

KOLBE PARK

EARNEST MONEY CONTRACT

This Earnest Money Contract is made and entered into by Buyer and Seller (defined below) on the date set forth above the signatures below.

SUMMARY OF TERMS

SELLER - Urban Grove Holdings, Inc
1314 Roy Street Houston,
Texas 77007

Contact: Michael Afshari - Compass RE Texas LLC
Telephone: 832.875.3252
Email: Michael.Afshari@Compass.com

BUYER #1: _____

BUYER #2: _____

(insert current address)

(insert current address)

Telephone #1: _____

Telephone #1: _____

Email #1: _____

Email #1: _____

PURCHASE PRICE: \$ _____

EARNEST MONEY: \$ 5,000.00

PROPERTY: STREET ADDRESS: _____

Lot _____ Block _____, Addition _____,
Section _____, _____ County, Texas, according to the map or plat
thereof recorded in the Official Public Records for Real Property of _____
County, Texas (hereinafter referred to as the "Property").

TITLE COMPANY: Select Title - Closer: Damian Smith
1333 West Loop Sout - STE 930 , Houston, TX 77027
Damian.Smith@Select-Title.com - 713.999.1061

BROKER COMMISSION: (Check here if applicable _____) Buyer understands that, at the closing of this sale, a Broker Commission will be paid by Seller, as follows:

BROKER: _____ **COMMISSION AMOUNT:** \$ _____

REALTOR: _____ (INSERT "NONE" IF NO REALTOR)

PLANS AND SPECIFICATIONS - the Home and any related Improvements are to be constructed and completed in substantial conformance with Seller's Plan No. _____.

SPECIAL PROVISIONS: . Closing on or before

THE DEFINITION OF TERMS SET FORTH ABOVE SHALL APPLY WHEN USED IN THE REMAINDER OF THE CONTRACT. THIS CONTRACT CONSISTS OF MULTIPLE PAGES EACH OF WHICH IS PART OF THIS CONTRACT.

I. DEFINITIONS

The following terms shall have the meanings given to them in this section, unless otherwise expressly provided.

1.1 **Acceptance Certificate** - the document to be signed by Seller and Buyer to evidence that the Home is complete and approved by Buyer.

1.2 **Additional Deposit** – the non-refundable amount paid by Buyer of an amount to be determined by Seller and as shown on a Change Order. The Additional Deposit, includes the non-refundable portion (which may be 100%) of the Additional Deposit, allows Buyer additional features and products to the home that are not available as standard features of the home as offered for sale. If the Buyer fails to complete closing of the purchase of the home for any reason the Additional Deposit will be retained by Seller. Seller reserves the right to require payment of as much as 100% of the price of the Change Order item where the changes described in the Change Orders are extraordinarily unique or uncommonly different from other homes in the community. Any Additional Deposit is non-refundable.

1.3 **Buyer** – shall mean the person(s) whose name(s) appear on the first page of this Contract and on the signature lines of the last page of this Contract.

1.4 **Changed Work** - any changes, alterations, additions or deletions, modifications, alterations or deviations in the Work or to this Contract or the Plans and Specifications.

1.5 **Contract or Contract Documents** – shall mean this Contract, all Change Orders signed in connection with this Contract, the Plans and Specifications, the standard specifications and the legal description of the Property. Any conflict among the Contract Documents shall be resolved by referring to the Contract Documents in the following order of priority: (a) any Change Orders; (b) the standard specifications; and (c) this Contract shall control. If at the time this contract is signed there are no plans and specifications, then this term shall include the plans and specifications that are ultimately agreed to by Buyer and Seller.

1.6 **Change Order** - a written description of changes, modifications or Changed Work that is signed by Seller and Buyer setting forth a description of the changes and the cost of such changes and any additional time required for completing the Changed Work. To be effective a Change Order must be signed by all parties to this Contract and the Additional Deposit must be paid. No Changed Work will be done without a signed Change Order and the appropriate Additional Deposit.

1.7 **Earnest Money** – shall mean the sum paid to Seller at the time of signing this Contract as reflected on page 1 of the Contract.

1.8 **Effective Date** - the later of the dates shown on the signature pages of this Contract.

1.9 **Governmental Authority** - includes the United States of America, the state, county, city, and any political subdivision in which the Property is located, or which exercises jurisdiction over the Property and any agency, department, commission, board, bureau, homeowners association, utility district, flood control district, improvement district or similar district, or other instrumentality of any of them which exercises jurisdiction over the Property.

1.10 **Governmental Requirement** - shall mean any law, statute, code, ordinance, order, rule, regulation, judgment, decree, injunction, franchise, permit, certificate, license, authorization or other direction from or requirement of a Governmental Authority (including without limitation any of the foregoing which relate to environmental standards or controls, energy regulations and occupational safety and health standards and controls).

1.11 **Home** - a private single-family residential dwelling (including all Improvements) to be constructed in accordance with the Plans and Specifications on the Property.

1.12 **Improvements** - a private single-family residential dwelling and related work to be constructed in substantial compliance with the Contract Documents.

1.13 **Lender** – any bank, mortgage company, person or other entity that makes a loan to Buyer for some or all of the Purchase Price.

1.14 **Limited Warranty** – shall mean the limited warranty offered by either: (a) by American Construction Educations Services, Inc. (“ACES”); or (b) for FHA/VA loans, the StrucSure Home Warranty, as discussed at Article V.

1.15 **Property** – shall mean the real property described on Page 1 of this Contract.

1.16 **Seller** – shall mean and refer to the Seller described on Page 1 of this Contract.

1.18 **Substantial Completion or Substantially Completed** – shall mean the earlier of: (a) when a certificate of occupancy is issued; or (b) if no certificate of occupancy is required, when all electrical, mechanical, and plumbing final inspections; or (c) all other required inspections, have been approved; or (d) all approvals for occupancy have been received from any applicable governmental authority; or (e) in the absence of the foregoing, when the Home is suitable for occupancy, as determined by Seller, in Seller’s sole discretion; or (f) the date of Buyer’s signing of the Acceptance Certificate.

1.19 **Work** - the physical activities relating to the construction of the Home which comprises the construction activities performed by Seller under this Contract and includes all labor and materials necessary to produce such construction required of Seller, and all materials and equipment incorporated or to be incorporated in the construction of the Home and the Work will comply with the performance standards established by Limited Warranty.

II. PURCHASE

2.1 **Agreement to Sell and Purchase.** Buyer agrees to pay the Purchase Price to purchase and Seller agrees to sell the Property, together with the Home, which has been or will be constructed thereon by Seller in substantial compliance with the Plans and Specifications. Buyer acknowledges and agrees that the Purchase Price includes all lot premiums and promotional discounts (if any). The Purchase Price will be paid by Buyer at closing either in cash, cashier’s check or wire transfer of funds to the Title Company or by a combination of cash and third-party financing to be obtained by Buyer.

2.2 **Change Order – Changes and Effect on Purchase Price.**

(a) No Changed Work will be performed by Seller unless agreed to in writing by both Buyer and Seller signing a written Change Order. Upon receiving from Buyer a request for any Changed Work, Seller shall present Buyer with a proposed Change Order for the Changed Work including any additional price of construction. If Buyer accepts, in writing, Seller’s proposal for Changed Work, the signed Change Order will become a binding part of this Contract and, to the extent a conflict between a Change Order and this Contract exists, the terms of the Change Order shall control. Failure of Buyer to approve Seller’s proposal for Changed Work within three (3) business days after receipt shall constitute a rejection of the proposal.

(b) Whenever Seller and Buyer enter into a Change Order, Seller shall require an Additional Deposit consisting of a non-refundable payment by the Buyer of an amount equal to at 100% of the amounts reflected in the Change Order. The full amount of the Change Order shall be added to the Purchase Price. The Purchase Price shall be adjusted pursuant to a Change Order. No options or upgrade items are included in the

Purchase Price unless stated in writing in this Contract or a Change Order signed by both Buyer and Seller. Buyer is responsible for and agrees to pay all additional sums for Change Orders that are not included in the initial Purchase Price. All Change Orders are subject to the terms, conditions, requirements, and additional charges, where applicable. All amounts paid by Buyer in connection with any Change Order shall be deemed an Additional Deposit and shall be non-refundable unless otherwise specified herein.

