

FIXED PRICE CONSTRUCTION CONTRACT

This agreement is made this ____ day of _____, 20____, by and between _____ herein referred to as "Owner", and _____, a _____ Corporation herein referred to as "Contractor." Construction shall commence approximately five days after Owner closes for the purchase of the property and issuance of all permits. The 100% New Construction Breakdown Draw Contract of work to be performed is attached hereto as "Exhibit A," and is hereby made part of this contract. In consideration of the mutual covenants hereinafter set forth, Owner and Contractor agree as follows:

SECTION ONE: STRUCTURE, SITE & ON TIME CONTRACTOR'S GUARANTEE

Contractor shall furnish all material, labor, and equipment necessary for the construction of the structure and be responsible for hiring and paying for all sub-contractors and material used for the 100% New Construction Breakdown Draw Contract of Work at the Property location: _____ which Owner warrants he/she owns or will own at the time of work commencement, free and clear of liens that would inhibit Owner's ability to pay Contractor.

CONTRACTOR'S On Time – Fast Build Guarantee Addendum: The work contracted herein shall be completed no later than the due date of the tenth (10th) Construction Mortgage Payment to be made by Owner. Settlement for the Property purchase and construction loan may not take place until after zoning and building permits are issued. Contractor's attached "On Time Fast Build Guarantee Addendum" governs and controls this guarantee section until project completion and final appraisal (see said attachment).

SECTION TWO: PLANS APPROVED & PROJECT MANAGEMENT PRIOR TO CLOSING

Contractor shall construct the structure in conformance with the plans, specifications, permits, and 100% New Construction Breakdown Draw Contract detail of construction costs and tasks to be provided and performed by the Contractor (attached hereto). Such Form is hereby agreed to be the 100% New Construction Breakdown Draw Contract to be made by or on behalf of Owner to Contractor for this Scope of Work, as it is completed. The 100% New Construction Breakdown Draw Contract, when signed by Contractor and Owner, is made part of and subject to the terms of this Contract.

Construction will be completed substantially similar to the plans and specifications on file in Contractor's office. Contractor is hereby given the option, in Contractor's sole discretion, to substitute material and equipment of equal or better quality whenever Contractor shall find it necessary or expedient to do so, at no additional cost to Owner.

Prior to closing, Contractor shall undertake Project Management, including expediting the architectural plans, obtaining all City engineering, geological, architectural, zoning, and site plan approvals, as well as all required building permits and approvals at Contractor's cost, to be reimbursed at the construction loan/purchase closing. Closing will not take place without zoning permits and project management contracted. All work shall be performed in a professional and workmanlike manner according to applicable industry, City, state, and federal construction guidelines and codes. Contractor shall have complete discretionary authority to make changes and modifications on site at the point of construction to plans, layouts, room designs, materials, and square footages that in the Contractor's sole and exclusive opinion best maximize the equity value sought or that are required by zoning contingencies. It is understood and agreed by the Owner the actual measurements on the job site may require the Contractor to use their discretionary authority herein to revise the layouts and plans drawn by the architect without new plans being redrawn, as permitted by the City inspector on site.

Contractor is responsible for furnishing all improvements to the main structure and land as detailed in the plans such as landscaping, grading, walkways, outside door painting, sewer and water systems, steps, driveways, patios and aprons, etc., as specifically stated in the 100% New Construction Breakdown Draw Contract. Contractor agrees to charge only the fixed cost of construction below, which is a firm cost of the total new construction for the plans and specifications on the above listed property and Contractor agrees it shall not exceed that amount except with prior written permission signed by the Owner.

