



PROMULGATED BY THE TEXAS ASSOCIATION OF BUILDERS (TAB)
RESIDENTIAL PARTIALLY COMPLETED HOME CONTRACT
 (For Use With Partially Completed Homes Constructed On The Builder's Property)

THIS DOCUMENT CREATES IMPORTANT LEGAL OBLIGATIONS THAT YOU SHOULD UNDERSTAND PRIOR TO SIGNING. YOU SHOULD READ IT THOROUGHLY AND IF YOU ARE UNCERTAIN OR HAVE QUESTIONS ABOUT YOUR RIGHTS, OBLIGATIONS OR RESPONSIBILITIES UNDER THIS CONTRACT, CONSULT AN ATTORNEY.

1. **PARTIES:** _____ (Builder and/or assigns) agrees to complete the construction of the Improvements (as defined below) and sell and convey the completed Improvements and Property (as defined below) to _____ and _____ (e.g. husband and wife or co-buyers) (collectively referred to as Buyer).

2. **PROPERTY:** Lot _____, Block _____, _____ Addition, City of _____, _____ County, Texas, known commonly as _____ (Address and Zip Code), or as described on the attached exhibit, together with all improvements constructed or to be constructed on the Property, including the Improvements described below (the foregoing collectively referred to as the Property).

3. **IMPROVEMENTS:**

A. CONSTRUCTION DOCUMENTS – The Construction Documents shall consist of the following:

- 1) Complete plans as may be hereafter amended, dated _____, prepared by _____ (Plans) and provided by or through: (check appropriate box) Buyer Builder;
- 2) Specifications as may be hereafter amended, dated _____, prepared by _____ (Specifications) and provided by or through: (check appropriate box) Buyer Builder; and
- 3) all attached addenda and exhibits.

B. WORK - Builder shall provide all labor and materials for the construction (Work) of the following improvements (Improvements): (check the appropriate box) a single family residence or _____

_____ substantially in accordance with the Construction Documents. Any inconsistencies or conflicts within the Construction Documents shall be resolved by the Builder in Builder's sole and exclusive discretion. If a detail of the construction is not specified within the Construction Documents or should an alternative building practice be available in lieu of a specified procedure, the Builder may select a construction procedure that complies with industry standards. Unless otherwise specified in writing, Builder materials used by the Builder in the construction of the Improvements shall be as prescribed in the Construction Documents, subject to substitution at Builder's election should an item not be reasonably available or if its procurement would cause undue delay of the Work. Any substitutions shall be of comparable grade and quality at Builder's election. The construction of the Improvements is subject to changes in the Construction Documents as required by any governmental authorities and/or property owners' association. Buyer acknowledges that these changes may occur during construction and agrees that any such deviations as described in this section shall be accepted. There is no representation, warranty or guarantee that the Property or Improvements are "built as designed" or that "as built" drawings will match the Construction Documents or other engineering, geotechnical or architectural drawings, reports or information. Buyer acknowledges that in-the-field changes may be made by the Builder as provided herein. If, between the date of this Contract and Closing (as defined below), Buyer requests that Builder install additional options or upgrades on the Property, Buyer will submit a Change Order (as defined below)

to Builder that will provide for payment by Buyer to Builder of the cost of such options or upgrades. If, subsequent to Buyer's elections to add additional options or upgrades, Buyer becomes unable to qualify or requalify for a loan for the increased Total Sales Price (as defined below), it is understood and agreed that Builder shall be entitled to terminate this Contract and retain all funds previously deposited with Builder by Buyer as liquidated damages.

4. SALES PRICE: Buyer agrees to pay Builder for the Property and the Improvements described above, subject to adjustment as allowed by this Contract and/or as this Contract may hereafter be amended, a total sales price (Total Sales Price) of \$ _____, payable as follows:

- A. EARNEST MONEY – Buyer shall deposit \$ _____ as Earnest Money with _____ at _____ (Address), as Escrow Agent, upon execution of this Contract by both parties. Additional earnest money of \$ _____ must be deposited by Buyer with Escrow Agent on or before _____. If Buyer fails to deposit the Earnest Money as required by this Contract, Buyer will be in default.
- B. INITIAL CASH PAYMENT – Prior to the commencement of any Work, Buyer shall pay in cash to Builder an Initial Cash Payment in the amount of \$ _____ as a portion of the Total Sales Price on or before _____. Builder may use the Initial Cash Payment for payment of construction expenses and compensation to Builder for time and effort expended. The Initial Cash Payment may be retained by the Builder as liquidated damages if this Contract is terminated for any reason other than a Builder's Event of Default (as defined below) in addition to any other rights or remedies allowed herein or by law. Builder and Buyer agree that it is not possible to calculate the exact amount of damages that Builder will suffer if this Contract is terminated for a reason other than Builder's default and this amount is a reasonable approximation of the damages. This amount is in no way a penalty.
- C. DISASTER REMEDIATION – The following bold text only applies if 1) the Builder is performing disaster remediation services on the Property with construction of the Improvements, 2) after the Governor or county judge has issued a disaster declaration for the county in which the Property is located, and 3) Builder has not maintained a physical business address in the subject county or adjacent county for at least one year prior to the execution of this Contract. **This Contract is subject to Chapter 58, Business & Commerce Code. A contractor may not require a full or partial payment before the contractor begins work and may not require partial payments in an amount that exceeds an amount reasonably proportionate to the work performed, including any materials delivered.** If applicable, this statutorily prescribed provision may affect the Initial Cash Payment amount in Paragraph B above.
- D. ADDITIONAL CASH PAYMENTS – Buyer shall make Additional Cash Payments of \$ _____ on or before _____. In the event of a payment delay, Builder shall have the right to suspend all Work.
Note: Additional payments for Change Orders (as defined below) are due as set forth below and are not included in the Total Sales Price.
- E. FINANCING – (Check the applicable box.)
 1) FINANCING – If Buyer desires to obtain financing for any portion of the Total Sales Price, refer to the Financing Addendum attached hereto and incorporated herein by reference.
 2) NO FINANCING - Any remaining unpaid balance of the Total Sales Price shall be paid by Buyer to Builder in cash at Closing (as defined below).
- F. AMENDMENT – This Contract may be hereafter amended.

5. ESCROW:

- A. ESCROW AGENT – The Escrow Agent (as specified above) is (i) not a party to this Contract and does not have liability for the performance or nonperformance of any party to this Contract, (ii) not liable for interest on the Earnest

Money and (iii) not liable for the loss of any Earnest Money caused by the failure of any financial institution in which the Earnest Money has been deposited unless the financial institution is acting as Escrow Agent.

- B. EXPENSES – At Closing (as defined below), the Earnest Money must be applied first to any cash down payment, then to Buyer's Expenses and any excess refunded to Buyer. If no Closing occurs, Escrow Agent may require payment of unpaid expenses incurred on behalf of the parties and a written release of liability of Escrow Agent from all parties.
- C. DEMAND – Upon termination of this Contract, either party or the Escrow Agent may send a release of Earnest Money to each party and the parties shall execute counterparts of the release and deliver same to the Escrow Agent. If either party fails to execute the release, either party may make a written demand to the Escrow Agent for the Earnest Money. If only one party makes written demand for the Earnest Money, the Escrow Agent shall promptly provide a copy of the demand to the other party. If the Escrow Agent does not receive written objection to the demand from the other party within fifteen (15) days, Escrow Agent may disburse the Earnest Money to the party making demand reduced by the amount of unpaid expenses incurred on behalf of the party receiving the Earnest Money and Escrow Agent may pay the same to the creditors. If Escrow Agent complies with the provisions of this paragraph, each party hereby releases Escrow Agent from all adverse claims related to the disbursement of the Earnest Money.
- D. DAMAGES – Any party who wrongfully fails or refuses to sign a release acceptable to the Escrow Agent within seven (7) days of receipt of the request will be liable to the other party for liquidated damages of three times the amount of the Earnest Money.
- E. NOTICES – Escrow Agent's notices will be effective when sent in compliance with Paragraph 20. Notice of objection to the demand will be deemed effective upon receipt by Escrow Agent.

6. TITLE POLICY AND SURVEY: (Check all that apply)

- A. TITLE POLICY - Builder shall furnish to Buyer at Builder's Buyer's expense an owner policy of title insurance (Title Policy) issued by _____ (Title Company) in the amount of the Total Sales Price, dated at or after Closing, insuring Buyer against loss under the provisions of the Title Policy, subject to the promulgated exclusions (including existing building and zoning ordinances) and the following exceptions:
 - 1) Restrictive covenants applicable to the platted subdivision in which the Property is located.
 - 2) The standard printed exception for standby fees, taxes and assessments.
 - 3) Liens created as part of the financing described in this Contract.
 - 4) Utility easements created by the dedication deed or plat of the subdivision in which the Property is located.
 - 5) Reservations or exceptions otherwise permitted by this Contract or as may be approved by Buyer in writing.
 - 6) The standard printed exception as to discrepancies, conflicts, shortages in area or boundary lines, encroachments or protrusions, or overlapping improvements. Buyer, at Buyer's expense, may have the exception amended to read only, "shortages in area."
 - 7) The standard printed exception as to marital rights.
 - 8) The standard printed exception as to waters, tidelands, beaches, streams, and related matters.
- B. COMMITMENT - Within twenty (20) days after the Title Company receives a copy of this Contract, Builder shall furnish to Buyer a commitment for title insurance (Commitment) and, at Buyer's expense, legible copies of restrictive covenants and documents evidencing exceptions in the Commitment other than the standard printed exceptions. Builder authorizes the Title Company to mail or hand deliver the Commitment and related documents to Buyer at Buyer's address shown below. If the Commitment is not delivered to Buyer within the specified time, the time for delivery will be automatically extended up to 15 days.
- C. SURVEY - Buyer, at Buyer's cost and option, may obtain a survey (Survey) of the Property. The Survey must be made by a registered professional land surveyor acceptable to the Title Company and any applicable lender. Utility easements created by the dedication deed and plat of the subdivision in which the Property is located will not be a basis for objection. (Check one box only)

- 1) Buyer may obtain a Survey from a third-party surveyor;
 - 2) Builder agrees to order a Survey of the Property at Buyer's expense;
 - 3) Builder agrees to provide a copy of the existing Survey of the Property;
 - 4) Buyer waives the right to obtain a Survey of the Property;
- D. RESOLVING TITLE OBJECTIONS - Any items constituting an encumbrance upon or adversely affecting title to the Property as reflected by the Commitment or the Survey shall constitute an exception to title. Within ten (10) days after receipt by Buyer of the Commitment and the Survey (if applicable) (Title Review Period), Buyer shall notify Builder and the Title Company in writing (Buyer's Objection Notice) of its objection to any such exceptions to title or disapproval of the Survey (Title Objections). Builder shall have ten (10) days (Builder's Cure Period) after receipt of Buyer's Objection Notice during which to cure such Title Objections. Builder shall exercise reasonable efforts to remove or cure any Title Objections set forth in Buyer's Objection Notice, provided, Builder shall not be obligated to incur any cost or expense in connection therewith. Notwithstanding the foregoing, Builder shall be obligated to discharge and cause to be released at Closing any lien securing a monetary obligation incurred by Builder. In the event that Builder fails to cure the Title Objections to Buyer's reasonable satisfaction prior to the end of Builder's Cure Period, Buyer may, at its option, terminate this Contract by written notice to Builder within three (3) business days after the conclusion of Builder's Cure Period whereupon the Earnest Money will be refunded to Buyer and neither Builder nor Buyer shall have any further rights or obligations hereunder. If Buyer fails to terminate this Contract within such period, then all of Buyer's Title Objections shall be deemed waived. Any exceptions to title disclosed in the Commitment and not objected to by Buyer in Buyer's Objection Notice shall be deemed accepted by Buyer. The phrase "Permitted Exceptions" shall mean those exceptions to title set forth in the Commitment and which have been accepted or waived by Buyer.

