

Home Builders Association of \_\_\_\_\_

HBA Phone \_\_\_\_\_

Contract No. \_\_\_\_\_

**CONSTRUCTION AND PURCHASE CONTRACT**  
(Cost Plus - Builder-owned Lot)

THIS CONTRACT, dated \_\_\_\_\_, 20\_\_\_\_, between \_\_\_\_\_  
(referred to as "Builder") and \_\_\_\_\_ (referred to as "Buyer") sets forth  
the agreement of the parties.

1. **Property.** Builder agrees to sell and Buyer agrees to purchase the following described real estate together with the Residence to be constructed thereon by Builder:

Lot # \_\_\_\_\_; Lot frontage (approx.): \_\_\_\_\_ feet; Lot depth (approx.): \_\_\_\_\_ feet  
Subdivision: \_\_\_\_\_; County: \_\_\_\_\_; City: \_\_\_\_\_

2. **Contract Documents.** The agreement of the parties is contained in the following Contract Documents (the "Contract Documents"): (1) this Construction and Purchase Contract; (2) the architectural plans (the "Plans"); and (3) an addendum describing construction specifications, materials and allowances (the "Specifications"). All Contract Documents shall be signed and contemporaneously dated. If any of the Contract Documents are not signed and dated, the contract is void. The Contract Documents supersede all other prior or contemporaneous agreements, written or oral, and shall be construed together and in a complementary manner.

3. **Work.** Builder shall furnish all labor and materials required for the construction of the Residence in accordance with the Contract Documents. Unless otherwise agreed, Builder shall determine the location and elevation of all improvements on the lot. Builder shall supply all materials and labor needed to complete the Residence. Builder shall not be responsible for any materials or labor supplied by Buyer. Builder may make changes and substitutions in construction as may be necessary because of the unavailability of materials through the Builder's ordinary and usual sources of supply or otherwise, provided the changes or substitutions are of equal or better quality. Builder is not responsible for the accuracy of plans supplied by the Buyer.

4. **Cost of Work.** Buyer will pay Builder for the Cost of Work, defined as all costs reasonably incurred in performing the work, including but not limited to cost of materials, supplies, and equipment incorporated or consumed in the work, cost of subcontracts, cost of temporary facilities and tools consumed in the work, reasonable equipment rental whether equipment is owned by, or rented to Builder, wages, payroll taxes, contributions for unemployment, social security, disability, and similar payments paid for direct labor at jobsite or elsewhere for work needed to perform this contract, travel and subsistence, power, utility, and telephone charges, permit fees, sales and use taxes incurred, premiums for bonds and insurance that Builder is required to maintain, cleanup costs, the professional fees of consultants engaged by Builder to facilitate work, and all other costs properly and reasonably incurred in the performance of the work. Prior to closing, Builder shall provide Buyer with copies of invoices or other proof of the Cost of Work.

*(Choose and complete one of the following and cross through the other)*

5. **Builder's Fee.** Buyer will pay a Builder's fee equal to the Cost of Work multiplied by \_\_\_\_\_ per cent.

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Buyers' Initials: \_\_\_\_\_ Builder's Initials: \_\_\_\_\_

6. **Changes in Work.** All changes in or departures from the Plans and Specifications shall be agreed upon in writing and reduced to a Change Order, i.e., a written instrument signed by Buyer and Builder stating their agreement upon all of the following:

- A. a change in the Plans and Specifications for the Residence;
- B. the amount of the adjustment, if any, in the Cost of the Work; and
- C. the extent of the adjustment, if any, in the time for completion.

Buyer may request changes in the scope of work from the Builder, subcontractors or suppliers, which Change Order shall consist of additions, deletions or modification to the Plans and Specifications. All such changes in the scope of work, if any, shall be authorized only by the Change Order signed by the Buyer, Builder, and the applicable subcontractor, supplier, and the Cost of the Work shall be adjusted accordingly. It is expressly understood and agreed by the parties that the Plans and Specifications and Cost of the Work, and time for completion may only be changed by a written Change Order which shall set forth the cost or credit to Buyer, if any, of such changes to the Cost of the Work. Builder shall not be obligated to perform any work, nor order any supplies or materials, pursuant to any Change Order prior to its execution by the parties to this Agreement.

