



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



PROMULGATED BY THE TEXAS ASSOCIATION OF BUILDERS (TAB)
SPECIAL PROVISIONS ADDENDUM
(For Use With Custom Construction Jobs On The Owner's Property)

CONCERNING THE PROPERTY AT

(Street Address and City)

SPECIAL PROVISIONS: The following provisions are included in this Contract and will govern and supersede any conflicting or inconsistent provisions.

1. Paragraph 5.A of the Contract is hereby amended in its entirety as follows:

A. PRE-CONSTRUCTION CASH PAYMENTS – Upon execution of this Contract, Owner shall pay to Builder \$100,000.00 as a portion of the Total Contract Price (“Initial Cash Payment”). In addition to the Initial Cash Payment, within five (5) days of Owner’s selection of any upgrades or options, but in no event later than the commencement of the Work, Owner shall pay to Builder a sum equal to twenty percent (20%) of the Total Contract Price (less the Initial Cash Payment) (the “Subsequent Cash Payment” and together with the Initial Cash Payment, the “Pre-Construction Cash Payments”) as a portion of the Total Contract Price. Builder may use the Pre-Construction Cash Payments in consideration for initial construction or construction expenses, and compensation to Builder for time and effort expended. The Pre-Construction Cash Payments will be credited in the Final Payment. The Pre-Construction Cash Payments (or any portion thereof paid to Builder) 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.

2. Paragraph 13.A of the Contract is hereby amended to add the following Paragraph 13.A.(5):

Notwithstanding anything contained in this Section 13 to the contrary, Builder shall not be deemed to have breached any material provision contained in this Contract, or shall be deemed to be in default under any term or condition of this Contract, if such breach or default is the result of, caused by, related to, or arises from, either directly or indirectly, any act or omission to act by any (a) unrelated third party, (b) Wine Country Hospitality Partners, LLC, a Delaware limited liability company (“WCHP”), Lantana Land Holdings LLC, a Delaware limited liability company, or any of their Affiliates (collectively, “Seller”), or (c) any party to a hotel management and/or license contract in respect of the Development or any of their Affiliates. As used herein, the term “Affiliate(s)” shall mean, with respect to any Person, any other Person directly or indirectly controlling (including but not limited to all directors and officers of such Person), controlled by, or under direct or indirect common control with such Person. A Person shall be deemed to control another Person for the purposes of this definition if such Person possesses, directly or indirectly, the power (i) to vote ten percent (10%) or more of the Equity Interests having ordinary voting

power for the election of directors or managers of such other Person, or (ii) to direct or cause the direction of the management and policies of such other Person, whether through the ownership of voting securities, by contract or otherwise. As used herein, the term "Equity Interests" shall mean (i) in the case of any corporation, all capital stock and any securities exchangeable for or convertible into capital stock, (ii) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents of corporate power (however designated) in or to such association or entity, (iii) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited) and (iv) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distribution of assets of, the issuing Person, and including, in all of the foregoing cases described in clauses (i), (ii), (iii) or (iv), any warrants, rights or other options to purchase or otherwise acquire any of the interests described in any of the foregoing cases. As used herein, the term "Person" shall mean a natural person, corporation, limited liability company, partnership, limited liability partnership, trust, incorporated or unincorporated organization, joint venture, joint stock company, firm or association or a government or any agency or political subdivision thereof or other entity of any kind.

3. Paragraph 13.C. of the Contract is amended by adding the following at the end of such Paragraph:

NOTWITHSTANDING ANYTHING CONTAINED IN THIS CONTRACT, IN NO EVENT SHALL BUILDER BE LIABLE OR RESPONSIBLE TO OWNER FOR, AND OWNER HEREBY EXPRESSLY RELEASES BUILDER FROM AND COVENANTS NOT TO SUE BUILDER FOR, ANY AND ALL CLAIMS OR DAMAGES ARISING FROM OR RELATED TO, EITHER DIRECTLY OR INDIRECTLY, ANY ACTS OR OMISSIONS TO ACT OF OTHER PROFESSIONALS (INCLUDING, WITHOUT LIMITATION, WCHP OR SELLER), WHETHER ENGAGED BY BUILDER FOR THE BENEFIT OF OWNER OR BY OWNER DIRECTLY.

4. A new paragraph 15.A. shall be deemed a part of the contract and read as follows:

15.A. Additional Remedy of Builder:

In the event that (a) Seller fails to achieve timely Substantial Completion (as referred to in that certain Referral and Builder Agreement to which Builder and certain entities comprising Seller are parties (the "Builder Agreement")), and (b) one of the Builder Parties (as defined in the Builder Agreement) terminates the Builder Agreement, then Builder shall have the absolute and unconditional right to terminate the Contract upon written notice to Owner, whereupon Builder shall be required to return to Owner the Pre-Construction Cash Payments paid by Owner to Builder within seven (7) days of such written notice, and thereafter no Party to the Contract shall have any rights, title, interests, liabilities, or obligations thereunder or to any other Party.

