

2023 - CMB©

**RESIDENTIAL CONSTRUCTION CONTRACT**  
**(COST PLUS ON OWNER'S LOT)**

**INSTRUCTIONS:**

**This Residential Construction Contract is to be used for new construction on the Owner's lot when the Total Contract Price is based on the actual cost of construction plus a Builder's Fee.**

**RESIDENTIAL CONSTRUCTION CONTRACT**  
**(Cost Plus on Owner's Lot) ©2023**

This Residential Construction Contract (Contract) is entered into on the Effective Date by and between \_\_\_\_\_ and \_\_\_\_\_ (Owner) and \_\_\_\_\_ (Builder) regarding Lot \_\_\_\_\_, Block \_\_\_\_\_, Addition, City of \_\_\_\_\_, County, Texas, also known as \_\_\_\_\_ and all improvements to be constructed thereon (Property). Owner and Builder may be referred to herein individually as a party or collectively as the parties. The Effective Date is \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_\_\_.

**A. TERMS.**

1. **CASH DEPOSIT:** \$ \_\_\_\_\_, which shall be applied towards the Total Contract Price at the (check one):  
initial draw; \_\_\_\_\_ commencement for initial start-up costs with the balance applied to Final Payment;  
final draw; or \_\_\_\_\_
2. **TOTAL CONTRACT PRICE:** \$ \_\_\_\_\_, which shall equal the sum of the Cost of the Work (Estimated) and the Builder's Fee.  
**COST OF THE WORK (ESTIMATED):** \$ \_\_\_\_\_, subject to adjustment as provided for herein.  
**BUILDER'S FEE:** The Builder's Fee shall equal: \_\_\_\_\_% of the Cost of the Work, \$ \_\_\_\_\_, or \$ \_\_\_\_\_ plus \_\_\_\_\_% of the Cost of the Work that exceeds \$ \_\_\_\_\_.
3. **CHANGE ORDER:** The Builder's Fee on an approved Change Order shall equal \_\_\_\_\_% of the Cost of the Work as attributed to the Change Order.
4. **PLANS & SPECIFICATIONS:** **PREPARED BY:** \_\_\_\_\_ **DATE:** \_\_\_\_\_  
Specifications  
Architectural  
Foundation  
Geotechnical  
Landscaping
5. **ESTIMATED COMPLETION DATE:** \_\_\_\_\_ (calendar days from the Commencement Date) \_\_\_\_\_ (insert date)
6. **ALLOWANCE SELECTION DATE:** within \_\_\_\_\_ days of written request from Builder \_\_\_\_\_ according to Schedule of Allowances.
7. **INSURANCE:** Builder shall obtain the following insurance, the cost of which is included in the Total Contract Price:  
Builder's Risk Insurance \_\_\_\_\_ General Liability Insurance.
8. **THIRD-PARTY WARRANTY:** \_\_\_\_\_ (if applicable)
9. **INSULATION:** The Improvements shall have insulation installed as follows (per the manufacturer):
- |   |             |                            |         |                  |   |
|---|-------------|----------------------------|---------|------------------|---|
| A. Exterior walls adjacent to living areas: | insulation; | minimum thickness of _____ | inches; | R-Value of _____ | . |
| B. Attics over improved living areas:       | insulation; | minimum thickness of _____ | inches; | R-Value of _____ | . |
| C. Sloped ceilings:                         | insulation; | minimum thickness of _____ | inches; | R-Value of _____ | . |
| D. Other:                                   | insulation; | minimum thickness of _____ | inches; | R-Value of _____ | . |
| E. per the Specifications.                  | insulation; | minimum thickness of _____ | inches; | R-Value of _____ | . |

10. **ATTACHMENTS:** The following documents are incorporated herein and are referred to as the Contract Documents:

Disclosure Statement	Draw Request Form
Builder Warranty (Limited) 2023	Draw Schedule
Plans & Specifications	Schedule of Allowances
Final Punch List	Third-Party Warranty Specimen
Change Order Form	Special Provisions

**SEE GENERAL CONDITIONS ON FOLLOWING PAGES**

**B. GENERAL CONDITIONS.**

1. **CONTRACT PRICE (COST PLUS).** Builder agrees to construct and Owner agrees to pay for the construction of the Improvements according to the terms set forth herein for cost of the Work plus a fee.

A. **CASH DEPOSIT & DRAWS.** Owner shall pay Builder the Total Contract Price, as adjusted herein, in good funds (and not by credit card) for Builder's performance of the Contract. Upon execution of this Contract, Owner shall pay Builder the Cash Deposit, which unless otherwise provided herein, is non-refundable. Builder may tender draw requests to Owner (and according to the Draw Schedule should one exist), which Owner shall pay within three days of receipt. Time is of the essence with respect to Owner's payment obligations herein. All cash discounts, trade discounts, variance between Builder's discount and pricing for others, rebates, refunds, returns from the sale of surplus materials and equipment, and cost savings of any kind shall accrue to the benefit of Builder. All fees deducted from any draw payments by Owner's lender shall be refunded to Builder.

(1) **WORK STOPPAGE.** If Owner fails to make payment when due, except when Owner has the right to withhold payment hereunder, Builder may stop work, following provision of written notice to Owner and three days to cure, until Owner tenders all unpaid payments and late fees. **IF WORK IS STOPPED PURSUANT TO THIS PARAGRAPH, OTHER THAN DUE TO OWNER'S RIGHT TO WITHHOLD PAYMENT, OWNER WAIVES ALL CLAIMS AGAINST BUILDER FOR ANY DAMAGES ARISING FROM SUCH WORK STOPPAGE.** Following a work stoppage per this section, payment of the then outstanding sum, and prior to recommencing construction of the Improvements, Owner shall execute and fund a Change Order increasing the Total Contract Price (Estimated) and amending the Estimated Completion Date to reflect such delay and the costs incurred by Builder to demobilize and remobilize the construction as a result of such failure of payment.

(2) **LATE PAYMENTS.** Owner acknowledges that late payments to Builder will cause Builder to incur costs not contemplated, the exact amount which will be difficult to ascertain. Thus, if timely payments are not made by Owner as required, then, in addition to the amount of the draw request, Owner shall pay Builder ten percent of the amount overdue as a late charge. Builder and Owner agree that because of the difficulty in ascertaining the exact damages, the liquidated damages are a reasonable sum (and not a penalty) considering the damages Builder will sustain in the event Owner fails to tender payment timely hereunder.

(3) **COST-PLUS CONTRACT.** In reliance upon the Contract Documents, proposals, budgets, if any, and other documents relied upon by Builder in executing this Contract, Builder has identified the Total Contract Price. **IT IS EXPRESSLY AGREED AND UNDERSTOOD BY OWNER THAT THE TOTAL CONTRACT PRICE AND ANY BUDGETS OR PROPOSALS ARE NOT BINDING OBLIGATIONS ON THE PART OF BUILDER, BUILDER SHALL NOT BE OBLIGATED TO CONSTRUCT THE IMPROVEMENTS FOR THE ESTIMATED TOTAL CONTRACT PRICE OR ANY COST IDENTIFIED IN ANY BUDGET OR PROPOSAL, AND BUILDER SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE, EXPENSE, INCONVENIENCE, OR ADDITIONAL COSTS INCURRED BY OWNER AS A RESULT OF AN INCREASE OR DECREASE IN THE COST OF THE WORK AND THE BUILDER'S FEE.** Should Owner elect to amend or change the Contract Documents, amenities, finish out, or any portion of the Improvements or Property from that identified in the Contract Documents, such change may necessarily increase or decrease the Total Contract Price.

B. **FINAL PAYMENT & RETAINAGE.** At Substantial Completion or as required by the Draw Schedule and upon Owner's receipt from Builder of a conditional All-Bills-Paid Affidavit per Texas Property Code (TPC) § 53.259, Owner shall pay Builder the difference between the Total Contract Price, as

amended, and the Cash Deposit, all paid draw requests, and the sum of all paid Change Orders. Owner has not substantially performed under the Contract unless Owner has paid Builder all sums due. **OWNER WAIVES STATUTORY RETAINAGE PER TPC § 53.101.**

C. **FINANCING.** Owner shall also pay any costs of obtaining a loan (if so obtained), including, but not limited to, the loan itself, closing costs, inspection fees, all costs incurred to satisfy Owner's lender, and all related expenses. The amount financed by Owner or of an appraisal shall not limit the Total Contract Price. Owner shall apply for financing within five days of the Effective Date. Should Owner fail to obtain and provide Builder notice of lender approved financing within thirty days of the Effective Date, Builder may terminate this Contract by providing notice of termination to Owner, retain one-half of the Cash Deposit as liquidated damages, and the parties shall be released from their obligations herein. Builder and Owner agree that because of the difficulty in ascertaining the exact damages, the liquidated damages are a reasonable sum (and not a penalty) considering the damages Builder will sustain in the event this Contract is terminated pursuant to this paragraph. If Owner is not obtaining financing to pay all or part of the Total Contract Price, upon Builder's request, Owner shall provide written documentation reasonably satisfactory to Builder to evidence Owner's ability and continued ability to pay the Total Contract Price.