7. NOTICE TO BUYER:

- A. ABSTRACT OR TITLE POLICY - Buyer is advised to have an abstract of title covering the Property examined by an attorney of Buyer's selection, or Buyer should be furnished with or obtain a Title Policy. If a Title Policy is furnished, the Commitment should be promptly reviewed by an attorney of Buyer's choice due to the time limitations on Buyer's right to object.
- B. MANDATORY OWNERS' ASSOCIATION MEMBERSHIP – The Property is is not subject to mandatory membership in an owners' association. **If the Property is subject to mandatory membership in an owners' association, Builder notifies Buyer under Section 5.012, Texas Property Code, that, as a purchaser of property in the residential community in which the Property is located, the Buyer is obligated to be a member of the owners' association. Restrictive covenants governing the use and occupancy of the Property and a dedicatory instrument governing the establishment, maintenance, and operation of this residential community have been or will be recorded in the real property records of the county in which the Property is located. Copies of the restrictive covenants and dedicatory instrument may be obtained from the county clerk. The Buyer is obligated to pay assessments to the owners' association. The amount of the assessments is subject to change. The Buyer's failure to pay the assessments could result in a lien on and the foreclosure of the Property. You are obligated to pay assessment to the property owners association, whether one or more. The amount of the assessment is subject to change. Your failure to pay the assessment could result in enforcement of the association lien on and the foreclosure of the Property.**
- C. STATUTORY TAX DISTRICT - If the Property is situated in a utility or other statutorily created district providing water, sewer, drainage, or flood control facilities and services, Chapter 49 of the Texas Water Code requires Builder to deliver and Buyer to sign the statutory notice relating to the tax rate, bonded indebtedness, or standby fee of the district prior to final execution of this Contract.
- D. PROPERTY LOCATED IN A CERTIFICATED SERVICE AREA OF A UTILITY SERVICE PROVIDER – Notice required by Section 13.257, Water Code: The real property, described in Paragraph 2, that you are about to purchase may be located in a certificated water or sewer service area, which is authorized by law to provide water or sewer

service to the properties in the certificated area. If your property is located in a certificated area there may be special costs or charges that you will be required to pay before you can receive water or sewer service. There may be a period required to construct lines or other facilities necessary to provide water or sewer service to your property. You are advised to determine if the property is in a certificated area and contact the utility service provider to determine the cost that you will be required to pay and the period, if any, that is required to provide water or sewer service to your property. The undersigned Buyer hereby acknowledges receipt of the foregoing notice at or before the execution of a binding contract for the purchase of the real property described in Paragraph 2 or at closing of purchase of the real property.

- E. TIDE WATERS - If the Property abuts the tidally influenced waters of the state, Section 33.135, Texas Natural Resources Code, requires a notice regarding coastal area property to be included in the Contract.
- F. GULF INTRACOASTAL WATERWAY – If the Property is located seaward of the Gulf Intracoastal Waterway to its southernmost point and then seaward of the longitudinal line also known as 97 degrees, 12', 19" which runs southerly to the international boundary from the intersection of the centerline of the Gulf Intracoastal Waterway and the Brownsville Ship Channel, Section 61.025, Texas Natural Resources Code, requires a statement to be included in the Contract for conveyance of the Property.
- G. ENVIRONMENTAL MATTERS - Buyer is advised that the presence of wetlands, toxic substances, including asbestos and wastes or other environmental hazards or the presence of a threatened or endangered species or its habitat may affect Buyer's intended use of the Property.
- H. ANNEXATION - If the Property is located outside the limits of a municipality, Builder notifies Buyer under Section 5.011, Texas Property Code, that the Property may now or later be included in the extraterritorial jurisdiction of a municipality and may now or later be subject to annexation by the municipality. Each municipality maintains a map that depicts its boundaries and extraterritorial jurisdiction. To determine if the Property is located within a municipality's extraterritorial jurisdiction or is likely to be located within a municipality's extraterritorial jurisdiction, Buyer should contact all applicable municipalities.
- I. PUBLIC IMPROVEMENT DISTRICTS – If the Property is in a public improvement district, Section 5.014, Texas Property Code, requires Builder to notify Buyer as follows: As a purchaser of this parcel of real property you are obligated to pay an assessment to a municipality or county for an improvement project undertaken by a public improvement district under Chapter 372, Local Government Code. The assessment may be due annually or in periodic installments. More information concerning the amount of the assessment and the due dates of that assessment may be obtained from the municipality or county levying the assessment. The amount of the assessment is subject to change. Your failure to pay the assessments could result in a lien on and the foreclosure of your property.
- J. BACK-UP OFFERS - Unless expressly prohibited in writing by the parties, Builder may continue to show the Property for sale and to receive, negotiate and accept back-up offers.

8. TIME:

- A. COMMENCEMENT OF WORK – To the extent that portions of the Improvements have been completed at the time this Contract is executed, Buyer acknowledges that Buyer has inspected the Improvements, noted changes from the Construction Documents, and Buyer hereby accepts those portions of the Improvements as built. Builder will make reasonable efforts to continue the Work within _____ calendar days after:
 - 1) The complete Construction Documents have been approved and initialed by both Buyer and Builder;
 - 2) Buyer has obtained permanent financing acceptable to the Builder;
 - 3) All appropriate building permits and regulatory approvals have been issued, including but not limited to homeowner's association, architectural control committee, engineering, governmental and otherwise; and
 - 4) The Initial Cash Payment has been received by Builder.
- B. DELAY OF COMMENCEMENT OF WORK – If Buyer's completion of the prerequisites in 8.A. above are delayed more than thirty (30) days from the execution of this Contract or buyer further delays Work commencement in any manner, Builder shall have the right to increase the Total Sales Price by an amount equal to any actual labor or

material price increases that occur after the execution date and an amount to compensate Builder for Builder's time and effort expended in obtaining same.

- C. COMPLETION OF IMPROVEMENTS - After Work begins, construction activities shall then be continued in accordance with Builder's normal construction schedule until the Improvements reach Substantial Completion (as defined below). Builder will make reasonable efforts to substantially complete the Improvements within _____ calendar days from the date hereof (Projected Completion Date), subject to Permitted Delays (as defined below). **Builder does not warrant or guarantee completion of the Improvements by any specific date, and no damages for delay or otherwise are recoverable by Buyer, including but not limited to taxes, tax penalties including 1031), carry costs, additional interest payments, cost of loan extension, temporary rental or living arrangements, moving costs, travel costs, boarding of animals, builder's risk or other insurance, etc.**
- D. PERMITTED DELAYS – Although there is no guaranteed completion date, the Projected Completion Date may be extended for one or more of the following causes (each is a Permitted Delay):
- 1) Changes by Buyer or Buyer's representatives to the Construction Documents.
 - 2) Failure of Buyer to timely make selections as directed below.
 - 3) Failure of Buyer to timely make any payments when due.
 - 4) Other acts or omissions by Buyer or Buyer's representatives.
 - 5) Prohibitive inclement weather or acts of God.
 - 6) Fire or casualty loss.
 - 7) Non-availability of labor, services or materials.
 - 8) Delays caused by a change in laws or ordinances or delays in issuing necessary permits or conducting inspections or testing by any governmental entity or regulatory authority.
 - 9) Delays caused by Change Orders.
 - 10) Disputes with Buyer or Buyer's representatives that allow Builder to suspend Work until resolved.
 - 11) Civil unrest, strikes, lockouts, acts of public authorities, war or any state, local, or national orders or mandates.
 - 12) Shortages or unavailability of labor or materials from any cause.
 - 13) Other events or causes beyond the Builder's reasonable control.
- E. CLOSING – The closing of the sale (Closing) of the Property and Improvements shall take place at the Title Company or any other location agreed to in writing by the parties within seven (7) days after Substantial Completion (as defined below) of the Improvements, or within seven (7) days after Title Objections have been cured or waived, whichever date is later (Closing Date). At Closing, Builder shall furnish tax statements or certificates showing no delinquent taxes, and a special warranty deed conveying good and indefeasible title. The special warranty deed shall be prepared and filed at the Builder's expense. Buyer shall be responsible for all remaining Closing costs, points, loan origination fees, escrow fee, and other amounts payable incident to the funding of Buyer's purchase money loan (if any) as permitted by applicable law. Any extension of the Closing Date due to lender required matters or caused by Buyer or Buyer's agents shall result in an increase of the Total Sales Price equal to the total amount of additional per diem interest incurred by Builder on any loan secured by the Property plus per diem tax, insurance, maintenance, and utility expenses.