5. Paragraph 15.C. of the Contract is hereby amended to provide the following:

IN ADDITION TO ALL OTHER RIGHTS AND REMEDIES AVAILABLE, BUILDER SHALL HAVE THE RIGHT, TO BE PAID AS LIQUIDATED DAMAGES AN AMOUNT

EQUAL TO TWENTY PERCENT (20%) OF THE TOTAL CONTRACT PRICE TO BE PAID BY OWNER UNDER THIS CONTRACT. THE PARTIES HAVE AGREED THAT BUILDER'S ACTUAL DAMAGES, IN THE EVENT OF A DEFAULT BY OWNER UNDER THIS CONTRACT, WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. THEREFORE, BY PLACING THEIR INITIALS BELOW, THE PARTIES ACKNOWLEDGE THAT THE LIQUIDATED DAMAGES HAS BEEN AGREED UPON, AFTER NEGOTIATION, AS THE PARTIES' REASONABLE ESTIMATE OF BUILDER'S DAMAGES, IN THE EVENT OF A DEFAULT UNDER THIS CONTRACT ON THE PART OF OWNER AND THAT SUCH LIQUIDATED DAMAGES DOES NOT CONSTITUTE A PENALTY.

INITIALS: BUILDER: _____ OWNER: _____

6. The first (1st) sentence of Paragraph 17 of the Contract is hereby amended to read as follows:

This Contract, the Purchase Agreement (as defined hereafter), the Construction Documents, and any Change Orders, constitutes the entire agreement between the Parties.

7. The following is added the end of Paragraph 17 of the Contract:

On or before the execution of this Contract, Owner, as Purchaser, and Seller, shall execute a Purchase and Sale Agreement ("Purchase Agreement"), in the form as may be agreed to by the parties, providing for the sale by Seller and purchase by Owner of the Property. The obligation of either party to enter into this Contract is conditioned upon, and subject to, the simultaneous execution of the Purchase Agreement by Owner and Seller.

NOTWITHSTANDING SELLER AND OWNER ENTERING INTO THE PURCHASE AGREEMENT, AND BUILDER AND OWNER ENTERING INTO THIS CONTRACT, FOR THE SALE OF THE PROPERTY, AND THE CONSTRUCTION OF IMPROVEMENTS THEREON, RESPECTIVELY, THIS CONTRACT HAS BEEN NEGOTIATED AND AGREED UPON BASED ON THE INTENDED SIMULTANEOUS EXECUTION OF THIS CONTRACT AND THE PURCHASE AGREEMENT. AS SUCH, THE TRANSACTIONS CONTEMPLATED UNDER THIS CONTRACT AND THE PURCHASE AGREEMENT SHALL CONSTITUTE A SINGLE, COMPOSITE, INSEPARABLE TRANSACTION AND WOULD HAVE BEEN SUBSTANTIALLY DIFFERENT HAD SEPARATE TRANSACTIONS AND AGREEMENTS BEEN INTENDED. WITHOUT THE EXECUTION OF THE PURCHASE AGREEMENT BY OWNER, BUILDER WOULD NOT ENTER INTO THIS CONTRACT WITH OWNER, AND WITHOUT THE EXECUTION OF THE PURCHASE AGREEMENT BY SELLER, OWNER WOULD NOT ENTER INTO THIS CONTRACT WITH BUILDER. THE PARTIES AGREE THAT THE OBLIGATIONS OF OWNER UNDER THIS CONTRACT AND THE PURCHASE AGREEMENT ARE CROSS-DEFAULTED, WITH A DEFAULT BY OWNER HEREUNDER CONSTITUTING A DEFAULT BY OWNER UNDER THE PURCHASE AGREEMENT. IN ADDITION, BUILDER AS THE NON-DEFAULTING PARTY SHALL HAVE THE RIGHT TO

