

The Pinnacle

of Germantown

MEMPHIS, TENN. _____

RECEIVED of _____, the sum of _____ as earnest money (the "Earnest Money") and in part payment for the purchase of the following described real estate (the "Property" or the "Lot") situated in the County of Shelby, and State of Tennessee and being part of the planned unit development known as "The Pinnacle of Germantown" (the "Development"):

Lot(s) _____ as shown on the final plat of The Pinnacle of Germantown, attached hereto as Exhibit "A".

Seller covenants and agrees to sell and convey the Property, with all improvements thereon, or cause it to be conveyed by good and sufficient special warranty deed, to Purchaser, or to such person or persons as Purchaser may designate; Purchaser, however, shall not be released from any of Purchaser's agreements and undertakings as set forth herein, unless otherwise stated; and Purchaser covenants and agrees to purchase and accept the Property for the price of

Dollars \$(_____) upon terms as follows:

1. All cash at closing of which the Earnest Money is a part. Possession is to be given at closing.
2. Closing to be on or before _____, time being of the essence. If the Property is not closed by the closing date stipulated in this contract, through no fault of Seller, the contract may be terminated at Seller's option and the earnest money retained by the Seller.
3. Purchaser acknowledges and agrees to the following provisions. These provisions shall be binding upon the Purchaser, his or her successors and assigns, and shall run with the land, and survive the Closing. The special warranty deed conveying the Property to Purchaser shall contain clauses to the following effect:

(a) Purchaser agrees to repair or replace any damage to the Development caused by Purchaser's construction after the Property is closed. Said repair or replacement is to be at the Purchaser's sole expense. Further, Purchaser agrees to maintain adequate erosion control measures on the Property, in compliance with all federal, state and local laws, regulations, ordinances, etc. Purchaser accepts all liability associated with said erosion control requirements and hereby indemnifies and holds harmless the Seller for any and all issues related to erosion control and drainage on the Lot or any adjacent land. In the event that Purchaser, after three (3) days of written notice from the Homeowner's Association (defined herein below), fails to remedy any issue resulting from this section then the Homeowner's Association shall have the option of making repairs or remedying said issue with the reasonable costs and expenses being invoiced to and paid by the Purchaser.

(b) The Property may be filled land or partially filled land. Seller shall not be responsible or liable for any claims of any kind or character related to the fill or soil conditions of Property. The subsurface conditions present may vary in accordance with underground conditions including without limitation, the prior uses of the property, the surface and subsurface soil types, the subsurface movement of water and the other geological conditions present. Seller makes no representation or warranty concerning these conditions and the results of such condition and expressly disclaims any responsibility or liability for subsurface conditions of the property.

(c) Purchaser understands that the Property shall be part of a planned unit development with private streets, sewer, drainage and common areas, all of which must be maintained by a homeowners association. In addition, the Property shall be subject to certain restrictive covenants pertaining to the planned unit development. Seller agrees to subdivide the Development in general conformance with Exhibit "A" attached hereto and to proceed with the installation of the required subdivision improvements. Purchaser agrees that neither Purchaser nor Purchaser's agents, contractors or employees will interfere with Seller's agents, contractors or employees during Seller's construction of subdivision improvements. Purchaser agrees to reasonably delay or alter Purchaser's construction schedule if required by Seller's contractor.

(d) The drainage improvements in the Development have been designed and are/or shall be installed in accordance with all prevailing local governmental standards and requirements. Seller makes no warranty concerning the degree of rainwater inundation that may result on the aforementioned lots since said inundation can be expected with rainfall which exceeds the design standards. Neither the Seller, the Homeowner's Association nor the Architectural Committee established under the Covenants and Restrictions discussed below, nor any employee, owner, architect, consultant or agent thereof shall be responsible or liable in any way for the drainage of the Property or the drainage of the lots surrounding the Property. Purchaser hereby acknowledges that Purchaser is solely responsible for ensuring that (i) the Property, once improved, will drain properly and sufficiently, (ii) no grading or improvement to the Property shall increase the natural flow of water onto the adjacent land, and (iii) that the drainage from surrounding lots will not negatively impact the Property. Purchaser, its successors and assigns, and anyone claiming by or through Purchaser hereby waive any and all claims of liability associated with the drainage of the Property and/or surrounding lots against Seller, the Homeowner's Association, the Architectural Committee and their respective employees, agents, successors and assigns. In addition to the foregoing, Purchaser shall in no event obstruct or impede the flow of water designed to run on, over or near the Property pursuant to the grading plans for the Development.

(e) Seller will not be responsible for any trees that die.

