



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

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

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

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

3. **IMPROVEMENTS:**

A. **CONSTRUCTION DOCUMENTS** – The Construction Documents shall consist of the following:

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

B. **WORK** - Builder shall provide all labor and materials for the construction (Work) of the following improvements (Improvements): (check the appropriate box) ☒ a single family residence or ☐ _____ substantially in accordance with the Construction Documents. Any inconsistencies or conflicts within the Construction Documents shall be resolved by the Builder in its reasonable discretion. If a detail of the construction is not specified within the Construction Documents or should an alternative building practice be available in lieu of a specified procedure, the Builder may select a construction procedure that complies with industry standards. Unless otherwise specified in writing, materials used by the Builder in the construction of the Improvements shall be as prescribed in the Construction Documents, subject to substitution at Builder's election should an item not be reasonably available or if its procurement would cause undue delay of the Work. Any substitutions shall be of comparable grade and quality at Builder's election. The construction of the Improvements is subject to changes in the Construction Documents as required by any governmental authorities and/or property owners' association. Owner acknowledges that these changes may occur during construction and agrees that any such deviations as described in this section shall be accepted. There is no representation, warranty or guarantee that the Property or Improvements are "built as designed" or that "as built" drawings will be created or match the Construction Documents or other engineering, geotechnical or architectural drawings, reports or information and in-the-field changes may be made by the Builder as provided herein.

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

5. **PAYMENTS:**

- A. **INITIAL CASH PAYMENT** - Prior to commencement of the Work, Owner shall pay to Builder \$100,000 as a portion of the Total Contract Price (Initial Cash Payment). Builder may use the Initial Cash Payment in consideration for initial construction or construction expenses, and compensation to Builder for time and effort expended. The Initial Cash Payment will be credited in the Final Payment. The Initial Cash Payment may be retained by the Builder, at Builder's sole discretion, as liquidated damages if this Contract is terminated for any reason other than a Builder's Event of Default (as defined below) in addition to any other rights or remedies allowed herein or by law. Builder and Owner agree that it is not possible to calculate the exact amount of damages that Builder will suffer if this Contract is terminated for a reason other than Builder's default and this amount is a reasonable approximation of the damages. This amount is in no way a penalty.
- B. **DISASTER REMEDIATION** – The following bold text only applies if 1) the Builder is performing disaster remediation services on the Property with construction of the Improvements, 2) after the Governor or county judge has issued a disaster declaration for the county in which the Property is located, and 3) Builder has not maintained a physical business address in the subject county or adjacent county for at least one year prior to the execution of this Contract. **This Contract is subject to Chapter 58, Business & Commerce Code. A contractor may not require a full or partial payment before the contractor begins work and may not require partial payments in an amount that exceeds an amount reasonably proportionate to the work performed, including any materials delivered.** If applicable, this statutorily prescribed provision may affect the Initial Cash Payment amount in Paragraph A above.
- C. **DRAW REQUESTS** - During construction, the Builder shall present Owner with requests (Draw Request) for payment (Draw Payment[s]) by Owner. Each Draw Request shall reflect the Construction Costs (as defined below) and any compensation to Builder for time and effort expended in connection with this transaction incurred up to the date the Draw Request is submitted to Owner. The Draw Request may include the name and address of each person who subcontracted directly with Builder and who Builder intends to pay from the requested funds. Subcontracts, invoices or other documentation will not be required as a part of the Draw Request unless specifically agreed to in writing in the Special Provisions of this Contract; Owner's lender's requirements are not the obligation of Builder. Owner shall cause the Draw Payments to be made to Builder within three (3) business days following communication of a Draw Request to Owner or Owner's lender. Delays by Owner's lender is not a permitted delay for payment of the Draw Request and such Draw Request shall be payable directly by Owner. In the event of a Draw Payment delay, Builder shall have the right to suspend all Work immediately upon the expiration of the payment period herein. Construction Costs are defined as all costs incurred by the Builder as a result of the Work, except for the following:
- 1) Salaries, wages, and other compensation for the Builder or the Builder's personnel stationed at the Builder's offices or at other sites not related to the Work.
 - 2) Expenses and operating cost of the Builder's offices.
 - 3) General overhead expenses of the Builder.
 - 4) Marketing and promotional expenses of the Builder.
 - 5) Capital and bank expenses of the Builder.
 - 6) Any costs not directly related to the Work.
- D. **FINAL PAYMENT** - The Final Payment (the portion of the Total Contract Price, Change Orders, and Allowances as defined below not paid by previous payments) shall be due and payable upon Substantial Completion (as defined below). Owner agrees that payment of the Total Contract Price at the time of Substantial Completion is a condition precedent that must be satisfied prior to Builder performing any Punch List Items, final walk-thru work, or warranty work, and the warranty period begins to run at the time of Substantial Completion although Builder is not obligated to perform warranty work until the Total Contract Price has been paid. Except as provided in Section 5.A, Owner and

Builder agree that there will be no retainage of funds. Any and all rights to retain under applicable law are waived by Owner and, if applicable, Owner's lender. If Owner's lender attempts or does withhold retainage on Draw Payments, Owner shall fund the retainage directly to Builder.

- E. SOURCE OF PAYMENT – Builder is not responsible for errors in payment by Owner or Owner's lender due to the fraudulent or criminal acts of third-parties. Such fraudulent or criminal acts by third-parties do not relieve Owner or Owner's lender from the terms and conditions herein. Owner and Owner's lender shall use all commercially reasonable efforts to determine that any and all payments by any means, including but not limited to electronic payments, wire transfers or otherwise, are appropriately verified as requested by Builder and made to Builder. Among other due diligence, Owner and Owner's lender shall verify all payment requests.

(check the appropriate box) –

- ☐ If Owner is obtaining interim construction financing from a bona fide third-party lender, Owner shall obtain and pay the loan and all related expenses at Owner's expense. In the event of any conflicts between this Contract or the Construction Documents and any documents promulgated by any third-party lender, the terms of this Contract and the Construction Documents control, despite any accommodation signature to lender's documents by Builder. If Owner is unable to obtain an interim construction loan, with terms reasonably acceptable to Builder, within _____ days of the date of this Contract, either Owner or Builder may terminate this Contract by giving the other party written notice of termination. Builder is not required to execute any additional lender documents that are in conflict with this Contract or otherwise reduce or mitigate any of Builder's rights under this Contract or at law or in equity. Owner acknowledges that, to the extent the Improvements do not sufficiently appraise for the Total Contract Price, Owner is solely responsible for payment of the Total Contract Price regardless of whether or not the Lender will loan to Owner the Total Contract Price. Builder is not obligated to obtain lender's permission for Owner requested Change Orders.
- ☐ If Owner is not obtaining an interim construction loan to pay for construction of the Improvements, upon execution of this Contract and prior to commencement of construction, Owner shall: (check the appropriate box)
- ☐ pay the Total Contract Price to Builder and Builder shall deposit same in a construction account (Builder's Construction Account) with a financial institution reasonably approved by Builder; or
- ☐ deposit the Total Contract Price in a construction account (Owner's Construction Account) with a financial institution reasonably acceptable to Builder. Builder shall have the right to monitor Owner's Construction Account to ensure Owner has deposited the required funds into the account. Failure by Owner to establish and maintain Owner's Construction Account as required herein shall be a breach of this Contract and Builder may, at its option, elect to treat such breach as an Owner Event of Default (as defined below).

6. TIME:

- A. COMMENCEMENT OF WORK - Builder will make reasonable efforts to commence the Work within 90 days calendar days after:
- 1) The complete Construction Documents have been approved and initialed by both Owner and Builder;
 - 2) Owner has a construction loan or other financing acceptable to the Builder in accordance with this Contract;
 - 3) Owner has all necessary approvals from, including but not limited to homeowner's association, architectural control committee, engineering, governmental and otherwise;
 - 4) Owner has furnished Builder with a current title commitment or such other evidence of Owner's ownership of the Property satisfactory to Builder in its discretion;
 - 5) All appropriate building permits and regulatory approvals have been issued; and
 - 6) Owner has executed and delivered to Builder for recording any additional required mechanic's lien contract pursuant to Section 16.A, Builder has received written notice from the lien holder and/or the title company ensuring lien holder's security interest in the Property that all documents required to be recorded prior to the commencement of construction have been properly recorded, and the Initial Cash Payment has been received by Builder.