SIMULTANEOUSLY EXERCISE ANY AND ALL REMEDIES AVAILABLE TO BUILDER UNDER THIS CONTRACT WITHOUT ANY PROHIBITION. NOTHING HEREIN SHALL PREVENT BUILDER, AS THE NON-DEFAULTING PARTY FROM EXERCISING ITS REMEDIES UNDER THIS CONTRACT. THE PARTIES INTEND THAT THE PROVISIONS OF THIS CONTRACT SHALL AT ALL TIMES BE CONSTRUED, INTERPRETED AND APPLIED IN CONJUNCTION WITH THE PURCHASE AGREEMENT SO AS TO CARRY OUT THEIR MUTUAL OBJECTIVE TO CREATE A SINGLE, INTEGRATED AND INDIVISIBLE AGREEMENT TO SELL THE PROPERTY TO OWNER AND SUBSEQUENTLY CONSTRUCT THE IMPROVEMENTS THEREON, AND, IN PARTICULAR BUT WITHOUT LIMITATION, THAT, FOR PURPOSES OF ANY ASSUMPTION, REJECTION OR ASSIGNMENT OF THIS CONTRACT UNDER 11 U.S.C. SECTION 365, WITH THE PURCHASE AGREEMENT, THIS IS ONE INDIVISIBLE AND NON-SEVERABLE AGREEMENT AND EXECUTORY CONTRACT DEALING WITH ONE LEGAL AND ECONOMIC UNIT AND THAT THIS CONTRACT AND THE PURCHASE AGREEMENT MUST BE ASSUMED, REJECTED OR ASSIGNED AS A WHOLE. THE PARTIES MAY AMEND THIS CONTRACT FROM TIME TO TIME AND SUCH AMENDMENT SHALL NOT IN ANY WAY CHANGE THE INDIVISIBLE AND NON-SEVERABLE NATURE OF THIS CONTRACT AND THE PURCHASE AGREEMENT AND ALL OF THE FOREGOING PROVISIONS SHALL CONTINUE TO APPLY IN FULL FORCE.

8. The following is added as Paragraph 22.A. of the Contract:

Upon purchase of the Property by Owner, Builder shall have right to record this Contract or a memorandum of this Contract in the applicable county records of the county in which the Property is located. Owner agrees to execute such documentation as Builder may provide or reasonably request to effect the purposes of this Paragraph 22.A. Upon completion of the construction of the Improvements and satisfaction of Owner's obligations under this Contract, Builder agrees to execute such reasonable documentation as Builder shall determine in order to release such recording and remove such encumbrance from title to the Property. Builder agrees to subordinate such recording to any lien of any person providing financing to Owner for the purchase of the Property and construction of the Improvements.

9. Owner hereby agrees and acknowledges that the special warranty deed that Seller will use to convey fee simple title subject to any condominium regime to the Property to Owner shall contain a provision providing Seller the right to repurchase the Property from Owner at the Purchase Price for which Owner bought the Property from Seller under the Purchase Agreement if (i) Owner defaults under this Contract (after any applicable notice and cure period); or (ii) Owner fails to give notice to Builder to commence construction of the Improvements on the Property pursuant to this Contract, no later than ninety (90) days following written notification from Developer to Owner and Builder of the substantial completion of certain improvements to be made on the Property by Developer.

10. The Purchase Agreement is incorporated herein for all purposes as if set out herein in its entirety. In the event of a conflict between the terms of this Contract and thereof the Purchase Agreement, the terms of this Contract shall govern.

Executed on _____, 20____.

Owner

Builder: _____

By: _____

Printed Name: _____

Owner

Title: _____

PROMULGATED BY THE TEXAS ASSOCIATION OF BUILDERS (TAB)
EXPRESS LIMITED HOME WARRANTY AND PERFORMANCE STANDARDS

CONCERNING THE PROPERTY AT

(Street Address and City)

Builder's Name: TIPLER Design & Build LLC
Builder's Address: 30643 FM2978, Magnolia, Texas 77354

Builder's Phone: 281-465-4401
Builder's Fax No.:
Builder's Email: clientservices@tipler.com

§ 1. General Provisions

- (a) Scope. This document describes the standards of performance for the various elements or components of a home as described. The Builder will repair or replace those elements or components of a home that do not meet these standards during the applicable Warranty Period based upon the expected level of performance described in these standards for residential construction to which the standards apply. If an element or component of a home is not described particularly herein, the element or component shall be constructed in accordance with the applicable written agreement or, if there is no agreement, in accordance with the usual and customary industry standards or practices for similar Improvements (defined below) in the geographic region shall govern and the element or component shall perform for the purpose for which it is intended for the period of the applicable warranty. This document does not replace homeowner's insurance or any third-party warranty.
- (b) Definitions. The following words and terms when used in this warranty shall have the following meanings, unless the context clearly indicates otherwise.
- (1) Adverse effect--A tangible condition that substantially impairs the functionality of the habitable areas of the home.
 - (2) ASCE Guidelines--"Guidelines for the Evaluation and Repair of Residential Foundations, Version 3, published by the Texas Section of the American Society of Civil Engineers (2022).
 - (3) Builder Responsibility--A statement of the corrective action required by the Builder to repair the construction defect and any other damage resulting from making the required repair. Parties may agree to an alternative remedy.
 - (4) Code--The International Residential Code or, if the context requires, the National Electrical Code.
 - (5) Construction Defect—a failure to meet the applicable performance standards as set forth herein of the home and subject to the provisions and procedures of the Residential Construction Liability Act, Chapter 27 of the Texas Property Code, except as modified by this Express Limited Home Warranty.
 - (6) Deflection--the distorted shape of a structural element due to bending. Deflection is characterized by the deflection ratio.

