

Home Builders Association of _____

HBA Phone No.: _____

Contract No.: _____

CONSTRUCTION CONTRACT

(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. **Builder's Undertaking and Cost of Construction.** 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 which is more specifically described on a survey attached to this Agreement and made a part hereof on which the Residence location has been placed, which survey has been signed by Owner. Builder will supply all labor and materials and will complete construction of the Residence in accordance with the attached drawings and specifications for the sum of \$_____ (the "Contract Price"). Said Contract Price shall be paid as follows:

- a. _____ percent (____%) equal to \$_____ upon signing of this Agreement;
- b. _____ percent (____%) equal to \$_____ on completion of _____;
- c. _____ percent (____%) equal to \$_____ on completion of _____;
- d. _____ percent (____%) equal to \$_____ on completion of _____;
- e. _____ percent (____%) equal to \$_____ on completion of all other work required by this Certificate of Occupancy, guaranteed survey, and conversion of building loan to permanent mortgage (if there is to be one).

The price shall include temporary heat and electricity installed by Builder, if the same is necessary. When electricity is drawn into the Residence through a hookup with the lines of the local power company, Builder may have the use of such electricity, which is to be paid for by Owner.

Allowances: The Contract Price may include Allowances for certain types of appliances, fixtures, finish work or other materials to be supplied or performed by subcontractors or suppliers, in the amounts set forth on Exhibit "A". The Allowances shall include the cost of all labor, material, and fixtures supplied by the Builder and/or Subcontractors. In the event any appliances, fixtures, finish work or other materials ordered by Owner, or Builder, at Owner's request, exceed the Allowance provided, then such excess cost shall be added to the Contract Sum and paid by Owner; or in the event such appliances, fixtures, finish work or other materials ordered by Owner, or Builder, at Owner's request, is less than the Allowance provided, then the Contract Sum shall be adjusted to reflect a credit for such savings. Owner agrees to make all selections for Allowances within thirty (30) days of execution of this Agreement.

Additional Fee to Builder: Changes and upgrades in materials or appliances designated as Allowances" from that shown on Exhibit "A" involving materials that increase the cost from that shown on Exhibit "A" shall not result in an increase in the Contract Price unless the increase in any such individual Allowance is greater than ten (10%) percent. Should an Allowance be exceeded by more than ten (10%) percent, the Contract Price shall be increased by fourteen (14%) percent of the excess.

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 Agreement 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. Should any of the foregoing warranties prove to be untrue, Owner shall take all reasonable steps to assure that foregoing representations and warranties prior to Builder commencing construction

3. **Time of Completion.** All work will be completed in a workmanlike manner according to practices that are standard in the community in which the Residence is to be constructed. The work shall be substantially completed and the Residence available for occupancy no later than _____. Anything to the contrary contained in this Agreement notwithstanding, Builder shall not be liable for any delays caused by changes or acts of Owner, or persons employed by Owner, failure of any subcontractor or materialman, fires, strikes, acts of public authority, inclement weather, allocation of materials priorities, delays or defaults by public or private carriers, shortages of materials or labor, acts of God, or other work stoppages, casualties, civil insurrection or other causes beyond the control of Builder.

4. **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.

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

6. **Work to Be Done by Builder.** Builder, at its own cost and expense, shall provide all manner of materials, labor, scaffolding, implements, molds, models, and cartage of every description for the due performance of all of the work provided in the attached drawings and specifications. All plumbing shall be properly installed and all connections thoroughly tested in accordance with local ordinances. Hot and cold water connections shall be made to all necessary fixtures. All Residence supply lines, waste lines, and vent pipes shall conform to the State Residential Building Code, and any additional local code requirements not in conflict with the State Residential Building Code. Tap-on fees, if any, are to be paid by Owner.

7. **Material and Products.** All material is as specified herein. Builder is authorized to substitute an equal or better grade or quality of material or to substitute products of equal grade or quality instead of those specified, provided they are recognized in the construction industry as equal to or better than those specified. Notwithstanding the foregoing, no material or products that will affect the appearance or utility value of the Residence unless its components will be substituted by Builder without Owner's written consent.

8. **Work by Owner.** No work shall be conducted by Owner without the express written consent of Builder. Any work that Owner is to do shall be coordinated with the work that Builder is to do so as not to delay Builder in the performance of its work.

9. **Plans and Specifications.** The Plans and Specifications, attached hereto are intended to coordinate with and explain each other. If there is any ambiguity between them, the Specifications shall control over the Plans. The Plans and

Owners' Initials: _____

Builder's Initials: _____

Specifications are incorporated in this Agreement as they exist at the time of the execution of this Agreement or as they may be amended in the future by the mutual agreement of Builder and Owner. No changes in the Plans and Specifications, other than those required to carry out the meaning and intent of this Agreement, shall be made unless Builder and Owner agree on the nature and extent of such changes and the price to be paid by Owner to Builder for such changes.

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 Contract Price; 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 Contract Price shall be adjusted accordingly. It is expressly understood and agreed by the parties that the Plans and Specifications and Contract Price, 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 Contract Price. 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.

10. Blueprints/Plans. Owner shall sign and accept all final blueprints or plans, provided they incorporate all changes requested by Owner following Owner's review.