9. **SUBSTANTIAL COMPLETION, INSPECTION, RELEASE AND OCCUPANCY:** The Improvements are substantially completed (Substantial Completion) when: 1) a certificate of occupancy is issued or, 2) if no certificate of occupancy is required, when all electrical, mechanical, and plumbing final inspections or all other required inspections (if any), have been approved or all approvals for occupancy have been received from any applicable governmental authority or, 3) in the absence of the foregoing, when the Improvements are suitable for occupancy; **provided, however, that if Buyer moves into the Improvements by occupying or placing any personal property in the Improvements or on the Property, the Improvements shall be deemed to be substantially complete, and the Total Sales Price becomes immediately due and payable.** At the time of Substantial Completion, but in no event later than the Closing Date, Buyer will conduct a walk-through inspection of the Improvements with Builder at Builder's request and discretion, and will Buyer

will execute and deliver to Builder a "Final Customer Walk-Thru Approval and Punch List" in the form associated with this Contract and that confirms Buyer's inspection and acceptance of the Improvements and releases Builder from all claims and liabilities except warranty obligations arising under the Builder's Express Limited Home Warranty (as defined below), and any agreed items of Work to be completed after Closing (Punch List Items). Buyer's failure to conduct the Final Customer Walk-Thru or failure to execute Final Customer Walk-Thru Approval and Punch List is a Buyer Event of Default, and even if the Total Contract Price has been paid, Builder will have no further obligations to Buyer for Punch List items that are not warrantable as set forth herein. Except for Punch List Items expressly noted in the Final Customer Walk-Thru Approval and Punch List, closing of this Contract shall be conclusively deemed to be an acknowledgment by the Buyer that all Work has been completed in accordance with the Construction Documents and approved by Buyer. Upon Substantial Completion of the Improvements and Closing, Buyer will be given possession of the Improvements and the Property; in no event shall Buyer be entitled, without the prior written consent of the Builder, to occupy the Improvements, place any personal property in the Improvements or on the Property until Builder has been paid the Total Sales Price and all other payments as set forth herein. At the time of Substantial Completion or if the Buyer occupies the Improvements, places any personal property in the Improvements or on the Property, Builder shall be released from any further obligation or duty for the maintenance of insurance coverage with respect to the Property and/or the care, repair, maintenance and condition of the Property and the Improvements, except as specified in the Builder's Express Limited Home Warranty. Builder's failure to complete Punch List Items shall not be a basis for Buyer to withhold any payments otherwise due Builder under this Contract or applicable law, and, although the Express Limited Home Warranty will be in effect at Substantial Completion and such warranty time periods are not tolled, no work is required to be performed by Builder pursuant to the Express Limited Home Warranty until the Total Sales Price and all payment set forth herein have been paid to Builder by Buyer in full.

10. ALLOWANCES: For the purposes of this Contract, Allowances include budgets for certain Work components shown in the Construction Documents to be incorporated into the Improvements. The sums allocable to each listed Allowance **are included in the Total Sales Price.** Unless otherwise noted in the Construction Documents, each Allowance listed includes, without limitation, the component costs of material and labor, any appropriate sales tax, shipping charges, or other costs associated with procurement. If Buyer exceeds any Allowance amount, such additional amounts shall be immediately payable in cash to Builder. Selections of Allowance items will be made at suppliers typically used by Builder to limit the possibility of unusual costs or delays, and Builder may disallow any such changes in Builder's discretion. All overages in expenditures from Allowance amounts will be treated as a Change Order (as defined below). Failure or refusal of Buyer to execute a Change Order for allowance overages does not relieve Buyer of the requirement to pay for all Allowance overages resulting from Buyer selections. The Projected Completion Date will be automatically extended if Allowance items are not selected according to the Builder's selection schedule hereto attached, within ten (10) days of written notice from Builder, or within _____ days of this Contract. Buyer will verify all selections with the supplier and provide Builder with the information for ordering. Buyer understands that some materials selected will have a wide variation in color, pattern, and texture and agrees that Builder is not liable for any such variation and there is no warranty obligation for such condition. The additional material or labor cost for any waste, spoilage, breakage, or culling shall be applied to the Allowance for that.

11. CHANGES:

A. **CHANGE ORDER PROCEDURE** – Except as otherwise stated in this Contract, no alterations, additions or deletions will be made in the Work unless agreed to in writing by Buyer and Builder. To approve a proposed change, both Buyer and Builder shall sign a written agreement (Change Order) in the form attached. In lieu of the form, a written Change Order may also constitute an email exchange between Buyer and Builder in which the Changes are discussed and acknowledged by the Parties or Buyer's selections from a material supplier or vendor. Upon receiving from Buyer a written request for any change, Builder may present Buyer with a proposal for the changes including any increase in the Total Sales Price and any extensions to the Projected Completion Date. If Buyer accepts Builder's

proposal for changes, the Change Order will become a binding attachment to the Construction Documents, and to the extent a conflict between a Change Order and the Construction Documents exists, the terms of the Change Order shall control. Any Buyer party may sign the Change Order as agent for the other, and the signature of one Buyer shall be binding on all others; an email from one Buyer concerning a Change Order also binds all Buyers. Failure of Buyer to approve Builder's proposal for changes within three (3) days after receipt by Buyer shall constitute a rejection of the proposal except where Buyer made selections exceeding a given Allowance category; in such a case, Buyer's selections bind Buyer to payment. Builder shall be reimbursed at \$_____ per hour, with a minimum of \$100 per request, for all expenses and effort incurred in the production of any Change Order proposal not accepted by Buyer within Builder discretion. Unless otherwise specified in agreed upon Change Orders, Buyer shall pay for all agreed upon Change Orders including any additional Builder's compensation to Builder in cash or immediately available funds within three (3) business days after Buyer's acceptance of the proposal. Builder will not be obligated to proceed with any Work until all amounts have been paid and Builder has no obligation to stop the Work while Change Orders are being discussed. Builder may disallow any and all Change Orders in Builder's sole and exclusive discretion that reduces the scope of work set forth herein.

- B. CHANGE ORDERS OF NECESSITY - Notwithstanding the provisions of Section 11.A, Buyer agrees to execute Change Orders, including any necessary increases to the Total Sales Price, that may be necessary to:
- 1) Comply with applicable governmental or regulatory requirements.
 - 2) Provide structural integrity to the Improvements.
 - 3) Route electrical, mechanical, or other systems included in the Work.
 - 4) Avoid or correct any conditions, known or unknown to Builder or Buyer, that might result in defects or other warranty claims.
 - 5) To comply with any and all other requirements, including but not limited to any homeowner's association rule, covenant, condition or restriction, design guidelines, declarant or architectural review committee requirements or similar obligation, known or unknown to the Builder or Buyer.

12. BUILDER'S RESPONSIBILITIES: Builder, in the performance of the remaining Work, does so as an independent contractor. Nothing contained in or inferable from this Contract should be construed to make Builder the agent, servant or employee of Buyer, or create any partnership, joint venture or other association between Buyer and Builder. Builder accepts responsibility for the performance of all duties reasonably necessary to complete the Work and agrees that:

- A. PERMITS - Builder has obtained or shall make reasonable efforts to obtain all necessary licenses, permits, and similar authorizations required by any applicable governmental authorities or other restrictions associated with the Property, including all water and wastewater services. Builder shall have no liability for any failure to obtain any such items, in which case either party may terminate this Contract without further liability to the other party and, in such event, Buyer will receive a refund of the Earnest Money less reasonable costs and expenses incurred by Builder.
- B. PAYMENT OF COSTS - Builder shall pay all costs related to the Work, except for costs associated with Change Orders and Allowance overages as described above.
- C. MATERIALS - Builder has used or shall use all new materials in connection with the Work that are of a suitable quality for the intended purpose, except as otherwise specified in the Construction Documents.
- D. LIENS - Builder shall deliver the Improvements and Property to the Buyer free of all liens, claims, security interests or encumbrances that might have arisen from the performance of the Work.
- E. CODES AND STANDARDS - Builder shall perform the Work such that the Improvements will be warrantable in accordance with the Express Limited Home Warranty incorporated herein by reference. Builder shall have sole control over the scheduling and progress of any remaining Work, including the superior right to select and arrange for all labor in any way related to the Work. Builder shall exercise exclusive control over the selection of subcontractors and shall not be obligated to employ subcontractors solely on the basis of cost savings that might be achieved. Builder has no obligation whatsoever to use any subcontractor or material supplier requested by Buyer. All subcontractors shall perform their work independently, and not as an agent or employee, servant or representative

of Builder. Notwithstanding any requirement herein, to the extent that any governing authority, pursuant to Code, or any warranty and/or performance standards conflict, the Builder has discretion to follow the normal course of construction for the location where the Property is located, and in such discretion, the Builder shall not be liable for any correction or warranty obligation or resulting damages if there is such conflict.

F. OTHER – Builder shall perform all other obligations as provided in this Contract.

13. WARRANTY:

- A. Builder will provide warranty coverage on the Improvements to Buyer pursuant to the attached and incorporated Express Limited Home Warranty. BUILDER AGREES TO COMPLY WITH THE EXPRESS LIMITED HOME WARRANTY AS ITS EXPRESS CONTRACTUAL WARRANTY. UNLESS BUILDER HAS ALSO ELECTED TO PROVIDE A THIRD-PARTY WARRANTY, BUILDER AND BUYER AGREE THAT THE EXPRESS LIMITED HOME WARRANTY CONSTITUTES THE EXCLUSIVE WARRANTY TO BE MADE AVAILABLE BY BUILDER AND IS IN PLACE OF, SUPERSEDES, AND PRECLUDES ALL OTHER GUARANTIES OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF PERFORMANCE, WORKMANSHIP, REPAIR, MODIFICATION, MERCHANTABILITY, SUITABILITY AND FITNESS. ANY AND ALL IMPLIED WARRANTIES ARE HEREBY DISCLAIMED BY BUILDER AND WAIVED BY BUYER, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTY OF GOOD AND WORKMANLIKE REPAIR OR MODIFICATION OF EXISTING TANGIBLE GOODS OR PROPERTY AND THE IMPLIED WARRANTY OF GOOD AND WORKMANLIKE CONSTRUCTION. THE PARTIES AGREE THAT THE EXPRESS LIMITED HOME WARRANTY AND THIRD-PARTY WARRANTY, IF APPLICABLE, ADEQUATELY SET FORTH THE MANNER, PERFORMANCE, AND QUALITY OF THE CONSTRUCTION OF THE HOME AND IMPROVEMENTS AND SERVICES TO BE PERFORMED. Buyer acknowledges that this waiver of implied warranties shall not be construed as a waiver of any right to bring a claim under Chapter 17 of the Texas Business and Commerce Code but simply a waiver and disclaimer of any and all implied warranties to the maximum extent allowable by applicable law. Buyer acknowledges, understands, and agrees that the terms of the Express Limited Home Warranty and Third-Party Warranty, if applicable, are clear, specific, and sufficiently detailed to establish the only standards of construction performance or service that Builder or Warrantor are obligated to meet. The Parties agree that this Express Limited Home Warranty will control any warranty, workmanship, material, or any other defect claims regarding the Property or Improvements. For items in need of repair under the Express Limited Home Warranty, the Parties agree that Builder shall have the sole right to determine the means, method, and manner of repair to be implemented. In the event that the Express Limited Home Warranty or the Third-Party Warranty do not specify a building or performance standard for the identified item, the usual and customary industry standards for similar improvements in the geographic region shall govern. In short, the Express Limited Home Warranty provides warranty coverage on the Improvements for one (1) year for workmanship and materials, two (2) years for plumbing, electrical, heating, and air-conditioning delivery systems, and six (6) years for major structural components of the Improvements. Under no circumstance is any landscaping, whether currently existing trees, plants, or grass on the subject property, or any of those installed by Builder, warranted by the Express Limited Home Warranty or any other warranty. Builder and Buyer agree that no warranty of any kind exists on landscaping in consideration for issuance of the Express Limited Home Warranty and any Third-Party Warranty. It is incumbent upon the Buyer to properly maintain and care for any landscaping. Regardless if the Express Limited Home Warranty is attached hereto, the Express Limited Home Warranty is incorporated by reference as if fully copied and set forth herein and made a part of this agreement.
- B. Builder will will not also provide a third-party warranty (Third-Party Warranty) provided through a third-party warranty company (if a box is not selected, Builder will not provide a Third-Party Warranty). If a Third-Party Warranty is provided, Buyer shall first file and pursue any claim that may be covered by the Third-Party Warranty with the third-party warranty company prior to making any warranty claim with the Builder under the Express Limited Home Warranty, and Buyer's failure to submit the warranty claim pursuant to the Third-Party Warranty process waives such claim. Buyer acknowledges and accepts that some or all of Builder's warranty obligation under the Express Limited