- (7) Deflection Ratio--the maximum deviation from a straight line between two points divided by the distance (L) between the two points.
- (8) Electrical Standard--for residential construction located in a municipality, a standard contained in the version of the National Electrical Code (NEC) applicable to electrical aspects of residential construction in the municipality under Local Government Code § 214.214 and that is effective on the date of commencement of construction of the home;
- (9) Excessive or Excessively--a quantity, amount or degree that exceeds that which is normal, usual or reasonable under the circumstance.
- (10) Exclusion--items, conditions or situations not warranted or not covered by a performance standard.
- (11) Extreme Weather Condition(s)--weather conditions in excess of or outside of the scope of the design criteria stated or assumed for the circumstance or locale in the Code.
- (12) Improvement(s)--any labor, materials, or other work supplied by Builder or its independent contractors or suppliers in performance of the contract documents or other written agreements, including, but not limited to, design plans or specifications.
- (13) The International Residential Code (IRC)--substantial compliance with the version of the IRC for One- and Two-Family Dwellings published by the International Code Council (ICC) as follows:
 - (A) for residential construction of the non-electrical standards of a One- and Two-Family Dwelling located in a municipality, the version of the IRC applicable to non-electrical aspects of residential construction in the municipality under Local Government Code § 214.212 and which is effective on the date of commencement of construction of the home;
 - (B) for residential construction of a One- and Two-Family Dwelling in the unincorporated area of a county, the version of the International Residential Code published as of May 1, 2008, or the version of the IRC that is applicable in the county seat of that county, including any other applicable Codes required by statute.
- (14) Major Structural Components--the load-bearing portions, and the integral connection between them, of the following elements of a home: footings and foundations; beams; headers; girders; lintels; columns; load-bearing portions of walls and partitions; roof framing systems, to include ceiling framing; structural floor systems; and structural masonry arches. Major Structural Components do not include components and/or component parts such as, including but not limited to: non-load-bearing walls, non-load-bearing columns, wall tiles or wallpaper, drywall, plaster, flooring, subfloors and associated material, stucco of any kind or application, brick, stone, exterior siding, cladding, roof shingles, roof tiles, roof membranes, sheathing even if rated for structural support, tar paper, mechanical systems and its component parts, manufactured equipment, doors, trim, cabinets, hardware, insulation.
- (15) Manufactured Product--a component of the home that was manufactured away from the site of the home and that was installed in the home without significant modifications to the product as manufactured. Manufactured products commonly installed in residential construction include but are not limited to dishwashers, cook tops, ovens, refrigerators, trash compactors, microwave ovens, kitchen vent fans, central air conditioning coils and compressors, furnace heat exchangers, water heaters, carpet, windows, doors, light fixtures, fireplace inserts, pipes and electrical wires. For purposes of this warranty, a manufactured product includes any component of a home for which the manufacturer provides a warranty, provided that the manufacturer permits transfer of the warranty to the homeowner, any such transfer shall be without recourse against the Builder.
- (16) Original Construction Elevations--actual elevations of the foundation taken before, on or within 30 days of the Effective Date of Warranty of the residential construction project. Such actual elevations shall include elevations

of porches and garages if those structures are part of a monolithic foundation. To establish original construction elevations, elevations shall be taken at a rate of at least one elevation per 100 square feet showing a reference point and shall be taken at a rate of at least one elevation per 10 linear feet along the perimeter of the foundation, subject to obstructions. Each elevation shall be taken on the surface of the foundation or on the surface of the floor covering on the foundation, if any. The type of floor finish or floor covering shall be identified for each elevation location or elevation grouping as applicable. For elevations surveyed on floor coverings, adjustments shall be made for the differential thickness between adjacent floor coverings such that all elevations reference a common plane. All intentional, as-built elevation changes, including but not limited to step-ups, step-downs, tire stops, sunken rooms, weather drops, and areas with drainage slopes shall be identified in location and magnitude. Original Construction Elevations shall be recorded with an accuracy of at least 1/8 of an inch (0.125 inch) on a to-scale plan view drawing of the home with interior and exterior walls to provide sufficient reference of each elevation location. If no such actual elevations are taken, the foundation for the habitable areas of the home are presumed to be level +/- 0.75 inch (three-quarters of an inch) over the entire area of the foundation.

