



**CONTRACT FOR CONSTRUCTION AND SALE OF REAL ESTATE**

Buyer: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Seller: Carbine & Associates, LLC  
621 Bradley Court  
Franklin, TN 37067

Effective Date: \_\_\_\_\_

Property to be Purchased / Sold \_\_\_\_\_

This Contract for Construction and Sale of Real Estate (the “Agreement”) is entered into between Buyer and Seller as of the last date signed below:

1. **Contract to Buy and Sell.** Seller agrees to sell, and Buyer agrees to purchase, the Property (inclusive of the Residence) pursuant to the terms of this Agreement.

2. **Construction of Residence.**

(a) Seller shall construct a residence on the Property (“Residence”). The Residence shall be constructed in general conformity with the plans attached as **Exhibit 1** (“Plans”). In the event Seller is unable to obtain the exact materials specified in the Plans and Specifications, Seller shall have the right to substitute materials of similar pattern, design and quality. Buyer acknowledges that the work will be performed in general conformity with the Plans and Specifications. Buyer further acknowledges that portions of the work will be performed by subcontractors and suppliers, and agrees not to in any way interfere with or give instructions or directives to these subcontractors and suppliers.

(b) Attached as **Exhibit 2** is a listing of specifications and allowances, if applicable. The full amount of each allowance has been included in computing the Purchase Price. If Owner makes selections that increase or decrease the amount of an allowance item, the Purchase Price shall be increased or decreased accordingly. If the plans and the specifications conflict, the specifications shall supersede the plans.

3. **Purchase Price.** Buyer agrees to pay Seller the sum of \_\_\_\_\_ for the purchase of the Property and construction of the Residence (“Purchase Price”), as adjusted by

allowances set forth in Paragraph 2(b) and change orders. The Purchase Price shall be paid as follows:

(a) On or before the Effective Date, Buyer shall tender \$\_\_\_\_\_ to Seller as the deposit for the transaction contemplated herein ("Deposit"). The Deposit will be added to the lot deposit of \$\_\_\_\_\_ ("Lot Deposit") to make a total deposit of \$\_\_\_\_\_. The Total Deposit shall be applied as a credit against the Purchase Price at the Closing. The Total Deposit is being paid directly to Seller, will be deposited into Seller's operating account and is non-refundable.

(b) N/A

(c) At the Closing, the balance of the Purchase Price, plus all closing costs, expenses and prorations which are the responsibility of Buyer hereunder, shall be paid by Buyer in cash or other immediately available funds. This Agreement is not contingent upon any appraisal of the value of the Residence or Property. This Agreement is not contingent upon Buyer's obtaining, or ability to obtain, financing for the purchase of the Property or Residence.

4. **Completion Date:** Seller and Buyer have agreed on an approximate completion date of \_\_\_\_\_ months from start of construction. The start of construction is identified as the digging of the footer. Seller reserves the right to extend this date for matters Seller may or may not have control over. These may include, but are not limited to weather, subcontractor problems, strikes and material and labor shortages. The actual settlement date will be set when interior trim has been completed. This will be approximately 95 days from completion.

5. **Closing.** The "Closing" of the sale of the Property shall occur within fifteen (15) days of (1) the issuance of a certificate of occupancy (or similar governmental approval) from the applicable governmental authority certifying that the Residence can be occupied for residential purposes and (2) the Buyers performing a pre-closing walk through inspection and all items being completed with the exception of any items that had to be ordered and not immediately available. At Closing, Seller shall convey the Property to Buyer by general warranty deed (subject to those exceptions described in Paragraph 7) and Buyer shall pay the balance of the Purchase Price to Seller (as set forth in Paragraph 3(c)). Possession of the Property is to be given at Closing, with delivery of the general warranty deed. Time is of the essence with respect to the Closing and payment of the Purchase Price.

6. **Prorations, Taxes and Other Ratable Items.** All taxes, association fees and other ongoing ratable costs, expenses or items shall be prorated between Seller and Buyer as of 12:01 a.m. on the date of the Closing for the current year. All back taxes and other accrued expenses, if any, shall be paid by Seller.

7. **Closing Costs.**

(a) \_\_\_\_\_ shall serve as the closing agent for Buyer and John T Cook shall serve as the closing agent for Seller in connection with the sale of the Property. Each party shall pay its own settlement fee and attorney's fee.

(b) Seller shall pay for the attorney's fees relating to the preparation of the documents in connection with the sale of the Property, including the general warranty deed.

(c) Buyer shall pay for the attorney's fees relating to all documents prepared in connection with the Buyer's purchase and loan, as applicable, including any and all loan closing costs, prepaid items and recording costs for the warranty deed and deed of trust.

**8. Title.** The Property shall be conveyed to Buyer via general warranty deed. All mortgages, deeds of trust and assignments of rents and leases granted on the Property by Seller shall be released prior to Closing. Notwithstanding the foregoing, the conveyance of the Property shall be made subject to all easements of record, restrictive covenants of record, zoning restrictions and subdivision regulations, utility easements, rights-of-way, encroachments, taxes for the current tax year (which shall be prorated at Closing) and any other matters that would be revealed by an accurate survey of the Property.

