



BASED ON FORMS PROMULGATED BY THE TEXAS ASSOCIATION OF BUILDERS (TAB)

**RESIDENTIAL COMPLETED HOME CONTRACT**

(For Use With Completed Homes Constructed On The Builder's Property)

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

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

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

3. **IMPROVEMENTS:** The Improvements consist of a  single family residence or  \_\_\_\_\_ constructed by Builder on the Property. There is no representation, warranty or guarantee that the Improvements are constructed in accordance with engineering, geotechnical, architectural drawings, reports or other information. If, between the date of this Contract and Closing (as defined below), Buyer requests that Builder install additional options or upgrades on the Property, Buyer will submit a Change Order (as defined below) to Builder that will provide for payment by Buyer to Builder of the cost of such options or upgrades. If, subsequent to Buyer's elections to add additional options or upgrades, Buyer becomes unable to qualify or requalify for a loan for the increased Sales Price (as defined below), it is understood and agreed that Builder shall be entitled to terminate this Contract and retain all funds previously deposited with Builder by Buyer as liquidated damages. Builder will have no obligation to install such additional options or upgrades unless and until Builder has approved and executed the aforesaid Change Order and received full payment from Buyer for such options or upgrades.

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

A. **EARNEST MONEY** – Buyer shall deposit \$ \_\_\_\_\_ as Earnest Money with \_\_\_\_\_ at \_\_\_\_\_ (Address), as Escrow Agent, upon execution of this Contract by both parties. Additional earnest money of \$ \_\_\_\_\_ must be deposited by Buyer with Escrow Agent on or before \_\_\_\_\_. If Buyer fails to deposit the Earnest Money as required by this Contract, Buyer will be in default.

B. **FINANCING** – (Check the applicable box.)

1) **FINANCING** – If Buyer desires to obtain financing for any portion of the Total Sales Price, refer to the Financing Addendum attached hereto and incorporated herein by reference.

2) **NO FINANCING** - Any remaining unpaid balance of the Total Sales Price shall be paid by Buyer to Builder in cash at Closing (as defined below).

C. **AMENDMENT** – This Contract may be hereafter amended.

**5. ESCROW:**

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

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

- A. TITLE POLICY - Builder shall furnish to Buyer at  Builder's  Buyer's expense an owner policy of title insurance (Title Policy) issued by \_\_\_\_\_ (Title Company) in the amount of the Total Sales Price, dated at or after Closing, insuring Buyer against loss under the provisions of the Title Policy, subject to the promulgated exclusions (including existing building and zoning ordinances) and the following exceptions:
  - 1) Restrictive covenants applicable to the platted subdivision in which the Property is located.
  - 2) The standard printed exception for standby fees, taxes and assessments.
  - 3) Liens created as part of the financing described in this Contract.
  - 4) Utility easements created by the dedication deed or plat of the subdivision in which the Property is located.
  - 5) Reservations or exceptions otherwise permitted by this Contract or as may be approved by Buyer in writing.
  - 6) The standard printed exception as to discrepancies, conflicts, shortages in area or boundary lines, encroachments or protrusions, or overlapping improvements. Buyer, at Buyer's expense, may have the exception amended to read only, "shortages in area."
  - 7) The standard printed exception as to marital rights.
  - 8) The standard printed exception as to waters, tidelands, beaches, streams, and related matters.
  - 9) Any exception or exclusion regarding minerals approved by the Texas Department of Insurance for inclusion in standard exceptions for policies of title insurance issued in this state.
- B. COMMITMENT - Within twenty (20) days after the Title Company receives a copy of this Contract, Builder shall furnish to Buyer a commitment for title insurance (Commitment) and, at Buyer's expense, legible copies of restrictive covenants and documents evidencing exceptions in the Commitment other than the standard printed exceptions. Builder authorizes the Title Company to mail or hand deliver the Commitment and related documents

to Buyer at Buyer's address shown below. If the Commitment is not delivered to Buyer within the specified time, the time for delivery will be automatically extended up to 15 days.

