

CONSTRUCTION AGREEMENT

(for construction of a new home on land of another)



Builder Job No.: _____

THIS AGREEMENT made this _____ day of _____ A.D. 20 _____

BETWEEN:

(mailing address)

In the Province of British Columbia (hereinafter called the "Builder")

The Builder is a Licensed Residential Builder pursuant to the Homeowner Protection Act, S.B.C. 1998 C.31 and has been accepted by the following new home warranty insurer.

Builder is a registered member of the Canadian Home Builders' Association (CHBA): yes _____ no _____

AND:

_____ phone _____
(mailing address)

In the Province of British Columbia (hereinafter called the "Purchaser")

The Purchasers are the owners or are entitled to become the owners of the following lands:

Civic Address: _____

Legal Description: _____

In the Province of British Columbia (in this Agreement called the "Lands"):

NOW in consideration of the payments to be made by the Purchasers as specified in the Agreement, the Builder and the Purchasers agree as follows:

1. SALE PURCHASE

The Builder agrees to construct a new home on the Lands, on the terms and conditions set forth in this Agreement.

2. CANCELLATION

The Builder and Purchaser agree that if the Builder is not able to commence construction within a period of sixty (60) days from the date of this Agreement due to causes beyond his reasonable control, such as inability to obtain a building permit, failure of Purchasers to qualify for a mortgage (if a condition of this Agreement), or failure to comply with provincial or municipal statutes, then the Builder or the Purchasers may cancel this Agreement on written notice mailed to or delivered to the address of the other party shown on this Agreement. The Builder's liability to the Purchasers shall be limited to the refund of any monies paid by the Purchasers to the Builder less any costs reasonably incurred by the Builder on account of this Agreement.

3. CONSTRUCTION

The Builder agrees to construct a dwelling house on the Lands built to applicable building code/bylaw standards in effect at the date of this Agreement and to the standards of workmanship required by established industry practice. The Builder also agrees to supply all the materials and perform all the work for the construction in accordance with:

a) A floor plan and general specifications similar to Model no. _____ previously constructed by the Builder at _____, excluding landscaping, topsoil and retaining walls.

OR

b) A floor plan and general specifications which the Builder has in its possession similar to its Model entitled _____, excluding landscaping, topsoil and retaining walls.

OR

c) Plans and Construction Specifications attached hereto, dated, and signed by the parties to this Agreement.

4. PRICE

The price to be paid by the Purchasers to the Builder, for the dwelling house to be constructed on the Lands, shall be the sum of _____ DOLLARS, \$ _____
HST included _____, HST not included _____
Subject to _____

and any excess or deficit in respect of an allowance or contract price listed in the specifications referred to in subparagraph 3.(c), and any price changes made pursuant to paragraph 9.

A) EXTRAS AND DELETIONS

- i) Extras to be calculated on a cost plus _____% basis or on a lump sum basis to be agreed upon, in advance, by both parties and to be payable no later than the next scheduled payment after its supply or construction.
- ii) Deletions to be calculated on a cost less _____% basis and to be deducted from the relevant or next scheduled payment.

5. TERMS OF PAYMENT

The Purchasers agree to pay to the Builder the above price, with interest at the rate of _____% per annum on any part of the price which not paid when due, as follows (describe consideration if other than money):

- a) _____ DOLLARS, \$ _____
deposit upon the signing of this Agreement.
- b) _____ DOLLARS, \$ _____
on completion of _____
- c) _____ DOLLARS, \$ _____
on completion of _____
- d) _____ DOLLARS, \$ _____
on completion of _____
- e) _____ DOLLARS, \$ _____
on completion of _____
- f) _____

being the balance of the price, if any, on the completion of the dwelling house to be constructed pursuant to this Agreement, or the date of occupancy of the dwelling house, whichever occurs first. The Builder will advise the Purchaser of the date of completion of construction.

5A. BUILDERS LIEN HOLDBACK

- a) contracts under \$100,000:
In accordance with the Builders Lien Act the Purchasers shall withhold from each payment due under this Agreement 10% of (i) the greater of the amount of the payment and (ii) the value of the work or material as they are actually provided as a builders lien holdback.
- b) contracts of \$100,000 or more without mortgagee administration:
In accordance with the Builders Lien Act there shall be withheld from each payment due under this Agreement 10% of (i) the greater of the amount of the payment and (ii) the value of the work or material as they are actually provided which shall be held in a holdback account. The holdback account will be held at _____
(name of financial institution)
and jointly administered by the Purchasers and the Builder.
- c) contracts of \$100,000 or more where mortgagee administers:
In Accordance with the Builders Lien Act there shall be withheld from each payment due under the Agreement 10% of (i) the greater of the amount of the payment and (ii) the value of the work or material as they are actually provided which shall be held and administered by the Purchasers' savings institution mortgagee _____
(name of financial institution)
as a builders lien holdback.

The Purchasers and the Builder agree to comply with all relevant provisions of the Builders Lien Act and to act reasonably and in good faith in so doing. The Builder will be solely responsible for retaining builders lien holdbacks from all applicable subcontractors (not including workers, material suppliers, architects or engineers) as required by the Builders Lien Act.

