



CONSTRUCTION CONTRACT FOR "SPEC" HOME

This CONSTRUCTION "SPEC" CONTRACT ("Contract") is made and entered into on this date _____ by and between Roost Building Company ("Builder") of Fincastle, Virginia, and _____ ("Client"), whose mailing address is _____.

For and in consideration of the promises contained herein and other good and valuable consideration hereinafter mentioned, the **Builder shall sell to the Client and the Client shall purchase from the Builder all that certain parcel or tract of land** located in _____ city/county, North Carolina with a street address of _____ and more particularly described as Lot _____, _____ Subdivision, **together with all improvements thereon and all appurtenances thereto** collectively referred to as the "Property". The Client, at the Client's expense, shall be entitled to pursue qualification for and approval of a Loan to construct the residence, if applicable, and shall provide proof to the Builder of qualification for the loan. The Client's obligations in this Contract are **not** contingent on obtaining a Loan. Therefore, the Client is advised to consult with the Client's lender prior to signing this Contract. **In the event an appraisal value comes in below the Contract Price, the Client agrees to pay the full and total difference between the appraised value and the Contract Price.**

1. CONSTRUCTION OF HOUSE. The Builder shall complete construction of a single-family residence ("House") on the property, located in the State of North Carolina, being known as and more particularly described as Lot _____ ("Property"), address is _____, in accordance with the site and construction plans, copies of which are attached hereto as "**Exhibit A**" and incorporated herein by this reference, the Specifications/Allowances (when applicable) and materials agreed to and identified by the Builder and the Client, a copy of which is attached hereto as "**Exhibit B**" and incorporated herein by this reference. The site and construction plans and specifications/description of materials are referred to hereinafter collectively as "Plans and Specifications".

- a. Additional Improvements.** Description. The parties agree that the Builder will make the additional minor improvements to the Property as fully described in "**Exhibit C**" attached hereto (hereinafter collectively the "Additional Improvements"). If there are no Additional Improvements to be made, state "N/A" here: _____
- b. Construction.** The Builder shall construct the Additional Improvements in compliance with all laws, regulations, codes, and ordinances applicable to the construction of the Additional Improvements and in a good and workmanlike manner with new, good quality materials and components.

- c. **Changes.** The Builder shall not make any significant deviation or change in the Additional Improvements without the prior written consent of the Client unless no other option is viable.

2. CONTRACT PRICE AND PAYMENT. The Client shall pay the Builder for the performance of this Contract, subject to modification as provided herein, the TOTAL amount of \$ _____.
The Contract Price shall be paid as follows:

2.1 The **nonrefundable** deposit of \$ _____ shall be paid by the Client to the Builder in certified funds or other legal tender acceptable to the Builder at the time of execution of this Contract. The Client shall deliver the deposit within seven (7) days of execution of this Contract.

- a. If applicable, due diligence funds of \$ _____ and/or escrow funds of \$ _____ shall be paid by the Client to the Builder in the manner as specified in section 2.1.
- b. Additional Improvements as outlined in Exhibit C with the cost of \$ _____ shall be paid by the Client to the Builder in the manner specified in section 2.1.

2.2 The balance of the Contract Price of \$ _____ shall be due at closing on the property as defined below.

2.3 Unforeseen Work Site Conditions. If concealed or unknown conditions, including, but not limited to, surface, subsurface, and/or site environmental conditions, which affect in whole or in part the performance of the Work are encountered, then the Builder shall stop work and give written notice thereof to the Client before conditions are further disturbed and promptly after first observing such changed conditions by the Builder. The Contract (e.g., costs, prices, schedule, etc.) shall be adjusted. Please also reference the attached Escalation Clause for material adjustments if needed. The Client acknowledges that some conditions or price increases will not be present until work has been started or completed and the Builder will make every effort to notify the client in a timely manner of an unforeseen condition or cost.

3. COST OF CONSTRUCTION, APPROVALS, PLANS & SPECIFICATIONS.

3.1 The Builder shall provide and pay for all labor, materials, equipment, tools, construction equipment, clean-up, water, construction permits, licenses, and all other costs, charges, and expenses of the construction of the House except as otherwise provided in this Contract (i.e., allowance overages) or Escalation Clause.