D. **COST OF THE WORK.** The "Cost of the Work" shall mean all costs incurred by Builder, its employees, agents, representatives, subcontractors or suppliers and Owner in the construction of the Improvements, including, but not limited to, the following:

(1) costs, including transportation and maintenance, of all labor, materials, supplies, fuel equipment furnished, purchased, or incorporated in the Improvements, temporary facilities and hand tools not owned by the workmen that are consumed in the construction of the Improvements, cost of debris removal from the site, and the sum of all Change Orders;

(2) cost, wages, benefits, unemployment insurance, payroll taxes, and other costs incurred by Builder for labor during the construction of the Improvements of all superintendents, subcontractors, suppliers, or construction workers directly employed by or on behalf Builder, including but not limited to Builder's superintendent or its agents for work performed and materials supplied

(3) all payments made by Builder to its subcontractors or suppliers for work performed under this Contract;

(4) that portion of insurance premiums that can be directly attributed to this Contract for Builder's Risk, Worker's Compensation, General Liability Insurance, and third-party warranties, including those premiums for subcontractors that do not maintain such insurance;

(5) costs of document reproductions, postage and parcel delivery charges, internet, and telephone service at the site;

(6) costs incurred for safety and security;

(7) rental of all necessary construction machinery and equipment, and related fuel, used at the site, including costs of installation, minor repairs and replacements, dismantling, removal, transportation and delivery thereof, all in accordance with the terms of said rental agreements;

(8) permit, impact, tap or connection fees, registration fees, or any other fees charged by any governmental agency to construct the Improvements;

(9) sales, use or other taxes imposed by any governmental authority that are related to the construction of the Improvements;

(10) Costs associated with differing or unexpected site conditions;

(11) fees for laboratories for tests required by the Contract Documents;

(12) costs incurred due to an emergency affecting the safety of persons or property (except due to Builder's negligence) and any deductible relating to any insurance claim, except as otherwise provided for herein;

(13) royalties and license fees paid for the use of a particular design, process or product required by this Contract;

(14) deposits lost for causes other than Builder's negligence or failure to fulfill a specific responsibility to the Owner as set forth herein; and

(15) any other reasonable cost incurred in the construction of the Improvements.

E. SUBCONTRACTORS. Builder shall be obligated to pay its subcontractors and suppliers for work performed and materials supplied (Subcontractors) if, and only if, Owner has paid Builder all amounts due hereunder. Builder is not obligated to obtain multiple bids from Subcontractors prior to awarding any work or to accept the low bid and maintains complete discretion in the retention of any Subcontractor.

F. RIGHT TO WITHHOLD PAYMENT. Owner may withhold payment from a draw request only as is reasonably necessary to protect Owner from the following: (1) defective Work not remedied; (2) third party claims filed (for which Builder is responsible) unless security acceptable to Owner is provided by Builder; (3) failure of Builder to make payments properly to the Subcontractors for labor, materials or equipment (but if Builder in good faith disputes whether such payment is owed, then Owner may only withhold such amount as to which the Subcontractor actually files a mechanic's lien affidavit against the Property); (4) damage to Owner directly caused by Builder; or (5) persistent failure to construct the Improvements per the Contract Documents, but only to the extent Owner has advised Builder on more than five occasions of the same, continued failure. Owner must provide Builder with notice, specifically describing the act or omission comprising one or more of the foregoing defaults for which the Owner intends to withhold funds. Builder shall have ten days after receipt of Owner's notice to cure or begin curing the alleged conditions. When the above reasons for withholding payment are removed, payment shall be made to Builder with three days.

G. UNEXPECTED SITE CONDITIONS. Should Builder encounter concealed, differing, or unexpected conditions, whether such condition is below the surface of the ground or in an existing structure, that are at variance with the conditions indicated in the Contract Documents or reasonably believed to exist by Builder (as determined by Builder in its sole discretion), Builder shall notify Owner of such conditions, any need to perform additional work due to such conditions, and whether such additional work will result in an increase in the Total Contract Price. If Owner rejects the performance of the additional work or increase in the Total Contract Price, then Builder may terminate this Contract and Owner shall pay Builder for all work performed through the date of termination along with a prorated portion of the Builder's Fee. If Owner consents to the performance of the additional work, the Total Contract Price shall be adjusted by Change Order.

## 2. CONSTRUCTION.

A. IMPROVEMENTS. Builder covenants that all materials furnished and used in connection herewith shall be new, except as otherwise provided in the Contract Documents. (ie: reclaimed beams) Builder shall furnish all labor, materials, fuel, equipment, tools, machinery, and supplies, perform all work,

obtain all necessary permits, pay all state sales taxes, and do all things necessary to complete the work substantially in accordance with the Plans and Specifications, all applicable building codes, and the Limited Warranty (Improvements). Builder may resolve discrepancies or omissions in the Contract Documents at its reasonable discretion so long as it complies with the applicable building codes.

B. CONSTRUCTION MEANS & METHODS. Builder maintains sole control over the means, methods, techniques, scheduling, progress of construction, and performance of warranty repairs, including the right to select and arrange for labor (except work for which Owner has contracted directly with contractors or suppliers, if any). Builder may substitute materials specified in the Contract Documents for those of like kind and quality. Builder is not required to provide professional services that constitute the practice of surveying, architecture, or engineering unless required by the Contract Documents. All salvage rights belong to Builder unless requested in writing by Owner. Owner shall not communicate with the Subcontractors regarding the construction of the Improvements.

C. PERMITS & FEES. If after using reasonable efforts to obtain all required building permits, If Builder is unable to obtain a required building permit, this Contract will automatically terminate, be of no further force or effect, and the Cash Deposit shall be refunded to Owner less any costs incurred by Builder in the construction of the Improvements. The cost of all building permits is included in the Total Contract Price. Unless otherwise specifically provided for herein, the cost of all impact fees, licenses, inspections by government agencies, easements, assessments, approvals, and charges required for construction shall be the responsibility of Owner.

D. SUBSTANTIAL COMPLETION. Substantial Completion shall occur at the earlier of: (1) when a certificate of occupancy or final green tag is issued by the applicable municipality or third-party inspector, (2) when all inspections required by Texas Local Government Code, Chapter 233 have been performed, as applicable, (3) if neither (1) nor (2) apply, when the Improvements have been constructed substantially in accordance with the Contract Documents, (4) the Owner takes or has the ability to take possession of the Improvements; or (5) the Owner moves into the house, including but not limited to storing personal items in the house or garage or other improvement such as and attic, barn or other attached or detached buildings. Completion of any punch list item is not required to reach Substantial Completion. Owner may take possession of the Property upon Substantial Completion and Final Payment. Should Owner take possession of or reasonably have the ability to occupy the Improvements prior to Substantial Completion, including, but not limited to, changing the locks, Owner acknowledges the Improvements are complete and habitable and have reached Substantial Completion.

E. OWNERSHIP OF CONTRACT DOCUMENTS. If Owner or Builder provide all or part of the Contract Documents, the party providing such documents acknowledges that both Owner and Builder have permission to use such Contract Documents. **THE PARTY PROVIDING THE CONTRACT DOCUMENTS SHALL INDEMNIFY, DEFEND (WITH COUNSEL AGREEABLE TO INDEMNITEE), AND HOLD HARMLESS THE OTHER PARTY FROM ANY CLAIM OF COPYRIGHT INFRINGEMENT, INTELLECTUAL PROPERTY, OR OTHER PROPRIETARY RIGHTS OF ANY THIRD PARTY ARISING FROM THE USE OF, OR REFERENCE TO, ANY SCHEMATIC DRAWINGS, SKETCHES, PLANS OR SPECIFICATIONS PROVIDED BY ANY PARTY AND USED TO CONSTRUCT THE IMPROVEMENTS.** Either party, at its option, may conduct its own defense without invalidating the terms of the foregoing indemnity. Unless identified in writing, Owner shall have no ownership rights in the Plans and Specifications supplied by Builder.

