

# Remedy Roofing



Award-winning roofing company  
Licensed & Insured for your protection  
888 HAIL PRO • 888-424-5776  
[www.remedyroofing.com](http://www.remedyroofing.com)



NATIONAL ROOFING CONTRACTORS ASSOCIATION

Job Number: PEA-10828

## RESPECTFULLY SUBMITTED TO:

Rafael Cole

First Name Last Name

Company (if applicable)

602 Everett Street, Conroe, TX 77301

Street / City / State / Zip

(347) 451-7914

Telephone Alternate number

rafaelcolemont@yahoo.com

Email

## WORK TO BE PERFORMED AT:

602 Everett Street

Address

Conroe TX 77301

City / State / Zip

Material Location

## SCOPE OF WORK

- ✓ Remove existing roof down to solid decking
- ✓ Inspect decking and replace damaged /rotten areas as needed
  - Note: 7/16" Sheathing unless otherwise noted
  - Up to two sheets of decking included
- ✓ Install 36" Ice and Water Shield in all Valley(s) and Chimney(s)
  - Note: Closed Valley System
- ✓ Install underlayment over entire deck      Brand: Remedy Tarco Synthetic
- ✓ Install pre-painted metal drip edge around perimeter of roof line
  - Drip Edge color: Terra Bronze
- ✓ Install starter shingles that match the shingle brand
- ✓ Install Chimney Flashing and Roof-To-Wall Flashing as necessary
- ✓ Install GAF Timberline      Shingle Color: Weathered Wood
  - Note: 1¼" roofing nails fastened per MFG specifications
- ✓ Install pipe jack over all plumbing stacks
  - Note: All vents will be painted to match shingles
- ✓ Install appropriate ventilation
- ✓ Install matching Hip & Ridge shingles
- ✓ Clean and haul away all job related debris
  - Note: Includes cleaning of gutters, magnetic nail sweep of yard/driveway, etc.
- ✓ 2yr Remedy Roofing workmanship warranty

### Notes:

- Installation of new roofing system
- Fix two sections of the roof where debris is accumulating due to the slope: Front porch and back of the roof on the northwest corner where the sloped roof meets the flat metal roof

## **BUILDING CODE & BEST PRACTICE**

Building Codes and good building practices require that air conditioning, water and electric lines and pipes be located a safe distance below the roof decking. You agree that Remedy Roofing, Inc. is not responsible for nail penetrations to air conditioning, water or electric lines or pipes that are located less than 3" below the bottom surface of the roof deck or any resulting damages. It may be necessary or prudent to remove roof-mounted equipment, including e.g. satellite dishes, antennas, solar panels, weather stations, etc. You agree to remove and reinstall/adjust such equipment at your costs. Remedy Roofing, Inc. may remove such equipment if you fail to do so, but will have no obligation to reinstall or align the equipment, including satellite dishes.

---

Customer (Initial)

## **TERMS AND CONDITIONS**

You have read and agree to the terms and conditions as outlined on pages 5-17 of this document.

---

Customer (Initial)

## **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.

---

Customer (Initial)

**PROJECT PRICE**

<b>Total Proposal Price</b>	<b>\$ 9842.60</b>
Due Upon Acceptance	\$ 4921.30
Due Upon Completion	\$ Remaining funds including any supplements

<b>Respectfully Submitted By:</b>	<b>David Waibel</b>
	Remedy Roofing, Inc. Sales Rep
	Remedy Roofing, Inc. Sales Rep (signature)

Sales Rep Cell No.

By signing this contract, I acknowledge all terms and conditions.

“Know Your Rights and Duties”: You, the buyer, may cancel this transaction at any time before midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right.

\_\_\_\_\_  
Customer Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Rafael Cole  
Customer

\_\_\_\_\_  
Customer Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Customer

# REMEDY ROOFING, INC. CONTRACT

**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. PAYMENTS:

A. INITIAL CASH PAYMENT - Upon acceptance of this contract, Owner shall pay to Contractor 50% of the Total Contract Price as a portion of the Total Contract Price (Initial Cash Payment). Contractor may use the Initial Cash Payment in consideration for initial construction or pre-construction expenses, and compensation to Contractor for time and effort expended. The Initial Cash Payment shall be retained by the Contractor as liquidated damages if this Contract is terminated for any reason other than a Contractor's Event of Default (as defined below). Contractor and Owner agree that it is not possible to calculate the exact amount of damages that Contractor will suffer if this Contract is terminated for a reason other than Contractor's default and this amount is a reasonable approximation of the damages. This amount is in no way a penalty and does not apply to the extent Chapter 58 of the Business & Commerce Code applies. See 1(B).

