

This legally binding Construction Agreement, ("Agreement") is between Keystone Homes, Inc. ("Builder"), and *Name of Legal Owners of Property as appears on deed*, ("Owner").

1. Basis of Agreement: For the considerations hereinafter set forth, Builder agrees to build and Owner agrees to purchase, upon the terms and conditions set forth in this Agreement, a home ("Home") to be built upon the property described as follows:

a. "Home"

Plan Name and Description

b. Location

Property Address

2. Purchase Price and Schedule of Payments:

Base Price \$ _____

Optional Items \$ _____ (from page 4)

Total Builder Purchase Price \$ _____

Owner Allowances \$ _____ (from page 3)

Total Price of Home \$ _____

The sales price is payable as follows:

(a) The Total Cash Deposit due as set forth herein below is \$ _____

(b) Construction progress draws will be due based upon the Disbursement Agreement outlined on Section 10 of this Agreement. Draws will include the Owner Allowances (Section 8).

Total of draws: \$ _____

(c) **All cash deposits and draw payments are to be paid to Builder.**

3. Optional Items: Optional items included in the sales price are: *See Section 9 Optional Items*

4. Pre-conditions to Construction: Construction by Builder shall begin as soon possible after receipt by Builder of:

(a) Cash payments called for in Section 2(a), (b), (c) hereinabove;

(b) Customer Selection Guide to be completed in full and signed by owner.

(c) Owner agrees that within five (5) days from the date of this agreement he/she will make application for a construction/mortgage loan at a lending institution acceptable to Builder and to attentively provide documentation as requested by said lending institution within seven (7) days of said request, or to receive a written waiver if Owner cannot reasonably comply with the request within seven (7) days;

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- (d) Written mortgage commitment within **30** days for a first mortgage loan secured by the property in the amount necessary to complete payment as described in Section 2, or other evidence satisfactory to Builder of Owner's ability to complete payment at as described in Section 2.
- (e) Approved plans and specifications signed by Owner and controlling architectural control committee (if any).
- (f) All necessary government approvals, permits, and all documented information in accordance with Section 8. Owner, with Builder's assistance, shall provide items (a), (b), (c), and (d). In section 8 Builder and Owner will cooperate in obtaining item (e).
- (g) **Any approved items or work added to this agreement prior to or day of scheduled pre-construction meeting must be paid to Builder prior to an approved change order being issued.**

5. Schedule of Construction: Construction by Builder shall be completed in accordance with Section 1 and disbursements shall take place in accordance with Disbursement Agreement.

- (a) In the event of delays resulting from any of the following causes, the time for completion of construction shall be extended for a period of time equal to the length of the delay in construction and/or Builder shall not be liable for any failure caused by:
 - (1) Acts or default of Owner
 - (2) any modifications to plans and/or the addition of any change ordered by Owner;
 - (3) Acts or default of any developer or contractor engaged in constructing or installing streets or utilities;
 - (4) Adverse weather conditions;
 - (5) Damage caused by fire, storm, theft, earthquake, or other casualty;
 - (6) Any form or act of God or unforeseeable event;
 - (7) Strike, lockout, or other labor trouble of any kind;
 - (8) Government controls or procedures, regulations or restrictions, or moratoriums;
 - (9) Allocation of labor, supplies or materials by or under the authority of any government or government agency;
 - (10) Acts of suppliers of labor or material, and;
 - (11) Acts of subcontractors or their employees.
- (b) In the event that Builder is unable to obtain the materials specified on the plans or specifications or the items shown on the selection sheets through reasonable sources of supply, Builder shall have the right to substitute materials of similar pattern and design and substantially equivalent quality. Owner agrees no compensation is due to owner for such substitution of materials.
- (c) **Builder reserves the right to make changes in plans and specifications** solely for the purpose of mechanical installations, building code requirements, and architectural design improvements subsequent to the date of this Agreement. Owner agrees no compensation is due to owner if such changes are made to plans or specifications.