F. FINAL INSPECTION. Within (5) five days of Substantial Completion, Owner shall conduct a walk-through of the Improvements with Builder and

deliver to Builder the Final Punch List. Any punch list prepared or inspection performed by or on behalf of Owner shall be limited to whether the Improvements were constructed in accordance with the Contract Documents. **IF OWNER FAILS TO PROVIDE A PUNCH LIST AS REQUIRED, OWNER ACKNOWLEDGES THE IMPROVEMENTS (1) HAVE BEEN CONSTRUCTED IN COMPLIANCE WITH THE PLANS AND SPECIFICATIONS, (2) ARE COMPLETE, AND (3) WAIVES THE EXISTENCE OF ANY PUNCH LIST ITEMS.** Upon Builder's completion of all punch list items, Owner agrees and acknowledges that the Improvements have been constructed in full compliance with the Contract Documents and that Builder is released from any liability for claims that arose prior to Final Payment, including, but not limited to non-latent defects in the construction of the Improvements. With the exception of any inspector hired on behalf of Owner's lender, if Owner uses a private inspector to inspect the Property, the inspector must maintain all business licenses required by law and general liability and professional liability errors and omissions insurance with policy limits of at least \$500,000 per occurrence. Builder shall not be obligated to any building code or standard not specifically required by the applicable municipality or Builder Warranty (Limited). If the Owner's inspector identifies any deficiencies in the construction of the Improvements, Owner shall provide Builder the complete report specifying such deficiencies. Owner shall be responsible for all third-party inspections requested by Owner. Owner shall not withhold any final payment to Builder due to incompleteness of punch list items.

G. BUILDER'S RELIANCE ON CONTRACT DOCUMENTS AND WARRANTY OF DESIGN DOCUMENTS. If all or any portion of the Contract Documents are provided or prepared by Owner or Owner's Design Professionals, in addition to Texas law, Owner warrants to Builder that (1) such Contract Documents are suitable and sufficient for construction of the Improvements and comply with applicable building codes, (2) Owner shall be responsible for any errors or omissions in the Contract Documents and any damages that may arise therefrom, and (3) Owner shall be responsible for designing such Contract Documents in accordance with accepted industry standards from licensed or registered designers (including interior), architects, engineers, surveyors, and landscape architects as applicable (Design Professionals). However, as required by Texas law, in the event Builder in its role as a contractor identifies errors in the Contract Documents, Builder will promptly advise Owner and its' Design Professionals. Any changes or corrections due to deficient Contract Documents provided by Owner or Owner's Design Professionals that necessitate additional expense or delays shall be administered as a Change Order. Builder shall not be liable for any claims arising from Builder's reliance on those portions of the Plans, Specifications, or other Contract Documents prepared by Owner and Owner's Design Professionals. **BUILDER MAKES NO WARRANTY TO OWNER AND DISCLAIMS ALL LIABILITY REGARDING THE QUALITY OR SUFFICIENCY OF THOSE CONTRACT DOCUMENTS PREPARED BY OWNER OR OWNER'S DESIGN PROFESSIONALS.** Moreover, if Owner provided plans do not include a geotechnical report, or Owner refuses to pay for a geotechnical report, Owner waives any and all claims against Builder for any structural problems, including but not limited to the foundation, and any resulting cosmetic damages.

H. WAIVER OF SUBCONTRACTORS & SUPPLIERS. **OWNER IS NOT REQUIRED TO WAIVE THE RIGHT GRANTED BY TPC § 53.256 TO RECEIVE FROM BUILDER AN ORIGINAL OR UPDATED LIST OF SUBCONTRACTORS AND SUPPLIERS. BY SIGNING THIS CONTRACT, OWNER WAIVES OWNER'S RIGHT TO RECEIVE FROM BUILDER AN ORIGINAL OR UPDATED LIST OF SUBCONTRACTORS AND SUPPLIERS. OWNER UNDERSTANDS AND ACKNOWLEDGES THAT AFTER SIGNING THIS DOCUMENT THIS WAIVER MAY NOT BE CANCELLED AT A LATER DATE. OWNER HAS VOLUNTARILY CONSENTED TO THIS WAIVER.** However, upon Final Completion, upon written request, Owner will be provided with the necessary

**Subcontractors information for warranty purposes. Such failure to do so by Builder is not a material breach.**

I. USED, ANTIQUE, OR REPURPOSED MATERIALS. Builder shall not be liable for, required to warrant, or otherwise be responsible for any defects in or damages caused by or to used, antique, reclaimed wood, or repurposed materials that Owner requested be incorporated into the Improvements.

J. UTILITIES. Owner shall make available to Builder at the Property and pad site, those utilities and utility connections called for in the Contract Documents. Unless indicated herein, all expenses incurred during construction for utility expenses, utility connection fees, and making such utilities available to Builder at the Property and pad site shall be paid by Owner. If any utilities required to be installed at the Property are not identified in the Contract Documents, any substitution or installation of such utility shall be administered as a Change Order at Owner's expense. Because utilities are controlled by third parties, Builder does not warrant or guarantee the installation and availability of utilities, including, but not limited to, telephone, cable, satellite television, streaming services, solar panels, gas, electricity, water, or internet by Substantial Completion. The final location of utility lines and boxes may not be determined and installed after Substantial Completion and is solely under the franchise utilities' control.

K. SURVEY. Owner, at Owner's expense, shall provide Builder with Owner's current survey of the Property, a form board survey, and such other surveys (including new surveys of the Property) as Builder requests. Owner shall bear responsibility for errors in such surveys unless indicated otherwise in the Contract Documents.

L. OWNER'S SUBCONTRACTORS & SUPPLIERS. Owner shall not do or cause any work to be performed or alter any portion of the Improvements, whether complete or incomplete, prior to Final Payment. Should Owner contract with anyone other than Builder, including Builder's subcontractors, to perform work at or supply materials to the Property prior to Final Payment, Builder will not be required to pay for, warrant, repair, insure, supervise, or correct any work performed or materials provided by such persons, or damages arising therefrom, even if the monies to pay such persons were directed through Builder; such monies are subject to Builder's Fee.

M. APPROVALS & DEED RESTRICTIONS. While Builder will assist Owner if possible, Owner shall be solely responsible for (1) ensuring that the Contract Documents provided by Builder, Owner, or Owner's Design Professionals comply with any governmental authority, deed restrictions, architectural review committee, and property owner's association (Restrictions) and all costs thereof and (2) any costs, expenses, or damages that may arise if the Contract Documents fail to satisfy such conditions and restrictions. Further, Owner shall be solely responsible for directing or causing Builder to perform in contradiction of any Restrictions, whether known or unknown at the time of Owner's directive.

N. FIRE SPRINKLER. Unless otherwise provided herein, Owner acknowledges that the Contract Documents do not require, and Owner is not requesting, Builder to install a multipurpose residential fire protection sprinkler system or any other fire sprinkler protection system, as those terms are defined in TEX. OCCUP. CODE § 1301.551.

O. INSULATION. The thickness of insulation in certain areas may be less than specified if the design of the Improvements or structural elements does not permit greater thicknesses. Examples of where the thickness of the insulation, and therefore R-values, may vary are wall stud locations, corners, windows, where roof rafters attach to outside walls, and locations purposefully not insulated so as to maximize ventilation.

P. ENERGY CLAIMS. Owner acknowledges that any verbal or written statements made by Builder relating to the energy efficiency, energy

consumption, energy savings, or energy costs of the Property or Improvements were estimates only, including but not limited to solar panel systems, and were developed by third parties based upon the design of the Improvements and various indices. Actual energy savings will vary due to, among other factors, construction variances, floor plan, occupancy, appliance usage, thermostat settings, weather conditions, maintenance, and orientation of the Improvements or Property. Builder provides no guarantee of any energy savings that will be achieved through construction of the Improvements.

Q. SQUARE FOOTAGE. Owner acknowledges that the total square footage and individual dimensions on the Contract Documents or any other document are approximations and should not be construed to indicate certainty. Builder makes no guarantee or warranty regarding the precise or actual square footage of the Improvements. In this regard, elevations and floor plans are merely conceptual, and actual construction will be performed according to the Contract Documents and in all events shall be subject to field adjustments as deemed appropriate by Builder. Garage sizes may vary and may not accommodate all vehicles. Should precise square footage measurements be necessary to Owner, an architect of Owner's choosing, at Owner's cost, should be consulted.

R. INSTALLATION OF SWIMMING POOL & DECKING. Owner acknowledges that should Owner choose to install a swimming pool, decking, and landscaping, that such installation will likely have an adverse impact on the foundation and drainage and could void the Builder Warranty. Builder has constructed the Improvements in accordance with recommendations that require positive drainage away from the foundation. Should Owner choose to install a swimming pool, decking, or landscaping, Owner acknowledges that it may be necessary to relocate certain electrical lines that run underground, regrade the Property, and Owner agrees to be solely responsible for any and all costs associated therewith. Unless approved in writing by a licensed engineer, the edge of the pool shell shall be no closer than 5 (five) feet from any portion of the foundation.

S. MAILBOXES. Owner agrees and acknowledges that the United States Postal Service ("USPS") has final decision making authority on the final location, design, and construction of mailboxes. Builder agrees to cooperate with the USPS on that final location.

### 3. COMMENCEMENT & COMPLETION.

A. COMMENCEMENT. Builder shall start construction within thirty (30) days after the last event to occur: (1) Owner is approved for construction financing, (2) all lender required documents, if any, have been recorded, (3) Owner has obtained all necessary approvals, including those required from a homeowners' association, architectural review committee, or similar committee or association, (4) Owner has provided Builder with a current survey, applicable deed restrictions, and any easements that encumber the Property, and (5) the issuance of all building permits and required approvals (Commencement Date). Builder and Owner acknowledge that Builder has not started construction of the Improvements as of the Effective Date.