- B. **DELAY OF COMMENCEMENT OF WORK** - If Owner's completion of the prerequisites in 6.A. above are delayed more than thirty (30) days from the execution of this Contract or Owner further delays Work commencement in any manner, Builder shall have the right to increase the Total Contract Price by an amount equal to any actual labor or material price increases that occur after the execution date and an amount to compensate Builder for Builder's time and effort expended in obtaining same.
- C. **COMPLETION OF IMPROVEMENTS** - After Work begins, construction activities shall then be continued in accordance with Builder's normal construction schedule until the Improvements reach Substantial Completion (as defined below). Builder will make reasonable efforts to substantially complete the Improvements within _____ calendar days from the date hereof (Projected Completion Date), subject to Permitted Delays (as defined below). **Builder does not warrant or guarantee completion of the Improvements by any specific date, and no damages for delay or otherwise are recoverable by Owner, including but not limited to taxes, carry costs, loss of interest rate lock with any lender, loss of use, lost rentals, temporary rental or living arrangements, moving costs, boarding of animals, builder's risk or other insurance, etc.**
- D. **PERMITTED DELAYS** - Although there is no guaranteed completion date, the Projected Completion Date may be extended for one or more of the following causes:
- 1) Changes by Owner or Owner's representatives to the Construction Documents.
 - 2) Failure of Owner to timely make selections as directed below.
 - 3) Failure of Owner or Owner's lender to timely make payments when due.
 - 4) Other acts or omissions by Owner or Owner's representatives.
 - 5) Prohibitive inclement weather or acts of God.
 - 6) Fire or casualty loss.
 - 7) Non-availability of labor, services, or materials.
 - 8) Delays caused by a change in laws or ordinances or delays in issuing necessary permits or conducting inspections or testing by any governmental entity or regulatory authority.
 - 9) Delays caused by Change Orders.
 - 10) Disputes with Owner or Owner's representatives that allow Builder to suspend Work until resolved.
 - 11) Civil unrest, strikes, lockouts, acts of public authorities, war or any state, local, or national orders or mandates.
 - 12) Shortages or unavailability of labor or materials from any cause.
 - 13) Pandemics or epidemics.
 - 14) Unavailability of labor or materials that would increase the Construction Costs or Total Contract Price.
 - 15) Other events or causes beyond the Builder's reasonable control.
- E. **NO WORK PERFORMED** - Builder and Owner, by their signatures to this Contract, acknowledge and agree that this Contract has been executed and delivered before Builder has performed any labor on the Property and before Builder has furnished any materials in connection with the construction of the Improvements. Owner shall execute any further or additional documents to evidence same.
7. **SUBSTANTIAL COMPLETION, INSPECTION, RELEASE AND OCCUPANCY:** The Improvements are substantially completed (Substantial Completion) when: 1) a certificate of occupancy is issued, or 2) if no certificate of occupancy is required, when all electrical, mechanical, and plumbing final inspections, or all other required inspections (if any), have been approved or all approvals for occupancy have been received from any applicable governmental authority, or 3) in the absence of the foregoing, when the Improvements are suitable for occupancy; **provided, however, that if Owner moves into the Improvements, by occupying or placing any personal property in the Improvements or on the Property, the Improvements shall be deemed to be substantially complete, and the Total Contract Price becomes immediately due and payable.** At the time of Substantial Completion, Owner will conduct a walk-thru inspection of the Improvements with Builder at Builder's request and discretion, and Owner shall execute and deliver to Builder a "Final

Customer Walk-Thru Approval and Punch List" in the form associated with this Contract and that confirms Owner's inspection and acceptance of the Improvements, Owner's acknowledgment that all construction Work has been completed in accordance with the Construction Documents, and releases Builder from all claims and liabilities except contractual warranty obligations arising under Builder's Express Limited Home Warranty and any agreed items of Work to be completed (Punch List Items). Owner's failure to conduct the Final Customer Walk-Thru or failure to execute Final Customer Walk-Thru Approval and Punch List is an Owner Event of Default. Upon Substantial Completion of the Improvements and payment to the Builder of the Total Contract Price and all payments as set forth herein, Owner will be given possession of the Improvements and the Property; in no event shall Owner be entitled, without the prior written consent of the Builder, to occupy the Improvements, place any personal property in the Improvements or on the Property, until Builder has been paid the Total Contract Price and all other payments as set forth herein. At the time of Substantial Completion or if the Owner occupies the Improvements, places any personal property in the Improvements or on the Property, Builder shall be released from any further obligation or duty for the maintenance of insurance coverage with respect to the Property and/or the care, repair, maintenance and condition of the Property and the Improvements, except as outlined in the Builder's Express Limited Home Warranty, if applicable. Builder's failure to complete Punch List Items shall not be a basis for Owner to withhold any payments otherwise due Builder under this Contract or applicable law, and, although the Express Limited Home Warranty will be in effect at Substantial Completion, no work is required to be performed by Builder pursuant to the Express Limited Home Warranty until the Total Contract Price and all payments set forth herein have been paid to Builder by Owner in full.

8. **ALLOWANCES:** For purposes of this Contract, Allowances include budgets for certain Work components shown in the Construction Documents to be incorporated into the Improvements. The sums allocable to each listed Allowance are **included in the Total Contract Price**. Unless otherwise noted in the Construction Documents, each Allowance listed includes, without limitation, the component costs of material and labor, any appropriate sales tax, shipping charges, or other costs associated with procurement. If Owner exceeds any Allowance amount, such additional amounts shall be immediately payable in cash to Builder, and if Owner refuses to pay for any Allowance overage, Builder may disallow any such changes in Builder's sole and exclusive discretion, and Builder may proceed with selections of Builder's choosing. Selections of Allowance items will be made at suppliers typically used by Builder to limit the possibility of unusual costs or delays, and Builder may disallow any such changes in Builder's discretion. All overages in expenditures from Allowance amounts will be treated as a Change Order (as defined below). Failure or refusal of Owner to execute a Change Order for Allowance overages does not relieve Owner of the requirement to pay for all Allowance overages resulting from Owner selections. The Projected Completion Date will be automatically extended if Allowance items are not selected ☐ according to the Builder's selection schedule hereto attached, ☒ within ten (10) days of written notice from Builder, or ☐ within _____ days of this Contract. Owner will verify all selections with the supplier and provide Builder with the information for ordering. Owner understands that some materials selected will have a wide variation in color, pattern, and texture. The additional material or labor cost for any waste, spoilage, breakage, or culling shall be applied to the Allowance for that item.

9. **CHANGES:**

- A. **CHANGE ORDER PROCEDURE** – Except as otherwise stated in this Contract, no alterations, additions or deletions will be made in the Work unless agreed to in writing by Owner and Builder. To approve a proposed change, both Owner and Builder shall sign a written agreement (Change Order) in the form attached. In lieu of the form, a written Change Order may also constitute an email exchange between Owner and Builder in which the Changes are discussed and acknowledged by the Parties or Owner's selections from a material supplier or vendor. Upon receiving from Owner a written request for any change, Builder may present Owner with a proposal for the changes including any additional price of construction, additional Builder's compensation, and any extensions to the Projected Completion Date. If Owner accepts Builder's proposal for changes, the Change Order will become a binding

attachment to the Construction Documents, and to the extent a conflict between a Change Order and the Construction Documents exists, the terms of the Change Order shall control. Any Owner party may sign the Change Order as agent for the other, and the signature of one Owner shall be binding on all others; an email from one Owner concerning a Change Order binds all Owners. Failure of Owner to approve Builder's proposal for changes within three (3) days after receipt by Owner shall constitute a rejection of the proposal except where Owner made selections exceeding a given Allowance category; in such a case, Owner's selections bind Owner to payment. Builder shall be reimbursed at \$175 per hour, with a minimum \$100, for all expenses and effort incurred in the production of any Change Order proposal not accepted by Owner within Builder discretion. Unless otherwise specified in agreed upon Change Orders, Owner shall pay for all agreed upon Change Orders including the additional Builder's compensation to Builder in cash or immediately available funds within three (3) business days after Owner's acceptance of the proposal. Builder will not be obliged to proceed with any Work until all amounts have been paid as agreed, Builder has no obligation to stop Work while Change Orders are being discussed, and Builder may proceed with the original scope of work at Owner's expense. Builder may disallow any and all Change Orders in Builder's sole and exclusive discretion that reduces the scope of work set forth herein or categories in the Schedule of Estimated Construction Costs, and if Owner mandates such reduction in the scope of work, Owner will remain liable for the expected profit of the Builder for that portion of the scope of work, de-escalation costs, and other associated expenses.