6. Default by Owner:

- (a) Default by Owner shall be deemed to have occurred upon Owner's failure:
 - (1) To make or delay to make all payments in accordance with Section 10 as noted in Section 2 hereinabove;
 - (2) To provide those items specified in Section 4(b), (c), and (d) within the period specified;
 - (3) On the date appointed, to make payments described in Section 2 for the amounts called for herein and accept title, or
 - (4) To comply with any other terms of this Agreement.
- (b) In the event of Owner's default under Agreement, Builder shall have the following remedies:
 - (1) Owner agrees that all sums paid by Owner under this agreement as total cash deposit, binding consideration, or any other amounts paid at the execution of Agreement, may be retained by the Builder as liquidated damages for
 - (2) Administrative costs incurred by the Builder as a result of owner's default; or
 - (3) Builder may retain all monies received pursuant to Section 2 of this agreement and pursue any and all rights, and remedies afforded to the Builder by the laws of the Builder's building territories or the United States of America, including but not limited to, the specific performance of Agreement or the recovery of any and all losses and damages incurred by the Builder due to the Owner's breach.
 - (4) In addition to any and all remedies set out herein, Builder shall be entitled to recover all costs incurred in the enforcement of Agreement, including but not limited to reasonable attorney's fees.

7. Cancellation by Builder: In the event items 4(d) and 4(e) cannot be obtained in thirty days or in the event that Builder shall determine, in good faith, and for reasons beyond, including any cause specified in Section 5(a) and including any pending or declared governmental moratorium, that Home hereunder cannot be completed and made available for occupancy prior to the time provided for completion hereunder or within a reasonable time, Agreement may be cancelled at the option of the Builder upon ten (10) days written notice to Owner. In the event of cancellation as provided for in this paragraph, Builder's liability shall be limited to the return of all monies paid, excluding costs incurred, hereunder by Owner, and upon such return, Agreement shall be null and void and Builder shall be released from all obligations hereunder.

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8. Owner Allowances:

The following items are the responsibility of the Owner and are not included in the Total Builder Purchase Price of the home as described in Section 2:

- (a) It is understood and agreed that any preliminary work on building lot necessary before or incidental to construction is to be taken care of by Owner.
- (b) Any and all additional expenses incurred prior to, during or after excavation due to any construction site condition including, but not limited to, poor soils, rock, sandstone, muck, gravel, filled materials, field drain tile, high water table, shifting sand, unstable materials, or any unusual conditions shall be at the Owners' sole expense and are NOT part of this contract. Additional charges shall be the sole responsibility of the owner and any expenses incurred by Builder as their result are due/payable in full regardless if construction is completed.
- (c) The cost of additional dirt, sand or gravel will be borne by Owner. The cost of final grading or hauling away excess dirt, if any, shall be borne by the Owner.
- (d) Owner shall purchase at his own expense a fire and comprehensive insurance policy (often referred to as a builder's risk insurance), on said premise and name Builder as an insured in said policy prior to commencement of construction.
- (e) Owner is responsible for securing temporary and permanent power and shall pay all utility bills while home is under construction.
- (f) If Owner desires to substitute materials after shipment is made, he must bear all costs including transportation or restocking charges.
- (g) It is understood and agreed that the Builder is not responsible for the following: natural gas, water, sewer, well, septic, driveway culvert, driveway installation, walks, patios/decks, landscaping, tiling of downspout and sump pump discharge line from foundation to street. These items are the responsibility of the Owner and subcontractors hired by the Owner to complete these items are subject to the supervision and right of control of the Owner only and that such subcontractors are not subject to the right of control of Builder nor are such subcontractors deemed to be the agents, servants, or employees of Builder. If any of the above is required prior to occupancy by local building codes, it is the responsibility of Owner to complete such work, unless stated on the Optional Items Sheet (Section 9).
- (h) All mortgage costs (including but not limited to loan application charges, discount points, credit report, loan origination fees, appraisals, and an optional owner title insurance policy), all closing costs/settlement charges (including but not limited to all conveyance fees, transfer taxes, recording fees / prepaid items including but not limited to all conveyance fees, transfer taxes, recording fees / prepaid items including but not limited to mortgage insurance premiums, prepaid fire and hazard insurance premiums, prepaid real estate taxes, and prepaid interest on the mortgage), and all other lender required fees and charges shall be paid by the Owner, unless stated on the Optional Items Sheet (Section 9).

