

## RESIDENTIAL CONSTRUCTION AND LAND SALES CONTRACT

This Residential Construction and Land Sales Contract ("Agreement") is made by and between Contractor and Buyer as identified below. This Agreement is effective on the date it is last signed by the parties hereto ("Effective Date"). In consideration of the following and the mutual covenants contained herein, Buyer agrees to purchase from Contractor, and Contractor agrees to sell, assign and convey to Buyer, upon the terms and conditions stated herein, the following described real property (the "Property"), together with all fixtures and improvements (the "House") constructed thereon or to be constructed thereon pursuant to the house plans and specifications referenced below (the Property and House hereinafter sometimes referred as the "Residence"). (Complete each space provided. For inapplicable provisions insert "N/A".)

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

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

**3. Real Property/Construction Site:** Located in the City of \_\_\_\_\_,  
County of \_\_\_\_\_, State of North Carolina, being known as and more particularly described as: Street Address: \_\_\_\_\_  
Legal Description: \_\_\_\_\_  
(being     All     A portion of the property in Deed Reference: Book \_\_\_\_\_,  
Page \_\_\_\_\_, \_\_\_\_\_ County.

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

**5. Purchase Price:** *Check appropriate box and fill in spaces accordingly or mark "N/A."*  
Regardless of the payment type selected, the purchase price 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 Buyer shall be jointly and severally liable for payment in full of the final purchase price to be paid to Contractor under this Agreement.

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: The fixed-price purchase price is \$ \_\_\_\_\_ and shall be paid to Contractor as follows:

(a) \$ \_\_\_\_\_ as an earnest money deposit due upon Buyer's execution of this Agreement, said amount paid to Contractor and which will be credited to Buyer at Closing. In the event any of the conditions hereto are not satisfied, then all earnest monies shall be returned to Buyer. In the event of a breach of this Agreement by Contractor, all earnest monies shall be returned to Buyer but such return shall not affect any other remedies available to Buyer for such breach. In the event Buyer breaches this Agreement, then all earnest monies shall be

forfeited, but receipt of such forfeited earnest monies shall not affect any other remedies available to Contractor for such breach.

(b) \$ \_\_\_\_\_ as additional earnest money deposit to be paid no later than \_\_\_\_\_ and time being of the essence with regard to said date.

(c) \$ \_\_\_\_\_, being the balance of the purchase price due in cash at Closing.

**6. Conditions:**

(a) Buyer must be able to obtain a  FHA  VHA  Conventional loan at a  Fixed Rate  Adjustable Rate in the principal amount of \_\_\_\_\_ (plus any financed VA Funding Fee or FHA MIP) for a term of \_\_\_ year(s), at an initial interest rate not to exceed \_\_\_\_\_ % per annum, with mortgage loan discount points not to exceed \_\_\_\_\_ % of the loan amount. Buyer shall apply for said loan within \_\_\_\_\_ days of the Effective Date of this Agreement. Buyer shall use Buyer's best efforts to secure the lender's customary loan commitment letter and deliver to Contractor a copy of same on or before \_\_\_\_\_. Buyer shall satisfy all terms and conditions of the loan commitment letter by Closing. If Buyer is unable to obtain the loan commitment letter and deliver a copy of same to Contractor within the time limit provided above, this Agreement will automatically terminate and neither party shall have any further obligations hereunder unless otherwise agreed to by the parties in writing.

(b) There must be no restriction, easement, zoning or other governmental regulation that would prevent the reasonable use of the Property for residential purposes.

(c) All deeds of trust, liens and other charges against the Property, not assumed by Buyer, must be paid and satisfied by Contractor prior to or at Closing such that cancellation may be promptly obtained following Closing. Contractor shall remain obligated to obtain any such cancellations following Closing.

(d) Title must be delivered at Closing by General Warranty Deed unless otherwise stated herein, and must be fee simple marketable and insurable title, free of all encumbrances except: *ad valorem* taxes for the current year (prorated through the date of Closing); utility easements and unviolated restrictive covenants that do not materially affect the value of the Property; and such other encumbrances as may be assumed or specifically approved by the Buyer. The Property must have legal access to a public right of way.

