

CONSTRUCTION AND PURCHASE AGREEMENT

THIS AGREEMENT is made this _____ day of _____, 20____, between _____ ("Builder"); and _____ ("Purchaser"). The Builder agrees to sell and the Purchaser agrees to buy the following described real estate together with a residence ("Property") to be constructed thereon by the Builder:

LOT: _____ SECTION OR BLOCK: _____

SUBDIVISION: _____ COUNTY: _____

CITY: _____ STATE: _____

LOT FRONTAGE: _____ LOT DEPTH (Approx.): _____

This Agreement is subject to the following terms and conditions:

1. *Scope of Agreement:* The Builder shall furnish all of the labor and material required for the erection of a new residence on the above described property according to the plans and specifications attached and forming a part of this Agreement, subject only to tolerances and deviations customary in the building industry. The Builder shall provide and pay for all materials, labor and tools needed to complete the residence unless otherwise stated herein. In the event that Builder is unable to obtain from its usual or ordinary sources of supply the exact materials specified in said plans and specifications, Builder shall have the right to substitute said materials with materials of similar pattern, design and quality. Purchaser shall finalize all necessary selections from the choices offered by the Builder. Changes after selections are finalized are subject to the Builder's approval and a change order fee. If any selection chosen by the Purchaser is unavailable, the Purchaser will be informed and make an alternate selection of equal value within five (5) business days.

2. *Loan Commitment and Financing Arrangements:* The Purchaser will either obtain a loan commitment to purchase the Property when completed, or the Purchaser will provide evidence of other financial ability to pay the full amount of the Agreement, when due. If after completion of the residence, the Purchaser fails to close or is unable to complete performance of this Agreement, the Builder may retain the down payment and any other payments made under this Agreement.

3. *Purchase Price and Payments:* For the purchase price, including the construction of the residence as set forth under paragraph (1) above, the Purchaser shall pay to the Builder the sum of \$ _____ to be paid as follows:

\$ _____, down payment on the signing of this Agreement, the balance to be paid upon completion of the work and before occupancy at the time of closing, except the parties may agree to installment payments as provided below:

\$ _____

\$ _____

\$ _____

\$ _____

4. *Start of Construction and Completion:* The Builder shall commence construction of the residence as soon as practical after signing of this Agreement and adequate financial arrangements satisfactory to the Builder have been made. The Builder shall complete construction as expeditiously as possible, provided that the Builder cannot guarantee a firm completion date. The Builder shall not be liable for any delay caused by acts of arbitration, failure of any subcontractor or materialman, fires, strikes, legal acts of public authorities, war, inclement weather, allocation of materials or material priorities, delays or defaults by public or private carriers, shortages of material or labor, acts of Purchaser or of persons employed or hired by Purchaser, Acts of God, or other work stoppages, casualties, or other causes beyond the control of the Builder. The foregoing list is illustrative of causes for delay in construction and is not intended to be all inclusive.

5. *Supervision of Work:* Purchaser agrees that the direction and supervision of the working forces including subcontractors, rests exclusively with the Builder, or its duly designated agent, and Purchaser agrees not to issue any instructions to, or otherwise interfere with, the same. The Purchaser further agrees not to negotiate for additional work with the Builder's subcontractors nor to engage other builders or subcontractors except with the Builder's consent and in such manner as will not interfere with Builder's completion of work under this Agreement.

6. *Changes, Alterations and Extras:* All changes in or departures from the plans and/or specifications shall be in writing. Such changes are subject to the Builder's approval and will result in a change order fee. Where changes in, or departure from, plans and specifications requested in writing by Purchaser, will result in the furnishing of additional labor and materials, the Purchaser shall pay the Builder for such extras at a price agreed upon in writing before commencement of said change. Where such change results in the omitting of any labor or materials, the Builder shall allow the Purchaser a credit therefore at a price agreed to in writing before commencement of said changes. Any changes, alternations or extras from the plans or specifications which may be required by any public body or inspector, shall constitute an extra and shall be paid for the same as any other extra as provided in this paragraph.

7. *Fire Insurance and Extended Coverage:* The Builder shall, during the progress of the work, maintain insurance on the same against loss or damage by fire and other risks normally covered by standard extended coverage policies, the same to cover all work incorporated in the residence,

and all materials for the same in or about the premises, and to be made payable to the parties, as their interest may appear. The cost of said policy is to be paid by the Purchaser at the time of closing.