These are estimates only. Actual contractor bids may vary. Please ensure that budgeted amounts cover the expense of proposed items. Enter amount to be added to contract price and paid to Owner at appropriate stage of construction, Builder is performing work (add to Optional Items Sheet) or (N/A) - if no allowance is needed and Owner is covering all expenses. No allowance monies will be distributed prior to Construction Loan closing (Section 9).

<input type="checkbox"/> Land Payoff	\$	<input type="checkbox"/> Electrical Service <input type="checkbox"/> Overhead <input type="checkbox"/> Underground	\$
<input type="checkbox"/> Site Preparation: <ul style="list-style-type: none"> <input type="checkbox"/> Lot Clearing <input type="checkbox"/> Addtl. Fill/Site work <input type="checkbox"/> Tree Removal <input type="checkbox"/> Dirt Removal/Hauling 		<input type="checkbox"/> Exterior Concrete: <ul style="list-style-type: none"> <input type="checkbox"/> Driveway _____ <input type="checkbox"/> Walks _____ <input type="checkbox"/> Patio _____ 	
<input type="checkbox"/> Boundary Survey		<input type="checkbox"/> Temporary Power Pole	
<input type="checkbox"/> Construction Drive/Access Drive (if required)		<input type="checkbox"/> Landscaping, Final Grade – Top Soil	
<input type="checkbox"/> Culvert Pipe (if required) <input type="checkbox"/> Steel <input type="checkbox"/> Concrete		<input type="checkbox"/> Builder's Risk Insurance	
<input type="checkbox"/> Utility Hook-ups/Tap Fees <input type="checkbox"/> Sewer (Appx. Ft. _____) <ul style="list-style-type: none"> <input type="checkbox"/> Water <input type="checkbox"/> Electric <input type="checkbox"/> Natural Gas 		<input type="checkbox"/> Closing Costs / Prepaid items/ Appraisals (paid by purchaser)	
<input type="checkbox"/> Utility Bills During Construction		<input type="checkbox"/> Building Permit	
<input type="checkbox"/> Well (labor & materials, pumps, filters, etc...)		<input type="checkbox"/> Loan Inspection Fees	
<input type="checkbox"/> Perk test, Health department permits		<input type="checkbox"/> Do-it-Yourself Options	
<input type="checkbox"/> Septic System (labor & materials)		<input type="checkbox"/> Other: _____	

Total.....\$ _____

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10. Disbursement Agreement:

<input type="checkbox"/> DRAW SCHEDULE				
All construction disbursements shall be made directly to Builder in accordance to the Construction Draw Schedule below. Periodic inspections shall be made by the bank inspector to ensure work has progressed according to plans and specifications. (i) Any item determined to require corrective action as a result of the inspections (by Builder and Owner) will be completed as soon as is practical, but is not cause for delaying disbursement if all other conditions of Agreement have been fulfilled.				
<input type="checkbox"/> 15% FOUNDATION	<input type="checkbox"/> 25% FRAMING	<input type="checkbox"/> 25% SHEETROCK	<input type="checkbox"/> 25% TRIM / CABINETS	<input type="checkbox"/> 10% FINAL
<ul style="list-style-type: none"> • Building Pad • Layout / Excavation • Footers / Foundation • Slab Poured 	<ul style="list-style-type: none"> • Lumber Drop • Plumbing Top Out • Shingles & Roof • Windows/Doors • Rough Mechanicals 	<ul style="list-style-type: none"> • Rough Electric • Insulation Sealant • Siding/Fascia/Soffit • Sheetrock Hung 	<ul style="list-style-type: none"> • Finish Sheetrock • Trim/Cabinets • Painting • Vinyl/Hardwood 	<ul style="list-style-type: none"> • Final Mechanicals • Carpet • Final Trim/Lock-Out • Electrical Service

Owner and Builder agree that bank may provide more or less draws than described above.

