

This document has been prepared as an aid to retailers selling a modular home for placement on the customer's land. We would like to remind you this is a general form and will need to be amended to fit your specific needs. We strongly recommend that you submit the document to your own attorney for review and approval before you put it into use.

MODULAR HOME PURCHASE & CONSTRUCTION AGREEMENT

This Modular Home Purchase & Construction Agreement (hereinafter the "Agreement") is made and entered into this ___ day of _____, 20___, by and between _____, a North Carolina business corporation, (the "Seller") and _____, (the "Buyer").

IN CONSIDERATION of the mutual agreements herein contained, and for the Purchase Price to be paid by the Buyer to the Seller as set forth below, the parties hereto agree as follows:

1. The Home. Seller agrees to sell and erect the home (hereinafter the "Home") and the Buyer agrees to buy the Home from Seller, in accordance with the provisions of this contract. The Home is a modular home constructed by _____ (the "Manufacturer"), together with certain accessories and improvements ("Additional Improvements") as described on Schedule A attached hereto.

2. Construction. Seller agrees to deliver and erect the Home and to construct such Additional Improvements as are described on Schedule A (hereinafter the "Construction") upon property _____ belonging to the Buyer located at _____ (hereinafter the "Property"). It is agreed that the plans and specifications are to be followed as closely as reasonably possible, but Seller reserves the right to vary from the plans and specifications where necessary to comply with the intention of the Seller and the Buyer, including when necessary to comply with scheduling, availability of material, mechanical installations, building codes and any unique features of the Property. Minor changes are to be expected due to site conditions and availability of materials. Some minor imperfections in material and workmanship are to be expected.

Any material deviation from the original specifications attached as Schedule A must be agreed to in writing by both parties in the form of a Change Order. Buyer shall be responsible for any additional costs or schedule delays resulting from a Change Order.

Buyer represents and agrees that the Property is under its ownership and control. Buyer will have the Property accessible for the Construction on or before _____, and will thereafter insure the Seller's regular and free access to the Property in order to complete the Construction in a timely manner. Seller's obligation under this Agreement is conditioned upon the Seller being able to obtain the necessary building permits from the appropriate governmental agencies.

The Seller agrees to diligently pursue the Construction after the execution of this Agreement but shall not be responsible for any delays to the Construction resulting from inclement weather, inability to access the site, and any acts or omissions of the Buyer including

Change Orders and decorating decisions, work stoppages, delays in receipt of materials, and acts of God.

3. Purchase Price/Financing. Buyer agrees to pay the Total Purchase Price set forth on Schedule B. Buyer agrees to use all best efforts to arrange for construction and permanent financing. Buyer understands that Seller will not begin construction until such financing has been approved and is in place. The proposed terms and schedule for payment of the Purchase Price are set forth on Schedule C.

4. Settlement and Possession. Buyer agrees to pay the balance of the Purchase Price within ten (10) days after notification from Seller to Buyer that the Construction has been completed and a certificate of occupancy will be issued. Buyer understands and agrees that the full balance of the Purchase Price, including all Change Orders must be paid in full before the Buyer has the right to occupy the Home or take possession of any of the Additional Improvements.

5. Builder's Risk Insurance. Seller shall purchase and maintain Builders Risk Insurance coverage on the Home on a "Completed Values" basis, while the Home is in the process of construction. "Completed Values" shall mean the full value of the Home as of the date that all construction is completed, but excluding the cost of the land. Seller shall assume the obligation and cost of restoring, rebuilding and repairing the Home. In the event the Home is damaged so that the Property cannot be conveyed in substantially the same condition as it was prior to Closing, Buyer may elect to terminate this Agreement.

6. Exclusion of Warranties.
THE BUYER UNDERSTANDS THAT THE MANUFACTURER, NOT THE SELLER, WILL PROVIDE A WARRANTY ON THE HOME. SELLER WILL GIVE BUYER A COPY OF THE MANUFACTURER'S WARRANTY. BUYER FURTHER UNDERSTANDS THAT BUYER WILL OBTAIN WARRANTY SERVICE ON THE HOME FROM THE MANUFACTURER.

THE SELLER HEREBY DISCLAIMS AND EXCLUDES ALL IMPLIED OR EXPRESS WARRANTIES RELATING TO THE HOME AND THE CONSTRUCTION, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, WARRANTIES OF HABITABILITY AND WORKMANLIKE CONSTRUCTION, TO THE HOME OR TO THE CONSTRUCTION.