3.2 The Client acknowledges that he/she/they have thoroughly reviewed the Plans and Specifications. Should there be a disagreement between the Builder and the Client as to the true construction and meaning of the Plans and Specifications, the Builder's reasonable interpretation shall control. In case of a conflict between the Plans and Specifications and the specifications required by Governmental Regulations, the Governmental Regulations shall control.

4. COORDINATION OF WORK AND SUBSTITUTION OF MATERIALS. The Builder and its representatives shall personally supervise and direct the construction of the House. The Builder shall be solely responsible for all construction methods, techniques, sequences, and procedures and for coordinating the construction of the House. If materials or products of a certain type or name brand are called for in the Plans and Specifications, allowances or otherwise, and are not available locally when needed by the Builder, the Builder may substitute similar materials and brands of equal grade. The Builder will consult with the Client regarding such substitutions if he can do so without causing an unreasonable delay in construction. The Client shall promptly respond to the Builder's requests, if any, for advice or decisions about the substitution of materials. The Client shall not engage, hire, or permit any vendor or supplier to perform any work on the property without prior

written consent from the Builder. Upon violation of this, the Client agrees to be responsible and held liable for any resulting damage or delay. The Builder's business hours are Monday - Friday 8:00 am-4:00 pm, please plan to schedule **ALL** meetings in this timeframe. Both parties acknowledge that all homes are different and necessitate the use of different methods and materials. If not identified in the Plans or Specifications, the Builder's quality standard shall be deemed generally similar to other homes (of similar price) that the Builder has constructed during the past three (3) years. The Builder shall not be required to employ a person against whom it makes a reasonable objection.

- a. **Financial ability.** At the Builder's election, the Client shall furnish the Builder (**within seven (7) days of the Builder's request**) with evidence that the Client is financially solvent and capable of fully performing under this Agreement. If, in the Builder's reasonable judgment, the Client is found not financially responsible or capable, then the Builder, by written notice, may terminate this Agreement without further obligation to the Client or require reasonable forms of security for payment, such as the posting of a letter of credit by the Client. The Builder shall be entitled to suspend its Work until such time financial security can be demonstrated and in the alternative exercise its termination rights as stated herein.

5. CHANGE ORDERS. The Client, without invalidating this Contract may request 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 Contract Price and Completion Date shall be adjusted accordingly when approved by the Builder. All such changes shall be made only by a written change order signed or initialed by both the Builder and the Client and incorporated herein in this reference. The Builder will provide the Client with change order forms to present and the Builder will not begin work on change order until the written change order form is signed and delivered to the Builder. Materials overages and major changes, each in excess of \$2,000, to the Plans and Specifications are treated as a change order and are due FROM THE CLIENT during construction at the time of the change order. **No real estate commissions are paid on change orders.**

6. INSPECTIONS/PROPERTY ACCESS. At all reasonable times during the course of construction, and with a minimum of four (4) business days' written notice of the Client's intent to inspect, the Client or the Client's agent may enter and inspect the House for the limited purposes of (I) determining whether the construction performed or being performed conforms with the Plans and Specifications and the locally prevailing standards of construction and/or (II) to consult with Builder regarding the construction. Should the Client hire a person or entity to perform an inspection on the House, the individual conducting the inspection must be both a licensed NC residential general contractor and a licensed home inspector. In the event that during construction, the Client or the Client's agent shall reasonably believe that such construction is not proceeding in accordance with the Plans and Specifications or locally prevailing standards of construction, the Client shall give written notice within twenty four (24) hours of any inspection to the Builder specifying each particular item of deviation, deficiency, or omission. Upon receipt of the Client's notice, the Builder shall, if in agreement with the items(s) listed by the Client, promptly and diligently correct all items listed. Should the Builder not agree with any item(s) of deviation, deficiency, or omission so specified, the Builder may choose an independent, third party, licensed, NC residential general contractor ("Inspector") to inspect the House with regard and only with regard to the particular item of deviation, deficiency, or omission in dispute. The Inspector will submit a written report specifying with regard to each particular item of deviation, deficiency, or omission in dispute, whether each item conforms to the plans and Specifications and locally prevailing standards of construction and, if not, what is required to bring each item into compliance. The decision of the Inspector shall be binding upon the Builder and the Client. The Builder shall promptly and diligently correct each item of deviation, deficiency, or omission identified by the Inspector as being in accordance with the