<input type="checkbox"/> CASH PURCHASE AGREEMENT AND PROMISSORY NOTE	
Owner, promises to pay to the order of Builder the principal sum of: \$ _____ as follows:	
20% Prior to commencement of construction	_____
20% Upon foundation completion	_____
25% Upon framing completion	_____
25% Upon drywall installation	_____
10% Upon final completion	_____
100% of the above disclosed funds will initially be deposited into an escrow account. This account will be opened through the law offices of Donald H. White. Builder will withdraw the payments in the increments stated above. Owner gives permission for Builder to facilitate the opening of this account, and the withdrawal of payments at Builders discretion in accordance with the above schedule.	

- Lender _____
- Loan Officer _____
- Loan Officers Contact Info _____
- Using Bank Draw Schedule (Y/N) _____

11. Agreement to Arbitrate

The Builder is a member of Quality Builders Warranty Program and Owner will be provided with a Ten Year Limited Warranty Agreement (“Limited Warranty”) in connection with the purchase of the home. The Builder’s sole responsibility shall be limited to the terms and conditions set forth in the Limited Warranty. The Owner agrees to submit to and be bound by the dispute settlement procedures under the Limited Warranty, which includes Binding Arbitration. Builder makes no further warranties, expressed, general, limited or implied, including implied warranty of merchantability, implied warranty for a particular purpose or implied warranty of habitability except as contained in the Limited Warranty.

In the event that the Owner asserts any claim or complaint arising out of or relating to this Agreement which Builder and Owner do not resolve by mutual agreement, and either: (i) the claim or complaint does not fall within the scope and jurisdiction of the Quality Builders Warranty for Property (claims or complaints that are determined to be expired or excluded under the Warranty are considered to be within the scope and jurisdiction of the Warranty); or (ii) the Property for some reason is determined to not be enrolled in the Quality Builders Program, then the claim or complaint shall be settled by binding arbitration through Construction Arbitration Program, administered by DeMars & Associates Limited (CAP-Home).

12. Warranty

There are no implied warranties that pertain to Agreement other than those warranties set forth in the Quality Builders Warranty Program Ten Year Limited Warranty Agreement. Specifically, all other warranties not otherwise contained within the Limited Warranty, either expressed or implied, including any implied warranty of merchantability, fitness for a particular purpose, habitability and workmanship are expressly excluded. There are no warranties which extend beyond the description on the face hereof.

13. Price Escalation Clause.

Owner and Builder acknowledge COVID 19 and other market conditions have caused dramatic material and labor shortages. Consequently, material and labor suppliers have at times substantially increased prices. Therefore, Owner and Builder agree that if Builder experiences a \$2,000 or more increase in the costs of material or labor to be used in the construction of the home, Builder may request an increase in the build price of home. Owner shall have the right to refuse the increase, the Builder shall cancel Agreement if Owner refuses the increase. Owner agrees to accept or reject the price increase within five (5) calendar days of notification to Owner or Owner’s agent. If Owner does not agree to accept price increase or fails to respond by the end of the notification period, Builder shall cancel Agreement. Builder shall have the right to ask for a price increase at any and all times that increases are greater than \$2000 in the costs of material or labor.

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14. Homeowner Responsibility Acknowledgement

ITEMS NOT INCLUDED IN BASE PRICE:

Owner's
Initials

- _____ Land
- _____ Removal of Trees, Lot Clearing, Site Preparation
- _____ Dirt Removal/Hauling
- _____ Closing Costs/Construction Loan Interest
- _____ Appraisals
- _____ Builders' Risk Insurance
- _____ Boundary Survey
- _____ Natural Gas/Sewer/Water/Tap Fees
- _____ Utility Bills (*Temp Power*)
- _____ Temporary Power Pole
- _____ Electrical Service: Overhead/Underground
- _____ Temporary Construction Access Drive (*if required*)
- _____ Culvert Pipe, Driveway, Walks, Patio, Decks
- _____ Refrigerator
- _____ Landscaping/Final Grade Topsoil
- _____ Water, Sewer, Well, Septic (*permit / installation, testings/inspections*)
- _____ Perk test, Health Department, Building Permit
- _____ Options or Changes after Construction
- _____ Mailboxes/House Numbers (*may be required for certificate of occupancy*)
- _____ Tiling of Downspout/Sump Pump Discharge line from foundation to street

NOTE: In some cases, depending on your building area, the above items may require completion to obtain a certificate of occupancy and/or final draw.