2.3 Earnest Money. Buyer has paid the Earnest Money to Seller as an initial payment, which is to be credited against the Purchase Price at Closing. Should the Earnest Money (or any Additional Deposit) be paid by a check and Buyer's bank refuses to pay the check for any reason, such event shall be a breach of this Contract by Buyer, entitling Seller to declare Buyer to be in default and to terminate this Contract and to recover from Buyer and/or retain the full amount of the Earnest Money and all Additional Deposits contracted for, as liquidated damages for Buyer's default.

2.4 Selections. Buyer agrees to make all selections in a timely manner and understands that some materials selected will have a wide variation in color, pattern, and texture. In the event Buyer fails to timely make selections Seller may charge Buyer all of Seller's actual costs caused by the delay including all finance charges, all per diem interest paid by Seller for any financing used by Seller to acquire the Property or construct the Home or any other costs related to such delay, and Buyer agrees to pay such additional charges at the time of the Change Order is executed. Alternatively, Seller may at Seller's sole option (but shall not be required to) make such selections itself, in which case, such selections shall thereupon be binding upon Buyer, as if made by Buyer. Further, Seller shall have the right to assess the additional charges described in the Seller's Policy on Change Orders.

2.5 Application for Financing. Buyer agrees to apply for all third-party financing (Financing) in an amount sufficient to pay the entire Purchase Price (with any Earnest Money or other cash payments being taken into account) within ten (10) days after the Effective Date. Buyer also agrees to cooperate with the Lender in all reasonable ways, including by supplying all information requested in a timely manner. Lender must be authorized by the appropriate agencies of the State of Texas to make mortgage loans and must be the Lender that will fund the loan contemplated by this paragraph at the Closing. Buyer authorizes Lender to communicate with Seller regarding the status of the loan approval process as well as any issue that may arise in obtaining the Financing. Buyer agrees to pay all costs of the Financing. If, despite Buyer's fulfillment of all obligations under this paragraph, Financing is not approved for Buyer or a financing commitment is not issued by Lender (subject only to such conditions as are acceptable to Seller) and delivered to Seller within thirty (30) days from the Effective Date, Seller may terminate this Contract, in which event the Earnest Money (but not any Additional Deposit, all of which shall be retained by Seller) shall be refunded to the Buyer, and neither Buyer nor Seller shall have any further obligation or liability to the other. If Financing is not conditionally approved (as previously described) within thirty (30) days from the Effective Date as a result of Buyer's failure to fulfill one or more obligations under this paragraph, or if Financing is conditionally approved, but thereafter approval is withdrawn, cancelled, or otherwise repudiated by Lender, whether rightfully or wrongfully, or if any commitment issued by the Lender expires, or should Lender for any reason (rightful or wrongful) fail to fund the loan within five (5) business days after the date of Substantial Completion, Seller may regard that circumstance as a default by Buyer, even if Buyer is not actually "at fault" for such occurrence or did not "cause" it and Seller may terminate this Contract and retain all Earnest Money and Additional Deposits. "

2.6 Lot Ownership Contingency. Buyer agrees, acknowledges and understands that Seller may not, at the time of this contract, own good and defeasible legal title to the Property. Buyer agrees that if, for any reason, Seller cannot or does not acquire legal title to the Property then Seller shall have the option to either: a) offer Buyer a similar lot; or b) terminate this Contract and return the Earnest Money to Buyer. In the case of a new or proposed subdivision, a plat of the tract of land in which your Property is located may not yet have been prepared or may not have yet received all necessary governmental approvals or has not been recorded in the real property records. As part of the governmental approval process, it is possible that it may become necessary to change the size, dimensions, or configuration of the Lot or to add, remove, or change the locations, size, and types of easements, set-back lines, restrictions, and other matters affecting the use of the Lot. Therefore, in the event that the Lot as established by the actual recorded plat is altered from what is

currently depicted on the proposed plat, and if in the good faith opinion of Seller or Buyer the Lot has been materially affected, for better or worse, then either Seller or Buyer may terminate the Earnest Money Contract by written notice of such termination to the other party, given on or before thirty days after recordation of the plat for the subdivision in which the Lot is located. Seller and Buyer have agreed upon a Purchase Price for the Lot and Improvements which includes, among other factors, Seller's anticipated costs of acquiring the Lot from the current owner, and the anticipated cost of constructing the Improvements thereon. In the event a proposed plat has not yet been finalized and recorded, Seller will not be able to purchase the Lot and commence construction of the Residence for several months. During this period, it is possible that increases in the cost of acquisition of the Lot or increased in the cost of labor, materials, and other items relating to the construction of the Residence may make it uneconomical for Seller to sell Buyer the Lot and Residence at the price stated in the Earnest Money Contract. If, in the sole opinion of the Seller, the sale of the Lot and Improvements to Buyer at the agreed Purchase Price is not economically feasible, or in Seller's best interest, Seller will have the right to terminate the Earnest Money Contract by written notice to Buyer at any time prior to the pouring of the foundation of this Residence.

2.6 **Appraisal.** In the event that the appraisal obtained by the Lender does not support the Purchase Price, Seller shall not be obligated to amend this Contract to change the Purchase Price. Purchaser acknowledges that the Purchase Price is the amount that was reasonably negotiated between the parties. Purchaser agrees that neither the third party appraiser nor the Lender are parties to this Contract. If Purchaser elects to terminate this Contract based on the appraisal, the Earnest Money, any Additional Deposit and/or amounts paid based on a Change Order shall be non-refundable.

III. CONSTRUCTION

3.1 **Plans and Specifications.** Buyer acknowledges that Buyer has either provided Seller with the Plans and Specifications or reviewed and approved the Plans and Specifications provided by Seller. In the event of a conflict between the Plans and Specifications or the Home as constructed then: a) in the event the Home is completed, the Home as constructed shall prevail over the Plans and Specifications; or b) in the event the Home is not completed, the Specifications shall prevail over the Plans. If either party discovers an error or incomplete portion of the Plan or, in its estimation deems that a portion of the construction can be done differently to improve the construction, then the party who discovers the error shall notify the other party in writing and Seller can rectify any such error or complete any incomplete portion of the Plan or make such changes to the Plan as it deems, in its sole discretion, to be appropriate unless within five (5) days following the date of the written notice the Buyer specifies the method and means of the correction and agrees to pay for any difference in cost.

3.2 **Building Materials and Methods.** Buyer acknowledges that Seller may substitute building materials, products and building methods or procedures at Seller's sole election and discretion provided that the substituted materials are of an equal or superior grade to the items for which they are substituted. Buyer has reviewed marketing material provided to Buyer by Seller and understands that those marketing materials do not constitute a part of the Plans and Specifications. Buyer may have visited or inspected a model home or other residence constructed by Seller. The fact that items or elements are incorporated into a model home does not mean that such features are "standard" or are included in the Home. On the contrary, Buyer understands that many of the features in model homes or other homes constructed by Seller are "upgrades". The Plans and Specifications for this Contract identify the only features or items included in the Home. Sales consultants, construction managers or other representatives of Seller have no authority to make representations contrary to or at variance with the limitations of this paragraph, and if Buyer wishes for a particular item or feature to be included in the Improvements, that item must be included and described specifically in the Plans and Specifications or in a Change Order signed by an authorized officer or other representative of Seller and Buyer. Buyer does not rely on any such marketing material, the upgraded features in the model home or contrary representations by employees of Seller in forming Buyer's decision to enter into this Contract.

