



PROMULGATED BY THE TEXAS ASSOCIATION OF BUILDERS (TAB)
RESIDENTIAL CONSTRUCTION CONTRACT
(For Use With Homes To Be 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, YOU MAY WISH TO CONSULT AN ATTORNEY.

1. **PARTIES:** _____ (Builder) agrees to construct 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;
 - 3) This Contract as may be hereafter amended; and
 - 4) 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 its reasonable 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 applicable building codes. Unless otherwise specified in writing, 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 the procurement of such would cause undue delay in the progress of the Work. Any substitutions shall be of comparable grade and quality and shall be specified in a Change Order (as defined below). The construction of the Improvements is also subject to any changes in the Construction Documents as may be required by federal, state or local governmental authorities. Buyer acknowledges that these changes may occur during construction and agrees that so long as the Improvements are substantially in compliance with the Construction Documents, any such deviations will be accepted.

4. **SALES PRICE:** Buyer agrees to pay Builder for the Property and the Improvements described above, subject to adjustment as allowed by this Contract, 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 - 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 _____ or within _____ days of securing all third-party financing. Builder may use the Initial Cash Payment in consideration for, among other things, initial construction or pre-construction expenses, and compensation to Builder for time and effort expended in connection with this transaction. Notwithstanding anything herein to the contrary, the sum of \$_____ (Termination Damages) out of the Initial Cash Payment shall 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) or Builder's Termination Right (as defined below). 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 the Builder being in default and this amount is a reasonable approximation of the damages. This amount is not intended by the parties to be a penalty in any way.
- C. 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 stop Work until payment is made.
Note: Additional payments for Change Orders (as defined below) are due as set forth below and are not included in the Total Sales Price.
- D. 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.

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 the notice requirements in this Contract. 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.
- 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 shall commence 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; and
 - 3) All appropriate building permits have been issued and/or appropriate regulatory approvals have been obtained.
- B. COMPLETION OF IMPROVEMENTS - After commencement or continuation of the Work, construction activities shall thereafter be continued in accordance with Builder's normal construction schedule until the Improvements reach Substantial Completion (as defined below). Builder will make all 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 on any specific date.**
- C. PERMITTED DELAYS - 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 any applicable governmental entity's change in laws or ordinances or delays in issuing necessary permits or conducting inspections.
 - 9) Delays caused by Change Orders.
 - 10) Disputes with Buyer or Buyer's representatives (which will allow Builder to suspend Work until resolved).
 - 11) Civil unrest, strikes, lockouts, acts of public authorities, war.
 - 12) Other events or causes beyond the Builder's reasonable control.Builder shall be able to extend the Projected Completion Date by giving Buyer written notice within thirty (30) days of a Permitted Delay.
- D. 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 objections to matters disclosed in the Commitment or in the Survey 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 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 will be deemed to be substantially completed (Substantial Completion) when a certificate of occupancy is issued or, if no certificate of occupancy is required, when all electrical, mechanical, and plumbing final inspections, or all other required inspections, have been approved or all approvals for occupancy have been received from any applicable governmental authority or, in the absence of the foregoing, when the Improvements are suitable for occupancy. 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 and will execute and deliver to Builder a "Final Customer Walk-Thru Approval and Punch List" in the form attached hereto which confirms Buyer's inspection and acceptance of the Improvements and releases Builder from all claims and liabilities except contractual warranty obligations arising under the Builder's Express Home Warranty and any agreed items of Work to be completed after Closing (Punch List Items). 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; provided, however, that in no event shall Buyer be entitled, without the prior written consent of the Builder, to occupy any portion of the Improvements until Builder has been paid the Total Sales Price and all payments as set forth herein. At such time as Buyer first occupies the Improvements, 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 outlined in Builder's Express Home Warranty, if applicable. Builder's failure to complete Punch List Items shall not be a basis for Buyer to withhold any payments otherwise due Builder and, although the Express Home Warranty will be in effect at Substantial Completion, no work is required to be performed by Builder pursuant to the Express Home Warranty until the Total Sales Price and all payments 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 within and are part of 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. Selections of Allowance items will be made at suppliers typically used by Builder to limit the possibility of unusual costs or delays. All overages in expenditures from Allowance amounts will be treated as a Change Order as defined below. The Projected Completion Date, as set forth above, 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 proper information for ordering. Buyer understands that some materials selected will have a wide variation in color, pattern, and texture. The additional material or labor cost for any waste, spoilage, breakage, or culling shall be applied to the allowance for that item and a Change Order for any overages will be executed by Buyer and Builder.

