

OWNER/BUILDER CONSTRUCTION AGREEMENT

1. **PARTIES:** This contract (hereinafter referred to as "Agreement"), is made and entered into on this _____ day of _____, 20____, by and between **Ken Manrubia and Debby Guidinger**, as owner/builders, (hereinafter called "Owner"); and _____, hereinafter called "Contractor".

Contractor's business is a: Corporation; Partnership
 Sole Proprietorship

Contractor's State License #: _____.

Contractor's Address: _____

Contractor's Phone: _____

Contractor's Fax: _____

Contractor's Email: _____

The project is located at: 4420 Bain Ave., Santa Cruz, CA 95062

In consideration of the mutual promises and conditions contained herein, the parties agree as follows:

2. **OWNER'S REPRESENTATIVE:** The Owner's Representative is **Ken Manrubia**. Contractor must coordinate all of its activities, construction, scheduling, and coordination with other Subcontractors, and administrative paperwork on this project in a manner consistent with the terms of this Agreement and in a manner agreeable to the Owner's Representative.

3. **CONTRACT DOCUMENTS:** The following documents are incorporated by reference into this Agreement and hereby made contract documents.

A. This Agreement.

B. Approved Plans: Drawn by: Studio S Squared Architecture, Inc., 19 N. 2ND St., Suite 205 San Jose, CA 95113, Phone (408) 998-0983, dated 6/10/09; 25 pages.
(A0.0, A0.1, T24, A1.0, A2.0, A2.1, A2.2, A2.3, A2.4, A3.0, A3.1, A5.0, A51., A5,2, A8.0, A8.1, A8.2, A10.0A10.1, S1.1, S1.2, S2, S3, S4, S5

C. Engineering (see Kai'shouse.com website) and engineering specifications. BCA Engineering, 1300 Industrial Rd., Suite 1, San Carlos, CA 94070, (65) 508-2500 ext. 25.

D. Other: APPROVED JOB SET OF PLANS STAMPED BY SANTA CRUZ COUNTY BUILDING DEPARTMENT - WORK WILL BE DONE ACCORDING TO THESE APPROVED PLANS

4. **SCOPE OF WORK:** Contractor will furnish all labor, equipment, tools, dust barriers, materials, debris removal, daily clean up of contractor's work areas, scaffolding, transportation, items required for safe operations in accordance with the safety provisions in this Agreement, and supervision to complete, in a first class and workmanlike manner, to the satisfaction of the Owner and/or its Representative, the following work in accordance with all applicable Building Codes and also in accordance with all the Contract Documents specified in this Agreement:

A. See scope of work described in attachment to this agreement.

B. Additional clarifications To Scope Of Work:

5. **LUMP SUM CONTRACT AMOUNT AND PAYMENT SCHEDULE:** Owner will pay Contractor the total lump sum of: \$_____.

(_____ dollars).

IN INSTALLMENTS AS WORK PROGRESSES according to the following schedule:

A. Contract Deposit: Not to exceed 10% of contract amount of \$1000., whichever is LESS: \$_____

B. Second Payment: _____
\$_____

C. Third Payment: _____
\$_____

D. **Final Payment:** Due upon completion of all work under this agreement (including all punch list work), inspection and approval of work by building department (if applicable), furnishing of all product warranties, manufacturer's maintenance instructions and information to owner, and furnishing of a conditional lien release upon final payment release to owner for Contractor and an unconditional lien release for all payments made to date by owner, and all subcontractors and material suppliers who filed preliminary notices on the project: \$_____

Contractor agrees to furnish Owner's Representative with a Conditional Lien Release Upon Progress Payment and Final Payment (for himself AND ALL Subcontractors and lower tier Subcontractors and material suppliers) and an Unconditional Lien Release after final payment. See Owner's Representative for approved Release forms and frequency of

Submittal of statutory lien releases.

6. **WORK COMMENCEMENT AND COMPLETION TIME:** Work shall commence on _____ and shall take approximately _____ weeks to complete. TIME IS OF THE ESSENCE in all aspects of Contractor's performance. Contractor shall commence its work Within 7 days or less after notification by Owner and shall diligently prosecute its work to full completion.

Approximate number of days to complete rough work: _____

Approximate number of days to complete finish: _____

Approximate number of days to complete punch list: _____

7. **CHANGES IN WORK:** Owner reserves the right to make changes in the scope of the work (increases and decreases of any kind). Contractor and Subcontractors shall make no changes in the work without prior issuance of a written change order that is first executed by both contractor and owner. Owner will not pay for verbal change orders. Unpaid Profit and overhead will be credited back to owner with all deductive change orders.

