

## RESIDENTIAL CONSTRUCTION CONTRACT

This Residential Construction Contract ("Contract") is made by and between \_\_\_\_\_ ("Contractor") and \_\_\_\_\_ ("Owner") and is subject to the terms and conditions stated below. The effective date of this Contract shall be the date it is last signed by Owner or Contractor ("Effective Date").

Contractor and Owner agree as follows: (Complete each space provided. For inapplicable provisions insert "N/A".)

**1. Name, Address and license number of Contractor:** \_\_\_\_\_

**2. Name and address of Owner:** \_\_\_\_\_

**3. Construction site (legal description):** \_\_\_\_\_

**4. Description of House plans and specifications (title, designer, date, number of pages, etc):** \_\_\_\_\_

**5. Compensation to Contractor:** *Check appropriate box and fill in spaces accordingly or mark "N/A."* Regardless of the compensation type selected, the compensation to Contractor does not reflect any price changes resulting from any change orders agreed upon in a writing signed by all the parties. All parties signing on behalf of Owner shall be jointly and severally liable for payment in full of all compensation to be paid to Contractor under this Contract.

Cost-Plus Contract: Price terms are as set forth in the attached and separately signed addendum captioned "Cost Plus Addendum to Residential Construction Contract."

Fixed-Price Contract: A fixed price of \$\_\_\_\_\_ which shall be

paid to Contractor as follows:

\$\_\_\_\_\_ as a deposit paid upon  Owner's execution of this agreement, or  the closing of Owner's construction loan. The balance of the Contract price will be disbursed:

according to the standard completion schedule for residential construction published by the financial institution listed below in paragraph 6, a copy of which is attached; or

according to the following schedule: (disbursements will be made within three (3) business days after substantial completion of the specified items)

(a) \$\_\_\_\_\_ upon substantial completion of the rough grading and foundation;

- (b) \$ \_\_\_\_\_ upon substantial completion of the framing, roof sheathing, and installation of exterior doors and windows;
- (c) \$ \_\_\_\_\_ upon substantial completion of rough-ins of electrical, plumbing, heating and air conditioning systems, telephone wiring and other wiring and upon substantial completion of the roof system;
- (d) \$ \_\_\_\_\_ upon substantial completion of exterior sidings and veneers, wall insulation, and drywall or other interior wall surfaces;
- (e) \$ \_\_\_\_\_ upon substantial completion of the construction of the House and receipt of a certificate of occupancy, subject to \_\_\_\_\_.

**6. Financing Condition:** This contract  is  is not conditioned on Owner receiving a construction loan in the amount of \$ \_\_\_\_\_ at an interest rate not to exceed \_\_\_\_\_ percent per annum from \_\_\_\_\_ (name of financial institution) and  is  is not conditioned on Owner receiving a commitment for a permanent loan in the amount of \$ \_\_\_\_\_ at an interest rate not to exceed \_\_\_\_\_ percent per annum for a term of \_\_\_\_\_ years, with mortgage loan discount points not to exceed \_\_\_\_\_. The construction loan condition is for the mutual benefit of Owner and Contractor. Owner agrees to use his best efforts to secure such commitments and to advise Contractor as to loan approval and the construction loan closing date which, for the construction loan, shall take place no later than \_\_\_\_\_ calendar days after the Effective Date. Owner has \_\_\_\_\_ calendar days after the Effective Date to secure such commitments and to deliver Contractor notice of the commitments. If Owner fails to obtain the commitments and deliver notice within the time limit provided above, this Contract will automatically terminate and neither party shall have any further obligations hereunder unless otherwise agreed to by the parties in writing. Contractor will pay no closing costs for Owner's loan except as follows: \_\_\_\_\_.

**7. Other Provisions and Conditions:** (Itemize all addenda to this Agreement and attach hereto).

**8. Contract Documents:** The documents that form the contract between Contractor and Owner are this Residential Construction Contract, the House Plans and Specifications, and all modifications and change orders agreed to by the parties hereafter ("Contract Documents").

**9. Change Orders:** The parties may agree to written change orders in the construction of the House, and the Purchase Price and Time for Completion shall be adjusted as agreed to by both parties.

