

PROMULGATED BY THE TEXAS ASSOCIATION OF BUILDERS (TAB)
RESIDENTIAL CONSTRUCTION CONTRACT – FIXED PRICE
 (For Use With Custom Construction Jobs On The Owner's Property)

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

1. **PARTIES:** _____ (Builder) agrees to construct the Improvements (as defined below) for _____ and _____ (e.g. husband and wife or co-buyers) (collectively referred to as Owner) on the Property (as defined below).

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

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

substantially in accordance with the Construction Documents. Any inconsistencies or conflicts within the Construction Documents shall be resolved by the Builder in 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 its procurement would cause undue delay of the Work. Any substitutions shall be of comparable grade and quality. The construction of the Improvements are subject to changes in the Construction Documents as required by any governmental authorities. Owner acknowledges that these changes may occur during construction and agrees that any such deviations will be accepted.

4. **CONTRACT PRICE:** Owner agrees to pay Builder the sum of \$ _____ (Total Contract Price) as consideration for the construction and completion of the Improvements and the performance of the Work, subject to adjustment as allowed by this Contract. This Contract may be hereafter amended.

5. **PAYMENTS:**

- A. **INITIAL CASH PAYMENT** - Prior to the commencement of the Work, Owner shall pay to Builder _____ % of the Total Contract Price **OR** \$ _____ as a portion of the Total Contract Price (Initial Cash Payment). Builder may use the Initial Cash Payment in consideration for initial construction or pre-construction expenses, and compensation to Builder for time and effort expended. 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 Owner agree that it is not possible to calculate the exact amount of damages that Builder will suffer if this Contract is terminated for a reason other than Builder's default and this amount is a reasonable approximation of the damages. This amount is in no way a penalty.
- B. **DISASTER REMEDIATION** – The following bold text only applies if 1) the Builder is performing disaster remediation services on the Property with construction of the Improvements, 2) after the Governor or county judge has issued a disaster declaration for the county in which the Property is located, and 3) Builder has not maintained a physical business address in the subject county or adjacent county for at least one year prior to the execution of this Contract. **This Contract is subject to Chapter 57, Business & Commerce Code. A contractor may not require a full or partial payment before the contractor begins work and may not require partial payments in an amount that exceeds an amount reasonably proportionate to the work performed, including any materials delivered.** If applicable, this statutorily prescribed provision may affect the Initial Cash Payment amount in Paragraph A above.
- C. **DRAW REQUESTS** - During construction, the Builder shall present Owner with requests (Draw Request) for payment (Draw Payment[s]) by Owner. Each Draw Request shall reflect the Construction Costs (as defined below) and any compensation to Builder for time and effort expended in connection with this transaction incurred up to the date the Draw Request is submitted to Owner. The Draw Request shall include the name and address of each person who subcontracted directly with Builder and who Builder intends to pay from the requested funds. Owner shall cause the Draw Payments to be made to Builder within three (3) business days following the receipt of a Draw Request. In the event of a Draw Payment delay, Builder shall have the right to stop Work. Construction Costs are defined as all costs incurred by the Builder as a result of the Work, except for the following:
- 1) Salaries, wages, and other compensation for the Builder or the Builder's personnel stationed at the Builder's offices or at other sites not related to the Work.
 - 2) Expenses and operating cost of the Builder's offices.
 - 3) General overhead expenses of the Builder.
 - 4) Marketing and promotional expenses of the Builder.
 - 5) Capital and bank expenses of the Builder.
 - 6) Any costs not directly related to the Work.
- D. **FINAL PAYMENT** - The Final Payment (the portion of the Total Contract Price, Change Orders, and Allowances as defined below not paid by previous payments) shall be due and payable upon Substantial Completion (as defined below). Except as provided in Section 5.A, Owner and Builder agree that there will be no retainage of funds.
- E. **SOURCE OF PAYMENT** (check the appropriate box) –
If Owner is obtaining interim construction financing from a bona fide third-party lender, Owner shall

obtain and pay the loan and all related expenses at Owner's expense. In the event of any conflicts between this Contract or the Construction Documents and any documents promulgated by any third-party lender, the terms of this Contract and the Construction Documents control. If Owner is unable to obtain an interim construction loan, with terms reasonably acceptable to Builder, within _____ days of the date of this Contract, either Owner or Builder may terminate this Contract by giving the other party written notice of termination.