B. **CHANGE ORDERS OF NECESSITY** - Notwithstanding the provisions of Section 9.A, Owner agrees to execute Change Orders, including any necessary increases to the Total Contract Price, that may be necessary to:

- 1) Comply with applicable governmental or regulatory requirements.
- 2) Provide structural integrity to the Improvements.
- 3) Route electrical, mechanical, or other systems included in the Work.
- 4) Avoid or correct any conditions, known or unknown to Builder or Owner, that might result in defects or other warranty claims.
- 5) Latent site conditions.
- 6) Engineering or architectural requirements.
- 7) To comply with any and all other requirements, including but not limited to any homeowner's association rules, covenants, conditions or restrictions, design guidelines, declarant or architectural review committee requirements or similar obligation, known or unknown to the Builder or Owner.

10. BUILDER'S RESPONSIBILITIES: Builder, in the performance of the Work, does so as an independent contractor. Nothing contained in or inferable from this Contract should be construed to make Builder the agent, servant, or employee of Owner, or create any partnership, joint venture, or other association between Owner and Builder. Builder accepts responsibility for the performance of all duties reasonably necessary to complete the Work and agrees that:

- A. **PERMITS** - Builder shall make reasonable efforts, as an accommodation to Owner and not a contractual obligation, to obtain all necessary licenses, permits, and similar authorizations required by applicable governmental authorities or other restrictions associated with the Property. Builder shall have no liability for any failure to obtain any such items, in which case either party may terminate this Contract without further liability to the other party and, in such event, Owner will receive a refund of the Initial Cash Payment less a reasonable Builder Fee and costs and expenses incurred by Builder.
- B. **PAYMENT OF COSTS** - Builder shall pay all costs related to the Work, except for costs associated with Change Orders and Allowance overages as described herein. Owner shall not pay any costs related to the Work directly to Builder's subcontractors, suppliers, or vendors, same being an Owner Event of Default.
- C. **MATERIALS** - Builder shall use all new materials in connection with the Work per the Plans and Specifications, except as otherwise specified in the Construction Documents.

- D. LIENS – Conditioned upon Owner's payment of the Total Contract Price, 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 an interim construction lender.
- E. CODES AND STANDARDS - Builder shall perform the Work such that the Improvements will be warrantable in accordance with the Express Limited Home Warranty incorporated herein by reference. Builder shall have sole control over the scheduling and progress of the Work, including the superior right to select and arrange for all labor in any way related to the Work. Builder shall exercise exclusive control over the selection of subcontractors and shall not be obligated to employ subcontractors on the basis of cost savings that might be achieved or for any other reason. Builder has no obligation whatsoever to use any subcontractor or material supplier requested by Owner. All subcontractors shall perform their work independently, and not as an agent or employee, servant or representative of Builder.
- F. OTHER – Builder shall perform all other obligations as provided in this Contract.

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

- ☒ Builder's risk insurance for the Improvements, in an amount equal to or greater than the Total Contract Price.
- ☒ General liability insurance.
- ☒ Workers Compensation Insurance or statutory waivers for Builder's direct employees that assist in the Work on-site at the Property.

The cost for all required insurance is included in the Total Contract Price unless specified otherwise in any associated document related to this Contract, including the Specifications or other estimate. Builder is not responsible for payment of any deductibles.

12. WARRANTY

- A. Builder will provide warranty coverage on the Improvements to Owner pursuant to the attached and incorporated Express Limited Home Warranty. BUILDER AGREES TO COMPLY WITH THE EXPRESS LIMITED HOME WARRANTY AS ITS EXPRESS CONTRACTUAL WARRANTY. UNLESS BUILDER HAS ALSO ELECTED TO PROVIDE A THIRD-PARTY WARRANTY, BUILDER AND OWNER AGREE THAT THE EXPRESS LIMITED HOME WARRANTY CONSTITUTES THE EXCLUSIVE WARRANTY TO BE MADE AVAILABLE BY BUILDER AND IS IN PLACE, SUPERSEDES AND PRECLUDES OF ALL OTHER GUARANTIES OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF PERFORMANCE, WORKMANSHIP, REPAIR, MODIFICATION, MERCHANTABILITY, SUITABILITY AND FITNESS. ANY AND ALL IMPLIED WARRANTIES ARE HEREBY DISCLAIMED BY BUILDER AND WAIVED BY OWNER, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTY OF GOOD AND WORKMANLIKE REPAIR OR MODIFICATION OR EXISTING TANGIBLE GOODS OR PROPERTY AND THE IMPLIED WARRANTY OF GOOD AND WORKMANLIKE CONSTRUCTION. THE PARTIES AGREE THAT THE EXPRESS LIMITED HOME WARRANTY AND THIRD-PARTY WARRANTY, IF APPLICABLE, ADEQUATELY SET FORTH THE MANNER, PERFORMANCE, AND QUALITY OF THE CONSTRUCTION OF THE HOME AND IMPROVEMENTS AND SERVICES TO BE PERFORMED. Owner acknowledges that this waiver of implied warranties shall not be construed as a waiver of any right to bring a claim under Chapter 17 of the Texas Business and Commerce Code but simply a waiver and disclaimer of any and all implied warranties to the maximum extent allowable by applicable law. Owner acknowledges, understands, and agrees that the terms of the Express Limited Home Warranty and Third-Party Warranty, if applicable, are clear, specific, and sufficiently detailed to establish the only standards of construction performance or service that Builder or Warrantor are obligated to meet. The Parties agree that this Express Limited Home Warranty will control any warranty, workmanship, material, or any other defect claims regarding the Property or Improvements. For items in need of repair under the Express Limited Home Warranty, the Parties agree that Builder shall have the sole right to determine the means, method, and manner of repair to be implemented. In the event that the Express Limited Home

Warranty or the Third-Party Warranty do not specify a building or performance standard for the identified item, the usual and customary industry standards for similar improvements in the geographic region shall govern. In short, the Express Limited Home Warranty provides warranty coverage on the Improvements for one (1) year for workmanship and materials, two (2) years for plumbing, electrical, heating, and air-conditioning delivery systems, and six (6) years for major structural components. Under no circumstance is any landscaping, whether currently existing trees, plants, or grass on the subject property, or any of those installed by Builder, warranted by the Express Limited Home Warranty or any other warranty. Builder and Owner agree that no warranty of any kind exists on landscaping in consideration for issuance of the Express Limited Home Warranty and any Third-Party Warranty. It is incumbent upon the Owner to properly maintain and care for any landscaping. The Express Limited Home Warranty is incorporated by reference as if fully copied and set forth herein.