8. **CONFLICT OF DOCUMENTS:** The work shall be constructed in accordance with the contract documents. In case of a conflict between any plans or other proposals submitted by Contractor, this contract and next any plans and engineering furnished by Owner shall control and supersede all other documents. The burden is on the Contractor and all Subcontractors to completely familiarize themselves with the existing site conditions and all contract documents, plans, specifications, reports, addenda, etc... PRIOR to signing this Agreement.

9. **INDEPENDENT CONTRACTOR:** Contractor warrants that he is fully experienced, properly licensed and properly qualified as an expert to perform the class of work described in this agreement. Contractor shall finance its own operations and affirms that it is and shall at all times be an Independent Contractor on this project and not an agent, employee or servant of the owner.

10. **INSPECTION AND CORRECTION OF WORK:** The work shall at all times be subject to the inspection of the Owner and the Owner's Representative. In the event that at any time a portion of the work is reasonably determined by the Owner or the Owner's Representative to be improper, defective, not in compliance with the contract documents, or of substandard quality, contractor shall immediately, upon being notified by Owner's Representative to do so, proceed to remove, dispose of and correct the work solely at Contractor's own cost and expense.

11. **PROTECTION OF THE WORK:** The Contractor shall at all times continuously maintain adequate protection of all his work in progress and the existing building and site from all types of damage.

12. **BACK CHARGES AND SET-OFFS:** Owner has the express right to deduct from any payments due to Contractor the cost of repairing

damage or defective/non-conforming work caused by Contractor or any of his Subcontractors or material suppliers if Contractor fails to correct this damage (or take significant steps towards repairing this damage) within 72 hours of receiving written notice of the same from Owner's Representative.

13. **INDEMNIFICATION:** All work performed by the Contractor pursuant to any aspect of this agreement shall be done so at the sole risk of Contractor. Contractor (and his Agents), Contractor's Subcontractors (and their Agents and lower tier Subcontractors) and Subcontractor's material suppliers (and their Agents) shall at all times indemnify, protect, defend and hold harmless Owner and the Owner's representative named in this agreement from all loss and damage and against all law suits, arbitrations, actions, legal or administrative proceedings, claims, debts, demands, awards, fines, judgments, damages, consequential damages, liabilities, interest, attorney's fees, costs, and expenses of any kind or nature whatsoever whether they may arise before, after or during the completion of Subcontractor's work under this agreement, which are in any manner directly or indirectly caused or contributed to in whole or in part, or claimed to be caused in whole or in part through any act, omission, fault or negligence whether active or passive of Contractor, or anyone acting under his direction, control, or on his behalf in connection with or incidental to the work under this Agreement.

14. **INSURANCE:** Before commencing work on the project, Contractor and its Subcontractors of every tier shall procure at their own expense and supply to Owner's Representative duly issued certificates of insurance in occurrence form, all of which (except worker's compensation) shall name **Ken Manrubia and Debby Guidninger** as additional insured, showing in force for as long as may be required to protect the Owner the following insurance for General Liability Insurance, Automobile Liability Insurance, and Worker's Compensation Insurance:

(a) Comprehensive General Liability in occurrence form with limits of not less than \$1,000,000. per occurrence (including coverage for: products, complete operations, contractual liability, and broad form property damage). Occurrence form policy, not claims made or modified occurrence.

(b) Automobile liability in comprehensive form with coverage or owned, hired, and non-owned automobiles, with limits not less than \$1,000,000. per occurrence for bodily injury and property damage.

(c) Workers' Compensation Insurance in statutory form.

All insurance certificates shall contain the following cancellation clause: "Should any of the above described policies be canceled before the expiration date thereof, the issuing company shall will mail 30 days prior written notice to certificate holders."

In the event of any damages of any kind caused by any Contractor or any Subcontractors, the Contractor's and Subcontractor's insurance shall operate as the primary insurance and no

other insurance of the Owner shall be called on to contribute to a loss related to this project. This insurance requirement is a material condition of this Agreement and it shall be a material breach of this Agreement for any contractor to commence work on this project without first satisfying the terms and conditions of the insurance clause of the Agreement. No PAYMENTS OF ANY KIND WILL BE MADE TO CONTRACTORS UNTIL THEY HAVE SUPPLIED THE INSURANCE CERTIFICATE REFERRED TO ABOVE TO THE OWNER.