3.3 **Pre-Construction Meeting: Additional Deposit.** If construction of the Home and other Improvements

to be purchased by Buyer has not commenced as of the date of this contract, then Seller and Buyer will conduct a pre-construction meeting at which time all plans, specifications, Change Orders and other contract documents will be reviewed and agreed upon by Buyer and Seller. At the pre-construction meeting Buyer and Seller may also agree upon Changed Work. At the conclusion of the pre-construction meeting Buyer shall pay Seller the Additional Deposit with respect to any Changed Work. Construction will not start on any Improvements until the Additional Deposit is paid. In the event that construction of the Improvements has already commenced at the time this Contract is entered into, but substantial completion of the Improvements (as defined herein) has not occurred as of the date of this Contract, then a pre-construction meeting will be held as soon as possible. The same terms and conditions as stated in the preceding sentences of this paragraph shall apply in this instance.

3.4 Buyer's Access to Property During Construction. During construction of the Home, and prior to closing, Seller will have exclusive possession of the Property. Buyer and agents and employees of Buyer's third-party lender will be entitled to inspect the progress of construction from time to time as they deem necessary, but only on such terms and conditions which Seller may from time to time establish. SELLER ADVISES BUYER AND BUYER ACKNOWLEDGES UNDERSTANDING, THAT CONSTRUCTION SITES CAN BE DANGEROUS. IF BUYER CHOOSES TO GO ON THE PROPERTY DURING CONSTRUCTION, BUYER MUST EXERCISE EXTREME CAUTION (AND AGREES TO INSTRUCT ANY THIRD PARTIES TO DO LIKEWISE) AND ASSUMES ALL RISK OF INJURY OR DAMAGE. IF BUYER ENTERS ONTO THE PROPERTY DURING CONSTRUCTION, BUYER DOES SO AT BUYER'S OWN AND SOLE RISK.

3.5 Work Performed by Others. Buyer will not contract with other contractors, subcontractors, material suppliers or otherwise allow persons other than Seller and its subcontractors to construct any of the Home or to supply materials therefore unless Buyer and Seller have first executed an amendment, addendum or Change Order to this Contract (in a form satisfactory to Seller) covering the terms and conditions under which such work will be performed or materials furnished. Buyer may not require, but may ask, Seller to act as a general contractor for Buyer in order to pay for Work provided by third parties. Seller may elect, in its sole discretion, to act in such intermediary capacity. Should Seller elect to so act, Seller will require various documentation which it may consider to be appropriate including but not limited to documentary proof of insurance (general liability or its equivalent) in an amount equal to or in excess of the minimum levels of coverage required by Seller, W-9 forms and any other paperwork that Seller in its sole discretion deems appropriate. Seller's minimum levels of coverage can be obtained from Seller and proof of such insurance must be provided by Buyer or the third party contractor or supplier before work or delivery of materials by such third party takes place. **SHOULD SELLER ELECT TO SO ACT, BUYER RELEASES SELLER FROM ANY AND ALL LIABILITY FOR ANY CLAIM RELATED IN ANY WAY TO SUCH WORK OR ANY INJURY OR DAMAGE RESULTING FROM SAME, WHETHER UNDER CONTRACT, WARRANTY, STATUTE OR AT COMMON LAW. BUYER UNDERSTANDS THAT SELLER MAKES NO WARRANTY OR REPRESENTATION OF ANY KIND CONCERNING ANY SUCH WORK PERFORMED BY BUYER OR ANY THIRD-PARTY OR PERSON ENGAGED BY BUYER, REGARDLESS OF WHETHER SELLER ACTS IN SUCH INTERMEDIARY CAPACITY, AND NONE OF SUCH WORK IS COVERED BY THE LIMITED WARRANTY REFERRED TO HEREIN.** If Seller agrees to act in such intermediary capacity then Buyer understands that in such instances Seller may charge (or decide not to charge) a fee in connection with same, such fee to be stated in a Change Order. If any work performed by Buyer or any third-party or person engaged by Buyer delays construction or requires diversion of Seller's personnel from the construction of the Improvements which are the subject of this Contract Seller may charge, and Buyer agrees to pay Seller Seller's actual costs resulting from such delay, including all finance charges, all per diem interest paid by Seller for any financing used by Seller to acquire the Property or construct the Home or any other costs related to such delay.

3.6 No Specific Completion Date. Buyer agrees there is no completion date for construction of the Home.

3.7 Matters that Can Delay Completion of Construction. While there is no projected or agreed upon completion date for construction of the Improvements, completion of the Improvements by Seller may be extended for one or more of the following causes, each of which is a Permitted Delay:

- a. Changes by Buyer or Buyer's representatives to the Plan or Specifications;
- b. Failure of Buyer to timely make selections as set out elsewhere herein;
- c. Failure of Buyer to timely make payments when due;
- d. Other acts or omissions by Buyer or Buyer's representatives;
- e. Unusually inclement weather or acts of God;
- f. Fire or casualty loss;
- g. Non-availability of labor, services or materials;
- h. Delays caused by any applicable governmental entity's change in laws or ordinances or delays in issuing necessary permits or conducting inspections;
- i. Delays caused by Change Orders;
- j. Disputes with Buyer or Buyer's representatives;
- k. Civil unrest, strikes, lockouts, acts of public authorities, or war;
- l. Other events or causes beyond the Seller's reasonable control; or
- m. Interruption of Seller's work, timeline, scheduling of work or subcontractors or other delays caused (in whole or in part) by Buyer's direct or indirect retention of any third-party to work on the Property or construct any improvement on the Property.

3.8 Drainage & Irrigation Systems. The drainage for the Property will be in place on the date of closing. Buyer is hereby advised that careful consideration to the effect on drainage should be given when installing sprinkler systems, swimming pools, decks, playground equipment or additional landscaping. Any damage to the home caused by an alteration of the original drainage pattern will not be the responsibility of Seller. Proper positive drainage away from the foundation is important for maintaining and ensuring that the foundation performs as designed. If you have requested that a sprinkler system be installed in your yard, you should be aware that proper maintenance of the sprinkler system is very important normal homeowner maintenance to avoid problems such as freeze damage. A leak in the system can negatively affect the performance of your foundation. After closing, Seller will have no further responsibility for the maintenance or performance of the sprinkler system.

3.9 Third Party Inspector. If Buyer engages a third party inspector ("Third Party Inspector") to inspect the home at any time during construction or prior to the "walk-through", Buyer shall coordinate with Seller for the appropriate time and date of such inspection. Buyer shall provide Seller with written notice (email is acceptable) forty-eight (48) hours in advance of any inspection. Buyer shall provide a copy of any written report that the Buyer receives from an inspector within twenty-four (24) hours following Buyer's receipt of such report. BUYER SHALL INDEMNIFY, DEFEND AND HOLD SELLER HARMLESS FROM ANY AND ALL CLAIMS, DEMANDS, COSTS, EXPENSES, SUITS, ACTIONS OR OTHER MATTERS ARISING OUT OF OR IN AN MANNER RELATED TO THE ACTIVITIES OF ANY INSPECTOR ACTING ON BEHALF OF BUYER. SELLER IS NOT RESPONSIBLE FOR THE SAFETY OF ANY INSPECTOR WHILE ON THE PROPERTY AND THIS INDEMNITY IS EXPRESSLY INTENDED BY BUYER AND SELLER TO INCLUDE ANY NEGLIGENCE ON THE PART OF SELLER. Seller recommends that Buyer obtain from any Third Party Inspector Seller a Certificate of Insurance from such Third Party Inspector showing Buyer as an additional insured with general liability coverage for at least \$2,000,000.00 Seller's obligations to Buyer are contained in the Contract Documents and Buyer understands that Seller is not required to fix, repair or otherwise address any matters in any Third Party Inspector's report.

