

# CONTRACT TO BUILD A HOUSE AT

## I. Contract Parties

Now comes       (builder's name)       of       (address)       and       (buyer's name)       of       (address)       to hereby agree to build a house on property located at       (common address)       and legally described as       (Insert legal description here.)      .

## II. Contract Documents

The terms of this contract include all the documents specifically listed below, and constitute the entire terms of the agreement between the parties. The terms of this contract shall prevail over any conflicting provision in the documents incorporated by reference.

1. Architectural Plans and Drawings dated \_\_\_\_\_ with \_\_\_\_\_ number of pages is hereby incorporated into this document.
2. Specifications dated \_\_\_\_\_ with \_\_\_\_\_ number of pages is hereby incorporated into this document.
3. Schedule of Allowance Items dated \_\_\_\_\_ with \_\_\_\_\_ number of pages is hereby incorporated into this document.
4. *Title of document – add any documents not included in the previous samples, delete any of the previous samples no longer needed* dated \_\_\_\_\_ with \_\_\_\_\_ number of pages is hereby incorporated into this document.

## III. Building Plans

### FIRST OPTION: USE WHEN THE PLANS ARE SUPPLIED BY THE BUYERS

The builder agrees to construct the home in accordance with the plans, including specifications and drawings, supplied by the buyer and incorporated by reference into paragraph II. *Contract Documents*. The builder assumes no responsibility or liability for defects in the design or engineering in these plans.

The buyer represents to the builder that the buyer is the sole owner of the plans or has the legal right to use the plans. The buyer agrees to indemnify and hold the builder harmless for any copyright action which may be asserted as a result of the use of the plans.

The buyer warrants that the plans are adequate and that the builder can rely on them. The buyer will be liable for any damages caused by defects in the plans, including, but not limited to, additional material costs, additional labor costs, pro rata overhead and profit.

### SECOND OPTION: USE WHEN THE PLANS ARE SUPPLIED BY THE BUILDER

The builder has provided the plans, specifications and drawings which are incorporated by reference into paragraph II. *Contract Documents*, and which are to be used for the

construction of the house. The builder makes no representation about the quality of these plans beyond those specifically provided in the warranties clause of this contract.

#### **IV. Completion Time**

Assuming all conditions are satisfied and weather permits, the work to be performed under the contract shall be substantially completed no later than \_\_\_\_\_ days after the work commences. The work shall commence within \_\_\_\_\_ days after the permits necessary to start work have been issued, the buyer has supplied the builder with a written notice of financing as described in paragraph V. *Financing*, and the buyer shall have supplied the builder with a correct statement of the recorded legal title of the property and the buyer's interest in the property.

Any time lost by reason of changes to the contract or changes in plans by the buyer, other acts of the buyer, strikes, weather conditions not reasonably anticipated, or any other condition not within the builder's control shall be added to the specified time for completion. For any delays which are not the builder's responsibility, the contract price shall increase by any increase in the builder's costs caused by the delay.

A claim for an increase in time for the performance of the contract, or an increase in the contract cost shall be made within \_\_\_\_\_ days after the builder first recognizes the condition giving rise to the claim.

#### **V. Financing**

This contract is contingent upon the buyer obtaining a construction loan in the amount of \$\_\_\_\_\_ dollars. All fees and expenses of obtaining a loan shall be borne by the buyer. The builder is not required to begin construction until the buyer provides the builder with written notice from the lender confirming the loan.

#### **VI. Contract Price**

##### **FIRST OPTION: FIXED PRICE CONTRACT**

The buyer agrees to pay a total price of \$\_\_\_\_\_ dollars to the builder for construction of the house, and the builder agrees to provide all the labor, materials, equipment, tools, and other services necessary to construct the house.

Upon the signing of this contract, the buyer agrees to pay \$\_\_\_\_\_ dollars to the builder as a deposit. The buyer will make the following interim payments:

*(List the amounts and number of the progress payments and what triggers them: for example, specific dates such as the first Monday of every month; or the start or the completion of specific construction events.)*

The buyer agrees to make a final payment in the amount of \$\_\_\_\_\_ within \_\_\_\_\_ days of the buyer's final inspection and acceptance of the property (*alternative language, such as:*

“within \_\_\_\_\_ days after substantial completion”). The buyer is not entitled to possession until after final payment.

## **SECOND OPTION: COST PLUS FEE**

The builder agrees to construct the house according to the plans. As consideration for the builder constructing the house, the buyer agrees to pay the builder’s full costs and expenses, plus a fixed fee of \$\_\_\_\_\_ dollars.

Upon signing the documents, the buyer will pay \$\_\_\_\_\_ dollars as a deposit.

Each \_\_\_\_\_ (at the end of the week or month) the builder shall prepare for the buyer itemized statements of the costs and expenses incurred to date.

The buyer will make a regular payment to the builder on \_\_\_\_\_ (a regular recurring date such as the first Monday of each week) of the builder’s unpaid costs and expenses as stated in the most recent itemized statement.

The builder’s costs and expenses include the following:

All gross wages, employment benefits, costs of workers’ compensation, and unemployment insurance incurred by the builder as the cost of labor during the performance of this contract, plus all salaries for builder’s employees, but only to the extent that their time is spent on work required by this contract;

The cost of all materials, supplies, and equipment consumed in this project, including the cost of delivery and transportation of materials;

Rental charges consistent with those prevailing in the area for the use of machinery and equipment used at the construction site, whether owned by the builder or by others;

All land costs associated with building this house, which are paid by the builder;

All payments made by the builder for work performed according to subcontracts under this agreement;

All costs incurred for safety and security at the job site;

All costs incurred for building and code compliance;

All landscaping and backfilling costs necessary under the contract documents;

All builder’s risk and other insurance costs necessary under the contract documents;

All soil fees and civil engineering fees necessary for this building project;

All costs associated with differing site conditions. A differing site condition is a physical characteristic of the property that materially changes the construction techniques from those reasonably expected at the time of the contract.