B. COMPLETION. Builder shall use reasonable efforts to reach Substantial Completion by the Estimated Completion Date on page 1, subject to the Permitted Delays and as amended by Change Order. If the Commencement Date and the Effective Date are not the same, the Estimated Completion Date shall be extended automatically and without notice, by the amount of time between such dates. **HOWEVER, BUILDER DOES NOT WARRANT SUBSTANTIAL COMPLETION WILL OCCUR BY THE ESTIMATED COMPLETION DATE AND OWNER RELEASES BUILDER FROM ALL DAMAGES, DIRECT, CONSEQUENTIAL, OTHERWISE, INCURRED BY OWNER FOR ANY DELAY, WHETHER OR NOT EXCUSABLE, IN FAILING TO REACH SUBSTANTIAL COMPLETION WITHIN A REASONABLE PERIOD OF TIME OR BY THE ESTIMATED**

### **COMPLETION DATE, WHETHER REQUIRED BY THIS CONTRACT OR OTHER AGREEMENT OF THE PARTIES.**

C. PERMITTED DELAYS. The Commencement Date and Estimated Completion Date shall be extended by the same period of time encompassed by any one or more of the following causes: (1) delays caused by conditions beyond the control of Builder; (2) the unavailability of required materials, labor, and services from Subcontractors, (3) interference by, disputes with, or delays caused by Owner or other subcontractors employed by Owner, (4) Change Orders, (5) fire, casualty, or acts of God, epidemics, pandemics, emergency governmental orders, (6) inclement weather that interferes with normal scheduling of the construction of the Improvements, (7) failure of Owner to promptly fund draw requests, (8) to timely make decisions or selections of allowance items as required by Builder, or (9) other unforeseen conditions.

4. CHANGE ORDERS. A Change Order is a written agreement or electronic communications (including entry or posting in software construction programs in which both Owner and Builder have access) which states the material terms of the change between Owner and Builder to make changes, additions, or deletions to the Plans or Specifications. Builder shall be entitled to receive the specific price for the labor, materials, and other charges (and additional days to the Estimated Completion Date) that are attributable to one or more Change Orders, whether stated in the Change Order or otherwise in writing. If Builder agrees to perform the extra work required by a Change Order (and it has no present obligation to do so), the price included in the Change Order will be treated as an increase in the Total Contract Price. The Change Order shall be paid in full when executed/signed by the Parties. Any payment by Owner toward the Change Order, even partial payment evidenced the Owner's acceptance of that change order. Owner agrees that any Owner signatory to this Contract can authorize and approve a Change Order. Each Owner signatory is designated an attorney-in-fact for any other Owner signatory for this purpose, and Builder is entitled to rely and act on any such Change Order signed by any Owner signatory. If the increase in the Total Contract Price for a Change Order cannot be ascertained before commencement of the extra work, an allowance shall be created for the Change Order with the increase being estimated, and that amount deposited with Builder. Builder shall not be required to commence the work called for in the Change Order until the specified or estimated increase in the Total Contract Price is paid in full. To the extent of a conflict between a Change Order and the Contract Documents, the Change Order shall control. Any proposed Change Order that is not approved by Owner within (5) five calendar days after Owner's receipt may be deemed rejected by Builder. Any deductive Change Order shall not reduce the Builder's Fee and shall be accounted for at Final Payment. Additionally, from time to time during construction, it may be necessary to issue a change order of necessity due to changes in laws, interpretations or decisions made by the Owner that changes the construction. Owner agrees to cooperate with Builder to sign a Change Order in such instances and any Change Order of necessity specifically identified in this contract will be considered valid. If Owner approves a Change Order by any means including but not limited to; email, text, written, online software portal and/or by making partial payment and later chooses to request a cancellation of the Change Order, there is no guarantee the cancellation can be processed or honored. In some cases, even if a cancellation can be processed there are still costs incurred by the Builder which Owner will be liable for even if work is not completed.

5. Owner's Forces. If the Owner hires other forces, Owner agrees to pay Builder a fixed builder's fee for coordination and damages, interferences, drainage, modified drainage warranty void, create additional drainage costs, or any repairs. Further, Owner agrees to INDEMNIFY, DEFEND (with counsel acceptable to Builder) and HOLD HARMLESS Builder Parties as defined in Section 7A from any and all causes, claims, judgments, award caused in full or in part by Owner's Forces except as limited by Texas law and Texas Insurance Code 151.

6. **ALLOWANCES.** The Parties have agreed to specific budgets for certain items to be incorporated into the Improvements (Allowances). The sums allocable to each Allowance are included within the Total Contract Price. Each Allowance includes the component costs of material and labor, sales tax, delivery, shipping costs, and other costs associated with procurement. These Allowances are also premised on the understanding that purchases will be made from Subcontractors who Builder typically uses and do not contemplate the payment of deposits, service fees, cost escalations, or the delays that may be encountered when other suppliers are used. As Builder incurs material and labor costs with respect to a specific Allowance, those costs shall be applied against the applicable Allowance. If an Allowance for any item is exceeded, the overage shall constitute an automatic increase in the Total Contract Price upon written notice and invoice from Builder of such increase without the need for a formal Change Order. Owner shall pay to Builder any overages on an Allowance upon Builder's request. Owner is solely responsible for and not relying on any representations from Builder regarding the adequacy of the Allowance amounts since the sums to be spent are determined ultimately by Owner's subjective considerations of quality, style, and functionality. Any savings resulting from reduced expenditures for Allowance items shall NOT be credited against the Final Payment

7. **CONSTRUCTION HAZARDS & HAZARDOUS MATERIALS.**

A. **CONSTRUCTION HAZARDS.** Owner, Owner's children, family members, neighbors or friends shall not enter the Property without a Builder's representative present. If Owner or Owner's children, family members or friends, Owner's subcontractors, suppliers, invitees, representatives, or agents (Owner Parties) enter the Property, **OWNER SHALL INDEMNIFY, RELEASE, DEFEND (USING ATTORNEYS APPROVED BY BUILDER), AND HOLD HARMLESS BUILDER, ITS DIRECTORS, OFFICERS, SHAREHOLDERS, MEMBERS, MANAGERS, PARTNERS, SUBCONTRACTORS, SUPPLIERS, INVITEES, EMPLOYEES, REPRESENTATIVES, AND AGENTS (BUILDER PARTIES) FROM ANY CLAIMS, ATTORNEYS' FEES, OR CAUSES OF ACTION BELONGING TO THE OWNER PARTIES OR THEIR HEIRS DUE TO PROPERTY DAMAGE (REAL OR PERSONAL) OR BODILY INJURY (INCLUDING DEATH) RELATED IN ANY WAY, DIRECTLY OR INDIRECTLY, TO THE CONSTRUCTION OF THE IMPROVEMENTS, CONDITION OF THE IMPROVEMENTS OR PROPERTY, OR THE OWNER PARTIES' ENTRY ONTO THE PROPERTY OR THE IMPROVEMENTS, REGARDLESS OF WHETHER THE BUILDER PARTIES ARE NEGLIGENT FOR ANY REASON, IN WHOLE OR IN PART, AND EVEN WHEN THE INJURY, DEATH OR DAMAGE TO THE OWNER PARTIES IS CAUSED BY THE SOLE NEGLIGENCE OF THE BUILDER PARTIES.**

B. **NATURAL VEGETATION.** Builder does not guarantee that native or pre-existing trees, lawn, or other vegetation will survive construction of the Improvements. **THEREFORE, OWNER RELEASES BUILDER FROM ANY DAMAGES TO SUCH VEGETATION THAT OCCUR ALL OR IN PART AS A RESULT OF THE BUILDER PARTIES' NEGLIGENCE.**

C. **HAZARDOUS MATERIALS.** Builder shall not be required to perform any work relating to Hazardous Materials. The term Hazardous Materials means substances, materials or waste the generation, handling, storage, treatment or disposal of which is regulated by any local, state or federal government authority or Laws, as a hazardous waste, hazardous material, hazardous substance, pollutant or contaminant and including, without limitation, those designated as a hazardous substance under § 311 or § 307 of the Clean Water Act (33 U.S.C. §§ 1321, 1317), defined as a hazardous waste under § 1004 of the Resource Conservation and Recovery Act (42 U.S.C. § 6903), or defined as a hazardous substance under § 101 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9601), and, including, without limitation, petroleum products and byproducts, PCBs and asbestos. **OWNER SHALL INDEMNIFY, DEFEND (USING ATTORNEYS APPROVED**

**BY BUILDER), AND HOLD HARMLESS THE BUILDER PARTIES FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES, AND ATTORNEYS' FEES, ARISING OUT OF OR RESULTING FROM PERFORMANCE OF THE WORK IF ANY HAZARDOUS MATERIAL NOT BROUGHT ONTO THE PROPERTY BY BUILDER HAS NOT BEEN RENDERED HARMLESS.** Notwithstanding anything herein to the contrary, Owner shall be solely responsible for payment of all costs related to the removal or clean-up of Hazardous Materials. Provided, however, Builder shall be responsible for any hazardous materials brought to or released upon the Property by Builder and similarly indemnify Owner with regard to any claims for damages or cleanup costs as a result of Builder-originated or caused Hazardous Material releases.

