



HOME PURCHASE AND CONSTRUCTION AGREEMENT

This Home Purchase and Construction Agreement (“Agreement”) is entered into on _____ (“Effective Date”) by and between:

Builder: _____, a [North Carolina corporation/LLC], having its principal place of business at _____ (“Builder”),

and

Buyer: _____, residing at _____ (“Buyer”).

1. Property

1.1 **Lot Description** – Builder intends to acquire the following real property:

_____ [Insert legal description or street address] (the “Lot”).

Buyer acknowledges that Builder is currently under contract to purchase the Lot. It shall be a condition to Builder’s obligations under this Agreement that Builder closes on the purchase of the Lot

1.2 **Home** – Upon acquiring the Lot, subject to the terms in this Agreement, Builder shall construct a semi-custom, single-family residence on the Lot (the “Home”) in accordance with the Plans and Specifications attached hereto as Exhibit A (“Plans and Specifications”).

2. Purchase and Sale

2.1 **Agreement to Sell** – Upon completion of construction of the Home in accordance with this Agreement, Builder shall sell, and Buyer shall purchase, the Lot and the completed Home for the Purchase Price set forth in Section 3, subject to adjustments under this Agreement.

2.2 **Transfer of Title** – Title shall be transferred to Buyer by special/limited warranty deed at Closing, free of liens, but subject to all encumbrances and matters of record.

3. Purchase Price and Adjustments

3.1 **Base Purchase Price** – The Base Purchase Price for the Lot and completed Home is _____ (“Base Purchase Price”).

3.2 **Adjustments for Change Orders** – The Purchase Price shall be increased by the total cost of all approved Change Orders (Section 6). Any changes to Buyer’s selections that will be



notated in writing on Builder's Change Order Form and billed through invoicing. Change Orders shall not be binding until the parties have agreed thereto in writing. Buyer hereby agrees to make all requests for change orders to Builder, and not to issue instructions to or otherwise negotiate for additional changed work specifications with Builder's employees or subcontractors. Buyer shall incur a minimum \$200.00 administrative charge per Change Order.

3.3 Adjustments for Cost Escalation – If Builder's actual costs for labor, materials, permits, or governmental fees increase after the Effective Date due to circumstances beyond Builder's reasonable control, the Purchase Price shall be increased by the amount of such increase, documented by invoices or change orders from subcontractors or suppliers.

3.4 Approvals or Required Third Party Adjustments to Plans - Buyer assumes full and complete responsibility for any price increase resulting from any modifications to the Plans and Specifications required by third parties, including, but not limited to, those requested or required by any architectural review board, developer, building codes, governmental bodies, home owner association, Builder's lender, insurance company, or the like.

4. Deposit

4.1 Deposit Amount – Upon execution of this Agreement, Buyer shall deliver to Builder a non-refundable deposit of \$ _____ ("Deposit").

4.2 Application of Deposit – The Deposit shall be applied toward the Purchase Price at Closing.

4.3 Non-Refundable Nature – The Deposit is non-refundable to Buyer except as expressly provided in Section 10 below or in the event of Builder's material default under this Agreement that remains uncured after notice.

5. Construction

5.1 Financing Responsibility – Builder shall be solely responsible for all financing and costs associated with construction of the Home until Closing.

5.2 Standards of Construction – The Home shall be constructed substantially in accordance with the Plans and Specifications, in compliance with all applicable laws, building codes, and ordinances.

5.3 Completion Date – Builder shall use commercially reasonable efforts to complete the Home by _____, subject to delays caused by events beyond Builder's control ("Force Majeure Events").

5.4 Buyer Acknowledgement – Buyer understands and agrees that many color selections installed do not always exactly match the samples upon which the Buyer made their selection because manufacturers' production may have slight variations from time to time and Builder has



no control over the manufacturers' quality control. Without limitation of the above disclaimer of Builder's responsibility for manufacturers' variations the following are examples.