3.10 Final Walk-Through – Buyer Orientation. Only Buyer and representatives of Seller shall attend the "walk-through" and Seller reserves the right to cancel and re-schedule a "walk-through" if any other parties are present. Video taping or audio recording of a "walk-through" is not permitted and if conducted without Seller's express written permission, then Buyer shall be deemed to have signed an Acceptance Certificate showing no items to be completed. The existence of a final walk-through list of work to be completed or altered shall not

prevent the occurrence of Substantial Completion. At the conclusion of the "walk through" inspection, Buyer shall sign and deliver to Seller an Acceptance Certificate (in the form provided by Seller) in which Buyer acknowledges a careful inspection of the Home and other Improvements and there are no items remaining to be completed, repaired, "touched-up" or otherwise addressed, except as stated in the Acceptance Agreement. If Buyer fails to deliver the signed Acceptance Certificate to Seller by closing, Buyer will have waived all claims that any item remains to be completed, repaired or addressed. By signing the Acceptance Certificate Buyer acknowledges that all obligations of Seller to Buyer under this Contract and any document or instrument relating to the transaction contemplated hereby will conclusively be presumed to be fully and timely satisfied and completely fulfilled, and the Home and other Improvements will be deemed to have been completely and finally accepted, save and except only: (a) obligations arising under the Limited Warranty; and (b) any "punch list" items agreed to in writing by Seller on the Acceptance Certificate and not completed by the time Buyer takes possession of the Property.

3.11 Certificate of Completion. If the Lender requires that Seller obtain a Certificate of Completion from the applicable Government Authority, Buyer agrees to pay Seller a fee in the amount of \$250.00 as a condition to obtaining the certificate.

IV. CLOSING

4.1 Closing. Seller shall give Buyer notice of the time and date of Closing and such notice may be given to Buyer(s) telephonically, via either fax, e-mail, verbally, in person, or by regular mail sent to the Buyer at the phone, fax, e-mail or physical address shown above. At closing Buyer shall pay the Purchase Price and execute all documents, instruments, affidavits and other papers required by Lender, the Title Company, or under this Contract or as may be reasonably requested by Seller, including, if Buyer has not previously executed same, the Acceptance Certificate. If Buyer fails or refuses to sign the Acceptance Certificate or fails to pay any amount required by this Contract then Buyer will be in breach of Buyer's obligations under this Contract. Any failure by Buyer to complete closing within forty-eight (48) hours after the scheduled Closing Date shall constitute a default by Buyer and Seller in addition to any other remedies described in this Contract shall be entitled to charge, and Buyer agrees to pay, a delay penalty of an amount all of Seller's actual costs caused by the delay, including all finance charges, all per diem interest paid by Seller for any financing used by Seller to acquire the Property or construct the Home or any other costs related to such delay.

4.2 Closing Costs. Seller shall not be responsible to pay, at time of Closing, any of the following costs, all of which shall be the sole duty and obligation of Buyer to pay: all loan origination fees, all loan application fees, all loan administration fees, the cost of any survey, appraisal, tax certification, flood certification, title commitment, title policy, escrow fee, all prepaid items or any other fee charged by any lender with which Buyer may do business. If Buyer purchases an Owner's Policy of Title Insurance, the purchase of such Policy is at Buyer's expense. Buyer shall pay all other closing costs relating to the Financing.

4.3 Property Taxes. Ad valorem and similar taxes and assessments relating to the Property shall be prorated between Seller and Purchaser as of the date of Closing with Seller being charged and credited for the same up to the Closing Date and Purchaser being charged and credited for the same on and after the Closing. If the actual amounts to be prorated are not known at Closing, the prorations shall be computed on the basis of the best evidence then available. When actual figures are available a cash settlement shall be made between Seller and Purchaser upon thirty (30) days written notice by either party. If Seller, in Seller's sole discretion engages a tax consultant to protest the ad valorem taxes and a reduction in the ad valorem taxes is obtained, then a prorata share of the cost of the tax consultant, attributable to the Property, may in Seller's discretion, either: (a) be deducted from any amount due to Buyer, if any, resulting from the ad valorem tax prorations; or (b) Buyer agrees to pay to Seller such prorata share of the cost of the tax consultant within ten (10) days following the date of written notice from Seller. The provisions of this Section shall survive the Closing.

4.4 Owner's Policy of Title Insurance. The Owner's Policy of Title Insurance (which Buyer may elect to purchase from the title company) shall insure good and indefeasible title to the Property, free and clear of liens and encumbrances except for (i) the standard exceptions promulgated by the Texas State Board of Insurance; (ii) covenants, conditions, restrictions, rights of way, maintenance charges, zoning ordinances, easements,

building set back lines and other matters common to the subdivision of which the Property is a part; and (iii) mineral reservations, royalty interests, and pipeline easements of record. Exceptions permitted in the title policy shall also be exceptions permitted in the Special Warranty Deed.

4.5 **Special Warranty Deed.** Seller shall execute, acknowledge, and deliver a Special Warranty Deed conveying the Property to Buyer free and clear of all encumbrances arising by, through, or under Seller, except those permitted by this Contract.

V. LIMITED WARRANTY

5.1 **Warranties Applicable to the Home.** Buyer acknowledges receipt of a sample of the Limited Warranty booklet which is incorporated herein by reference and which describes the only warranty from Seller to Buyer concerning the Home, except for the manufacturers' warranties described in paragraph 5.6 below which warranties are hereby assigned to Buyer. Buyer acknowledges that the warranty includes a provision requiring all disputes that arise under the limited warranty to be submitted to binding arbitration. By signing this Contract at (or prior to) closing, Buyer fully understands the Limited Warranty and agrees to its terms. In the event Buyer subsequently sells or conveys title to the Property, any subsequent owner or title recipient shall only receive the warranty coverage applicable to years three (3) through six (6) following the Closing Date, regardless of when such transfer or sale to a subsequent owner or title recipient occurs. Buyer hereby agrees to also inform any prospective subsequent owner or title recipient of the fact that such subsequent owner or title recipient shall only receive the warranty coverage applicable to years three (3) through six (6) following the Closing Date, failing to give such notice Buyer shall indemnify, defend and hold Seller harmless for any damages or costs resulting from the failure to give such notice.

5.2 **The Limited Warranty Replaces All Other Warranties Except the Warranty of Habitability.** BUYER HEREBY ACCEPTS THE LIMITED WARRANTY IN LIEU OF ALL OTHER WARRANTIES, ORAL AGREEMENTS, PRIOR AGREEMENTS, OR REPRESENTATIONS OF ANY KIND, AND UNDERSTANDS THAT SELLER MAKES NO WARRANTY, EXPRESS OR IMPLIED, WHETHER ARISING UNDER STATUTE OR COMMON LAW, STATE OR FEDERAL LAW, AS TO QUALITY, FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, GOOD AND WORKMANLIKE CONSTRUCTION, OR OTHERWISE TO THE EXTENT ALLOWED BY LAW. SELLER MAKES NO WARRANTY AND DISCLAIMS ALL WARRANTIES OF ANY KIND CONCERNING HOME AND IMPROVEMENTS CONSTRUCTED, ADDED TO OR ALTERED BY BUYER OR ANY PERSON OR ENTITY HIRED OR RETAINED BY BUYER.

5.3 **Implied Warranty of Habitability.** Buyer and Seller acknowledge that the implied warranty of habitability lasts for ten years from substantial completion of the home. Buyer and Seller agree this implied warranty is defined as Seller's obligation to construct a home or a home improvement that is: (1) in compliance with the performance standards of the Limited Warranty Program; and (2) safe, sanitary and fit for humans to inhabit. Seller and Buyer further agree that an alleged construction defect under the warranty of habitability must have a direct adverse affect on the habitable areas of the home. The implied warranty applies to an alleged construction defect that would otherwise have been covered by the express limited warranties applicable to workmanship and materials, plumbing, electrical, and heating and air-conditioning delivery systems, but arose after the termination of the two-year warranty period, and the alleged construction defect must not have been discoverable by a reasonable prudent inspection or examination of the home within the two-year warranty period.

