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Proposal and Agreement for Construction on Purchaser's Lot

This Proposal and Agreement is made this _____ day of _____, 200__, by and between The Company, (hereinafter referred to as The Company), and _____ (hereinafter referred to as the Purchaser) for the construction of a structure to be placed on property located in _____ County, State of XXXXXXXX, and legally described as lot _____, block _____, subdivision _____, and also known and numbered as _____.

The Company and the Purchaser agree as set forth below:

1. **Purpose of Agreement – Purchaser desires to employ The Company to oversee construction of a single-family residence, with Purchaser acting as General Contractor and The Company as a Subcontractor.**
2. **Responsibilities under Agreement** – With Purchaser acting as General Contractor, The Company will act as Project Manager for all work defined on Specification Sheet other than work to be performed by the Purchaser. All work sub-contracted by Purchaser shall be completed in a timely manner so as not to interfere with other work scheduled by the Project Manager.
3. **Agreement Documents**—The terms of this agreement include the conditions of this agreement and by reference the provisions in the other documents specifically listed below. (Copies of these documents are attached to this agreement as Exhibits A, B, and C.) The terms of this agreement shall prevail over any conflicting provisions in the documents incorporated by reference. If a conflict exists between the plans and the specifications, the specifications shall govern.

Agreement documents:

- A. Floor Plans and Elevations
- B. Standard Specifications
- C. Mold Disclaimer and Waiver
- D. Sample of The Company Limited Warranty

4. **The Work**—Unless otherwise specifically noted, The Company shall provide and pay for all labor, materials, equipment, tools, production equipment and machinery, and other facilities and services necessary for the completion of the structure at the site. Landscaping or other work outside the foundation footprint, including, but not limited to, the construction of retaining walls required by the topography of the site, is not included as part of the work. The work shall be done substantially in conformance with the production plans and specification sheet that have been initialed or signed by each party. These plans and specifications are attached to this agreement and incorporated into it as Exhibits A and B, respectively.

_____/_____(Purchaser initials).

5. **The Company shall not be responsible for preparatory work, including, but not limited to, the following work:** excavation and/or site preparation; hauling excavation and existing debris from the property; off-site utility trenches; installation or construction of walks, pavements, curbing, retaining walls other than foundation, patios, porches, and decks; and extra work caused by the presence of concealed conditions and/or weather-related site access difficulties as set forth in paragraph 23.
6. **Financing**—This agreement is contingent upon payment of the deposit as shown in Section 8. All fees and expenses of obtaining any financing on the part of the Purchaser, including all commissions, title charges, and credit reports, shall be borne by the Purchaser. The Company is not required to begin production until the Purchaser provides The Company with satisfactory evidence that the final payment as provided in Section 8 is, or will be, available to Purchaser for payment to The Company on completion of the project.
7. **Agreement Price**—The Purchaser promises to pay the total agreement price for all labor and materials furnished and work performed by The Company of

AGREED UPON AMOUNT OF Dollars (\$XXX,XXX.00),

including state sales tax, subject to additions and deletions by change order evidenced by a Confirmation of Instructions issued by Purchaser as provided in Section 20. The agreement price includes the specifications listed in the General Specifications attached to this agreement and incorporated into it as Exhibit B.