D. **ENVIRONMENTAL RISK.** Builder makes no warranties, express or implied, about 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 soil conditions and contamination of the Property or the surrounding air, water or soil from any sources or in any manner.

8. **INSURANCE.** Prior to the Commencement Date, Builder shall obtain the insurance required herein. Builder shall not be obligated to carry worker's compensation insurance as such is not required by Texas law. Builder shall name Owner as a loss payee on the Builder's Risk policy. Once Substantial Completion is achieved, Builder may terminate the insurance and for the care, maintenance, and condition of the Property and Improvements. Owner further agrees that if Builder or Owner file a claim under any insurance policy required by this Contract, Owner shall be solely responsible for the cost of any deductible not to exceed \$5,000.00 for non-hail claims, and not to exceed \$10,000.00 for hail claims (save and except if the cause for filing such claim is due solely to Builder's gross negligence). Please note deductibles can vary by type of claim. Owner agrees to consult with Owner's insurance professionals and obtain such insurance that Owner deems prudent and necessary to insure Owner against all claims that may arise out of the construction of the Improvements. Unless approved by Builder in writing, Owner shall not be permitted to provide the Builder's Risk insurance. Builder is not liable to repair any item submitted for a claim that Builders Risk Insurance Carrier does not find to be an insurable event.

9. **WARRANTY.** Builder shall warrant the Improvements according to the Builder Warranty (Limited) and, if applicable, per the warranty provided by the Third-Party Warranty Company (Third-Party Warranty) (collectively, Limited Warranty). Owner acknowledges, understands, and agrees that the only warranty given by Builder to Owner regarding the Improvements is the Limited Warranty. Owner acknowledges that the terms of the Limited Warranty provide for the manner, performance, or quality of the desired construction and are clear, specific, and sufficiently detailed to establish the only standards of construction. **TO THE EXTENT PERMITTED BY LAW, OWNER WAIVES ANY CAUSE OF ACTION UNDER ALL IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTY OF GOOD AND WORKMANLIKE CONSTRUCTION, IMPLIED WARRANTY OF HABITABILITY, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE AND STIPULATES THAT SUCH IMPLIED WARRANTIES ARE EXPRESSLY REPLACED BY THE LIMITED WARRANTY.** In the event that the Builder Warranty (Limited) does not specify a building or performance standard, the condition shall be evaluated under the edition of the Residential Construction Performance Guidelines published by the National Association of Home Builders in effect as of the Commencement Date (NAHB Guidelines 6<sup>th</sup> ed). Should such condition not be covered by the Builder Warranty (Limited) or NAHB Guidelines, then such condition shall be evaluated according to the usual and customary industry standards in the county where the Property is located. If a conflict exists between the Third-Party Warranty and the Builder Warranty (Limited) with the exception of the



length of time of the respective warranty, the Third-Party Warranty shall control as to the conflicting terms or standards only. All warranties on Manufactured or Consumer Products are assigned, without recourse. Builder makes no warranties of any kind, express or implied, concerning Manufactured or Consumer Products and expressly disclaims all implied warranties of merchantability, fitness, or use for a particular purpose, and any other warranties to the fullest extent permitted by state or federal law.

#### 10. DISPUTE RESOLUTION.

A. CONCILIATION PROCESS. One of the benefits of hiring a Certified Master Builder is their long-standing process of conciliation before the parties seek legal advice. This is a service provided free of charge by the Certified Master Builder Corporation (CMBC). The parties agree that before they mediate, arbitrate or proceed with any legal action that they will engage in and complete the Reconciliation Process through CMBC (the "Process"). Failure to complete the Process prior to initiating Mediation or Arbitration will be remedied by the Arbitrator abating the mediation and arbitration until the parties complete the Process, unless waived in writing by the Parties.

B. MEDIATION. If a dispute arises out of or relates to this Contract and it cannot be settled through Conciliation or other informal processes, either party upon their election shall require the other party to mediate their dispute no later than 60 days prior to the arbitration hearing. However, the parties may by written agreement choose to mediate before any party initiates arbitration proceedings. If the parties cannot agree on a mediator, either party may file a court proceeding for the sole purpose of the court to appoint a mediator. The parties shall share the costs of the mediator equally.

C. ARBITRATION. If mediation does not resolve the dispute, any dispute or claim arising out of or relating to this Contract, the breach thereof, construction of the Improvements, property damage (real or personal), personal injury (including death) resulting therefrom, representations made by the Builder Parties (as defined in Section 7A), or the scope, arbitrability (including the validity or existence of an enforceable arbitration agreement or claims within scope), (Dispute), shall be brought by the parties in their individual capacity and not as a plaintiff or class member in any purported class or representative capacity, and settled by binding arbitration before a single arbitrator administered by the American Arbitration Association (AAA) per its Construction Industry Arbitration Rules in effect at the time the demand for arbitration is filed. Any claim brought in arbitration that is less than \$100,000.00 (exclusive of attorneys' fees, interest, and costs) shall be brought pursuant to the current AAA fast track procedures set forth in the AAA Construction Industry Arbitration Rules. On application of either party, the arbitrator may issue a temporary restraining order, temporary injunction, or protective order per the applicable procedural rules, statutes, and common law of Texas, which the parties agree shall be as enforceable as if it had been issued by a court of this state. Judgment on the arbitration award may be entered in any federal or state court having jurisdiction thereof. No award shall exceed the amount of the claim by either party and the arbitrator shall have no authority to award punitive or exemplary damages. If the Dispute cannot be heard by the AAA for any reason, the Dispute shall be heard by an arbitrator mutually selected by the parties. If the parties cannot agree upon an arbitrator, then either party may petition an appropriate court to appoint an arbitrator. Arbitration shall be subject to 9 U.S.C. § 1 et seq. and Chapter 171 of the Texas Civil Practice and Remedies Code. If either party files suit in violation of this paragraph (except to toll the statute of limitations), such party shall reimburse the other for their costs and expenses, including attorneys' fees, incurred in seeking abatement of such suit and enforcement of this paragraph. Any arbitrator appointed hereunder shall be a licensed Texas attorney who concentrates, not necessarily board certified, in construction law. Save and except to

Builder \_\_\_\_\_ Owner \_\_\_\_\_

preserve the statute of limitations, if Builder provides Owner a warranty from the Third-Party Warranty Company (the "Company") Owner agrees that it shall be a condition precedent to requesting mediation, filing suit, or demanding arbitration that Owner has filed a claim with the Company and received a final response with respect to such claim.

D. WAIVER OF JURY TRIAL. OWNER AND BUILDER KNOWINGLY AND VOLUNTARILY, WITH FULL AWARENESS OF THE LEGAL CONSEQUENCES, WAIVE THEIR RIGHT TO JURY TRIAL OF ANY DISPUTE. AND AGREE TO BINDING ARBITRATION.

E. NON-DISPARAGEMENT AND DEFAMATION. THE PARTIES MUTUALLY AGREE NOT TO DISPAGE OR DEFAME EACH OTHER IN ANY WAY AND IN ANY FORUM, INCLUDING SOCIAL MEDIA SITES AND THE INTERNET. SUCH ACTIONS SHALL ENTITLE THE NON-DEFAMING OR NON-DISPARAGING PARTY TO INJUNCTIVE RELIEF WITHOUT WAIVING ARBITRATION RIGHTS.

#### 11. TERMINATION, DEFAULT, & REMEDIES.

A. OWNER DEFAULT. Each of the following constitutes an Owner Act of Default and a material breach of this Contract by Owner: (1) Owner unreasonably delays or interferes with Builder in the commencement, prosecution, or completion of the Improvements; (2) Owner's failure to provide evidence of Owner's ability and continued ability to pay the Total Contract Price; (3) Owner fails to execute a Change Order required herein or to change or correct any deficiencies in the Contract Documents; (4) Owner shall file a voluntary or involuntary petition for bankruptcy; (5) Owner fails to pay all or any part of a draw request, Change Order, or the Total Contract Price when due; (6) Owner moves in to the Property prior to Substantial Completion without Builder's written consent; or (7) Owner commit a breach any other material obligation contained herein.

B. BUILDER DEFAULT. Each of the following constitutes a Builder Act of Default and a material breach of this Contract by Builder: (1) Builder abandoned the Project for more than three (3) weeks without written explanation or legal justification; (2) Builder shall file a voluntary or involuntary petition in bankruptcy or (3) Builder commit a material breach of an any provision of this Contract.