Plans and Specifications or locally prevailing standards of construction. The Client waives all claims regarding and releases the Builder from all claims as to items identified by the Inspector as not being in accordance with the Plans and Specifications or locally prevailing standards of construction. The non-prevailing party whose opinion/decision was not endorsed by the Inspector shall be responsible for the Inspector fees. The Client shall, at the Client's expense, promptly repair any damage to the Property resulting from any activities of the Client, the Client's Agent, and any contractor hired by the Client or Client's Agent. This repair obligation shall survive any termination of this contract.

- a. **Property Access.** The Client's right of access to the house during construction and prior to completion is expressly conditioned upon the following: The Client's entry shall be in such a manner as to not interfere with the progress of construction of the House, and only as accompanied by the Builder personnel. The Client shall indemnify the Builder and its employees and agents (the "Builder Indemnitees") against and hold the Builder Indemnitees harmless from any claims, losses, damages, and/or expenses (including reasonable attorney's fees) relating to or arising out of the Client's exercise of this right of access. The Client's entry upon the property and/or in the House shall be at his/her own risk. The Client also acknowledges that construction sites are inherently unsafe and agrees that during construction Builder has no duty to make the site safe for the Client's exercise of this right of access. To the extent allowed by law, the Client releases any and all claims for damages and/or losses, irrespective of how caused, as against the Builder and its agents related to or arising out of the Client's exercise of this right of access. (As used in this Section the term "Client" shall be deemed to include its representatives and invitees). This indemnification obligation shall survive the Closing or termination of this Contract.
- b. **Safety/Security.** At all times during construction and prior to purchase, the Builder shall supervise subcontractor work to cause erection, installation, and maintenance of safety equipment, as required by the conditions and progress of the Work, and/or Governmental Regulations, all necessary safeguards (including, but not limited to, all passageways, guards, fences, lights and the like) and shall otherwise take all precautions necessary for the protection of the Work and its employees, agents, and others at the job site and to otherwise prevent accidents, injury, loss of life and damage to property and persons at the job site. Persons not directly connected with the Work shall be kept entirely away from the site during the execution of the Work.
- c. **Advertising.** The Builder may prominently display its sign at the Property until the completion of the House. The Builder may photograph the Work and the House for marketing purposes, and the Client authorizes the Builder to display those photos, renderings, or depictions of the House on its website, in brochures, or other marketing materials.

7. INSURANCE. The Builder shall purchase and maintain fire and extended coverage and/or "Builders Risk" insurance upon the House, or such portions may be completed; liability insurance and worker's compensation insurance, all in such amounts and in such form as it is accepted in the industry.

8. WARRANTIES AND DISCLAIMER.

- a. **Limited Warranty of Construction.** The Builder and the Client agree to be bound by the Limited Warranty Agreement, a copy of which is attached hereto as "***Exhibit D***" and incorporated herein by this reference. Requests for warranty service must be in writing submitted to the Builder at the Builder's warranty email address (warranty@roostbuildingcompany.com) or via the website portal

(roostbuildingcompany.com/warranty) as indicated herein. **Oral requests to the Builder's staff are not acceptable.** At the Builder's sole option, the Builder may either (I) make such repairs and corrections, (II) replace any faulty or non-conforming item or condition or (III) pay the Client the reasonable cost of such repair, correction, or replacement. If the Client fails to notify the Builder of the defect within the warranty period, or if the Client does not allow the Builder any and all access to the Property needed to correct the defect during reasonable normal business hours (8:00 AM to 4:00 PM, Monday through Friday), then the Client shall be deemed to have waived any claim against Builder for failure to correct such defect or condition. Notwithstanding any other provision herein, all of the Builder's obligations and responsibilities pursuant to this subsection shall automatically expire one year from the date of Closing. The Client understands that non-payment of any outstanding invoices or change orders is grounds for cancellation of warranty coverage. The warranty made by the Builder pursuant to subsection a. above is to the exclusion of all other warranties, expressed or implied, and the Builder hereby disclaims any and all such other warranties, express or implied, including but not limited to any warranty of habitability, merchantability, or fitness for a particular purpose. The Builder shall not be liable for any reason under any circumstances to the Client or anyone claiming through the Client for monetary damages of any kind, including secondary, consequential, punitive, general, special, or indirect damages.