- B. Builder ☐ will ☒ will not also provide a third-party warranty (Third-Party Warranty) provided through a third-party warranty company (if a box is not selected, Builder will not provide a Third-Party Warranty). If a Third-Party Warranty is provided, Owner shall first file and pursue any claim that may be covered by the Third-Party Warranty with the third-party warranty company prior to making any warranty claim with the Builder under the Express Limited Home Warranty. Owner acknowledges and accepts that some or all of Builder's warranty obligation is being transferred to the Third-Party Warranty. Owner understands and agrees that the third-party warranty requires enrollment of the Property pursuant to the applicable program and that Owner agrees to sign and cooperate with execution of such program documents prior to and after Closing, this being a material term. **Owner further agrees and acknowledges that the Third-Party Warranty may offer warranty coverage for major structural components for more than six (6) years but in no event shall Builder have any warranty obligation after six (6) years and Builder is not liable for any claims, causes of action, attorney's fees, expert costs, diminution in market value, or other damages whatsoever. If a Third-Party Warranty offers warranty for more than six (6) years, Owner acknowledges that the Third-Party Warranty is solely responsible for any warranty claim after six (6) years pursuant to the terms and conditions of such Third-Party Warranty.**
- C. Builder shall construct the Improvements in a manner that passes all applicable municipal or county inspections; passage of such inspections indicates compliance with applicable codes and standards. Subject to applicable law, failure to meet an applicable code or standard by itself for any element of the Improvements does not give rise to strict liability and it is not negligence *per se*, breach of contract or breach of warranty and does not create a cause of action or warranty claim against Builder. A claim or allegation that there is a failure to meet applicable code must be accompanied by (1) actual physical damage resulting from that failure or violation of code to the Property or Improvements, or (2) an immediate threat to the health and safety for the occupants or invitees. Builder shall not be required to utilize any repair method that would result in economic waste or be required to repair items or areas that are not damaged.
- D. Right of Entry and Repair. Owner hereby grants to Builder the right to enter and inspect the Improvements during normal business hours upon Builder's request, or at other times as needed if any emergency is claimed. Owner also grants Builder the irrevocable right to implement repairs to the Improvements pursuant to the Express Limited Home Warranty or any notice from Owner to Builder of claimed defects, deficiencies, or items in need of repair, or to implement any offered repair of the Improvements by the Builder. This provision shall not be construed as a requirement that Builder repair any claim asserted by Owner. Owner's refusal to allow Builder reasonable access to the Improvements or failure to allow Builder to perform repairs shall be construed as a waiver of Builder's obligation to perform any warranty work and relieves Builder of Builder's obligations under the Express Limited Home Warranty and the Third-Party Warranty, if any.
- E. Any Manufactured Product warranties will be assigned, without recourse, to Owner upon payment of the Total Contract Price. Although it is intended that this assignment be automatic, the assignment shall be evidenced by Builder's execution and delivery to Owner of the "Assignment of Manufactured Product Warranties" addendum. Owner understands and agrees that proper maintenance of the Improvements is required to ensure (i) the Express

Limited Home Warranty and Third-Party Warranty, if applicable, remains in effect, and (ii) the proper performance of the Improvements.

- F. Water Wells. If present, Owner understands and acknowledges that certain issues exist with respect to the quality of water supplied by the water well(s) and that the quality of water may change over time, even though the current water quality may require the installation of additional filtration systems at an additional cost to Owner and subject to a Change Order. Owner acknowledges that the quality of water is a latent condition. Builder is under no obligation to discover water quality, availability, or conditions of water on the Property or otherwise. **OWNER IS HEREBY ADVISED OF THE ISSUE(S) CONCERNING WATER QUALITY FROM WATER WELLS AND ACKNOWLEDGES THAT BUILDER IS NOT PROVIDING ANY WARRANTY WITH RESPECT TO THE QUALITY OF WATER SUPPLIED BY ANY WATER WELL. ALL WARRANTIES, IMPLIED OR EXPRESS, ARE HEREBY WAIVED AND/OR DISCLAIMED BY OWNER, INCLUDING BUT NOT LIMITED TO THE WARRANTY OF HABITABILITY, TO THE EXTENT APPLICABLE.**

13. DEFAULT BY BUILDER:

- A. EVENTS OF DEFAULT (each is a Builder Event of Default) -
- 1) Builder's failure, without cause, to make payment to any material supplier, laborer, or subcontractor for which Builder has received payment in full from Owner or Owner's lender.
 - 2) A breach by Builder of any material provision contained in this Contract.
 - 3) Builder's filing of a voluntary petition in bankruptcy, making an assignment for the benefit of any creditor, being adjudicated as bankrupt or insolvent, or applying for or consenting to the appointment of a receiver, trustee or liquidator of all or a substantial part of Builder's assets.
 - 4) Abandonment of the Work by Builder for a period of thirty (30) or more consecutive days provided that the inactivity is not caused, at least in part, by weather, shortage of labor or materials, delays attributable to the conduct of Owner, Change Order discussions, other matters beyond the control of Builder, or a Permitted Delay.
- B. NOTICE OF DEFAULT TO BUILDER - If Builder commits a Builder Event of Default, prior to exercising any remedy granted by this Contract or by law, Owner shall deliver written notice of such default to Builder. If the Builder Event of Default is not commenced to be cured within fifteen (15) days after delivery of the written notice (Builder's Cure Period), Owner may exercise any remedy, subject to the terms of this Contract.
- C. REMEDIES OF OWNER - Upon the occurrence of any Builder Event of Default and the expiration of Builder's Cure Period, Owner may (but shall not be obligated to) terminate this Contract and recover monetary damages as specified below. Owner does not and shall not have the right to terminate this Contract but for an uncured Builder Event of Default. The remedy of specific performance is hereby waived by Owner and shall not be available in any action concerning this Contract, the Property or otherwise. Any monetary damages available to Owner shall not exceed the total of any sums paid to Builder for (i) labor and materials not already incorporated into the Improvements; and (ii) reasonable and necessary attorney's fees and costs incurred to invoke mediation and/or arbitration. If Builder refuses to give possession of the Improvements and Property to Owner, Owner not being in default, Owner will be entitled to pursue all remedies provided under Texas law, save and except specific performance, which is specifically waived by Owner and disclaimed by Builder. If Owner receives notice of any lien or claim for labor or materials furnished to Builder for which, Owner of the Property might become liable, though primarily chargeable to Builder, Owner shall have the right to retain out of the next Draw Payment, an amount sufficient to pay the face value of the lien claim. However, Builder shall have the right to contest in good faith the validity of such lien or claim prior to Owner's retention of any funds. **If any lien or claim of lien is filed as a result of Owner's failure to pay Builder amounts due, Builder shall have no liability for such lien or claim of lien, and Owner shall indemnify and defend Builder for such lien or claim of lien and all associated attorney's fees and expenses related to same.**

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

- A. PAYMENTS - Owner shall make all payments to Builder as required by this Contract.

- B. TITLE AND POSSESSION - Owner shall protect the title and possession of the Property and pay all taxes and assessments prior to delinquency.
- C. APPROVALS - Owner shall obtain all consents and approvals required from any governmental authority, architectural review committee, homeowner's 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. Builder may assist Owner in obtaining such consents and approvals as an accommodation only and Builder is not liable for the disapproval of any such consents or approvals.
- D. OBJECTIONS TO WORK - Owner agrees to promptly notify Builder of any objections to any Work not in compliance with the Construction Documents. **Failure by Owner to promptly notify Builder of objections to any Work performed within any phase of construction shall constitute an acceptance of that portion of the Work subject to Builder's obligations under the Express Limited Home Warranty.** Owner acknowledges and agrees that it may be inappropriate and/or unreasonably expensive and time-consuming to replace, re-fabricate, or repaint a component that exhibits a minor defective condition. In such instances, Builder, in its sole judgment, may (i) employ an alternate remedy to correct the deficiency in conformance with reasonable building practices, or (ii) conclude that the condition is within acceptable tolerances and take no corrective action.
- E. UTILITIES - Owner is solely responsible for providing Builder, prior to commencement of construction, with water, gas, storm and sanitary sewer, and electricity at the lot line required for construction of the Improvements.
- F. EXISTING ITEMS - Owner shall remove or protect all of Owner's existing items of property at the Property that could be affected by the contemplated construction. Builder shall not be responsible for damaged driveways, walks, lawns, trees, shrubs, flowers, and items of personal property or the release of confined pets. **OWNER HEREBY RELEASES BUILDER FROM ANY DAMAGES TO THESE ITEMS THAT OCCUR ALL OR IN PART AS A RESULT OF BUILDER'S NEGLIGENCE, BUT NOT AS A RESULT OF ITS GROSS NEGLIGENCE.**
- G. SUBCONTRACTORS - Owner agrees not to instruct, direct, or otherwise communicate with the subcontractors retained by Builder as to the scheduling of or details about the Work (including additions to, modifications of, or deletions from the Work), and any such violation of this provision shall be a default and material breach of this Contract without any notice and opportunity to cure and Builder may terminate this Contract and exercise any right or remedy herein. Owner shall not do or cause any work to be done or alter or cause the alteration of any portion of the Improvements, engage any work to be performed on the Property, whether complete or incomplete, prior to the later of Owner's acceptance of the Improvements as set forth herein, Substantial Completion, and payment of the Total Contract Price. Owner may not without the express written consent of Builder, engage any subcontractor, vendor, or supplier of Builder.
- H. HOME INSPECTION SERVICES – Owner may hire an independent home inspector (Inspector) at its sole expense and Builder may allow within Builder's discretion the Inspector access to the Improvements only after Substantial Completion, provided that the Inspector:
- 1) carries worker's compensation insurance and general liability insurance in an amount not less than \$500,000.00 and provides Builder with a certificate of insurance naming Builder as an additional insured;
 - 2) is licensed by all governmental authorities having jurisdiction over the Improvements;
 - 3) performs all inspections at a time which is reasonably convenient to Builder, provided that Builder receives no less than forty-eight (48) hours prior notice of any inspection;
 - 4) provides the results of any inspection to Builder in writing detailing any alleged violation of any applicable building code with citation of the relevant sections of such code and specifically references any deviation from the Contract Documents;
 - 5) performs such inspection(s) in the presence of an authorized representative of Builder; and
 - 6) performs all inspections visually without the disassembly or removal of construction within the Improvements or Property.