**10. Construction:** The dwelling house and appurtenant structures depicted in the Contract Documents are referred to collectively in this Contract as the "House."

(a) Commencement: Within \_\_\_\_\_ calendar days after the Effective Date of this Agreement, Contractor will obtain the building permit for the construction of the House. Construction of the House shall commence upon issuance of the building permit and necessary land use permits. Contractor will, upon issuance of the building permit, provide all labor, material, and equipment needed in order to construct the House.

(b) Substantial Completion: The House shall be substantially completed within \_\_\_\_\_ calendar days after commencement of construction of the House ("Time for Completion"). As used in this Contract the term "substantial completion" of the House shall mean completion of construction of the House to the degree that it is habitable, a certificate of occupancy has been issued by the building inspector's office and delivered to Owner, and only minor imperfections typically referred to as "punch list" items, if any, remain to be corrected. Provided, however, if Contractor is delayed in the progress of construction by any act or neglect of Owner, material shortages, adverse weather conditions, delays in transportation which were not reasonably foreseeable, or acts of God, then the Time for Completion shall be extended by such reasonable time as Contractor and Owner may determine.

(c) As to the deadlines set forth in this Paragraph 10, time  is  is not of the essence.

**11. Inspections; Occupancy:** During the course of construction, Owner or Owner's designated representatives may enter and inspect the House for the purpose of appraisal, inspection and evaluation. Such inspections shall take place at reasonable times and in such a manner as not to interfere with the progress of construction. Until substantial completion of the House, Owner agrees not to occupy or store personal property in the House.

**12. Insurance and Risk of Loss:** Contractor shall purchase and maintain throughout the entire course of construction an "All Risks" builder's risk insurance policy from a company licensed to do business in North Carolina in the amount of the House's "Replacement Cost" without any voluntary deductibles. "Replacement Cost" shall mean the full cost of replacement of the House at the same site with new material of like kind and quality without deduction for depreciation. The policy shall include coverage for theft, vandalism and malicious mischief. Contractor shall assume the obligation and cost of restoring, rebuilding, repairing, and/or replacing the House. Such risk of loss or damage assumed by Contractor shall continue until the delivery to Owner of a valid certificate of occupancy, and until such time Contractor shall also bear the risk of loss for theft, damage or destruction of building materials, tools, equipment, appliances and fixtures, whether incorporated in the House or stored on or off site. Notwithstanding the foregoing, any loss or damage caused by flood shall be Owner's sole responsibility and Owner shall purchase and maintain at Owner's expense a flood insurance policy that lists Contractor as an additional insured and which insures the House up to its Replacement Cost. At all times during construction, including completion of punch list items, Contractor shall maintain workers' compensation insurance as required by law and commercial general liability insurance in the amount of \$ \_\_\_\_\_ covering personal injury or death and property damage which may arise out of Contractor's operations under the Contract Documents and for which Contractor may be legally liable. Certificates of insurance acceptable to Owner shall be provided to Owner before construction is commenced.

**13. Owner's warranties:** Owner warrants and represents to Contractor that Owner owns the Construction Site in fee simple absolute subject only to Owner's recorded deeds of trust, restrictive covenants, minimum building lines on subdivision plats, and utility easements. Owner will deliver copies of applicable restrictive covenants, minimum building lines on subdivision plats, and utility easements upon request of Contractor. Owner further warrants and represents that, subject to the financing condition referenced above, if any, that Owner has the financial ability to pay the compensation to Contractor as set forth herein as it is due, and Owner will make such payments.

**14. Punch list:** Contractor shall notify Owner when the House is substantially complete. Owner shall thereupon promptly inspect the House and deliver to Contractor a written comprehensive list of all deficiencies that are detectable by visual examination. These deficiencies are referred to in the Contract Documents as "punch list" items. Contractor shall promptly and diligently correct all construction deficiencies so listed. Owner may withhold an amount estimated by Owner to be the reasonable cost of correcting the construction deficiencies noted on Owner's punch list from the payment due Contractor upon substantial completion. Any sum retained will be promptly paid as Contractor corrects such construction deficiency. In the event Contractor fails to complete the punch list in a reasonable time, Owner shall have the option of completing the punch list and paying for the same from the monies retained. Any balance of retainage shall be paid to Contractor. Contractor is liable for any deficiency.