Provided no claims of lien are then filed against title to the Lands, the builders lien holdback, or a portion thereof, will be payable to the Builder on the later of 55 days after (i) a certificate of completion is issued and (ii) the contract is completed, abandoned or terminated.

5A. BUILDERS LIEN HOLDBACK cont'd

For greater certainty, if under the Builders Lien Act, a certificate of completion is issued in respect of a subcontract to which the Builder was a party and the builder lien holdback period under such subcontract has expired without any claims of clime being filed thereunder, the Builder will be entitled to receive from the builders lien holdback with held by the Purchasers from the Builder an amount equal to the builders lien holdback amount applicable to such subcontract. Under no circumstances will any portion of the builders lien holdback be held back to require the Builder to complete deficiencies.

5B. PAYMENT CERTIFIER

The payment certifier (the person responsible for certifying when payments are due, if or when required, under the Builders Lien Act) will be

_____ (name)
of _____ (address)

(the "Payment Certifier"). If no Payment Certifier is named in the agreement, then the Purchasers alone will be the Payment Certifier in respect of amounts due to the Builder and the Purchasers and the Builder acting together will be the Payment Certifier in respect of amounts due to any subcontractor. The Payment Certifier agrees to act in this capacity in accordance with the Builders Lien Act.

Name of Payment Certifier (print): _____

Signature of Payment Certifier: _____

(if an architect, engineer or other person is so specifically designated)

6) PRE-OCCUPANCY INSPECTION

a) The Builder shall provide a notice to the Purchasers advising that on a date to be specified in the notice the dwelling house will be ready for occupancy, and further advising the Purchasers that an inspection shall take place on the date specified. The Purchasers shall make an inspection of the dwelling house on the date specified in the notice together with a representative of the Builder, at which time any omission or defects will be noted in writing. Taking occupancy will be deemed to conclusively prove the dwelling house is then complete and in full compliance with the Agreement except as to matters noted at the time of inspection.

b) The Builder will cause to be corrected as soon as is practical, and to the reasonable satisfaction of the Purchasers, all the omissions and deficiencies noted, pursuant and agreed to in sub-paragraph 6.(a).

7) ADJUSTMENTS

The Builder will be responsible for utility connection _____, liability insurance _____, permits _____, surveys _____, fire insurance _____, municipal deposits _____, utility costs _____, other (specify) _____.

8) COMPLETION DATE

Subject to any extensions required as a result of paragraph 9, the Builder agrees to construct the dwelling house in accordance with paragraph 3, of this Agreement in a proper and workmanlike manner and with all due diligence and to have the said dwelling house completed on or about the day of _____ A.D. 20_____ provided that the Builder does not guarantee the completion or possession of the dwelling house on this date if delays occur which are caused by unfavourable weather, strikes, fires, shortages of material and/or labour, acts of God or any causes beyond the reasonable control of the Builder. The Purchasers agree that if items chosen by them such as floor coverings, tile, plumbing fixtures, bricks or countertops are not available for installation in time for the Builder's scheduled installation date, they shall choose alternate items that are available for installation in time, or the completion date shall be extended by such time as required to install those items chosen by the Purchasers as agreed to in writing from time to time; otherwise the Builder reserves the right to make such alternate selections, which selections shall be final and binding on the Purchasers.

9) EXTRAS, DELETIONS, ERRORS

a) Any additions, removals, corrections, variations or price changes to the dwelling house referred to in paragraph 3, shall be effected only by a further agreement in writing signed by the Builder and Purchasers and attached to the Agreement by a Change Work Order signed by the Builder and the Purchasers and both shall be subject to acceptance by any mortgagor, if applicable. Any "extras" shall be paid for the by Purchasers in addition to the price set out in paragraph 4.

b) If the Builders and Purchasers do not agree as provided above, any additional work, materials, variations or extras requested by the Purchasers, but not provided for in the plans and specifications referred to in paragraph 3, will be classified as an extra and paid for by the Purchasers in addition to the purchase price.

c) If the Builder discovers an error, inconsistency or omission in the specification referred to in paragraph 3, he shall not proceed with the work affected until he has received corrected or missing information from the Purchasers.

10) ACCESS TO LANDS

a) The Purchasers covenant and agree to give free uninterrupted and exclusive possession of the Lands to the Builder, including the right to conduct soil tests, from the date of the Agreement until the Builder has completed construction of the dwelling house, provided, however, the Purchasers shall have the right of inspection at all reasonable times so long as they do not interrupt or interfere with the work of the Builder or anyone gaining access under such Builder.

b) If the Builder discovers conditions at the Lands which are subsurface or otherwise concealed physical conditions which existed before the commencement of the construction of the new home which differ materially from those indicated in this Agreement or physical conditions of a nature which differ materially from those ordinarily found to exist, the Purchasers shall indemnify the Builder for all reasonable costs incurred as a result of such conditions including loss of profit and overhead percentage on such costs.

c) If the Builder encounters toxic or hazardous substances or materials at the Lands or has reasonable grounds to believe that toxic or hazardous substances or materials are present, the Builder shall take all reasonable steps to deal with the toxic or hazardous substances including testing, stopping construction of the new home to ensure that no person suffers injury, sickness, or death. The Purchasers shall indemnify the

10) ACCESS TO LANDS cont'd

Builder for all reasonable costs associated with the toxic or hazardous substances or materials and for reasonable costs incurred as a result of any delay as a result of taking any additional steps including loss of profit and overhead percentage on such costs.