5.4 **Manufacturer's and Suppliers Warranty.** Buyer understands and agrees that any warranty pertaining to all appliances, building products or other consumer products installed in the Property are exclusively those of the respective manufacturers or suppliers and are not those of Seller. For and in consideration of the Purchase Price, Seller hereby assigns, grants, conveys and sells any and all rights, title, obligations or claims under any manufacturer's or supplier's warranty relating to any consumer products (e.g., furnace/ air conditioner, water heater, refrigerator, range, dishwasher, other appliances, equipment or other "consumer products," as defined by the Federal Trade Commission), or any other products which are the subject of a manufacturer's or supplier's warranty, which have been incorporated into the Property. Seller will provide Buyer, at the time of closing or Final Walk-Through, copies of the manufacturers' warranties pertaining to such

products and, if Buyer requested one or more of such warranties, that they received and reviewed copies of all applicable manufacturers' warranties. BUYER UNDERSTANDS AND AGREES THAT SELLER IN NO WAY MAKES AND HEREBY DISCLAIMS ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESS OR IMPLIED, WITH REGARD TO ANY CONSUMER PRODUCT OR OTHER PRODUCT INCORPORATED INTO THE IMPROVEMENTS OR THE PROPERTY, WHETHER THE PRODUCT MANUFACTURER OR SUPPLIER PROVIDES A WRITTEN WARRANTY OR NOT. THERE ARE NO WARRANTIES BY SELLER AND SELLER DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, AS TO THE MERCHANTABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR INTENDED USE OF THE CONSUMER PRODUCTS AND ANY OTHER PRODUCTS, WHICH ARE INCORPORATED INTO THE IMPROVEMENTS OR THE PROPERTY OR ARE OTHERWISE THE SUBJECT OF THIS ASSIGNMENT. Buyer expressly agrees and understands that Seller will have no contractual or legal liability of any kind for any consumer product incorporated into the Property and that any claim relating to a consumer product incorporated into the Property shall be directed solely to the manufacturer or supplier of the consumer product.

5.5 Environmental Conditions The Limited Warranty (the only warranty given by Seller) does not cover claims, damages, or costs based upon the presence of environmental conditions regardless of how those conditions come about, and Seller makes no representations or warranties, express or implied, that any real property or the Property is free of environmental conditions or defects, including mold which could give rise to the growth or spread of toxic substances. Buyer hereby releases Seller from, and Seller shall have no responsibility or liability for, any and all claims, damages and costs related to or arising from any environmental conditions or toxic substances. Seller makes no representation or warranty, express or implied, concerning any existing or future environmental condition or health hazard on, or under, the Property or in connection with any adjoining property, any electrical or other utility source, magnetic field, water source, wetland, contaminated air, soil or water, or the seepage or migration of any environmental condition, toxic substance, liquid or gas onto or across the Property. Seller expressly disclaims, and Buyer waives and releases Seller from, any and all claims, damages and costs of any kind related to or arising from such conditions. Mold commonly occurs in the environment and is an abundant and essential part of the world's ecological system. Molds are classified as fungi and are found nearly everywhere. The majority of mold types are not toxic. It is not uncommon for mold to develop on framing members during construction. For the purposes of this Contract "toxic substances" means the presence or consequence of unacceptable levels of radon, formaldehyde, carcinogenic substances or other pollutants and contaminants; or the presence of hazardous or toxic materials resulting in uninhabitability or health risk within the Home.

5.6 The Warranty Process. All disputes in any way arising out of, under or related to this Contract, construction of the Home, warranty work, or any other dealings between Buyer and Seller (including, without limitation, any representations or warranties allegedly made by Seller), shall be resolved by the parties first submitting all claims through Seller's normal warranty procedures and, if this process does not resolve the dispute by then negotiating in good faith to resolve the dispute. If such efforts do not resolve the claim(s) then the parties acknowledge that it is the policy of the State of Texas to encourage the peaceable resolution of disputes through alternative dispute resolution procedures. In such event, and after exhausting the warranty procedure process and attempting to negotiate in good faith, then either party may use the dispute resolution procedures established by the Limited Warranty including non-binding mediation, first and then binding arbitration.

5.7 Information Supporting Warranty Requests. For any condition that Buyer claims is either a construction defect or a violation of the Limited Warranty, or both (a "Defect"), Buyer agrees to provide to Seller any evidence and documents depicting the nature, cause, and effect of the Defect and the nature and extent of repairs necessary to remedy the Defect, including expert reports, photographs, and videotapes (collectively, "Supporting Information") within ten days of providing notice to Seller of the Defect. Buyer agrees that failure to provide Supporting Information to Seller under this paragraph is an express waiver of Buyer's right to refer to or rely on the Supporting Information in responding to any offers of repair that Seller makes and is also an express waiver of Buyer's ability to introduce the Supporting Information into evidence at any subsequent trial or to have any experts (consulting or testifying) review, rely on, testify concerning, or otherwise consider such Supporting Information.

5.8 Damages and Limitation of Claims-Two Year Statute of Limitations. Under no circumstances shall either Buyer or Seller be liable for any special, indirect, or consequential damages, including claims of mental anguish, except as otherwise specifically set forth in this Contract. Any action or claim, regardless of form, which arises from or relates to this Contract, the Work or the Improvements or the dealings between Buyer and Seller is barred unless it is brought by Buyer or Seller not later than two (2) years and one (1) day from the date the cause of action accrues. Without waiving the foregoing or any provision herein for Alternative Dispute Resolution, any signatory to this Contract who is the prevailing party in any legal proceeding or arbitration against any other signatory brought under or with relation to this Contract or transaction will also be entitled to recover court costs and reasonable attorney's fees from the non-prevailing party. SELLER'S LIABILITY, WHETHER UNDER CONTRACT, WARRANTY, TORT, STATUTE OR AT COMMON LAW, IS LIMITED TO THE REMEDIES PROVIDED IN THIS CONTRACT AND THE LIMITED WARRANTY MENTIONED HEREIN. UNDER NO CIRCUMSTANCES SHALL THE SELLER BE LIABLE FOR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES, OR FOR ANY DAMAGES BASED ON A CLAIM OF DIMINUTION IN THE VALUE OF THE PROPERTY OR FOR MENTAL ANGUISH. SUCH LIMITATION SHALL APPLY NOTWITHSTANDING ANY CURRENT USES OF AND/OR PLANS FOR ANY LAND OUTSIDE THE BOUNDARIES OF THE PROPERTY, PUBLIC GOVERNMENTAL REQUIREMENTS, UNFORESEEN LAND DEVELOPMENT PROBLEMS, AND/OR FACTORS THAT RESULT IN LAND USE OR SITE PLAN CHANGES. SELLER DISCLAIMS, AND BUYER IS NOT RELYING UPON, ANY AND ALL WARRANTIES OR REPRESENTATIONS AS TO THE FUTURE USE OR CONDITION OF ANY LAND OUTSIDE THE PROPERTY, WHETHER THE LAND IS OWNED BY SELLER OR NOT, INCLUDING AS TO THE STYLE, SIZE, DESIGN, OR DENSITY OF ANY STRUCTURE TO BE CONSTRUCTED THEREON, THE AVAILABILITY OF ANY PUBLIC OR PRIVATE RECREATIONAL FACILITY, THE LOCATION OF ANY ROAD OR ANY OTHER TRANSPORTATION FACILITY, OR THE LOCATION OR CHARACTER OF ANY COMMERCIAL ESTABLISHMENT. The parties agree and understand that, to the extent allowed by law, any damages which Buyer may recover from Seller are strictly limited to the damages allowed under the Texas Residential Construction Liability Act.

5.9 Buyer's and Seller's Representations. Seller shall not be bound to any statement or representation made by any employee or sales representative or employee of Seller unless set forth in this Contract in one of the documents incorporated herein by reference or in any Change Order signed by all parties to this Contract ("Seller's Representations"). Buyer acknowledges that Buyer has executed this Contract solely on the basis of Buyer's own investigation of Seller, other builders and after study of the type of home Buyer desires and upon Seller's Representations (as defined in the previous sentence) and not in reliance upon any other statement or representation attributed to Seller. Without limiting the generality of the foregoing, Buyer acknowledges that Seller may build (or has already built) other homes very similar to the Property, or based upon the same or similar design or Plan, and possibly in relatively close proximity to the Property, and no one has made any representation to Buyer to the contrary. Buyer also acknowledges that Seller makes no representations, promises, or warranties (either verbally or in writing) concerning the uniqueness of the design or Plan or the square footage of any home and that any statements by Seller (whether in writing or verbal) concerning the square footage of a home are estimates only and may not be exact or accurate.

