



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

1. **PARTIES:** _____ (Builder) agrees to construct the Improvements described below for _____ (both husband and wife if married) (Owner) on the Property described below.
2. **PROPERTY:** Lot _____, Block _____, _____ Addition, City of _____, _____ County, Texas, known commonly as _____ (Address), or as described on attached exhibit, together with all improvements constructed or to be constructed on the Property, including the Improvements described below.
3. **IMPROVEMENTS:** Builder shall provide all labor and materials (The Work) for the construction of a single family residence or _____ (Improvements) according to the plans, dated _____, prepared by _____, specifications, dated _____, prepared by _____, and this Contract and all attached addenda and exhibits (collectively referred to as the Construction Documents).
4. **CONTRACT PRICE:** Owner agrees to pay Builder the sum of \$ _____ (The Contract Price) as consideration for the construction and completion of the Improvements and the performance of the Work, subject to adjustment as allowed by this Contract.
5. **PAYMENTS:**
 - A. **INITIAL PAYMENT** - Prior to the commencement of the Work, Owner shall pay to Builder _____ % of the Contract Price or \$ _____ as a portion of the Contract Price (the Initial Payment). Builder may use the Initial Payment for, among other things, initial construction or pre-construction expenses, and a portion of the Builder's fee. Notwithstanding anything herein to the contrary, the sum of \$ _____ out of the Initial Payment shall be retained by the Builder if this Contract is terminated for any reason other than Builder's default.
 - B. **PROGRESS PAYMENTS** - During construction, as often as every other week, the Builder shall present owner with requests for payment (Progress Payment Request). Each payment (Progress Payment) shall be made in normal construction phases or according to a draw schedule approved by Owner, Builder, and interim lender, if any, and attached to this contract as an exhibit. Owner shall cause these payments to be made to Builder within three business days following the receipt of the Progress Payment Request. In the event of a payment delay, Builder shall have the right to stop work progress until payment is made. Owner and Builder agree that there will be no retainage of funds.
 - C. **FINAL PAYMENT** - The Final Payment (that portion of the Contract Price not paid by previous payments as well as any Change Orders and Allowance variances) will be due and payable upon Substantial Completion of the Improvements, as defined below.
 - D. **SOURCE OF PAYMENT** –
 - If Owner is obtaining interim construction financing, Owner shall obtain and pay the loan at Owner's expense and pay all related expenses. If Owner is unable to obtain an interim construction loan, with terms reasonably acceptable to Owner and Builder, within _____ days of the date of this Contract, either Owner or Builder may terminate this Contract by giving other party written notice of termination.

- If Owner is not obtaining an interim construction loan to pay for construction of the Improvements, upon execution of this Contract and prior to commencement of construction, Owner shall establish a construction account with a financial institution acceptable to both Owner and Builder. Owner shall deposit the entire Contract Price in the account when it is established. The Builder shall have the right to monitor the account to insure the Owner has deposited the required funds into the account. Failure by Owner to establish and maintain the account as required shall be a breach of this Contract.

6. TIME:

- A. COMMENCEMENT OF WORK - Builder shall commence construction of the Improvements within _____ calendar days after:
 - 1) Complete plans and specifications have been approved and initialed by both Owner and Builder;
 - 2) Owner has obtained a construction loan or other financing acceptable to the Builder;
 - 3) Owner has obtained all architectural approvals from subdivision or neighborhood authorities;
 - 4) Owner has furnished Builder with a current title commitment or such other evidence of Owner's ownership of the Property satisfactory to Builder in its sole discretion;
 - 5) All appropriate building permits have been issued; and
 - 6) Owner has executed and delivered to Builder for recording any required mechanic's lien contract pursuant to Section 16.A hereof, and Builder has received written notice from the lien holder and/or the title company insuring lien holder's security interest in the Property that all documents required to be recorded prior to the commencement of construction have been properly recorded.
- B. COMPLETION OF IMPROVEMENTS - After commencement of the Work, Builder will diligently proceed with the construction and make all reasonable efforts to substantially complete the Improvements within _____ calendar days (the Projected Completion Date), subject to permitted delays as defined below.
- C. DELAYS - The Projected Completion Date may be extended for one or more of the following causes:
 - 1) Changes by Owner or Owner's representatives.
 - 2) Failure of Owner to make selections as directed below.
 - 3) Failure of Owner to make timely progress payments.
 - 4) Other acts or omissions by Owner or Owner's representatives.
 - 5) Prohibitive weather.
 - 6) Fire or casualty loss.
 - 7) Non-availability of labor or materials.
 - 8) Delays caused by the applicable governmental entity's delay in issuing necessary permits.
 - 9) Other events beyond the Builder's reasonable control.