SECTION THREE: FIXED PRICING & PAYMENT

Owner shall pay contractor the FIXED PRICE SUM of **Three Hundred Seventy-Three Thousand Nine Hundred Ninety Dollars (\$373,990.00)**, except as otherwise stated herein in Section Nine, in installments as set forth in the escrow instructions of primary Lender's schedule and draw addendums to the construction loan signed by Owner and Contractor. It is agreed that all payments hereunder are subject to the terms and conditions of the escrow agreement of the Lender and that no amount will be paid until that portion of work is completed and certified as finished by the Lender or Owner as may be provided therein. **It is agreed that 10% of the 100% New Construction Breakdown Draw Contract of contracting budget shall be disbursed at the time of property purchase and closing (from the loan proceeds/escrow) for architectural, project management, and expediting the build out when all permits and drawings are provided. It is agreed that this advance outlay and cost is escrowed and paid by the Lender to expedite the immediate excavation and lot clearing directly after closing, speed the build out and finishing of the property, and hire professional Project Management Audit and Control Services over the contractor's progress and quality of work performed throughout the build.** In the event any installment in the 100% New Construction Breakdown Draw Contract schedule is not paid directly after work is performed, including the final draw or retainage due, contractor may stop work until payment is made unless such non-payment is the result of the actions or inactions of the Contractor. In the event any installment is not paid within five (5) days after it is due, Contractor may take such action as may be necessary, including legal proceedings, filing of mechanics liens, and declaring the contract in default, and any related agreements in default and void. If Contractor is ever over advanced draws prior to the equivalent percentage of work being completed, then either such overdrawn amount shall be repaid by Contractor within 48 hours of Owner's written demand or such work shall be immediately completed and performed within 21 business days of said demand, and no further draws of the escrow shall be made until this work is accomplished. If the Lender does not pay for its site inspections, Owner shall pay for same.

SECTION FOUR: PREPARATION

During construction, Owner shall provide Contractor with unimpeded access to the Property. Contractor shall obtain zoning approval with the Project Manager for the structure anticipated and identify and stake the property boundaries of Owner's Property at all corners, if required.

SECTION FIVE: UTILITIES

During construction, on Owner's behalf, Contractor shall activate water, gas, and electrical usage meters and services to the Property, to be billed to Owner by the utility for usage and meter set up. Subject to the terms of this Fixed Price Construction Contract, as detailed in the 100% New Construction Breakdown Draw Contract and herein, Contractor shall, as applicable, connect permanent electric, gas or oil service, and water and sewer service and lines to the structure.

SECTION SIX: LIMITED WARRANTIES

Contractor shall inspect and identify any existing environmental issues on the Property and include any such issues in this Fixed Price Construction Contract for removal and/repair or remediation. If a Hazardous Substance is discovered after construction has commenced, and said issue is not noted on the 100% New Construction Breakdown Draw Contract, then Contractor will be fully responsible for removal and/or repair of such issues at Contractor's sole expense. Contractor will be responsible for damages to persons or property caused or precipitated by Contractor or his agents, employees, sub-contractors, or third parties, excepting acts of God or other causes beyond Contractor's control.

For the purposes of this Limited Warranty provision, "Hazardous Substances" shall be as defined in the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 et seq., as amended ("CERCLA") as well as any other substance or contaminant regulated or controlled by any state, federal, or local law, regulation, statute, or the like.

All new systems and construction installed or built by Contractor shall be warranted for one year from the date of the Certificate of Occupancy, including plumbing, electric, HVAC, and roof under the Contractor's separate Limited Warranty Agreement. Roofs include a total 10 year limited warranty from roofing sub-contractor. Appliances shall be warranted under their respective one-year manufacturer's warranties. Structural components shall be warranted by the Contractor one additional year for a total of two years under the Contractor's Limited Warranty Agreement. All warranties are subject to proper home maintenance being performed annually.