- (17) Performance Standard(s)--the standard(s) to which a home or an element or component of a home constructed as a part of new home construction or a material improvement or interior renovation must perform.
- (18) Raised-Floor Foundation--a foundation comprised of a structural floor system that is elevated above the underlying ground surface by footings, piers, piles, or other localized foundation support elements. The foundation exhibits a void space or a crawlspace between the structural floor system and the underlying ground surface. Examples of raised floor foundations include, but are not limited to traditional wood floor systems, concrete slabs on metal formwork, and concrete slabs on temporary carton forms.
- (19) Slab-on-Ground Foundation--a foundation comprised of a concrete slab, either reinforced or post-tension, that is continuously supported by the underlying ground surface. The foundation may be a concrete slab of uniform thickness, or it may incorporate monolithic stiffening beams that are deeper than the slab sections. The foundation may be supplemented with piers; however, it is placed on, and directly supported by, the ground.
- (20) Span (L)--the distance between two supports for structural elements supported at both ends. For calculating overall deflection and/or tilt of foundations, L shall be defined as the edge-to-edge distance across the entire length of the foundation cross-section for which deflection or tilt is to be calculated. For calculating overall deflection and/or tilt of foundations, the minimum L shall be not less than 25 feet. Localized and/or shortened spans may not be used for calculations. For cantilevered framing elements, L shall be determined as twice the distance from the last support to the unsupported end of the element.
- (21) Substantial Completion--achieved when:
 - (A) the stage of construction when a new home, addition, improvement, or alteration to an existing home is sufficiently complete that the home, addition, improvement or alteration can be occupied or used for its intended purpose; or
 - (B) if required, the issuance of a final certificate of inspection or occupancy by the applicable governmental authority; or
 - (C) if no final inspection or 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
 - (D) provided, however, that if Owner moves into, occupies and/or places personal property in the home or Improvements (or any portion of the property that is the subject of the contract), the home or Improvements shall be deemed to be for all purposes substantially completed.

- (22) Tilt --the planar rotation from a level condition to a slope across the entire foundation, edge-to-edge. Tilt is the mathematical difference in elevation of two points from opposing edges of a foundation divided by the distance (L) between the two points, expressed as a percent.

(c) Additional Terms and Conditions

- (1) Foreclosure. Notwithstanding any other term or condition herein, this Express Limited Home Warranty does not apply to Property and/or Improvements that have been subject to a foreclosure under Texas law, such Property and Improvements are taken "AS IS, with all faults."
- (2) Commercial Purpose. Notwithstanding any other term or condition herein, this Express Limited Home Warranty does not apply to Property and/or Improvements that have been used at any time for a commercial, for profit, rental (short or long term), leasing or occupancy by any person other than the named owners on the deed recorded in the public records, such Property and Improvements are taken "AS IS, with all faults" and/or this Express Limited Home Warranty is cancelled upon the first or any use in violation of this provision.
- (3) Green Building Compliance. Any and all green building requirements, standards, certifications or otherwise are controlled by those written standards applicable to and agreed upon between the Builder and the initial owner(s), if any, after which there is no warranty or guarantee related to or concerning any such green building requirements, standards, certifications or otherwise to any subsequent owner of the Property and/or Improvements. There is no guarantee or warranty for the energy efficiency, energy usage or otherwise of the home or Improvements in the Express Limited Home Warranty.
- (4) Residential Construction Liability Act (RCLA) and Contractual Requirements. The contract associated with this Express Limited Home Warranty along with the terms and conditions therein are incorporated into this Express Limited Home Warranty, including but not limited to the dispute resolution provisions. As a condition precedent to the applicability of this Express Limited Home Warranty, the owner must follow each term and condition in the contract associated with this Express Limited Home Warranty, the requirements of the RCLA, all other legal requirements, and any and all other requirements in any instrument related to the Property and/or the Improvements, including but not limited to any third-party warranty. Any and all claims with the applicable third-party warranty company, insurance carrier or other responsible party is to be made before a claim under this Express Limited Home Warranty is presented to Builder, and there is no Builder Responsibility until same is fully completed in all respects unless Builder, at Builder's sole and exclusive discretion, agrees to participate concurrently.
- (5) Approved Variations. Any variations in any element of construction, the Property and/or the Improvements that are not in compliance with the Performance Standard(s) or applicable Code(s) that are approved by an engineer associated with the project, included in the Construction Documents, provided for in the plans and specifications or approved by the local building official, governing authority, city inspector, third-party inspector or third-party warranty company are not warranted hereunder, are deemed within the Performance Standard(s) and are an Exclusion.
- (6) Other Insurance or Warranty. This document does not replace homeowner's insurance or any third-party warranty. As a condition precedent to the applicability of this Express Limited Home Warranty, the owner must make a claim with the owner's homeowner's insurance carrier and third-party warranty company, as applicable. There is no Builder Responsibility for any loss paid, covered claim, repair or the like if same is available through any insurance or third-party warranty. Any insurance or third-party warranty is primary and non-contributory to this Express Limited Home Warranty.
- (7) Access. In order to carry out the Builder Responsibilities, the Builder will require access to the home, the Property and Improvements. Builder and Builder designees shall be allowed full access in Builder's normal

business operations for testing, inspection and repairs. Refusal or delay of more than ten calendar days upon verbal or written request of the Builder will waive and void any Builder Responsibility, unless mutually agreed upon in writing by the parties.