BUYER UNDERSTANDS THAT THERE MAY BE ADDITIONAL WRITTEN WARRANTIES COVERING THE HOME, OR ANY APPLIANCE OR COMPONENT THEREOF, WHICH MAY HAVE BEEN PROVIDED BY THIRD PARTIES. SELLER SHALL DELIVER BUYER COPIES OF ANY AND ALL WRITTEN WARRANTIES SUPPLIED BY SAID THIRD PARTIES BUT DELIVERY SHALL NOT CONSTITUTE AN ADOPTION OF ANY SUCH WARRANTIES BY THE SELLER. BUYER ACKNOWLEDGES THAT ANY SUCH WARRANTIES HAVE NOT BEEN MADE BY THE SELLER AND THAT THE SELLER IS NOT AN AGENT OF ANY SUCH THIRD PARTY.

7. Limitation of Damages.

IN NO EVENT SHALL SELLER BE LIABLE FOR ANY LOSS OF OR DAMAGE TO REVENUES, PROFITS OR GOODWILL OR FOR OTHER SPECIAL, INCIDENTAL, INDIRECT AND CONSEQUENTIAL DAMAGES OF ANY KIND, RESULTING FROM ITS PERFORMANCE OR FAILURE TO PERFORM PURSUANT TO THE TERMS OF THIS AGREEMENT OR ANY OF THE ATTACHMENTS HERETO, WHETHER RESULTING FROM BREACH OF CONTRACT OR BREACH OF WARRANTY OR OTHERWISE, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING

ANYTHING HEREIN TO THE CONTRARY, THE MAXIMUM AGGREGATE AMOUNT OF MONEY DAMAGES FOR WHICH SELLER MAY BE LIABLE TO PAY UNDER THIS AGREEMENT, RESULTING FROM ANY CAUSE WHATSOEVER, SHALL BE LIMITED TO THE AMOUNTS ACTUALLY PAID TO SELLER UNDER THIS AGREEMENT.

8. Default. In the event that the Buyer shall fail or refuse to perform any obligation as set forth in this Agreement, Seller may declare this Agreement terminated and may elect to retain all sums paid by Buyer to Seller, including any deposit hereunder or Change Order payment as liquidated damages.

9. Waiver. The failure of Seller and Buyer at any time to demand strict performance by the other of any terms, covenants or conditions set forth herein, shall not be constructed as a continuing waiver or relinquishment thereof, and either party may, at any time, demand strict and complete performance by the other of said terms, covenants or conditions.

10. Governing Law/Venue. It is the intent of the parties hereto that all questions with respect to the construction of this Agreement and the rights and liabilities of the parties hereto shall be determined in accordance with the provisions of the laws of the state of North Carolina, in such case made and provided.

11. Arbitration. Any claims, disputes or controversy between Buyer and Seller shall be resolved by arbitration as provided in Schedule D.

12. Severability. In the event that any of the terms of this Agreement are held to be partially or wholly invalid or unenforceable for any reason whatsoever, such holdings shall not affect, alter, modify or impair in any manner whatsoever, any of the other terms, or the remaining portion of any term, held to be partially invalid or unenforceable.

13. Notice. All notices required to be given hereunder shall be in writing and shall be deemed to be delivered if personally delivered or sent by Certified or Registered mail, Return Receipt Request, postage paid, addressed to the parties as follows:

Seller:

Buyer:

Notice shall be deemed given on the date that it is deposited in the mail in accordance with the foregoing. Any party may change the address to which to send notices by notifying the other party of such change of address in writing in accordance with the foregoing.

14. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties, and contains all of the agreements between the parties with respect to the subject matter hereof; this Agreement supersedes any and all other agreements, either oral or in writing, among the parties hereto with respect to the subject matter hereof.

No change or modification of this Agreement shall be valid unless the same shall be in writing and signed by the Seller and Buyer. No waiver of any provision of this Agreement shall be valid unless in writing and signed by the person or party against whom charged.

15. **Invalid Provision.** The invalidity or unenforceability of any other particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

16. **Counterparts.**

This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement effective the date and year first above written.

BUYER

SELLER

_____,
a North Carolina corporation

By: _____
Its: _____

SCHEDULE A

Scope of Work.

Seller agrees to sell and install the Home described in Paragraph 1 of this Agreement on the Buyer's Property as described in Paragraph 2 of this Agreement, subject to the following terms, conditions and specifications:

Manufacturer: _____

Make/Model: _____

Bedrooms _____ Bathrooms _____

Other Features: _____

Description of Additional Improvements, Accessories and Work:

Survey _____

Installation of Well _____

Installation of Septic Tank _____

Delivery and Installation of Home _____

Heat Pump _____

Electrical & Plumbing Work _____

Foundation / Curtain Wall _____

Deck/Porches _____

Garage _____

Landscaping _____

Driveway _____

Other Items _____

SCHEDULE B

Purchase Price. Buyer agrees to buy the Home and Additional Improvements from Seller for the Purchase Price as described on this Schedule B.