If Owner is not obtaining an interim construction loan to pay for construction of the Improvements, upon execution of this Contract and prior to commencement of construction, Owner shall: (check the appropriate box)

pay the Total Contract Price to Builder and Builder shall deposit same in a construction account (Builder's Construction Account) with a financial institution reasonably approved by Owner; or deposit the Total Contract Price in a construction account (Owner's Construction Account) with a financial institution reasonably acceptable to Builder. Builder shall have the right to monitor Owner's Construction Account to insure Owner has deposited the required funds into the account. Failure by Owner to establish and maintain Owner's Construction Account as required herein shall be a breach of this Contract and Builder may, at its option, elect to treat such breach as an Owner Event of Default (as defined below).

6. TIME:

- A. COMMENCEMENT OF WORK - Builder shall commence the Work within _____ calendar days after:
 - 1) The complete Construction Documents have been approved and initialed by both Owner and Builder;
 - 2) Owner has a construction loan or other financing acceptable to the Builder in accordance with this Contract;
 - 3) Owner has all necessary approvals;
 - 4) Owner has furnished Builder with a current title commitment or such other evidence of Owner's ownership of the Property satisfactory to Builder in its discretion;
 - 5) All appropriate building permits and regulatory approvals have been issued; and
 - 6) Owner has executed and delivered to Builder for recording any required mechanic's lien contract pursuant to Section 16.A, Builder has received written notice from the lien holder and/or the title company insuring lien holder's security interest in the Property that all documents required to be recorded prior to the commencement of construction have been properly recorded, and the Initial Cash Payment has been received by Builder.
- B. COMPLETION OF IMPROVEMENTS - After Work begins, construction activities shall then be continued in accordance with Builder's normal construction schedule until the Improvements reach Substantial Completion (as defined below). Builder will make reasonable efforts to substantially complete the Improvements within _____ calendar days from the date hereof (Projected Completion Date), subject to Permitted Delays (as defined below). **Builder does not warrant or guarantee completion of the Improvements by any specific date.**
- C. PERMITTED DELAYS - The Projected Completion Date may be extended for one or more of the following causes:
 - 1) Changes by Owner or Owner's representatives to the Construction Documents.
 - 2) Failure of Owner to timely make selections as directed below.
 - 3) Failure of Owner to timely make payments when due.
 - 4) Other acts or omissions by Owner or Owner's representatives.
 - 5) Prohibitive inclement weather or acts of God.

- 6) Fire or casualty loss.
 - 7) Non-availability of labor, services, or materials.
 - 8) Delays caused by a change in laws or ordinances or delays in issuing necessary permits or conducting inspections or testing by any governmental entity or regulatory authority.
 - 9) Delays caused by Change Orders.
 - 10) Disputes with Owner or Owner's representatives that allow Builder to suspend Work until resolved.
 - 11) Civil unrest, strikes, lockouts, acts of public authorities, or war.
 - 12) Other events or causes beyond the Builder's reasonable control.
- D. NO WORK PERFORMED - Builder and Owner, by their signatures to this Contract, acknowledge and agree that this Contract has been executed and delivered before Builder has performed any labor on the Property and before Builder has furnished any materials in connection with the construction of the Improvements.

7. SUBSTANTIAL COMPLETION, INSPECTION, RELEASE AND OCCUPANCY: The Improvements are substantially completed (Substantial Completion) when: 1) a certificate of occupancy is issued or, 2) if no certificate of occupancy is required, when all electrical, mechanical, and plumbing final inspections, or all other required inspections, have been approved or all approvals for occupancy have been received from any applicable governmental authority or, 3) in the absence of the foregoing, when the Improvements are suitable for occupancy; **provided, however, that if Owner moves into the Improvements, the Improvements shall be deemed to be substantially completed.** At the time of Substantial Completion, Owner will conduct a walk-thru inspection of the Improvements with Builder, and will execute and deliver to Builder a "Final Customer Walk-Thru Approval and Punch List" in the form attached hereto that confirms Owner's inspection and acceptance of the Improvements, Owner's acknowledgment that all construction Work has been completed in accordance with the Construction Documents, and releases Builder from all claims and liabilities except contractual warranty obligations arising under Builder's Express Limited Home Warranty and any agreed items of Work to be completed (Punch List Items). Upon Substantial Completion of the Improvements and payment to the Builder of the Total Contract Price and all payments as set forth herein, Owner will be given possession of the Improvements and the Property; in no event shall Owner be entitled, without the prior written consent of the Builder, to occupy any portion of the Improvements until Builder has been paid the Total Contract Price and all payments as set forth herein. At the time Owner 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 the Builder's Express Limited Home Warranty, if applicable. Builder's failure to complete Punch List Items shall not be a basis for Owner to withhold any payments otherwise due Builder, and, although the Express Limited Home Warranty will be in effect at Substantial Completion, no work is required to be performed by Builder pursuant to the Express Limited Home Warranty until the Total Contract Price and all payments set forth herein have been paid to Builder by Owner in full.