VI. DISPUTE RESOLUTION

6.1 Right to Terminate.

(a) If Buyer, at any time prior to closing, informs Seller in writing that Buyer does not wish to purchase the Property, then Buyer may terminate this Contract. In the event of such termination by Buyer, Seller shall retain all Earnest Money and Additional Deposits.

(b) In the event that a bona fide dispute should arise between Seller and Buyer before Closing has been completed, and such dispute has not been resolved completely and to the satisfaction of both parties within ten (10) days after such dispute arises, then, at Seller's election, Seller shall have the right, upon written notice to Buyer, to terminate this Contract and return to the Buyer all Earnest Money previously paid to Seller by Buyer and Seller shall retain all Additional Deposits.

(c) If Seller is not able to perform in substantial accordance with the Contract Documents, or if Seller terminates this Contract due to circumstances beyond Seller's control, or if matters not presently known to the parties adversely affect Seller's performance or ability to perform or significantly increase the cost Seller would have to pay to complete performance hereunder then, at Seller's election, the Earnest Money and all Additional Deposits shall be returned to Buyer and this Contract shall be terminated.

If Seller is unable to contact Buyer for a period of fourteen (14) days or more, then Seller may terminate this Contract and keep all Earnest Money and any Additional Deposit as Seller's sole remedy and Buyer will have no claim whatsoever against Seller. In the event of any termination neither Buyer nor Seller shall have any further duties or obligations under this Contract, no cause of action shall accrue on behalf of Buyer because of such termination and Seller shall be entitled to sell the Property to any other party.

6.2 Remedies for Default. In the event Buyer defaults and Closing does not take place or it is reasonably anticipated by Seller that the Closing may not timely occur after the Completion Date, Seller may terminate this contract and retain the Earnest Money and all Additional Deposits as Seller's liquidated damages and as Seller's sole and exclusive remedy, thereby releasing both parties from any further obligation or liability under this Contract. In the event Seller defaults and Closing does not take place, then this contract shall be terminated and the Earnest Money and all Additional Deposits shall be refunded and paid to Buyer as liquidated damages as Buyer's sole and exclusive remedy, thereby releasing both parties from any further obligation or liability under this Contract. Upon termination of this Contract, Buyer shall have no further interest in the Property and Seller shall be at liberty to market and sell the Property to any third party.

6.3 Mediation-Binding Arbitration/Waiver of Jury Trial. Any dispute, claim or controversy (whether arising in contract, warranty, tort, statutory or otherwise), arising out of or related to: (a) any and all controversies, disputes or claims arising under, or relating to, this Contract, and any amendments thereto, the Property, Home, or any dealings between the Buyer and Seller; (b) any controversy, dispute or claim arising by virtue of any representations, omissions, promises or warranties alleged to have been made by Seller or Seller's representative; or (c) any personal injury or property damage alleged to have been sustained by Buyer on the Property or in the subdivision in which the Property is located, shall first be submitted to mediation and, if not settled during mediation, shall thereafter be submitted to binding arbitration to a single arbitrator under the applicable rules of the American Arbitration Association or JAMS (third party arbitration service) and governed by the Federal Arbitration Act or the Texas Arbitration Act but excluding any and all matters, disputes or claims arising out of or relating to copyright, trademark or patent, also known as intellectual property law. All issues respecting the arbitrability of any dispute shall be decided by the arbitrator. The parties agree to work together in good faith to select a mediator and, if all disputes are not resolved by mediation, an arbitrator in the county where the Property is located (to the extent practicable). If the parties are unable to agree on the appointment of a mediator and/or arbitrator, either party may petition a court of general jurisdiction in the county where the Property is located (to the extent practicable) to appoint a mediator and/or arbitrator. It is stipulated and agreed that the filing of a petition requesting appointment of a mediator and/or arbitrator shall not constitute a waiver of the right to enforce binding arbitration.

In any arbitration proceeding between the parties:

- a. All applicable Federal and State law (including Chapter 27 of the Texas Property Code) shall apply;
- b. All applicable claims, causes of action, remedies and defenses that would be available in court shall apply and the arbitrator may award either party "Costs and fees" which may include reasonable expenses of mediation and/or arbitration, including arbitrator's fees, administrative fees, travel expenses and out-of-pocket expenses such as copying and telephone, court costs, witness fees, and reasonable attorney's fees;
- c. The proceeding shall be conducted by a single arbitrator selected by a process designed to ensure the neutrality of the arbitrator;

- d. The parties shall be entitled to conduct reasonable and necessary discovery;
- e. The arbitrator shall render a written award and, if requested by any party, a reasoned award;
- f. The Buyer and Seller shall each pay one half of the arbitrator's fees and expenses and the arbitrator shall have the right to apportion the cost of any such items in an equitable manner in the arbitration award;
- g. Any award rendered in the proceeding shall be final and binding and judgment upon any such award may be entered in any court having jurisdiction; and
- h. The arbitration shall be conducted in the same county where the Home is located. Buyer and Seller agree that notwithstanding anything to the contrary, the rights and obligations set forth in this mediation-arbitration agreement shall survive: (1) the termination of this Contract by either party; (2) the default of this Contract by either party; or (3) Closing and payment in full of the Purchase Price. The waiver or invalidity of any portion of this mediation-arbitration agreement shall not affect the validity or enforceability of the remaining portions of this mediation-arbitration agreement and/or the Contract. Buyer and Seller further agree: (1) that any dispute involving Seller's directors, officers, partners, employees, members and agents shall be resolved as set forth herein and not in a court of law; and (2) that Seller shall have the option to include its subcontractors and suppliers as parties in the alternative dispute resolution procedures set forth in this Contract.

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

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

VII. GENERAL

7.1 Condemnation. If prior to the completion of the Improvements condemnation proceedings are commenced relating to all or any portion of the Property, this Contract Agreement will terminate, the Earnest Money and all Additional Deposits will be refunded to Buyer, and neither party shall have any further rights or liabilities hereunder. If condemnation proceedings are commenced against the Property after construction has commenced, the Buyer shall have no right or interest in such condemnation proceedings and any condemnation award or proceeds arising therefrom.

7.2 Broker/Realtor Commission. If a broker or realtor was the procuring cause of this Contract, Seller will pay the amount reflected on page 1 of this agreement which amount shall also be stated in a separate Realtor Commission Agreement.

7.3 Ownership of Plans and Specifications. The Plans and other documents furnished by Seller are instruments of service and shall not become the property of Buyer. Buyer does not have, and shall not in future acquire, either ownership of the Plans or the right to use the Plans or to allow their use by any third party and Seller may use the Plans (or derivations or portions of the Plans) to construct other homes without limitation or restriction. Buyer acknowledges that, even though Buyer may pay Seller for the Plans, the Plans are unique to

Seller and are (and shall always remain) the property of Seller. If Buyer does not, for whatever reason, proceed with construction of the Home, then Buyer shall return to Seller all construction drawings, elevations, floor plans, specifications and other depictions of the Home and any other product of Seller. Buyer shall also return to Seller all copies of such documents. Buyer shall, under no circumstance, allow the use of, or provide, any such Plans to any third person as Buyer acknowledges and agrees that all such Plans are copyrighted by Seller. Submission or distribution of documents to meet or to comply with Government Regulations or for other purposes in connection with the Work shall not be construed as a waiver of Seller's ownership rights in the Plans and Specifications. Buyer acknowledges that the Plans are subject to copyrights owned by Seller. Any use of the Plans by Buyer for any purpose other than as described in this Contract is strictly prohibited and Buyer agrees to indemnify and hold Seller harmless from any claims, demands, losses, expenses, causes of action, court costs or attorneys fees arising out of Buyer's wrongful use of the Plans. Without limiting the generality of the foregoing, Buyer acknowledges that Seller may build (or has already built) other homes very similar to the Property, or based upon the same plan, in relatively close proximity to the Property, and no one has made any representation to Buyer to the contrary.