- (8) Non-Builder Repairs. Any and all repairs performed by any party without full compliance with this Express Limited Home Warranty waives any Builder Responsibility and any claim or cause of action against Builder related to same.
- (9) Resolving conflicts among construction standards. During the construction of the home, when an inconsistency exists between the Code, manufacturer's instructions and specifications, the standard required by the United States Department of Housing and Urban Development for Federal Housing Administration or Veterans Administration programs, or ANSI/ASHRAE Standard (62.2-2003), the most restrictive requirement shall apply if reasonable under the circumstances.
- (10) This Express Limited Home Warranty is fully transferable to subsequent homeowners without any additional paperwork or assignment. The subsequent homeowner's name must appear on the title filed in the deed records of the county for the subject property.
- (11) This Express Limited Home Warranty runs with the land and is a condition to any sale, transfer or otherwise related thereto. The terms and conditions of this Express Limited Home Warranty are incorporated by reference in and subsequent sale, transfer or otherwise regardless of any reference in the any such written instrument or document. Any and all subsequent homeowner is bound by the terms and conditions of this Express Limited Home Warranty. Any and all homeowners, now or in the future, accept this Express Limited Home Warranty by acceptance of title. To the extent that a subsequent homeowner has no knowledge of this instrument, actual or constructive, any assertion of a claim or cause of action against any person or entity that implicates the terms and conditions hereunder, the entirety of this document is applicable. This Express Limited Home Warranty cannot be changed or modified by any person or party whatsoever save and except for mutual written agreement between Builder and current homeowner.
- (12) Any claim or cause of action related to this Express Limited Home Warranty must be filed on or before the second anniversary plus one day of the date of discovery of the alleged construction defect; the statute of limitations for any such claim or cause of action is the second anniversary plus one day of the date of the discovery of the alleged construction defect; this provision does not extend the time period of any warranty.
- (13) HOMEOWNER AGREES AND UNDERSTANDS THAT OTHER THAN THE WARRANTIES PROVIDED IN THIS EXPRESS LIMITED HOME WARRANTY, ALL OTHER WARRANTIES ARE DISCLAIMED AND HOMEOWNER IS WAIVING ANY AND ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTY OF GOOD AND WORKMANLIKE REPAIR OR MODIFICATION OF EXISTING TANGIBLE GOODS OR PROPERTY, THE IMPLIED WARRANTY OF GOOD AND WORKMANLIKE CONSTRUCTION, PERFORMANCE, WORKMANSHIP, REPAIR, MODIFICATION, MERCHANTABILITY, SUITABILITY AND FITNESS. THE IMPLIED WARRANTY OF HABITABILITY IS WAIVED TO THE FULLEST EXTENT ALLOWED UNDER LAW, AS THE HOMEOWNER UNDERSTANDS AND AGREES THAT THE REPAIR OBLIGATIONS HEREUNDER ARE SUFFICIENT TO REPLACE ANY SUCH IMPLIED WARRANTIES AND UNDERSTANDS THAT THE IMPROVEMENTS MAY BECOME UNSAFE FOR HABITATION BUT THAT THE OBLIGATIONS HEREUNDER ARE SUFFICIENT FOR THE REPLACEMENT OF ANY SUCH IMPLIED HABITABILITY WARRANTY; HOWEVER, TO THE EXTENT THAT IT IS FINALLY DETERMINED UNDER THE DISPUTE RESOLUTION PROVISIONS HEREIN THAT THE IMPROVEMENTS ARE NOT HABITABLE DIRECTLY BECAUSE OF A LATENT UNDISCLOSED CONSTRUCTION DEFECT, THE WARRANTY OBLIGATIONS HEREIN ARE SUFFICIENT TO CURE ANY SUCH CONSTRUCTION DEFECT TO BRING THE CONSTRUCTION DEFECT INTO COMPLIANCE WITH THE APPLICABLE STANDARD,

NOTWITHSTANDING, THE BUILDER IS NOT LIABLE FOR ANY RESULTING DAMAGES, CONSEQUENTIAL DAMAGES, CONDITIONS, INJURIES, DEATH OR OTHERWISE. THE PARTIES AGREE THAT THE LIMITED WARRANTY ADEQUATELY SET FORTH THE MANNER, PERFORMANCE, AND QUALITY OF THE CONSTRUCTION OF THE IMPROVEMENTS. Homeowner acknowledges, understands, and agrees that the terms of this Express Limited Home Warranty are clear, specific, and sufficiently detailed to establish the only standards of construction performance. The Parties agree that this Express Limited Home Warranty will control any warranty, workmanship, material, or any other defect claims regarding the Improvements.