Home Warranty is being transferred to the Third-Party Warranty without recourse, and in such event, Builder has no warranty obligation. Buyer understands and agrees that the third-party warranty requires enrollment of the Property pursuant to the applicable program and that Buyer agrees to sign and cooperate with execution of such program documents prior to and after Closing, this being a material term. **Buyer further agrees and acknowledges that the Third-Party Warranty may offer warranty coverage for major structural components for more than six (6) years but in no event shall Builder have any warranty obligation after six (6) years and Builder is not liable for any claims, causes of action, attorney's fees, expert costs, diminution in market value, or other damages whatsoever. If a Third-Party Warranty offers warranty for more than six (6) years, Owner acknowledges that the Third-Party Warranty is solely responsible for any warranty claim after six (6) years pursuant to the terms and conditions of such Third-Party Warranty.**

- C. Builder shall construct the Improvements in a manner that passes all applicable municipal or county inspections; passage of such inspections indicates compliance with applicable codes and standards and is deemed approved by the governing authority and accepted by the Buyer. Subject to applicable law, failure to meet an applicable code or standard by itself for any element of the Improvements does not give rise to strict liability and it is not negligence per se, breach of contract or breach of warranty and does not create a cause of action or warranty claim against Builder. A claim or allegation that there is a failure to meet applicable code must be accompanied by (1) actual physical damage resulting from that failure or violation of code to the Property or Improvements, or (2) an immediate threat to the health and safety for the occupants or invitees. Builder shall not be required to utilize any repair method that would result in economic waste, exceeds the original cost of construction, or be required to repair items or areas that are not damaged.
- D. Right of Entry and Repair. Buyer hereby agrees that Builder the right to enter and inspect the Improvements during normal business hours, or at other times as needed if any emergency is claimed. Buyer also agrees that Builder has the irrevocable right to implement repairs to the Improvements pursuant to the Express Limited Home Warranty or any notice from Buyer to Builder of claimed defects, deficiencies, or items in need of repair, or to implement any offered repair of the Improvements by the Builder. This provision shall not be construed as a requirement that Builder repair any claim asserted by Buyer. Buyer's refusal to allow Builder reasonable access to the Improvements or failure to allow Builder to perform repairs shall be construed as a waiver of Builder's obligation to perform any warranty work and relieves Builder of Builder's obligations under the Express Limited Home Warranty and the Third-Party Warranty, if any, and any liability with respect to the conditions complained of by Buyers. Buyer's repair, modification, or otherwise of any of the Improvements or the Property that would otherwise be warrantable, is a waiver of any warranty obligation of Builder and Builder is not liable for any such costs.
- E. Any Manufactured Product warranties will be assigned, without recourse, to Buyer upon payment of the Total Sales Price. Although it is intended that this assignment be automatic, the assignment of such manufacturer warranties may be evidenced by Builder's execution and delivery to Buyer of the "Assignment of Manufactured Product Warranties". Buyer understands and agrees that proper maintenance of the Improvements and compliance with the manufacturer instructions and other requirements are required to ensure (i) the Express Limited Home Warranty and Third-Party Warranty, if applicable remains in effect, and (ii) the proper performance of the Improvements. Builder is not responsible for manufacturer maintenance requirements for any manufactured product.
- F. Water Wells: If present, Buyer understands and acknowledges that certain issues exist with respect to the quality of water supplied by the water well(s) and that the quality of water may change over time, even though the current water quality may require the installation of additional filtration systems at an additional cost to Buyer and subject to a Change Order. Buyer acknowledges that the quality of water is a latent condition. Builder is under no obligation to discover water quality, availability, or conditions of water on the Property or otherwise. **BUYER IS HEREBY ADVISED OF THE ISSUE(S) CONCERNING WATER QUALITY FROM WATER WELLS AND ACKNOWLEDGES THAT BUILDER IS NOT PROVIDING ANY WARRANTY WITH RESPECT TO THE QUALITY OF WATER SUPPLIED BY ANY WATER WELL. ALL WARRANTIES, IMPLIED OR EXPRESS, ARE HEREBY WAIVED AND/OR**

DISCLAIMED, INCLUDING BUT NOT LIMITED TO THE WARRANTY OF HABITABILITY, TO THE EXTENT APPLICABLE.

- G. Drainage. Builder is not responsible for drainage modifications by Buyer. Builder is not responsible for site conditions that otherwise are not in compliance with code, Builder's only obligation is to obtain approval from local governing authorities. Site conditions at the Property are deemed accepted upon Substantial Completion.
- H. Excessive or Excessively. Any warranty or performance standard that is determined by a condition as defined in the Express Limited Home Warranty or Third-Party Warranty as excessive or excessively will only be corrected or subject to a warranty obligation if such condition is continuous, regardless of use.
- I. Warranty Term. Subject to other non-warrantable terms and conditions herein, to the extent that an element of construction is not set forth in the Express Limited Home Warranty or Third-Party Warranty, such warranty term for the element is no more than one year from Substantial Completion.
- J. Trip Charges. Builder reserves the right to collect a trip charge in the amount of \$_____ for repeated non-warrantable items presented.

14. DEFAULT BY BUILDER:

- A. EVENTS OF DEFAULT (each is a Builder Event of Default) -
 - 1) A breach by Builder of any material provision contained in this Contract.
 - 2) Builder's filing of a voluntary petition in bankruptcy, making an assignment for the benefit of any creditor, being adjudicated as bankrupt or insolvent, or applying for or consenting to the appointment of a receiver, trustee or liquidator of all or a substantial part of Builder's assets.
 - 3) Builder's failure, without cause, to make payment to any material supplier, laborer or subcontractor for which Builder has received payment in full from Buyer or Buyer's lender.
 - 4) Abandonment of any remaining Work by Builder for a period of fifteen (15) or more consecutive days provided that the inactivity is not caused, at least in part, by weather, shortage of labor or materials, delays attributable to the conduct of Buyer, or other matters beyond the control of Builder, or a Permitted Delay.
- B. NOTICE OF DEFAULT TO BUILDER - If Builder commits a Builder Event of Default, prior to exercising any remedy granted by this Contract or by law, Buyer shall deliver written notice of such default to Builder. If the Builder Event of Default is not commenced to be cured within fifteen (15) days after delivery of the written notice (Builder's Cure Period), Buyer may exercise any remedy specified below, subject to the terms of this Contract.
- C. REMEDIES OF BUYER - Upon the occurrence of any Builder Event of Default and the expiration of Builder's Cure Period, Buyer may (but shall not be obligated to) terminate this Contract and recover monetary damages as specified below. Buyer does not and shall not have the right to terminate this Contract but for an uncured Builder Event of Default. The remedy of specific performance is hereby waived by Buyer and shall not be available in any action concerning this Contract, the Property, or otherwise. In no event shall Buyer be entitled to file a lis pendens or otherwise cloud the title to the Property. Notwithstanding any default by Builder, Builder shall be entitled to seek an injunction to remove any such cloud. Any monetary damages available to Buyer shall be limited to (i) return of any sums paid to Builder for upgrades, options, extras or Change Orders; (ii) return of the Earnest Money; and (iii) reasonable and necessary attorney's fees and costs incurred to invoke mediation and/or arbitration. If Builder refuses to close, Buyer not being in default, Buyer will be entitled to pursue all remedies provided under Texas law, save and except specific performance.

15. BUYER'S RESPONSIBILITIES: Buyer agrees to the following:

- A. PAYMENTS - Buyer shall make all payments to Builder as required by this Contract.
- B. HOME INSPECTION SERVICES – Buyer may hire an independent home inspector (Inspector) at its sole expense and Builder may allow within Builder's discretion the Inspector access to the Improvements, provided that the Inspector:

- 1) carries worker's compensation insurance and general liability insurance in an amount not less than \$500,000.00 and provides Builder with a certificate of insurance naming Builder as an additional insured;
- 2) is licensed by all governmental authorities having jurisdiction over the Improvements;
- 3) performs all inspections at a time which is reasonably convenient to Builder, provided that Builder receives no less than forty-eight (48) hours prior notice of any inspection;
- 4) provides the results of any inspection to Builder in writing detailing any alleged violation of any applicable building code with citation of the relevant sections of such code and specifically references any deviation from the Contract Documents;
- 5) performs such inspection(s) in the presence of an authorized representative of Builder; and
- 6) performs all inspections visually without the disassembly or removal of construction within the Improvements or Property.

Buyer expressly agrees that Builder has no obligation to perform any work identified by Inspector and that no portion of the Total Sales Price may be withheld as a result of the inspection

- C. **OBJECTIONS TO WORK** - Buyer agrees to promptly notify Builder of any objections to any Work not in compliance with the Construction Documents. **Failure by Buyer to promptly notify Builder of objections to any Work performed within any phase of construction shall constitute an acceptance of that portion of the Work subject to Builder's obligations under the Express Limited Home Warranty.** Buyer acknowledges and agrees that it may be inappropriate and/or unreasonably expensive and time-consuming to replace, re-fabricate or repaint a component that exhibits a minor defective condition. In such instances, Builder, in its sole judgment, may (i) employ an alternate remedy to correct the deficiency in conformance with reasonable building practices, or (ii) conclude that the condition is within acceptable tolerances and take no corrective action.
- D. **CONTRACTORS** - Buyer agrees not to instruct, direct or otherwise communicate with the contractors retained by Builder as to the scheduling of or details about the Work (including additions to, modifications of, or deletions from the Work), and any such violation of this provision shall be a default and breach of this Contract without any notice and opportunity to cure and Builder may terminate this Contract and exercise any right or remedy herein. Buyer shall not do or cause any Work to be done or alter or cause the alteration of any portion of the Improvements, engage any work to be performed on the Property, whether complete or incomplete, prior to the later of Buyer's acceptance of the Improvements as set forth herein, Substantial Completion, and payment of the Total Sales Price.
- E. **OTHER** - Buyer shall perform all other obligations as provided in this Contract.

