notary fee on trust deed, recording of deed, state tax and Register's fee on deed, and expense of title examination or title insurance, if any. Seller and Buyer are to share equally in paying any closing fee in connection with transaction. If Buyer obtains a loan on the Lot, he is to pay all expenses incident thereto.

This instrument when signed only by the prospective Buyer shall constitute an offer which shall not be withdrawable in less than 48 hours from the date hereof.

Buyer accepts the Lot in its existing condition, no warranties or representations having been made by Seller or Agent which are not expressly stated herein. Buyer acknowledges that the Lot is not served by sanitary sewer and that while electrical, gas and water service shall be available at a point contiguous to a boundary of the Lot, Buyer shall have the sole responsibility of paying all costs associated with the extension of underground service from the transformers to the building site.

The Lot, or portions thereof, may be filled land or partially filled land. The Seller shall not be responsible or liable for any claims of any kind or character because of said Property being filled or partially filled land. Engineer's Certifications are required for foundations built upon fill and Buyer shall be solely responsible for design and certification of the foundation of improvements to be erected upon the Property. Seller will not be responsible for any trees that die. Seller makes no warranty concerning the degree of rainwater inundation that may result on the Lot since said inundation can be expected with rainfall which exceeds the design standards. A statement to the preceding effect shall be included in the deed of conveyance to the Lot.

Buyer acknowledges that the Property is not served by sanitary sewer and that a septic system shall be required for the Property. Purchaser shall engage a soils engineer approved by the Shelby County Health Department for the purpose of investigating the soil conditions in order to determine

whether the Lot contains a site suitable for a septic system and field lines and prior to closing, Purchaser shall be satisfied as to the soil conditions, availability of permits and suitability of the site for a septic system in all respects.

In the event Purchaser's soils consultant or the Shelby County Health Department determines that the Lot does not meet their requirements for a septic system or the soils are not suitable for a septic system for Purchaser's planned home, then Purchaser shall be permitted to terminate this Contract and receive a refund of the earnest money deposit.

Should Purchaser, after investigating the soils conditions thoroughly, determine that the Lot is suitable and elect to close, then Purchaser shall be deemed to have released Seller from any liability, claim for loss or damage which may be occasioned by or related to the soils conditions or the operation of any septic system subsequently installed by Purchaser in connection with Purchaser's home. Although Seller has engaged the services of a soils engineer and believes that the lot contains a site suitable for a septic system, there are many variables associated with the efficiency of a septic system including grading, design, installation by Purchaser's contractor and other variables which are solely within the control of Purchaser. Seller makes no representation or warranty regarding suitability of the soils for a septic system and Purchaser hereby waives any and all claims for injury, losses or damage occasioned by the absence of a public sewer system serving the Property and, further, expressly releases Seller from any liability for such claims. Seller would not enter into the Contract without this release which is expressly made a part of the consideration to Seller. The provisions of this Rider shall survive closing.

Seller agrees to pay the undersigned Agent a commission equal to SIX (6%) percent of the sale price. Unless otherwise specified herein, such commission is to be paid in cash out of the net proceeds of the sale at time of closing this transaction.

As used herein, where applicable, "Seller" and "Buyer" include the plural; the masculine includes the feminine or neuter gender.

WITNESS the signatures of all parties the day and year above written

BUYER

SELLER

Sparkle Creek Development, Inc.

By: _____

Subject to clearance of any check given, Agent acknowledges receipt of the above mentioned Earnest Money which is held in trust subject to the terms of this Contract.

By: _____

Buyer's Address: _____, Tel. _____

Seller's Address: 645 Pisgah Road, Eads, Tennessee 38028, 901-753-8261.

ENCLAVE.SALES CONTRACT