- (14) The maximum warranty limit or warranty obligation hereunder is deemed the maximum obligation under any circumstance, including multiple claims, against this Express Limited Home Warranty and made in any manner against the Builder is the original, total purchase price in the original sales contract. Any obligation herein shall be deemed excess of any other insurance available, regardless of collectability and including any and all primary, umbrella or excess policies or coverages. Any other insurance available to any person or entity, including but not limited to the owner, third-party beneficiary, Builder, subcontractor or otherwise is primary and non-contributory to this Express Limited Home Warranty.

(15) **DISPUTE RESOLUTION; MEDIATION-BINDING ARBITRATION.**

The parties agree that any dispute or claim arising under, or relating to, this Warranty any amendments thereto, the Property, Improvements, or any dealings between the Homeowner 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 Warranty and the Third-Party Warranty on these procedures, the provisions of this Warranty shall control as to the Builder and Homeowner 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 Warranty and such rules or procedures, the provisions of this Warranty 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 is unable or unwilling to conduct the mediation or the binding arbitration, or both, either party may petition a court of general jurisdiction in the subject county to appoint a mediator or arbitrator, or both, but only after a good faith effort to agree to an alternative mediator, arbitrator or service provider. It is agreed that the filing of a petition requesting appointment of a mediator or arbitrator, or for a court to resolve a dispute under this provision, shall not constitute a waiver of the right to enforce binding arbitration.

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

- (A) The arbitrator shall have no authority to (i) award any remedy or damage not provided by this Contract, Federal law or State law, (ii) render a decision which contains a reversible error of state or federal law, or (iii) apply a cause of action or remedy not provided for under existing state or federal law. Any such decision to the contrary shall be subject to judicial review;**
- (B) All applicable claims, causes of action, remedies, and defenses as available in court shall apply, including temporary and permanent restraining orders;**
- (C) The proceeding shall be conducted by a single arbitrator selected by a process designed to ensure the neutrality of the arbitrator;**
- (D) Subject to relevance and discovery reasonably calculated to lead to the discovery of admissible evidence, proper objections, confidentiality and other privileges, the parties shall voluntarily produce documents related to the claims and disputes, and the parties shall be entitled to conduct reasonable and necessary discovery as limited by the arbitrator but in no event shall any party be entitled to more than 6 hours of total deposition time, 10 requests for production and disclosures under Tex. Rule of Civ. Pro. 194; no interrogatories shall be allowed;**
- (E) The arbitrator shall render a written award and, if requested by any party at any time, a reasoned award, even if after the written award is issued;**
- (F) No party shall be required to pay any unreasonable costs, expenses, or arbitrator's fees;**
- (G) Judgment upon any such award may be entered in any court having jurisdiction, subject to the terms and conditions herein and the Federal Arbitration Act;**
- (H) If the proceeding pertains to a construction defect, as that term is defined in Chapter 27 of the Texas Property Code (§27.001(4)), then the arbitration shall be conducted in the same county as the Property, absent agreement of the parties or the arbitrator's determination that such location is inconvenient;**
- (I) Any arbitration shall be private and confidential, and no publication or disclosure of such arbitration or facts surrounding same shall be made to any third-party, except for necessary testimonial witnesses, experts and counsel. The final award of the arbitrator shall not be payable until 60 days after such award, and such award shall not be sought to be confirmed in any court until 90 days after such award, with or without objection by any party and regardless of the terms and conditions of the award. If the award requires repairs of construction defects, such repairs are not required to be commenced until 90 days after the award is confirmed but shall be completed within 120 days after the award is finally confirmed.**

Homeowner 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; and/or (2) the breach of this Warranty by either party. 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 Warranty. Homeowner 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 Warranty.

This Warranty requires mandatory mediation and arbitration of all claims and disputes; if any party commences litigation in violation of this Warranty, 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.

Homeowner and Builder expressly agree that this Warranty is being entered into for the benefit of and is binding on 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.

Homeowner further agrees that if Homeowner sells the Property and Improvements, Homeowner 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 Homeowner, Builder or subsequent purchaser(s) relating to or arising under, in whole or in part, to this Contract, the Property or Improvements. This terms of this agreement to arbitrate may be incorporated into the deed for the Property to which this Warranty applies, this Warranty may be filed in the deed records, or any other instrument may be filed to evidence this agreement and this Warranty; however, the non-filing of this Warranty or this agreement does not otherwise affect the enforceability of this agreement or the Warranty.

- (16) A request for warranty performance is not to be construed as a notice of construction defect under the Texas Residential Construction Liability Act and that any notice under said action shall be separately sent as required herein and under law.
- (17) Any dispute, claim and/or cause of action must be filed for arbitration no later than two years and one day after the date of accrual and the statute of limitations is shortened to this time period unless any such Dispute, claim and/or cause of action already has a shorter limitations period as a matter of law. It being a breach of contract and violation of this Express Limited Home Warranty, the filing of a lawsuit in a court of law does not toll the limitations periods.
- (18) Under no circumstances shall a party be liable for any special, indirect, or consequential damages, including claims of mental anguish.
- (19) This Express Limited Home Warranty is not governed by the Texas Real Estate Commission.
- (20) THE PARTIES HERETO HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY DISPUTE, CLAIM OR CAUSE OF ACTION.