16. DEFAULT BY BUYER:

- A. **EVENTS OF DEFAULT BY BUYER** – (each is a Buyer Event of Default):
- 1) Buyer or Buyer's agents or representatives fail to make any payments due under this Contract, including payment for any Change Orders.
 - 2) Buyer or Buyer's agents or representatives unreasonably delay or unreasonably interfere with the Builder or its subcontractors or suppliers in the execution of any remaining Work.
 - 3) Buyer fails to participate in the Final Customer Walk-Thru Approval and Punch List inspection.
 - 4) Buyer or Buyer's agents or representatives fail to perform any material agreement contained in this Contract.
 - 5) Buyer, or any person liable for the payment or performance under this Contract, files a petition in bankruptcy, makes an assignment for the benefit of any creditor, is adjudicated as bankrupt or insolvent, or applies for or consents to the appointment of a receiver, trustee or liquidator of all or a substantial part of their or its assets.
- B. **NOTICE OF DEFAULT TO BUYER** – If Buyer commits a Buyer Event of Default, prior to exercising any remedy granted by this Contract or by law, Builder shall deliver written notice of such default to Buyer. If the Buyer Event of Default is not cured within seven (7) days after delivery of such written notice (Buyer's Cure Period), Builder may exercise any remedy subject to the terms of this Contract. Upon the occurrence of a Buyer Event of Default, all amounts owed for any upgrades, options, extras or Change Orders will, at the option of the Builder, after expiration of Buyer's Cure Period, become immediately due and payable without prejudice to any other remedy of the Builder.

- C. REMEDIES OF BUILDER - Upon the occurrence of any Buyer Event of Default and the expiration of Buyer's Cure Period, Builder may (but shall not be obligated to) discontinue performance of this Contract and (i) terminate this Contract, receive the Earnest Money and retain all money previously paid by Buyer to Builder as liquidated damages thereby releasing both parties from this Contract; or (ii) terminate and seek recovery of any and all damages suffered by Builder. The remedy of specific performance is hereby waived by Builder and shall not be available in any action concerning this Contract. Notwithstanding the foregoing, if Buyer refuses to close, Builder not being in default, Builder will be entitled to pursue all remedies provided by Texas law, save and except specific performance.
- D. DELINQUENT PAYMENT - Should the Buyer fail to make payment to the Builder of any portion of the Total Sales Price when payment is due, then the Buyer shall pay to the Builder, in addition to the sum shown as due, interest at the maximum rate allowed by applicable federal and state law, which interest shall accrue as of the date payment was first due and shall continue to accrue until the date of payment.

17. BUYER(S)' AND BUILDER'S JOINT AGREEMENTS:

- A. WORK PERFORMED AND MATERIALS PROVIDED DIRECTLY BY BUYER – Upon receipt of Builder's written approval, in the event Buyer contracts with other parties to perform work or provide or install materials that are not a part of any Work performable by Builder hereunder, Buyer shall keep such other parties from interfering with the progress of the Work. To the extent reasonably practicable, Builder shall cooperate with such other parties, but will not be responsible for coordinating that work or for the quality of their work. Buyer agrees that any ACTS OF, OMISSIONS BY, OR LOSSES, DAMAGES OR DELAYS CAUSED BY BUYER, BUYER'S AGENTS, OR ANY THIRD PARTY RETAINED BY, THROUGH OR UNDER BUYER SHALL BE THE SOLE RESPONSIBILITY OF BUYER, NOT THE BUILDER. FURTHERMORE, BUYER AGREES THAT BUILDER WILL NOT BE REQUIRED TO PAY FOR, WARRANT, REPAIR, INSURE OR CORRECT ANY WORK PERFORMED OR MATERIALS PROVIDED BY PERSONS OR ENTITIES EMPLOYED BY, OR WHO HAVE CONTRACTED WITH BUYER. Buyer shall fully and promptly pay all sums charged by third parties hired by Buyer and indemnify and hold Builder harmless from all such charges and any related liens. If after execution of this Contract and only on Builder's written consent, Buyer supplies Buyer's own materials and/or labor, the Total Sales Price will not be amended unless agreed to in writing by both Buyer and Builder. Buyer agrees that legal and equitable ownership of such third party changes, additions and materials shall remain in Builder until Closing has occurred.
- B. INSULATION – As required by Federal Trade Commission regulations, the information relating to the insulation installed or to be installed in the Improvements at the Property is: (check only one box below)
 - 1) as shown in the Specifications.
 - 2) as follows:
 - a) Exterior walls of improved living areas: insulated with _____ insulation to a thickness of _____ inches that yields an R-Value of _____.
 - b) Walls in other areas of the home: insulated with _____ insulation to a thickness of _____ inches that yields an R-Value of _____.
 - c) Ceilings on improved living areas: insulated with _____ insulation to a thickness of _____ inches that yields an R-Value of _____.
 - d) Floors of improved living areas not applied to a slab foundation insulated with _____ insulation to a thickness of _____ inches that yields an R-Value of _____.
 - e) Other insulated areas: insulated with _____ insulation to a thickness of _____ inches that yields an R-Value of _____.

All stated R-Values are based on information provided by the manufacturer of this insulation.
- C. DOCUMENT RELIANCE - Buyer is advised that the Builder may have contracted with one or more independent professional architects, engineers, surveyors, designers, or other professional third parties (Builder's Professionals) to perform services and/or prepare certain documents or reports for completion of the Construction Documents and/or use in constructing the Improvements. Buyer, at Buyer's cost and option, may also elect to obtain site specific soil

and sub-soil tests (Geotechnical Report), flood plain maps and any other data or documents that may impact the performance of the Improvements from experts knowledgeable of such matters and hired by Buyer (Buyer's Professionals). Builder shall have no obligation to follow any recommendations, report, or otherwise created by Buyer's Professionals unless specifically stated herein. **If Buyer elects not to obtain a Geotechnical Report for use in the design of the foundation system by a professional engineer, Buyer hereby releases Builder from any and all foundation claims under this Contract or any applicable warranty.** If Buyer does not supply the referenced Geotechnical Report for use in the design of the foundation system, it is presumed that the Buyer elected not to have one performed. If Buyer elects to obtain such data and/or documents, Buyer shall direct Buyer's Professionals to furnish all such data and/or documents to Builder prior to the design of the foundation and the completion of the Construction Documents. In constructing the Improvements, Builder will rely on documents provided by Builder's Professionals and Buyer's Professionals as being complete, adequate, and correct in all respects. Builder shall promptly notify Buyer of any errors, conflicts, or inconsistencies discovered with respect to the Buyer supplied data or Construction Documents. BUILDER DOES NOT WARRANT OR GUARANTEE AND WILL NOT BE RESPONSIBLE FOR ANY ERRORS OR OMISSIONS IN THE REPRESENTATIONS, DOCUMENTS, DATA, PLANS, SPECIFICATIONS, DESIGNS, OR CONSTRUCTION DOCUMENTS THAT HAVE BEEN PREPARED BY BUYER, BUYER'S PROFESSIONALS OR ANY OTHER THIRD PARTY. Builder's reasonable reliance on the data and Construction Documents compiled and/or provided by Buyer's Professionals shall relieve Builder from all responsibility for or liability to the Buyer for damages to the structural components of the Improvements caused by raising, shifting, heaving or settling of the soil or any other damage to the Improvements, provided Builder constructs the Improvements in substantial compliance with the Construction Documents. Any supplements to the Construction Documents prepared by Builder shall be the property of Builder and shall not be used by Buyer except for construction provided by Builder. Buyer acknowledges that changes may occur in the Work and agrees that so long as the construction of the Improvements is substantially in compliance with the Construction Documents, such deviations will be accepted by Buyer and Builder shall have no liability for same. This provision is not intended to waive any rights, remedies or otherwise of the parties hereto provided by Chapter 59, Tex. Bus. & Comm. Code.

D. PRORATIONS AND ROLLBACK TAXES –

- 1) Prorations: Taxes for the current year, maintenance fees, assessments, dues and rents will be prorated through the Closing Date. If taxes for the current year vary from the amount prorated at Closing, the parties shall adjust the prorations when tax statements for the current year are available. If taxes are not paid at or prior to Closing, Buyer will be obligated to pay all applicable taxes for the current year.
- 2) Rollback Taxes: If Builder's change in use of the Property prior to Closing or denial of a special use valuation on the Property results in additional taxes, penalties or interest (Assessments) for periods prior to Closing the Assessments will be the obligation of Builder.

E. FEDERAL TAX REQUIREMENT – If Builder is a “foreign person,” as defined by applicable law, or if Builder fails to deliver an affidavit that Builder is not a “foreign person,” then Buyer shall withhold from the sales proceeds an amount sufficient to comply with applicable tax law and deliver the same to the Internal Revenue Service together with appropriate tax forms. IRS regulations require filing written reports if cash in excess of specified amounts is received in the transaction.

F. OTHER PARTIES BOUND – Buyer and Builder each bind themselves and their respective heirs, executors, administrators, partners, successors, assigns, and legal representatives in all matters related to this Contract.

G. NO ASSIGNMENT – Buyer may not assign this Contract without the written consent of Builder. Builder may assign all or part of this Contract to any third party.

H. TIME OF THE ESSENCE – Time is of the essence in this Contract except as otherwise set forth herein.

I. REAL ESTATE BROKERS' FEES – All obligations of the parties, if any, for payment of brokers' fees are reflected in the Real Estate Broker's Fee Addendum.

J. RISK OF LOSS – Should the Improvements and/or Property be partially or wholly destroyed by fire, windstorm, or other casualty prior to Closing, Builder will have the option of repairing any damage or terminating this Contract and

returning all sums paid to Builder by Buyer. The Builder's decision to rebuild the Improvements or terminate this Contract shall be communicated to Buyer in writing within twenty (20) days of the loss. If Builder elects to repair the Improvements, the damaged Improvements shall be repaired within a reasonable time and Builder shall have no liability to Buyer for any expenses or damages resulting from any delay in Closing. Buyer agrees that it shall have no claim to or interest in any insurance proceeds attributable to the loss.