8. ALLOWANCES: For purposes of this Contract, Allowances include budgets for certain Work components shown in the Construction Documents to be incorporated into the Improvements. The sums allocable to each listed Allowance are **included in the Total Contract 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 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. Owner will

verify all selections with the supplier and provide Builder with the information for ordering. Owner 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.

9. 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 Owner and Builder. To approve a proposed change, both Owner and Builder shall sign a written agreement (Change Order) in the form attached. In lieu of the form, a written Change Order may also constitute an email exchange between Owner and Builder in which the Changes are discussed and acknowledged by the Parties. Upon receiving from Owner a written request for any change, Builder will present Owner 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 Owner accepts Builder's proposal for changes, the Change Order will become a binding attachment to the Construction Documents, and to the extent a conflict between a Change Order and the Construction Documents exists, the terms of the Change Order shall control. Any Owner party may sign the Change Order as agent for the other, and the signature of one Owner shall be binding on all others; an email from one Owner concerning a Change Order also binds all Owners. Failure of Owner 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 Owner. Unless otherwise specified in agreed upon Change Orders, Owner 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 Owner's acceptance of the proposal. Builder will not be obliged to proceed with any Work until all amounts have been paid as agreed and Builder has no obligation to stop Work while Change Orders are being discussed.
- B. **CHANGE ORDERS OF NECESSITY** - Notwithstanding the provisions of Section 9.A, Owner agrees to execute Change Orders, including any necessary increases to the Total Contract Price, that may be necessary to:
- 1) Comply with applicable governmental or regulatory requirements.
 - 2) Provide structural integrity to the Improvements.
 - 3) Route electrical, mechanical, or other systems included in the Work.
 - 4) Avoid or correct any conditions that might result in defects or other warranty claims.

10. 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 Owner, or create any partnership, joint venture, or other association between Owner 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. 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, Owner will receive a refund of the Initial Cash Payment.
- B. **PAYMENT OF COSTS** - Builder shall pay all costs related to the Work, except for costs associated with Change Orders and Allowance overages as described above.
- C. **MATERIALS** - Builder shall use all new materials in connection with the Work that are of suitable quality for the

intended purpose, except as otherwise specified in the Construction Documents.

- D. LIENS - Builder shall deliver the Improvements to the Owner free of all liens, claims, security interests or encumbrances that might have arisen from the performance of the Work, except the lien and security interest created by this Contract or given to the interim construction lender.
- E. CODES AND STANDARDS - Builder shall perform the Work in accordance with the Express Limited Home Warranty (Paragraph 12), 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

11. INSURANCE: Before beginning the Work, Builder shall obtain: (check the appropriate box(es))

Builder's risk insurance covering all insurable risks, with respect to the Improvements, in an amount equal to or greater than the Total Contract Price.

Comprehensive general liability insurance.

Workers Compensation Insurance or waivers covering all individuals who assist in the Work.

The cost for all required insurance is included in the Total Contract Price.

12. WARRANTY

- A. Builder will provide warranty coverage on the Improvements to Owner pursuant to the attached and incorporated Express Limited Home Warranty. BUILDER AGREES TO COMPLY WITH THE EXPRESS LIMITED HOME WARRANTY AS ITS EXPRESS CONTRACTUAL WARRANTY. UNLESS BUILDER HAS ALSO ELECTED TO PROVIDE A THIRD-PARTY WARRANTY, BUILDER AND OWNER AGREE THAT THE EXPRESS LIMITED HOME WARRANTY CONSTITUTES THE EXCLUSIVE WARRANTY TO BE MADE AVAILABLE BY BUILDER AND IS IN PLACE, SUPERSEDES AND PRECLUDES OF ALL OTHER GUARANTIES OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF PERFORMANCE, WORKMANSHIP, REPAIR, MODIFICATION, MERCHANTABILITY, SUITABILITY AND FITNESS. ANY AND ALL IMPLIED WARRANTIES ARE HEREBY DISCLAIMED BY BUILDER AND WAIVED BY OWNER, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTY OF GOOD AND WORKMANLIKE REPAIR OR MODIFICATION OR EXISTING TANGIBLE GOODS OR PROPERTY AND THE IMPLIED WARRANTY OF GOOD AND WORKMANLIKE CONSTRUCTION.. THE PARTIES AGREE THAT THE EXPRESS LIMITED HOME WARRANTY AND THIRD-PARTY WARRANTY, IF APPLICABLE, ADEQUATELY SET FORTH THE MANNER, PERFORMANCE, AND QUALITY OF THE CONSTRUCTION OF THE HOME AND IMPROVEMENTS AND SERVICES TO BE PERFORMED. Owner acknowledges, understands, and agrees that the terms of the Express Limited Home Warranty and Third-Party Warranty, if applicable, are clear, specific, and sufficiently detailed to establish the only standards of construction performance or service that Builder or Warrantor are obligated to meet. The Parties agree that this Express Limited Home Warranty will control any warranty, workmanship, material, or any other defect claims regarding the Property or Improvements. In the event that the Express Limited Home Warranty or the Third-Party Warranty do not specify a building or performance standard for the identified item, the usual and customary industry standards for similar improvements in the geographic region shall govern. In short, the Express Limited Home Warranty provides warranty coverage on the Improvements for one (1) year for workmanship and materials, two (2) years for plumbing, electrical, heating, and air-conditioning delivery systems, and ten (10) years for major structural