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

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

15. DEFAULT BY OWNER:

- A. EVENTS OF DEFAULT BY OWNER (each is an Owner Event of Default):

- 1) Owner or Owner's agents or representatives fail to make any payments due under this Contract, including payment for any Change Orders.
- 2) Owner or Owner's agents or representatives unreasonably delay or unreasonably interfere with the Builder or its subcontractors or suppliers in the execution of the Work.
- 3) Owner fails to participate in the Final Customer Walk-Thru Approval and Punch List inspection.
- 4) Owner or Owner's agents or representatives fail to perform any material agreement contained in this Contract.
- 5) Owner, or any person liable for the payment or performance under this Contract, files a petition in bankruptcy, makes an assignment for the benefit of any creditor, is adjudicated as bankrupt or insolvent, or applies for or consents to the appointment of a receiver, trustee or liquidator of all or a substantial part of their or its assets.

- B. NOTICE OF DEFAULT TO OWNER - If Owner commits an Owner Event of Default, prior to exercising any remedy granted by this Contract or by law, Builder shall deliver written notice of such default to Owner. If the Owner Event of Default is not cured within seven (7) days after delivery of such written notice (Owner's Cure Period), Builder may exercise any remedy subject to the terms of this Contract.

- C. REMEDIES OF BUILDER - Upon the occurrence of any Owner Event of Default and the expiration of Owner's Cure Period, all amounts owed for Work completed will, at the option of the Builder, become immediately due and payable without prejudice to any other remedy of the Builder and Builder may (but shall not be obligated to) discontinue performance of this Contract and (i) terminate this Contract and retain all money previously paid by Owner to Builder as liquidated damages thereby releasing both parties from this Contract; or (ii) terminate and seek recovery of any and all damages suffered by Builder, including, but not limited to lost profits, payment for all materials, labor, overhead and fees with respect to this Contract. The remedy of specific performance is hereby waived by Builder and shall not be available in any action concerning this Contract. If Owner refuses to accept the completed Improvements and/or pay the Total Contract Price to Builder as specified in this Contract, Builder not being in default, Builder will be entitled to pursue all remedies provided by Texas law, save and except specific performance.

- D. DELINQUENT PAYMENT - Should the Owner fail to make payment to the Builder of any portion of the Total Contract Price when payment is due, then the Owner shall pay to the Builder, in addition to the sum shown as due, interest at the maximum rate allowed by applicable federal and state law, which interest shall accrue as of the date payment was first due and shall continue to accrue until the date of payment.

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

- A. MECHANIC'S LIEN - Owner grants to Builder a mechanic's lien to secure performance of the obligations of Owner. If Owner is obtaining an interim construction loan, Builder shall assign to the interim construction lender a portion of Builder's mechanic's lien equal to the amount of the interim construction loan advanced to or for the benefit of the Owner and paid to Builder, and to subordinate any remaining amount of Builder's lien to the interim construction loan. In the event that the Improvements to be erected fail for any reason to be completed, or fail to be completed according to this Contract, or all of the labor and material used in erection thereof fail to be provided by Builder, then Builder and the holder of the indebtedness under the builder's and mechanic's lien shall have a valid and subsisting lien for the Total Contract Price, less such amount as would be reasonably necessary to complete the Improvements according to the Construction Documents. In the event of any conflicts between this Contract and the builder's and mechanic's lien contract, the terms of this Contract shall control. In no event do any bank or lending documents or instruments, including mechanic lien forms or assignments negate or waive Builder's mechanic's lien created herein.

B. INSULATION – As required by Federal Trade Commission regulations, the information relating to the insulation installed or to be installed in the Improvements at the Property is: (check only one box below)

☒ 1) as shown in the Specifications.

☐ 2) as follows:

- a) Exterior walls of improved living areas: insulated with _____ insulation to a thickness of _____ inches that yields an R-Value of _____.
- b) Walls in other areas of the home: insulated with _____ insulation to a thickness of _____ inches that yields an R-Value of _____.
- c) Ceilings on improved living areas: insulated with _____ insulation to a thickness of _____ inches that yields an R-Value of _____.
- d) Floors of improved living areas not applied to a slab foundation insulated with _____ insulation to a thickness of _____ inches that yields an R-Value of _____.
- e) Other insulated areas: insulated with _____ insulation to a thickness of _____ inches that yields an R-Value of _____.

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

C. DOCUMENT RELIANCE - Owner is advised that the Builder may have contracted with one or more independent professional architects, engineers, surveyors, designers, or other professional third parties (Builder's Professionals) to perform services and/or prepare certain documents or reports for completion of the Construction Documents and/or use in constructing the Improvements. Owner, at Owner's cost and option, may also elect to obtain site specific soil and sub-soil tests (Geotechnical Report), flood plain maps and any other data or documents that may impact the performance of the completed Improvements from experts knowledgeable of such matters and hired by Owner (Owner's Professionals). **If Owner elects not to obtain a Geotechnical Report for use in the design of the foundation system by a professional engineer, Owner hereby releases Builder from any and all foundation movement or foundation failure based claims under this Contract or any applicable warranty.** If Owner does not supply the referenced Geotechnical Report for use in the design of the foundation system, it is presumed that the Owner elected not to have one performed. If Owner elects to obtain such data and/or documents, Owner shall direct Owner's Professionals to furnish all such data and/or documents to Builder prior to the design of the foundation and the completion of the Construction Documents. In constructing the Improvements, Builder will rely on documents provided by Builder's Professionals and Owner's Professionals as being complete, adequate, and correct in all respects. Builder shall promptly notify Owner of any errors, conflicts, or inconsistencies discovered with respect to the Owner supplied data or Construction Documents. BUILDER DOES NOT WARRANT OR GUARANTEE AND WILL NOT BE RESPONSIBLE FOR ANY ERRORS OR OMISSIONS IN THE REPRESENTATIONS, DOCUMENTS, DATA, PLANS, SPECIFICATIONS, DESIGNS, OR CONSTRUCTION DOCUMENTS THAT HAVE BEEN PREPARED BY OWNER, OWNER'S PROFESSIONALS OR ANY OTHER THIRD PARTY. Builder's reasonable reliance on the data and Construction Documents compiled and/or provided by Owner's Professionals shall relieve Builder from all responsibility for or liability to the Owner for damages to the structural components of the Improvements caused by raising, shifting, heaving or settling of the soil or any other damage to the Improvements, provided Builder constructs the Improvements in substantial compliance with the Construction Documents. Any supplements to the Construction Documents prepared by Builder shall be the property of Builder and shall not be used by Owner except for construction provided by Builder. Owner acknowledges that changes may occur in the Work and agrees that so long as the construction of the Improvements is substantially in compliance with the Construction Documents, such deviations will be accepted. This provision is not intended to waive any rights, remedies or otherwise of the parties hereto provided by Chapter 59, Tex. Bus. & Comm. Code.