- K. PERMISSION FOR INTERNET/SOCIAL MEDIA PUBLICATION – Buyer grants Builder permission and non-exclusive license to take pictures and video of the Property and Improvements for the purpose of promoting Builder's work on its website, the internet, social media, contests, or literature and to otherwise document the project. Buyer hereby waives any claim for compensation of any kind related to this permission and publication, and Buyer further waives any related claims, including, but not limited to, a violation of Buyer's privacy or any other personal or property rights.
- L. DISPUTE PUBLICATION WAIVER – Buyer and Builder agree that neither party shall utilize any form of social media, the internet, the world wide web, or print, traditional, or digital media of any kind, or any other form of information distribution to insult, disparage, make false statements, misleading communications, negative ratings, or speak negatively of the other party as it may concern the alleged condition of the Improvements or any claimed defect, deficiency, or condition of the Improvements, or of any dispute, misunderstanding, complaint or otherwise between the parties, including but not limited to any circumstances concerning mediation, settlement, lawsuit and/or arbitration. Any and all disputes between the parties hereto are private and confidential, including but not limited to the mediation and arbitration proceedings. Any violation of this provision is a material breach of this Contract and subject to a party's right to obtain a restraining order or similar relief and associated attorney's fees and expenses.
- M. PRIVACY AND TECHNOLOGY – Buyer may elect for the installation of, or the Improvements may have, various technologies installed that in some form document, photograph, record, or otherwise capture data, images, video, or voice, of the Buyer, occupants, or invitees. All such information may be transmitted, sold or used without Buyer's knowledge or consent. As a result, Buyer waives any claims against Builder regarding these various incorporated technologies and all claims of how any data captured by said technologies is published, distributed, sold, or used.
- N. RELEASE OF AND INDEMNIFICATION FOR LOSSES SUSTAINED DURING CONSTRUCTION – Because of potential safety and health hazards present during construction of the Improvements, as well as the practical limitations on the Builder's ability to control the activities of all persons involved in the construction process and thereby limit the risk of personal injury that may arise from construction activities, the parties agree as follows:
- 1) Personal Safety: To ensure and to protect the personal health and safety of Buyer and Buyer's licensees and invitees, Buyer shall restrict entry by the Buyer and Buyer's licensees and invitees onto the Property or into the Improvements to a minimum. When Buyer chooses to enter the Property (except at the request of Builder), and irrespective of Builder's presence on the Property at such time, BUYER AGREES TO AND DOES HEREBY RELEASE, INDEMNIFY AND HOLD BUILDER HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS OR CAUSES OF ACTION ARISING IN FAVOR OF BUYER OR BUYER'S AGENTS, LICENSEES AND INVITEES ON ACCOUNT OF BODILY INJURY, DEATH OR DAMAGE TO OR LOSS OF PROPERTY IN ANY WAY OCCURRING OR INCIDENT TO THE CONDITION OF THE PROPERTY AND/OR THE IMPROVEMENTS. THIS RELEASE AND INDEMNITY IS GIVEN TO BUILDER REGARDLESS OF WHETHER THE BUILDER OR ITS AGENTS OR EMPLOYEES ARE NEGLIGENT IN WHOLE OR IN PART AND EVEN WHEN THE INJURY, DEATH OR DAMAGE TO BUYER OR BUYER'S AGENTS, LICENSEES AND INVITEES IS CAUSED BY THE SOLE NEGLIGENCE OF BUILDER OR ATTRIBUTABLE TO BUILDER'S NEGLIGENCE PER SE OR IMPOSED BY STRICT LIABILITY.
 - 2) Risks to Vegetation: Buyer also acknowledges that the Work that is completed or to be completed imposes an inherent risk to the health of the trees and vegetation situated on the Property, and Buyer understands that Builder cannot guarantee the viability of those trees and vegetation. Buyer acknowledges this risk and hereby releases the Builder from any claims for damages to or loss of trees or vegetation resulting from any construction activities.
 - 3) Changes in Water Table: Buyer also acknowledges that the water table underneath the Property fluctuates naturally which may cause differing site conditions from year-to-year even after Substantial Completion due to no

fault of Builder. Buyer acknowledges this risk and hereby releases the Builder from any claims for damages to the Improvements or Property relating to, in whole or part, to changes in the water table.

O. LAND USE AND ENVIRONMENTAL DISCLAIMERS – The Builder has informed Buyer and Buyer acknowledges the following:

- 1) Adjacent Land Usage: Builder is neither responsible for nor has control of the use of the land adjacent to or in the vicinity of the Property and makes no representations or warranties with respect to the use or future use of the land adjacent to or in the vicinity of the Property. The Builder also has no control over and is not responsible for any easements on, adjacent to, or in the vicinity of the Property. Buyer understands that individuals, corporations, and/or utilities may have specific rights granted by those easements, if any, including but not limited to, access to and use of the land described by the easements, even though the use of any easement may not be evident at the present time.
- 2) Environmental Risk: Builder makes no warranties, express or implied, about the existing or future health hazards or environmental conditions on the Property, in the Improvements, or from adjacent sources, including, but not limited to, exposure to radon gas, electric and magnetic fields, shifting or instability of the soil and contamination of the Improvements or the surrounding air, water or soil from any sources or in any manner. Buyer is advised that the continued presence of moisture on components of the Improvements can cause the propagation of mold, which may cause allergenic reactions and other health problems in some individuals. Upon assuming possession of the Improvements, Buyer is responsible for implementing an inspection and maintenance program for the identification and elimination of moisture in the Improvements that could give rise to the growth of mold or other conditions detrimental to functioning of the Improvements or the health of its occupants. Any leak or the presence of moisture that is covered by the Builder's Express Limited Home Warranty will be corrected pursuant to that Express Limited Home Warranty, but the Buyer's failure to implement an effective maintenance program or the failure to promptly notify the Builder of warranty claims will negate the Builder's responsibility (if any) for any property damage, personal injury, or other loss, damage or liability resulting directly or indirectly from the presence of mold or other harmful organisms.

P. PROPRIETARY DOCUMENTATION – All documentation, including but not limited to marketing materials, sketches, floor plans, and photographs, which may have been provided to Buyer concerning this Contract are proprietary to Builder and shall not be reproduced or disseminated in any way, shape or form by Buyer. Furthermore, Buyer agrees that Buyer shall have no right to copies of any architectural plans or other materials, whether copyrighted or not, of Builder. Buyer agrees that Builder may utilize pictures, videos or other documentation of the Property and Improvements. Buyer shall have no right to control the use of such documentation, nor shall Buyer be entitled to any compensation for the use of such documentation.

Q. GRADING AND DRAINAGE – Buyer understands that the Property has been or will be graded by Builder to drain in accordance with an approved grading and drainage plan. Any future construction on the Property by Buyer (including pools, spas, fences, landscaping, etc.) can disrupt the drainage and cause flooding, excessive settlement and other problems. Builder is responsible for drainage of the Property as it is delivered at Closing in accordance with the grading and drainage plans. Any subsequent changes in grade or soil conditions and any damages or loss resulting therefrom shall be Buyer's sole responsibility and Buyer hereby releases Builder, its agents and employees, from any and all liability and/or damages that may arise as a result of such changes.

R. PRE-CLOSING TERMINATION/STIPULATED DAMAGES – Regardless of any allegation or actual default or breach of this Contract by any party, in the event a bona fide dispute, material misunderstanding or for the convenience of Builder upon determination within Builder's discretion that the subject matter of this Contract has become untenable (collectively, Dispute) between Builder and Buyer prior to Closing and if such Dispute cannot be resolved to the mutual satisfaction of Builder and Buyer, Builder at its sole election, may either submit the Dispute to mediation as provided in this Contract and/or may terminate this Contract by written notice to Buyer. In the event of termination of this Contract by the Builder pursuant to this paragraph, Builder will pay to Buyer one of the following, as stipulated damages: (1) _____% of the Initial Cash Payment as defined herein, or (2) \$ _____, or if neither of

the preceding blanks are completed, then \$500.00. The parties agree that the stipulated damages are a reasonable and foreseeable estimate of the damages that might be experienced by the Buyer incident to the termination of this Contract (it being difficult if not impossible to ascertain those damages). Upon such termination of this Contract by Builder and tender of the stipulated liquidated damages, no cause of action against Builder shall accrue to the Buyer and Buyer shall execute a written release of this Contract and the Earnest Money and deliver it to the Builder and the Title Company; however, failure of Buyer to deposit the stipulated damages or to execute a written release, does not in any way affect the applicability of this provision. Additionally, the Builder shall have no further obligation to complete and sell the Improvements and Property to Buyer and Buyer shall not be obligated to acquire the Improvements and Property.

S. ALTERNATIVE DISPUTE RESOLUTION - It is the policy of the State of Texas to encourage the peaceable resolution of disputes through alternative dispute resolution procedures.

1) **Re-Purchase Option:** Pursuant to § 27.0042 of the Texas Property Code, should Buyer discover, during the first five (5) years after Closing, one or more defects in the construction of the Improvements that exceed in the aggregate ten percent (10%) of the fair market value of the Improvements, upon receipt of written notice and an opportunity to inspect the defects, Builder may elect to repurchase the Improvements and Property. If Builder elects this option, Buyer shall be reimbursed the Total Sales Price and all closing costs incurred by the Buyer, plus reimbursement of the cost of any permanent improvements made by Buyer to the Improvements and the Property, reasonable moving expenses to vacate the Improvements, and reasonable and necessary attorney's fees and inspection costs incurred by Buyer to discover, identify and present the construction defects to Builder. In return, Buyer will deliver a Special Warranty Deed conveying the Improvements and Property to the Builder, free and clear of all liens and claims and deliver possession of the Improvements and Property free of any casualty or damage caused by the Buyer, normal wear and tear excepted.

2) **Mediation-Binding Arbitration:** The parties agree that any dispute or claim arising under, or relating to, this Contract, any amendments thereto, the Property, Improvements, or any dealings between the Buyer and Builder or their representatives shall first be submitted to mediation and, if not settled during mediation, shall thereafter be submitted to binding arbitration as provided by the Federal Arbitration Act (9 U.S.C. §§ 1 et seq.) or, if applicable, by similar state statute, and not by or in a court of law. All decisions respecting the arbitrability of any dispute shall be decided by the arbitrator. Any cost or fee associated with filing a claim for arbitration is to be paid by the party filing same. The Parties agree to split the mediation fee and the arbitrator's fees with all participating parties. The mediation and, if necessary, the arbitration shall be conducted pursuant to the procedures set forth in any applicable Third-Party Warranty documents. If there is any conflict between this Contract and the Third-Party Warranty on these procedures, the provisions of this Contract shall control as to the Builder and Buyer disputes or claim. Furthermore, if the mediator and/or arbitrator designated in any applicable warranty documents cannot conduct the mediation or arbitration for any reason, or if no mediator and/or arbitrator is designated, the parties agree to work together in good faith to select a. If the parties are unable to agree on the appointment of a mediator and/or arbitrator, then the mediation and arbitration shall be conducted by the American Arbitration Association (AAA) in accordance with the Construction Industry Rules promulgated by the American Arbitration Association (AAA), however, if there is any conflict between this Contract and such rules or procedures, the provisions of this Contract shall control. If for any reason the arbitration service is unable or unwilling to conduct the mediation or the binding arbitration, or both, either party may petition a court of general jurisdiction in the subject county to appoint a mediator or arbitrator, or both, but only after a good faith effort to agree to an alternative mediator, arbitrator or service provider. It is agreed that the filing of a petition requesting appointment of a mediator or arbitrator, or for a court to resolve a dispute under this provision, shall not constitute a waiver of the right to enforce binding arbitration.