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 hereto. Upon

receiving from Buyer a written request for any such change that details the nature of the changes to be made, Builder shall present Buyer with a proposal for the changes including any additional price of construction, additional Builder's compensation and any extensions to the Projected Completion Date. If Buyer accepts, in writing, 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 (e.g. husband or wife) may sign the Change Order as agent for the other, and the signature of one Buyer shall be binding on the other. Failure of Buyer to approve Builder's proposal for changes within three (3) days after receipt shall constitute a rejection of the proposal. Builder shall be reimbursed at \$ _____ per hour, with a minimum fifty dollars, for all expenses and effort incurred in the production of any Change Order proposal not accepted by the Buyer. Unless otherwise specified in agreed upon Change Orders, Buyer shall pay for all agreed upon Change Orders including the 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 obliged to proceed with any Work until any such amounts have been paid as agreed. Builder has no obligation to stop the Work while Change Orders are being discussed.

- B. CHANGE ORDERS OF NECESSITY - Notwithstanding the provisions of Section 10.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 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 which might result in defects or other warranty claims.

12. BUILDER'S RESPONSIBILITIES: Builder, in the performance of the 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 shall make reasonable efforts to obtain all necessary licenses, permits, and similar authorizations required by any applicable governmental authorities, 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.
- B. PAYMENT OF COSTS - Builder shall pay all costs related to the Work, except for costs associated with Change Orders as described above.
- C. MATERIALS - Builder 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 in accordance with the Express Home Warranty (Paragraph 13), and attached to the Contract as Addendum 14, except where such standards have been modified by local building codes. Builder shall have sole control over the scheduling and progress of the 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. All subcontractors shall perform their work independently, and not as an agent or employee, servant or representative of Builder.
- 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 Express Home Warranty – Addendum 14. BUILDER AGREES TO COMPLY WITH THE EXPRESS 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 HOME WARRANTY CONSTITUTES THE EXCLUSIVE WARRANTY TO BE MADE AVAILABLE BY BUILDER AND IS IN PLACE OF ALL OTHER GUARANTIES OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF WORKMANSHIP, MERCHANTABILITY, SUITABILITY AND FITNESS, WHICH ARE ALL HEREBY DISCLAIMED BY BUILDER AND WAIVED BY BUYER. THE PARTIES AGREE THAT THE EXPRESS HOME WARRANTY ADEQUATELY SETS FORTH THE MANNER, PERFORMANCE, AND QUALITY OF THE CONSTRUCTION OF THE HOME AND IMPROVEMENTS. The Parties agree that this Express Home Warranty will control any warranty, workmanship, material, or any other defect claims regarding the Property. In the event that the Express Home Warranty does 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 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 ten (10) years for major structural components of the Improvements.
- B. Builder will will not also provide a third-party warranty (Third-Party Warranty) provided through a third-party warranty company, and if Builder has elected to do so, a specimen copy of same is attached hereto and made a part hereof by reference. 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 against Builder under the Express Home Warranty.
- C. Buyer acknowledges, understands, and agrees that the terms of the Express Home Warranty and Third-Party Warranty, if applicable, are clear, specific, and sufficiently detailed to establish the only standards of construction performance that Builder is obligated to meet. Any warranties on Manufactured Products will be assigned, without recourse, to Buyer upon payment of the Total Sales Price. This assignment shall be evidenced by Builder's execution and delivery to Buyer of the document entitled "Assignment of Manufactured Product Warranties" that is attached hereto as an addendum. Buyer understands and agrees that proper maintenance of the Improvements is required to ensure (i) the Express Home Warranty remains in effect, as well as the Third-Party Warranty, if applicable, and (ii) the proper performance of the Improvements.