Contractor shall not be responsible for damages to persons or property caused by Owner or his agents including property managers and tenants, third parties, acts of God or other causes beyond Contractor's control. Owner may not visit the Property during construction without Contractor's prior approval and escort being present due to insurance requirements. Contractor shall not be liable or responsible to the Owner for loss of rents, loss of tenants, loss of profits or the like of any nature whether due to delay, repairs, or warranties or any other cause or alleged cause. Owner shall save and hold Contractor harmless from, and shall indemnify Contractor for, all costs, damages, losses, and expenses, including judgments and attorneys' fees, resulting from claims arising from causes enumerated in this paragraph. Owner will procure at Owner's expense and before the commencement of any work hereunder, builder's risk, fire and other hazard and liability insurance with course of construction, vandalism and malicious mischief clauses attached naming Owner's lender and Contractor as additional insureds in such amounts as warranted to protect the interests of the parties hereto and Lender. Contractor shall not be responsible for loss of rents, tenants, profits from rents, equity valuation losses or alleged valuation losses or differences of any nature whatsoever or for reasonable delays in the finalization of the property punch down list after final appraisal for the Owner's possession of the premises or rental to a tenant. Contractor is also not responsible for any damages incurred due to basement water or flooding other than to remedy same under its limited warranty and to make consistent efforts to resolve and stop any such problem during the warranty period. Contractor and Contractor's representatives and subcontractors shall be duly licensed and shall maintain adequate insurance coverage for the scope of work under the terms of this Contract including, without limitation, workers' compensation coverage. Contractor shall indemnify and hold Owner harmless of and from any and all claims, demands, losses and damages of any kind arising from Workers' Compensation claims and Mechanics Lien Claims, General Liability, and Commercial Auto claims. In the event of a default by Contractor, Owner shall retain any and all rights and remedies available to the Owner at law or in equity.

A. Contractor hereby agrees to provide to Purchaser a One-Year Builder's Limited Warranty administered by Contractor and Owner agrees that Contractor's sole responsibility shall be to comply with the Standards of Performance and warranty tolerances for defined Structural Elements as defined in the Builder's Limited Warranty, which Limited Warranty is attached hereto as Exhibit "C".

B. OWNER ACCEPTS ALL LIMITATIONS OF LIABILITY AS SET FORTH IN THIS BUILDER'S LIMITED WARRANTY. ALSO, OWNER AGREES TO SEEK BINDING ARBITRATION AS OWNER'S SOLE REMEDY FOR CONSTRUCTION-RELATED DISPUTES WITH CONTRACTOR.

C. Except as otherwise provided in said Builder's Limited Warranty or in the Uniform Planned Community Act, Owner agrees that Contractor shall be released and discharged from all liability for injury, loss or damage resulting from any cause whatsoever, including but not limited to negligence, latent or undiscovered defects, or any other causes not specifically recited herein.

D. Owner further agrees that Contractor shall be responsible to install industry-acceptable materials in a good and workmanlike manner, but shall not be responsible for naturally-occurring conditions, materials, elements, substances or occurrences, including but not limited to radon gas, latex paint, formaldehyde, molds, fungus, dampness or water accumulation in the house which may promote the formation of mold, synthetic carpet fibers, allergens, or any other natural phenomena, whether known or unknown.

E. Owner understands and agrees that the Builder's Limited Warranty is provided by Contractor in lieu of all other warranties, oral agreements, or representations except as expressly set forth in the One-Year Builder's Limited Warranty.

F. As required by Section 5411 of the Act, Contractor warrants against structural defects in each of the Units and all of the Common Elements constructed by Contractor for a period of Two Years, as defined in such section of the Act.

Except as set forth in writing in this Contract, there are no other warranties or representations, express or implied. This is an EXPRESS WAIVER of any and all Warranties of Merchantability, Habitability or Fitness for a Particular Purpose.

SECTION SEVEN: POSSESSION & TERMINATION

Owner shall not have possession of the structure until such time as all payments or other obligations required by Owner to Contractor, as set forth in this contract, have been fully paid. If possession of the structure is taken by the Owner before the above obligations are met, without the prior written consent of Contractor, such possession shall act as acceptance of the structure by the Owner as 100% completed and 100% satisfactory and there shall be no other obligations remaining between the parties except as written below. In such case, the Contractor shall have no additional recourse of any nature against the property or Owner except to be paid in full for all work performed and contracted for according to the 100% New Construction Breakdown Draw Contract attached hereto and made part of this contract. After receipt of the final payment in full, this Contract shall then be considered terminated and of no further force, except for any expressed limited warranties. In order to induce Contractor to include the Fixed Price Construction Contract, One Year Warranty and On Time – Fast Build Guarantee Addendum clauses and addendums to this Contract, Owner agrees this contract is non-cancelable by Owner except by breach of contract by Contractor or written mutual agreement and release of the parties to each other. In the event Owner claims Contractor is in breach of this Contract, Owner shall so notify Contractor, in writing, and Contractor shall have thirty (30) days in which to correct any claimed

deficiency or cause of breach. In the event of a breach of this Contract by Owner, because actual damages would be difficult or impossible to ascertain, Contractor's remedy shall be to receive payment in full under this Contract, as liquidated damages to Contractor.