(a) Paint Disclaimer. It is understood by Buyer that the paint colors as applied on the walls may not exactly match the paint selected and touch up spots may not exactly match the original sprayed paint. These colors are mixed and there may be a minor color variation in the mix. Every effort will be made to save as much original paint as possible for the touchup and also to get the new touchup spots as close to the original paint color as possible. Buyer understands and acknowledges that there may be minor color variations in the touched up spots. Builder is not liable for paint color variations. The Builder may, in its discretion, substitute interior and exterior colors in the event of material shortages if Buyer selections are not available.

(b) Stone Disclaimer. Stone colors may vary and Buyer acknowledges that there may be minor color variations. Builder is not liable for color variations in any stone installed.

(c) Siding Disclaimer. Buyer acknowledges that dark siding colors are not warranted against warping. Builder is not liable in the event dark siding warps.

5.5 Onsite Conditions – Buyer understands and agrees that onsite conditions encountered during construction may require modifications, changes or deletions from the Plans and Specifications. Buyer agrees that if such site conditions are encountered by Builder, the Builder has the right to make such changes as may be necessary. Without limitation of the above, but by way of example, are the following:

(a) Basement Windows, Walkout Locations and Crawl Space Door Locations. These locations are subject to change made necessary by site conditions. Builder is not liable for changes necessary to the approved floor plan in the event basement windows and walkout locations have to be moved/deleted or changed. Every effort will be made to pre- determine locations however Builder is not liable for any necessary changes.

(b) Plans and Specification Deviations. Builder reserves the right to make changes to the property and improvements and to make such deviations from the plans and specifications as become necessary in the sole opinion of Builder due to site or job conditions. All grading, fill, landscaping, disposition of trees and control of water flow shall be at the sole discretion of Builder. Builder assumes no liability for the loss of any trees on the property not planted by Builder.

5.6 Lawns and Landscaping – Buyer understands and agrees that lawn and landscaping work is weather dependent and may not be completed by Builder at the time of completion of the Home. Buyer acknowledges and agrees that the Builder may complete the lawn and/or landscaping after Closing. Builder agrees to complete all lawn and landscaping at the Home in compliance with the approved Plans and Specifications.



5.7. **Well and Septic** – If the property is on a well and/or an on-site sewage system, Builder agrees to furnish Buyer, upon Buyer’s request, with a certificate from the appropriate governmental authority, stating that the well water is potable and the septic system is in satisfactory working order and sufficient for the number of bedrooms in the house constructed. If either system is found defective prior to Closing, Builder will take immediate steps to repair all defects at Buyer’s expense and Closing will be delayed until Builder’s repairs of the defects are completed. After Closing, repair of any defects shall be at Buyer’s expense. Buyer agrees to familiarize themselves with and perform the preventive maintenance required.

6. Change Orders

6.1 **Definition** – A Change Order is any Buyer-requested modification to the Plans and Specifications, materials, finishes, fixtures, or other construction details after the Effective Date.

6.2 **Procedure** – All Change Orders must be in writing, signed by both parties, and specify the additional cost and any impact on completion time.

6.3 **Payment for Change Orders** – Buyer shall pay for each Change Order either:

- (a) in full upon approval (and the same shall be non-refundable to Buyer), or
- (b) as part of the Purchase Price at Closing, as mutually agreed in the Change Order.

7. Inspections and Walk-Through; Builder’s Warranty

7.1 **Buyer Inspections** – Buyer may inspect the Home during construction at reasonable times upon reasonable notice to Builder. Notwithstanding the foregoing, Buyer understands and agrees that for safety reasons, access to the Home is not permitted unless accompanied by Builder or Builder’s representative.