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

## 7. NOTICE TO BUYER:

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

- D. **PROPERTY LOCATED IN A CERTIFICATED SERVICE AREA OF A UTILITY SERVICE PROVIDER** – Notice required by Section 13.257, Water Code: The real property, described in Paragraph 2, that you are about to purchase may be located in a certificated water or sewer service area, which is authorized by law to provide water or sewer service to the properties in the certificated area. If your property is located in a certificated area there may be special costs or charges that you will be required to pay before you can receive water or sewer service. There may be a period required to construct lines or other facilities necessary to provide water or sewer service to your property. You are advised to determine if the property is in a certificated area and contact the utility service provider to determine the cost that you will be required to pay and the period, if any, that is required to provide water or sewer service to your property. The undersigned Buyer hereby acknowledges receipt of the foregoing notice at or before the execution of a binding contract for the purchase of the real property described in Paragraph 2 or at closing of purchase of the real property.
- E. **TIDE WATERS** - If the Property abuts the tidally influenced waters of the state, Section 33.135, Texas Natural Resources Code, requires a notice regarding coastal area property to be included in the Contract.
- F. **GULF INTRACOASTAL WATERWAY** – If the Property is located seaward of the Gulf Intracoastal Waterway to its southernmost point and then seaward of the longitudinal line also known as 97 degrees, 12', 19" which runs southerly to the international boundary from the intersection of the centerline of the Gulf Intracoastal Waterway and the Brownsville Ship Channel, Section 61.025, Texas Natural Resources Code, requires a statement to be included in the Contract for conveyance of the Property.
- G. **ENVIRONMENTAL MATTERS** - Buyer is advised that the presence of wetlands, toxic substances, including asbestos and wastes or other environmental hazards or the presence of a threatened or endangered species or its habitat may affect Buyer's intended use of the Property.
- H. **ANNEXATION** - If the Property is located outside the limits of a municipality, Builder notifies Buyer under Section 5.011, Texas Property Code, that the Property may now or later be included in the extraterritorial jurisdiction of a municipality and may now or later be subject to annexation by the municipality. Each municipality maintains a map that depicts its boundaries and extraterritorial jurisdiction. To determine if the Property is located within a municipality's extraterritorial jurisdiction or is likely to be located within a municipality's extraterritorial jurisdiction, Buyer should contact all applicable municipalities.
- I. **PUBLIC IMPROVEMENT DISTRICTS** – If the Property is in a public improvement district, Section 5.014, Texas Property Code, requires Builder to notify Buyer as follows: As a purchaser of this parcel of real property you are obligated to pay an assessment to a municipality or county for an improvement project undertaken by a public improvement district under Chapter 372, Local Government Code. The assessment may be due annually or in periodic installments. More information concerning the amount of the assessment and the due dates of that assessment may be obtained from the municipality or county levying the assessment. The amount of the assessment is subject to change. Your failure to pay the assessments could result in a lien on and the foreclosure of your property.
- J. **BACK-UP OFFERS** - Unless expressly prohibited in writing by the parties, Builder may continue to show the Property for sale and to receive, negotiate and accept back-up offers.
- 8. CLOSING:** The closing of the sale (Closing) of the Property and Improvements shall take place at the Title Company or any other location agreed to in writing by the parties on \_\_\_\_\_, 20\_\_\_\_, or within seven (7) days after Title Objections have been resolved or waived, whichever date is later (Closing Date). At Closing, Builder shall furnish tax statements or certificates showing no delinquent taxes, and a special warranty deed conveying good and indefeasible title. The special warranty deed shall be prepared and filed at the Builder's expense. Buyer shall be responsible for all remaining Closing costs, points, loan origination fees, escrow fee, and other amounts payable incident to the funding of Buyer's purchase money loan (if any) as permitted by applicable law. Any extension of the Closing Date due to lender required matters or caused by Buyer or Buyer's agents shall result in an increase of the Total Sales Price equal to the total amount of additional per diem interest incurred by Builder on any loan secured by the Property plus per diem tax, insurance, maintenance and utility expenses.

**9. INSPECTION, RELEASE AND OCCUPANCY:** Buyer acknowledges that Buyer has conducted a walk-through inspection of the Property and Improvements and is thoroughly familiar with their condition and accepts the Property "AS IS" and in its present condition. Prior to or at Closing Buyer will execute and deliver to Builder a "Final Customer Walk-Thru Approval and Punch List" in the form associated with this Contract that confirms Buyer's inspection and acceptance of the Improvements and releases Builder from all claims and liabilities except warranty obligations arising under the Builder's Express Limited Home Warranty (as defined below) and any agreed items of work to be completed after Closing (Punch List Items). Builder is not required to Close or to convey the Property and/or Improvements to the Buyer(s) until the Buyer(s) has/have conducted the walk-through inspection and signed and delivered to Builder the Final Customer Walk-Thru Approval and Punch List form, accepting the Improvements as complete and satisfactory (except for agreed Punch List items). Except for Punch List Items expressly noted in the Final Customer Walk-Thru Approval and Punch List, closing of this Contract shall be conclusively deemed to be an acknowledgment by the Buyer that the Improvements have been completed and approved by Buyer. Upon Closing and payment to Builder of the Total Sales Price and all payments as set forth herein, Buyer will be given possession of the Improvements and the Property; in no event shall Buyer be entitled, without the prior written consent of the Builder, to occupy the Improvements, place any personal property in the Improvements or on the Property until Builder has been paid the Total Sales Price and all other payments as set forth herein. At the time of Closing or if Buyer occupies the Improvements, places any personal property in the Improvements or on the Property, Builder shall be released from any further obligation or duty for the maintenance of insurance coverage with respect to the Property and/or the care, repair, maintenance and condition of the Property and the Improvements, except as specified in the Express Limited Home Warranty, if applicable. Builder's failure to complete Punch List Items shall not be a basis for Buyer to withhold any payments otherwise due Builder.

**10. CHANGE ORDER PROCEDURE:** Except as otherwise stated in this Contract, no alterations, additions or deletions will be made to the Improvements or Property unless agreed to in writing by Buyer and Builder. To approve a proposed change, both Buyer and Builder shall sign a written agreement (Change Order) in the form attached. Upon receiving from Buyer a written request for any change, Builder will present Buyer with a proposal for the changes including any increase in the Total Sales Price and any extensions to the Closing Date. If Buyer accepts Builder's proposal for changes, the Change Order will become a binding attachment to this Contract, and to the extent a conflict between a Change Order and this Contract exists, the terms of the Change Order shall control. Any Buyer party may sign the Change Order as agent for the other, and the signature of one Buyer shall be binding on all others; an email from one Buyer concerning a Change Order also binds all Buyers. Builder may, at its discretion, but is not required to, treat an email exchange between Buyer and Builder, in which the changes are acknowledged by Buyer as constituting a signed Change Order for purposes of this Section 11 and this Contract and of Buyer(s) acceptance of the additional price, Builder's compensation, and extensions to the Projected Completion Date, resulting from such change(s). Except where Builder chooses to treat an exchange of emails as constituting an acceptance of Builder's proposal concerning a change, failure of Buyer to approve Builder's proposal for changes within three (3) days after receipt shall constitute a rejection of the proposal. Builder shall be reimbursed at \$50.00 per hour, with a minimum \$100, for all expenses and effort incurred in the production of any Change Order proposal not accepted by Buyer within Builder discretion. Builder may disallow any and all Change Orders in Builder's sole and exclusive discretion.