Builder, within 30 days of a delay, shall give Owner written notice of any extensions to the Projected Completion Date.

- D. NO WORK PERFORMED - Builder and Owner, by their signatures to this Contract, acknowledge and agree that this Contract has been executed and delivered before Builder has performed any labor and before Builder has furnished any materials in connection with the construction of the Improvements.

- 7. SUBSTANTIAL COMPLETION AND OCCUPANCY:** The Improvements will be deemed to be substantially completed (Substantial Completion) when a certificate of occupancy is issued or, if no certificate of occupancy is required, when all electrical, mechanical, and plumbing final inspections have been approved or all approvals for occupancy have been received from the applicable governmental authority. However, notwithstanding the foregoing, if Owner moves into the Improvements, the Improvements shall be deemed to be substantially completed. Upon Substantial Completion of the Improvements and payment to the Builder of the Final Payment, Owner will be given possession of the Improvements and the Property; provided, however, that in no event shall Owner be entitled, without the prior written consent of the

Builder, to occupy any portion of the Improvements until Builder has been paid the Final Payment. At such time as Owner is entitled to occupy the Improvements, Builder shall be released from any further obligation or duty for the maintenance of insurance coverage with respect to the Property and/or the care, repair, maintenance and condition of the Property and the Improvements, except as outlined in the Builder's warranty policy, if applicable.

8. ALLOWANCES: Allowance items are any Work components shown in the Construction Documents for which a specified dollar amount is allotted to cover unknown material or labor selections, such as fixtures, floor coverings, appliances, etc. Allowances include, without limitation, tax, material, shipping charges, and labor where applicable. In some cases, additional labor charges could be incurred. Selections of allowance items should be made at suppliers typically used by Builder to limit the possibility of unusual costs, delays, or lack of appropriate service. All overages in expenditures from allowance amounts will be treated as a Change Order as defined below. The Projected Completion Date, as set forth above, will be automatically extended if allowance items are not selected according to the Builder's selection schedule hereto attached within ten days of written notice from Builder or within _____ days of this Contract. Owner will verify all selections with the supplier and provide Builder with the proper information for ordering.

9. CHANGES:

A. No alterations, additions or deletions will be made in the Work, unless agreed to in writing by Owner and Builder. To approve a proposed change, both Owner and Builder shall sign a written agreement referred to as a Change Order. Upon receiving, from Owner, a written request for such change, detailing the nature of the changes to be made, Builder shall present Owner with a proposal for the changes including any additional costs of construction, additional Builder's fee of _____ and any extensions to the Completion Date. If Owner accepts, in writing, Builder's proposal for changes, this Change Order will become a binding attachment to the Contract Documents. Any Owner party (e.g. husband or wife) may sign the Change Order as agent for the other, and that signature of one Owner shall be binding on the other. Failure of Owner to approve Builder's proposal for changes within (3) three days after receipt shall constitute a rejection of the proposal. Builder shall be reimbursed at \$_____ per Hr., with a minimum fifty dollars, for all expenses and effort incurred in the production of any Change Order proposal not accepted by the Owner. Owner shall pay for all agreed upon Change Orders including the additional Builder's fee to Builder within (3) three business days after Owner's acceptance of the proposal.

Builder will not be obliged to proceed with any Work until any such amounts have been paid as agreed. Builder has no obligation to stop work while change orders are being discussed.

B. Notwithstanding the foregoing, Owner agrees to execute Change Orders prepared by Builder for Changes in the Work (including any necessary increases to the Contract Price) that may be necessary to:

- 1) Comply with applicable Governmental Requirements.
- 2) Provide structural integrity to the Improvements.
- 3) Route electrical, mechanical, or other systems included in the Work.
- 4) Avoid or correct any conditions which might result in defects or other warranty claims.
- 5) Correct or cure any omissions in the Construction Documents or any conditions not completely or correctly represented in the Construction Documents such as unusual subsurface soil conditions, topography, hazardous substances or materials, underground tanks, dump sites or ground water.
- 6) Address overages in expenditures from allowance amounts as contemplated in Section 8 above.

10. BUILDER'S RESPONSIBILITIES: Builder accepts responsibility for the performance of all duties reasonably necessary to complete the Work and agrees that:

A. Builder shall make good faith efforts to obtain all necessary licenses, permits, and similar authorizations from governmental authorities required, including all water and wastewater taps. Builder shall have no liability for any failure to obtain any such items, in which case either party may terminate this Contract without further liability to the other party.