components.

- B. Builder will will not also provide a third-party warranty (Third-Party Warranty) provided through a third-party warranty company. If a Third-Party Warranty is provided, Owner 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 Limited Home Warranty.
- C. Any Manufactured Product warranties will be assigned, without recourse, to Owner upon payment of the Total Contract Price. This assignment shall be evidenced by Builder's execution and delivery to Owner of the "Assignment of Manufactured Product Warranties". Owner understands and agrees that proper maintenance of the Improvements is required to ensure (i) the Express Limited Home Warranty and Third-Party Warranty, if applicable remains in effect, and (ii) the proper performance of the Improvements.

13. DEFAULT BY BUILDER:

- A. EVENTS OF DEFAULT (each is a Builder Event of Default) -
 - 1) Builder's failure, without cause, to make payment to any material supplier, laborer, or subcontractor for which Builder has received payment from Owner or Owner's lender.
 - 2) A breach by Builder of any material provision contained in this Contract.
 - 3) 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.
 - 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 Owner, other matters beyond the control of Builder, or a Permitted Delay.
- B. NOTICE OF DEFAULT TO BUILDER - If Builder commits a Builder Event of Default, prior to exercising any remedy granted by this Contract or by law, Owner 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), Owner may exercise any remedy, subject to the terms of this Contract.
- C. REMEDIES OF OWNER - Upon the occurrence of any Builder Event of Default and the expiration of Builder's Cure Period, Owner 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 Owner and shall not be available in any action concerning this Contract. Any monetary damages available to Owner shall not exceed the total of any sums paid to Builder for (i) labor and materials not already incorporated into the Improvements; and (ii) reasonable and necessary attorney's fees and costs incurred to invoke mediation and/or arbitration. If Builder refuses to give possession of the Improvements and Property to Owner, Owner not being in default, Owner will be entitled to pursue all remedies provided under Texas law, save and except specific performance. If Owner receives notice of any lien or claim for labor or materials furnished to Builder for which, Owner of the Property might become liable, though primarily chargeable to Builder, Owner shall have the right to retain out of any Draw Payment, an amount sufficient to indemnify Owner against such lien or claim. However, Builder shall have the right to contest in good faith the validity of such lien or claim. If Builder fails to discharge any such lien or claim, all amounts expended by Owner for the payment of any liens or claims shall be credited against the Total Contract Price.

14. OWNER'S RESPONSIBILITIES: Owner agrees to the following:

- A. PAYMENTS - Owner shall make all payments to Builder as required by this Contract.
- B. TITLE AND POSSESSION - Owner shall protect the title and possession of the Property and pay all taxes and assessments prior to delinquency.

- C. APPROVALS - Owner shall obtain all consents and approvals required from any governmental authority, architectural review committee, homeowners association or similar entity having the right to review and approve plans and specifications for any residence or improvements proposed to be constructed on the Property.
- D. OBJECTIONS TO WORK - Owner agrees to promptly notify Builder of any objections to any Work not in compliance with the Construction Documents. **Failure by Owner to promptly notify Builder of objections to any Work performed within any phase of construction shall constitute an acceptance of that portion of the Work subject to Builder's obligations under the Express Limited Home Warranty.** Owner 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.
- E. UTILITIES - Owner is solely responsible for providing Builder, prior to commencement of construction, with water, gas, storm and sanitary sewer, and electricity at the lot line required for construction of the Improvements.
- F. EXISTING ITEMS - Owner shall remove or protect all of Owner's existing items of property at the Property that could be affected by the contemplated construction. Builder shall not be responsible for damaged driveways, walks, lawns, trees, shrubs, flowers, and items of personal property or the release of confined pets. **OWNER HEREBY RELEASES BUILDER FROM ANY DAMAGES TO THESE ITEMS THAT OCCUR ALL OR IN PART AS A RESULT OF BUILDER'S NEGLIGENCE, BUT NOT AS A RESULT OF ITS GROSS NEGLIGENCE.**
- G. SUBCONTRACTORS - Owner 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, Owner 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 Owner's occupancy of the Improvements without Builder's prior written consent.
- H. OTHER - Owner shall perform all other obligations as provided in this Contract.

