

FIXED PRICE CONTRACT

CONSTRUCTION AGREEMENT

AGREEMENT between _____
of _____ ,
(herein "Owner"), and _____
of _____ ,
(herein "Contractor"):

WHEREAS, Owner is the Owner of certain real property referred and/or described as follows:

(herein "the Property"); and

WHEREAS, Owner is desirous of constructing a residence on the Property (herein "Owner's Residence") and is furthermore desirous that Contractor construct Owner's Residence.

Now, THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

SECTION ONE DESCRIPTION OF WORK

Contractor will construct Owner's residence according to the plans and specifications marked "Exhibit A:" attached hereto and incorporated herein by reference (such documents hereinafter referred to as the "Construction Documents"). Construction to be similar in workmanship and materials to house located at _____ .

The Owners acknowledge that they have thoroughly reviewed the plans and specifications.

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SECTION TWO RESPONSIBILITY AND LIABILITY FOR PAYMENT OF CONSTRUCTION COSTS AND FEES TO CONTRACTOR

Within _____ (_____) days after execution hereof Owner will provide Contractor, in a form satisfactory to Contractor, with such documents (including but not limited to loan commitments or financial information) as are reasonably necessary to assure Contractor that Owner has taken such steps as are reasonable to secure a sufficient and unconditional source of funds necessary to pay the construction costs and Owner will thereafter be responsible and liable for the prompt payment of all costs and fees in connection with the construction and completion of Owner's Residence as set forth herein.

SECTION THREE CONSTRUCTION COSTS

Contractor shall construct and owner shall pay total cost of construction of _____

The total amount shall be paid as follows:

(1) On the execution hereof	\$ _____
(2) On completion of foundation and backfill	\$ <u>Per loan</u>
(3) On completion of rough framing and roofing	\$ <u>Per loan</u>
(4) On completion of rough-in, ready for insulating	\$ <u>Per loan</u>
(5) On hanging, taping and finish of drywall	\$ <u>Per loan</u>
(6) On completion of basic trim carpentry	\$ <u>Per loan</u>
(7) On completion of ceramic tile	\$ <u>N/A</u>
(8) On completion of carpeting and issuance of certificate of occupancy	Balance \$

These progress payments (#2 through #7) shall be due and payable within ten (10) days after receipt by Owner of Contractor's written statement that the various enumerated phases of construction are complete.

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SECTION FOUR DISCRETIONARY ITEMS

As part of Contractor's services rendered hereunder they shall notify Owner at least ten (10) days prior to the deadline for the selection of any fixtures, colors or materials or any items for which allowances are made in the Construction Documents and Owner shall indicate his selection or preference prior to the deadline date. It is the obligation of Owner to make selections of materials, colors and other selections in a timely manner, and Owner agrees to fully cooperate and make every reasonable effort to assist contractor. Delays caused by Owner through failure to make these selections are reasonable justification for delay in completion.

SECTION FIVE CHANGE ORDERS

The provisions as set out in the Construction Documents may be altered or amended only by agreement of Owner and Contractor for such changes. If Owner wishes to make any changes in the Residence after execution of this Agreement, Owner must first execute a "Change Order" or an addendum to this Agreement approved in writing by Contractor specifying the amount due and providing for the payment of any costs involved in such change.

SECTION SIX COMMENCEMENT AND COMPLETION OF CONSTRUCTION

The Owner and Contractor will each expend their best efforts to effect the commencement of the construction of Owner's Residence no later than _____, and complete construction and have Owner's Residence ready for occupancy no later than _____ (_____) days thereafter. Owner agrees that he will not occupy the residence, without the written consent of the Contractor, until all payments due and payable to Contractor and all subcontractors and suppliers under this Construction Agreement have been made.

Contractor is authorized to contact and work with Owner's architect and the non-cooperation of Owner's architect will be a cause for excused delay with no penalties to Contractor. Contractor is authorized to make direct contact with Owner's lender (financial institution) regarding the status of Owner's loan(s) used to pay construction costs.

Basic Construction Components of House:

[Description of major components of home and reference to a set of plans.]

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SECTION SEVEN TERMINATION OF CONTRACTOR

Owner may upon ten (10) days written notice terminate Contractor's services under this agreement in which event all costs due Contractor (as herein provided for) must be paid by Owner to Contractor on or prior to the effective date of the termination. Contractor may terminate this Agreement upon Owner's failure to pay any items listed on a request for payment within ten (10) days after submission and upon such termination all costs (as herein provided for) shall be paid to Contractor within five (5) days of such termination. Within ten (10) days of any termination of this Agreement by Owner or Contractor, Owner shall pay all construction costs (as defined in Section Three of this Agreement) that are due and payable as of termination, and Owner shall pay within 10 days of receipt of an invoice any other construction costs that were incurred prior to termination but were not billed as of the termination.

SECTION EIGHT ALLOWANCES

The descriptions of all specific items to be included in the residence for which owner has a choice and the allowances for such specific items are to be included in the Construction Documents. If Owner exceeds the allowance set for each such item, Owner agrees to execute a written Change Order or an addendum to this Agreement whereby Owner agrees to pay such excess in cash upon Contractor's direction at any time and from time to time during construction. Contractor may require payment of such excess directly to the Contractor or its subcontractors or material men. If Owner does not spend the allowance limit, Contractor will adjust the reduction at payment #8. No deviations in the Construction Documents shall be made unless Owner and Contractor execute a written Change Order adjusting the Construction Documents, allowances and purchase price.