- b. Disclaimer and Limitation on Builder's Liability.** The warranty made by the Builder pursuant to subsection a. above is to the exclusion of all other warranties, expressed or implied, and the Builder hereby disclaims any and all such other warranties, express or implied, including but not limited to any warranty of habitability, merchantability, or fitness for a particular purpose. The Builder shall not be liable for any reason under any circumstances to the Client or anyone claiming through the Client for monetary damages of any kind, including secondary, consequential, punitive, general, special, or indirect damages.
- c. Mandatory Binding Arbitration.** The Client and the Builder shall submit to binding arbitration for any and all disputes which may arise between them regarding this contract and/or the Property, including, but not limited to any disputes regarding (I) the Builder's construction and delivery of the home, (II) the Builder's performance under any punch-list or inspection agreement, and (III) the Builder's warranty pursuant to section **8A** above. The arbitration shall be conducted in accordance with the North Carolina Revised Uniform Arbitration Act and the rules and procedures of the American Arbitration Association and shall take place in the county in which the property is located. To the extent possible, the proceeding shall be conducted under rules which provide for an expedited hearing. In the event of a conflict between the North Carolina Revised Uniform Arbitration Act and the rules and procedures of the American Arbitration Association, the North Carolina Revised Uniform Arbitration Act shall control. The filing fee for the arbitration shall be paid by the party filing the arbitration demand, but the arbitrator shall have the right to assess or allocate the filing fees and any other costs of the arbitration as part of the arbitrator's final order. The arbitration shall be binding and final, and either party shall have the right to seek judicial enforcement of the arbitration award.
- d. Mold Notice, Disclosure, and Disclaimer.** Mold occurs naturally in the environment. It spreads by means of microscopic spores transported by air movement and is found everywhere life can be supported. Whether or not you will experience mold growth in your residence will depend on how you manage and maintain your home. The Builder's responsibility will be limited to things that it

can control. **Unless it results solely and directly from a breach of its Limited Warranty provided in this document, Builder will never be responsible for any damages, whatsoever (including, but not limited to, property damage, personal injury, loss of income, emotional distress, death, loss of use, or loss of value) caused by mold or by any other agent.**

9. COMPLETION, FINAL PAYMENT, AND CONSTRUCTION CERTIFICATES.

9.1 The Builder shall diligently pursue the construction of the House and the Additional Improvements and shall complete construction of the House and Additional Improvements on or before the Settlement Date. If Builder is delayed at any time in the progress of construction by (I) any act or neglect of Client, (II) any changes ordered in the construction, (III) material shortages, adverse weather conditions, government orders, pandemic conditions, or delays in transportation which were not reasonably anticipated or (IV) acts of God, then the time for completion of construction of the House and Additional Improvements and the Settlement Date shall be extended automatically by a reasonable time to account for the delay experienced. Builder shall notify Client or Client's Agent in writing within five (5) days after the commencement of the delay; otherwise, the right to an extension shall be waived.

9.2 The construction of the House or Additional Improvements shall be deemed complete when (I) the House or Additional Improvements have been completed in accordance with this Contract and broom cleaned, (II) a Certificate of Occupancy has been issued with respect to the House, and (III) Builder has notified Client that, in the opinion of Builder, the House is completely ready for residential purposes. The closing date will occur within 7 days of issuance of Certificate of Occupancy ("Settlement") unless otherwise agreed in writing.

9.3 Final Payment of the outstanding balance of the Contract Price and the cost of any additional items added to the contract ("Final Payment") shall be made at the Settlement.