If a loss occurs, whether covered by insurance or not, replacement of injured work shall be ordered and executed as provided for in the case of changes in the work. It is specifically agreed that the original contract price shall be adjusted to reflect increases in labor, materials, overhead and other costs, since the date of the original contract, in calculating payment for replacement of injured work.

8. *Purchaser's Responsibility; Exclusions:* The Purchaser is solely responsible for the purchase and installation of any septic tank and leach field system that may be required on the property. The Purchaser also agrees that there is excluded from this Agreement the following items, for which the Builder shall have no responsibility:

9. *Late Charge on Delinquent Payments:* Should the Purchaser fail to pay any draw when due, or fail to pay for any change, alteration or extra before commencement of the work, or fail to pay the final payment upon completion of the work, all said delinquent payments or any unpaid portion, shall be subject to a late charge calculated at the rate of one and one-half (1½%) percent per month until paid, and the Purchaser agrees to pay said late charge to the Builder.

10. *Builder's Right to Terminate the Contract:* Should the work be stopped by any public authority for a period of thirty (30) days or more, through no fault of the Builder, or should the work be stopped through act or neglect of the Purchaser for a period of seven (7) days, or should the Purchaser fail to pay the Builder any payment within seven (7) days after it is due, then the Builder upon seven (7) days' written notice to the Purchaser may stop work or terminate this Agreement and recover from the Purchaser payment for all work executed and any loss sustained and reasonable profit and damages. The Builder shall also be permitted to terminate this Agreement, at Builder's option, upon seven (7) days' written notice to the Purchaser if, prior to Builder's commencement of grading and subsequent construction activity, the Sanitary Sewer Tap-In Contingency (as defined in Section 20) is not satisfied.

11. *Possession of Residence Upon Completion:* On final payment by Purchaser and upon Purchaser's request at the closing, Builder shall provide Purchaser with an Affidavit stating that all labor, materials and equipment used in the construction have been paid for or will be paid in full by the Builder unless otherwise noted. Builder shall not be required to give possession of the residence to the Purchaser before final payment by Purchaser. Final payment by the Purchaser is acknowledgment of acceptance of the residence as completed unless a separate escrow agreement is executed between the parties stipulating unfinished items.

12. *Closing:* Upon completion of the work and final payment by the Purchaser to the Builder, including all extras and change orders, the Builder shall convey to Purchaser the Property with improvements by Special Warranty Deed, title to be clear, free and unencumbered, subject only to restrictions and easements of record, real estate taxes for the year of transfer of title (which taxes shall be prorated as of the date of transfer of title), subject to the following:

Closing shall not be delayed due to uncompleted, weather related, exterior items such as final grading, landscaping, concrete, asphalt and painting. Upon the Builder's approval, the Purchaser's mortgagee may escrow exact amounts for uncompleted exterior work until completed. The mortgagee's escrow agreement shall be in a form satisfactory to the Builder. Minor repair or completion items identified during the pre-settlement walk-through shall not delay closing and no escrow shall be made for such items.

13. *Right to Cure:* If the Purchaser believes a construction defect exists in the residence, the Purchaser shall comply with the requirements of the conciliation, mediation and arbitration provisions of this Agreement, the Limited Warranty, and the provisions of Kentucky's Notice and Opportunity to Repair Act ("NORA"), Kentucky Revised Statutes §§411.250 to 411.266, in the manner set forth below. Under NORA and common law, the Builder is responsible for its acts or omissions or the acts or omissions of its agents, employees or subcontractors, but is not liable for any damages caused by:

- a. Acts or omissions of a person other than the Builder or its agents, employees or subcontractors;
- b. Failure of a person other than the Builder or its agents, employees or subcontractors to take reasonable action to reduce the damages or maintain the residence;
- c. Normal wear, tear or deterioration;
- d. Normal shrinkage, swelling, expansion or settlement; and
- e. Any construction defect disclosed in writing to the Purchaser before purchase of the residence.

