



NEW CONSTRUCTION CONTRACT

1. **PARTIES:** This legally binding Agreement entered into on _____, 20____
between, Buyer(s), _____, (hereinafter called "**BUYER**"), and
Seller(s), _____, (hereinafter called "**SELLER**"). The
property shall be deeded in the name(s) of _____

THE ☐BUYER ☐SELLER IS LICENSED UNDER THE LAWS OF SOUTH CAROLINA AS A REAL ESTATE LICENSEE.

2. **CONSTRUCTION OF HOUSE:** Subject to terms and conditions herein, Seller shall complete construction of a single-family dwelling and related improvements (hereinafter called "**HOUSE**") on the property known as:

Lot _____ Block _____ Section _____ Subdivision _____

Address _____

Tax Map # _____ City _____ Zip _____

County of _____, State of South Carolina in accordance with the plans and specifications agreed to by Seller and Buyer, and described as follows: (list or describe all site plans, drawings, floor plans, landscape plans, description of materials and specification lists):

(hereinafter collectively "Plans and Specifications").

- (a) Seller shall construct the House (i) in accordance with the Plans and Specifications; (ii) in compliance with all laws, regulations, codes, and ordinances applicable to the construction of the House; and (iii) in a good and workmanlike manner with new, good quality materials and components.
- (b) Seller shall not make any material deviation or change in the Plans and Specifications without prior written consent of Buyer.

3. **COST OF CONSTRUCTION:** **Seller** shall provide and pay for all labor, materials, equipment, tools, clean-up, utilities, transportation, facilities, permits, fees, licenses, and all other costs, charges and expenses whatsoever in connection with or related to the construction of the House. **Seller** shall pay all costs, and other expenses, of any nature whatsoever, for Seller's construction financing of the House including real estate commissions or fees, if applicable.

4. **PURCHASE PRICE** shall be \$ _____,
_____ dollars.

5. **METHOD OF PAYMENT:** Purchase price shall be paid as follows: [☐] Cash; or [☐] Subject to Financing. Financing to be obtained by [☐] Conventional [☐] Seller [☐] VA [☐] FHA [☐] Other terms: _____

6. **EARNEST MONEY:** This offer is accompanied by an earnest money deposit of \$ _____
Buyer and Seller authorize _____, as Escrow Agent, to hold and disburse earnest money according to the terms of this agreement. Earnest money paid by [☐] Cash, [☐] Check, or [☐] Other. Broker does not guarantee payment of a check or checks accepted as earnest money. All escrow money received shall be

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deposited as required by South Carolina law and South Carolina Real Estate Commission Rules and Regulations. At the consummation of this sale, the earnest money deposit shall be credited to the Buyer.

THE PARTIES UNDERSTAND THAT, UNDER ALL CIRCUMSTANCES, INCLUDING DEFAULT, THE BROKER HOLDING THE EARNEST MONEY DEPOSIT WILL NOT DISBURSE IT TO EITHER PARTY UNTIL BOTH PARTIES HAVE EXECUTED AN AGREEMENT AUTHORIZING THE DISBURSEMENT OR UNTIL A COURT OF COMPETENT JURISDICTION HAS DIRECTED A DISBURSEMENT.

7. LOAN PROCESSING AND APPLICATION: Buyer's obligation under this agreement is contingent on Buyer obtaining said loan. Buyer shall apply for a maximum ____% loan (loan-to-value ratio) within _____ consecutive days from the execution of this Agreement and shall provide Seller with written satisfactory loan approval within _____ consecutive days that contains no credit, income, or asset conditions, unless otherwise set forth in this contract. **Time is of the essence.** Should the Buyer fail to make loan application or receive approval within said period, and to diligently pursue the application, the Seller shall have the option to terminate this Agreement, with written notice. Buyer also agrees to provide all documents or information requested by the lending company in a prompt and timely manner. Buyer will take any action that is needed or requested by Lender to process the loan application. Buyer further hereby gives permission to Lender to disclose pertinent information concerning the Buyer's credit-worthiness or any other information needed for the loan processing to the listing or cooperating broker(s) or agent(s). If Buyer fails to comply with these above contingencies, Buyer shall be in default of this agreement subject to the terms of paragraph 23.

FHA Mortgage Insurance [] will [] will not be added to the mortgage. VA funding fee [] will [] will not be added to the mortgage.

8. CONVEYANCE SHALL BE MADE: Conveyance shall be made subject to all easements as well as covenants of record (provided they do not make the title unmarketable) and to all governmental statutes, ordinances, rules and regulations. Seller agrees to convey by marketable title and deliver a proper general warranty deed, if applicable, free of encumbrances, except as herein stated. Seller agrees to pay all statutory deed recording fees. The deed shall be delivered at the stipulated place of closing, and transaction closed on or before _____, 20_____, no later than 9:00 p.m. **Time is of the essence.** Seller and Buyer authorize their respective attorneys and the settlement agent to furnish to Listing Broker and Selling Broker copies of the final HUD-1 settlement statement for the transaction for their review prior to closing.