7.2 **Final Walk-Through** – Within five (5) days prior to Closing, Buyer and Builder, or Builder’s representative, shall inspect the premises and note in a written Inspection Report provided by the Builder any incomplete items or defects which both Buyer and Builder agree require correction and which itemized list both Buyer and Builder shall sign at the time of the inspection (“Inspection Report”). Builder agrees to correct each listed item in a manner consistent with acceptable workmanship in the trade. Buyer agrees to hold the Builder free from liability for any incomplete work or defects not specifically noted in the Inspection Report. Builder hereby agrees to correct as many of the items listed on the Inspection Report as possible prior to Closing and to diligently complete all items as soon after the Closing as the schedule of Builder’s labor and materials can accommodate or if correction is required by a subcontractor, the subcontractor’s schedule of labor and materials can accommodate. This work will be done during normal working hours and Buyer will cooperate by making the premises available to Builder or Builder’s subcontractors after occupancy to complete all Inspection Report items. Buyer will sign off each of the Inspection Report items as each item is completed. Buyer’s



refusal to sign off any item that is completed will be a waiver of Builder's obligation to complete that item. No funds shall be held in escrow nor will final payment be postponed or delayed by reason of uncompleted items listed on the Inspection Report. Builder is not responsible for the completion of any items not listed on the Inspection Report signed by both Builder and Buyer. After the items listed on the Inspection are completed, Builder shall have no further liability to correct further or additional items except in accordance with Builder's Limited Warranty provided in Section 7.3 below. If Buyer chooses to hire a private home inspector to inspect the house prior to Closing, Builder must be notified and the inspection shall be scheduled five (5) days prior to the final walk-through described hereinabove.

7.3 Builder's Limited Warranty – Builder hereby warrants for a period of one year, as described hereinbelow, to the Buyer that the Home to be located on the Lot, together with all its fixtures will be (a) constructed in substantial conformity with the Plans and Specifications (including any amendments thereof, or changes and variations therein) and (b) constructed in workmanlike manner free from substantial defects in workmanship and materials and free from major structural defects. At Builder's sole option, Builder may either (i) make necessary repairs or corrections, (ii) replace any faulty or nonconforming item or condition, or (iii) pay the Buyer the reasonable costs of such repair, correction, or replacement. This warranty shall apply to such instances of substantial nonconformity as to which the Buyer(s) shall have given written notice to the Builder at any time or times within one year from the date of Closing.

Buyer acknowledges and agrees that this is not a warranty as to cosmetic appearance beyond those agreed to by the parties and noted in the Inspection Report and does not include those cosmetic items not noted in the Inspection Report prior to Closing. This Warranty does not include a warranty against damages to the premises occurring after Closing as a result of Buyer's negligence including, but not limited to, frozen pipes, frozen hose bibs, plants or tree damage due to the elements. In addition, cracks in concrete are specifically excluded from this warranty. Existing trees that may die during or after construction are not the responsibility of the Builder. BUILDER DOES NOT WARRANT EXISTING TREES. Except as listed on the Inspection Report defects or chips in vanity tops, toilet seats, plumbing fixtures, kitchen appliances, countertops, floor surfaces (carpet, wood and vinyl), screens, glass, kitchen cabinets, and/or similar "cosmetic" defects are EXCLUDED from the Builder's warranty. Builder does not cover this in the warranty, nor does Builder warrant minor nicks and gouges not listed on the Inspection Report.

The Builder may at Builder's option, elect to fix or repair any items cosmetic or otherwise. Such action by the Builder shall be at Builder's sole discretion and shall not constitute an acceptance or assumption of responsibility by the Builder for the repair of such items or similar items. Further, Builder may elect to perform any repair after the one year term of the Warranty without such action extending the Warranty beyond the initial term of one year.