7.4. Assignment – Subcontractors. Buyer may not assign this Contract without the prior written consent of Seller. Buyer acknowledges and understands that Seller will engage subcontractors and suppliers to construct the Home and hereby agrees to Seller's assignment of those duties to such third parties.

7.5 Joinder of Spouse (To be used if only one spouse will acquire title to the Property). I, _____, am the spouse of the Buyer in this Contract. I understand that title to the Property will be conveyed only to my spouse; but I agree and understand that to the extent I now own or hereafter acquire any right, title, or interest in the Property by virtue of my status as the spouse of Buyer, or by virtue of the homestead laws of the State of Texas or otherwise, all obligations of the Buyer which survive Closing, and all terms of this Contract will be binding upon me. I expressly agree that the warranty provisions and the Alternate Dispute Resolution provisions of this Contract will be fully applicable to and binding upon me, for all intents and purposes, as if I were the Buyer named in this Contract. I agree that any and all disputes I may have at any time (presently or in the future) relating in any way to the Property, Home or this Contract or my dealings with Seller will be resolved exclusively.

7.6 Signature By One Buyer Only Sufficient. Any document including but not limited to a Change Order, Plan, Specification, Termination Agreement, Acceptance Certificate, Selection Sheet, or other document, amendment, or addendum, relating to this Contract or the construction of the Home may be signed by only one Buyer, without being signed by any other Buyer, and will nonetheless be fully binding upon, and have the same force and effect as if personally signed by, all Buyers. In the event of the death of any one of the undersigned Buyers, this Contract will remain in full force and effect and will not be terminated or affected by such death. Each Buyer hereby appoints each other Buyer as the true and lawful agent and attorney-in-fact for the other to sign acknowledge and deliver all such documents as such agent and attorney-in-fact deems appropriate in the place of and with the same force and effect as if the non-signing Buyer had actually signed the applicable document.

7.7 Independent Contractor. It is the intention of the parties that Seller act as and is an independent contractor. It is the intention of the parties that: (a) Seller shall not be considered an agent, servant, or employee of Buyer; and (b) the relationship between Seller and Buyer shall not be that of a partnership, joint venture, or other similar association.

7.8 Binding Effect. This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, representatives, successors and assigns.

7.9 Counterparts/ Electronic Signatures. This Contract may be executed in counterparts, each of which shall be considered an original, but all of which shall constitute one document. Copies of genuine signatures (tangible or electronic form) shall have the full force and effect of original signatures. The signature of any party thereon shall be considered for these purposes as an original signature, and the document transmitted

shall be considered to have the same binding legal effect as on original signature on an original document. At the request of either party, a facsimile or telecopy document shall be re-executed by both parties in original form. No party hereto may raise the use of a facsimile machine or the fact that any signature was transmitted through the use of a facsimile machine as a defense to the enforcement of this Contract, rider or amendment given in connection with this Contract. This Contract may be signed by means of an electronic signatures and upon receipt of an electronic copy of this Contract, it shall be deemed in full force and effect, the same as if a fully executed paper copy had been executed by the parties.

7.10 Integration. This Contract contains the complete agreement between the parties and cannot be varied except by the written agreement of the parties. The parties agree that there are not oral agreements, understandings, representations, or warranties, which are not expressly set forth herein.

7.11 Legal Construction. In case any one or more of the provisions contained in this Contract shall for any reason be invalid, illegal, or unenforceable in any respect, to the extent such invalidity or unenforceability does not destroy the basis of the bargain among the parties, such invalidity, illegality, or unenforceability shall not affect any other provision hereof and to the extent such invalidity or unenforceability does not destroy the basis of the bargain among the parties hereto, this Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein. Whenever required by the context, as used in this Contract, the singular number shall include the plural and the neuter shall include the masculine or feminine gender, and vice versa. The Article and Section headings appearing in this Contract are for convenience of reference only and are not intended, to any extent or for any purpose, to limit or define the text of any Article or Section. This Contract shall not be construed more or less favorably between the parties by reason of authorship or origin of language.

7.12 Notices. Any notice required or permitted to be delivered hereunder is deemed received at the earliest of when actually received if given by personal delivery or, if given by mail, five (5) postal business days after deposit in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to Seller or Buyer, as the case may be, at the address set forth below the signature of such party hereto or upon delivery by a nationally recognize delivery service.

7.13 Time. Time is of the essence. Unless otherwise specified, all references to "days" shall mean and refer to calendar days. In the event the date for performance of any obligation hereunder shall fall on Saturday, Sunday, or Texas legal banking holiday, then that obligation shall be performable on the next following day that is not a Saturday, Sunday or banking holiday.

7.14 Venue. This Contract shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in the county in which the Property is situated.

7.15 Severability. 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 this Contract remaining valid and enforceable. Buyer acknowledges that Seller is relying on these representations and would not enter into this Contract without this understanding.

7.16 Risk of Loss. If the Home is destroyed or substantially damaged by casualty before Closing, Seller may cancel this Contract and return Buyer any Initial Earnest Money and Additional Deposit. If Seller elects to rebuild and complete the Home, this Contract shall be extended until the Home are rebuilt and completed.

7.17 Additional Documents that are Part of this Contract. The following documents, once signed by Buyer and Seller shall become part of this Contract and are incorporated herein by reference as if set out verbatim:

- a. Limited Warranty Booklet;
- b. MUD Tax Addendum, if applicable;
- c. Standard Specifications; and

- d. Depending upon the subdivision or area in which the Property is located additional documents may be required by the developer of the subdivision or a governmental entity or homeBuyer's association. In the event any such additional documents are required then they too shall be considered to be a part of this Contract as if set out verbatim.

Buyer acknowledges receipt of each of copies of the documents mentioned in this paragraph.

7.18 **Square Footage.** Buyer acknowledges that Seller makes no representations, promises, or warranties (either verbally or in writing) concerning the square footage of any home and statements (whether in writing or verbal) concerning the square footage of a home are estimates only and may not be exact or accurate.

7.19 **Merger and Survival of Terms and Acceptance of Property As Built.** The terms, provisions, covenants, and conditions of this Contract shall merge into the Deed delivered to Buyer at Closing, and, by virtue of Buyer's acceptance of the Deed and taking possession of the Property, all obligations of Seller to Buyer under this Contract and any document or instrument relating to the transaction contemplated hereby will conclusively be presumed to be fully and timely satisfied and completely fulfilled, and all Home to have been completely and finally accepted, even if there is a variance between the Home as constructed and the Plan.

7.20 **Effective Date/Multiple Counterparts** The "Effective Date" of this Contract is the date on which it is signed on behalf of Seller by the president or a vice-president of Seller (as opposed to a sales consultant). This instrument may be executed in multiple counterparts, any one of which shall have the full force and effect of original hereof. Facsimiles of genuine signatures shall have the full force and effect of original signatures.

VIII. NOTICES AND DISCLOSURES

8.1 **Attics.** Not all attics are designed for storage space. The installation of attic access is not an indication that the attic can be used for storage. During your plan review with your Sales Consultant, Buyer should determine if the attic is designed for storage.

8.2 **Availability of Utilities and Electric Service.** "Utilities" means electricity, gas, telephone and/or cable. If the Utilities in the area or section in which the home is located are not yet complete, Seller cannot guarantee finish dates for homes in the area or section. Buyer acknowledges that Seller has not made, and does not make, any promises or representations, oral or written, concerning the availability of Utilities or the performance of utility companies. Buyer acknowledges that three (3) days after the closing date, electric service will be discontinued in Seller's name.