- B. In constructing the Improvements, Builder will rely on the Construction Documents as being complete and correct in all respects. Builder shall promptly notify Owner of all errors, conflicts, or inconsistencies discovered with respect to the Construction Documents. BUILDER DOES NOT WARRANT OR GUARANTEE ANY OF THE CONSTRUCTION DOCUMENTS WHICH HAVE BEEN PREPARED BY ANY PARTY OTHER THAN THE BUILDER. BUILDER WILL NOT BE RESPONSIBLE FOR ANY ERRORS OR OMISSIONS IN THE REPRESENTATIONS, DOCUMENTS, PLANS, SPECIFICATIONS, OR DESIGNS MADE BY AN ARCHITECT, ENGINEER, SURVEYOR, OR DESIGNER WITH RESPECT TO ANY OF THE CONSTRUCTION DOCUMENTS. All changes or corrections causing additional expense or delays shall be administered as a Change Order as outlined above. Any supplements to the Construction Documents prepared by Builder shall be the property of Builder and shall not be used by Owner except for construction provided by Builder. Owner acknowledges that minor changes may occur in the Work and agrees that so long as the construction of the Improvements is substantially in compliance with the Construction Documents, such minor deviations will be accepted.
- C. Builder shall pay all costs related to the Work, except for Changes as described above.
- D. Builder shall use all new materials in connection with the Work that are of a quality suitable for the intended purpose, except as otherwise specified in the Construction Documents.
- E. Builder shall deliver the Improvements to the Owner free of all liens, claims, security interests or encumbrances that might have arisen from the performance of the Work, except the lien and security interest created by this Contract or given to the interim construction lender.
- F. Builder shall perform the Work in accordance with all applicable local government codes and shall conform to the industry standards established by the National Association of Home Builders' Residential Construction Performance Guidelines.

11. INSURANCE: Before beginning the Work, Builder shall obtain:

- Builder's risk insurance covering all insurable risks, with respect to the Improvements, in an amount equal to or greater than the Contract Price.
- Comprehensive general liability insurance.
- Workers Compensation Insurance or waivers covering all individuals who assist in the Work.

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

12. WARRANTY: Builder shall transfer to Owner all manufacturers' warranties received by the Builder or any subcontractor. Builder will not be required to warrant, repair or correct any of the Work provided by any party other than the Builder or the Builder's subcontractors or employees. Builder shall not be obligated under any warranty given to Owner until Builder has been paid in full. Builder shall correct any of the Work:

- Which is defective or which does not comply with the Construction Documents for a period of one year from the date of Substantial Completion of the Work.
- According to the attached warranty documentation, if any.

EXCEPT AS EXPRESSLY SET FORTH ABOVE OR IN THE ATTACHED WARRANTY DOCUMENTATION, IF ANY, NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, ARE MADE TO OWNER CONCERNING THE NATURE, CONDITION OR CONSTRUCTION OF THE IMPROVEMENTS OR THE SUITABILITY OF THE LAND FOR THE CONSTRUCTION OF THE IMPROVEMENTS THEREIN; ALL SUCH WARRANTIES ARE HEREBY DISCLAIMED BY BUILDER AND WAIVED BY OWNER TO THE FULLEST EXTENT ALLOWED BY LAW, INCLUDING, BUT NOT LIMITED TO ANY AND ALL EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY, HABITABILITY, SUITABILITY, CONDITION, FITNESS FOR A PARTICULAR PURPOSE, AND WORKMANSHIP.

13. DEFAULT BY BUILDER:**A. EVENTS OF DEFAULT -**

- 1) Builder's failure to make payments without cause to contractors or vendors supplying material for the Work.
- 2) A breach by Builder of a covenant or agreement contained in this Contract.
- 3) The Builder's filing of a voluntary petition in bankruptcy, making an assignment for the benefit of any creditor, being adjudicated a 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.

B. NOTICE OF DEFAULT TO BUILDER - If Builder commits an Event of Default, prior to exercising any remedy granted by this Contract or by law, Owner shall deliver notice of default to Builder. If the Event of Default is not cured within thirty (30) days after delivery of the written notice, Owner may exercise any remedy granted by this Contract or by applicable law.**C. REMEDIES OF OWNER -** Upon the occurrence of any Event of Default by Builder and the expiration of the 30-day cure period, Owner may (but shall not be obligated to), without prejudice to any other available right or remedy, terminate this Contract; seek specific performance of this Contract by Builder, pursue any other remedies available to Owner under this Contract or as provided by law, or any combination of the foregoing.