**11. WARRANTY:**

A. Builder will provide warranty coverage on the Improvements to Buyer pursuant to the attached and incorporated Express Limited Home Warranty. BUILDER AGREES TO COMPLY WITH THE EXPRESS LIMITED HOME WARRANTY AS ITS EXPRESS CONTRACTUAL WARRANTY. UNLESS BUILDER HAS ALSO ELECTED TO PROVIDE A THIRD-PARTY WARRANTY, BUILDER AND BUYER AGREE THAT THE EXPRESS LIMITED HOME WARRANTY CONSTITUTES THE EXCLUSIVE WARRANTY TO BE MADE AVAILABLE BY BUILDER AND IS IN PLACE OF AND SUPERSEDES AND PRECLUDES ALL OTHER GUARANTIES OR WARRANTIES, EXPRESS OR

IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF PERFORMANCE, WORKMANSHIP, REPAIR, MODIFICATION, MERCHANTABILITY, SUITABILITY AND FITNESS. ANY AND ALL IMPLIED WARRANTIES ARE HEREBY DISCLAIMED BY BUILDER AND WAIVED BY BUYER, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTY OF GOOD AND WORKMANLIKE REPAIR OR MODIFICATION OF EXISTING TANGIBLE GOODS OR PROPERTY AND THE IMPLIED WARRANTY OF GOOD AND WORKMANLIKE CONSTRUCTION. THE PARTIES AGREE THAT THE EXPRESS LIMITED HOME WARRANTY AND THIRD-PARTY WARRANTY, IF APPLICABLE, ADEQUATELY SET FORTH THE MANNER, PERFORMANCE, AND QUALITY OF THE CONSTRUCTION OF THE HOME AND IMPROVEMENTS AND SERVICES TO BE PERFORMED. Buyer acknowledges that this waiver of implied warranties shall not be construed as a waiver of any right to bring a claim under Chapter 17 of the Texas Business and Commerce Code but simply a waiver and disclaimer of any and all implied warranties to the maximum extent allowable by applicable law. Buyer acknowledges, understands, and agrees that the terms of the Express Limited Home Warranty and Third-Party Warranty, if applicable, are clear, specific, and sufficiently detailed to establish the only standards of construction performance or service that Builder or Warrantor are obligated to meet. The Parties agree that this Express Limited Home Warranty will control any warranty, workmanship, material, or any other defect claims regarding the Property or Improvements. For items in need of repair under the Express Limited Home Warranty, the Parties agree that Builder shall have the sole right to determine the means, method, and manner of repair to be implemented. In the event that the Express Limited Home Warranty or the Third-Party Warranty do not specify a building or performance standard for the identified item, the usual and customary industry standards for similar improvements in the geographic region shall govern. In short, the Express Limited Home Warranty provides warranty coverage on the Improvements for one (1) year for workmanship and materials, two (2) years for plumbing, electrical, heating, and air-conditioning delivery systems, and ten (10) years for major structural components of the Improvements. Under no circumstance is any landscaping, whether currently existing trees, plants, or grass on the subject property, or any of those installed by Builder, warranted by the Express Limited Home Warranty or any other warranty. Builder and Buyer agree that no warranty of any kind exists on landscaping in consideration for issuance of the Express Limited Home Warranty and any Third-Party Warranty. It is incumbent upon the Buyer to properly maintain and care for any landscaping. The Express Limited Home Warranty is incorporated by reference as if fully copied and set forth herein.

- B. Builder  will  will not also provide a third-party warranty (Third-Party Warranty) provided through a third-party warranty company (if a box is not selected, Builder will not provide a Third-Party Warranty). If a Third-Party Warranty is provided, Buyer shall first file and pursue any claim that may be covered by the Third-Party Warranty with the third-party warranty company prior to making any warranty claim with the Builder under the Express Limited Home Warranty. Buyer understands and agrees that the third-party warranty requires enrollment of the Property pursuant to the applicable program and that Buyer agrees to sign and cooperate with execution of such program documents prior to and after Closing, this being a material term.
- C. Builder shall construct the Improvements in a manner that passes all applicable municipal or county inspections; passage of such inspections indicates compliance with applicable codes and standards. Failure to meet an applicable code or standard by itself for any element of the Improvements does not give rise to strict liability and it is not negligence per se, breach of contract or breach of warranty and does not create a cause of action or warranty claim against Builder. A claim or allegation that there is a failure to meet applicable code must be accompanied by (1) actual physical damage resulting from that failure or violation of code to the Property or Improvements, or (2) an immediate threat to the health and safety for the occupants or invitees. Builder shall not be required to utilize any repair method that would result in economic waste or be required to repair items or areas that are not damaged.
- D. Right of Entry and Repair. Buyer hereby grants to Builder the right to enter and inspect the Improvements during normal business hours upon Builder's request, or at other times as needed if any emergency is claimed. Buyer also grants Builder the irrevocable right to implement repairs to the Improvements pursuant to the Express Limited Home Warranty or any notice from Buyer to Builder of claimed defects, deficiencies, or items in need of repair, or to

implement any offered repair of the Improvements by the Builder. This provision is specifically enforceable by Builder and shall not be construed as a requirement that Builder repair any claim asserted by Buyer.