15. DEFAULT BY OWNER:

- A. EVENTS OF DEFAULT BY OWNER (each is an Owner Event of Default):
 - 1) Owner or Owner's agents or representatives fail to make any payments due under this Contract, including payment for any Change Orders.
 - 2) Owner or Owner's agents or representatives unreasonably delay or unreasonably interfere with the Builder in the execution of the Work.
 - 3) Owner fails to participate in the Final Customer Walk-Thru Approval and Punch List inspection.
 - 4) Owner or Owner's agents or representatives fail to perform any material agreement contained in this Contract.
 - 5) Owner, 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 OWNER - If Owner commits an Owner Event of Default, prior to exercising any remedy granted by this Contract or by law, Builder shall deliver written notice of such default to Owner. If the Owner Event of Default is not cured within fifteen (15) days after delivery of such written notice (Owner's Cure Period), Builder may exercise any remedy subject to the terms of this Contract.
- C. REMEDIES OF BUILDER - Upon the occurrence of any Owner Event of Default and the expiration of Owner's Cure Period, all amounts owed for Work completed will, at the option of the Builder, become immediately due and payable without prejudice to any other remedy of the Builder and Builder may (but shall not be

obligated to) discontinue performance of this Contract and (i) terminate this Contract and retain all money previously paid by Owner to Builder as liquidated damages thereby releasing both parties from this Contract; or (ii) terminate and seek recovery of any and all damages suffered by Builder, including, but not limited to, payment for all materials, labor, profit, overhead and fees with respect to this Contract. The remedy of specific performance is hereby waived by Builder and shall not be available in any action concerning this Contract. If Owner refuses to accept the completed Improvements and/or pay the Total Contract Price to Builder as specified in this Contract, Builder not being in default, Builder will be entitled to pursue all remedies provided by Texas law, save and except specific performance.

- D. **DELINQUENT PAYMENT** - Should the Owner fail to make payment to the Builder of any portion of the Total Contract Price when payment is due, then the Owner 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.

16. OWNER(S)' AND BUILDER'S JOINT AGREEMENTS:

- A. **MECHANIC'S LIEN** - Owner grants to Builder a mechanic's lien to secure performance of the obligations of Owner. If Owner is obtaining an interim construction loan, Builder shall assign to the interim construction lender a portion of Builder's mechanic's lien equal to the amount of the interim construction loan advanced to or for the benefit of the Owner and paid to Builder, and to subordinate any remaining amount of Builder's lien to the interim construction loan. In the event that the Improvements to be erected fail for any reason to be completed, or fail to be completed according to this Contract, or all of the labor and material used in erection thereof fail to be provided by Builder, then Builder and the holder of the indebtedness under the builder's and mechanic's lien shall have a valid and subsisting lien for the Total Contract Price, less such amount as would be reasonably necessary to complete the Improvements according to the Construction Documents. In the event of any conflicts between this Contract and the builder's and mechanic's lien contract, the terms of this Contract shall control.
- B. **INSULATION** - As required by Federal Trade Commission regulations, the information relating to the insulation installed or to be installed in the Improvements at the Property is: (check only one box below)
- 1) as shown in the Specifications.
 - 2) as follows:
 - a) Exterior walls of improved living areas: insulated with _____ insulation to a thickness of ____ inches that yields an R-Value of _____.
 - b) Walls in other areas of the home: insulated with _____ insulation to a thickness of ____ inches that yields an R-Value of _____.
 - c) Ceilings on improved living areas: insulated with _____ insulation to a thickness of ____ inches that yields an R-Value of _____.
 - d) Floors of improved living areas not applied to a slab foundation insulated with _____ insulation to a thickness of ____ inches that yields an R-Value of _____.
 - e) Other insulated areas: insulated with _____ insulation to a thickness of _____ inches that yields an R-Value of _____.

All stated R-Values are based on information provided by the manufacturer of this insulation.