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 from Buyer or Buyer's lender.
 - 4) Abandonment of the 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.
- 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 cured within fifteen (15) days after delivery of the written notice (Builder's Cure Period), Buyer may exercise any remedy, 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. The remedy of specific performance is hereby waived by Buyer and shall not be available in any action concerning this Contract. 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 construction deposits, 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 and prosecute mediation and/or arbitration as herein provided. 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. 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 Home Warranty.** Buyer acknowledges and agrees, however, 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.
- C. SUBCONTRACTORS - Buyer agrees not to instruct, direct or otherwise communicate with the subcontractors retained by Builder as to the scheduling of or details about the Work (including additions to or deletions from the Work). Furthermore, Buyer shall not do or cause any Work to be done, or alter or cause the alteration of any portion of the Improvements, whether complete or incomplete, prior to Buyer's occupancy of the Improvements without Builder's express written consent.
- D. 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 in the execution of the Work.
 - 3) Buyer fails to participate in the walk through inspection as provided in this Contract.
 - 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 fifteen (15) 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 Work completed will, at the option of the Builder, after any notice or 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) 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. If Buyer refuses to close, Builder not being in default, Builder will be entitled to pursue all remedies provided under 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 which 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 BUYER SHALL BE THE 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 or retained by Buyer and indemnify and hold Builder harmless from all such charges and any related liens. Buyer agrees that 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 which yields an R-Value of _____.
- b) Walls in other areas of the home: insulated with _____ insulation to a thickness of _____ inches which yields an R-Value of _____.
- c) Ceilings on improved living areas: insulated with _____ insulation to a thickness of _____ inches which 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 which yields an R-Value of _____.
- e) Other insulated areas: insulated with _____ insulation to a thickness of _____ inches which 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 option, may also elect to obtain soil and sub-soil tests, flood plain maps and any other data or documents which may impact the performance of the completed Improvements from experts knowledgeable of such matters and hired by Buyer (Buyer's Professionals). 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 WHICH 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.

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 of such party in all matters related to this Contract.

G. NO ASSIGNMENT – Neither party has the right to assign this Contract without the written consent of the other, which consent shall not be unreasonably withheld.

H. TIME OF THE ESSENCE – Time is of the essence in this Contract.

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 attached to this Contract.

J. RISK OF LOSS – Should the Improvements and/or Property be partially or wholly destroyed by fire, windstorm, or other casualty prior to Closing, the Builder will have the option of repairing any damage or terminating this Contract and returning all sums paid to the Builder by the 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. 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 contemplated construction 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 agrees to release the Builder from any claims for damages to or loss of trees or vegetation resulting from construction activities.

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

- 1) Adjacent Land Usage: The 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: The 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 Home Warranty will be corrected pursuant to that Express 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.

M. PRE-CLOSING TERMINATION/STIPULATED DAMAGES – In the event any bona fide dispute or material misunderstanding (Dispute) arises 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 election, may either submit the Dispute to mediation and binding arbitration as provided in this Contract 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 shall return the Termination Damages portion of the Initial Cash Payment as defined above, an amount which the parties agree to be a reasonable and foreseeable estimate of the damages that might be experienced by the Buyer incident to the cancellation 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. 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. Builder is not required to apply the provisions of this paragraph to any breach of this Contract by Buyer.

N. 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 the 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 twenty percent (20%) of the fair market value of the Improvements, upon receipt of written notice and an opportunity to inspect the defects, the Builder may elect to repurchase the Improvements and Property. If the Builder elects this option, the 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 the 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 the Buyer to discover, identify and present the construction defects to the Builder. In return, the 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 (whether arising in contract, warranty, tort, statutory or otherwise), including, but not limited to, (a) any and all controversies, disputes or claims arising under, or relating to, this Contract, and any amendments thereto, the Property, Improvements, or any dealings between the Buyer and Builder; (b) any controversy, dispute or claim arising by virtue of any representations, omissions, promises or warranties alleged to have been made by Builder or Builder's representative; and (c) any personal injury or property damage alleged to have been sustained by Buyer on the Property or in the subdivision in which the Property is located, 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. In no event shall Buyer be initially required to pay arbitration costs and fees in excess of those that would have been incurred in filing suit in a court of law and effecting service of process. The arbitrator may award to the prevailing party, if any, as determined by the arbitrator, all or any portion of its costs and fees. "Costs and fees" may include reasonable expenses of mediation and/or arbitration, including arbitrator's fees, administrative fees, travel expenses and out-of-pocket expenses such as copying and telephone, court costs, witness fees, and reasonable attorney's fees. 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 such procedures, the provisions of this Contract shall control. 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 mediator and, if all disputes are not resolved by mediation, an arbitrator in the county where the Property is located (to the extent practicable). If the parties are unable to agree on the appointment of a mediator and/or arbitrator, then the mediation or arbitration, or both, shall be conducted by the American Arbitration Association ("AAA") in accordance with its applicable rules and procedures provided, 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 AAA 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 and/or arbitrator, or both. It is stipulated and agreed that the filing of a petition

requesting appointment of a mediator or arbitrator shall not constitute a waiver of the right to enforce binding arbitration.