- E. Any Manufactured Product warranties will be assigned, without recourse, to Buyer upon payment of the Total Sales Price. This assignment shall be evidenced by Builder's execution and delivery to Buyer of the "Assignment of Manufactured Product Warranties". Buyer 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.
- F. Water Wells: If present, Buyer understands and acknowledges that certain issues exist with respect to the quality of water supplied by the water well(s) and that the quality of water may change over time, even though the current water quality may require the installation of additional filtration systems at an additional cost to Buyer and subject to a Change Order. Buyer acknowledges that the quality of water is a latent condition. **BUYER IS HEREBY ADVISED OF THE ISSUE(S) CONCERNING WATER QUALITY FROM WATER WELLS AND ACKNOWLEDGES THAT BUILDER IS NOT PROVIDING ANY WARRANTY WITH RESPECT TO THE QUALITY OF WATER SUPPLIED BY ANY WATER WELL. ALL WARRANTIES, IMPLIED OR EXPRESS, ARE HEREBY WAIVED AND/OR DISCLAIMED BY BUYER, INCLUDING BUT NOT LIMITED TO THE WARRANTY OF HABITABILITY, TO THE EXTENT APPLICABLE.**

## 12. DEFAULT BY BUILDER:

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

## 13. BUYER'S RESPONSIBILITIES: Buyer agrees to the following:

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

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

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

- C. DOCUMENT RELIANCE - Buyer is advised that the Builder may have contracted with one or more independent professional architects, engineers, surveyors, designers, or other professional third parties (Builder's Professionals) to perform services and/or prepare certain documents or reports for construction of the Improvements. In constructing the Improvements, Builder relied on documents provided by Builder's Professionals as being complete, adequate, and correct as to certain issues including, but not limited to, the soils on the Property, the adequacy of the building pad, the foundation design and the framing plan. This provision is not intended to waive any rights, remedies or otherwise of the parties hereto provided by Chapter 59, Tex. Bus. & Comm. Code.
- D. PAYMENT OF COSTS - Buyer shall pay all costs related to the installation of options or upgrades as agreed to in fully executed Change Orders.
- E. CONTRACTORS - Buyer agrees not to instruct, direct, or otherwise communicate with the contractors retained by Builder as to the scheduling of or details about the installation of additional options or upgrades. Furthermore, Buyer shall not do or cause any work to be done or alter or cause the alteration of any portion of the Improvements prior to Buyer's occupancy of the Improvements without Builder's prior written consent.
- F. OTHER - Buyer shall perform all other obligations as provided in this Contract.

#### 14. DEFAULT BY BUYER:

- A. EVENTS OF DEFAULT BY BUYER – (each is a Buyer Event of Default):
  - 1) Buyer or Buyer's agents or representatives fail to make any payments due under this Contract, including payment for any Change Orders.
  - 2) Buyer or Buyer's agents or representatives unreasonably delay or unreasonably interfere with the Builder or its subcontractors or suppliers in the execution of installing additional options or upgrades.
  - 3) Buyer fails to participate in the Final Customer Walk-Thru Approval and Punch List inspection or to sign and deliver to Builder the Final Walk -Thru Approval and Punch List form within 24 hours after the customer walk-thru is completed.
  - 4) Buyer or Buyer's agents or representatives fail to perform any material agreement contained in this Contract.
  - 5) Buyer, or any person liable for the payment or performance under this Contract, files a petition in bankruptcy, makes an assignment for the benefit of any creditor, is adjudicated as bankrupt or insolvent, or applies for or consents to the appointment of a receiver, trustee or liquidator of all or a substantial part of their or its assets.
  - 6) Buyer communicates to Builder or any representative of Building in writing or verbally that Buyer intends not to close or complete the sale transaction or otherwise intends to do any act which would constitute a breach or default under this Contract or intends to fail timely to perform or fulfill any obligation or undertaking required by this Contract, and fails to clearly, unequivocally, and unconditionally repudiate such communication within three calendar days of being request to do so by Builder.
- B. NOTICE OF DEFAULT TO BUYER – If Buyer commits a Buyer Event of Default, prior to exercising any remedy granted by this Contract or by law, Builder shall deliver written notice of such default to Buyer. If the Buyer Event of



Default is not cured within fifteen (15) days after delivery of such written notice (Buyer's Cure Period), Builder may exercise any remedy subject to the terms of this Contract.

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

**15. BUYER(S)' AND BUILDER'S JOINT AGREEMENTS:**

- A. WORK PERFORMED AND MATERIALS PROVIDED DIRECTLY BY BUYER – Upon receipt of Builder's written approval, in the event Buyer contracts with other parties to perform work or provide or install materials, Buyer shall keep such other parties from interfering with the progress of the installation of any additional options or upgrades to be provided by Builder. To the extent reasonably practicable, Builder shall cooperate with such other parties, but will not be responsible for coordinating that work or for the quality of their work. Buyer agrees that any ACTS OF, OMISSIONS BY, OR LOSSES, DAMAGES OR DELAYS CAUSED BY BUYER, BUYER'S AGENTS OR ANY THIRD PARTY RETAINED BY, THROUGH OR UNDER BUYER SHALL BE THE SOLE RESPONSIBILITY OF BUYER, NOT THE BUILDER. FURTHERMORE, BUYER AGREES THAT BUILDER WILL NOT BE REQUIRED TO PAY FOR, WARRANT, REPAIR, INSURE OR CORRECT ANY WORK PERFORMED OR MATERIALS PROVIDED BY PERSONS OR ENTITIES EMPLOYED BY, OR WHO HAVE CONTRACTED WITH BUYER. Buyer shall fully and promptly pay all sums charged by third parties hired by Buyer and indemnify and hold Builder harmless from all such charges and any related liens. If after execution of this Contract and only on Builders's written consent, Buyer supplies Buyer's own materials and/or labor, the Total Sales Price will not be amended unless agreed to in writing by both Buyer and Builder. Buyer agrees that legal and equitable ownership of such third party changes, additions and materials shall remain in Builder until Closing has occurred. In the event any "developer participation fees" (sometimes referred to as "true-ups") are assessed against or charged to Builder on account of work performed or contracted for, or materials provided or installed or contracted for, directly by Buyer, Buyer shall pay such "developer participation fees" immediately upon demand, in addition to any other amounts Buyer is responsible to pay under this Contract.
- 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 as follows:
  - 1) Exterior walls of improved living areas: insulated with \_\_\_\_\_ insulation to a thickness of \_\_\_\_\_ inches that yields an R-Value of \_\_\_\_\_.
  - 2) Walls in other areas of the home: insulated with \_\_\_\_\_ insulation to a thickness of \_\_\_\_\_ inches that yields an R-Value of \_\_\_\_\_.
  - 3) Ceilings on improved living areas: insulated with \_\_\_\_\_ insulation to a thickness of \_\_\_\_\_ inches that yields an R-Value of \_\_\_\_\_.
  - 4) 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 \_\_\_\_\_.