In the event physical conditions differ materially from those indicated in this contract or in the event there exist unknown physical conditions at the site of an unusual nature differing materially from those ordinarily encountered in work of the character provided for in this contract, Builder shall advise Buyer of the existence of such conditions and the Builder shall be entitled to the cost incurred for any increase resulting from such conditions.

7. **Reasonable Assurance.** Builder is modifying Builder's real property based on his trust and confidence that Buyer will qualify for sufficient financing to purchase the property as constructed. As a sign of good faith, Buyer shall deposit \$\_\_\_\_\_ with Builder to be used by Builder as necessary and applied to the purchase price upon delivery of the deed. Furthermore, Buyer shall immediately apply for financing for a \_\_\_\_\_ loan in the principal amount of \$\_\_\_\_\_ to be paid to Builder at closing. Buyer shall present Builder with a written pre-approval letter not later than \_\_\_\_\_ days from the date of this Contract. If the financial institution imposes conditions to a final commitment, Builder may demand and Buyer, within five (5) business days, shall establish to Builder's satisfaction that Buyer can satisfy all conditions to the final loan commitment. For purposes of this paragraph, time is of the essence.

**THIS AGREEMENT IS NOT CONTINGENT ON FINANCING ONCE CONSTRUCTION HAS STARTED.** In the event that Buyer does not finance the purchase price, Buyer shall pay construction draws as more particularly shown on the schedule of construction payments from Buyer to Builder, included as part of the Additional Provisions.

8. **Commencing Construction.** Builder shall commence construction as soon as practical after the Contract Documents are fully executed and financial arrangements satisfactory to the Builder secured.

9. **Supervision.** Buyer agrees that the direction and supervision of construction personnel, including subcontractors, rests exclusively with Builder or its duly designated agent, and Buyer agrees not to issue any instructions or to otherwise interfere with the same. Buyer shall not negotiate for additional work with Builder's subcontractors or engage another contractor or subcontractor except with Builder's prior written consent and then only in such manner as will not interfere with Builder's completion of the Work.

Buyers' Initials: \_\_\_\_\_ Builder's Initials: \_\_\_\_\_

10. **Completing Construction.** Builder shall complete construction within \_\_\_\_\_ working days from the start of construction. "Working day" means Monday through Friday except national and state holidays. If the progress of the work is delayed by changes or acts of Buyer or Buyer's agent, government acts, inclement weather, flood, earthquake, picketing, boycotts, shortages of materials, or other causes beyond the reasonable control of Builder, the time for performance of the work shall be extended as necessary.

11. **Closing.** The closing date shall be within \_\_\_\_\_ days after substantial completion of the Residence and receipt of all applicable city/county and lender inspections and approvals required (the "Closing Date"), with the date and place of the closing to be specified by Builder. On the Closing Date, and upon Buyer's request, Builder shall provide Buyer with an affidavit stating that all labor, materials and equipment used in the construction have been paid for or will be paid in full by Builder unless otherwise noted. On the Closing Date, Builder shall convey to Buyer an unencumbered marketable title, by general warranty deed subject to easements and restrictive covenants of record at the time of the closing, and applicable regulations imposed by governmental agencies. Possession of the lot and Residence shall be given on the Closing Date.

12. **Acknowledgment of Completion and Release.** Except for matters covered by the limited warranty (described in Section 15), Buyer's acceptance of deed constitutes a complete release and discharge of all Builder obligations and liabilities with respect to construction, completion and delivery of Residence and lot. Buyer, if requested by Builder, shall execute and deliver to Builder an acknowledgment to that effect and releasing Builder from any and all claims hereunder. If after Buyer takes possession, defects are claimed by Buyer, Buyer and Builder shall comply with the claim procedures in the limited warranty described in the previous section, including but not limited to the notice requirements.