To comply with NORA and the dispute resolutions of this Agreement, the Purchaser and the Builder must take the following steps:

- a. The Purchaser shall describe the claim in writing in reasonable detail delivered to the Builder and shall offer to attempt to resolve the claim by either conciliation (as required under Section 18(a)) or mediation (as required under Section 18(b)); and
- b. Not less than twenty-one (21) days after receipt of that written notice, the Builder shall send a written response to the Purchaser to arrange an inspection, offer to correct the defect or compensate the Purchaser for the defect, or state in writing an intent not to take any remedial action. If the Builder intends to take no remedial action, the Builder shall agree to either resolve the claim through the conciliation process required under Section 18(a) or the mediation process required under Section 18(b). If the Purchaser and the Builder cannot resolve the claim or dispute by conciliation or mediation, as the case may be, then the parties shall arbitrate the dispute or claim as required under Section 18(c).

NORA CONTAINS IMPORTANT REQUIREMENTS YOU, AS PURCHASER, MUST FOLLOW BEFORE YOU MAY FILE A LEGAL PROCEEDING FOR DEFECTIVE CONSTRUCTION AGAINST THE BUILDER OF YOUR RESIDENCE. YOU MUST DELIVER 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 LEGAL PROCEEDING.

14. *Title Insurance:* Title insurance is designed to indemnify the policy-holder of the insurance for losses caused by defects in title to the subject real estate that are in existence on the date the policy is issued. Title insurance is different from property insurance, which insures Purchaser's improvements from future events of fire and casualty. An owner's policy of title insurance at the time of closing is recommended, though not required. Purchaser is encouraged to inquire about the benefits of title insurance for his or her benefit from an attorney or title insurance agent. Purchaser should also be aware that a lender's policy, which may be required by the lender, does not provide the same level of protection as an owner's policy.

15. *Representations and Limited Warranty:* The Limited Warranty attached and incorporated by reference into the Agreement contains the sole Warranty provided by the Builder to the Purchaser. The Limited Warranty shall have no force and effect until the Builder has received full payment of the purchase price stated above, and the Limited Warranty will take effect at the time of closing. In exchange for this Limited Warranty, Purchaser waives any right to incidental or consequential damages with respect to any claim under the Agreement or the Limited Warranty.

The Agreement and the Limited Warranty contains all of the representations, warranties and promises of the Builder. No agent or representative of the Builder is authorized to make any representation or promise on behalf of the Builder other than those contained in this Agreement, and the Builder makes no other warranties, express or implied, including but not limited to the warranties of good workmanship and habitability. Any implied warranties, including an implied warranty of workmanlike construction, an implied warranty of habitability, or an implied warranty of fitness for a particular use, are expressly waived and disclaimed.

16. *Radon Gas:* Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Kentucky. Additional information regarding radon and radon testing may be obtained from your county health department. The Builder will not be responsible for any damages caused by radon gas, or by some other agent, that may or may not be associated with defects in construction, to include but not be limited to property damage, personal injury, loss of income, emotional distress, death, loss of use, loss of value, and adverse health effects, or any other effects.

17. *Soil Shrinkage/Expansion:* Builder is not responsible for and does not warrant against damage or defects caused by or resulting from rising or lowering of water tables, expansion or contraction of the soil or other soil conditions. Builder shall have no responsibility to Purchaser nor to any subsequent purchasers of the Property under any circumstances for any damage which occurs or may occur as a result of any shifting or movement of slabs or foundation movement of the Property caused in whole or in part by the quality or type of soil, or earth movement, soil or earth substance or expansion of any kind or by moisture of any kind, or from failure to maintain proper drainage adjacent to the Property or from construction techniques when damage is caused in whole or in part by any of the above described causes or sources, such damage to include, but not be limited to, property damage, personal injury, loss of income, emotional distress, death, loss of use, loss of value, adverse health effects, or any other effects.