Subject to the terms and conditions of the Third-Party Warranty, if applicable, in the event that the dispute or claim involves only construction defect claims and/or warranty, and no other dispute, claim, or cause of action is asserted, claimant may file with DeMars & Associates. Additionally, at Builder's election, Builder may submit or transfer all of the disputes and claims to DeMars & Associates.

In any arbitration proceeding between the parties the following material terms shall apply:

- a) The arbitrator shall have no authority to award any remedy or damage not provided by this Contract, Federal law or State law;**
- b) All applicable claims, causes of action, remedies, and defenses as available in court shall apply, including temporary and permanent restraining orders except as otherwise set forth herein;**
- c) The proceeding shall be conducted by a single arbitrator selected by a process designed to ensure the neutrality of the arbitrator;**
- d) The parties shall be entitled to conduct the following discovery pursuant to the Texas Rules of Civil Procedure unless the arbitrator determines that there is good cause to allow additional discovery: (1) Initial Disclosures as provided by Rule 194.2 of the Texas Rules of Civil Procedure (2) ten Requests for Production; (3) ten Interrogatories; and (4) a deposition of each named party and any expert retained, controlled or in custody of any party by such party.**
- e) Unless agreed to otherwise by the parties, the arbitrator shall render a written award and, if requested by any party at any time, a reasoned award, even if after the written award is issued;**
- f) No party shall be required to pay any unreasonable costs, expenses, or arbitrator's fees;**
- g) Judgment upon any such award may be entered in any court having jurisdiction, subject to the terms and conditions herein and the Federal Arbitration Act;**
- h) If the proceeding pertains to a construction defect, as that term is defined in Chapter 27 of the Texas Property Code (§27.001(4)), then the arbitration shall be conducted in the same county as the Property, absent agreement of the parties or the arbitrator's determination that such location is inconvenient;**
- i) Any arbitration shall be private and confidential, and no publication or disclosure of such arbitration or facts surrounding same shall be made to any third-party, except for necessary testimonial witnesses, experts and counsel. The final award of the arbitrator shall not be payable until 60 days after such award, and such award shall not be sought to be confirmed in any court until 90 days after such award, with or without objection by any party and regardless of the terms and conditions of the award. If the award requires repairs of construction defects, such repairs are not required to be commenced until 90 days after the award is confirmed but shall be completed within 120 days after the award is finally confirmed.**

Buyer and Builder agree that notwithstanding anything to the contrary, the rights and obligations set forth in this mediation-arbitration agreement shall survive (1) the termination of this Contract by either party; (2) the default or breach of this Contract by either party; and/or (3) any closing and delivery of deed. The waiver or invalidity of any portion of this mediation-arbitration agreement shall not affect the validity or enforceability of the remaining portions of this mediation-arbitration agreement and/or the Contract. Buyer and Builder further agree (1) that any dispute involving Builder's directors, officers, partners, employees and agents shall be resolved as set forth herein and not in a court of law; and (2) that Builder shall have the option to include its subcontractors, suppliers, and vendors as parties in the alternative dispute resolution procedures set forth in this Contract.

This Contract requires mandatory mediation and arbitration of all claims and disputes; if any party commences litigation in violation of this Contract, that party shall reimburse the other parties for all costs

and expenses including attorneys' fees incurred in seeking abatement of such litigation and enforcement of mediation and/or arbitration.

Buyer and Builder expressly agree that this Contract is being entered into for the benefit of any third-party and/or subsequent owner that owns, inhabits or resides in the Improvements, Property or dwelling and is therefore subject to this requirement to arbitrate any and all claims concerning this Contract, the Property, Improvements or dwelling.

Buyer further agrees that if Buyer sells the Property and Improvements, Buyer agrees to inform the subsequent purchaser(s) of this requirement to arbitrate in accordance with this Contract and, as part of any sales agreement, agrees to require the subsequent purchaser(s) to arbitrate any and all claims that may arise between Buyer, Builder or subsequent purchaser(s) relating to or arising under, in whole or in part, to this Contract, the Property or Improvements.

T. WAIVER OF TRIAL BY JURY: If it is determined that the arbitration provisions of the alternative dispute resolution agreement are not enforceable, the parties agree that any and all disputes between them shall be resolved by a court of competent jurisdiction in the county where the Property is located without the use of a jury. The right to a trial by jury is hereby expressly waived by Buyer and Builder. The parties also agree that the rights and obligations set forth in this paragraph shall survive termination of this Contract by either party, default of this Contract by either party, or any Closing and delivery of deed.

U. MUTUAL LIMITATION OF CLAIMS AND REMEDIES – The parties desire pragmatic and logical limitations on claims and remedies to ensure effective and realistic dispute resolution. Accordingly,

1) **Limitation of Claims: Under no circumstances shall either Buyer or Builder be liable for any special, indirect, incidental or consequential damages, including, but not limited to, claims of mental anguish, except as otherwise specifically set forth in this Contract. Any action or claim, regardless of form, that arises from or relates to this Contract, the Work, the Improvements and/or otherwise is barred unless it is brought by Buyer not later than two (2) years and one (1) day from the date the cause of action accrues.**

2) **Waiver of Subrogation: The parties agree that after occupancy or Closing, whichever comes first, Buyer shall secure and maintain insurance covering risk of loss and damage to the Improvements. The parties further mutually agree that with respect to any loss or damage that may occur to the Property, Improvements, personal property, persons, third-parties, or any other loss by reason of fire, the elements, or any other cause that could be or is insured against under the terms of standard fire and extended coverage insurance policies or any other insurance, regardless of the cause or origin, including negligence of the Parties, their agents, officers, or employees, the party carrying such insurance and suffering said loss, hereby releases the other from any and all claims with respect to such loss. The Parties further mutually agree that their respective insurance companies shall have no right of subrogation against the other party or other party's insurance carrier on account of any loss whatsoever as all rights of subrogation are hereby waived and disclaimed. Buyer agrees that it will request its insurance carrier(s) to include in its policies such a clause or endorsement, but the failure to request or include such does not affect the applicability or effectiveness of this paragraph. If any such carrier refuses or fails to include such a clause or endorsement, the terms and conditions herein are in no way affected. . Builder is not responsible for any deductibles, self-insured retentions or other charges payable by Buyer. The agreements in this paragraph shall survive Closing and payment in full of the Total Sales Price. The agreements in this paragraph shall survive Substantial Completion and payment in full of the Total Sales Price. Nothing contained in this paragraph shall be deemed to modify or otherwise affect releases of either party from liability for claims elsewhere herein contained. To the extent that Buyer's carrier in carrier's name or in Buyer's name makes any claim or asserts a cause of action against Builder for subrogation, Buyer agrees to defend, indemnify and hold Builder harmless, including attorney's fees, from any such claim or cause of action, including but not limited to negligence of Builder or Builder's subcontractors.**

V. WARRANTY REQUEST - Buyer and Builder agree that a request for warranty performance shall not be construed as a notice of construction defect under the Texas Residential Construction Liability Act (RCLA), and that any notice

under RCLA shall be separately sent to Builder in the manner required by RCLA. Subsequent, new or differing allegations of construction defect shall be subject to the requirements of the RCLA, including but not limited to the notice requirements therein. All documents producible pursuant to the RCLA shall be made immediately available to Builder. All notices under the RCLA shall be sent by certified mail, return receipt requested. Warranty claims, Punch List Items or other notices through Builder's normal warranty procedures are not to be considered as compliance with the RCLA.

- W. **ATTORNEY FEES** - If Builder or Buyer is the prevailing party in any legal proceeding or arbitration, brought in connection with or relating to this Contract or the Improvements in any way, then, in addition to any other relief sought, such party shall be entitled to recover its reasonable attorney's fees, court/arbitration costs, and other reasonable litigation expenses from the non-prevailing party. The "prevailing party" shall be deemed to be the party whose last written offer to settle the dispute (or the fair market value of the offer), before the initiation of the proceeding/arbitration or pursuant to Chapter 27 of the Texas Property Code, whichever occurs later, most closely approximates the final award (excluding any award for attorney's fees, costs, and prejudgment interest which accrue after the offer is made). If the claimant makes no written demand or offer, its last offer shall be the amount claimed in the arbitration. If the defending party makes no written offer, its last offer shall either be zero or, if applicable, the amount of its counterclaim. "Initiation of the proceeding/arbitration" shall mean the date on which the parties agree in writing to the selection of an Arbitrator or the date on which a Court of competent jurisdiction or arbitration service selects an arbitrator, orders the parties to arbitration, or denies a request to arbitrate.
- X. **ESCALATION OF CERTAIN PRODUCTS AND MATERIALS** – Building products and materials utilized in construction can be subject to price variation based on local, regional, and national supply. supply chain and demand issues, catastrophic events including but not limited to pandemics, hurricanes, tornadoes, floods, earthquakes, terrorism, wars, etc. Categories of products and materials most commonly affected by these variations in pricing are sheet goods such as drywall, insulated wiring, piping, soffit trim, lumber, plywood, OSB, structural members, 2x material, insulation, concrete, steel products, appliances, manufactured products and equipment, and petroleum-based roofing or other materials; this is not an exclusive list of such categories of products and materials that are subject to this provision. In the event that there is one or more price increases in these construction products and materials, whether one or more categories individually or collectively, of more than 10% from the (1) estimated or budget pricing, (2) average of similar materials or products purchased by Builder, and/or (3) general geographic region where the Property is located, starting from and including the preceding 60-day period from the execution of this Contract, the entirety of the increase in actual pricing paid or to be paid will be paid by Buyer, resulting in an increase in the Total Sales Price. Builder will not be responsible for payment of any increase in product or material costs as contemplated herein; in other words, Buyer will be responsible for any and all amounts, including but not limited to the increased amounts. Buyer shall execute a Change Order or other instrument evidencing these increases, and failure to execute such Change Order or other instrument shall be a default and breach by Buyer, and Builder may exercise any and all rights or remedies as contemplated in this Contract.