8.3 **Flood Plain/Insurance.** Buyer acknowledges that the designation of a "flood plain" or similar area is made by one or more governmental entities and that such determinations are not within the control of Seller and that Seller has no responsibility for same. In the event that the Property which is the subject of this Contract may be in an area that has previously, currently is or in the future may be in a designated "flood plain" or flood zone Buyer acknowledges that Buyer is solely responsible for ascertaining the flood plain status of the Property and releases and holds Seller harmless from any damages resulting from flood or drainage issues. Some areas in certain Texas counties may be more flood prone than other areas. Buyer should consult with Buyer's insurance agent to determine whether to purchase flood insurance.

8.4 **Mold and Moisture.** Mold commonly occurs in the environment and in homes and is an abundant and essential part of the world's ecological system. Molds are classified as fungi and are found nearly everywhere. The majority of mold types are not toxic. To date, the health effects of mold are not known with any certainty. The only agreement seems to be that responses to mold are individualized, based on each person's immune system. It is not uncommon for mold to develop on framing members during construction.

8.5 **Plumbing Lines.** The water lines for the home will be, or are, located in the attic and/or walls of the Home. This means that during severe cold weather situations, the homeowner should take necessary precautions to prevent freezing and/or bursting of water lines. The placement of water lines in the attic and/or walls of the home is a normal and customary construction practice.

8.6 Consent to Release. Buyer authorizes Seller to release a copy of the signed Settlement Statement (HUD-1), this Contract and Change Order upon the written or email request of any appraiser assigned to perform an appraisal for another property.

8.7 Notice Regarding Possible Annexation. If the Property is located outside the limits of a municipality, 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, contact all municipalities located in the general proximity of the Property for further information.

8.8 Membership in Property Owners Association. Seller hereby notifies Buyer that Buyer is (or may be) obligated to be a member of a property owners' association. Restrictive covenants, deed restrictions or similar instruments governing the use and occupancy of the property and dedicatory instruments governing the establishment, maintenance, and operation of this residential community have been or may in future 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 or title company at your expense. You are (or may be) obligated to pay assessments to the property owners' association. The amount of the assessments is subject to change. Your failure to pay the assessments could result in a lien against, and the foreclosure of, your property. Consult the Deed Restrictions and dedicatory instruments to know your rights. Buyer acknowledges that the property (and each lot or part thereof Buyer is purchasing if Buyer is acquiring more than one lot) is subject to restrictions, covenants, and conditions set forth in the Restrictive Covenants (or other documents) identified in the title report to be issued by the Title Company or filed of record, regardless of whether identified in the title report or not. These restrictive covenants contain (among other matters) provisions for assessments and liens against the property to secure compliance by homeowners with the obligations of the covenants (including the obligation to pay assessments and other costs, fees and expenses). Some of these restrictive covenants or other filings of record may impose a transfer fee or conveyance fee that must be paid when you sell or otherwise convey title to the property. Seller receives no benefit from these fees and by signing below you acknowledge that Seller owes you no duty or obligation in connection with such fees as you acknowledge that payment of any such fees is your sole obligation.

8.9 Community Amenities and Other Subdivision Development Member Obligations. Buyer understands that Seller has no responsibility for any aspect of the subdivision amenities (which could, but do not necessarily, include such items as subdivision lighting, reserves, subdivision perimeter fencing, parks, walking paths, bike paths, hiking trails, green belts, open spaces, landscaped areas, trees, or any community swimming pool, clubhouse center, recreation centers, tennis court, golf course, country club, health club, recreation area, or recreation equipment, or community playgrounds, if any) and that Seller has no responsibility or liability for design, construction, or upkeep of any of the subdivision amenities (if any). If facilities or amenities have been "proposed" for the subdivision (including but not limited to the items enumerated above and improvements such as the future location of schools, roads, and other improvements), Buyers agree that Seller makes no representation or warranty concerning when, if ever, they will be constructed, and Seller has no responsibility to see that they are constructed or completed, or that if constructed, they will be the same as what is currently "proposed."

8.10 Adjacent Property and Various Property Conditions and Regulations. Seller is not responsible for any changes to boundary lines or topography of the Property, or any adjacent or nearby property after closing, whether resulting from erosion, meandering of adjacent waterways, failure to provide bulkheads, or any other cause, nor is Seller liable to Buyer for any damage to any part of the property caused by any such event(s), condition(s), or cause(s). In the event of termination of this Earnest Money Contract by Seller, all Earnest Money and Additional Deposits paid by Buyer to Seller, will be refunded to Buyer, without interest, and Seller and Buyer will be released from any further duties or obligations under the Earnest Money Contract. Seller has no responsibility, and makes no representations concerning, zoning changes in the subdivision (if the subdivision is in a community which has zoning), including zoning changes in the vicinity of or even adjacent to

the property covered by the Earnest Money Contract. If the Subdivision in which the Property you have agreed to buy is located in a region where oil and gas have been produced or where abandoned oil and gas wells and drill sites, gathering lines, hydrocarbon transmission lines, storage facilities, and other oil and gas extraction related equipment and facilities either do or may currently exist or have existed in the past, either above ground or in underground facilities in or near the subdivision or the property which is the subject of the Earnest Money Contract. Seller will provide Buyer with additional information known to Seller, if any, about these matters upon request. Failure of Buyer to submit such a request to Seller in writing prior to closing will be deemed conclusively to evidence that Buyers have satisfied themselves concerning these issues from information and sources available to them from persons or governmental agencies other than Seller. Further information concerning these matters can usually and generally be obtained from the Texas Railroad Commission.

8.11 TEXAS PROPERTY CODE NOTICE.

THIS 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 THE PERFORMANCE OF THIS CONTRACT. IF YOU HAVE A COMPLAINT CONCERNING A CONSTRUCTION DEFECT ARISING FROM THE PERFORMANCE OF THIS CONTRACT AND THAT DEFECT HAS NOT BEEN CORRECTED THROUGH NORMAL WARRANTY SERVICE, YOU MUST PROVIDE THE NOTICE REQUIRED BY CHAPTER 27 OF THE TEXAS PROPERTY CODE TO THE CONTRACTOR BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, NOT LATER THAN THE 60TH DAY BEFORE THE DATE YOU FILE SUIT TO RECOVER DAMAGES IN A COURT OF LAW OR INITIATE ARBITRATION. THE NOTICE MUST REFER TO CHAPTER 27 OF THE TEXAS PROPERTY CODE, AND MUST DESCRIBE THE CONSTRUCTION DEFECT. IF REQUESTED BY THE CONTRACTOR, YOU MUST PROVIDE THE CONTRACTOR AN OPPORTUNITY TO INSPECT AND CURE THE DEFECT AS PROVIDED BY SECTION 27.004 OF THE TEXAS PROPERTY CODE.

ANY ADDENDA, ANY NOTICES AND ALL CHANGE ORDERS SIGNED, EITHER ON THE DATE SET FORTH BELOW OR LATER, IN CONNECTION WITH THIS CONTRACT, ARE INCORPORATED INTO THIS CONTRACT AND MADE A PART HEREOF FOR ALL PURPOSES. THIS CONTRACT CREATES CERTAIN LEGAL RIGHTS AND OBLIGATIONS. IF YOU HAVE ANY QUESTIONS YOU SHOULD CONSULT WITH AN ATTORNEY. BY THE SIGNATURE AFFIXED BELOW, BUYER ACKNOWLEDGES THAT BUYER'S DEFAULT OF THIS CONTRACT WILL RESULT IN FORFEITURE OF ALL OF BUYER'S EARNEST MONEY DEPOSIT. TIME IS OF THE ESSENCE IN THE PERFORMANCE OF THIS CONTRACT.

Executed to be effective the _____ day of _____ 201__

Buyer#1

Buyer #2 (or if applicable Joinder of Spouse)

X

Address: _____
PhoneNo.: _____
E-mail: _____

X

Address: _____
Phone No.: _____
E-mail: _____

ACCEPTED FOR SELLER

Urban Grove Holdings, Inc
a Texas Limited Partnership

Name: _____

Title: _____