(f) Prior to construction of a single-family residence on the Property, Purchaser covenants and agrees to keep the Property mowed and free of debris. Should Purchaser not keep the Property mowed and free of debris, Seller may notify Purchaser in writing at the address shown on sales contract. If corrective measures have not been taken within two (2) weeks of date of said notice, Seller shall have the right, but not the obligation, to enter the Property for the purpose of mowing and cleaning the same and in such event the cost of said work shall be charged to Purchaser. If the cost of same is not paid within thirty (30) days from date of billing, then the cost of cutting and cleaning plus court cost, attorney fees and interest at the maximum legal rate shall become a lien on the Property. This covenant shall expire and be of no force or effect upon completion of residence.

(g) If there is a variance between the metes and bounds description for the Lot and the edge of the pavement for the completed common driveway adjacent to the Lot, then the edge of such pavement shall be the actual perimeter and boundary of the Lot.

(h) In the event following closing Seller is assessed, penalized, or otherwise fined by the Environmental Protection Agency or the applicable state or municipal authority for violations related to erosion prevention sediment control (EPSCs) on the Property, then Purchaser shall assume all of Seller's liability therefore including, but not limited to, payment of fines assessed. Purchaser shall reimburse Seller within seven (7) days of written notice from Seller.

(i) Until the residence is constructed on a Lot, Purchaser shall not, without the prior written approval of Seller, list the Lot for sale, nor convey Lot to any third party, or otherwise transfer the Property, except to a family member or heir within 18 months after the closing of this transaction. Such approval shall be granted or withheld at the sole subjective discretion of Seller. In the event Purchaser desires to sell the Lot prior to the expiration of the 18 month period, Seller shall have the right to re-purchase said Lot if it so desires at the same purchase price paid by Purchaser net of any interest, expenses, and closing costs.

(j) Purchaser agrees that, within 18 months of closing, such Purchaser shall complete construction of a primary residence on the Lots(s) purchased. Purchaser hereby acknowledges and agrees that if construction is not completed on the Lot(s) so purchased within the time frame established pursuant to this Section, Seller shall have the immediate right to re-purchase said Lot if it so desires at the above purchase price net of any interest, expenses, and closing costs.

4. As noted herein, the Property is part of a planned unit development and shall be subject to certain restrictive covenants, entitled the Declaration of Covenants, Conditions and Restrictions for Pinnacle of Germantown (referred to herein as "Covenants and Restrictions") attached as Exhibit "B". Purchaser shall have fifteen (15) days from the date of this contract ("Review Period") to determine whether the Property is satisfactory to Purchaser and to conduct such reviews and investigations, including, but not limited to, review of title, the Declaration of Covenants, Conditions and Restrictions of the Property and of the Development as Purchaser deems appropriate. If Purchaser determines the Property to be unsatisfactory, Purchaser shall so notify Seller in writing prior to the expiration of the Review Period. If Purchaser timely provides written notice as provided above, then Purchaser shall be deemed to have terminated this contract, the Earnest Money previously paid shall be returned to Purchaser and neither party shall have any further liability to the other under this contract. Upon expiration of the Review Period if no notice has been received, the Earnest Money will be nonrefundable (except as otherwise specifically provided in this contract) and closing will occur as set forth herein.

By initialing below, Purchaser acknowledges that it has read this Section, understands that the Property is part of a planned unit development and has received a copy of the Covenants and Restrictions.

Purchaser's Initials: _____

5. Setbacks on all lots shall be as required by Shelby County zoning ordinances, the Final Plat, and/or subdivision regulations. In addition, Seller may establish certain setbacks as set forth in the Covenants and Restrictions. Exceptions to the setbacks established by Seller may be permitted upon architectural control approval as provided in the Covenants and Restrictions.

6. The Purchaser's Lot(s) shall be a member of a homeowners association known as The Pinnacle Homeowners Association, Inc. Because the Property is part of a planned unit development and is subject to the Covenants and Restrictions, Purchaser understands that The Pinnacle Homeowners Association, Inc. ("Homeowners Association") has been established to maintain the common area improvements of the Development including, but not limited to, landscaping, structures, recreational amenities, lake, gates (without security), private driveways, roads, insurance, lighting, brick/stone wall, fences, utilities etc. Purchaser further understands that certain Covenants and Restrictions for the Development have been recorded and include, in addition to other restrictions, a requirement for architectural review and approval of proposed house plans and minimum house size requirements of no less than 4000 sf heated and no more than 6500 sf heated and an obligation to adhere to certain design guidelines that may be established and amended from time to time. The Covenants and Restrictions shall also provide for an architectural plans review fee, as determined by the board of directors of the Homeowners Association (the "Board of Directors"), which shall be due with the initial plans submittal. No building shall be constructed on the Property prior to written approval of the plans by Architectural Control Committee or its representative as provided for in the Declaration of Covenants, Conditions and Restrictions. The Covenants and Restrictions shall also provide for dues and/or assessments which shall be determined by the Board of Directors of the Homeowners Association. The Final Plat sets forth certain easements, set back lines and other restrictions affecting the Property. The Property shall be conveyed subject to the terms and conditions of the charter and bylaws of the Homeowners Association, the Final Plat, the Covenants and Restrictions and architectural review requirements, as well as all restrictions, easements and covenants of record, and subject to zoning ordinances or laws of any governmental authority.