The buyer shall also pay to the builder a salary or hourly rate of \$\_\_\_\_\_ for the builder's actual hours spent on supervision of the construction of this house.

The buyer will make a final payment of all amounts still owing within \_\_\_\_\_ days of the buyer's final inspection and acceptance of the property (*alternative language, such as: "within \_\_\_\_\_ days after substantial completion"*). The buyer is not entitled to possession until after final payment.

## **VII. Allowance Items**

Upon signing this contract, the buyer shall be given the selection guide that is incorporated by reference into paragraph II. *Contract Documents* to help the buyer select allowance items, materials, and colors that will be required during the construction process. Exterior selections must be made within \_\_\_\_ days of signing this contract. Interior selections must be made within \_\_\_\_ days of signing this contract.

## **VIII. Late Payments**

Payments not made in a timely fashion shall incur daily interest at the rate of \_\_\_\_\_% from the day the payment is due.

If the buyer fails to pay the builder within seven days of the date the payment is due, through no fault of the builder, the builder may stop work and may keep the job idle until such time as payments that are due to the builder are paid. If the builder chooses not to stop work after a payment delay, this is not to be construed as a waiver of his rights to stop work if future payments are delayed.

All attorney fees incurred by the builder to collect sums owed by the buyer shall be paid by the buyer, together with interest at the rate of \_\_\_\_\_%.

## **IX. Permits and Surveys**

The buyer shall obtain and furnish all necessary surveys describing the physical characteristics of the property, the location of all utilities, and the location of all easements to the building that are necessary to allow the builder to complete his performance. If additional easements are necessary to complete the work, the buyer shall obtain those easements promptly.

If no soil report is available, the buyer shall provide one at his own expense.

The builder shall obtain building permits, licenses, building inspections and approvals required by local law.

If a covenant or architectural review committee requires the approval of plans and specifications, the buyer shall be responsible for obtaining these approvals and paying for any fees connected with them.

## **X. Change Orders**

The buyer may order changes in the work within the terms of this contract, but only by a prior written order and agreement with the builder that states the changes to the contract, the amount of any additional cost, and the additional number of days to be added to the contract completion date.

Any of the buyers may sign the change order and that signature will be binding upon all of the buyers.

The buyers hereby agree to make all requests for change orders to the builder, and not to issue instructions to, or otherwise negotiate for additional or changed work specifications with, the builder's employees or subcontractors.

## **XI. Insurance and Risk Management**

The builder shall obtain all workers' compensation, commercial general liability insurance and comprehensive liability insurance necessary to protect builder from claims for damages due to bodily injury, including death, and for damages to property that may arise out of and during operations under this contract.

The buyer shall purchase his own liability insurance including fire and casualty insurance to the full insurable value of the house and shall name the builder as an additional insured.

Each party shall issue a certificate of insurance to the other prior to the commencement of construction.

## **XII. Access to the Property Site**

The buyer shall have access to the property and the right to inspect the work in the presence of the builder.

If the buyer enters the property during the course of construction without the permission of the builder, he does so at his own risk, and the buyer hereby releases the builder and does hereby hold the builder harmless from any and all claims for injury or damage to his person or property, and to the person or property of any person accompanying the buyer.

## **XIII. Inspection, Acceptance, Final Payment and Possession**

At the final inspection, the buyer will give the builder a signed and dated list that identifies any alleged deficiencies in the quality of the work or materials. The builder shall correct any items on the buyer's list that are, in the good faith judgment of the builder, deficient in the quality of the work and/or materials according to the standards of construction in the area in which the house is built. The builder shall correct those defects within a reasonable period of time.

After the defects have been corrected according to the standards of construction in the area in which the house is built, the buyer shall sign a certificate of acceptance acknowledging that the defects on the buyer's list have been corrected according to the standards of this contract.

The builder shall provide the buyer with an affidavit stating that all materials and services for which a lien could be filed have been paid, or an affidavit identifying what services and materials for which a lien could be filed have not been paid, and swearing that such amounts will be paid from the proceeds of the final payment. *(Some states give the property owners the right to withhold amounts for unpaid potential lienholders, and make those payments directly to those potential lienholders.)*

Occupancy will be granted to the buyer when the buyer makes a final inspection of the home, signs a certificate of acceptance, and makes the final payment.

#### **XIV. Warranties**

All warranties are limited to the implied warranties of habitability and workmanlike construction and are limited to a period of one year from the date of the issuance of a certificate of occupancy by the local building code enforcement authority. This limited warranty is the only express warranty provided by the builder.

#### **XV. Disputes**

Should any dispute arise relative to the performance of this contract that the parties cannot resolve, the dispute shall be referred to a single arbitrator acceptable to the builder and the buyer. If the builder and the buyer cannot agree upon an arbitrator, the dispute shall be referred to the American Arbitration Association for resolution.

All attorney fees that shall be incurred in the resolution of disputes shall be the responsibility of the party not prevailing in the dispute.

#### **XVI. The Governing Law and Assignment**

This contract will be construed, interpreted, and applied according to the law of the state where the property is located. This contract shall not be assigned without the written consent of all parties.

#### **XVII. Effective Date and Signature**