In any arbitration proceeding between the parties:

- a) All applicable Federal and State law (including Chapter 27 of the Texas Property Code) shall apply;
- b) All applicable claims, causes of action, remedies and defenses that would be available in court shall apply;
- 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 reasonable and necessary discovery;
- e) The arbitrator shall render a written award and, if requested by any party, a reasoned award;
- f) The Buyer shall not be required to pay any unreasonable costs, expenses or arbitrator's fees and the arbitrator shall have the right to apportion the cost of any such items in an equitable manner in the arbitration award;
- g) Any award rendered in the proceeding shall be final and binding and judgment upon any such award may be entered in any court having jurisdiction; and
- 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.

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 of this Contract by either party; 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 and suppliers as parties in the alternative dispute resolution procedures set forth in this Contract.

If any party to this Contract files a proceeding in any court to resolve any such controversy, dispute or claim, such action shall not constitute a waiver of the right of such party or a bar to the right of any other party to seek arbitration of that or any other claim, dispute or controversy, and the court shall, upon motion of any party to the proceeding, direct that such controversy, dispute or claim be arbitrated in accordance herewith. Inasmuch as this Contract provides for mandatory arbitration of disputes, if any party commences litigation in violation of this Contract, such party shall reimburse the other parties to the litigation for their costs and expenses including attorneys' fees incurred in seeking abatement of such litigation and enforcement of arbitration.

The requirement that the parties submit any disputes between them to mediation and, if that does not resolve the dispute, binding arbitration is absolute and enforceable despite there being no signature by either party on this page of the Contract. The parties, by their signatures at the end of this Contract, agree to arbitration as if their signatures appeared on the page where arbitration is made part of the agreement.

- O. **WAIVER OF TRIAL BY JURY:** IN THE EVENT THAT IT IS DETERMINED THAT THE ARBITRATION PROVISIONS OF THE FOREGOING ALTERNATIVE DISPUTE RESOLUTION AGREEMENT ARE NOT ENFORCEABLE, THE PARTIES STIPULATE AND 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 AND THE RIGHT TO A TRIAL BY JURY IS HEREBY EXPRESSLY WAIVED BY BUYER AND BUILDER. THE PARTIES FURTHER AGREE THAT THE RIGHTS AND OBLIGATIONS SET FORTH IN THIS PARAGRAPH SHALL SURVIVE (1) THE TERMINATION OF

THIS CONTRACT BY EITHER PARTY; (2) THE DEFAULT OF THIS CONTRACT BY EITHER PARTY; OR (3) ANY CLOSING AND DELIVERY OF DEED.