HOWEVER, NOTWITHSTANDING ANY PROVISION HEREIN TO THE CONTRARY, UNDER NO CIRCUMSTANCES SHALL BUILDER BE LIABLE FOR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES INCURRED BY OWNER, INCLUDING CLAIMS OF MENTAL ANGUISH. If Owner receives notice of any lien or claim for labor or materials furnished to Builder for which, if established, Owner of the Property might become liable, though primarily chargeable to Builder, Owner shall have the right to retain out of any Progress Payment, an amount sufficient to indemnify Owner against such lien or claim. However, Builder shall have the right to contest in good faith the validity of such lien or claim. If Builder fails to discharge any such lien or claim, any amounts expended by Owner for the payment of any liens or claims shall be credited against the Contract Price.

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

- A. Owner shall make all payments to Builder as required by this Contract.
- B. Owner shall protect the title and possession of the Property and pay all taxes and assessments prior to delinquency.
- C. Owner shall obtain all consents and approvals required from any architectural review committee, homeowners association or similar entity having the right to review and approve plans and specifications for any residence or improvements proposed to be constructed on the Property.
- D. Owner shall provide, or cause to have provided, complete Construction Documents, and supporting information for use on the Property.
- E. Owner agrees to promptly specify any objections to any Work not in compliance with the Construction Documents of which Owner becomes aware. Failure by Owner to promptly object to the Work performed within any phase of construction shall constitute an acceptance of the Work. Owner acknowledges and agrees, however that it may be inappropriate and/or unreasonably expensive and time-consuming to replace, refabricate or repaint a component that exhibits a minor defective condition. In such instances, Builder, in its sole judgment, may (i) employ an alternate remedy to correct the deficiency in conformance with reasonable building practices, or (ii) conclude that the condition is within acceptable tolerances and take no corrective action. Owner is solely responsible for providing Builder, prior to commencement of construction, with such water, gas, storm and sanitary sewer and electricity at the lot line as may be required by Builder to effect the construction of the Improvements.
- F. Owner, at Owner's expense, shall be responsible for obtaining the necessary fault line maps, soil and sub-soil tests, flood plain maps and any other tests which may affect the structural integrity of the Improvements, from experts knowledgeable of such matters, prior to the design of the foundation and the completion of the Construction Documents. Owner shall require the design professional(s) to prepare the Construction Documents in light of the information obtained from such maps, tests and analysis and cause the Construction Documents to be suitable in

consideration thereof. Evaluation of the soils on the Property, the suitability of the foundation design and any special specifications for the type of concrete used in the foundation shall be the sole responsibility of Owner and Owner's architects and engineers. Builder therefore disclaims any warranty of or responsibility for such tests, reports or plans. Builder's reliance on third parties for the components of the foundation shall relieve Builder from all responsibility for or liability to the Owner for the raising, shifting, heaving or settling of the soil or any consequential damage to the Improvements, provided Builder constructs the foundation in substantial compliance with the Construction Documents.

- G. Owner shall remove or protect all of Owner's existing items of property, including, without limitation, shrubs and flowers, at the Property that could be affected by the construction contemplated herein. Builder shall not be responsible for damaged driveways, walks, lawns, trees, shrubs and items of personal property. **OWNER HEREBY RELEASES BUILDER FROM ANY DAMAGES TO THE FOREGOING ITEMS THAT OCCUR ALL OR IN PART AS A RESULT OF BUILDER'S NEGLIGENCE, BUT NOT AS A RESULT OF BUILDER'S GROSS NEGLIGENCE.**
- H. In the event Owner contracts with other parties to perform work which is not a part of the Work performable by Builder hereunder, Owner shall keep such other parties from interfering with the progress of the Work.
- I. To the extent reasonably practicable, Builder shall cooperate with such other parties, but will not be responsible for coordinating their work, for the quality of their work or for any damage done by such other parties.
- J. Owner shall perform all other obligations as provided in this Contract.

15. DEFAULT BY OWNER:

A. EVENTS OF DEFAULT BY OWNER:

- 1) Owner fails to make any payments due under this Contract as defined above.
- 2) Owner unreasonably delays or unreasonably interferes with the Builder in the execution of the Work.
- 3) Owner fails to perform any other covenant or agreement contained in this Contract.
- 4) Owner, or any person liable for the payment or performance under this Contract, files a petition in bankruptcy, makes an assignment for the benefit of any creditor, is adjudicated a bankrupt or insolvent, or applies for or consents to the appointment of a receiver, trustee or liquidator of all or a substantial part of their or its assets.