Notwithstanding anything to the contrary contained herein, THE PARTIES AGREE THAT THE EXPRESS LIMITED WARRANTY DESCRIBED HEREINABOVE, SHALL BE IN LIEU OF ANY OTHER WARRANTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF HABITABILITY OR OF WORKMANLIKE CONSTRUCTION. THE PARTIES FURTHER AGREE THAT SAID EXPRESS WARRANTY SHALL BE IN LIEU OF ANY LIABILITY OR DAMAGES IN TORT OR NEGLIGENCE FROM THE BUILDER TO THE BUYER, AND THE BUYER HEREBY RELEASES AND FOREVER DISCHARGES THE BUILDER, ITS AGENTS, AND SERVANTS, OF AND FROM ANY AND ALL ACTIONS, CLAIMS, DEMANDS, IN TORT OR NEGLIGENCE NOW EXISTING OR WHICH MAY HEREAFTER ARISE OUT OF THIS AGREEMENT AND TRANSACTION, INCLUDING ANY AND ALL CONSEQUENCES THEREOF NOW EXISTING OR WHICH MAY HEREAFTER BECOME KNOWN, WHETHER OR NOT SUCH CONSEQUENCES ARE KNOWN OR ANTICIPATED.

All disputes and controversies of every kind and nature between the parties to this warranty arising out of or in connection with this warranty as to the existence, construction, validity, interpretation or meaning, performance, nonperformance, enforcement, operation, breach, continuance or termination of this warranty shall be submitted to arbitration as provided in Section 11.14 below. This warranty is non-assignable and shall run to the Buyer alone. If this warranty agreement shall conflict with any other warranty regarding the Lot or Home, this warranty agreement shall govern. Builder shall assign and deliver to Buyer at Closing all guaranties and warranties of all components comprising the Home to the extent the same are assignable.

8. Closing

8.1 Closing Date – Closing shall occur within fifteen (15) days after a final certificate of compliance allowing occupancy has been issued by the appropriate governmental authority having jurisdiction over the construction of the Home.

8.2 Location and Costs – The closing of the sale to Buyer (“Closing”) shall take place at _____. Fees for preparation of the deed of conveyance, any Grantor's tax, and Builder's settlement fee shall be borne by Builder. Fees for examination of the title, title insurance, any survey, recording charges, (including those for any purchase money trusts), points and other lender charges, Buyer's settlement fee, appropriate legal fees and any other proper charges assessed to Buyer shall be paid by Buyer. All other closing costs shall be allocated according to standard North Carolina practice unless otherwise agreed in writing.

8.3 Utilities and Prorations – Buyer shall be responsible for transferring all utilities to its name effective as of the Closing. The parties agree that all real estate taxes and assessments, homes associates dues, and other assessments and fees levied against the Lot and Home, shall be prorated as of Closing, consistent with customary practices in the county where the property is located, with Builder responsible for the period prior to Closing, and Buyer responsible for the period after Closing.



9. Default

9.1 **Buyer Default** – If Buyer fails to perform Buyer’s obligations under this Agreement, including failing to close, Builder may terminate this Agreement and retain the Deposit as liquidated damages.

9.2 **Builder Default** – If Builder fails to perform Builder’s obligations under this Agreement and does not cure within thirty (30) days after written notice, Buyer may terminate this Agreement and recover the Deposit as liquidated damages as Buyer’s sole remedy. Buyer agrees to hold Builder harmless for the payment of any consequential or punitive damages.

10. Contingencies

10.1 **Acquisition of Lot** – This Agreement is contingent upon Builder’s successful acquisition of the Lot described in Section 1.1 on terms acceptable to Builder in Builder’s sole discretion. Builder agrees to use best efforts to deliver to Buyer as soon as reasonably possible after the satisfaction of the Acquisition Contingency copies of all title information in possession of or available to Builder, including but not limited to, title insurance policies, attorney’s opinions on title, surveys, covenants, deeds, notes and deeds of trust and easements relating to the Lot. Builder authorizes the title insurer or its agent to release and disclose all materials in the Lot’s title insurer’s (or title insurer’s agent’s) file to Buyer and both Buyer’s and Builder’s agent and attorneys.