9. CLOSING COSTS: Unless otherwise agreed, closing costs, including all loan charges and prepaid recurring items, shall be paid as follows:

(a) SELLER shall provide or pay for preparation of deed, any recording charge based on value of property, and all costs necessary to deliver a marketable title, including recording of satisfactions and property taxes to the day of closing.

(b) BUYER shall pay, unless otherwise agreed herein, the cost of the Buyer's credit report, property insurance, appraisal, survey, cost of obtaining loan, discount points, title examination, escrow deposits, and prepaid expenses. The Buyer shall also pay, if applicable, interim interest and mortgage insurance premium or VA funding fee. Buyer's hazard insurance policy shall provide coverage as required by lender. Other terms: _____

10. HOME PROTECTION PLAN COVERAGE: Both parties understand that a third party home warranty Plan [] will [] will not be issued at closing. If applicable, the warranty premium will be paid at closing by the [] Buyer or [] Seller not to exceed \$_____.

11. COMPLETION OF CONSTRUCTION: Seller shall diligently pursue the construction of the House, and shall complete construction of the House as a "turn-key" job on or before the closing. If Seller is delayed at any time in the progress of construction by (1) any act or neglect of Buyer, (2) any changes ordered in construction, (3) material shortages, adverse weather conditions, or delays in transportation which were not reasonably anticipated or (4) acts of God, then the time for completion of construction of the House and the closing shall be extended automatically by a reasonable time to account for the delay experienced. Seller shall notify Buyer in writing within ten (10) days after the commencement of the delay; otherwise the right to an extension shall be waived. The construction of the House shall be deemed completed when (i) the House has been completed in accordance with the Plans and Specifications and is broom-clean; and (ii) a certificate of compliance has been issued by the appropriate governmental authority having jurisdiction over the construction of the House. If not closed by _____, a penalty of \$_____ per day will be due from Builder.

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12. PURCHASE PRICE AND ALLOWANCES: The purchase price in Paragraph Four (4) above includes the purchase price of the House and all allowances stated on the reverse side hereof. Whenever the final cost for allowances is more or less than the allowances stated on the reverse side, the difference shall be adjusted between the parties at or prior to closing.

13. INSPECTIONS: Buyer or Buyer's designated representative may enter and inspect the House at reasonable times and in such manner as not to interfere with the progress of construction for the limited purpose of determining whether the work performed or being performed conforms with the Plans and Specifications and the terms of this offer to purchase. In the event that during construction the Buyer shall reasonably determine that such construction is not proceeding in accordance with this offer to purchase, Buyer shall give written notice to Seller specifying that particular deviation, deficiency, or omission, and the Seller shall forthwith correct such deviation, deficiency, or omission. Buyer's rights under this paragraph shall not release Seller from any of Seller's obligations for the construction of the House in accordance with the Plans and Specifications and this offer.

14. INSURANCE: Seller shall purchase and maintain "All Risks" Builders' Risk Insurance coverage, including Theft and Vandalism and Malicious Mischief, upon the House on a "Completed Value" basis, while the House is in the course of construction. "Completed Value" shall mean the full value of the House as of the date that all construction is completed, including the Seller's total cost plus profit, but excluding the cost of land. In the event that construction is fully completed prior to sale of the Property, Seller shall purchase and maintain Permanent "All Risks" Property Insurance coverage on the House, including Theft and Vandalism and Malicious Mischief on a "Replacement Cost" basis. "Replacement Cost" shall mean the full cost of replacement of structure or structures at the same site with new material of like kind and quality without deduction for depreciation.

In addition, Seller shall purchase and maintain Third Party Liability Insurance coverage on the premises of the Property during the course of construction and after construction is completed. Seller shall assume the obligation and cost of restoring, rebuilding, repairing, and replacing the House. Such risk of loss or damage assumed by Seller shall continue until the closing in accordance with the terms of this offer.

15. CHANGE ORDERS: The Buyer, without invalidating this offer, may order changes in the construction of the House within the general scope of the Plans and Specifications, consisting of additions, deletions, or other revisions, and the purchase price and closing shall be adjusted accordingly. All such changes shall be made only by a change order which shall be in writing and signed by both Buyer and Seller.