18. *Dispute Resolution:*

- a. *Conciliation:* In the event of any claims, disputes or other matters in question between the parties involving compliance by the Builder with Industry Standards as contained in the Industry Standards Manual published by The Home Builders Association of Northern Kentucky, Inc. ("HBA"), the parties agree first to try in good faith to settle the dispute through the conciliation process established under the auspices of the HBA.
- b. *Mediation:* In the event of any claims, disputes or other matters in question between the parties with regard to this Agreement not otherwise covered under Paragraph 18(a), the parties agree first to try in good faith to settle the dispute by mediation. Any mediation conducted pursuant to this Section shall be conducted, if reasonably possible, by the Better Business Bureau, Cincinnati, Ohio, in accordance with its rules. Demand for mediation shall be filed in writing with the other party to this Agreement and with the Better Business Bureau. Any demand for mediation must be made within a reasonable time after the claim, dispute or other matter in question has arisen. The Purchaser and the Builder agree to use best efforts to reach a mediated settlement and fully cooperate with all requests and suggestions of the Better Business Bureau.
- c. *Arbitration:* Any claim, dispute or other matter in question not resolved by mediation or conciliation shall be decided by arbitration in accordance with Chapter 417 of the Kentucky Revised Code. The arbitration process and hearing must be initiated through the Circuit Court of the County in which the residence is located ("Circuit Court"). Hearings on all mediation and arbitration matters must be held in Northern Kentucky. A demand for arbitration may be made concurrently with a demand for mediation and must be made within a reasonable time after the claim, dispute or other matter in question has arisen.
- d. *Discovery:* The parties shall allow and participate in discovery in accordance with the Kentucky Rules of Civil Procedure for a period of ninety (90) days after the filing of an answer or other responsive pleading. All issues regarding compliance with discovery requests shall be decided by the arbitration panel appointed under the auspices of the Circuit Court.
- e. *Arbitration Award:* The arbitration panel shall have the authority to award any remedy or relief, other than the awarding of punitive damages, that a court of the State of Kentucky could order or grant, including, without limitation, specific performance of any obligation created under this Agreement, the issuance of an injunction, or the imposition of sanctions for abuse or frustration of the arbitration process. The arbitration award must be in writing and must specify the factual and legal basis for the arbitration panel's decision. The award rendered by the arbitration panel shall be final upon approval by the Circuit Court, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

- f. *Fees and Expenses:* The parties shall share equally the expense of the mediation fees, the arbitration fees and filing fees. Each party shall be responsible for all expenses of its experts and witnesses and the preparation and presentation of its proofs. The prevailing party shall be entitled to an award of reasonable attorney fees. In the event that both parties are determined to be at fault, awards for reasonable attorney fees may be equitably allocated by the arbitration panel. The arbitration panel may also determine that no attorney fees are due from either party.
- g. *Additional Parties:* The Builder shall have the right to include (i) the Purchaser as a party in any mediation or arbitration between the Builder and its subcontractors or suppliers and (ii) any subcontractors or suppliers as parties in any mediation or arbitration between the Builder and the Purchaser.

19. *Notice, Disclosure and Disclaimer:* The Builder's Notice, Warranty and Disclaimer is attached and incorporated into this Construction and Purchase Agreement by reference.

20. *Sanitary Sewer Tap-In Contingency:* The obligations of the Builder under this Agreement are expressly conditioned upon the Builder being able to connect the sanitary sewer lines for the proposed residence to the existing public sanitary sewer system closest to the residence ("Sanitary Sewer Tap-In Contingency"). Should the Builder, for any reason, be denied the right to or otherwise prohibited from tapping the residence into an existing sanitary public sanitary sewer system located closest to the site on which the residence is or is to be constructed prior to the commencement of grading and subsequent construction activity, the Builder may, at the Builder's sole option, terminate this Agreement upon seven (7) days' written notice to the Purchaser.

21. *Statute of Limitations:* Notwithstanding anything in this Agreement to the contrary, with regard to all acts or failures to act by the parties to this Agreement, any statute of limitations governing claims related to such acts or omissions or failures to act shall commence to run and any cause of action accrue upon the last of the following occurrences: (a) the Date of Substantial Completion of the work; (b) the issuance of a Certificate of Occupancy for the residence; or (c) the date the Purchaser takes occupancy of the residence.

22. *Survival of Terms:* The terms of the Limited Warranty, Notice, Warranty and Disclaimer, and Sections 13, 15, 16, 17, 18 and 19 of this Agreement shall not be merged with and shall survive the execution of the Builder's deed and the conveyance of the Property by Builder to Purchaser.

23. The Purchaser(s) acknowledge that they have read and fully understand the provisions of this Agreement.

IN WITNESS, the Builder and Purchaser have executed this Agreement.

BUILDER _____

PURCHASER _____

PURCHASER _____

This form approved by the Home Builders Association of Northern Kentucky, Inc. for use by its Builder Members.

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NOTICE, DISCLOSURE AND DISCLAIMER

What Homeowners Should Know About Mold

Mold. Lately, mold has been in the news. Mold is a type of fungus. It occurs naturally in the environment, and it is necessary for the natural decomposition of plant and other organic material. It spreads by means of microscopic spores borne on the wind, and is found everywhere life can be supported. Residential home construction is not, and cannot be, designed to exclude mold spores. If the growing conditions are right, mold can grow in your home. Most homeowners are familiar with mold growth in the form of bread mold, and mold that may grow on the bathroom tile.