B. DISASTER REMEDIATION - The following bold text only applies if 1) the Contractor 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) Contractor has not maintained a physical business address in the subject county or adjacent county for at least one year prior to the execution of this Contract. **This Contract is subject to Chapter 58, Business & Commerce Code. A contractor may not require a full or partial payment before the contractor begins work and may not require partial payments in an amount that exceeds an amount reasonably proportionate to the work performed, including any materials delivered.** If applicable, this statutorily prescribed provision may affect the Initial Cash Payment amount in Paragraph A above.

A. DRAW REQUESTS - During construction, the Contractor 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 Contractor 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 Contractor and who Contractor intends to pay from the requested funds. Owner shall cause the Draw Payments to be made to Contractor within three (3) business days following the receipt of a Draw Request. In the event of a Draw Payment delay, Contractor shall have the right to stop Work. Construction Costs are defined as all costs incurred by the Contractor as a result of the Work, except for the following:

- 1) Salaries, wages, and other compensation for the Contractor or the Contractor's personnel stationed at the Contractor's offices or at other sites not related to the Work.
- 2) Expenses and operating cost of the Contractor's offices.
- 3) General overhead expenses of the Contractor.
- 4) Marketing and promotional expenses of the Contractor.
- 5) Capital and bank expenses of the Contractor.
- 6) Any costs not directly related to the Work.

B. 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 Contractor agree that there will be no retainage of funds.

C. Payments that are more than thirty (30 days late), which payments being due upon receipt of the invoice, are subject to an 18% per annum interest rate or whatever the highest rate is allowed by law.

**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 Contractor, and will execute and deliver to Contractor 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 Contractor from all claims and liabilities except contractual warranty obligations arising under Contractor's Express Limited Home Warranty and any agreed items of Work to be completed (Punch List Items). Contractor's failure to complete Punch List Items shall not be a basis for Owner to withhold any payments otherwise due Contractor, and, although the Express Limited Home Warranty will be in effect at Substantial Completion, no work is required to be performed by Contractor pursuant to the Express Limited Home Warranty until the Total Contract Price and all payments set forth herein have been paid to Contractor 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 Contractor 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 within ten (10) days of written notice from Contractor. Owner will verify all selections with the supplier and provide Contractor 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 Contractor. To approve a proposed change, both Owner and Contractor 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 Contractor in which the Changes are discussed and acknowledged by the Parties. Upon receiving from Owner a written request for any change, Contractor will present Owner with a proposal for the changes including any additional price of construction, additional Contractor's compensation, and any extensions to the Projected Completion Date. If Owner accepts Contractor'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 Contractor's proposal for changes within three (3) days after receipt shall constitute a rejection of the proposal. Contractor shall be reimbursed at \$ 100 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 Contractor's compensation to Contractor in cash or immediately available funds within three(3) business days after Owner's acceptance of the proposal. Contractor will not be obliged to proceed with any Work until all amounts have been paid as agreed and Contractor 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. CONTRACTOR'S RESPONSIBILITIES:** Contractor, 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 Contractor the agent, servant, or employee of Owner, or create any partnership, joint venture, or other association between Owner and Contractor. Contractor accepts responsibility for the performance of all duties reasonably necessary to complete the Work and agrees that:

A. PERMITS - Contractor shall make reasonable efforts to obtain all necessary licenses, permits, and similar authorizations required by any applicable governmental authorities. Contractor 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 - Contractor shall pay all costs related to the Work, except for costs associated with Change Orders and Allowance overages as described above.

C. MATERIALS - Contractor 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 - Contractor 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 - Contractor 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. Contractor 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. Contractor 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 Contractor.

F. OTHER - Contractor shall perform all other obligations as provided in this Contract

**11. INSURANCE:** Before beginning the Work, Contractor shall, upon written request from the homeowner, a copy of the certificate of insurance.

## **12. WARRANTY**

A. Contractor will provide a two (2) years Express Limited Warranty that covers its workmanship. CONTRACTOR AGREES TO COMPLY WITH THE EXPRESS LIMITED HOME WARRANTY AS ITS EXPRESS CONTRACTUAL WARRANTY. CONTRACTOR AND OWNER AGREE THAT THE EXPRESS LIMITED HOME WARRANTY CONSTITUTES THE EXCLUSIVE WARRANTY TO BE MADE AVAILABLE BY CONTRACTOR 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 CONTRACTOR 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 Contractor 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 two (2) years for workmanship. Under no circumstance is any landscaping, whether currently existing trees, plants, or grass on the subject property, or any of those installed by Contractor, warranted by the Express Limited Home Warranty or any other warranty. Contractor and Owner agree that no warranty of any kind exists on landscaping in consideration for issuance of the Express Limited Home Warranty and any Third-Party Warranty. It is incumbent upon the Owner to properly maintain and care for any landscaping.

B. 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 Contractor 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 Contractor'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.