- 5) 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. PRORATIONS AND ROLLBACK TAXES –

- 1) Prorations: Taxes for the current year, maintenance fees, assessments, dues and rents will be prorated through the Closing Date based upon such information as is then readily available to the title company. If taxes for the current year vary from the amount prorated at Closing, the parties shall adjust the prorations when tax statements for the current year are available. If taxes are not paid at or prior to Closing, Buyer will be obligated to pay all applicable taxes for the current year.
- 2) Rollback Taxes: If Builder's change in use of the Property prior to Closing or denial of a special use valuation on the Property results in additional taxes, penalties or interest (Assessments) for periods prior to Closing the Assessments will be the obligation of Builder. If notice of any such Rollback Taxes are given in a Tax Certificate, said taxes shall be paid at or prior to the time of closing if Buyer is obtaining lender financing.

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

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

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

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

I. RISK OF LOSS – Should the Improvements and/or Property be partially or wholly destroyed by fire, windstorm, or other casualty prior to Closing, the Builder will have the option of repairing any damage or terminating this Contract and returning all sums paid to the Builder by the Buyer. The Builder's decision to rebuild the Improvements or terminate this Contract shall be communicated to Buyer in writing within twenty (20) days of the loss. If Builder elects to repair the Improvements, the damaged Improvements shall be repaired within a reasonable time and Builder shall have no liability to Buyer for any expenses or damages resulting from any delay in Closing. Buyer agrees that it shall have no claim to or interest in any insurance proceeds attributable to the loss.

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

K. DISPUTE PUBLICATION WAIVER – Buyer and Builder agree that neither party shall utilize any form of social media, the internet, the world wide web, or print, traditional, or digital media of any kind, or any other form of information distribution to publicly insult, disparage, or speak negatively of the other party as it may concern the alleged condition of the Improvements or any claimed defect, deficiency, or condition of the Improvements, or of any dispute with Builder, including but not limited to any mediation, settlement, lawsuit and/or arbitration. Any violation of this provision is a material breach of this Contract and subject to Builder's right to obtain a restraining order or similar relief and associated attorney's fees and expenses. Attorney-client communications via email are excepted from the prohibitions of this section.

L. PRIVACY AND TECHNOLOGY – Buyer may elect for the installation of, or the Improvements may have, various technologies installed that in some form document, photograph, record, or otherwise capture data, images, video, or voice, of the Buyer, occupants, or invitees. All such information may be transmitted, sold or used without Buyer's

knowledge or consent. As a result, Buyer waives any claims against Builder regarding these various incorporated technologies and all claims of how any data captured by said technologies is published, distributed, sold, used, or misused.

M. **RELEASE OF AND INDEMNIFICATION FOR LOSSES SUSTAINED DURING CONSTRUCTION** – Because of potential safety and health hazards present during installation of any additional options or upgrades, as well as the practical limitations on the Builder's ability to control the activities of all persons involved in the installation process and thereby limit the risk of personal injury that may arise from construction activities, the parties agree as follows:

- 1) **Personal Safety:** To ensure and to protect the personal health and safety of Buyer and Buyer's licensees and invitees, Builder may restrict or deny access to the Property or into the Improvements by any person(s) at any time, including to Buyer or Buyer's representatives or persons invited by Buyer to visit or view the Property or Improvements. Builder will, however, provide reasonable access to the Property and Improvements, at times determined by Builder, to Buyer's Inspector, if any, to perform his, her, or its functions (subject to the provisions of Section 15(D) above), to workers, contractors, and suppliers provided directly by Buyer and performing work or providing materials pursuant to Section 17A above, and to Buyer and persons assisting Buyer, throughout the construction process, subject to such reasonable safety and other rules as Builder may require, BUYER AGREES TO AND DOES HEREBY RELEASE, INDEMNIFY AND HOLD BUILDER HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS OR CAUSES OF ACTION ARISING IN FAVOR OF BUYER OR BUYER'S AGENTS, LICENSEES AND INVITEES ON ACCOUNT OF BODILY INJURY, DEATH OR DAMAGE TO OR LOSS OF PROPERTY IN ANY WAY OCCURRING OR INCIDENT TO THE CONDITION OF THE PROPERTY AND/OR THE IMPROVEMENTS. THIS RELEASE AND INDEMNITY IS GIVEN TO BUILDER REGARDLESS OF WHETHER THE BUILDER OR ITS AGENTS OR EMPLOYEES ARE NEGLIGENT IN WHOLE OR IN PART AND EVEN WHEN THE INJURY, DEATH OR DAMAGE TO BUYER OR BUYER'S AGENTS, LICENSEES AND INVITEES IS CAUSED BY THE SOLE NEGLIGENCE OF BUILDER OR ATTRIBUTABLE TO BUILDER'S NEGLIGENCE PER SE OR IMPOSED BY STRICT LIABILITY.
- 2) **Risks to Vegetation:** Buyer also acknowledges that the construction of the Improvements on the Property imposes an inherent risk to the health of the trees and vegetation situated on the Property, and Buyer understands that Builder cannot and does not guarantee the viability of those trees and vegetation. Buyer acknowledges this risk and agrees to and does hereby release the Builder from any claims for damages to or loss of trees or vegetation resulting from any construction activities.
- 3) **Changes in Water Table:** Buyer also acknowledges that the water table underneath the Property fluctuates naturally which may cause differing site conditions from year-to-year even after closing due to no fault of Builder. Buyer acknowledges this risk and hereby releases the Builder from any claims for damages to the Improvements or Property relating to, in whole or part, to changes in the water table.