In order to grow, mold requires a food source. This might be supplied by items found in the home, such as fabric, carpet or even wallpaper, or by building materials, such as drywall, wood and insulation, to name a few. Also, mold growth requires a temperature climate. The best growth occurs at temperatures between 40° F and 100° F. Finally, mold growth requires moisture. Moisture is the only mold growth factor that can be controlled in a residential setting. By minimizing moisture, a homeowner can reduce or eliminate mold growth.

Moisture in the home can have many causes. Spills, leaks, overflows, condensation, and high humidity are common sources of home moisture. Good housekeeping and home maintenance practices are essential in the effort to prevent or eliminate mold growth. If moisture is allowed to remain on the growth medium, mold can develop within 24 to 48 hours.

Consequences of Mold. All mold is not necessarily harmful, but certain strains of mold have been shown to have adverse health effects in susceptible persons. The most common effects are allergic reactions, including skin irritation, watery eyes, runny nose, coughing, sneezing, congestion, sore throat and headache. Individuals with suppressed immune systems may risk infections. Some experts contend that mold causes serious symptoms and diseases which may even be life threatening. However, experts disagree about the level of mold exposure that may cause health problems, and about the exact nature and extent of the health problems that may be caused by mold. The Center for Disease Control states that a causal link between the presence of toxic mold and serious health conditions has not been proven.

What the Homeowner can do. The homeowner can take positive steps to reduce or eliminate the occurrence of mold growth in the home, and thereby minimize any possible adverse effects that may be caused by mold. These steps include the following:

1. Before bringing items into the home, check for signs of mold. Potted plants (roots and soil), furnishings or stored clothing and bedding material, as well as many other household goods, could already contain mold growth.
2. Regular vacuuming and cleaning will help reduce mold levels. Mild bleach solutions and most tile cleaners are effective in eliminating or preventing mold growth.
3. Keep the humidity in the home low. Vent clothes dryers to the outdoors. Ventilate kitchens and bathrooms by opening the windows, by using exhaust fans, or by running the air conditioning to remove excess moisture in the air, and to facilitate evaporation of water from wet surfaces.
4. Promptly clean up spills, condensation and other sources of moisture. Thoroughly dry any wet surfaces or material. Do not let water pool or stand in your home. Promptly replace any materials that cannot be thoroughly dried, such as drywall or insulation.
5. Inspect for leaks on a regular basis. Look for discolorations or wet spots. Repair any leaks promptly. Inspect condensation pans (refrigerators and air conditioners) for mold growth. Take notice of musty odors, and any visible signs of mold.
6. Should mold develop, thoroughly clean the affected area with a mild solution of bleach. First, test to see if the affected material or surface is color safe. Porous materials, such as fabric, upholstery or carpet should be discarded. Should the mold growth be severe, call on the services of a qualified professional cleaner.

DISCLAIMER AND WAIVER

Whether or not you as a homeowner experience mold growth depends largely on how you manage and maintain your home. Our responsibility as the Builder must be limited to things that we can control. As explained in our written Limited Warranty, provided by separate instrument, we will repair or replace defects in our construction (defects defined as a failure to comply with reasonable standards of residential construction) for a period of one (1) year. The Builder will not be responsible for any damages caused by mold, or by some other agent, that may be associated with defects in our construction, to include but not be limited to property damage, personal injury, loss of income, emotional distress, death, loss of use, loss of value, and adverse health effects, or any other effects. Any implied warranties, including an implied warranty of workmanlike construction, an implied warranty of habitability, or an implied warranty of fitness for a particular use, are waived and disclaimed.

This notice, disclosure and disclaimer agreement is appended to and made a part of the Construction and Purchase Agreement. The consideration for this agreement shall be the same consideration as stated in the Construction and Purchase Agreement. Should any term or provision of this agreement be ruled invalid or unenforceable by a court of competent jurisdiction, the remainder of this agreement shall nonetheless stand in full force and effect.

I acknowledge receipt of the notice, disclosure and disclaimer agreement. I have carefully read and reviewed its terms, and I agree to its provisions.

PURCHASER

DATE

PURCHASER

DATE

7699.5