- P. **MUTUAL LIMITATION OF CLAIMS AND REMEDIES** – The parties further 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, or consequential damages, including claims of mental anguish, except as otherwise specifically set forth in this Contract. Any action or claim, regardless of form, which arises from or relates to this Contract, the Work and/or the Improvements is barred unless it is brought by Buyer or Builder not later than two (2) years and one (1) day from the date the cause of action accrues.
 - 2) **WAIVER OF SUBROGATION; INDEMNITY:** THE PARTIES AGREE THAT AFTER OCCUPANCY OR CLOSING, WHICHEVER COMES FIRST, THE 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 OR IMPROVEMENTS BY REASON OF FIRE, THE ELEMENTS, OR ANY OTHER CAUSE WHICH COULD BE INSURED AGAINST UNDER THE TERMS OF STANDARD FIRE AND EXTENDED COVERAGE INSURANCE POLICIES, REGARDLESS OF THE CAUSE OR ORIGIN, INCLUDING NEGLIGENCE OF THE PARTIES HERETO, THEIR AGENTS, OFFICERS, AND EMPLOYEES, THE PARTY HERETO 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 HERETO ON ACCOUNT OF ANY SUCH LOSS AND EACH PARTY AGREES THAT IT WILL REQUEST ITS INSURANCE CARRIER TO INCLUDE IN ITS POLICIES SUCH A CLAUSE OR ENDORSEMENT. IF BUYER RECEIVES ANY CONSIDERATION FROM A THIRD PARTY, INCLUDING, BUT NOT LIMITED TO, AN ASSIGNEE OR SUBROGEE, IN SETTLEMENT OR PAYMENT FOR ANY DISPUTE, BUYER SHALL INDEMNIFY BUILDER FOR ANY CLAIMS ASSERTED AGAINST BUILDER BY SUCH THIRD PARTY, REGARDLESS OF ANY ALLEGATION OF BUILDER'S NEGLIGENCE, STRICT LIABILITY, BREACH OF CONTRACT, BREACH OF WARRANTY OR VIOLATIONS OF THE TEXAS DECEPTIVE TRADE PRACTICES-CONSUMER PROTECTION ACT. NOTHING CONTAINED IN THIS PARAGRAPH SHALL BE DEEMED TO MODIFY OR OTHERWISE AFFECT RELEASES OF EITHER PARTY FROM LIABILITY FOR CLAIMS ELSEWHERE HEREIN CONTAINED.
- Q. **WARRANTY REQUEST** - Buyer and Builder acknowledge and 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.
- R. **ATTORNEY FEES** - The prevailing party in any arbitration or legal proceedings brought under or with relation to this Contract may be entitled to recover from the non-prevailing party all costs of such proceeding and reasonable attorney's fees.
- S. **ESCALATION OF CERTAIN MATERIALS CATEGORIES** – Certain building materials utilized in the construction of new homes can be subject to price variation based on local, regional, and national supply and demand issues and additionally, catastrophic events such as hurricanes, tornadoes, floods, earthquakes, terrorism and wars can dramatically affect the price of delivered materials. Categories of materials most commonly affected by these variations in demand are sheet goods such as drywall, insulated wiring, soffit trim, plywood, OSB, structural members commonly referred to as 2x material, concrete and steel products, and petroleum based roofing materials. In the event that there is a significant price increase in these construction materials categories in excess of 25% from the average of similar materials purchased by Builder in the preceding 30-day period from the execution of this Contract, the excess charges will be passed through to Buyer, resulting in an increase in the Total Sales Price. Builder will attempt to keep the Buyer informed of cost variations and prior to contracting, will attempt to verify the price of materials in these categories, thus limiting exposure to the Buyer for any subsequent price changes.

18. AGREEMENT OF PARTIES: This Contract, along with the Construction Documents and any Change Orders, constitutes the entire agreement between Buyer and Builder and no oral or written statements made at or prior to the execution of this Contract shall be binding upon Buyer or Builder. Exhibits and addenda which are part of this Contract are: (check all that apply)

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

BUYER REPRESENTS THAT BUYER HAS READ AND UNDERSTANDS THIS CONTRACT, INCLUDING THE AGREEMENT FOR ALTERNATIVE DISPUTE RESOLUTION OF DISPUTES RELATED TO THIS CONTRACT. BUYER ALSO REPRESENTS THAT NO VERBAL STATEMENT, PROMISE OR CONDITION NOT SPECIFICALLY SET FORTH IN THIS CONTRACT OR ANY ATTACHMENTS ARE 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 IN THIS CONTRACT. 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 intended to be a legally binding Contract. READ IT CAREFULLY. If you do not understand the effect of this Contract, consult your attorney BEFORE signing.

Buyer's Attorney:

Builder's Attorney:

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

Buyer:

Builder:

Phone: _____
Fax: _____

Phone: _____
Fax: _____

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

21. EXECUTION BY BUILDER: 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 any contract for construction of the Improvements and sale of the Property on behalf of Builder.

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.

[the remainder of this page intentionally left blank]

23. SIGNATURES OF PARTIES:

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.

EXECUTED on _____, 20____

BUYER(S):

Buyer Signature

Buyer Signature

Address: _____

Email: _____

BUILDER: _____

By: _____

Name: _____

Its: _____

Address: _____

Email: _____

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.