N. **LAND USE AND ENVIRONMENTAL DISCLAIMERS** – The Builder has informed the Buyer and Buyer acknowledges and agrees to the following:

- 1) **Adjacent Land Usage:** The Builder is neither responsible for nor (in most cases) has control of the use of the land adjacent to or in the vicinity of the Property and makes no representations or warranties with respect to the use or future use of the land adjacent to or in the vicinity of the Property. The Builder also has no control over and is not responsible for any easements on, adjacent to, or in the vicinity of the Property. Buyer understands that individuals, corporations, and/or utilities may have specific rights granted by those easements, if any, including but not limited to, access to and use of the land described by the easements, even though the use of any easement may not be evident at the present time.
- 2) **Environmental Risk:** The Builder makes no warranties, express or implied, about the existing or future health hazards or environmental conditions on the Property, in the Improvements, or from adjacent sources, including, but not limited to, exposure to radon gas, electric and magnetic fields, shifting or instability of the soil and contamination of the Improvements or the surrounding air, water or soil from any sources or in any manner. Buyer is advised that the continued presence of moisture on components of the Improvements can cause the

propagation of mold that may cause allergenic reactions and other health problems in some individuals. Upon assuming possession of the Improvements, Buyer is responsible for implementing an inspection and maintenance program for the identification and elimination of moisture in the Improvements that could give rise to the growth of mold or other conditions detrimental to functioning of the Improvements or the health of its occupants. Any leak or the presence of moisture that is covered by the Builder's Express Limited Home Warranty will be corrected pursuant to that Express Limited Home Warranty, but the Buyer's failure to implement an effective maintenance program or the failure to promptly notify the Builder of warranty claims will negate the Builder's responsibility (if any) for any property damage, personal injury, or other loss, damage or liability resulting directly or indirectly from the presence of mold or other harmful organisms.

- O. PROPRIETARY DOCUMENTATION – All documentation, including but not limited to marketing materials, sketches, floor plans, and photographs, that may have been provided to Buyer concerning this Contract are proprietary to Builder and shall not be reproduced or disseminated in any way, shape, or form by Buyer. Buyer acknowledges and agrees that Buyer shall have no right to copies of any architectural plans or other materials, whether copyrighted or not, of Builder. Buyer agrees that Builder may utilize pictures, videos or other documentation of the Property and Improvements. Buyer shall have no right to control the use of such documentation, nor shall Buyer be entitled to any compensation for the use of such documentation.
- P. GRADING AND DRAINAGE – Buyer understands that the Property has been or will be graded by Builder to drain in accordance with an approved grading and drainage plan. Any future construction on the Property by Buyer (including pools, spas, fences, landscaping, etc.) can disrupt the drainage and cause flooding, excessive settlement and other problems. Builder is responsible for drainage of the Property as it is delivered at Closing in accordance with the grading and drainage plans. Any subsequent changes in grade or soil conditions and any damages or loss resulting therefrom shall be Buyer's sole responsibility and Buyer hereby releases Builder, its agents and employees, from any and all liability and/or damages that may arise as a result of such changes.
- Q. PRE-CLOSING TERMINATION/STIPULATED DAMAGES – Regardless of any allegation or actual default or breach of this Contract by any party, in the event a bona fide dispute or material misunderstanding between Builder and Buyer (collectively, Dispute), such Dispute arising prior to Closing and if such Dispute is not resolved to the mutual satisfaction of Builder and Buyer by direct negotiation and discussion between them prior to Closing, either party may demand that the Dispute be submitted to mediation as provided in this Contract. If either before or after mediation, Builder concludes in Builder's sole and unquestioned discretion, that further performance of this Contract has become untenable, Builder may terminate this Contract by written notice to Buyer. In the event of termination of this Contract by the Builder pursuant to this paragraph, Builder shall pay to Buyer the sum of \$1,000.00, an amount that the parties agree to be a reasonable and foreseeable estimate of the damages that might be experienced by the Buyer incident to the cancellation of this Contract (it being difficult if not impossible to ascertain those damages). Upon such termination of this Contract by Builder and tender of the stipulated liquidated damages, no cause of action against Builder shall accrue to the Buyer and Buyer shall execute a written release of this Contract and deliver it to the Builder or the Title Company whereupon the Earnest Money shall be returned to Buyer; however, failure of the Buyer to execute a written release, does not in any way affect the applicability or enforceability of this provision. Additionally, upon termination pursuant to this provision, the Builder shall have no further obligation to complete and sell the Improvements and Property to Buyer and Buyer shall not be obligated to acquire the Improvements and Property.
- R. ALTERNATIVE DISPUTE RESOLUTION - It is the policy of the State of Texas to encourage the peaceable resolution of disputes through alternative dispute resolution procedures.
- 1) Re-Purchase Option: Pursuant to § 27.0042 of the Texas Property Code, should Buyer discover, during the first five (5) years after Closing, one or more defects in the construction of the Improvements that exceed in the aggregate ten percent (10%) of the fair market value of the Improvements, upon receipt of written notice and an opportunity to inspect the defects, Builder may elect to repurchase the Improvements and Property. If Builder elects this option, Buyer shall be reimbursed the Total Sales Price and all closing costs incurred by Buyer, plus reimbursement of the cost of any permanent improvements made by Buyer to the Improvements and the

Property, reasonable moving expenses to vacate the Improvements, and reasonable and necessary attorney's fees and inspection costs incurred by Buyer to discover, identify, and present the construction defects to Builder. In return, Buyer will deliver a Special Warranty Deed conveying the Improvements and Property to Builder, free and clear of all liens and claims and deliver possession of the Improvements and Property free of any casualty or damage caused by Buyer, normal wear and tear excepted.