6. AGREEMENT OF PARTIES: This Contract, the Construction Documents, and any Change Orders, constitutes the entire agreement between the parties. No oral or written statements made at or prior to the execution of this Contract shall be binding upon Buyer or Builder. The Parties further understand and agree that the failure to enforce any provision, term, or right in this Contract in a specific instance does not waive a Party's right to do so in any future instance. Buyer and Builder wish to avoid any misunderstanding concerning this Contract, Property, Work, or Improvements and Builder does not desire Buyer to rely on any oral representations concerning the Contract, Property, Work, or Improvements. Therefore, Buyer must write in the spaces provided below ANY understandings, representations, warranties, guaranties, or promises that are not set out in the Contract but that have been made by Builder upon which Buyer is relying when signing this Contract. In addition to listing those representations, Buyer must strike through "NONE." Alternatively, if this Contract represents the entire understanding between the Parties, leave "NONE" as shown:

NONE

Buyer's failure to write anything in the space above shall be conclusively deemed Buyer's affirmation that "NONE" is applicable thereto. To induce Builder to accept this Contract, and as material consideration to Builder, Buyer hereby acknowledges that there are no understandings, representations, warranties, guarantees, or promises of any kind that have been made to induce Buyer to execute the Contract or to acquire the Property or Improvements except as specifically set forth in the Contract, and the Contract supersedes any and all prior understandings and agreements between the Parties regarding and/or relating to: (i) all advertising materials, (ii) the Contract (iii) the Express Limited Home Warranty, and (iv) the Construction Documents. No person on behalf of Buyer is authorized to make any future oral agreement upon which Buyer may rely to cancel, change, or modify any portion of the Contract. Buyer has not relied on any oral agreement, statement, or representation that is not expressly set forth in the Contract.

18. Exhibits and addenda that are not already incorporated by reference herein as a part of this Contract are: (check all that apply)

- Legal Description (TAB E-1)
- Special Provisions Addendum (TAB E-2)
- Financing Addendum (TAB E-3)
- Addendum for Property Subject to Mandatory Membership in an Owners' Association (TAB E-4)
- Tide Waters Notice (TAB E-5)
- Final Customer Walk-Thru Approval and Punch List (TAB E-6)
- Selection / Allowance Schedule (TAB E-7)
- Change Order (TAB E-8)
- Real Estate Broker's Fee Addendum (TAB E-9)
- Addendum for Property Located Seaward of the Gulf Intracoastal Waterway (TAB E-10)
- Assignment of Manufactured Product Warranties (TAB E-11)
- Notice Regarding Expansive Soils (TAB E-12)
- Green Building Disclosure (TAB E-13)
- Express Limited Home Warranty (TAB E-14)
- Homeowner Maintenance Requirements (TAB E-15)
- Notice Regarding Heating and Cooling Equipment (TAB E-16)
- Notice Concerning Improvement District (TAB E-17)
- Third-Party Warranty Specimen
- _____

BUYER REPRESENTS THAT BUYER HAS READ AND UNDERSTANDS THIS CONTRACT, INCLUDING THE AGREEMENT FOR ALTERNATIVE DISPUTE RESOLUTION. BUYER AGREES THAT NO VERBAL STATEMENT, PROMISE, OR CONDITION NOT SPECIFICALLY LISTED IN THIS CONTRACT IS BEING RELIED UPON BY BUYER. BUYER ACKNOWLEDGES THAT THERE ARE NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, BY BUILDER, ITS EMPLOYEES, OWNERS, SHAREHOLDERS, OFFICERS, DIRECTORS, OR AGENTS EXCEPT THOSE CONTAINED HEREIN. THIS CONTRACT CANNOT BE MODIFIED OR AMENDED EXCEPT BY WRITTEN AGREEMENT SIGNED BY THE PARTIES. IF ANY COURT OR ARBITRATOR DECLARES ANY PROVISION OF THIS CONTRACT TO BE VOID AND UNENFORCEABLE, THEN ONLY THAT PROVISION SHALL BE UNENFORCEABLE, WITH THE REMAINDER OF THE CONTRACT REMAINING VALID AND ENFORCEABLE. BUYER ACKNOWLEDGES THAT BUILDER IS RELYING ON THESE REPRESENTATIONS AND WOULD NOT ENTER INTO THIS CONTRACT WITHOUT THIS UNDERSTANDING.

19. CONSULT YOUR ATTORNEY: Builders/Real Estate Licensees cannot give legal advice. This is a legally binding Contract so read it carefully. If you do not understand the effect of this Contract, consult your attorney before signing it.

Buyer's Attorney:

Builder's Attorney:

20. NOTICES: To the extent not otherwise required by law, including but not limited to the RCLA, notices must be in writing and must be delivered by personal delivery or by certified mail return receipt requested to the location for each party designated below.

Buyer:

Builder:

Either party may change the location for notice upon written notice, delivered as described above.

NOTICE OF WATER LEVEL FLUCTUATIONS: This section applies only to the sale of residential real property adjoining an impoundment of water, including a reservoir or lake, constructed and maintained under Chapter 11, Water Code, that has a storage capacity of at least 5,000 acre-feet at the impoundment's normal operating level. The water level of the impoundment of water adjoining the Property fluctuates for various reasons, including as a result of: 1) an entity lawfully exercising its right to use the water stored in the impoundment; or 2) drought or flood conditions.

EROSION DISCLOSURE. If the Property is located within approximately 500 feet of a river, an authorized impoundment of water, and/or other natural or manmade topography, the Property is subject to potential erosion caused by a river or impoundment of water that may: (1) damage the Property and/or Improvements; or (2) affect an area of the Property that is available for development for its intended use.

FLOOD DISCLOSURE and HIGH RISK AREAS: Please be advised that the subject property in this Contract may have experienced previous flooding due to a breach of a reservoir or a controlled release from such or a previous water penetration due to a natural flood event. The Property and the current and future Improvements may be located in a floodway, flood pool, reservoir, a 100 year floodplain or a 500 year floodplain, or some combination of all. Please be advised that homes in high risk flood zones with mortgages from federally regulated or insured lenders are required to have flood insurance. Even when not required, the Federal Emergency Management Agency (FEMA) encourages homeowners in high risk, moderate risk, and low risk flood zones to purchase flood insurance that covers the structure(s) and the personal property within the structure(s). Buyer hereby accepts the sole responsibility for determining whether or not the subject property of this contract is in any such flood area as well as the suitability for construction of the Improvements and hereby waives any and all such claims against Builder. Buyer may choose to consult the FEMA Flood Map Service Center at <https://msc.fema.gov/portal/home> as part of its due diligence performance.

NOTICE OF MILITARY INSTALLATION: The subject property and the Improvements may be located near a military installation and may be affected by high noise or air installation compatible use zones or other operations. Information relating to high noise and compatible use zones is available in the most recent Air Installation Compatible Use Zone Study or Joint Land Use Study prepared for a military installation and may be accessed on the Internet website of the military installation and of the county or municipality in which the military installation is located.

ADJOINING LAND USE: Builder makes no representation, warranty or guarantee as to the adjoining use of land, property, streets, future construction, zoning, property lines or otherwise of any surrounding property, adjoining property

or property near the property the subject of this Contract, regardless of ownership or control, and all such claims are waived and disclaimed regardless of any claim of fraud or fraudulent inducement, and the parties are relying on each parties own investigation and due diligence.

CITY / GOVERNMENT / THIRD-PARTY OWNED LAND: Any and all property owned or to be owned by a branch of government or third-party that may or is intended to be used in a particular manner, including but not limited to public access, parks, recreation facilities, common elements, homeowner's association improvements or land, right of ways, ingress, egress or otherwise may not continue to be used in such a manner in the future, and the parties hereto waive and disclaim any and all reliance on any information, documentation or otherwise that such current or future use will continue.

HOMEOWNER ASSOCIATION AND/OR DEVELOPER LAND/FACILITIES: Builder makes no warranty, representation, or guarantee as to the use, availability, completion, quality, or otherwise of any homeowner association or developer land and/or facilities, and the parties hereto waive and disclaim any and all reliance on any information, documentation or otherwise.

CONSTANT ELECTRICAL FLOW: The Buyer shall not plug in appliances that require constant electrical flow, such as refrigerators and freezers, into an outlet with a ground fault interrupter.

21. EXECUTION& AUTHORITY: This Contract shall not be binding upon Builder until accepted and executed by one of its duly authorized officers. No other employee or agent is authorized to enter into this agreement or any contract for construction of the Improvements and sale of the Property on behalf of Builder. Buyer and the person signing this agreement represent and warrant that Buyer and any such person has the capacity and authority to enter into this agreement. To the extent that Buyer is a company, corporation, partnership, trust or any other entity whatsoever, such person executing this agreement is liable for the terms and conditions herein and any obligations in such person's individual capacity and personally guarantees the performance same as if the person executed this agreement in such person's individual capacity, and no presentment to Buyer is required, all obligations being joint and several.

22. NO MERGER: The terms and conditions contained in this Contract shall survive the Closing of the sale of the Property and delivery of a deed.

[SIGNATURE PAGE TO FOLLOW}

23. SIGNATURES OF PARTIES:

EXECUTED on _____, 20__.

This is a negotiated Contract for the construction and/or sale of improvements to real property. This Contract is not sponsored, commissioned, or mandated by any governmental entity. The terms and conditions of this Contract are not standardized.

Buyer Signature

Buyer Signature

Address: _____

Email: _____

BUILDER: _____

By: _____

Printed Name: _____

Title: _____

Address: _____

Email: _____

The Contract is subject to Chapter 27 of the Texas Property Code. The provisions of that chapter may affect your right to recover damages arising from a construction defect. If you have a complaint concerning a construction defect and that defect has not been corrected as may be required by law or by contract, you must provide the notice required by Chapter 27 of the Texas Property Code to the contractor by certified mail, return receipt requested, not later than the 60th day before the date you file suit to recover damages in a court of law or initiate arbitration. The notice must refer to Chapter 27 of the Texas Property Code and must describe the construction defect. If requested by the contractor, you must provide the contractor an opportunity to inspect and cure the defect as provided by Section 27.004 of the Texas Property Code.

RECEIPT

Receipt of Contract and \$ _____ Earnest Money in the form of _____ is acknowledged.

Escrow Agent: _____ Date: _____

By: _____ Email Address: _____

Address: _____ Telephone: _____

City: _____ State: _____ Zip: _____ Facsimile: _____

This Contract and its printed addenda are promulgated by the Texas Association of Builders (TAB) for the voluntary use of its members. TAB makes no representation or warranty that any party using this form is a member of TAB.

NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY, ADEQUACY, SUFFICIENCY OR TAX CONSEQUENCES OF ANY PROVISION OF THIS FORM IN ANY SPECIFIC TRANSACTION.

IT IS THE USER'S RESPONSIBILITY TO OBTAIN AND USE THE MOST RECENT VERSION OF THIS DOCUMENT. ANY CHANGES SHOULD BE MADE ONLY AFTER CONSULTATION WITH LEGAL COUNSEL.