8. **Payments**—The agreement price will be paid as follows:
- A. Thirty percent (30%) or **\$XX,XXX.00**, of the Agreement Price as a deposit upon signing the agreement.
 - B. Thirty percent (30%), or **\$XX,XXX.00**, at substantial completion of framing.
 - C. Thirty percent (30%), or **\$XX,XXX.00**, at substantial completion of drywall.
 - D. Remaining balance of agreement price, or **\$XX,XXX.00**, at completion.
 - E. Any payments due and unpaid shall bear interest (at the maximum legal rate) payable to the The Company from the date the payment is due until the payment is made.
9. **Acceptance and Final Payment**—Upon notice that the work is ready for final inspection and acceptance, the Purchaser, or Purchaser's Agent, will inspect the work within three calendar days. If the inspection has not been made within the allotted time, acceptance by the Purchaser will be assumed. Upon acceptance, the Purchaser will promptly pay (or cause to be paid) the balance due under the agreement.
The Company agrees to provide the Purchaser, upon request, with (a) an affidavit stating that all materials and services for which a lien could be filed have been paid or will be paid from the proceeds and (b) such other affidavit as may be reasonably required by the Purchaser's title insurance company.
10. **Commencement and Completion**—The work will be scheduled promptly upon payment of the deposit referenced in Section 8 above, and when any other contingencies, including the issuance of a building permit, are cleared. The work will be substantially completed within **180** days from the scheduled start date.
Any time lost by reason of change in plans or specifications requested by the Purchaser, other acts of the Purchaser, strikes, weather conditions not reasonably anticipated, or any other conditions that are not within The Company's control shall be added to the specified time of completion, and The Company shall not be liable for such delay. For any delays not the responsibility of The Company, the agreement price shall increase by the difference, if any, in The Company's costs occasioned by such delay. Any such delay will be treated as a Change Order under Paragraph 20 of this agreement.
11. **Other Subcontractors and Employees** – Agreements made by the Purchaser, as General Contractor, with mechanics or subcontractors on the job are specifically not recognized by The Company, and The Company does not bear any responsibility for direct, collateral, or contingent results of such agreements.
12. **Selections**—The Purchaser has reviewed and signed a Specification Sheet (attached to this agreement and incorporated in it as Exhibit B) delineating the materials and fixtures to be used in the project. The Company will, to the best of its ability, adhere to the specifications. Any significant deviation from specification because of non-availability or other problems in acquisition will be treated as a Change Order under Paragraph 20 of this agreement.

This agreement requires the Purchaser to declare selections of certain materials, colors and/or other specifications by a certain date. All exterior and trade-related (HVAC, plumbing, and electrical) selections must be made within **fifteen days** of this contract date. All other selections must be made within **thirty days** of this contract date. Requisite selections not made within the time allowed will be made by The Company and Purchaser agrees hereby to those selections.

_____/_____(Purchaser initials).

- 13. Substitution of Materials** – Purchaser recognizes that any change or alteration made by The Company to the signed and accepted plans and specifications will be made because of building code issues or design considerations and approves any such changes or alterations in advance. The Company may substitute structural materials and other generically described items without notice to the Purchaser in order to allow the work to proceed, provided that the substituted materials are of no lesser quality than those described in the Construction Specifications.
- 14. Substitution of Design Features** – The Company may alter design features, including, but not limited to, window and door locations and sizes without notice to the Purchaser in order to allow the work to proceed, provided that the alterations do not substantially change the character or appearance of the structure.
- 15. Escalation Clause for Building Materials** -- The contract price for this residential construction project has been calculated based on the current prices for the component building materials. However, the market for the building materials is considered to be volatile, and sudden price increases could occur. The Company agrees to use its best efforts to obtain the lowest possible prices from available building material suppliers but should there be an increase in the prices of these specified materials that are purchased after execution of contract for use in this residential construction project, the Purchaser agrees to pay that cost increase to The Company. Any claim by The Company for payment of a cost increase, as provided above, shall be evidenced by a Change Order as provided in Section 20 of this document and shall state the increased cost anticipated.
- 16. Special Circumstances – Right of Termination** --Should there be a rise in the cost of any building material or materials, that would cause the total contract price to increase by more than fifteen percent (15%), The Company shall, before making any additional purchases of material or materials, provide to the Purchaser a written statement expressing the dollar amount of the price increase to be incurred. The Purchaser may then, at its option, terminate the contract by providing within three business days both written notice of termination to The Company, and payment to The Company for all costs expended in performance of the contract to the date of termination, plus payment of a prorated percentage of the profits based on the percent of completion. Should both notice of termination and full payment not be forthcoming within three business days, as provided herein, The Company shall have the option to terminate the contract, or to proceed with the contract and purchase the specified building materials at the increased price. If termination is elected, The Company shall provide to the Purchaser a written notice of termination, and the Purchaser shall be required to pay The Company for all its costs expended in performance of the contract to the date of termination, plus payment of a prorated percentage of the profits based on the percent of completion. If The Company elects to proceed on the contract, it may then purchase the specified material or materials at the increased price, and the Purchaser shall be required to pay the increased cost incurred.
- 17. Health Concerns Arising From Materials Used in Construction** -- It is possible that the Purchaser or anyone associated with the Purchaser may experience negative reactions to the materials used in the manufacture of products utilized in the construction of the project. Though The Company has carefully selected the products to be used in the construction in the project, The Company does not represent that such a negative reaction will not occur. If the Purchaser is concerned with regard to any such possible reaction, The Company will provide a sample of any or all products to the Purchaser and urges the Purchaser or Purchaser's agent to test for negative reactions.