9.4 Closing. The following shall constitute the "Closing" on the property: (I) receipt by the settlement agent of all funds necessary to close the transaction, (II) receipt by the settlement agent of the fully executed Deed in a form acceptable for immediate recording in the office of the applicable register of deeds, (III) execution of the closing disclosure and/or settlement statement by the Client, the Builder and settlement agent, (IV) recording of Deed transferring title to the property to the Client, and (V) payment to the Builder of the net proceeds of the sale due to the Builder. Keys to and possession of the Property will not be delivered to the Client until Closing is complete. Closing shall be scheduled as follows:

- a. Estimated Closing Date.** The parties estimate that the closing will take place on _____, subject to any delays encountered by the Builder as described hereinabove. Parties agree that this is just an estimate, that closing can be extended for a reasonable time with no penalty assessed to the Builder for a reasonable delay, but that in any event closing shall occur within seven days of issuance of certificate of occupancy, with time being of the essence with respect to closing. Any delay by the Client beyond the initial closing date set and agreed upon by the Builder and the Client shall be subject to a \$100 per day fee.
- b. Exchange at Closing.** At closing, the Builder shall deliver to the Client a Special Warranty Deed to the property, subject to restrictions, easement(s), rights-of-way of record, and ad valorem taxes for the year of closing, a certificate of occupancy issued by the applicable governmental authority, a soil treatment letter for termites, an affidavit regarding liens, and a FIRTPA/1099 statement, as required by law.

- c. **Place of Closing.** Closing shall take place at the office of a closing agent selected by the Builder within a reasonable distance from the property.
- d. **Closing Costs.** The Client shall pay for the preparation of the Deed and for the revenue Stamps/excise fees payable to the register of deeds. The Client shall pay for all other costs, including any and all HOA certification fees, initiation fees, capital contribution fees, or other fees charged by any applicable HOA or HOA's management company. See HOA Addendum for HOA fees that may be applicable to the Property.
- e. **Termination of contract.** If the Client and the Builder agree mutually to terminate the contract, the Client and all its representatives agree to sign a confidentiality agreement. Any monies or deposits owed to the Client will be returned within 30 days of termination.
- f. **Loan Type.** Please state loan type here (Conventional, FHA, VA, Cash, ETC): _____

10. DEFAULT AND STOP PAYMENT/WORK PROVISION. Should the Client at any time during the progress of the Work, refuse or neglect to provide the Builder with access to the Property or otherwise prevent the Builder from completing the Work, should the Client fail to make any payments in a timely manner, should the Client be adjudged as bankrupt or make a general assignment for the benefit of creditors, or should a receiver be appointed for Client, the Builder shall, after the Client has failed to cure the default within five (5) days after written notice of such to the Client, suspend performance under and/or terminate this Contract. In that latter event, the Builder shall be paid for all Additional Work and change orders done to the date of termination and shall be entitled to recover any other damages (including lost profits) suffered as a result of such termination. If the Client shall have failed to cure any default within five (5) after written notice of such, the Builder may terminate the Builder's services under this agreement in which event all costs due the Builder (as herein provided for) must be paid by the Client to the Builder on or prior to the effective date of the termination.

11. USE OF FUNDS. The Builder shall be entitled to use all monies paid to it by the Client hereunder without obligation to segregate the same.

12. WALK-THROUGH. The Builder will conduct a walk-through to orient the Client to the house.

12.1 With notice (by the Builder) prior to completion of the House, that in the opinion of the Builder, the House will be complete and ready for occupancy for residential purposes, the Client and/or the Client's agent shall engage with the Builder to conduct a final walk-through of the new home. The Client and the Builder agree to sign the Walk-Through document provided by the Builder upon completion of the walk-through. The Builder agrees to correct any items that do not conform to the Plans and Specifications as requested by the Client discovered during the walk-through. Requests shall be made in writing. Should the Builder and the Client disagree with any item(s) of deficiency so specified, then the Client and the Builder shall choose an independent third party, licensed, residential general contractor ("Inspector") to inspect the House with regard and only with regard to the particular item of deficiency in dispute whether each such item conforms to the Plans and Specifications and locally prevailing standards of construction, and as to each non-conforming item, the scope and approximate cost of correction. The decision of the Inspector shall be binding upon the Builder and the Client. The Builder shall promptly and diligently correct each such item of deficiency identified by the Inspector as not being in accordance with Plans and Specifications or locally prevailing standards of construction and shall use his best effort to complete such correction prior to the time of Final Payment. The Client waives all claims regarding and releases the Builder from all claims as to items identified by the Inspector as being in accordance with Plans and Specifications or locally prevailing standards of construction.

The prevailing party whose opinion/decision was not endorsed by the Inspector shall be responsible for the Inspector's fees.