D. WORK PERFORMED AND MATERIALS PROVIDED DIRECTLY BY OWNER - Upon receipt of Builder's written approval, in the event Owner contracts with other parties to perform work or provide or install materials that are not a part of the Work performable by Builder hereunder, Owner shall keep such other parties from interfering with the

progress of the Work. To the extent reasonably practicable, Builder shall cooperate with such other parties, but will not be responsible for coordinating that work or for the quality of their work. Owner agrees that any ACTS OF, OMISSIONS BY, OR LOSSES, DAMAGES OR DELAYS CAUSED BY OWNER, OWNER'S AGENTS OR ANY THIRD PARTY RETAINED BY, THROUGH OR UNDER OWNER SHALL BE THE SOLE RESPONSIBILITY OF OWNER, NOT THE BUILDER. FURTHERMORE, OWNER AGREES THAT BUILDER WILL NOT BE REQUIRED TO PAY FOR, WARRANT, REPAIR, INSURE, OR CORRECT ANY WORK PERFORMED OR MATERIALS PROVIDED BY PERSONS OR ENTITIES EMPLOYED BY, OR WHO HAVE CONTRACTED WITH OWNER. Owner shall fully and promptly pay all sums charged by third parties hired by Owner and indemnify and hold Builder harmless from all such charges and any related liens. If after execution of this Contract and only on Builder's written consent, Owner supplies Owner's own materials and/or labor, the Total Contract Price will not be amended unless agreed to in writing by both Owner and Builder.

- E. CONFIDENTIALITY OF INFORMATION – Owner acknowledges that Owner may receive a list of subcontractors and materialmen utilized by Builder to construct the Improvements. Owner acknowledges that Builder regards that information as confidential, proprietary, and trade secret information of Builder's business. Owner agrees that Owner shall not disclose such information to any party except as required by this Contract. Prior to Substantial Completion and payment to Builder of the Total Contract Price, Owner agrees that Owner will not contract any of Builder's subcontractors for labor or materials to be incorporated into the Improvements except with the express, prior written consent of Builder. If Owner does so, Builder shall be entitled to its estimated gross profit on any such services rendered. Owner further acknowledges that Builder shall have the right to seek injunctive relief and damages should Owner violate this paragraph. Owner agrees that a temporary restraining order and injunction may be granted by a court with jurisdiction to prevent violation of this paragraph by Owner.
- F. OTHER PARTIES BOUND - Owner and Builder each bind themselves, their respective heirs, executors, administrators, partners, successors, assigns, and legal representatives in all matters related to this Contract.
- G. NO ASSIGNMENT – Owner may not assign this Contract without the written consent of Builder. Builder may assign all or part of this Contract to any third-party.
- H. TIME OF THE ESSENCE - Time is of the essence in this Contract except as otherwise set forth herein.
- I. REAL ESTATE BROKERS' FEES - Builder and Owner acknowledge to each other that, unless specified in the Real Estate Broker's Fee Addendum, there has been no contract with any real estate broker or other party in connection with this Contract, to whom any brokerage, finders, or other fees may be due and payable. Each party hereby agrees to indemnify and hold the other harmless from and against any loss, liability, damage, cost, or expense (including reasonable attorney's fees) resulting by reasons of breach of this representation and warranty.
- J. PERMISSION FOR INTERNET/SOCIAL MEDIA PUBLICATION – Owner grants Builder permission and non-exclusive license to take pictures and video of the Property and Improvements for the purpose of promoting Builder's work on its website, the internet, social media, contests, or literature, and to otherwise document the project. Owner hereby waives any claim for compensation of any kind related to this permission and publication, and Owner further waives any related claims, including, but not limited to, a violation of Owner's privacy or any other personal or property rights.
- K. DISPUTE PUBLICATION WAIVER – Owner and Builder agree that neither party shall utilize any form of social media, the internet, the world wide web, or print, traditional, or digital media of any kind, or any other form of information distribution to insult, disparage, make false statements, misleading communications, or speak negatively of the other party as it may concern the alleged condition of the Improvements or any claimed defect, deficiency, or condition of the Improvements, or of any dispute between the parties, including but not limited to any mediation, settlement, lawsuit and/or arbitration. Any and all disputes between the parties hereto are private and confidential, including but not limited to the mediation and arbitration proceedings. Any violation of this provision is a material breach of this Contract and subject to a party's right to obtain a restraining order or similar relief and associated attorney's fees and expenses.

- L. **PRIVACY AND TECHNOLOGY** – Owner may elect for the installation of, or the Improvements may have, various technologies installed that in some form document, photograph, record, or otherwise capture data, images, video, or voice, of the Owner, occupants, or invitees. All such information may be transmitted, sold or used without Owner's knowledge or consent. As a result, Owner waives any claims against Builder regarding these various incorporated technologies and all claims of how any data captured by said technologies is published, distributed, sold, or used.
- M. **RELEASE OF AND INDEMNIFICATION FOR LOSSES SUSTAINED DURING CONSTRUCTION** – Because of potential safety and health hazards present during construction of the Improvements, as well as the practical limitations on the Builder's ability to control the activities of all persons involved in the construction process and thereby limit the risk of personal injury that may arise from construction activities, the parties agree as follows:
- 1) **Personal Safety:** To ensure and to protect the personal health and safety of Owner and Owner's licensees and invitees, Owner shall restrict entry by the Owner and Owner's licensees and invitees onto the Property or into the Improvements to a minimum. When Owner chooses to enter the Property (even at the request of Builder), and irrespective of Builder's presence on the Property at such time, OWNER AGREES TO AND DOES HEREBY RELEASE, INDEMNIFY AND HOLD BUILDER HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS OR CAUSES OF ACTION ARISING IN FAVOR OF OWNER OR OWNER'S AGENTS, LICENSEES AND INVITEES ON ACCOUNT OF BODILY INJURY, DEATH OR DAMAGE TO OR LOSS OF PROPERTY IN ANY WAY OCCURRING OR INCIDENT TO THE CONDITION OF THE PROPERTY AND/OR THE IMPROVEMENTS. THIS RELEASE AND INDEMNITY IS GIVEN TO BUILDER REGARDLESS OF WHETHER THE BUILDER OR ITS AGENTS OR EMPLOYEES ARE NEGLIGENT IN WHOLE OR IN PART AND EVEN WHEN THE INJURY, DEATH OR DAMAGE TO OWNER OR OWNER'S AGENTS, LICENSEES AND INVITEES IS CAUSED BY THE SOLE NEGLIGENCE OF BUILDER OR ATTRIBUTABLE TO BUILDER'S NEGLIGENCE PER SE OR IMPOSED BY STRICT LIABILITY.
 - 2) **Risks to Vegetation:** Owner also acknowledges that the contemplated construction imposes an inherent risk to the health of the trees and vegetation situated on the Property, and Owner understands that Builder cannot guarantee the viability of those trees and vegetation. Owner acknowledges this risk and hereby releases the Builder from any claims for damages to or loss of trees or vegetation resulting from construction activities.
 - 3) **Changes in Water Table:** Owner also acknowledges that the water table underneath the Property fluctuates naturally which may cause differing site conditions from year-to-year even after Substantial Completion due to no fault of Builder. Owner acknowledges this risk and hereby releases the Builder from any claims for damages to the Improvements or Property relating to, in whole or part, to changes in the water table.
- N. **TERMINATION/STIPULATED DAMAGES PRIOR TO SUBSTANTIAL COMPLETION** – Regardless of any allegation or actual default or breach of this Contract by any party, in the event a bona fide dispute, material misunderstanding or for the convenience of Builder, upon determination within Builder's discretion that the subject matter of this Contract has become untenable (collectively, Dispute), between Builder and Owner prior to payment of the Total Contract Price and if such Dispute cannot be resolved to the mutual satisfaction of Builder and Owner, Builder at its sole election, may either submit the Dispute to mediation as provided in this Contract and/or may terminate this Contract by written notice to Owner. In the event of termination of this Contract by the Builder pursuant to this paragraph, Builder will pay Owner one of the following, as stipulated damages: (1) _____% of the Initial Cash Payment as defined herein, or (2) \$_____, or if neither of the preceding blanks are completed, then \$500.00. The parties agree that the stipulated damages are a reasonable and foreseeable estimate of the damages that might be experienced by the Owner incident to the termination of this Contract (it being difficult if not impossible to ascertain those damages) provided that Owner shall be obligated to pay or reimburse Builder for all materials purchased, all Work performed up through the date of termination, and an amount representing Builder's profit or fee that shall be proportionate to the amount of Work performed. Upon such termination of this Contract by Builder and tender of the stipulated liquidated damages, no cause of action against Builder shall accrue to the Owner and Owner shall execute

a written release of this Contract and deliver it to the Builder; however, failure of Owner to deposit the stipulated damages or to execute a written release, does not in any way affect the applicability of this provision.