The Company requires, and Purchaser agrees, that Purchaser provide notarized copies of any such tests, either positive or negative, to The Company immediately upon receipt.

The absence of a request for any or all materials will be interpreted in this agreement as acceptance by the Purchaser of the products and any consequences of the installation of the products in this project.
- 18. Permits, Fees, and Tests**—The Company shall secure and pay for building permits, licenses, and other similar approvals necessary for the proper execution and completion of the work. If necessary, Purchaser agrees to assist The Company in obtaining any such permits and licenses by completing all necessary applications and

forms. However, if a covenant or an architectural review committee requires the approval of plans and specifications, the Purchaser shall be responsible for obtaining these approvals and paying for any fees connected with them.

- 19. Taxes**—The Purchaser shall pay all real property taxes and taxes imposed upon the improvements on the structure when they are due. The Company shall pay all necessary sales, use, and similar taxes on materials used in production that are legally enacted at the time this agreement is signed.
- 20. Change Orders**— Without invalidating this agreement, the Purchaser may order changes in the work within the general scope of the agreement. However, no changes are to be made except upon a prior written order (signed by both parties) consisting of the change, any additional cost, and the additional number of days to be added to the completion date. An additional minimum **15%** will be added to the cost of the change order to cover The Company overhead expense. The form used to document such changes will be the Customer Instructions, a blank copy of which will be provided to the Purchaser upon request.

If the change reduces the cost, the Purchaser will receive a credit, but The Company's supervision and overhead expenses and profit will not be reduced. Any additional cost shall be due prior to installation, or as indicated on the Customer Instructions. The Purchaser agrees to make requests concerning any changes, additions, or alterations in the work to The Company in writing. Any Purchaser signing the change order does so on his or her own behalf and on behalf of any other Purchaser, and the signature shall be binding on all Purchasers.
- 21. Insurance**—The Company shall purchase and maintain, at The Company's own expense, all necessary workers' compensation and employer's liability insurance, commercial general liability insurance, and comprehensive automobile liability insurance to protect The Company from claims for damages because of bodily injury, including death, and for damages to property that may arise both out of and during operations under this agreement.
- 22. Purchaser Obligations**—The Purchaser shall secure and pay for easements necessary for the completion of the work. The Purchaser shall furnish information and services under their control to The Company promptly to avoid delay.
- 23. Concealed or Weather-Related Conditions**—The Company has not visited the site for the purpose of investigating site conditions, nor has The Company familiarized itself with the local conditions under which the work is to be performed. The Company is not responsible for subsurface or latent physical conditions at the site.

It is the Purchaser's, or Purchaser's agent's, responsibility to investigate the site to determine that no adverse or concealed conditions that would prohibit the successful placement of the structure exist at the jobsite.