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15. Marketing

- (a) Owner agrees Builder has a right to use Owner’s home in marketing efforts during the construction period as follows
 - (1) Builder has the right to use pictures of the Owner’s home in advertising and marketing.
 - (2) Builder has the right to bring potential customers, Realtors, and other interested parties to the home for marketing and sales purposes.
 - (3) Builder has the right to have an open house at the home for marketing and sales purposes.
 - (4) Builder has the right to install signs on the property for marketing and sales purposes, in addition to any directional signage needed to identify property to trade partners, suppliers, and other business partners.
- (b) After the Owner moves into the home, Builder has the right to use pictures of the Owner’s home in advertising and marketing.

16. Assignment: Owner’s interest and obligation hereunder shall not be assignable and/or recorded by Owner without written consent of the Builder; and the happening of either event shall be a default by Owner.

17. Contract Assignment: The Builder's interests, duties, benefits and obligations under this Agreement shall be fully assignable to any and all companies, corporations, partnerships, limited liability partnerships, limited liability companies and any other entity affiliated or associated with the Builder in any capacity. This ability of the Builder to assign its interest in this Agreement shall not require the consent, either written or otherwise, of the Owner prior to the assignment being implemented and completed.

18. This is the complete agreement between the parties. There are no written or oral agreements or understandings directly or indirectly connected with Agreement that are not incorporated herein unless they are put in writing, signed by the parties and attached hereto.

19. Agreement shall be binding upon the parties, their heirs, legal representatives, and assigns.

20. TIME IS OF THE ESSENCE OF AGREEMENT. THIS IS A LEGALLY BINDING CONTRACT. READ AND UNDERSTAND ALL PROVISIONS PRIOR TO SIGNING. IF NOT UNDERSTOOD, SEEK LEGAL OR OTHER COMPETENT ADVICE.

Owner and Builder have executed and delivered this Agreement as of the _____ day of _____, 20_____

Owner Signature: _____

Print Owner Name: _____

Owner Signature: _____

Print Owner Name: _____

Builder Signature: _____

Print Builder Name: _____

Owners Contact Info _____

Contingency Option Addendum

Agreement is contingent upon...

BUILDER'S RIGHT TO DELAY CONSTRUCTION.

1. If Agreement is contingent upon the sale of a residence or property owned by Owner, Builder will not begin construction on the home while the contingency exists. This decision is made in Builder's absolute and sole discretion and shall not affect any other right or obligation contained herein.
2. The Builder's start schedule determines the order of construction starts. This schedule is done in order of Agreement signing except in the case of contingent agreements such as this. Contingent agreements will be placed in the Builder schedule at time the contingency is removed. No acceleration of start date, ahead of non-contingent agreements that were signed after this agreement, is possible.

Owner has read and understands the foregoing paragraph concerning the start schedule.

_____ (Initial) _____ (initial)

- A. Removal of Contingency. If Owner has not sold the property by the specified date, _____, Builder may demand that Owner perform under the Agreement. Upon Builder's demand, Owner shall have the obligation within 48 hours to either (i) remove the contingency in writing and proceed with the construction process; or, (ii) sign a mutual termination of the Agreement and receive a refund of the Earnest Money. Builder's delay in making such demand shall not constitute a waiver of Builder's right to make demand subsequent thereto.
- B. Expiration of Contingency. Owner shall have 60 days to remove the contingency. In the event Owner does not remove the contingency within these days from the date of Agreement, Agreement shall automatically terminate. Upon such termination, Builder shall refund the earnest money.

In the event Owner is unable or unwilling to withdraw said contingencies within the allotted time or just fails to do so for any reason whatsoever he shall be deemed to have forfeited any rights or claims to Agreement and the earnest money shall be refunded.

It shall be Owner's sole responsibility to keep the Builder aware of how Owner may be contacted.

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