B. NOTICE OF DEFAULT TO OWNER - If Owner commits an Event of Default, prior to exercising any remedy granted by this Contract or by law, Builder shall deliver written notice of default to Owner. If the Event of Default is not cured within ten (10) days after delivery of such written notice, Builder may exercise any remedy granted by this Contract or by applicable law. Upon the occurrence of an Event of Default by Owner, all amounts owed for Work completed will, at the option of the Builder, after any notice or cure period, become immediately due and payable without prejudice to any other remedy of the Builder.

C. REMEDIES OF BUILDERS - Upon the occurrence of any Event of Default by Owner and the expiration of the 10-day cure period, Builder may (but shall not be obligated to), without prejudice to any other available right or remedy, terminate this contract and seek recovery of any damage suffered by Builder, including, but not limited to, payment for all materials, labor, profit, overhead and fees with respect to the Work; discontinue performance of this Contract; seek specific performance of this Contract by Owner; recover any and all damages to which Builder is entitled as a result of Owner's breach of this Contract; foreclose any builder's and mechanic's lien granted in connection herewith; or any combination of the foregoing.

D. DELINQUENT PAYMENT - Should the Owner fail to make payment to the Builder of the Contract Price in any partial or final payment, when payment is due, then the Owner shall pay to the Builder, in addition to the sum shown as due by such statement, interest at the maximum rate allowed by applicable federal and state law.

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

A. MECHANIC'S LIEN - Owner grants to Builder a mechanic's lien to secure performance of the obligations of Owner, and agrees, prior to beginning construction, to execute a separate mechanic's lien contract in form and substance acceptable to the Builder and Interim Lender, if any. If Owner is obtaining an interim construction loan, Builder shall

assign to the Interim Construction Lender a portion of Contractor's mechanic's lien equal to the amount of the interim construction loan obtained by and advanced to the Owner, and to subordinate any remaining amount of Builder's lien to the interim construction loan. In the event that the Improvements to be erected fail for any reason to be completed, or fail to be completed according to this Contract, or all of the labor and material used in erection thereof fail to be provided by Builder, then Builder and the owner or holder of the indebtedness under the builder's and mechanic's lien shall have a valid and subsisting lien for the Contract Price, less such amount as would be reasonably necessary to complete the Improvements according to the Construction Documents, and the right to complete the Improvements. In the event of any conflicts between this Contract and the builder's and mechanic's lien contract, the terms of this Contract shall control.

- B. INDEPENDENT CONTRACTOR - Builder will be an independent contractor. Nothing contained in or inferable from this Contract should be construed to make Builder the agent, servant or employee of Owner, or create any partnership, joint venture or other association between Owner and Builder.
- C. WORK PERFORMED BY OWNER - Owner agrees that Builder will not be required to warrant, repair, insure, or correct any Work performed by the Owner or any entity employed by the Owner or any other entity that is not employed or engaged by the Builder as part of the Work to be performed by the Builder under this Contract.
- D. OTHER PARTIES BOUND - Owner and Builder each binds themselves, their partners, successors, assigns, and legal representatives of the other party in all matters related to this Contract.
- E. NO ASSIGNMENT - Neither party has the right to assign this Contract without the written consent of the other.
- F. TIME OF THE ESSENCE - Time is of the essence in this Contract.
- G. BROKERAGE COMMISSIONS - Builder and Owner acknowledge to each other that, unless specified in an attached addendum, there has been no contract with any real estate broker, finder or other party in connection with this Contract, to whom any brokerage, finders, or other fees may be due and payable. Each party hereby indemnifies and agrees to hold the other harmless from any loss, liability, damage, cost, or expense (including reasonable attorney's fees) resulting by reasons of breach of this representation and warranty.
- H. ALTERNATE DISPUTE RESOLUTION - The parties to this Agreement specifically agree that this transaction involves interstate commerce and that any dispute (whether contract, warranty, tort, statutory or otherwise), including, but not limited to, (a) any and all controversies, disputes or claims arising under, or related to, this Agreement, the property, or any dealings between the Buyer and Seller (with the exception of "consumer products" as defined by the Magnuson-Moss Warranty-Federal Trade Commission Act, 15 U.S.C. § 2301 et seq., and the regulations promulgated thereunder; (b) any controversy, dispute or claim arising by virtue of any representations, promises or warranties alleged to have been made by Seller or Seller's representative; and (c) any personal injury or property damage alleged to have been sustained by Buyer on the property or in the subdivision, 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. The arbitrator shall have the right to award reasonable attorneys' fees and expenses, including those incurred in mediation, arbitration, trial or on appeal. The mediation shall be conducted before the American Arbitration Association ("AAA") in accordance with the AAA's Commercial or Construction Industry Mediation Rules, as appropriate, if the dispute is not fully resolved by mediation, the dispute shall be submitted to binding arbitration before the AAA in accordance with the Commercial or Construction Industry Arbitration Rules, as appropriate, and judgment upon the award rendered by the arbitrator can be entered in and enforced by any court having jurisdiction over the matter. It is understood and agreed by the parties that in the event the Homeowner's Warranty provided by Seller (if a Homeowner's Warranty is provided by Seller) does not provide for binding arbitration, a claim under, or covered by, the warranty will be administered as provided in the warranty prior to submission to binding arbitration pursuant to this paragraph. Unless otherwise provided by law or the Homeowner's Warranty, the cost of mediation and arbitration shall be borne equally by Seller and Buyer. Buyer and Seller agree that notwithstanding anything to the contrary, the rights and obligations set forth in this paragraph shall survive (1) the termination of this