10.2 **Construction Financing** – This Agreement is also contingent upon Builder securing, on terms acceptable to Builder in Builder’s sole discretion, the necessary financing to construct the Home as described in this Agreement.

10.3 **Failure of Contingencies** – If either contingency in Sections 10.1 or 10.2 is not satisfied within _____ days after the Effective Date, Builder may terminate this Agreement by written notice to Buyer, whereupon the Deposit shall be returned to Buyer and neither party shall have further obligations hereunder.

11. Miscellaneous

11.1 **Governing Law** – This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina.

11.2 **Entire Agreement** – This Agreement, including Exhibit A and all Change Orders, constitutes the entire agreement between the parties and supersedes all prior agreements and understandings.

11.3 **Amendments** – No amendment shall be binding unless in writing and signed by both parties.



11.4 Notices – Any notice required or permitted under this Agreement shall be in writing and delivered personally, by certified mail, or by recognized overnight courier to the addresses set forth above.

11.5 Commissions – Builder and Buyer agree that they have not entered into an agreement with a Real Estate Broker/Agent for which a commission is due. Each party agrees to indemnify the other for any claim of commission arising from anyone claiming to represent such party.

11.6 Damage – If prior to Closing, the Home is damaged or destroyed by fire or other causes, including those that could be covered by what is known as fire and extended coverage insurance, the parties agree that risk of that damage or destruction shall be Builder's. If such damage is minor, Builder may repair or replace the Home. If Builder elects not to repair or replace the Home, or if the damage is substantial, Buyer may terminate this Agreement by written notice to Builder within ten (10) days after receiving notice of the damage or destruction of the Home. If Buyer elects to terminate the Agreement, the Deposit shall be returned to Buyer. After Closing, Buyer shall keep the Home fully insured and shall bear the risk of loss.

11.7 Oil and Gas Rights Disclosure – Oil and gas rights can be severed from the title to real property by conveyance (deed) of the oil and gas rights from the owner or by reservation of the oil and gas rights by the owner. If oil and gas rights are or will be severed from the property, the owner of those rights may have the perpetual right to drill, mine, explore, and remove any of the subsurface oil or gas resources on or from the property either directly from the surface of the property or from a nearby location. With regard to the severance of oil and gas rights, Builder makes no warranties or representation regarding whether oil and gas rights were severed from the property by a previous owner. Builder has not severed any oil or gas rights from the property and does not intend to sever said rights from the property.

11.8 Mold Disclosure and Release – Buyer acknowledges that the Builder has disclosed to Buyer the possibility that mold may exist in the natural environment and in the Home being constructed. Mold treatment is not a part of this Agreement and Buyer acknowledges that the Builder is not responsible for any mold. If Buyer determines that the property should be inspected or treated for mold at Buyer's expense, Buyer may have the property inspected or treated for mold by an independent contractor mold treatment firm. Buyer understands and agrees that Builder has no knowledge of or control over mold and that Builder does not warrant or represent to Buyer that the property which is the subject of this Agreement is mold free. Accordingly, Buyer acknowledges and agree that the property which is the subject of this Agreement is being purchased without any warranty by the Builder express or implied that the property is mold-free and release Builder from all claims relating to mold in the property.

11.9 Libel or Slander – Buyer shall be in material default if they libel or defame the Builder or any of Builder's agents, employees or subcontractors. Buyer agrees to present all complaints against Builder in writing to the address of Builder for resolution and if not resolved satisfactorily to seek remedies of arbitration as provided for herein. Buyer agrees not to use any form of public display of anger or hostility toward Builder which is designed to, or may, harm the



business or business reputation of Builder. If Buyer violates this provision of the Agreement, it is a material breach and Builder may terminate the Agreement and retain Buyer's deposit as liquidated damages and/or seek injunctive relief and damages pursuant to arbitration as set out in this Agreement.

