



Home Builder's Association of _____

HBA Phone _____
Contract No. _____

CONSTRUCTION AND PURCHASE CONTRACT
(Cost Plus - Owner-owned Lot)

THIS CONTRACT, dated _____, 20____, between _____ (referred to as "Builder") and _____ (referred to as "Owner") sets forth the agreement of the parties.

1. **Property.** Builder will construct a _____, more fully described in the drawings, blueprints, and specifications signed by the Owners and attached to this Agreement and made a part hereof (the Residence). The Residence shall be constructed on a tract of land owned by Owner which is more specifically described in a deed and survey attached to and made a part of this Contract.

2. **Owner's Warranties Regarding Tract.** Owner represents and warrants that:

- a. Owner is the sole owner of the tract of land on which the Residence is to be erected.
- b. Owner has not executed and, until this Contract is fully performed, will not execute any deed, lease, or other document to convey to anyone any interest in the land (other than construction or permanent mortgages).
- c. Title to the land is good and marketable.
- d. The premises are free and clear of all liens and encumbrances (with the exception of the construction and permanent mortgages).
- e. The tract of land abuts a public street or is accessible by way of a permanent right of way as means of uninterrupted access to and from the subject tract to enable Builder to perform this Agreement.
- f. Owner will remove or remedy any circumstance contrary to any of the foregoing representations.

3. **Contract Documents.** The agreement of the parties is contained in the following Contract Documents: (a) this Construction and Purchase Contract; (b) the deed and survey referred to in Section 1; (c) the architectural plans (the "Plans"); and (d) an addendum describing construction specifications, materials and allowances (the "Specifications"). All Contract Documents all 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. Builder will supply all labor and materials and will complete construction of the House in accordance with the attached drawings and specifications.

4. **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 Owner. 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 Owner.

5. **Cost of Work.** Owner 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 Owner with Copies of invoices or other proof of the Cost of Work.

Owner shall pay construction draws as more particularly shown on the schedule of construction payments from Owner to Builder, included as part of the Additional Provisions.

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

6. **Builder's Fee.** Owner will pay a Builder's fee equal to the Cost of Work multiplied by _____ per cent as Requests for Payment, accompanied by invoices, are presented to Owner.

OR

6. **Builder's Fee.** Owner will pay a Builder's Fee of \$ _____ as follows:

_____ % on completion of _____,

_____ % on completion of _____,

the balance on completion of all other work required by this Contract; obtaining a Certificate of Occupancy, where required, and conversion of construction loan to permanent mortgage (if there is to be one).

7. **Construction Loan.** Owner shall apply for a construction loan with a lender acceptable to Builder ("Lender". Builder shall cooperate with Owner in Owner's efforts to secure construction loan financing.

8. **Insurance.** Owner shall at all times maintain fire and extended coverage insurance on the Residence in an amount no less than the full insurable value thereof. All such insurance policies shall be payable to Owner, Builder, and mortgagees, as their respective interests should appear. Builder will carry Workers' Compensation and Contractor's Liability Insurance in an amount not less than One Hundred Thousand Dollars (\$100,000). The parties, upon demand, shall provide each other with certificates evidencing ownership of such insurance.

9. **Permits and Liens.** Owner is responsible for obtaining all necessary permits and for the cost thereof. By executing this Contract, Owner designates Builder or Builder's agent as Owner's agent to obtain all permits.

10. **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.

11. **Supervision.** Owner agrees that the direction and supervision of construction personnel, including contractors, rests exclusively with Builder or its' duly designated agent, and Owner agrees not to issue any instructions or to otherwise

interfere with the same. Owner 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.

12. **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 Owner and Builder stating their agreement upon all of the following:

- i. a change in the Plans and Specifications for the Residence;
- ii. the amount of the adjustment, if any, in the Cost of the Work; and
- iii. the extent of the adjustment, if any, in the time for completion.