Agreement by either party; or (2) the default of this Agreement by either party. The waiver or invalidity of any portion of this paragraph shall not affect the validity or enforceability of the remaining portions of this paragraph. Buyer and Seller further agree (1) that any dispute involving Seller's directors, officers, employees and agents shall be resolved as set forth herein and not in a court of law; (2) that Seller shall have the option to include its subcontractors and suppliers as parties in the mediation and arbitration; and (3) that the mediation and arbitration will be limited to the disputes involving the parties specified herein, including any warranty company and insurer.

- I. **EXCLUSIVE DAMAGE REMEDY** - After completion of the mediation process described above, if there are any outstanding claims, Owner agrees that the exclusive remedy for any such claim for damages against Builder for breach of warranty or any other claim whatsoever, is under the effective version of the Residential Construction Liability Act ("RCLA"). Owner and Builder also acknowledge and agree that a request for warranty performance shall not be construed as a notice of construction defect under RCLA, and that any notice under RCLA shall be separately sent to Builder in the manner required by RCLA.
- J. **ATTORNEY FEES** - If Builder or Owner is the prevailing party in any arbitration or legal proceedings brought under or with relation to this Contract, the prevailing party will be entitled to recover from the non-prevailing party all costs of such proceeding and reasonable attorney's fees.

17. AGREEMENT OF PARTIES: This Contract contains the entire agreement of the parties and cannot be changed except by their written consent. Exhibits and addenda which are part of this Contract are (list):

RESIDENTIAL CONSTRUCTION CONTRACT DISCLOSURE STATEMENT (TAB-A1) _____

In the event of any conflict or inconsistency between the provisions of Sections 1 through 22, inclusive, of this Contract and the provisions of any attached addenda or exhibits, the provisions of this Contract shall govern and control.

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

Buyer: _____	Builder: _____
Phone: _____	Phone: _____
Fax: _____	Fax: _____

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

19. CONSULT YOUR ATTORNEY: Builders/Brokers cannot give legal advice. This is intended to be a legally binding Contract. READ IT CAREFULLY. If you do not understand the effect of this Contract, consult your attorney BEFORE signing.

20. THIS CONTRACT CONSTITUTES A CONSTRUCTION MORTGAGE WITHIN THE MEANING OF SECTION 9.313 OF THE TEXAS BUSINESS & COMMERCE CODE.

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

Owners Initials _____

22. SIGNATURES OF PARTIES:

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

The Contract is subject to Chapter 27, 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 notice regarding the defect to the contractor by certified mail, return receipt requested, not later than the 60th day before the date you file suit to recover damages in a court of law. The notice must refer to Chapter 27, 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, Texas Property Code.

EXECUTED on _____, 20__.

OWNER(S):

Address: _____

BUILDER:

By: _____

Name: _____

Its: _____

Address: _____

This Contract and its printed addenda are promulgated by the Texas Association of Builders (TAB) for the voluntary use of its members. TAB makes no representation or warranty that any party using this form is a member of TAB.

NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY, ADEQUACY OR TAX CONSEQUENCES OF ANY PROVISION OF THIS FORM IN ANY SPECIFIC TRANSACTION.

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