- C. **DOCUMENT RELIANCE** - Owner 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. Owner, at Owner's option, may also elect to obtain soil and sub-soil tests, flood plain maps and any other data or documents that may

impact the performance of the completed Improvements from experts knowledgeable of such matters and hired by Owner (Owner's Professionals). If Owner elects to obtain such data and/or documents, Owner shall direct Owner'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 Owner's Professionals as being complete, adequate, and correct in all respects. Builder shall promptly notify Owner of any errors, conflicts, or inconsistencies discovered with respect to the Owner supplied data or Construction Documents. BUILDER DOES NOT WARRANT OR GUARANTEE AND WILL NOT BE RESPONSIBLE FOR ANY ERRORS OR OMISSIONS IN THE REPRESENTATIONS, DOCUMENTS, DATA, PLANS, SPECIFICATIONS, DESIGNS, OR CONSTRUCTION DOCUMENTS THAT HAVE BEEN PREPARED BY OWNER, OWNER'S PROFESSIONALS OR ANY OTHER THIRD PARTY. Builder's reasonable reliance on the data and Construction Documents compiled and/or provided by Owner's Professionals shall relieve Builder from all responsibility for or liability to the Owner 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 Owner except for construction provided by Builder. Owner 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. WORK PERFORMED AND MATERIALS PROVIDED DIRECTLY BY OWNER - Upon receipt of Builder's written approval, in the event Owner contracts with other parties to perform work or provide or install materials that are not a part of the Work performable by Builder hereunder, Owner 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. Owner agrees that any ACTS OF, OMISSIONS BY, OR LOSSES, DAMAGES OR DELAYS CAUSED BY OWNER, OWNER'S AGENTS OR ANY THIRD PARTY RETAINED BY OWNER SHALL BE THE RESPONSIBILITY OF OWNER, NOT THE BUILDER. FURTHERMORE, OWNER 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 OWNER. Owner shall fully and promptly pay all sums charged by third parties hired by Owner and indemnify and hold Builder harmless from all such charges and any related liens.
- E. CONFIDENTIALITY OF INFORMATION - Owner acknowledges that Owner may receive a list of subcontractors and materialmen utilized by Builder to construct the Improvements. Owner acknowledges that Builder regards that information as confidential, proprietary, and trade secret information of Builder's business. Owner agrees that Owner shall not disclose such information to any party except as required by this Contract. Prior to Substantial Completion and payment to Builder of the Total Contract Price, Owner agrees that Owner will not contract any of Builder's subcontractors for labor or materials to be incorporated into the Improvements except with the express, prior written consent of Builder. Owner further acknowledges that Builder shall have the right to seek injunctive relief and damages should Owner violate this paragraph. Owner agrees that a temporary restraining order and injunction may be granted by a court with jurisdiction to prevent violation of this paragraph by Owner.
- F. OTHER PARTIES BOUND - Owner and Builder each bind themselves, their respective heirs, executors, administrators, partners, successors, assigns, and legal representatives 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 - Builder and Owner acknowledge to each other that, unless specified in the Real Estate Broker's Fee Addendum, there has been no contract with any real estate broker or other party in connection with this Contract, to whom any brokerage, finders, or other fees may be due and payable. Each party hereby agrees to indemnify and hold the other harmless from and against any loss, liability, damage, cost, or expense (including reasonable attorney's fees) resulting by reasons of breach of this representation and warranty.

J. 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 Owner and Owner's licensees and invitees, Owner shall restrict entry by the Owner and Owner's licensees and invitees onto the Property or into the Improvements to a minimum. When Owner chooses to enter the Property (except at the request of Builder), and irrespective of Builder's presence on the Property at such time, OWNER 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 OWNER OR OWNER'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 OWNER OR OWNER'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: Owner also acknowledges that the contemplated construction imposes an inherent risk to the health of the trees and vegetation situated on the Property, and Owner understands that Builder cannot guarantee the viability of those trees and vegetation. Owner 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.

K. TERMINATION/STIPULATED DAMAGES PRIOR TO SUBSTANTIAL COMPLETION – In the event a bona fide dispute or material misunderstanding (Dispute) arises between Builder and Owner prior to Substantial Completion and if such Dispute cannot be resolved to the mutual satisfaction of Builder and Owner, Builder at its sole 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 Owner. 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 that the parties agree to be a reasonable and foreseeable estimate of the damages that might be experienced by the Owner incident to the cancellation of this Contract (it being difficult if not impossible to ascertain those damages) provided that Owner shall be obligated to pay or reimburse Builder for all materials purchased, all Work performed up through the date of termination and an amount representing Builder's profit or fee that shall be proportionate to the amount of Work performed. 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 Owner and Owner shall execute a written release of this Contract and deliver it to the Builder.