Owner 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 Owner, 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 Owner, 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 Owner of the existence of such conditions and the Builder shall be entitled to the cost incurred for any increase resulting from such conditions.

13. **Completing Construction.** Builder shall have substantially completed 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 Owner or Owner'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.

14. **Progress Payments.** Builder shall submit to Owner a request for payment in a form or manner agreed to by Owner and Builder and approved by Lender ("Request for Payment") which shall cover a period of at least _____ calendar days. Within _____ calendar days after a Request for Payment is presented, Owner shall notify Builder if Owner has any concerns about the Request for Payment that Owner believes should be resolved before Owner pays the amounts specified in the Request for Payment, and, in this event, Owner and Builder shall promptly meet to address such concerns.

15. **Final Payment.** Final payment of the Builder's Fee shall be made in accordance with the following procedures:

a. When Builder considers the Work substantially complete, Builder shall notify Owner in writing. Within a reasonable time thereafter, Owner and Builder shall inspect the Work. Promptly after such inspection, Owner shall deliver to Builder a written punch list of the items that must be completed in order for the Work to reach final completion. Alternatively, Owner shall deliver to Builder a written statement that Final Completion has been reached because no punch list items remain to be completed.

b. If Owner delivers a written punch list to Builder, then Builder shall deliver to Owner a written notice that the Work is finally complete when Builder has completed the punch list items or has obtained a Certificate of Occupancy at which time the Residence shall have been finally completed ("Final Completion").

c. When Final Completion has been reached and after Builder has delivered to Owner all maintenance and operating instructions, schedules, guarantees, certificates of inspection, marked-up record documents and other documents, Builder shall be entitled to payment of the balance, if any, of the Builder's Fee.

16. **Acknowledgment of Completion and Release.** Except for matters covered by the limited warranty (described in Section 19), Owner's occupancy of the Residence constitutes a complete release and discharge of all Builder obligations and liabilities with respect to construction, completion and delivery of Residence. Owner, 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 Owner takes possession, defects are claimed by Owner, Owner and Builder shall comply with the claim procedures in the limited warranty, including but not limited to the notice requirements.

17. **Property Taxes.** All property taxes shall be paid by Owner.

18. **Default.** In the event either party defaults in performance of this agreement, the non-defaulting aggrieved party shall be entitled to seek any and all legal and equitable relief. The prevailing party in any litigation shall be entitled to recover such party's costs including but not limited to reasonable attorney fees.

19. **Limited Warranty.** At the time Owner takes occupancy of the Residence, Builder shall execute and deliver to the Owner a home owners "limited warranty." Builder disclaims and Owner 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. OWNER AND BUILDER AGREE THAT SUCH LIMITED WARRANTY SHALL CONSTITUTE THE SOLE WARRANTY FROM BUILDER TO OWNER AND THE LIMITED WARRANTY IS GIVEN IN LIEU OF ALL OTHER WARRANTIES.

20. **Conciliation.** If after closing Builder fails to comply with the claim procedures in the limited warranty described in Section 19, or if before closing the parties are unable to mutually resolve any question with respect to the performance of this Contract, Owner 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 Owner and does not undertake or guarantee, expressly or impliedly, to perform any obligation of Builder resulting from such procedures.

21. **Notice and Opportunity to Repair Act.** If after occupancy, Owner believes a construction defect exists in the Residence, Owner shall first comply with Sections 19 and 20 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, Owner and Builder shall take the following steps:

22. **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.

23. **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 Owner.

24. **Agents' Commissions.** Builder and Owner 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 through the indemnifying party.

25. **Additional provisions.**

26. **Amendments of the Contract Documents.** No change in this Contract shall be effective unless in writing signed by the parties.

27. **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.

28. **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.

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

30. **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

OWNER

Fax:

Fax:

Email:

Email:

31. **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 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.

32. **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.

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

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

BUILDER: _____
BY: _____
ITS: _____
DATE: _____

OWNER: _____
DATE: _____
OWNER: _____
DATE: _____