12.2 In the event that all corrective work or Additional Improvements requested by the Client and agreed to by the Builder are not completed by the date of closing, then the Builder will provide the Client with a final list of items remaining with a reasonable schedule for completion thereof after closing and closing **SHALL NOT** be delayed.

12.3 The Client's failure to list a construction deficiency which, at the time of the inspection under this paragraph 12.1 was detectable by the Client through a visible examination of all exposed portions of the House, shall constitute a waiver of such unlisted deficiency and shall release the Builder of and from any obligations and liabilities to Client for corrective work or otherwise with respect to such unlisted deficiency.

13. TERMITES. The Builder shall provide the Client with a new construction termite guarantee.

14. ASSIGNMENT OF WARRANTIES OF COMPONENTS. The Builder shall assign and deliver to Client at the time of Final Payment all guarantees and warranties of all components and appliances in the House if the same are assignable.

15. ASSIGNMENT. This Contract may not be assigned or transferred without the written consent of the Builder and the Client. If this Contract is assigned by agreement, then it shall be binding on the assignee, his heirs, successors, and permitted assigns.

16. MODIFICATION AND AMENDMENTS. This Contract represents the entire agreement and understanding between the Builder and the Client with regard to the subject matter hereto and all prior or contemporaneous oral or written agreements are merged herein. The Client and the Builder agree that any and all changes, modifications, alterations, or revisions of this Contract that change the cost, materials, work to be performed, or estimated completion date, must be in writing and signed by all parties. The Client and the Builder further agree and understand that any changes, modifications, alterations, or revisions of the Contract, may result in additional charges to the Client. It is further understood and agreed that any subsequent document executed by the parties hereto shall not alter, amend, or change the terms of this Contract unless in writing and signed by all parties.

17. NOTICES. All notices and other communications hereunder shall be in writing and shall be deemed to be duly given upon mailing by email or first-class mail to the parties at such addresses as a party may specify by like notice.

18. PARTIES. This Contract shall be binding upon and shall be between the Builder and the Client.

19. GOVERNING LAW. This Contract is executed under and shall be governed by the laws of the State of North Carolina.

20. LEGAL ACTION. If any legal action is necessary to enforce the terms of the contract, the prevailing party will be entitled to be reimbursed attorney's fees.

21. ATTITUDE AND COMMUNICATION. The Builder and its representatives value an open line of communication and respectful treatment of all parties.

21.1 Communication with Roost Building Company is to be written such as an email during our office hours (Monday through Friday, 8:00 AM to 4:00 PM). Disrespectful attitude, language, or communication from the Client will result in construction being halted until the issue is resolved with both parties.

21.2 All parties, including the Builder's Agent and the Client's Agent, agree that, unless required by law, they will not make disparaging representations in any way, including electronically, orally, by writing, on social media, or by gesture, to any person, company, or government body. A disparaging representation includes any communication that would cause or tend to cause a recipient to question the business condition, integrity, competence, or good character of the subject of the communication. Electronic communications specifically include any form of communication via social media. This communication obligation shall survive any termination of this contract.

21. COUNTERPARTS. This Contract shall become binding when signed by both the Builder and the Client and when the Deposit is presented to the Builder. This Contract may be signed in two (2) or more counterparts but each counterpart shall be deemed one and the same document.

22. OIL GAS AND MINERAL RIGHTS. See the Oil, Gas, and Mineral Rights Addendum attached.

23. RADON AND WELL TESTING. Roost Building Company is not responsible for any radon testing in the home, nor any well testing or corrections needed from well testing. **Any corrective actions and/or costs required for the well or water are the responsibility of the Client.**

BUILDER	DATE
_____	_____
ROOST BUILDING COMPANY	
CLIENT	DATE
_____	_____
CLIENT	DATE
_____	_____

CONFIRMATION OF AGENCY/NOTICE ADDRESSES

Selling Firm Name: _____	Listing Firm Name: _____
Firm License#: _____	Firm License#: _____
Mailing Address: _____	Mailing Address: _____
Selling Agent: _____	Listing Agent: _____
Agent License #: _____	Agent License #: _____
Agent Phone: _____	Agent Phone: _____
Agent E-mail: _____	Agent E-mail: _____