- 2) Mediation-Binding Arbitration:** The parties agree that, subject to the provisions of 17R(1), any dispute or claim arising under, or relating to, this Contract, any amendments thereto, the Property, Improvements, or any dealings between the Buyer and Builder or their representatives shall first be submitted to mediation and, if not settled during mediation, shall thereafter be submitted to binding arbitration as provided by the Federal Arbitration Act (9 U.S.C. §§ 1 et seq.) or, if applicable, by similar state statute, and not by or in a court of law. All decisions respecting the arbitrability of any dispute shall be decided by the arbitrator. Any cost or fee associated with filing a claim for arbitration is to be paid by the party filing same; the arbitrator's compensation shall be split initially between the parties, and paid equally by both of them, subject to being re-allocated and assessed in whatever way the arbitrator determines. With regard to mediation, the parties agree that (a) the mediator's fee will be paid entirely by the party choosing to submit the dispute to mediation and (b) the mediator will be assigned by the American Arbitration Association, if the parties are unable to agree on a mediator between themselves within 10 days of the party requesting mediation notifying the other party of his, her, or its decision to submit the dispute to mediation. In the event the mediation is unsuccessful at resolving the Dispute, or if neither party elects to submit the dispute to mediation within ten days after it shall have arisen, or if the Builder determines, in its sole and unquestioned discretion that further performance of or work under the Contract has become untenable, Builder may, at its sole option, terminate the Contract. The mediation and, if necessary, the arbitration shall be conducted pursuant to the procedures set forth in any applicable Third-Party Warranty documents. If there is any conflict between this Contract and the Third-Party Warranty on these procedures, the provisions of this Contract shall control as to the Builder and Buyer dispute or claim. Furthermore, if the mediator and/or arbitrator designated in any applicable warranty documents cannot conduct the mediation or arbitration for any reason, or if no mediator and/or arbitrator is designated, the parties agree to work together in good faith to select a mediator. If the parties are unable to agree on the appointment of a mediator and/or arbitrator, then the mediation and arbitration shall be conducted by the American Arbitration Association ("AAA") in accordance with the applicable rules and procedures provided by such service providers; 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, but only after a good faith effort to agree to an alternative mediator, arbitrator or service provider. It is agreed that the filing of a petition requesting appointment of a mediator or arbitrator, or for a court to resolve a dispute under this provision, shall not constitute a waiver of the right to enforce binding arbitration.

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

- a) The arbitrator shall have no authority to award any remedy or damage not provided by this Contract, Federal law or State law;
- b) All applicable claims, causes of action, remedies and defenses as available in court shall apply, including temporary and permanent restraining orders;
- c) The proceeding shall be conducted by a single arbitrator selected by a process designed to ensure the neutrality of the arbitrator;
- d) Subject to relevance and discovery reasonably calculated to lead to the discovery of admissible evidence, proper objections, confidentiality and other privileges, the parties shall voluntarily produce

documents related to the claims and disputes, and the parties shall be entitled to conduct reasonable and necessary discovery as limited by the arbitrator but in no event shall any party be entitled to more than 6 hours of total deposition time, 10 requests for production and disclosures under Tex. Rule of Civ. Pro. 194; no interrogatories shall be allowed;

- e) The arbitrator shall render a written award and, if requested by any party at any time, a reasoned award, even if after the written award is issued;
- f) No party shall be required to pay any unreasonable costs, expenses, or arbitrator's fees;
- g) Judgment upon any such award may be entered in any court having jurisdiction, subject to the terms and conditions herein and the Federal Arbitration Act;
- h) If the proceeding pertains to a construction defect, as that term is defined in Chapter 27 of the Texas Property Code (§27.001(4)), then the arbitration shall be conducted in the same county as the Property, absent agreement of the parties or the arbitrator's determination that such location is inconvenient;
- i) Any arbitration shall be private and confidential, and no publication or disclosure of such arbitration or facts surrounding same shall be made to any third-party, except for necessary testimonial witnesses, experts and counsel. The final award of the arbitrator shall not be payable until 60 days after such award, and such award shall not be sought to be confirmed in any court until 90 days after such award, with or without objection by any party and regardless of the terms and conditions of the award. If the award requires repairs of construction defects, such repairs are not required to be commenced until 90 days after the award is confirmed but shall be completed within 120 days after the award is finally confirmed.

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

This Contract requires mandatory mediation and arbitration of all claims and disputes; if any party commences litigation in violation of this Contract, that party shall reimburse the other parties for all costs and expenses including attorneys' fees incurred in seeking abatement of such litigation and enforcement of mediation and/or arbitration.