13. **Property taxes.** All property taxes on the lot due and payable in 20\_\_\_\_ and after shall be paid by Buyer.

14. **Default.** Buyer acknowledges that Builder is modifying Builder's property to satisfy tastes peculiar to - Buyer. Therefore, Buyer agrees to indemnify and hold Builder harmless from any and all loss, expense, and cost, including but not limited to reasonable attorney fees, that Builder incurs which arise out of any default by Buyer in the performance of its obligations under this Contract. Furthermore, if Buyer defaults on any obligation under this Contract, Builder may at its option treat this Contract as null and void and retain all payments made under this Contract. In addition, Builder shall be entitled to the remedy of specific performance. If Builder defaults on its obligations in this Contract, Buyer shall be limited to the remedies available at law.

15. **Limited Warranty.** At the time of transfer of title of the lot and residence to Buyer, Builder shall execute and deliver to the Buyer a home owners "limited warranty." Builder disclaims and Buyer waives, unless otherwise expressly provided for in Builder's limited warranty, all warranties, express or implied, including but not limited to the warranties of merchantability, and fitness of purpose, and including any warranties that could be construed to relate to the presence of radon or other environmental pollutants. **BUYER AND BUILDER AGREE THAT SUCH LIMITED WARRANTY SHALL CONSTITUTE THE SOLE WARRANTY FROM BUILDER TO BUYER AND THE LIMITED WARRANTY IS GIVEN IN LIEU OF ALL OTHER WARRANTIES.**

16. **Conciliation.** If after closing Builder fails to comply with the claim procedures in the limited warranty described in Section 15, or if before closing the parties are unable to mutually resolve any question with respect to the performance of this Contract, Buyer may contact the local Home Builders Association and request conciliation. The provisions of this last sentence shall not apply unless the Builder is at all times during the conciliation procedure a member of the respective Home Builders Association. The association provides the conciliation procedures only as a service to its members and the home buyer and does not undertake or guarantee, expressly or impliedly, to perform any obligation of Builder resulting from such procedures.

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17. **Notice and Opportunity to Repair Act.** If after closing Buyer believes a construction defect exists in the Residence, Buyer shall first comply with Sections 15 and 16 above. If those remedies do not result in a satisfactory solution, the parties shall implement the provisions of Kentucky's Notice and Opportunity to Repair Act (hereafter, "NORA"). As described in bold below, to comply with NORA, Buyer and Builder shall take the following steps:

- A. Buyer shall describe the claim in writing in reasonable detail delivered to the Builder;
- B. Not less than twenty-one (21) days after receipt of that written notice, Builder shall send a written response to Buyer to arrange an inspection, offer to correct the defect or compensate Buyer for the defect, or state in writing an intent not to take any remedial action.

**THE NOTICE AND OPPORTUNITY TO REPAIR ACT CONTAINS IMPORTANT REQUIREMENTS YOU MUST FOLLOW BEFORE YOU MAY FILE A LAWSUIT FOR DEFECTIVE CONSTRUCTION AGAINST THE BUILDER OF YOUR HOME. YOU MUST DEUVER TO THE BUILDER A WRITTEN NOTICE OF ANY CONSTRUCTION CONDITIONS YOU ALLEGE ARE DEFECTNE AND PROVIDE YOUR BUILDER THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR OR PAY FOR THE DEFECTS. YOU ARE NOT OBUGATED TO ACCEPT ANY OFFER MADE BY THE BUILDER. THERE ARE STRICT DEADUNES AND PROCEDURES UNDER STATE LAW, AND FAILURE TO FOLLOW THEM MAY AFFECT YOUR ABILITY TO FILE A LAWSUIT.**

18. **Arbitration.** If the remedies available in the Contract, in the Warranty and through NORA fail to resolve the dispute, that dispute shall be submitted to binding arbitration. The parties shall mutually agree to the election of an arbitrator or panel of arbitrators. However, each arbitrator must have arbitrated at least one previous residential construction case. If the parties cannot agree on an arbitrator or panel of arbitrators, the arbitrator or panel of arbitrators shall be selected in accordance with the Kentucky Uniform Arbitration Act (the "Act"). In all cases, the hearing shall be conducted in accordance with the Act. Arbitration shall be conducted in the county in which the Residence is located. The arbitrators' written decision shall be binding on the parties.