16. WARRANTIES: LIMITED WARRANTY OF CONSTRUCTION. Unless otherwise provided for herein, Seller hereby warrants that for a period of one (1) year from the date of closing or the date Buyer occupies the House, whichever comes first, Seller will make all necessary repairs and corrections to the House, either interior or exterior, structural or nonstructural, that shall become necessary by reason of faulty construction, labor or materials or non-conformity of construction to the Plans and Specifications. At Seller's sole option, Seller may either (1) make such repairs or corrections, (2) replace any faulty or non-conforming item or condition or (3) pay to Buyer the reasonable cost of such repair, correction, or replacement. This limited warranty: (1) is for the benefit of Buyer only and may not be assigned nor shall it inure to the benefit of any other person or entity; (2) shall survive closing and the delivery of the deed; and (3) is in lieu of all other warranties, oral or written, express or implied, except such other express written warranties as Seller may provide to Buyer and the warranties described below.

WARRANTIES OF COMPONENTS. Seller shall assign and deliver to Buyer at closing all guarantees and warranties of all components comprising the House to the extent the same are assignable. Buyer shall be responsible for compliance with any notice and claim procedures set forth therein.

17. DISCLAIMER BY BROKERS AND AGENTS: The parties acknowledge that the Listing and Cooperating Broker(s) and their Agent(s): (1) Give no guaranty or warranty of any kind, express or implied, as to the physical condition of the House; (2) Give no warranty, express or implied, as to the habitability or workmanlike service of the House and any implied warranty hereby disclaimed; (3) Give no guaranty on warranty concerning (a) any certification or inspection concerning the condition of the House, and (b) the accuracy of the published square footage of the property; (4) Buyer acknowledges that Seller and Seller's Agents have not made any oral or written commitments to Buyer regarding (a) projected income or economic benefit for Buyer from rentals; (b) rental arrangements except that Buyer may rent the unit if Buyer so desires or (c) other economic benefits to the Buyer.

18. SCHEDULE OF ALLOWANCES

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NOTE: Reference should be made to the Plan and Specifications for a more detailed description of the items and allowances and where the items are to be located. The amount of the allowance indicated below includes the labor and materials to install them unless otherwise indicated.

	<u>ITEM</u>	<u>AMOUNT OF ALLOWANCE</u>
1.	Wallpaper:	
	A. Kitchen	\$_____ per roll
	B. Bathrooms	\$_____ per roll
	C. Other _____	\$_____ per roll
2.	Carpet and Pad	\$_____ per sq. yd.
3.	Marble or Ceramic tile	\$_____ per sq. ft.
4.	Vinyl/floor covering	\$_____ per sq. yd.
5.	Light fixtures (includes fixtures, bulbs, spots, floods, door chimes, and recessed fixtures)	\$_____
6.	Hardware for doors	\$_____
7.	Cabinets:	
	A. Kitchen	\$_____
	B. Bathrooms	\$_____
	C. Other _____	\$_____
8.	Paneled walls	\$_____ per 4x8 sheet
9.	Appliances	
	A. Stove	\$_____
	B. Refrigerator	\$_____
	C. Dishwasher	\$_____
	D. Disposal	\$_____
	E.	\$_____
	F.	\$_____
	G.	\$_____
10.	Bathrooms	
	A. Mirrors and Medicine Cabinets	\$_____
	B. Accessories (such as paper and towel bars)	\$_____
11.	Ceiling Fan(s)	\$_____
12.	Landscaping to include trees and shrubs	\$_____
13.	Other: <u>(Attach addendum if necessary)</u>	\$_____

18. MEDIATION CLAUSE. Any dispute or claim arising out of or relating to this Agreement, the breach of this Agreement or the services provided in relation to this Agreement, shall be submitted to mediation in accordance with the Rules and Procedures of the Dispute Resolution System of the NATIONAL ASSOCIATION OF REALTORS®. Disputes shall include representations made by the Buyer(s), Seller(s) or any real estate broker or other person or entity in connection with the sale, purchase, financing, condition or other aspect of the property to which this Agreement pertains, including without limitation allegations of concealment, misrepresentation, negligence and/or fraud. Any agreement signed by the parties pursuant to the mediation conference shall be binding. This mediation clause shall survive for a period of 120 days after the date of the closing.

The following matters are excluded from mediation hereunder: (a) judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage, or land contract; (b) an unlawful detainer action; (c) the filing or enforcement of a mechanic's lien; (d) any matter which is within the jurisdiction of a probate court; (e) the filing of a interpleader action to resolve earnest money disputes. The filing of a judicial action to enable the recording of a notice of pending action, for order

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of attachment, receivership, injunction, or other provisional remedies, shall not constitute a waiver of the right to mediate under this provision, nor shall it constitute a breach of the duty to mediate.

19. ENTIRE BINDING AGREEMENT: This written instrument, including the additional terms and conditions set forth on any documents intended by the parties to be included, expresses the entire agreement and all promises, covenants, and warranties between the Buyer and Seller. It can be changed only by a subsequently written instrument signed by both parties. Both Buyer and Seller hereby acknowledge that they have not received or relied upon any statements or representations by either Broker or their agents which are not expressly stipulated herein. The benefits and obligations shall inure to and bind the parties hereto and their heirs, assigns, successors, executors, or administrators. Whenever used, singular includes plural, and use of any gender shall include all.