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

Mediation-Binding Arbitration: The parties agree that any dispute or claim arising under, or relating to, this Contract, any amendments thereto, the Property, Improvements, or any dealings between the Owner and Builder or their representatives, shall first be submitted to mediation and, if not settled during mediation, shall thereafter be submitted to binding arbitration as provided by the Federal Arbitration Act (9 U.S.C. §§ 1 et seq.) or, if applicable, by similar state statute, and not by or in a court of law. All decisions respecting the arbitrability of any dispute shall be decided by the arbitrator. Any cost or fee associated with filing a claim for arbitration is to be paid by the party filing same. The Parties agree to split the mediation fee and the arbitrator's fees with all participating parties. The arbitrator may award to the prevailing party, if any, as determined by the arbitrator, all or any portion of costs and 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 or arbitrator, or both. It is agreed that the filing of a petition requesting appointment of a mediator or arbitrator, or for a court to resolve a dispute under this provision, shall not constitute a waiver of the right to enforce binding arbitration.

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 as 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 Owner 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; and
- 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.
- 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.

Owner 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) Substantial Completion and payment in full of the Total Contract Price. 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. Owner and Builder further agree (1) that any dispute involving Builder's directors, officers, partners, employees and agents shall be resolved as set forth herein and not in a court of law; and (2) that Builder shall have the option to include its subcontractors, suppliers, and vendors as parties in the alternative dispute resolution procedures set forth in this Contract.

This Contract requires mandatory arbitration of disputes; if any party commences litigation in violation of this Contract, that 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.

- M. **WAIVER OF TRIAL BY JURY:** If it is determined that the arbitration provisions of the alternative dispute resolution agreement are not enforceable, the parties agree that any disputes between them shall be resolved by a court of competent jurisdiction in the county where the Property is located without the use of a jury. The right to a trial by jury is hereby expressly waived by Owner and Builder. The Parties also agree that the rights and obligations set forth in this paragraph shall survive termination of this Contract by either party, default of this Contract by either party, or Substantial Completion and full payment of the Total Contract Price.
- N. **MUTUAL LIMITATION OF CLAIMS AND REMEDIES** – The parties desire pragmatic and logical limitations on claims and remedies to ensure effective and realistic dispute resolution. Accordingly,
- 1) **Limitation of Claims:** Under no circumstances shall either Owner 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, that arises from or relates to this Contract, the Work and/or the Improvements is barred unless it is brought by Owner or Builder not later than two (2) years and one (1) day from the date the cause of action accrues.
 - 2) **Waiver of Subrogation:** The parties agree that after Substantial Completion, Owner shall secure and maintain insurance covering risk of loss and damage to the Improvements. The parties further mutually agree that with respect to any loss or damage that may occur to the Property, Improvements, personal property, persons, third-parties, or any other loss by reason of fire, the elements, or any other cause that could be or is insured against under the terms of standard fire and extended coverage insurance policies, or any other insurance, regardless of the cause or origin, including negligence of the Parties, their agents, officers, or employees, the party carrying such insurance and suffering said loss, hereby releases the other from any and all claims with respect to such loss. The parties further mutually agree that their respective insurance companies shall have no right of subrogation against the other party or other party's insurance carrier on account of any such loss as all rights of subrogation are hereby waived and disclaimed. Each party agrees that it will request its insurance carrier(s) to include in its policies such a clause or endorsement, but the failure to request or include such does not affect the applicability or effectiveness of this paragraph. The agreements in this paragraph shall survive Substantial Completion and payment in full of the Total Contract Price. Nothing contained in this paragraph shall be deemed to modify or otherwise affect releases of either party from liability for claims elsewhere herein contained.
- O. **WARRANTY REQUEST-** Owner and Builder agree that a request for warranty performance shall not be construed as a notice of construction defect under the Texas Residential Construction Liability Act (RCLA),

and that any notice under RCLA shall be separately sent to Builder in the manner required by RCLA.

- P. ATTORNEY FEES - The prevailing party in any legal proceedings brought in relation to this Contract may be entitled to recover from the non-prevailing party all litigation costs and reasonable and necessary attorney's fees.
- Q. ESCALATION OF CERTAIN MATERIALS CATEGORIES – 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 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 Owner, resulting in an increase in the Total Contract Price. Builder will keep Owner informed of cost variations, and prior to contracting Builder will attempt to verify the price of materials in these categories, thus limiting exposure to Owner for any subsequent price changes.