D. WARRANTY VOIDED. The Express Limited Warranty is voided by repairs and/or work performed on or impacting Contractor's Work, and/or the Owner refuses to allow the Contractor the opportunity to inspect and repair, if that is necessary.

**13. OWNER'S RESPONSIBILITIES:** Owner agrees to the following:

A. PAYMENTS - Owner shall make all payments to Contractor 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 Contractor of any objections to any Work not in compliance with the Construction Documents. **Failure by Owner to promptly notify Contractor of objections to any Work performed within any phase of construction shall constitute an acceptance of that portion of the Work subject to Contractor'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, Contractor, 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 Contractor, 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. Contractor 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 CONTRACTOR FROM ANY DAMAGES TO THESE ITEMS THAT OCCUR ALL OR IN PART AS A RESULT OF CONTRACTOR'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 Contractor 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 Contractor's prior written consent.

H. OTHER - Owner shall perform all other obligations as provided in this Contract.

#### **14. 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 Contractor 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, Contractor shall deliver written notice of such default to Owner. If the Owner Event of Default is not cured within three (3) days after delivery of such written notice (Owner's Cure Period), Contractor may exercise any remedy subject to the terms of this Contract.

C. REMEDIES OF CONTRACTOR - 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 Contractor, become immediately due and payable without prejudice to any other remedy of the Contractor and Contractor 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 Contractor as liquidated damages thereby releasing both parties from this Contract; or (ii) terminate and seek recovery of any and all damages suffered by Contractor, including, but not limited to, payment for all materials, labor, profit, overhead and fees with respect to this Contract. If Owner refuses to accept the completed Improvements and/or pay the Total Contract Price to Contractor as specified in this Contract, Contractor not being in default, Contractor 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 Contractor of any portion of the Total Contract Price when payment is due, then the Owner shall pay to the Contractor, 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.

E. TERMINATION FOR CONVENIENCE – Contractor has the right to terminate this Contract for its convenience, which shall be construed to mean for any reason whatsoever.

#### **15. OWNER(S)' AND CONTRACTOR'S JOINT AGREEMENTS:**

A. MECHANIC'S LIEN – Owner grants to Contractor a mechanic's lien to secure performance of the obligations of Owner. If Owner is obtaining an interim construction loan, Contractor shall assign to the interim construction lender a portion of Contractor'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 Contractor, and to subordinate any remaining amount of Contractor'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 Contractor, then Contractor and the holder of the indebtedness under the contractor'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 contractor's and mechanic's lien contract, the terms of this Contract shall control.

B. DOCUMENT RELIANCE – Owner is advised that the Contractor may have contracted with one or more independent professional architects, engineers, surveyors, designers, or other professional third parties (Contractor'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 Contractor prior to the design of the foundation and the completion of the Construction Documents. In constructing the Improvements, Contractor will rely on documents provided by Contractor's Professionals and Owner's Professionals as being complete, adequate, and correct in all respects. Contractor shall promptly notify Owner of any errors, conflicts, or inconsistencies discovered with respect to the Owner supplied data or Construction Documents. CONTRACTOR 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. Contractor's reasonable reliance on the data and Construction Documents compiled and/or provided by Owner's Professionals shall relieve Contractor 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 Contractor constructs the Improvements in substantial compliance with the Construction Documents. Any supplements to the Construction Documents prepared by Contractor shall be the property of Contractor and shall not be used by Owner except for construction provided by Contractor. 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.

C. WORK PERFORMED AND MATERIALS PROVIDED DIRECTLY BY OWNER – Upon receipt of Contractor'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 Contractor hereunder, Owner shall keep such other parties from interfering with the progress of the Work. To the extent reasonably practicable, Contractor 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 CONTRACTOR. FURTHERMORE, OWNER AGREES THAT CONTRACTOR 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 Contractor harmless from all such charges and any related liens.

D. CONFIDENTIALITY OF INFORMATION – Owner acknowledges that Owner may receive a list of subcontractors and materialmen utilized by Contractor to construct the Improvements. Owner acknowledges that Contractor regards that information as confidential, proprietary, and trade secret information of Contractor'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 Contractor of the Total Contract Price, Owner agrees that Owner will not contract any of Contractor's subcontractors for labor or materials to be incorporated into the Improvements except with the express, prior written consent of Contractor. Owner further acknowledges that Contractor 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.

E. OTHER PARTIES BOUND - Owner and Contractor each bind themselves, their respective heirs, executors, administrators, partners, successors, assigns, and legal representatives in all matters related to this Contract.

F. 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.

G. PERMISSION FOR INTERNET/SOCIAL MEDIA PUBLICATION – Owner grants Contractor permission to take pictures and video of the Property and Improvements for the purpose of promoting Contractor's work on its website, the internet, social media, contests, or literature. Owner hereby waives any claim for compensation of any kind related to this permission and publication, and Owner further waives any related claims, including, but not limited to, a violation of Owners privacy or any other personal or property rights.