SECTION NINE OTHER PROVISIONS

- (a) This Agreement shall be deemed to be a (NC) agreement and shall be construed and constructed under the laws of that state.
- (b) This Agreement can be amended only by a writing by all parties hereto.
- (c) In the event of any conflict in the terms of this Agreement and any of Construction documents, the terms of this agreement shall control.
- (d) In the event one or more persons or entities are identified herein as Owners, then they shall be jointly and severally liable hereunder; and furthermore, the terms hereof shall bind the heirs, executors, successors, assigns and legal representatives of the parties hereto the signature of one Owner shall be binding on all Owners with respect to any changes in the contract documents.

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SECTION NINE OTHER PROVISIONS (continued)

- (e) Agreement shall be binding on the heirs, successors, and assigns of contractor.
- (f) Contractor warrants that the house will be substantially free from defects in workmanship and materials for one year. Other than those warranties provided by law, CONTRACTOR only provides a warranty that the house meets the standards of "Residential Construction Performance Guidelines Second Edition", copyright 2000, National Association of Homebuilders.
- (g) Owner and Contractor specifically acknowledge that radon and radon gases are naturally created and exist everywhere and that Contractor provides no warranty regarding radon presence.
- (h) Contractor agrees to maintain general liability and workman's compensation insurance during the term of contract of:

General Liability	\$1,000,000
Worker's Compensation	statutory

Owner agrees to maintain liability insurance for the property as deemed appropriate by Owner and construction lender.
- (i) Retainage is not a common practice in residential construction and is specifically NOT allowed.
- (j) Contractor is not liable for any sales commission relating to this contract or any sale/building agreement regarding the Owner's lot or property.
- (k) The parties understand that the price herein stated is predicated upon no undiggable rock or shale being encountered while excavating with a tracked front-end loader, grading or ditching, or any condition below the surface of the ground presenting unusual problems due to the presence of springs or other water streams, expenses for engineering reports, fill dirt requirements, poor soil condition, unknown or unstable soil conditions, or any substantial movement of earth to or from the Premises. Contractor agrees to notify Owner of said conditions prior to backfill of foundation or trenches, if they occur. In such event, a mutually agreed upon Change Order shall be executed to compensate for the direct and indirect time and material costs or out-of-pocket expense incurred by Contractor due to removal, grading, foundation work and fill dirt as a result of said conditions, if any.
- (l) Owner agrees to permit Contractor to place signs on or about the premises during the course of construction and allow Contractor to show home to potential customers during the course of construction.
- (m) Materials selected by Owner for the house must be obtained from Contractor's existing suppliers, be available for immediate installation, and be installed by Contractor or his employees, agents, contractors or subcontractors. Any deviation must be mutually approved by Owner and Contractor.

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SECTION NINE OTHER PROVISIONS (continued)

- (n) Owner in executing and performing this contract does not rely upon any statement, report and/or information to whomsoever made or given, directly or indirectly, verbally or in writing, by Contractor or any other party, excepting any contractual agreement which had been agreed to and signed by both Owner and Contractor.

SECTION TEN CASUALTY LOSS

If, before completion, a substantial portion of the improvements on the Premises are damaged by any casualty, including, without limitation, fire, lightning, or any causes that could be covered by what is known as "all risk" hazard insurance, Contractor shall complete the residence provided the possession date shall be appropriately extended.

SECTION ELEVEN SERVICE AND ATTORNEY'S FEES

Contractor may impose a service fee of 1.5% for any fees due contractor under section three not paid within the specified period(s) and an additional service fee of 1.5% for each 30 days elapsed thereafter. Owner recognizes that materials' suppliers and contractors working on the construction may also levy service or finance charges for failure to promptly pay invoices.

In the event of default on or material breach of this Agreement by either party, the non-breaching party shall be entitled to recover from the defaulting or breaching party its reasonable attorney's fees and costs expended in the enforcement of its rights hereunder.

NOTICE TO OWNER

FAILURE OF CONTRACTOR TO PAY THOSE PERSONS SUPPLYING MATERIAL OR SERVICES TO COMPLETE THIS CONTRACT CAN RESULT IN THE FILING OF A MECHANICS LIEN ON THE PROPERTY WHICH IS THE SUBJECT OF THIS CONTRACT PURSUANT TO CHAPTER 429, RSMO. TO AVOID THIS RESULT, YOU MAY ASK THE CONTRACTORS FOR "LIEN WAIVERS" FROM ALL PERSONS SUPPLYING MATERIALS OR SERVICES FOR THE WORK DESCRIBED IN THIS CONTRACT. FAILURE TO SECURE LIEN WAIVERS MAY RESULT IN YOUR PAYING FOR LABOR AND MATERIAL TWICE.

THIS AGREEMENT CONTAINS A BINDING ARBITRATION CLAUSE WHICH, IF ELECTED BY THE OWNER, MAY BE ENFORCED BY THE PARTIES.

CONSTRUCTION DOCUMENTS

List of Allowances:

Attached Floorplan is also part of this contractual agreement.

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CONSENT OF OWNER

CONSENT IS HEREBY GIVEN FOR FILING OF MECHANIC'S LIENS BY ANY PERSON WHO SUPPLIES MATERIALS OR SERVICES FOR THE WORK DESCRIBED IN THIS CONTRACT ON THE PROPERTY ON WHICH IT IS LOCATED IF THEY ARE NOT PAID.

Date

By _____
Officer

CONTRACTOR

Date:

Owner

Owner