C. NOTICE OF DEFAULT. Except where excluded herein, if a party hereto commits an Act of Default, the non-defaulting party shall provide notice of default to the defaulting party and ten (10) days to cure prior to exercising any remedy provided herein or at law. If such Act of Default is not cured following notice, the non-defaulting party may terminate this Contract for cause upon notice to the defaulting party.

D. OWNER'S REMEDIES. Owner's exclusive remedies due to a Builder Act of Default are limited to termination of this Contract, to take possession of the Property, the return of any sums Owner paid Builder that were not used to pay for construction of the Improvements, if any, and the reasonable cost to repair Builder's defective or substandard work per TPC, Chapter 27. If Builder fails to reach Substantial Completion within a reasonable period of time after the Estimated Completion Date, following written notice and sixty (60) days to cure, Owner, as its sole and exclusive remedy, may terminate the Contract. In such event, Owner shall remain liable to pay Builder for all unreimbursed materials purchased or ordered, all work performed through the date of termination, and that amount representing Builder's Fee, which shall be proportionate to the work performed through the date of termination.

E. BUILDER'S REMEDIES. Builder's remedies due to an Owner Act of Default shall be limited to termination of this Contract and (1) recovery of all damages suffered by Builder, including, but not limited to, payment for all materials, labor, profit, overhead and fees with respect to this Contract, (2) retention of all unused sums previously paid by Owner to Builder as liquidated

damages, (3) filing or foreclosure of any mechanic's and materialmen's lien as authorized by law and (4) fees and costs, including attorneys' fees, associated with the enforcement of the Contract or any remedy herein. Builder may retain and offset any amounts on deposit with Builder from Owner for damages accruing under this Contract.

F. LIMITATION OF CLAIMS & REMEDIES. IN NO EVENT SHALL ANY DAMAGES, INCLUSIVE OF ATTORNEYS' FEES AND ARBITRATION FEES, AWARDED TO OWNER PURSUANT TO ANY CAUSE OF ACTION EXCEED THE TOTAL CONTRACT PRICE. FURTHER, OWNER AND BUILDER RELEASE EACH OTHER FROM ANY SPECIAL, INDIRECT, CONSEQUENTIAL, OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, DELAY DAMAGES, MENTAL ANGUISH, DIMINUTION OF VALUE, STIGMA, LOSS OF USE, OR ADDITIONAL INTEREST, FORESEEABLE OR NOT, ARISING OUT OF OR IN CONNECTION WITH ANY CAUSE OF ACTION THAT RELIES IN WHOLE OR IN PART ON THIS CONTRACT OR THE WORK PERFORMED BY BUILDER HEREUNDER. OWNER AND BUILDER FURTHER WAIVE THE REMEDIES OF SPECIFIC PERFORMANCE AND RESCISSION. IN THE EVENT AN ARBITRATOR AWARDS SUCH DAMAGES CONTRARY TO THIS SECTION G, THE FAILURE TO COMPLY WITH THIS SECTION G SHALL PROVIDE THE BUILDER A CONTRACTUAL GROUND TO VACATE THE AWARD IF BUILDER MEETS THE NECESSARY BURDEN AT THE TRIAL COURT.

G. LIMITATION OF ACTION. Any lawsuit in any way arising out of the construction of the Improvements must be brought within two years and one day of the date the cause of action accrues. THE PARTIES WAIVE ALL CAUSES OF ACTION AGAINST EACH OTHER NOT COMMENCED IN ACCORDANCE WITH THIS SECTION. ANY APPLICABLE STATUTE OF LIMITATIONS SHALL COMMENCE TO RUN AND ANY ALLEGED CAUSE OF ACTION ARISING HEREUNDER SHALL BE DEEMED TO HAVE ACCRUED IN ALL EVENTS NO LATER THAN THE DATE OF SUBSTANTIAL COMPLETION. All parties agree that claims may only be made towards the parties of the contract directly related to the claims.

H. WAIVER OF SUBROGATION. TO THE EXTENT PERMITTED BY LAW, OWNER AND BUILDER WAIVE AND RELEASE EACH OTHER FROM ANY LIABILITY OR RESPONSIBILITY TO EACH OTHER, THEIR RESPECTIVE INSURANCE CARRIERS, OR ANYONE CLAIMING BY, THROUGH, OR UNDER THEM BY WAY OF SUBROGATION OR OTHERWISE, FOR ANY LOSS OR DAMAGE TO PROPERTY (REAL OR PERSONAL) OR THE IMPROVEMENTS CAUSED BY FIRE OR ANY OTHER CASUALTY, EVEN IF SUCH CASUALTY SHALL HAVE BEEN CAUSED BY THE FAULT OR NEGLIGENCE OF THE BUILDER PARTIES. IN THE EVENT OWNER'S INSURER DOES FILE A SUBROGATION CLAIM AGAINST BUILDER IN VIOLATION OF THIS PROVISION, OWNER SHALL DEFEND (WITH COUNSEL ACCEPTABLE TO BUILDER), INDEMNIFY AND HOLD HARMLESS THE BUILDER PARTIES FROM ALL CLAIMS, CAUSES OF ACTIONS, LAWSUITS, ARBITRATIONS, AND ANY DAMAGES ALLEGED AGAINST BUILDER,, INCLUDING BUT NOT LIMITED TO ATTORNEY'S FEES, COURT COSTS, AND ARBITRATION FEES.

I. PERSONAL LIABILITY. Owner acknowledges and agrees that this Contract is entered into only between Owner and Builder. Further, Owner agrees that any correspondence, signage, marketing materials, websites, vendor agreements or invoices, newsletters, literature, business cards, checks, or any other document, sign, or materials published or maintained by Builder at any time shall not amend the parties to this Contract. TO THE FULLEST EXTENT PERMITTED BY LAW AND NOTWITHSTANDING ANY OTHER PROVISIONS TO THE CONTRARY, IN NO EVENT SHALL ANY OF BUILDER'S PARTNERS, OFFICERS, DIRECTORS, SHAREHOLDERS, MANAGERS, MEMBERS, AGENTS, REPRESENTATIVES, OR EMPLOYEES HAVE ANY PERSONAL

**OBLIGATION OR LIABILITY FOR ANY TERMS, COVENANTS, REPRESENTATIONS, AGREEMENTS, OR WARRANTIES CONTAINED HEREIN (WHETHER EXPRESSED OR IMPLIED), ALL SUCH PERSONAL LIABILITY BEING EXPRESSLY WAIVED BY OWNER.** Owner agrees that no other parties or persons shall be liable hereunder except for Owner and Builder and Owner shall only look to Builder for satisfaction of Builder's obligations set forth herein.

J. TERMINATION FOR CONVENIENCE. In addition to termination due to Owner's default, in its reasonable discretion, Builder may terminate this Contract for convenience and without regard to fault or breach by providing notice to Owner. Except as otherwise provided for in this paragraph, neither party shall have any further rights, obligations, or liabilities to the other under this Contract. It being the intent of the parties that upon termination of the Contract pursuant to this paragraph K, the only remaining claims Owner will have against Builder shall arise out of the Builder Warranty (Limited) with respect to that work performed up to Builder's termination of the Contract. Within ten (10) days after termination under paragraph K, Builder shall submit a final draw request to Owner, which may request payment for all unreimbursed materials purchased or ordered, all work performed through the date of termination, and that amount representing Builder's Fee, which shall be proportionate to the work performed. Within five (5) calendar days of Owner's receipt of such final draw request, Owner shall tender payment to Builder. In the event Owner fails to timely tender payment to Builder, Owner shall immediately be deemed in default and material breach without any further notice requirements by Builder and Builder will be entitled to all available remedies. To the extent that the Cash Deposit, if any, has not been applied towards the Total Contract Price, such deposit shall be applied to those amounts owed pursuant to this paragraph with the balance, if any, refunded to Owner. Builder reserves the right to convert any termination of this Contract into a termination for convenience under paragraph K. Builder is not obligated to provide advanced notice to Owner (1) prior to terminating the Contract pursuant to this paragraph or (2) if Owner fails to remit payment following termination.

12. CASUALTY LOSS. If any part of the Property is damaged or destroyed by fire or other casualty after the Effective Date and prior to Substantial Completion and payment of the Total Contract Price, Owner shall remain obligated to pay Builder for all work performed, materials supplied, and that amount representing Builder's profit, which shall be proportionate to the amount of work performed. If Owner decides to rebuild the Improvements following the casualty loss, such election shall be communicated to Builder in writing within thirty calendar days of such casualty and Owner and Builder shall execute a separate agreement setting forth the terms. Builder shall have no liability to Owner for any expenses or damages resulting from any delay in completion due to such casualty.