**9. Unanticipated Conditions; Delays.**

(a) Escalation clause for building costs - Should there be a rise in the cost of any building material or labor cost more than 5%, the Seller shall, before making any additional purchases of specified material or labor, provide to the buyer a written statement expressing the percentage increase of the contract price, the building material or labor in question, and the dollar amount of the price increase. The Seller will pay up to a 5% increase of any one cost item and the buyer will pay the amount over 5%. In the event where price increases total 5% of the total Purchase Price or more, the Buyer may, at their option, terminate the agreement by providing within 7 business days both written notice of termination to the Seller, and payment to the Seller for all costs expended in performance of the contract to the date of termination, plus payment of a prorated percentage of the Seller's profits based on the percentage of completion. Should both notice of termination and full payment not be forthcoming within 7 business days, as provided herein, the Seller shall have the option to terminate the contract, or to proceed with the contract and purchase the specified building material or labor at the increased price. If the Seller elects to proceed, the Buyer, shall be required to pay the increased cost incurred.

(b) Seller shall have no liability for (and has made no warranty regarding) (i) the surface, subsurface, geological, soil or rock conditions on the Property; (ii) the amount of surface or subsurface water that will traverse the Property; (iii) any testing for, identification of and remediation of any hazardous or toxic substances or waste, lead-based paint, fungi, mold, radon and asbestos; (iv) existing electrical deficiencies, plumbing deficiencies, framing deficiencies or other concealed conditions; and (v) rock excavation or the filling of sinkholes. Buyer assumes all risk for all of the conditions identified in this paragraph.

(c) Seller shall have no liability for any delay in the prosecution or completion of the construction of the Residence resulting from (i) those causes listed in Paragraph 8(a); (ii) the act, neglect, or default of Buyer; (iii) damage by fire, earthquake, weather, or other casualty; (iv) strike, walkouts, or any other acts of employees or suppliers of labor or materials; (v) governmental control, delays, regulations, or restrictions; or (vi) allocations of labor, supplies and materials instituted by any state, municipal, or other governmental agency.

(d) The land conveyed to Buyer under this Agreement is conveyed in its "as is / where is" condition. Seller has made no warranties, guarantees or representations as to the condition, drainage, subsurface condition or percolation of the land conveyed to Buyer under this Agreement, and Buyer waives and releases all claims against Seller arising from the same. Seller has made no representation regarding the zoning or subdivision regulations that may apply to the Property or Residence, and Buyer waives and releases all claims against Seller arising from the same. Seller makes no representation regarding any homeowner's association or other restrictive covenants on

the Property or Residence, and Buyer waives and releases all claims against Seller arising from the same.

(e) Subcontractors: Homeowner(s) shall refrain from interfering with any subcontractors and from direct contact with said subcontractors and/or suppliers; provided, however, Homeowner shall not be prohibited from speaking to any persons working on the jobsite during visits for the purpose of learning about the on-going work or status. Homeowner(s) shall be prohibited from entering into separate contracts, costs or consultations with subcontractors, suppliers, or others without the written consent of the Seller.

(f) Changes: Homeowner understands that the Contract Price is partly dependent upon the information contained in Exhibit A. If Homeowner desires to make any additions, deletions, or other changes to Exhibit A, Seller reserves the right to change the Contract Price, including, but not limited to, Seller's fee of 18%. Any and all changes to Exhibit A must be approved and executed via written change order signed by both parties and costs paid in advance of any such work or purchase of materials for the work. Seller has the right to extend the estimated completion date if changes are not submitted to Seller in a timely matter, or if changes requested by Homeowners cause a delay in construction.

(g) Selections: If there are decorative selections to be selected in the completion of the residence, Buyer has the responsibility to make those selections from the Seller's selected suppliers. Deadlines are to be set on the Selection Deadline sheet in **Exhibit 3**. The dates for the deadlines will be established in the pre-start construction meeting once the building permit has been obtained. If the selections have not been made by the dates on the Selection Deadline, seller will pay a fee of \$125 per day until the selections are delivered to the Seller's office. Seller will give email notice one week before each deadline as a courtesy to the Buyer. If the Buyer has not made selections within two weeks of each deadline, Seller has the right to make the selections and continue construction.

**10. Warranty; Claims.** Seller warrants the construction of the Residence to Buyer against defects in workmanship and materials (normal wear and tear excepted) for a period of one year from the day of its substantial completion (as defined by T.C.A. 28-3-201, et seq.) (the "Warranty"), with respect to those defects in workmanship and materials reported to Seller during said one-year period (the "Warranty Period"). To make a claim under this Warranty, Buyer must submit a written warranty claim to Seller within the Warranty Period, identifying the perceived defect in workmanship and/or materials, and time is of the essence with respect to the making of claims. When Seller is timely notified of a defect in workmanship or materials, Seller (at its option) will repair, replace or pay the reasonable cost of repair or replacement for defects in workmanship or materials. If Seller elects to pay the reasonable cost to repair or replace any warranted item, the warranty on any such item is at that point terminated. Actions taken by Seller to remedy warranty issues will not extend the Warranty Period. All defects will be remedied one time only, within 45 days after the expiration of the Warranty Period, unless Seller (in its discretion) elects to remedy the defect at an earlier date. In the event that a manufacturer has discontinued a material, product, or finish originally installed in the Property, or in the event the material, product, or finish is otherwise unavailable, Seller shall not be obligated to provide an exact match. In such event, Seller shall have the right to substitute materials of similar pattern, design, and quality, at Seller's discretion. **THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND ALL WARRANTIES IMPLIED BY TENNESSEE LAW ARE WAIVED. ALL ACTIONS FOR BREACH OF THIS WARRANTY MUST BE BROUGHT**