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

**8. Contract Documents:** The documents that form the Agreement between Contractor and Buyer are this Residential Construction and Land Sales 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:** Construction of the House shall commence and be completed as follows:

(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 Buyer, 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:** During the course of construction, Buyer or Buyer'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.

**12. Closing:** Closing shall be defined as the date and time of recording of the deed to be delivered by Contractor to Buyer, and Closing and transfer of title shall occur on or before \_\_\_\_\_ at a place designated by Buyer ("Closing"). The deed is to be made to \_\_\_\_\_. All parties agree to execute any and all documents and papers necessary in connection with Closing. As to the deadline for Closing, time  is  is not of the essence.

**13. Special Assessments:** Contractor warrants that there are no pending or confirmed governmental special assessments for sidewalk, paving, water, sewer, or other improvements on or adjoining the Property, and no pending or confirmed owners' association special assessments, except as follows: \_\_\_\_\_.

**14. Prorations and Adjustments:** Unless otherwise provided, the following items shall be prorated and either adjusted between the parties or paid at Closing: (a) *Ad valorem* taxes on real property shall be prorated on a calendar year basis through the date of Closing; (b) *Ad valorem* taxes on personal property for the entire year shall be paid by the Contractor unless the personal property is conveyed to the Buyer, in which case, the personal property taxes shall be prorated on

a calendar year basis through the date of Closing; (c) All late listing penalties, if any, shall be paid by Contractor; (d) Rents, if any, for the Property shall be prorated through the date of Closing; (e) Owners' association dues and other like charges, if any, shall be prorated through the date of Closing. Contractor represents that the regular homeowners' association dues, if any, are \$ \_\_\_\_\_ per \_\_\_\_\_.

**15. Closing Expenses:** Buyer shall be responsible for all costs with respect to any loan obtained by Buyer. Buyer shall pay for recording the deed and for preparation and recording of all instruments required to secure the balance of the purchase price unpaid at Closing. Contractor shall pay for preparation of a deed and all other documents necessary to perform Contractor's obligations under this Agreement, and for excise tax (revenue stamps) required by law. If Contractor is to pay any of Buyer's expenses associated with the purchase of the Residence, the amount thereof shall be \$ \_\_\_\_\_, including any FHA/VA lender and inspection costs that Buyer is not permitted to pay, but excluding any portion disapproved by Buyer's lender.

**16. Evidence of Title:** Contractor agrees to use its best efforts to deliver to Buyer as soon as reasonably possible after the Effective Date, copies of all title information in possession of or available to Contractor, including but not limited to: title insurance policies, attorney's opinions on title, surveys, covenants, deeds, notes and deed of trust and easements relating to the Property. Contractor authorizes (1) any attorney presently or previously representing Contractor to release and disclose any title insurance policy in such attorney's file to Buyer and both Buyer's and Contractor's agents and attorneys; and (2) the Property's title insurer or its agent to release and disclose all materials in the Property's title insurer's (or title insurer's agent's) file to Buyer and both Buyer's and Contractor's agents and attorneys.

**17. Risk of Loss and Insurance:** Until Closing, Contractor shall bear the risk of loss for damage or destruction of the House and any damage or destruction to, or theft of, building materials, equipment, appliances and fixtures, whether incorporated in the House or stored on or off site. If the House is destroyed or materially damaged prior to Closing, Buyer may terminate this Agreement by providing Contractor with written notice of such termination, and all deposits shall be returned to Buyer without interest. In the event Buyer does not elect to terminate this Agreement, Buyer shall be entitled to receive, in addition to the Property, all of Contractor's insurance proceeds payable on account of the damage or destruction applicable to the House being purchased hereunder. At all times during construction of the House, 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 Buyer shall be provided to Buyer before construction is commenced.