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

Legal Description (TAB A-1)
 Schedule of Estimated Construction Costs (TAB A-2)
 Draw Request Form (TAB A-3)
 Notice Regarding Expansive Soils (TAB A-4)
 Final Customer Walk-Thru Approval and Punch List (TAB A-5)
 Selection / Allowance Schedule (TAB A-6)
 Change Order (TAB A-7)
 Real Estate Broker's Fee Addendum (TAB A-8)
 Disclosure Statement (TAB A-9)
 Waiver of the List of Subcontractors & Suppliers (TAB A-10)
 Assignment of Manufactured Product Warranties (TAB A-11)
 Special Provisions Addendum (TAB A-12)
 Green Building Disclosure (TAB A-13)
 Express Limited Home Warranty (TAB A-14)
 Third-Party Warranty Specimen

OWNER REPRESENTS THAT OWNER HAS READ AND UNDERSTANDS THIS CONTRACT, INCLUDING THE AGREEMENT FOR ALTERNATIVE DISPUTE RESOLUTION. OWNER AGREES THAT NO VERBAL STATEMENT, PROMISE, OR CONDITION NOT SPECIFICALLY LISTED IN THIS CONTRACT IS BEING RELIED UPON BY OWNER. OWNER ACKNOWLEDGES THAT THERE ARE NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, BY BUILDER, ITS EMPLOYEES, OWNERS, SHAREHOLDERS, OFFICERS, DIRECTORS, OR AGENTS EXCEPT THOSE CONTAINED HEREIN. THIS CONTRACT CANNOT BE MODIFIED OR AMENDED EXCEPT BY WRITTEN AGREEMENT SIGNED BY THE PARTIES. IF ANY

COURT OR ARBITRATOR DECLARES ANY PROVISION OF THIS CONTRACT TO BE VOID OR UNENFORCEABLE, THEN ONLY THAT PROVISION SHALL BE UNENFORCEABLE, WITH THE REMAINDER OF THE CONTRACT REMAINING VALID AND ENFORCEABLE. OWNER ACKNOWLEDGES THAT BUILDER IS RELYING ON THESE REPRESENTATIONS AND WOULD NOT ENTER INTO THIS CONTRACT WITHOUT THIS UNDERSTANDING.

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

Owner's Attorney: _____

Builder's Attorney: _____

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

Owner: _____

Builder: _____

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

- 20. RESIDENTIAL CONSTRUCTION CONTRACT DISCLOSURE STATEMENT:** This Contract is a residential construction contract as defined in Section 53.001 of the Texas Property Code. By Owner's initials in the space provided below, Owner acknowledges delivery and receipt of the disclosure statement required for residential construction contracts in accordance with Section 53.255 of the Texas Property Code. A copy of this disclosure statement is attached to this Contract as an addendum.

Owner's Initials

- 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 on behalf of Builder.

[remainder of this page intentionally blank]

Fixed Price

(Address of Property)

22. SIGNATURES OF PARTIES:**EXECUTED ON _____, 20 ____.**

IMPORTANT NOTICE: You and your Contractor are responsible for meeting the terms and conditions of this Contract. If you sign this Contract and you fail to meet the terms and conditions of this Contract, you may lose your legal ownership rights in your home. **KNOW YOUR RIGHTS AND DUTIES UNDER THE LAW.**

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.

OWNER(S):

Owner Signature

Owner Signature

Address:

Email:

BUILDER:

By:

Name:

Its:

Address:

Email:

Initials: Owner(s) _____ Builder _____

Fixed Price

(Address of Property)

Fixed Price

(Address of Property)

THE STATE OF TEXAS

§

COUNTY OF _____

§

§

This instrument was acknowledged before me on the _____ day of _____, _____
by _____ (Owner) and _____ (Owner).

Notary Public, State of Texas

My Commission Expires: _____

Notary's Printed/Typed Name

THE STATE OF TEXAS

§

COUNTY OF _____

§

§

This instrument was acknowledged before me on the _____ day of _____, _____
by _____ [name of Builder's agent], [title] of _____
_____ [Builder], on behalf of said entity.

Notary Public, State of Texas

My Commission Expires: _____

Notary's Printed/Typed Name

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.

ASSIGNMENT

Builder hereby assigns its rights to receive payment under the foregoing Contract, together with the liens above created, to _____ (Assignee), provided this assignment shall be effective only with respect to the amount of Total Contract Price paid to Builder under the foregoing Contract, with Builder retaining its right to receive payment of any portion of the Total Contract Price not then paid to Builder and further retaining the lien securing same, which retained lien shall be subordinate to the portion of the lien assigned to Assignee. This Assignment is made without recourse, representation or warranty.

Builder:

By:

Title:

THE STATE OF TEXAS §
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, _____ by
[*name*], [title] of _____, on behalf of
said entity.

Notary Public, State of Texas

My Commission Expires: _____

Notary's Printed/Typed Name