11.10 Megan's Law Disclosure – Laws have been enacted that require registration of sex offenders and other criminals and provide that the information may be disclosed to certain qualifying citizens or groups. Builder has not made any inquiry and assumes no liability or responsibility for criminal acts that may be committed in the county or neighborhood where the real property which is the subject of this contract is located.

11.11 Assignment – The parties to this Agreement mutually agree that it shall be binding upon them, their and each of their respective heirs, executors, administrators, successors and assigns; provided, however, that the Buyer shall have no right to assign this Agreement without the prior written consent of the Builder.

11.12 Ownership of Plans and Specifications: Buyer acknowledges that Buyer has no ownership rights in any of the Plans and Specifications used in connection with this Agreement, and that Buyer will be liable to Builder or other owner of the Plans and Specifications in the amount of any lost profits, consequential damages, and other applicable damages for any re-use, sale, or dissemination of such Plans and Specifications.

11.13 Property Disclosure – Builder shall not be required to provide a North Carolina Residential Property Disclosure Statement for this transaction because the Home is new construction which has never been inhabited.

11.14 Arbitration - The parties hereto agree that any dispute that arises under this Agreement shall be resolved through arbitration. The arbitration will be conducted by the American Arbitration Association ("AAA") in accordance with its Commercial Arbitration rules. Judgment on the award made by the arbitrator may be entered in any court having jurisdiction over the dispute. If there are preliminary steps that would have to be followed under state law before a lawsuit could be commenced, such as mediation, those steps must be followed before the arbitration can begin. Compliance with these state law provisions, and any negotiations or settlement attempts made before arbitration, do not constitute waiver of arbitration. If Builder chooses, it can have its supplier(s) and contractor(s) whose work or supplies in the dispute included as parties to the arbitration. Builder and Buyer agree to share the cost of filing fees and administrative fees charged by the AAA as well as the fee charged by the arbitrator. If one of the parties pays a fee to the arbitrator or the AAA, in the process of requesting or scheduling arbitration, the other party will reimburse the paying party for its half of the fee within 30 days of being requested to do so in writing. The parties acknowledge that this agreement evidences a transaction involving interstate commerce. The Federal Arbitration Act will govern the interpretation and enforcement of this provision. This provision will survive the closing of the purchase of the Home and the default of either party. It is binding on the Buyer and Builder and on their respective successors and assigns. If a party



uses litigation to enforce this provision or the arbitration award, the court shall award such party its court costs and reasonable attorneys' fees.

NOTICE TO BUYER(S): IF YOU DO NOT UNDERSTAND THIS FORM OR FEEL THAT IT DOES NOT PROVIDE FOR YOUR LEGAL NEEDS, YOU SHOULD CONSULT A NORTH CAROLINA REAL ESTATE ATTORNEY BEFORE YOU SIGN.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

BUILDER:

By: _____

Name: James Luke _____

Title: _____

BUYER:

By: _____

Name: _____



EXHIBIT A – PLANS AND SPECIFICATIONS



Home Purchase & Construction Agreement – Realtor Intake Form

Buyer Information

Buyer Name: _____

Buyer Address: _____

1. Property Details

Address of Home (lot#): _____

Subdivision/Community: _____

2. Purchase & Sale Terms

Base Purchase Price: \$ _____

Deposit Amount (non-refundable): \$ _____

Closing Attorney: _____

3. Construction Details

Completion Date Goal: _____

Plans & Specifications (Exhibit A): Attached Pending

Special Notes/Upgrades Buyer Wants Discussed: _____

5. Closing Terms

- Closing to occur within 15 days of Certificate of Occupancy

6. Contingencies

Lot Acquisition Contingency

Construction Financing Contingency

Contingency Deadline: _____ days from Effective Date



Notes

Realtor Completing Form: _____

Date: _____

⚠ Reminder: This is only a summary form for gathering negotiation details. The full Home Purchase & Construction Agreement will be prepared and sent to your and your clients for signature.