**WITHIN 180 DAYS AFTER THE EXPIRATION OF THE WARRANTY PERIOD. ALL OTHER ACTIONS ENCOMPASSED BY T.C.A. 28-3-202, MUST BE BROUGHT WITHIN ONE YEAR AFTER SUBSTANTIAL COMPLETION OF THE CONSTRUCTION OF THE RESIDENCE.**

**11. Dispute Resolution.** If a dispute develops between the parties to this contract, they will submit to non-binding mediation to address any controversy or claim arising out of, or relating to this contract or relating to any change orders or the other changes or addendums to this contract. Prior to the beginning of the mediation process, the parties may agree that if there is one or more disputed items that remain unresolved at the end of the mediation, the parties will proceed with binding mediation where the mediator will render a final and binding decision on those unresolved items, or the parties may elect to submit the remaining unresolved items to a med-arb procedure where a new and separate binding arbitration session may be scheduled to settle any unresolved issues remaining after the mediation session has been concluded. The parties must mutually agree to utilize binding mediation or arbitration or the parties will be bound only to participate in the non-binding mediation process. The mediation and/or arbitration shall be conducted by and according to the Mediation and/or Arbitration Rules and Procedures of Construction Dispute Resolution Services, LLC. The Settlement Agreement and/or Arbitration Award shall be binding upon the parties and shall be enforceable in any court of competent jurisdiction. Both parties shall share the cost of the dispute resolution process equally although personal attorneys and witnesses or specialists are the direct responsibility of each party and their fees and expenses shall be the responsibility of the individual parties.

\_\_\_\_\_  
**Seller's Signature**

\_\_\_\_\_  
**Buyer's Signature**

\_\_\_\_\_  
**Buyer's Signature**

**12. Default.**

(a) If Buyer defaults under this Agreement by failing to close the transaction set forth herein, then the Earnest Money shall be deemed forfeited to Seller as a credit against its damages.

(b) If Seller defaults under this Agreement by failing to close the transaction set forth herein, and if Buyer is not in default, then Buyer may elect to (i) receive a refund of the Earnest Money as full liquidated damages. With respect to any other type of default by Seller (i.e., a default not related to the failure to close the sale of the Property), in no event shall Buyer be entitled to collect damages from Seller in any action for more than Fifteen Thousand and 00/100 Dollars (\$15,000.00), inclusive of all damages, costs and expenses. This limitation of liability shall apply to any type of claim or cause of action Buyer may assert, including contract claims, tort claims and statutory claims.

**13. Commissions.** Buyer is represented by \_\_\_\_\_ a real estate agent in this transaction. Seller has been represented in this transaction by \_\_\_\_\_.

**14. Miscellaneous.** (a) Time is of the essence for the Closing of this Agreement. (b) If any provision of this Agreement is unenforceable to any extent, the remainder of this agreement, or application of that provision to any persons or circumstances other than those as to which it is held unenforceable, will not be affected by that unenforceability and will be enforceable to the fullest extent of the law. Any unenforceable provision shall be severed. (c) The laws of the State of Tennessee, without giving effect to principles of conflict of laws, govern all matters arising under this Agreement, including all tort claims. (d) No amendment of this Agreement will be effective

unless it is in writing and signed by all parties. (e) No waiver, whether express or implied, of the performance of any covenant, condition or obligation of this Agreement will invalidate this Agreement or be construed as a waiver of any other covenant, condition or obligation herein. (f) Each of the parties to this Agreement represent that they have had the opportunity to seek the advice of counsel with respect to the negotiation and execution of this Agreement and that they have executed this Agreement of their own free will and are not relying on counsel to the other party with respect to any portion of this Agreement. (g) This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument. The parties agree that a facsimile or email transmission may be executed as an original. (h) This Agreement constitutes the entire agreement of the parties relating to the subject matter hereof and supersedes all other oral or written agreements. (i) The parties shall have no liability to one another for any special, consequential or incidental damages, lost profits or delay damages arising from or related to the Warranty, the Residence or the Property, all of which are waived herein. (j) The terms of this Agreement shall survive Closing and shall not be merged into the general warranty deed.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the Effective Date.

**SELLER:**

By: \_\_\_\_\_

Date: \_\_\_\_\_

**BUYER:**

By: \_\_\_\_\_

Date: \_\_\_\_\_

**BUYER:**

By: \_\_\_\_\_

Date: \_\_\_\_\_

**Exhibit 1**  
(Plans and Specifications)

**Exhibit 2**  
(Allowances)