H. 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 Contractor'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 Contractor), and irrespective of Contractor's presence on the Property at such time, OWNER AGREES TO AND DOES HEREBY RELEASE, INDEMNIFY AND HOLD CONTRACTOR 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 CONTRACTOR REGARDLESS OF WHETHER THE CONTRACTOR 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 CONTRACTOR OR ATTRIBUTABLE TO CONTRACTOR'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 Contractor cannot guarantee the viability of those trees and vegetation. Owner acknowledges this risk and agrees to release the Contractor from any claims for damages to or loss of trees or vegetation resulting from construction activities.

I. TERMINATION/STIPULATED DAMAGES PRIOR TO SUBSTANTIAL COMPLETION – In the event a bona fide dispute or material misunderstanding (Dispute) arises between Contractor and Owner prior to Substantial Completion and if such Dispute cannot be resolved to the mutual satisfaction of Contractor and Owner, Contractor at its sole election,

may either submit the Dispute to mediation 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 Contractor pursuant to this paragraph, Contractor shall elect to pay Owner one of the following, as stipulated damages: (1) **5%** of the Initial Cash Payment as defined above in 5.A., or (2) **\$ 500.00**. The parties agree that the stipulated damages are 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 Contractor for all materials purchased, all Work performed up through the date of termination and an amount representing Contractor's profit or fee that shall be proportionate to the amount of Work performed. Upon such termination of this Contract by Contractor and tender of the stipulated liquidated damages, no cause of action against Contractor shall accrue to the Owner and Owner shall execute a written release of this Contract and deliver it to the Contractor.

J. 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: 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 Contractor or their representatives, shall first be submitted to mediation.** The Parties agree to split the mediation fee and the mediator's fees with all participating parties.

**a) 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 mediator shall be conducted in the same county as the Property.**

**Owner and Contractor agree that notwithstanding anything to the contrary, the rights and obligations set forth in this mediation 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 agreement shall not affect the validity or enforceability of the remaining portions of this mediation agreement and/or the Contract. Owner and Contractor further agree (1) that any dispute involving Contractor's directors, officers, partners, employees and agents shall be resolved as set forth herein and not in a court of law; and (2) that Contractor shall have the option to include its subcontractors, suppliers, and vendors as parties in the alternative dispute resolution procedures set forth in this Contract.**

**K. WAIVER OF TRIAL BY JURY: 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 Contractor. 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. Any party who challenges this provision with a Court and loses, shall pay the opposing party's reasonable and necessary attorney's fees and costs incurred in defending the provision.**

L. 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 Contractor be liable for any special, indirect, or consequential damages, including claims of mental anguish, except as otherwise specifically set forth in this Contract. No party shall be liable for treble damages, exemplary damages, or punitive damages. 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 Contractor 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.

**3) DAMAGES CAPPED. Notwithstanding anything to the contrary, Owner may not recover damages against Contractor that exceed \$100,000 or 5% of the paid contract price, whichever is greater. For purposes of this limitation of liability provision, damages include any and all damages, e.g., damages, reasonable and necessary attorney's fees, court costs, etc.**

M. WARRANTY REQUEST- Owner and Contractor 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 Contractor in the manner required by RCLA.

N. ATTORNEY FEES - The prevailing party in any legal proceedings brought in relation to this Contract shall be entitled to recover from the non-prevailing party all litigation costs and reasonable and necessary attorney's fees.

O. COLLECTION FEES - Owner will be responsible for all collection fees including, but not limited to, attorney's fees and costs incurred prior to securing a judgment and all attorney's fees and costs related to post-judgment collection actions.

**16. 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 Contractor.

**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 CONTRACTOR, 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 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 CONTRACTOR IS RELYING ON THESE REPRESENTATIONS AND WOULD NOT ENTER INTO THIS CONTRACT WITHOUT THIS UNDERSTANDING.**

**17. CONSULT YOUR ATTORNEY:** 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.

**18. 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.

**19. EXECUTION BY CONTRACTOR:** This Contract shall not be binding upon Contractor 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 Contractor.

**20. THREE-DAY RIGHT TO RESCIND:** To the extent this Contract is for work and material used in constructing new improvements to a residential homestead, the Owner may rescind this Contract without penalty or charge within three days after execution of this Contract by all parties.

[remainder of this page intentionally blank]

## **21. SIGNATURES OF PARTIES:**

**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. 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.**



## 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 retainage 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 YOU 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 rights 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 payment 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 withhold or cause your lender to withhold 10 percent of the amount of payments made for the work performed by your contractor. This is sometimes referred to as 'statutory retainage.' If you choose not to withhold 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 withhold.**

**"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 fully complied with the law regarding statutory retainage, 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 that 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."**