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

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

- S. **WAIVER OF TRIAL BY JURY:** If it is determined that the arbitration provisions of the foregoing alternative dispute resolution agreement are not enforceable, the parties agree that any and all disputes between them shall be resolved by a court of competent jurisdiction in the county where the Property is located without the use of a jury and the right to a trial by jury is hereby expressly waived by Buyer and Builder. The parties also

**agree that the rights and obligations set forth in this paragraph shall survive termination of this Contract by either party, default of this Contract by either party, or any Closing and delivery of deed.**

- T. MUTUAL LIMITATION OF CLAIMS AND REMEDIES – The parties desire pragmatic and logical limitations on claims and remedies to ensure effective and realistic dispute resolution.
- 1) Limitation of Claims: Under no circumstances shall either Buyer or Builder be liable for any special, indirect, or consequential damages, including claims of mental anguish, except as otherwise specifically set forth in this Contract. Any action or claim, including, without limitation, a demand for arbitration, regardless of form, that arises from or relates to this Contract, the construction and/or the Improvements is barred unless it is brought by Buyer not later than two (2) years and one (1) day from the date the cause of action accrues.
  - 2) Waiver of Subrogation: The parties agree that after occupancy or Closing, whichever comes first, Buyer shall secure and maintain insurance covering risk of loss and damage to the Improvements. The parties further mutually agree that with respect to any loss or damage that may occur to the Property, Improvements, personal property, persons, third-parties, or any other loss by reason of fire, the elements, or any other cause that could be or is insured against under the terms of standard fire and extended coverage insurance policies, or any other insurance, regardless of the cause or origin, including negligence of the Parties, their agents, officers, or employees, the party carrying such insurance or required by this paragraph 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. If any such carrier refuses or fails to include such a clause or endorsement, the terms and conditions herein are in no way affected. Nothing contained in this paragraph shall be deemed to modify or otherwise affect releases of either party from liability for claims elsewhere herein contained. To the extent that Buyer's carrier in carrier's name or in Buyer's name makes any claim or asserts a cause of action against Builder for subrogation, Buyer agrees to defend, indemnify and hold Builder harmless, including attorney's fees, from any such claim or cause of action, including but not limited to negligence of Builder or Builder's subcontractors.
- U. WARRANTY REQUEST - Buyer and Builder agree that a request for warranty performance shall not be construed as a notice of construction defect under the Texas Residential Construction Liability Act (RCLA), and that any notice under RCLA shall be separately sent to Builder in the manner required by RCLA. . Subsequent, new or differing allegations of construction defect shall be subject to the requirements of the RCLA, including but not limited to the notice requirements therein. All documents producible pursuant to the RCLA shall be made immediately available to Builder. All notices under the RCLA shall be sent by certified mail, return receipt requested. Warranty claims, Punch List Items or other notices through Builder's normal warranty procedures are not to be considered as compliance with the RCLA.
- V. ATTORNEY FEES - If Builder or Buyer is the prevailing party in any legal proceeding or arbitration, brought in connection with or relating to this Contract or the Improvements in any way, then, in addition to any other relief sought, such party shall be entitled to recover its attorney's fees, court/arbitration costs, and any other litigation expenses from the non-prevailing party. The "prevailing party" shall be deemed to be the party whose last written offer to settle the dispute (or the fair market value of the offer), before the initiation of the proceeding/arbitration or pursuant to Chapter 27 of the Texas Property Code, whichever occurs later, most closely approximates the final award (excluding any award for attorney's fees, costs, and prejudgment interest which accrue after the offer is made). If the claimant makes no written demand or offer, its last offer shall be the amount claimed in the first filed demand for arbitration. If the defending party makes no written offer, its last offer shall either be zero or, if applicable, the amount of its counterclaim.

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

NONE

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

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

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



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

Buyer's Attorney:

Builder's Attorney:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**NOTICES:** To the extent not otherwise required by law, notices must be in writing and must be delivered (a) by certified mail, return receipt requested, or (b) by courier or similar delivery method (such as Federal Express or UPS) producing a reliable record of the manner, time, and date on which such communication was delivered to the recipient, or (c) by email with a copy being simultaneously sent to the other party by regular first class mail; in any case, such notice shall be addressed to the intended recipient as follows:

If to Buyer:

If to Builder:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Jamestown Estate Homes, LP  
731 W. 16<sup>th</sup> Street  
Houston, TX 77008

email: \_\_\_\_\_

email: [katy.hawes@jamestownestatehomes.com](mailto:katy.hawes@jamestownestatehomes.com)

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

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

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

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

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

**ADJOINING LAND USE:** Builder makes no representation, warranty or guarantee as to the adjoining use of land, property, streets, future construction, zoning, property lines or otherwise of any surrounding property, adjoining property or property near the property the subject of this Contract, regardless of ownership or control, and all claims against Builder based on or relating to any such matter(s) are waived and disclaimed, including, without limitation, any claim of fraud or fraudulent inducement. The parties are relying on solely each party's own investigation and due diligence.

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

**19. 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 sale of the Property on behalf of Builder.

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

*[the remainder of this page intentionally left blank]*

**21. SIGNATURES OF PARTIES:**

The Contract is subject to Chapter 27 of the Texas Property Code. The provisions of that chapter may affect your right to recover damages arising from a construction defect. If you have a complaint concerning a construction defect and that defect has not been corrected as may be required by law or by contract, you must provide the notice required by Chapter 27 of the Texas Property Code to the contractor (Builder) 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 (Builder), you must provide the contractor (Builder) an opportunity to inspect and cure the defect as provided by Section 27.004 of the Texas Property Code.

EXECUTED on \_\_\_\_\_, 20\_\_.

**BUYER(S):**

\_\_\_\_\_  
Buyer Signature

\_\_\_\_\_  
Buyer Signature

Address: \_\_\_\_\_

Email: \_\_\_\_\_

**BUILDER:** \_\_\_\_\_

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

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Email: \_\_\_\_\_

**RECEIPT**

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

Escrow Agent: \_\_\_\_\_ Date: \_\_\_\_\_

By: \_\_\_\_\_ Email Address: \_\_\_\_\_

Address: \_\_\_\_\_ Telephone: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ Facsimile: \_\_\_\_\_

**This Contract and its printed addenda are based on forms 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.**