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

Mediation-Binding Arbitration: The parties agree that any dispute or claim arising under, or relating to, this Contract, any amendments thereto, the Property, Improvements, or any dealings between the Owner and Builder or their representatives, shall first be submitted to mediation and, if not settled during mediation, shall thereafter be submitted to binding arbitration as provided by the Federal Arbitration Act (9 U.S.C. §§ 1 et seq.) or, if applicable, by similar state statute, and not by or in a court of law. All decisions respecting the arbitrability of any dispute shall be decided by the arbitrator. Any cost or fee associated with filing a claim for arbitration is to be paid by the party filing same. The Parties agree to split the mediation fee and the arbitrator's fees with all participating parties. The arbitrator has no authority to apportion to the prevailing party any portion of costs and fees. The mediation and, if necessary, the arbitration shall be conducted pursuant to the procedures set forth in any applicable Third-Party Warranty documents. If there is any conflict between this Contract and the Third-Party Warranty on these procedures, the provisions of this Contract shall control as to the Builder and Owner dispute or claims. Furthermore, if the mediator and/or arbitrator designated in any applicable warranty documents cannot conduct the mediation or arbitration for any reason, or if no mediator and/or arbitrator is designated, the parties agree to work together in good faith to select a mediator. If the parties are unable to agree on the appointment of a mediator and/or arbitrator, then the mediation and arbitration shall be conducted by DeMars & Associates (DeMars) or the American Arbitration Association (AAA), in accordance with the applicable rules and procedures provided by such service providers; however, if there is any conflict between this Contract and such rules or procedures, the provisions of this Contract shall control. The choice of AAA or DeMars shall be the choice of the party that first files for mediation and/or arbitration respectively, and one service may be used for mediation and another for arbitration. In the event that the dispute or claim involves only construction defect claims under the Residential Construction Liability Act and no other dispute, claim, or cause of action is asserted and if an in-person, evidentiary hearing is not necessary then, at Builder's election, Builder may submit or transfer all of the disputes and claims to Construction Dispute Resolution Services (CDRS). If for any reason the AAA, DeMars and CDRS are all unable or unwilling to conduct the mediation or the binding arbitration, or both, either party may petition a court of general jurisdiction in the subject county to appoint a mediator or arbitrator, or both, but only after a good faith effort to agree to an alternative mediator, arbitrator or service provider. It is agreed that the filing of a petition requesting appointment of a mediator or arbitrator, or for a court to resolve a dispute under this provision, shall not constitute a waiver of the right to enforce binding arbitration.

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

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

than 6 hours of total deposition time, 10 requests for production and disclosures under Tex. Rule of Civ. Pro. 194; no interrogatories shall be allowed;

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

Owner and Builder agree that notwithstanding anything to the contrary, the rights and obligations set forth in this mediation-arbitration agreement shall survive (1) the termination of this Contract by either party; (2) the default or breach of this Contract by either party; and/or (3) Substantial Completion and payment in full of the Total Contract Price. The waiver or invalidity of any portion of this mediation-arbitration agreement shall not affect the validity or enforceability of the remaining portions of this mediation-arbitration agreement and/or the Contract. Owner and Builder further agree (1) that any dispute involving Builder's directors, officers, partners, employees and agents shall be resolved as set forth herein and not in a court of law; and (2) that Builder shall have the option to include its subcontractors, suppliers, and vendors as parties in the alternative dispute resolution procedures set forth in this Contract. This Contract requires mandatory mediation and arbitration of all claims and disputes; if any party commences litigation in violation of this Contract, that party shall reimburse the other parties for all costs and expenses including attorneys' fees incurred in seeking abatement of such litigation and enforcement of mediation and/or arbitration. Owner and Builder expressly agree that this Contract is being entered into for the benefit of any third-party and/or subsequent owner that owns, inhabits or resides in the Improvements, Property or dwelling and is therefore subject to this requirement to arbitrate any and all claims concerning this Contract, the Property, Improvements or dwelling. Owner further agrees that if Owner sells the Property and Improvements, Owner agrees to inform the subsequent purchaser(s) of this requirement to arbitrate in accordance with this Contract and, as part of any sales agreement, agrees to require the subsequent purchaser(s) to arbitrate any and all claims that may arise between Owner, Builder or subsequent purchaser(s) relating to or arising under, in whole or in part, to this Contract, the Property or Improvements.

- P. **WAIVER OF TRIAL BY JURY:** If it is determined that the arbitration provisions of the alternative dispute resolution agreement are not enforceable, the parties agree that any disputes between them shall be resolved by a court of competent jurisdiction in the county where the Property is located without the use of a jury. The right to a trial by jury is hereby expressly waived by Owner and Builder. The Parties also agree that the rights and obligations set forth in this paragraph shall survive termination of this Contract by either party, default of this Contract by either party, or Substantial Completion and full payment of the Total Contract Price.

- Q. **MUTUAL LIMITATION OF CLAIMS AND REMEDIES** – The parties desire pragmatic and logical limitations on claims and remedies to ensure effective and realistic dispute resolution. Accordingly,

- 1) Limitation of Claims: Under no circumstances shall either Owner or Builder be liable for any special, indirect, or consequential damages, including claims of mental anguish, except as otherwise specifically set forth in this Contract. Any action or claim, regardless of form, that arises from or relates to this Contract, the Work and/or the Improvements is barred unless it is brought by Owner not later than two (2) years and one (1) day from the date the cause of action accrues.
- 2) Waiver of Subrogation: The parties agree that after Substantial Completion, Owner shall secure and maintain insurance covering risk of loss and damage to the Improvements. The parties further mutually agree that with respect to any loss or damage that may occur to the Property, Improvements, personal property, persons, third-parties, or any other loss by reason of fire, the elements, or any other cause that could be or is insured against under the terms of standard fire and extended coverage insurance policies, or any other insurance, regardless of the cause or origin, including negligence of the Parties, their agents, officers, or employees, the party carrying such insurance and suffering said loss, hereby releases the other from any and all claims with respect to such loss. The parties further mutually agree that their respective insurance companies shall have no right of subrogation against the other party or other party's insurance carrier on account of any such loss as all rights of subrogation are hereby waived and disclaimed. Owner agrees that it will request its insurance carrier(s) to include in its policies such a clause or endorsement, but the failure to request or include such does not affect the applicability or effectiveness of this paragraph. If any such carrier refuses or fails to include such a clause or endorsement, the terms and conditions herein are in no way affected. Builder is not responsible for any deductibles. The agreements in this paragraph shall survive Substantial Completion and payment in full of the Total Contract Price. Nothing contained in this paragraph shall be deemed to modify or otherwise affect releases of either party from liability for claims elsewhere herein contained. To the extent that Owner's carrier in carrier's name or in Owner's name makes any claim or asserts a cause of action against Builder for subrogation, Owner agrees to defend, indemnify and hold Builder harmless, including attorney's fees, from any such claim or cause of action, including but not limited to negligence of Builder or Builder's subcontractors.
- R. WARRANTY REQUEST- Owner and Builder agree that a request for warranty performance shall not be construed as a notice of construction defect under the Texas Residential Construction Liability Act (RCLA), and that any notice under RCLA shall be separately sent to Builder in the manner required by RCLA. Subsequent, new or differing allegations of construction defect shall be subject to the requirements of the RCLA, including but not limited to the notice requirements therein. All documents producible pursuant to the RCLA shall be made immediately available to Builder. All notices under the RCLA shall be sent by certified mail, return receipt requested. Warranty claims, Punch List Items or other notices through Builder's normal warranty procedures are not to be considered as compliance with the RCLA.
- S. ATTORNEY'S FEES - If Builder or Owner is the prevailing party in any legal proceeding or arbitration, brought in connection with or relating to this Contract or the Improvements in any way, then, in addition to any other relief sought, such party shall be entitled to recover its reasonable attorney's fees, court/arbitration costs, and other reasonable litigation expenses from the non-prevailing party. The "prevailing party" shall be deemed to be the party whose last written offer to settle the dispute (or the fair market value of the offer), before the initiation of the proceeding/arbitration or pursuant to Chapter 27 of the Texas Property Code, whichever occurs later, most closely approximates the final award (excluding any award for attorney's fees, costs, and prejudgment interest which accrue after the offer is made). If the claimant makes no written demand or offer, its last offer shall be the amount claimed in the arbitration. If the defending party makes no written offer, its last offer shall either be zero or, if applicable, the amount of its counterclaim. "Initiation of the proceeding/arbitration" shall mean the date on which the parties agree in writing to the selection of an Arbitrator or the date on which a Court of competent jurisdiction or arbitration service selects an arbitrator, orders the parties to arbitration, or denies a request to arbitrate.
- T. ESCALATION OF CERTAIN PRODUCTS AND MATERIALS – Building products and materials utilized in construction can be subject to price variation based on local, regional, and national supply, supply chain and demand issues, or