SECTION EIGHT: INDEMNIFICATION AND SUB-CONTRACTOR MECHANICS LIENS

To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner and the Owner's agent and employees from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the 100% New Construction Breakdown Draw Contract, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent or intentional acts or omissions of the Contractor, the Contractor's subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.

Contractor agrees to pay for all materials, equipment, and labor used in the performance of this contract when and as bills or claims therefore become due and to save harmless and indemnify and protect the premises, Contractor and the Owner from and against any claims and mechanics liens on account thereof, and Contractor may retain monies for such indemnification.

SECTION NINE: DISCOUNT/CREDIT

The Fixed Pricing in Paragraph Three above assumes Owner has selected to use one of Contractor's preferred lenders and title insurance agencies. Contractor has worked closely in the past with various lenders and title insurance agencies that understand Contractor's unique concept of guarantying both a fixed construction price and timing of construction. If Owner selects one of Contractor's preferred lenders and title insurance agencies, the construction process will proceed more smoothly and will create a cost savings for Contractor. Contractor is willing to pass the cost savings to Owner.

Therefore, if Owner chooses a construction lender and title agency from Contractor's list of preferred service providers, Contractor's FIXED PRICE SUM is the sum listed in Section Three. Should Owner select a lender or title insurance company not on Contractor's list of preferred lenders and title agencies, then the Fixed Price Sum in Section Three above shall be **Three Hundred Ninety-Seven Thousand and Eight Hundred Sixty-Two Dollars (\$397,862.00)**

SECTION TEN: GENERAL PROVISIONS

Owner agrees to promptly complete the necessary requirements to obtain financing and to take ownership of the site to begin construction. There are no understandings or agreements between Contractor and Owner other than those set forth in this contract and in the documents referred to in Sections Two and Three. No other statement, representation or promise has been made to induce either party to enter into this contract. This contract and the documents referred to in Sections Two and three may not be modified or amended except by written agreement of the parties.

Neither party has any authority to bind the other in any way. This contract constitutes the entire agreement between the parties relating to the subject matter hereof. Except as expressly provided herein, this contract shall not be amended except by written agreement between the parties. No oral waiver, amendment or modification shall be effective under any circumstances. If any term, covenant or condition of this contract shall for any reason be held unenforceable by a court of competent jurisdiction, the remainder of the contract shall remain in full force and effect and shall in no way be affected or impaired.

The representations and warranties herein shall survive termination or expiration of this contract. This contract shall be governed and construed under the laws of the State where the property is located, including choice of law rules.

Failure to maintain a valid NRIA Project Management Power of Attorney in force and on hand is a breach of this contract.

SECTION TEN: BINDING ARBITRATION REQUIRED

Both parties agree that any dispute resulting from the construction process, regardless of when it arose, will be resolved through means of binding arbitration administered by The American Arbitration Association (AAA). By signing this contract, both parties understand and agree that they are waiving their right to a jury trial, before a judge in a public court. Furthermore, they agree they will not have the right to participate as a representative, or member of any class of claimants, pertaining to any dispute subject to the purchase of this property, or arbitration. The parties hereto agree that that they shall bear individually the costs of their arbitration representation. The party initiating the complaint will pay any fees due the arbitration committee. Any arbitration proceedings shall be conducted in the city and state where the subject property is located.

SECTION ELEVEN: SPECIFICATION OF MATERIALS & WORKMANSHIP

Construction will include the Contractor's Specifications as detailed below.

Owner agrees there may be changes to features, amenities, and elements based upon Contractor's design expertise or the requirements of construction codes and materials availability. Contractor is given the option, in Contractor's sole discretion, to substitute material and equipment of equal or better quality whenever Contractor shall find it necessary or expedient to do so, at no additional cost to Owner.