15. **SAFETY MEASURES:** It is the sole responsibility of the Contractor to continually operate, monitor and supervise all of its operations in a manner that meets or exceeds all statutes and regulations that establish safety requirements as established by the California Division of Industrial Safety. In addition, all of Contractor's activities (whether labor or materials) shall at all times comply with all OSHA standards and regulations and all applicable governmental laws and orders.

Contractor shall erect, install and maintain all pedestrian traffic areas, warning signs, barricades, first aid kits, and other protective means as may be necessary for the protection of all persons and work in progress on the site from injury.

Finally, by signing this agreement, Contractor knowingly and willingly accepts and assumes full responsibility for the safe operation of all of its activities and the activities of all its Subcontractors of every tier and the protection of other persons and property during the entire course of this project.

16. **CLEANUP:** On a DAILY BASIS, and at his own expense, Contractor will clean up its work areas and keep them in a safe and sanitary condition on a daily basis. On a no more than weekly basis, contractor will remove all of its debris to an owner supplied dumpster.

17. **EXPRESS WARRANTY:** Contractor unconditionally guarantees that all material supplied by Contractor will be new and of good quality, and that all work performed by Contractor will be performed in a substantial and workmanlike manner consistent with the quality of a custom home. Contractor unconditionally guarantees it will, at its own expense, at the request of Owner or Owner's Representative, promptly replace or repair any work, equipment, or materials that fail to function properly for a period of no less than twelve months following the issuance of the final building department approval of the project. Contractor will also repair any surrounding parts of the structure (and/or personal property) that are damaged due to any failure in Contractor's work for the period of twelve months following the issuance of the final building department approval. This express warranty is in addition to any implied warranties under state and federal laws.

18. **TERMINATION FOR CAUSE / CONTRACTOR DEFAULT:** If Contractor fails to commence or prosecute the work hereunder promptly and diligently at all times, or, in the opinion of the Owner's Representative falls significantly behind schedule, or Contractor fails in any way to perform the conditions contained within this Agreement, or any of the conditions relating to Contractors contained in this Agreement, or repeatedly fails to follow the instructions of the Owner's Representative, Contractor may be

terminated for default by Owner's Representative after being given 48 hours notice by Owner's Representative if contractor fails to take significant steps to cure his default.

19. **LAWS AND REGULATIONS:** Contractor, its employees and representatives and Subcontractors of every tier, shall at all times comply with any applicable laws, ordinances, rules and regulations, whether Federal, State or Municipal, particularly those relating to wages, prevailing wages, hours, working conditions, safety, all applicable Building Codes, and the payment of all taxes of any kind.

20. **DISPUTE RESOLUTION: ARBITRATION OF DISPUTES & ATTORNEY'S FEES**

Any and all disputes over the dollar limit of the Small Claims Court arising out of this Agreement that are not first settled by informal mediation shall be settled by binding arbitration using an experienced private construction arbitrator (retired judge or experienced construction attorney) that shall be mutually selected by the parties to conduct a binding arbitration in accordance with Chapter 3, Title 9 of the California Code of Civil Procedure (CCP section 1283.05) including, but not limited to the right of limited discovery. If the parties can not mutually agree on arbitrator within 30 days of written demand for arbitration by one of the parties, then either of the parties may submit the dispute to the American Arbitration Association for arbitration according to the Construction Industry Rules of the American Arbitration Association and the AAA shall administer the binding arbitration.

Judgment upon the award may be entered in any Court having jurisdiction thereof. The arbitrator's award shall be detailed and set forth both the legal and factual basis of the award.

NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE ARBITRATION OF DISPUTES PROVISION DECIDED BY NEUTRAL AND BINDING ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR A JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" SECTION ABOVE. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE BUSINESS AND PROFESSIONS CODE OR OTHER APPLICABLE LAWS. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

I, (WE) HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION TO NEUTRAL AND BINDING ARBITRATION.

OWNER

OWNER

CONTRACTOR

The prevailing party in any legal proceeding related to this Agreement shall be entitled to payment of reasonable attorney's fees, costs, and expenses.

Owner

Owner

Contractor

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21. **ENTIRE AGREEMENT, MODIFICATION, SEVERABILITY:** This Agreement represents the entire agreement and legal understanding of the

22. **ASSIGNMENT OF CONTRACT:** Contractor is strictly prohibited from assigning or subcontracting his work under this agreement.

Date: _____ By: _____
CONTRACTOR

Date: _____ By: _____
Ken Manrubia, Owner

Date: _____ By: _____
Debby Guidinger, Owner