catastrophic events, including but not limited to pandemics, hurricanes, tornadoes, floods, earthquakes, terrorism, wars, etc. Categories of products and materials most commonly affected by these variations in pricing are sheet goods such as drywall, insulated wiring, piping, soffit trim, lumber, plywood, OSB, structural members, 2x material, insulation, concrete, steel products, appliances, manufactured products and equipment, and petroleum-based roofing or other materials; this is not an exclusive list of such categories of products and materials that are subject to this provision. In the event that there is one or more price increases in these construction products and materials, whether one or more categories individually or collectively, of more than 10% from the (1) estimated or budget pricing, (2) average of similar materials or products purchased by Builder, and/or (3) general geographic region where the Property is located, starting from and including the preceding 60-day period from the execution of this Contract, the entirety of the increase in actual pricing paid or to be paid will be paid by Owner, resulting in an increase in the Total Contract Price. Builder will not be responsible for payment of any increase in product or material costs as contemplated herein; in other words, Owner will be responsible for any and all amounts, including but not limited to the increased amounts. Owner shall execute a Change Order or other instrument evidencing these increases, and failure to execute such Change Order or other instrument shall be a default and material breach by Owner, and Builder may exercise any and all rights or remedies as contemplated in this Contract.

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

NONE

Owner's failure to write anything in the space above shall be conclusively deemed Owner's affirmation that "NONE" is applicable thereto. To induce Builder to accept the Contract, and as material consideration to Builder, Owner hereby acknowledges that: (i) there are no understandings, representations, warranties, guarantees, or promises of any kind that have been made to induce Owner to execute the Contract or to acquire the Property or Improvements except as specifically set forth in the Contract, and the Contract supersedes any and all prior understandings and agreements between the parties; (ii) all advertising materials are superseded by the Contract; (iii) the Contract sets forth in full the entire agreement between the parties; (iv) Owner has not relied on any oral agreement, statement, or representation that is not expressly set forth in the Contract; and (v) no person on behalf of Owner is authorized to make any future oral agreement upon which Owner may rely to cancel, change, or modify any portion of the Contract.

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

- ☒ Legal Description (TAB A-1)
- ☐ Schedule of Estimated Construction Costs (TAB A-2)
- ☐ Draw Request Form (TAB A-3)

- ☐ Notice Regarding Expansive Soils (TAB A-4)
- ☒ Final Customer Walk-Thru Approval and Punch List (TAB A-5)
- ☐ Selection / Allowance Schedule (TAB A-6)
- ☐ Change Order (TAB A-7)
- ☐ Real Estate Broker's Fee Addendum (TAB A-8)
- ☐ Disclosure Statement (TAB A-9)
- ☒ Waiver of the List of Subcontractors & Suppliers (TAB A-10)
- ☐ Assignment of Manufactured Product Warranties (TAB A-11)
- ☒ Special Provisions Addendum (TAB A-12)
- ☐ Green Building Disclosure (TAB A-13)
- ☒ Express Limited Home Warranty (TAB A-14)
- ☒ Homeowner Maintenance Requirements (TAB A-15)
- ☐ Notice Regarding Heating and Cooling Equipment (TAB A-16)
- ☐ Third-Party Warranty Specimen
- ☐ _____

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

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

Owner's Attorney:

Builder's Attorney:

Dana Campbell

Ferguson Braswell Fraser Kubasta PC

2500 Dallas Parkway

Suite 600, Plano Texas 75093

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

Owner:

Builder: TIPLER Design & Build LLC

30643 FM2978

The Woodlands, Texas, 77354

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

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

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

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

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

ADJOINING LAND USE: Builder makes no representation, warranty or guarantee as to the adjoining use of land, property, streets, future construction, zoning, property lines or otherwise of any surrounding property, adjoining property or property near the property the subject of this Contract, regardless of ownership or control, and all such claims are waived and disclaimed regardless of any claim of fraud or fraudulent inducement, and the parties are relying on each parties own investigation and due diligence.

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

21. RESIDENTIAL CONSTRUCTION CONTRACT DISCLOSURE STATEMENT: This Contract is a residential construction contract as defined in Section 53.001 of the Texas Property Code. 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.

22. EXECUTION BY BUILDER: This Contract shall not be binding upon Builder until accepted and executed by one of its duly authorized officers. No other employee or agent is authorized to enter into any contract for construction of the Improvements on behalf of Builder.

23. SIGNATURES OF PARTIES:

IMPORTANT NOTICE: This is a negotiated Contract for the construction and/or sale of improvements to real property. This Contract is not sponsored, commissioned, or mandated by any governmental entity. The terms and conditions of this Contract are not standardized.

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

The Contract is subject to Chapter 27 of the Texas Property Code. The provisions of that chapter may affect your right to recover damages arising from a construction defect. If you have a complaint concerning a construction defect and that defect has not been corrected as may be required by law or by contract, you must provide the notice required by Chapter 27 of the Texas Property Code to the contractor by certified mail, return receipt requested, not later than the 60th day before the date you file suit to recover damages in a court of law or initiate arbitration. The notice must refer to Chapter 27 of the Texas Property Code and must describe the construction defect. If requested by the contractor, you must provide the contractor an opportunity to inspect and cure the defect as provided by Section 27.004 of the Texas Property Code.

EXECUTED ON _____, 20 ____.

OWNER(S):

Owner Signature

Owner Signature

Address: _____

Email: _____

BUILDER: _____

By: _____

Printed Name: _____

Title: _____

Address: _____

Email: _____

THE STATE OF TEXAS

§
§
§

COUNTY OF _____

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

Notary Public, State of Texas

My Commission Expires: _____

Notary's Printed/Typed Name

THE STATE OF TEXAS

§
§
§

COUNTY OF _____

This instrument was acknowledged before me on the _____ day of _____, _____ by _____ [Builder representative name], _____

[Builder representative title] of _____
[Builder], on behalf of said entity.

Notary Public, State of Texas

My Commission Expires: _____

Notary's Printed/Typed Name

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

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

IT IS THE USER'S RESPONSIBILITY TO OBTAIN AND USE THE MOST RECENT VERSION OF THIS DOCUMENT. ANY CHANGES SHOULD BE MADE ONLY AFTER CONSULTATION WITH LEGAL COUNSEL.

ASSIGNMENT

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

Builder: _____

By: _____

Printed Name: _____

Title: _____

THE STATE OF TEXAS

§

§

COUNTY OF _____

§

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

Notary Public, State of Texas

My Commission Expires: _____

Notary's Printed/Typed Name