Purchase Price \$ _____

Additional Improvements & Accessories

Survey \$ _____

Set-Up & Delivery Costs \$ _____

Permits \$ _____

Foundation \$ _____

Plumbing \$ _____

Electrical Work \$ _____

Well \$ _____

Septic \$ _____

Heat Pump \$ _____

Driveway \$ _____

Deck/Porch \$ _____

Garage \$ _____

Landscaping \$ _____

Other _____ \$ _____

Other _____ \$ _____

TOTAL PURCHASE PRICE \$ _____

SCHEDULE C

PAYMENT OF PURCHASE PRICE

The Schedule for Payment of the Purchase Price is as follows:

\$_____ Deposit, payable upon signing of this Agreement. The Deposit shall be applied to the Purchase Price at Closing. The Deposit may be used by Seller and is otherwise non-refundable unless Seller defaults on its obligations under this Agreement.

\$_____ Payable upon issuance of necessary building permits.

\$_____ Payable in monthly installments from the Buyer's funds or construction loan as construction progresses.

\$_____ Other Payment

\$_____ Other Payment

\$_____ Balance of the Purchase Price payable at closing prior to Buyer's occupancy.

\$_____ TOTAL PURCHASE PRICE

SCHEDULE D

ARBITRATION AGREEMENT

All claims, disputes, and controversies arising out of or relating in any way to the sale, purchase, design, manufacture, construction, delivery, installation, repair, servicing, providing of improvements to any real property where the Home is to be placed, occupancy of the Home, any goods, services or insurance products offered or sold in connection with the Agreement, or arising out of the financing of the Home, related personal property and services (and including any acquisition of real property where the Home is to be placed), including, but not limited to, any negotiations between the parties or any relationship that results from any of the foregoing, including claims for equitable relief or claims based on contract, tort, statute, warranty, or any alleged breach of contract, negligence, fraud, misrepresentation, suppression of fact, or inducement, will to the fullest extent permitted by law be resolved by binding arbitration administered according to the Revised Uniform Arbitration Act of North Carolina (the "Act").

Arbitration may be initiated by any party by sending written notice of its intention to arbitrate ("Notice") to Seller through its registered agent and to Buyer at Buyer's last known address. The Notice will contain a description of the claim, dispute, or controversy and the remedy requested. In no event may any demand for arbitration be made after the date when the institution of a legal or equitable proceeding based on the claim, dispute or controversy in question would be barred the applicable statute of limitations or laches. For any claim requesting relief or an award of \$100,000 or more, the arbitration will be conducted before a panel of three independent and impartial arbitrators selected pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Unless otherwise mutually agreed, such arbitrators shall be lawyers licensed in North Carolina, with five or more year's experience both in the practice of Commercial Law and in conducting arbitrations. For any other claim, the arbitration will be conducted by one independent and impartial arbitrator selected by mutual agreement of Buyer and Seller. If the parties cannot agree on an arbitrator, either party may apply to court for an order appointing an independent arbitrator.

The Arbitrator will deliver the decision or award in writing with a summary of the reasons for the decision or award, and the decision or award shall be final and binding on all parties, their successors and assigns. In an appropriate case, the arbitrator may grant a motion to dismiss the claim or a motion for summary disposition of the claim. Judgment on the decision or award may be entered by any court having jurisdiction. Fees and costs of the arbitration shall be shared equally by Buyer and Seller.

Notwithstanding the terms of this agreement, action by any person, firm or corporation to take possession of or to sell or otherwise transfer ownership of or title to the Home, or of any related real or personal property or possessions, as collateral securing payment or performance by the Buyer under the Agreement, or as allowed by any financing for such purchase (including without limitation the exercise of any rights under any mortgage, deed of trust, or security agreement, with or without judicial process, or obtaining a writ of attachment, seizure, or sequestration) shall not be subject to this Agreement. Any challenges to the validity or enforceability of this Agreement shall be determined by arbitration in accordance with the provisions of the Revised Uniform Arbitration Act of North Carolina.

This Agreement shall be governed by the construed and enforced in accordance with the laws of North Carolina without regard to any choice of governing law contained in the Agreement. If any term or provision of this Agreement is unenforceable, the enforceability of the remaining terms and provisions hereof shall not be affected thereby.

This Agreement is an election to resolve claims, disputes, and controversies by arbitration rather than the judicial process. **IT IS UNDERSTOOD THAT THE PARTIES WAIVE ANY RIGHT TO A JURY TRIAL OR A TRIAL IN COURT.** However, any party shall have the right to seek relief in a small claims court for disputes or claims within the scope of its jurisdiction, but not to any judicial appeal from such court. The parties understand that the rules applicable to arbitrations and the rights of parties in arbitrations differ from the rules and rights applicable in court.