13. NOTICES.

A. EXPANSIVE SOILS. Soils conditions vary greatly throughout Texas. Cracks will appear in all foundations to a varying degree due to the concrete curing process and the movement of the slab caused by seasonal moisture changes in the soil. As a result, Owner shall (1) keep consistent moisture levels around and beneath the foundation, (2) ensure no puddles exist around the foundation during rains and fill in low spots with dirt so that water drains away from the home, (3) keep downspout extensions and splash blocks, if provided, in place and in good condition, (4) install full gutting around the home, with downspouts that extend at least three feet away from the foundation, and keep it clean and in good repair, (5) not change the grade of the soil around your foundation by building planters, raised beds, or otherwise blocking construction which changes the drainage around the house, (6) be certain that all paving or patio slabs abutting your home slope away from the foundation, (7) be cautious in planting of trees, shrubs, and plants since they

can cause foundation problems if they are too close to the house, (8) water the yard as needed to maintain a proper moisture level,(9) not allow water or sewer leaks of any type to continue, and (10) maintain adequate drainage around the perimeter of the home. The foregoing is not a warranty from Builder and Owner is encouraged to engage appropriate and competent professionals regarding such matters.

**B. TEXAS PROPERTY CODE § 27.007.** The Contract is subject to Chapter 27 of the TPC. The provisions of that chapter may affect your right to recover damages arising from the performance of this Contract. If you have a complaint concerning a construction defect arising from the performance of this Contract and that defect has not been corrected through normal warranty service, you must provide notice required by Chapter 27 of the TPC to Builder by certified mail, return receipt requested, not later than the 60<sup>th</sup> 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 Builder, you must provide Builder an opportunity to inspect and cure the defect as provided by TPC § 27.004.

**C. SUFFICIENCY OF CONTRACT.** Prior to executing this Contract, Owner and Builder should consult with their attorney regarding the sufficiency of this Contract, whether it complies with applicable law, and whether it is appropriate for this transaction. The promulgation of this Contract in no way implies compliance with the law, it is appropriate for any transaction, or creates an attorney-client relationship.

**D. CONSTRUCTION MORTGAGE.** This Contract constitutes a Construction Mortgage pursuant to TEX. BUS. & COMM. CODE § 9.313. Builder may record this document in the real property records of the county in which the Property is located.

#### **14. MISCELLANEOUS.**

**A. BROKER COMMISSION.** No real estate commission shall be paid hereunder unless a Broker's Fee Addendum has been executed.

**B. INDEPENDENT CONTRACTOR.** It is the intention of the parties that Builder occupies the status of an independent contractor and that (1) Builder shall not occupy the status of an agent, servant, or employee of Owner; (2) the relationship between Builder and Owner shall not be that of a partnership, joint venture, or other similar association, and (3) all Subcontractors and suppliers are independent contractors and not Builder's employees.

**C. NOTICES.** Any notice, request, demand, instruction or other communication to be given to either party hereunder or otherwise shall be in writing, and shall be deemed to be received (1), if hand delivered or delivered by express delivery service, upon receipt, (2) if mailed by registered or certified mail, return receipt requested, when postmarked by the postal service, or (3) upon electronic transmission (including posts in construction software programs) the authorized representative of Owner or Builder. All notices should be addressed to the contact information identified in the signature block but if no address is identified for Owner, then to the Property.

**D. ASSIGNMENT, CONFLICTS & INVALIDITY OF PROVISION.** This Contract may not be assigned without the written consent of all parties. If there is a conflict between this Contract, any mechanic's lien note, mechanic's lien contract, or lender document, this Contract shall control. If any term, provision, covenant, or condition of this Contract is held to be invalid, void, or unenforceable, the remainder of the Contract shall remain in effect and shall not be affected, impaired or invalidated and any discrepancies herein shall be resolved in Builder's favor. To extent a lender requires assignment of the Builder's mechanics' lien rights, such assignment is not a complete assignment and is only to the extent the Builder's rights are subordinate to the

lenders. Further, in no way does such assignment extinguish Builder's constitutional lien rights.

**E. MERGER.** This Contract, its attachments, and any other writings signed by the parties expressly stated to be supplemental hereto and together with any instruments to be executed and delivered pursuant to this Contract, constitute the entire agreement of the parties concerning the subject matter hereof, supersede any prior agreement or representations made between Owner and Builder, either written or oral, and may only be modified in writing. This Contract shall inure to the benefit of and be binding upon the parties hereto and their heirs, executors, administrators, successors and assigns. No salesperson has authority to modify this Contract. The parties shall execute such further documents and do any and all further things necessary to implement and carry out the intent of this Contract.

**F. GOVERNING LAW, VENUE, & ATTORNEYS' FEES.** This Contract and the performance of all the obligations set forth in this Contract shall be governed, construed, and enforced by the laws of the State of Texas and this Contract shall be performable and venue shall be exclusively and solely in the county where the Property is located. If either party employs an attorney to enforce the terms of or defend a claim brought under this Contract, either by arbitration or litigation, the Prevailing Party shall be entitled to reasonable attorneys' fees, arbitration fees, court costs and expenses incurred, subject to the provisions set forth in TPC, Chapter 27. Prevailing Party shall mean the party who substantially prevails on the claims or defenses asserted without regard to whether such party recovered any relief, direct benefit, or monetary damages. If, and only if, the Parties have made timely cash offer(s) under the RCLA and the value of those offers can be quantified, then the Prevailing Party is the party whose offer was the closest in dollar amount to the final arbitration award.

**G. WAIVER.** The terms and conditions contained herein and in any attachments hereto may be waived only by written instrument executed by the party waiving compliance, save and except as related to change orders. Any such waiver shall only be effective in the specific instance and for the specific purpose for which it is given and shall not be deemed a waiver of any other provision.

**H. INTELLECTUAL PROPERTY & SIGNS.** Unless provided by Owner, all documentation, including but not limited to the Plans, Specifications, marketing materials, sketches, floor plans, and photographs, which may have been provided to Owner concerning this Contract are proprietary to Builder and shall not be reproduced or disseminated by Owner. Owner agrees that Owner has no ownership rights in the Plans or Specifications provided by Builder. Builder may take and utilize pictures (film or digital), videos, audio recordings, or the like of the Property and Improvements before, during, and after Substantial Completion for Builder's use, marketing, promotion, advertising, and general distribution to the public in the furtherance of Builder's business, including, but not limited to publication in literature, websites and social media sites, blogs, books, publications, magazines, advertisements, and other similar uses. However, to the best of Builder's ability Builder agrees not to identify the location of the Property or the Owners and their family within such materials. Such materials shall remain the sole and exclusive property of Builder and be used by Builder without compensation to Owner. Owner agrees that Builder's use of such materials in furtherance of Builder's business shall not be limited. Builder may place one of Builder's signs on the Property during and for no more than thirty days Substantial Completion.

**I. SURVIVAL.** The terms and agreements set forth herein, including, but not limited to, the disclaimers, indemnities and releases, shall survive the termination or default of this Contract, Substantial Completion, and payment in full of the Total Contract Price.

**J. RULE OF CONSTRUCTION.** This Contract has been jointly drafted, negotiated, and agreed upon by Owner and Builder. Any rule and contract interpretation that provides that an ambiguity will be construed against the

drafting party is inapplicable to this Contract and shall not be used in connection with the interpretation of this Contract.

K. COUNTERPARTS. The Contract may be executed in one or more counterparts, each of which shall be deemed an original. Said counterparts shall constitute but one and the same instrument and shall be binding upon each of the undersigned as full and completely as if all had signed but one instrument and shall be unaffected by the failure of any of the undersigned to execute any of said counterparts. In addition, if the Contract or any other document executed in connection with the Contract is transmitted by facsimile machine, email or other electronic medium (or format,) such document (and the signature of any party on same) shall be treated for all purposes as an original document. Any such faxed, emailed, or electronically transmitted document shall be considered to have the same binding legal effect as an original document.

L. THIRD-PARTY BENEFICIARY. Nothing contained herein shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Builder or any parent, subsidiaries or affiliates of Builder.

M. DISCLAIMER OF REPRESENTATIONS. Except as otherwise expressly provided for herein, Owner warrants that Owner is not relying on and Builder has not made, does not make, and specifically negates and disclaims any representations, warranties, promises, covenants, agreements, or guaranties of any kind or character whatsoever, either express or implied, oral or written, past, present, or future, of, as to, or concerning or with respect to the Property, Improvements, or the transactions contemplated herein.

N. ORDER OF PRECEDENCE. In case of a conflict or discrepancy between the Contract Documents or between the Contract Documents and lender required documents regardless of the document execution dates, the conflict shall be resolved in the following order of precedence: Change Orders, shop drawings, Contract, addendum to the Contract, Plans, Specifications, and lender required documents.

O. TECHNOLOGY. With the evolution of SMART homes and technology, Builder's liability for any hacking, malfunctioning, or other issues with such system is STRICTLY limited to the underlying subcontract and manufacturer's warranties that pass through upon final completion.