**18. Punch List:** Contractor shall notify Buyer when the Residence is substantially complete and shall schedule a date and time on which Buyer shall inspect the House and deliver to Contractor a written comprehensive list of all deficiencies in workmanship and material that are detectable by visual examination. These deficiencies are referred to in the Contract Documents

as "punch list" items. Contractor shall correct such deficiencies at its cost within a reasonable period of time, however, Contractor's obligation to correct same will not be grounds, as to minor deficiencies, for deferring the Closing, nor for imposing any conditions on the Closing. Buyer's failure to participate in a pre-Closing walkthrough and deliver a punch list will be deemed to be a waiver of that right, Buyer will be obligated to close without such inspection or correction of deficiencies, and any deficiencies not so specified in the pre-Closing punch list shall be deemed to have occurred after Closing while the Residence was in the possession of Buyer.

**19. 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 Buyer. Contractor will deliver to Buyer all product warranty forms in its possession. Buyer 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. Buyer's rights under the product warranties are in addition to Contractor's warranties in paragraph 19(a) above.

(c) WARRANTY DISCLAIMER: *Both Buyer 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.

\_\_\_\_\_ *Buyer's initials*      \_\_\_\_\_ *Contractor's initials*

**20. Contractor's Duty to Correct:** In addition to the warranties in paragraph 19, 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 Residence 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 Buyer. 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 Buyer. (Imperfections in non-structural components of the House resulting from normal settling and drying of materials shall not be considered "defects.")

**21. Completion Documentation:** At Closing, Contractor shall deliver to Buyer (1) a copy of the certificate of occupancy issued by the building inspector's office; (2) all product warranties in the possession of Contractor; (3) a new construction termite guarantee if the Contract Documents require Contractor to provide treatment against wood destroying insects; (4) an

affidavit, in form and content standard in the construction industry and approved by Buyer'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 Buyer and Buyer'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.

**22. Subordination:** This Agreement is subordinate and subject to any mortgage the Contractor may obtain to provide any portion of the construction costs of the House referred to herein or any mortgage the proceeds of which are used to satisfy any construction mortgage, but Contractor shall cause such mortgage or mortgages to be satisfied or released as to the Residence being sold prior to or simultaneously with the Closing unless Buyer is to assume same. The provisions hereof shall be self-operative. Notwithstanding the preceding sentence, Buyer agrees upon request of Contractor to execute any documents of subordination as reasonably requested by Contractor or any mortgage lender.

**23. Broker:** Except for \_\_\_\_\_, Buyer represents that Buyer has not dealt with any other real estate broker regarding this transaction and Contractor will not be liable for a real estate brokerage commission other than to the named Realtor, if any. Buyer agrees to indemnify and hold harmless Contractor for all loss, cost or expense, including attorneys' fees, as to all claims of real estate brokers or salesmen due to act of Buyer or Buyer's representatives, except for any Realtor named herein.

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

- (a) The Contract Documents may not be assigned or transferred without the written agreement of Contractor and Buyer.
- (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 Agreement 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 Agreement 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 and Land Sales Contract.
- (h) Buyer shall not acquire any right, title, interest or lien rights in the Residence prior to Closing.

- (i) If any provision herein is by its nature and effect required to be observed, kept or performed after the Closing, it shall survive the Closing and remain binding upon and for the benefit of the parties hereto until fully observed, kept or performed.
- (j) The parties hereto adopt the word/symbol (SEAL) next to their respective signatures as their seal with the intent that this Agreement (along with any Addendum or Change Order) be treated as a sealed instrument.

IN WITNESS WHEREOF, the parties have executed this Residential Construction and Land Sales Contract on the dates as set forth below.

**CONTRACTOR**

Name: \_\_\_\_\_  
By: \_\_\_\_\_ (SEAL)  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**BUYER**

\_\_\_\_\_  
DATE: \_\_\_\_\_ (SEAL)

**BUYER**

\_\_\_\_\_  
DATE: \_\_\_\_\_ (SEAL)