**15. Contractor's Warranties:**

(a) Contractor warrants that the construction will be performed in conformity (i) with the Contract Documents, (ii) with all laws, regulations, and codes applicable to the construction of the House, (iii) with any applicable restrictive covenants and homeowners' association documents, (iv) in a good and workmanlike manner, and (v) with new (unless otherwise specified) good quality materials.

(b) Manufacturers' or vendors' warranties or guarantees (referred to as "product warranties" herein), if any, on materials, fixtures, appliances, and components, to the extent assignable, are deemed assigned by Contractor to Owner. Contractor will deliver to Owner all product warranty forms in its possession. Owner is responsible for compliance with any notice and claim procedures set forth therein. Contractor does not adopt and is not bound by any such product warranty. Owner's rights under the product warranties are in addition to Contractor's warranties in 15(a) above.

(c) WARRANTY DISCLAIMER: *Both Owner and Contractor to initial spaces below if Warranty Disclaimer is applicable:*

CONTRACTOR MAKES NO WARRANTY, EXPRESS OR IMPLIED, EXCEPT AS EXPRESSLY SET FORTH HEREIN. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, CONTRACTOR HEREBY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

\_\_\_\_\_ *Owner's initials*      \_\_\_\_\_ *Contractor's initials*

**16. Contractor's duty to correct:** In addition to the warranties in paragraph 15, for a period of one (1) year from the date the certificate of occupancy is issued, Contractor will make all repairs and corrections to the House that shall become necessary by reason of defects in labor or

materials or substantial non-conformity with the Contract Documents which were not detectable by visual examination at the time of preparation of the punch list upon written notice of the defect from Owner. Should a repair or correction become defective within one (1) year from the date the repair or correction was made or attempted, Contractor will make all necessary adjustments to the repair or correction that shall become necessary by reason of defects in labor or materials or substantial non-conformity with the Contract Documents upon written notice of the defect from Owner. (Imperfections in non-structural components of the House resulting from normal settling and drying of materials shall not be considered "defects.")

**17. Completion documentation:** Upon substantial completion of the House, Contractor shall deliver to Owner a certificate of occupancy issued by the building inspector's office, all product warranties in the possession of Contractor, and a new construction termite guarantee if the Contract Documents require Contractor to provide treatment against wood destroying insects. Simultaneously with the receipt of the balance of compensation payable by Owner to Contractor upon substantial completion of the House (less any retainage for "punch list items" authorized in paragraph 7 above), Contractor will deliver to Owner an affidavit, in form and content standard in the construction industry and approved by Owner's title insurance company, verifying that all work, labor, services and materials for the construction of the House have been paid in full and indemnifying and holding Owner and Owner's title insurance company harmless from any and all costs, damage, or expense of any kind (including attorney's fees and court costs) arising out of or on account of any claims or liens of any contractor, laborer, or materialman of Contractor arising by virtue of Chapter 44A of the North Carolina General Statutes, now or as may be hereafter amended.

**18. Miscellaneous:** The parties also agree that

- (a) The Contract Documents may not be assigned or transferred without the written agreement of Contractor and Owner.
- (b) In the event that any court of competent jurisdiction shall declare any provision of the Contract Documents to be invalid, the remaining portions of the Contract Documents shall remain in full force and effect except to the extent that said adjudication of invalidity shall defeat the purpose of the contract, in which case it shall terminate.
- (c) This Contract shall be governed by and construed in accordance with the internal substantive laws of North Carolina without giving effect to its conflicts of laws.
- (d) This Contract shall be binding upon and shall inure to the benefit of the parties and their respective successors, assigns, executors and administrators, and their heirs.
- (e) As used herein the words in the singular include the plural and the masculine, feminine and neuter genders are interchangeable as required by context.
- (f) The Contract Documents constitute the entire understanding of the parties and all prior agreements and understandings are merged herein. The Contract Documents may not be modified or amended except in writing, signed by each of the parties hereto.
- (g) In case of conflict among the Contract Documents, the Specifications will take precedence over the House Plans, and the House Plans will take precedence over this Residential Construction Contract.
- (h) If any provision herein is by its nature and effect required to be observed, kept or performed after substantial completion of the House, it shall survive same and remain