19. **Survival of rights and obligations.** The rights and obligations granted and assumed under this Contract shall apply to the heirs, administrators, executors, successors and assigns of Builder and Buyer.

20. **Agents' commissions.** Builder and Buyer covenant and represent to each other that, to their knowledge, there is no party entitled to a real estate commission or other brokerage fee or similar compensation in connection with the Contract and the transactions contemplated hereby with the exception of \_\_\_\_\_ and \_\_\_\_\_, whose fee(s) shall be due and payable if and only if the transaction contemplated actually closes and shall be paid by Builder on the Closing Date, and only in accordance with the terms of a separate written agreement between Builder, and the licensed real estate agents or brokers set forth above. Each party agrees to hold the other harmless from and against any claim for a commission or fee from any other broker or agent claiming by or though the indemnifying party.

21. **Additional provisions.**  
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22. **Amendments of the Contract Documents.** No change in this Contract shall be effective unless in writing signed by the parties.

23. **Entire Agreement.** This Agreement and the Plans and Specifications, and other Exhibits attached hereto constitutes the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersedes all previous and contemporaneous written or oral agreements. This Agreement may only be amended by an instrument in writing signed by both parties.

24. **Governing Law/Venue.** This Agreement shall be construed and enforced in accordance with the laws of the Commonwealth of Kentucky. Venue for any litigation between the parties with respect to the subject matter hereof shall be proper only in \_\_\_\_\_ County (Kentucky) Circuit Court.

25. **Binding Effect.** This Agreement shall inure to the benefit of and be binding upon the parties hereto, their respective affiliates, successors and permitted assigns.

26. **Notices.** All notices, requests, demands, consents and other communications required or permitted under this Agreement shall be in writing and shall be either (1) hand delivered by messenger or courier service, (2) telecommunicated by fax or electronic mail; or (3) mailed by registered or certified mail (postage prepaid), return receipt requested, addressed to the appropriate party at its address set forth above or to such other address as that party may designate by notice complying with the terms of this Section. Each such notice is deemed delivered: (a) on the date delivered if by personal delivery; (b) on the date of transmission, with confirmed answer back if by facsimile or electronic mail; or (c) on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities or courier service as not deliverable, as the case may be, if mailed or couriered. All notices and demands herein required shall be delivered to the addresses set forth below.

**BUILDER**

**BUYER**

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\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Fax:

Fax:

Email:

Email:

27. **Severability.** Each section, paragraph, term and provision of this Agreement, or any portion thereof, shall be considered severable and if, for any reason, any such portion of this Agreement is held by a court of competent jurisdiction to be unenforceable due to any applicable existing or future law or regulation, such

Buyers' Initials: \_\_\_\_\_ Builder's Initials: \_\_\_\_\_

portion shall not impair the operation of or have any effect upon, the remaining portions of this Agreement which will remain in full force and effect and bind the parties hereto, although the invalid portion shall be deemed not part of this Agreement from the time so directed by the court.

28. **Headings.** The section headings contained herein are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

29. **Reading the Contract.** Buyer certifies that Buyer has read the entire contents of this Contract. Buyer further certifies that Buyer was given ample opportunity to review this Contract and the Contract Documents and to consult with an attorney of Buyer's choosing. Buyer also acknowledges receipt of a copy of the Contract Documents.

IN WITNESS WHEREOF, Builder and Buyer have signed this agreement on the date set forth below.

BUILDER: \_\_\_\_\_  
BY: \_\_\_\_\_  
ITS: \_\_\_\_\_  
DATE: \_\_\_\_\_

BUYER: \_\_\_\_\_  
DATE: \_\_\_\_\_  
BUYER: \_\_\_\_\_  
DATE: \_\_\_\_\_

Buyers' Initials: \_\_\_\_\_ Builder's Initials: \_\_\_\_\_