Additionally, adverse weather conditions such as snow and/or rain may impede access to the site. In such circumstances, any additional costs in gaining access to the site will be billed to the owner as such costs are incurred.
- 24. Soil Engineer's Report** – Purchaser hereby acknowledges that it has been advised by The Company that the ground in this State may consist of expansive and/or low-density soils which can adversely affect the integrity of improvements. Purchaser is responsible for obtaining a soils engineer's report (which may be based on a open hole inspection or test drilling with core samples), and shall deliver a copy of said report to The Company before the foundation is poured.
- 25. Radon** --The State Department of Health and the United State Environmental Protection Agency (EPA) have detected elevated levels of naturally occurring radon in structures in the area. Radon is a colorless, odorless, tasteless radioactive gas produced by the natural breakdown of uranium contained in soils and rocks. High concentrations may result from accumulation of radon in enclosed spaces, such as homes. EPA has raised concerns with respect to adverse effects on human health of long-term exposure to high levels of radon. It is therefore suggested that the Purchaser conduct such investigations and consult with such experts as Purchaser deems appropriate to determine the possible radon mitigation measures that may be employed in design and construction of improvements on the Lot. Purchaser shall rely solely upon such investigations and consultations and be solely responsible for providing any radon mitigation measures that Purchaser desires or that may be recommended to Purchaser. The Company makes no representations or warranties, express or

implied, concerning the presence or absence of radon in the soil of the Lot or in the House, or the design or construction measures, if any, that may be employed to reduce any radon levels in the improvements built on the Lot.

- 26. THE COMPANY HEREBY DISCLAIMS AND PURCHASER, FOR ITSELF AND IT'S SUCCESSORS AND ASSIGNS, HEREBY WAIVES ANY SUCH WARRANTIES AND ANY OTHER WARRANTIES THAT COULD BE CONSTRUED TO COVER RADON OR OTHER ENVIRONMENTAL POLLUTANTS. PURCHASER FOR ITSELF, ITS SUCCESSORS AND ASSIGNS, HEREBY RELEASES THE COMPANY FROM ANY AND ALL LIABILITY WHATSOEVER WITH RESPECT TO RADON OR OTHER ENVIRONMENTAL POLLUTANTS. PURCHASER FURTHER AGREES TO INDEMNIFY THE COMPANY AGAINST ALL CLAIMS, LOSSES, COST AND LIABILITIES (INCLUDING REASONABLE ATTORNEY'S FEES) RESULTING FROM OR ARISING IN ANY WAY OUT OF THE PRESENCE OF RADON IN THE CONSTRUCTION OF IMPROVEMENTS ON THE LOT.**
- 27. Disputes—** Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association and judgment upon the award rendered by the arbitrator or arbitrators may be entered in any court having jurisdiction thereof. In the event The Company's work is judged to be deficient, The Company shall have the right to repair, replace, or pay reasonable sums to effect repairs of, the deficiencies. In any event, no party may institute a claim against the other party after one year after the completion of the project.
- 28. Termination—** Purchaser has the right to assume duties as Project Manager at any time, but The Company shall be entitled to full project payment per Contract.
- 29. Limited Warranty—** Upon receipt of the final payment in full, The Company shall deliver to the Purchaser the Company Limited Warranty Agreement. This agreement provides warranties subject to stated terms and conditions against certain kinds of defects in workmanship and materials for the time stated therein. A copy of the Limited Warranty is attached to this agreement and incorporated in it as Exhibit D.
- This Limited Warranty is the only express warranty provided by The Company. Implied warranties, including (but not limited to) warranties of merchantability, fitness for a particular purpose, habitability, and good workmanship are limited to the warranty period set forth in the Company Limited Warranty Agreement.
- The Purchaser acknowledges that The Company has made no guarantees, warranties, understandings, nor representations (nor have any been made by any representatives of The Company) that are not included in the agreement documents.
- 30. Miscellaneous—** The Purchaser agrees that The Company shall have the right to place signs on or about the property and to show the structure to other prospective clients and customers. The Company is authorized by the Purchaser to use photographs taken at the project for permanent display, promotion, or advertising without compensation to the Purchaser.
- 31. Governing Law and Assignment—** This agreement will be construed, interpreted, and applied according to the law of the state where the structure was produced. This agreement shall not be assigned without the written consent of all parties.
- 32. Effective Date and Signature—** This agreement shall become effective on the day it is signed by both parties.

We the undersigned, have read, understand, and agree to each of the provisions of this agreement and hereby acknowledge receipt of a copy of this agreement.