Notwithstanding any other agreement to the contrary herein Contractor may determine all elevations, or the position of the building or Unit, or make any change or changes in the grading of the land or in the number of steps to the front door. Additionally, the number of windows and other exterior items may vary based on the exterior architectural design of a Building.

Any optional, extra or upgraded work must be requested by Owner in writing, must be approved by Contractor in writing, and be paid in full by Owner prior to the commencement of such work. Contractor will not respond to ANY requests for changes made more than thirty (30) days after the date of this Contract, or a shorter period for work in progress or already ordered.

The following new construction specifications will apply, subject to the terms above regarding substitution of materials, if necessary:

Contractor's Specifications

Foundation: All foundation walls will be constructed of a solid poured concrete or Precast at a minimum of 10" wide. Finished Basement heights are required to be at a minimum of 7' if applicable.

Utilities: New Water Service, Sprinkler System, Sewer, Yard Drain/Rain Leader, & Curb Trap
New 200 Amp Electrical wiring Throughout w/ High Hats (All Baths and exterior of properties to have Chrome Modern Fixtures)

New HVAC Unit

New Plumbing Manifold System

All Appliances & Systems to Run on Gas

Framing: All Carpentry to have a standard minimum of:

2x6 Exterior Walls

2x12 Joists

2x4 Interior walls

TGI & LVL Beams where specified by the structural engineer

Custom Built Stained Stairs

Roof: New Roof with 10 Year Limited Warranty

Veneer: 4" Brick (Manufacturer may vary)

Bays: Metal Siding or Hardy Panel Systems (Color and Design to Vary)

Smooth Stucco: Exposed sides of building or rear

Kitchen: Dulce Dark Maple Flat Panel Contemporary 42" Custom Cabinets w/ Self-close Drawers and Modern Stainless Steel Handles or equivalent

Granite Counter Tops or Quartz(1 1/4" Thick) w/ eased Modern Edging (Color to Vary)

GE Stainless Steel Appliances or equivalent

Grohe Conchetto Dual Spray Pull Down Stainless Steel Kitchen Faucet- Model # 32655

Master Bath: Ultra Modern European Bath- Covered w/ 12" x 24" Modern Porcelain Tile (colors to Vary)

Contemporary Fixtures

European Contemporary Shower

Grohe Systems with Chrome Handheld Shower Stick and Overhead Rain Shower or equivalent

Vanity: Custom Built Solid Wood Maple Wenge Modern Wall Mount Vanity w/ undermount sink Stainless Steel Grohe vessel faucet

Tops: Marble Top

Toilet: Kohler Persuade® two-piece elongated toilet with Dual Flush Technology K-3654

Secondary baths:

Tile: 16" European Travertine Tile, 12" x 24" Porcelain Tile or equivalent (colors to Vary)

Tub: Kohler Archer 5' bath- Model #K-1123or Equivalent

Kohler Oblo® Rite-Temp® pressure-balancing bath and shower faucet trim Model # K-T10055-9 or Equivalent

Vanity: Custom Built Solid Wood Maple Wenge Modern Wall Mount Vanity w/ undermount sink Stainless Steel Grohe vessel faucet

Tops: Marble Top

Toilet: Kohler Persuade® two-piece elongated toilet with Dual Flush Technology K-3654

Powder Room- If applicable:

Tile: 16" European Travertine Tile, 12" x 24" Porcelain Tile or equivalent(colors to Vary)

Vanity: Kohler Reve™ pedestal lavatory with Grohe Vessel Faucet or equivalent

Toilet: Kohler Persuade® two-piece elongated toilet with Dual Flush Technology K-3654

Flooring: Bamboo Horizontal Grain Natural Wood (5/8" thick x 3 1/4" wide) or equivalent

Landscape: New Concrete Sidewalk & Rear Patio surrounded by Custom Wood Fencing

IN WITNESS WHEREOF, intending to be legally bound hereby, the parties have caused this Contract to be executed as of the date set forth below.

For the Owner:

Date: _____ (seal)
_____ Owner #1 Signature

Owner #1 Name & Address

Date: _____ (seal)
_____ Owner #2 Signature

For the Contractor:

Date: _____
_____ Contractor Signature

Firm Address & Telephone:

Name & Title

Firm Name