7. All taxes and Homeowners Association dues and assessments for the current year are to be prorated as of date of closing. Any and all prior unpaid taxes or liens including front foot assessments are to be paid by Seller, unless otherwise specified. Seller shall pay all "roll back taxes", if any are assessed against the Property, through the date of closing of the Property. To the extent that any "roll back taxes" are not separately assessed against the Property, but instead against a larger parcel of which the Property forms a part, such roll back taxes will be prorated on the basis of acreage as established on the Final Plat. Purchaser and Seller shall each pay one-half (1/2) of the costs of obtaining the dues/transfer letter from the Homeowners Association.

8. At the election of Purchaser, Seller agrees promptly to furnish, for examination only, either title search or adequate abstracts of title, taxes, and judgments, covering the Property, or at Seller's option, a policy of title insurance by one of a title insurance company with offices in Shelby County, Tennessee (the "Title Company") for the amount of the above purchase price, insuring marketability of title and paid for by Seller. Adequate abstracts of title, taxes and judgments are those required by the Title Company as the basis for the issuance of a policy of title insurance. In the event of controversy regarding title, a title insurance policy covering the Property, issued by the Title Company for the above purchase price, shall constitute and be accepted by Purchaser as conclusive evidence of good and merchantable title.

9. 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 Purchaser, this contract shall be deemed terminated and neither party shall have any further liability to the other hereunder. If the title is good and Purchaser shall fail to pay for the Property as specified herein, Seller shall have the right to elect to declare this contract canceled, and upon such election, the Earnest Money shall be retained by Seller as liquidated 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 the Earnest Money shall not be evidence of an election to declare this contract canceled, as Seller shall have the right to retain his portion of the Earnest Money to be credited against damages actually sustained. No commission shall be paid by Seller and there is no cooperating agreement.

10. Subject to the limitation noted herein, Seller is to pay for preparation of deed and title search or abstract. Regardless of the title company used to provide the title search or abstract for closing, Seller shall only be obligated to pay up to \$100.00 for the title search or abstract. In the event the title search or abstract cost in excess of said amount, Purchaser shall be responsible any and all such excess. Purchaser 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. If a single closing agent or attorney closes the Seller and Purchaser hereby agree to share equally in paying the closing fees, otherwise each party shall be responsible for its own closing fees. If Purchaser obtains a loan on the Property, Purchaser is to pay all expenses incident thereto. Each party shall pay the fees and expenses of any attorney engaged to represent such party in connection with the transaction contemplated herein.

11. Assignment by Purchaser: This contract or any Lot thereunder may be assigned only as provided below. In the event Purchaser assigns, as provided herein, this Contract, said assignment shall occur at least five days prior to closing, and Purchaser agrees to pay an assignment fee of \$50.00 to Seller's attorney at closing. Upon assignment, the Earnest Money shall remain on deposit with Boyle Investment Company and shall be held for the account of the assignee subject to the terms of this Contract. In the event Purchaser desires to assign any of its rights under this Contract, it shall notify in writing the Seller of its desire to assign. The Purchaser shall assign only to an individual potential homeowner who has a written contract with a member of the Purchaser group to construct a primary residence on the Lot(s).

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

13. Purchaser accepts the Property in its existing "AS IS" condition, no warranties or representations having been made by Seller or Agent which are not expressly stated herein.

14. As used herein, where applicable: Seller and Purchaser include the plural; the masculine includes the feminine or neuter gender.

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

Subject to any check given, the Seller acknowledges receipt of the Earnest Money which is held in trust, subject to the terms of this contract.

Purchaser: _____

BK Pinnacle, LLC, Seller

By: _____

By: _____

By: _____

Title: _____

Purchaser's address: _____

Attachments:
Exhibits A and B have been provided to and received by Purchaser.

Initial: _____

EXHIBIT "A"

**Final Plat
[See Attached]**