11. Construction Mortgage Loan. This Agreement is conditioned on the Owner's obtaining a construction mortgage loan sufficient to finance the Work contemplated by this contract. Owner will use his best efforts to obtain such loan. Builder will cooperate fully with Owner and Lender in this effort. Such loan shall provide that the lender will make payments to Builder as construction proceeds in accordance with the schedule set forth in Paragraph no. 1 above, or by a schedule approved by the Lender (Construction Payments). Owner shall obtain a commitment for the construction mortgage loan from a lending institution within ____ days from the date hereof and close on construction financing within ____ days hereafter. If Owner is unable to secure a commitment for a construction loan, Builder shall return to Owner all monies paid by Owner to Builder in accordance with the provisions of this Agreement, except for any fees, costs, and out-of-pocket expenses borne by Builder to process this Agreement and to obtain and/or prepare drawings, blueprints, and specifications. A statement of all such fees, costs, and expenses shall accompany the payment. Upon receipt of any monies due to Owner in accordance with this Paragraph 12 together with the statement of fees, costs, and expenses, this Agreement shall terminate and be without force or effect. All drawings, blueprints, and Plans and Specifications prepared by Builder are Builder's property, and Owner shall return all copies in his possession.

12. Release of Construction Payments. Owner, Owner's agent or the Lender may inspect the Residence prior to every release of a Construction Payment. Any failure of the Owner to inspect the Residence, or to inform the Builder of any deviation from this Agreement or the drawings or specifications, shall be deemed a waiver of any right Owner may have to object to or reject such deviations on work performed by Builder during the particular stage of construction for the release of a Construction Payment and shall be deemed to be an acceptance thereof by Owner. Notwithstanding the foregoing, structural defects that reduce the fitness of the Residence for occupancy shall not be deemed accepted by Owner, who shall retain all rights that he may have to demand that such structural defects be corrected.

13. Final Payment/Occupancy of Residence. Final payment of the Contract Price shall be made in accordance with the following procedures:

Owners' Initials: _____

Builder's Initials: _____

a. When Builder considers the Work substantially complete, and a Final Certificate of Occupancy has been issued, or, a Temporary Certificate of Occupancy has been issued, subject only to conditions that may be remedied after occupancy by the Owner, 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.

Owner shall not occupy the Residence, either physically or by moving in personal possessions, until (a) the Residence has been completed in accordance with the drawings and specifications attached hereto; (b) all the terms of this Agreement have been complied with; and (c) an occupancy permit is issued. Until final settlement of all monies owed to Builder, the Residence shall remain Builder's personalty though affixed to the real estate. Owner's occupancy of the Residence shall constitute acceptance of the work performed by Builder as being in compliance with the provisions of this Agreement, the drawings and specifications that are part of this Agreement, and any Change Order signed by Owner.

14. Unexpected Conditions. 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.

15. Delay of Construction by Owner. If Owner delays construction by indecision, by failure to authorize release of construction Payments, or for any other reason not due to the fault of Builder, Owner shall be responsible for all additional costs incurred by Builder as a result of such delay. Such costs shall include, but are not limited to, (a) extra labor and materials and (b) the down time of workers and equipment or, in the alternative, the cost of moving equipment to other job sites, together with the reasonable cost of remobilization of workers and equipment. If payment is not received within ____ days after billing, Builder may stop all work until payment is made in full.

16. Breach by Owner. If in Builder's sole opinion Owner commits any material breach of this Agreement, Builder may terminate this Agreement by sending notice to Owner at the address provided by Owner, by certified mail, return receipt requested. Upon sending such notice, Builder shall have no further obligations under this Agreement and may terminate construction. Builder may retain any monies it has received, and, if the percentage of construction completed at the time such notice is given has not been paid for in full, Builder shall be entitled to receive such unpaid amount from the Owner together with the agreed-on price of all unpaid extra work performed by Builder. In addition to the foregoing, Builder shall be entitled to _____ percent (____%) of the amount paid by Owner to Builder to date (including any unpaid amounts described in this Paragraph 16) together with Builder's collection costs and attorney fees, if any, as liquidated damages and not as a penalty.

17. Limited Warranty. At the time of transfer of title of the lot and residence to Owner, 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.**

Owners' Initials: _____

Builder's Initials: _____

18. **Conciliation.** If after closing Builder fails to comply with the claim procedures in the limited warranty described in Section 17, 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.

19. **Notice and Opportunity to Repair Act; Arbitration.** If after closing and/or occupancy, Owner believes a construction defect exists in the Residence, Owner shall first comply with Sections 17 and 18 above. If those remedies do not result in a satisfactory solution, the parties shall implement provisions of Kentucky's Notice and Opportunity to Repair Act ("NORA"). As described in bold below, to comply with NORA, Owner and Builder shall take the following steps:

- a. Owner 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 Owner to arrange an inspection, offer to correct the defect or compensate Owner 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 DEFECTIVE AND PROVIDE YOUR BUILDER THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR OR PAY FOR THE DEFECTS. YOU ARE NOT OBLIGATED TO ACCEPT ANY OFFER MADE BY THE BUILDER. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER STATE LAW, AND FAILURE TO FOLLOW THEM MAY AFFECT YOUR ABILITY TO FILE A LAWSUIT.

If the remedies available in this Agreement, 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 selection 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 Arbitration Act. In all cases, the hearing shall be conducted in accordance with the Kentucky Arbitration Act. Arbitration shall be conducted in the county in which the Residence is located. The arbitrators' written decision shall be binding on the parties.

20. **Additional Provisions:** _____

21. **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.

22. **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.

Owners' Initials: _____ Builder's Initials: _____

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

24. **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:

25. **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.

26. **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.

BUILDER: _____

OWNER: _____

BY: _____

DATE: _____

ITS: _____

OWNER: _____

DATE: _____

DATE: _____

Owners' Initials: _____

Builder's Initials: _____