20. SURVIVAL: If any provision herein contained which by its nature and effect is required to be observed, kept or performed after the closing, it shall survive the closing and remain binding upon and for the benefit of the parties hereto until fully observed, kept or performed.

21. FACSIMILE AND OTHER ELECTRONIC MEANS: The parties agree that the offer, any counteroffer and/or acceptance of any offer or counteroffer may be communicated by use of a fax or other secure electronic means, including but not limited to electronic mail and the internet, and the signatures, initials and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

22. EXTENSION AGREEMENT: If the transaction has not closed within the stipulated time limit because a contingency has not been satisfied through no fault of either party, then both parties agree to extend this agreement for a period not to exceed _____ consecutive days from the original closing date. Closing shall occur within this time extension, but in no event shall closing occur later than the above extension date. **Time is of the essence.**

23. DEFAULT: If Buyer or Seller fails to perform any covenant of this Agreement, the other may elect to seek any remedy provided by law, including but not limited to attorney fees and actual costs incurred (as defined in paragraph 24), or terminate this Agreement with a five day written notice. If terminated, both parties shall execute a written release of the other from this contract and both shall agree to hold the Escrow Agent harmless. If either Buyer or Seller refuses to execute release, Escrow Agent will hold the earnest money in trust until said releases are executed or until a court of competent jurisdiction dictates legal disposition.

24. ACTUAL COST INCURRED shall include all costs and expenses incurred or obligated for by Buyer, Seller or Broker in an effort to consummate this sale. Such costs shall include, but are not limited to, cost of credit report, appraisal, survey, inspections and reports, title examination, and Broker's fee or commission for this sale.

25. MEGAN'S LAW: The Buyer and Seller agree that the Listing and Selling Broker and all affiliated agents are not responsible for obtaining or disclosing any information contained in the South Carolina Sex Offender Registry. The Buyer and Seller agree that no course of action may be brought against the Listing and Selling Broker and all affiliated agents for failure to obtain or disclose any information contained in the South Carolina Sex Offender Registry. The Buyer agrees that the Buyer has the sole responsibility to obtain any such information. The Buyer understands that Sex Offender Registry information may be obtained from the local sheriff's department or other appropriate law enforcement officials.

26. NON-RELIANCE CLAUSE: Both Buyer and Seller hereby acknowledge that they have not received or relied nor could have relied upon any statements or representations or promises or inducements by either Broker or their agents which are not expressly stipulated herein. If not contained herein, such statements, representations, promises, or agreements shall be of no force or effect. This general non-reliance clause shall not prevent recovery in tort for fraud or negligent misrepresentation or intentional misrepresentation unless specific non-reliance language is included in this agreement. This is a non-reliance clause and is neither a merger clause nor an extension of a merger clause. The parties execute this agreement freely and voluntarily without reliance upon any statements or representations by parties or agents except as set forth herein. Parties have fully read and understand this Agreement and the meaning of its provisions. Parties are legally competent to enter into this agreement and to fully accept responsibility. Parties have been advised to consult with counsel before entering into this agreement and have had the opportunity to do so.

27. CONTINGENCIES: These stipulations shall preempt printed matter herein:(attach and reference addendum if necessary) _____

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THIS IS A LEGALLY BINDING AGREEMENT. BOTH BUYER AND SELLER SHALL SEEK FURTHER ASSISTANCE IF THE CONTENTS ARE NOT UNDERSTOOD. BOTH BUYER AND SELLER ACKNOWLEDGE RECEIPT OF A COPY OF THIS AGREEMENT. BOTH BUYER AND SELLER ACKNOWLEDGE RECEIVING, READING, AND UNDERSTANDING THE SOUTH CAROLINA REAL ESTATE COMMISSION'S AGENCY DISCLOSURE FORM.

ALL TERMS AND CONDITIONS OF THIS AGREEMENT DO NOT SURVIVE CLOSING UNLESS OTHERWISE SPECIFIED.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties.

BUYER: _____ Date _____ Time _____

WITNESS: _____ Date _____ Time _____

BUYER: _____ Date _____ Time _____

WITNESS: _____ Date _____ Time _____

SELLER: _____ Date _____ Time _____

WITNESS: _____ Date _____ Time _____

SELLER: _____ Date _____ Time _____

WITNESS: _____ Date _____ Time _____

LISTING AGENT AND COMPANY _____

SELLING AGENT AND COMPANY _____

SELLING AGENT IS PRESENTING THIS OFFER AS A ☐ BUYER'S AGENT OR ☐ SUBAGENT OF THE SELLER.

ESCROW AGENT ACKNOWLEDGMENT _____

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