11) DEFAULT BY PURCHASERS

If the payment of any of the amounts herein agreed to be paid to the Builder are not made at the times and in the manner provided, or if the Purchasers default in any of the other covenants or agreements herein, the Builder may at his option cease work and treat the contract as repudiated forthwith on the occurrence of such default, and the Builder may recover payment for the work already complete plus damages, including loss of profit, together with interest thereon at the rate of _____% per annum.

12) DEFAULT BY BUILDER

If the Builder neglects to prosecute the work in accordance with the terms on this Agreement, or fails to make prompt payment to sub-contractors, material men or labourers or if the Builder becomes bankrupt or makes a general assignment for the benefit of its creditors, or if a receiver of the Builder is appointed, the Purchasers may, by written notice to the Builder, require him to cure the default, neglect or event specified in such notice within fifteen (15) days of the delivery of such notice. If the Builder fails to comply with the said notice in the time so limited, the Purchasers may take possession of the Lands and of all materials and appliances thereon and finish the work in accordance with the plans and specifications as they may deem expedient but without undue delay or expense. In such event, the Builder shall not be entitled to any further payment under this Agreement but upon completion of the work an accounting shall be made between the Purchasers and the Builder in which the costs of completion necessarily incurred by the Purchasers shall be set off against the balance due to the Builder under this agreement. If the unpaid balance shall exceed the expense of finishing the work, such excess shall be paid to the Builder; however, if such expense shall exceed such unpaid balance, the Builder shall pay the difference to the Purchasers.

In the event of such default by the Builder, the Purchasers will not under any circumstances pay out or apply any portion of the builders lien holdback withheld from the Builder until the possibility of any lien arising under the Builder is exhausted.

13) NO ASSIGNMENTS

No assignments of this Agreement shall be valid by the Purchasers without the written consent of the Builder.

14) TIME ESSENCE

Subject to paragraph 8, time shall in all respects be of the essence, provided that the time for doing or completing any matter provided for in the Agreement may be extended or abridged by an agreement in writing signed by the Builder and the Purchasers.

15) INTERPRETATION

All words in the Agreement may be read and construed in singular number instead of the plural if there be fewer than two Purchasers named and in such case, this Agreement shall be deemed to bind the Purchasers severally and jointly and also the masculine gender shall be construed to include the feminine or a body corporate where the context of this Agreement so requires.

16) OCCUPATION OF PREMISES

It is strictly agreed between the Builder and Purchasers that the dwelling house constructed by the Builder may not be occupied by the Purchasers until all monies payable to the Builder have been received by the Builder.

17) EARLY OR WRONGFUL OCCUPANCY PURCHASERS

If the purchasers occupy the said dwelling house prior to the notice given by the Builder pursuant to paragraph 6, or after completion without having completed the inspection referred to herein, or prior to payment of all monies due the Builder, the Purchasers shall be deemed to have accepted the said dwelling in the state in which they find it and shall be deemed to have waived all rights to object or to complain about any defect in workmanship, materials, or construction of any kind and all warranties of any kind given by the Builder or through the Builder, subject to coverage provided by _____

18) WARRANTY

The Builder represents that the new home warranty insurer listed on page one of this Agreement has provided, or will provide, the home with home warranty insurance in compliance with the Homeowner Protection Act.

19) NOTICES

- a) Any notices to be given under this Agreement shall be given to either Builder or the Purchaser in writing and mailed to or delivered to the other at the address shown in this Agreement.
- b) Any notice delivered by hand shall be deemed received that day or if by mail shall be deemed to have been received seven (7) calendar days after it has been posted in a pre-paid addressed envelope.

20) ENTIRE AGREEMENT

This Agreement shall constitute the entire Agreement between the Builder and the Purchasers and there is no representation warranty, collateral agreement or condition affecting this Agreement other than as expressed in writing in this Agreement.

21) BINDING EFFECT

This Agreement shall ensure to the benefit of and be binding upon the Builder and the Purchasers, their respective heirs, administrators, executors, successors and assigns.

22) DISPUTE RESOLUTION

Any dispute between the parties involving any matter that is the subject of this Agreement or the performance of the work set out herein, shall at the written request of either party be referred to mediation or failing mediation, arbitration pursuant to Commercial Arbitration Act, R.S.B.C. 1996 c.55, and amendments thereto.

Name of Builder (print)

Name of Purchaser (print)

Name of Authorized Signatory (print)

Signature of Purchaser (s)

Signature of Authorized Signatory

Signature of Purchaser (s)

Date _____

Date _____

NB. This form is provided by the Canadian Home Builders' Association of B.C. as a service to the industry. The Association accepts no responsibility whatsoever for its sufficiency and recommends that appropriate professional advice be sought.

SAMPLE