THE REMAINDER OF THIS PAGE IS LEFT BLANK INTENTIONALLY.

IMPORTANT DISCLOSURES:

RELIANCE. OWNER WARRANTS THAT OWNER IS NOT RELYING ON ANY ORAL REPRESENTATIONS OR PROMISES, EXPRESS OR IMPLIED, MADE BY THE BUILDER PARTIES NOT SPECIFICALLY SET FORTH HEREIN AND THAT OWNER (I) WAIVES AND RELEASES ALL CLAIMS AGAINST THE BUILDER PARTIES FOR FRAUD IN THE INDUCEMENT (II) NEGOTIATED OR HAD THE OPPORTUNITY TO NEGOTIATE THIS CONTRACT, AND (III) ACKNOWLEDGES THIS CONTRACT REPRESENTS AN ARMS LENGTH TRANSACTION AND OWNER IS KNOWLEDGEABLE WITH RESPECT TO THE MATTERS SUBJECT OF THIS CONTRACT. THIS WAIVER EVIDENCES OWNER'S CLEAR INTENT TO DISCLAIM RELIANCE AND THE LANGUAGE OF THIS CONTRACT IS CLEAR.

\_\_\_\_\_  
Owner Initials

BUILDER WARRANTY (LIMITED) 2023. Owner acknowledges receipt of the Builder Warranty (Limited) 2023 and that Owner has read it in its entirety.

\_\_\_\_\_  
Owner Initials

ADVICE OF COUNSEL. Owner represents that Owner (i) has carefully reviewed and understands this Contract and addendum, (ii) sought and obtained, or had the opportunity to seek or obtain, legal advice regarding the negotiation of this Contract, and (iii) has relied solely on Owner's own judgment, belief, and knowledge in executing this Contract.

\_\_\_\_\_  
Owner Initials

**OWNER:**

**BUILDER:**

\_\_\_\_\_  
Owner:

By: \_\_\_\_\_

Printed Name:

Its:

Address:

City, State, Zip:

Phone:

Fax:

Email:

\_\_\_\_\_  
Owner:

Address:

City, State, Zip:

Phone:

Fax:

Email:

ACKNOWLEDGMENTS

THE STATE OF TEXAS     §  
COUNTY OF                 §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_\_\_ by \_\_\_\_\_ and \_\_\_\_\_ (Owner(s)).

\_\_\_\_\_  
Notary Public, State of Texas

THE STATE OF TEXAS     §  
COUNTY OF                 §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_\_\_ by \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_, on behalf of Builder.

\_\_\_\_\_  
Notary Public, State of Texas

**TEXAS PROPERTY CODE § 53.255(B) DISCLOSURE STATEMENT:**

**KNOW YOUR RIGHTS AND RESPONSIBILITIES UNDER THE LAW.** You are about to enter into a transaction to build a new home or remodel existing residential property. Texas law requires your contractor to provide you with this brief overview of some of your rights, responsibilities, and risks in this transaction.

**CONVEYANCE TO CONTRACTOR NOT REQUIRED.** Your contractor may not require you to convey your real property to your contractor as a condition to the agreement for the construction of improvements on your property.

**KNOW YOUR CONTRACTOR.** Before you enter into your agreement for the construction of improvements to your real property, make sure that you have investigated your contractor. Obtain and verify references from other people who have used the contractor for the type and size of construction project on your property.

**GET IT IN WRITING.** Make sure that you have a written agreement with your contractor that includes: (1) a description of the work the contractor is to perform; (2) the required or estimated time for completion of the work; (3) the cost of the work or how the cost will be determined; and (4) the procedure and method of payment, including provisions for statutory reservation of funds and conditions for final payment. If your contractor made a promise, warranty, or representation to you concerning the work the contractor is to perform, make sure that promise, warranty, or representation is specified in the written agreement. An oral promise that is not included in the written agreement may not be enforceable under Texas law.

**READ BEFORE YOUR SIGN.** Do not sign any document before you have read and understood it.

**NEVER SIGN A DOCUMENT THAT INCLUDES AN UNTRUE STATEMENT.** Take your time in reviewing documents. If you borrow money from a lender to pay for the improvements, you are entitled to have the loan closing documents furnished to you for review at least one business day before the closing. Do not waive this requirement unless a bona fide emergency or another good cause exists, and make sure you understand the documents before you sign them. If you fail to comply with the terms of the documents, you could lose your property. You are entitled to have your own attorney review any documents. If you have any question about the meaning of a document, consult an attorney.

**GET A LIST OF SUBCONTRACTORS AND SUPPLIERS:** Before construction commences, your contractor is required to provide you with a list of the subcontractors and suppliers the contractor intends to use on your project. Your contractor is required to supply updated information on any subcontractors and suppliers added after the list is provided. Your Contractor is not required to supply this information if you sign a written waiver of your right to receive this information.

**MONITOR THE WORK.** Lenders and governmental authorities may inspect the work in progress from time to time for their own purposes. These inspections are not intended as quality control inspections. Quality control is a matter for you and your contractor. To ensure that your home is being constructed in accordance with your wishes and specifications, you should inspect the work yourself or have your own independent inspector review the work in progress.

**MONITOR PAYMENTS.** If you use a lender, your lender is required to provide you with a periodic statement showing the money disbursed by the lender from the proceeds of your loan. Each time your contractor requests payments from you or your lender for work performed, your contractor is also required to furnish you with a disbursement statement that lists the name and address of each subcontractor or supplier that the contractor intends to pay from the requested funds. Review these statements and make sure that the money is being properly disbursed.

**CLAIMS BY SUBCONTRACTORS AND SUPPLIERS.** Under Texas law, if a subcontractor or supplier who furnishes labor or materials for the construction of improvements on your property is not paid, you may become liable and your property may be subject to a lien for the unpaid amount, even if you have not contracted directly with the subcontractor or supplier. To avoid liability, you should take the following actions:

(1) If you receive a written notice from a subcontractor or supplier, you should withhold payment from your contractor for the amount of the claim stated in the notice until the dispute between your contractor and the subcontractor or supplier is resolved. If your lender is disbursing money directly to your contractor, you should immediately provide a copy of the notice to your lender and instruct the lender to withhold payment in the amount of the claim stated in the notice. If you continue to pay the contractor after receiving the written notice without withholding the amount of the claim, you may be liable and your property may be subject to a lien for the amount you failed to withhold.

(2) During construction and for 30 days after final completion, termination, or abandonment of the contract by the contractor, you should reserve or cause your lender to reserve 10 percent of the amount of payments made for the work performed by your contractor. If you choose not to reserve the 10 percent for at least 30 days after final completion, termination, or abandonment of the contract by the contractor and if a valid claim is timely made by a claimant and your contractor fails to pay the claim, you may be personally liable and your property may be subject to a lien up to the amount that you failed to reserve.

If a claim is not paid within a certain time period, the claimant is required to file a mechanic's lien affidavit in the real property records in the county where the property is located. A mechanic's lien affidavit is not a lien on your property, but the filing of the affidavit could result in a court imposing a lien on your property if the claimant is successful in litigation to enforce the lien claim.

**SOME CLAIMS MAY NOT BE VALID.** When you receive a written notice of a claim or when a mechanic's lien affidavit is filed on your property, you should know your legal rights and responsibilities regarding the claim. Not all claims are valid. A notice of a claim by a subcontractor or supplier is required to be sent, and the mechanic's lien affidavit is required to be filed, within strict time periods. The notice and the affidavit must contain certain information. All claimants may not fully comply with the legal requirements to collect on a claim. If you have paid the contractor in full before receiving a notice of a claim and have withheld the 10 percent of the contract price or value of work, you may not be liable for that claim. Accordingly, you should consult your attorney when you receive a written notice of a claim to determine the true extent of your liability or potential liability for the claim.

**OBTAIN A LIEN RELEASE AND A BILLS-PAID AFFIDAVIT.** When you receive a notice of claim do not release withheld funds without obtaining a signed and notarized release of lien and claim from the claimant. You can also reduce the risk of having a claim filed by a subcontractor or supplier by requiring as a condition of each payment made by you or your lender that your contractor furnish you with an affidavit stating that all bills have been paid. Under Texas law, on final completion of the work and before final payment, the contractor is required to furnish you with an affidavit stating that all bills have been paid. If the contractor discloses any unpaid bill in the affidavit, you should withhold payment in the amount of the unpaid bill until you receive a waiver of lien or release from that subcontractor or supplier.

**OBTAIN TITLE INSURANCE PROTECTION.** You may be able to obtain a title insurance policy to insure that the title to your property and the existing improvements on your property are free from liens claimed by subcontractors and suppliers. If your policy is issued before the improvements are completed and covers the value of the improvements to be completed, you should obtain, on the completion of the improvements and as a condition of your final payment, a 'completion of improvements' policy endorsement. This endorsement will protect your property from liens claimed by subcontractors and suppliers that may arise from the date the original title policy is issued to the date of the endorsement.