§ 2. General Provisions for New Homes, Material Improvements and Interior Renovations

(a) Builder Responsibilities for Compliance with Performance Standards and Repair Obligations.

- (1) **Builder's Work.** The Builder is responsible for all work performed under the direction of the Builder for the period of the applicable warranty. The Builder is only responsible for construction defects about which the Builder receives written notice in compliance with Sec. 1(c)(4) no later than thirty (30) days following the expiration of the applicable warranty period:
 - (A) the date of the initial transfer of title from the Builder to the initial owner of the affected home or improvement; or

- (B) if the transaction that is the subject of the dispute did not involve a title transfer, the date that the construction was substantially complete unless otherwise expressly stated herein.
- (2) **Repair Obligations.** Unless otherwise stated under the various performance standards herein, if any such performance standard is not met, the Builder shall take such action as is necessary to bring the variance within the standard, subject to the terms and conditions herein. The method and manner of any repair is within the sole discretion of Builder. The Builder shall have the option in its sole and exclusive discretion to repair, replace or pay for the reasonable cost of repair of any construction defect or exercise any remedy available to it under law or contract, or any combination of any of the preceding. As a condition precedent to any obligation herein, the homeowner must make a written, unconditional assignment to the Builder or its designee any and all rights, remedies or otherwise that the homeowner has or may have against any other entity, person or third-party of or relating to the subject property, Improvements or otherwise. If the homeowner or any of homeowner's agents, representatives or affiliates have assigned or otherwise prejudiced any rights related this Express Limited Home Warranty or the subject property or Improvements, the obligations hereunder are waived to any such extent of said assignment or prejudice. The Builder retains all rights of subrogation, which shall not be assigned or waived by the homeowner. Builder has the unrestricted right to subrogation against any and all third-parties, including but not limited to any person or entity constructing, modifying, supplying materials, labor or otherwise to the Improvements, insuring the Improvements, or in any way causing Builder to incur or accept liability, damages or the like hereunder. Upon selection by Builder of the one or more options herein, the homeowner shall execute a recordable release of all claims and causes of action related to the construction defects, any condition and/or damages related to the construction defect, and this Express Limited Home Warranty to the extent of the construction defects, save and except that any remaining Warranty Period or express obligation hereunder shall not be released. No repairs performed by or on behalf of Builder shall extend the Warranty Period or any other obligation hereunder.
- (3) **Repair Condition.** In connection with a repair of a construction defect, any repairs performed by the Builder will include those components of the home that have to be removed or altered in order to repair the construction defect. Repair shall be made so that the condition is returned to its condition as it existed at the time immediately preceding the construction defect. Any repair will be finished or touched up to match the surrounding area as closely as practical but not necessarily to a like-new condition. Imperfections and variations may exist and should be expected. A repair or action bringing a variance within the standard under this warranty shall not cause the period of the applicable warranty to be extended.
- (4) **Finish.** Surfaces altered incident to any repair will be finished or touched up to match the surrounding area as closely as practical but not necessarily to a like-new condition. Imperfections and variations may exist and should be expected. In connection with the repair of finish or surface material, such as paint, wallpaper, flooring or a hard surface, the Builder will match the standard and grade as closely as reasonably possible. Builder will attempt to match the finish but will not be responsible for discontinued patterns or materials, color variations or shade variations. When the surface finish material must be replaced and the original material has been discontinued, the Builder is responsible for installing replacement material substantially similar in appearance to the original material.
- (5) **Manufactured Products.** The Builder shall install all manufactured products in accordance with the manufacturer's instructions and specifications.
- (A) The Builder shall use only new manufactured products and parts unless otherwise agreed in writing by the parties. If the Builder did not install a manufactured product in accordance with the manufacturer's specifications or use newly manufactured parts as required, the Builder shall take such action as is necessary to bring the variance within the standard.

(B) The homeowner shall notify the Builder in writing of a known construction defect not later than the second anniversary of the date of discovery of the construction defect or not later than thirty days following the applicable warranty period. In no event shall there be Builder Responsibility for any Manufactured Product that was installed in accordance with the manufacturer's instructions and specifications. In no event shall there be Builder Responsibility for any denial of warranty claim or otherwise by the manufacturer.

(6) Specialty Feature. Notwithstanding a performance standard stated in this Express Home Warranty, a specialty feature, which is work performed or material supplied incident to certain design elements shown on the construction plans and specifications and agreed to in writing by the Builder and the homeowner, shall be deemed to be compliant with the performance standards stated herein so long as all items are compliant with the Code.

(b) Exceptions and Exclusions from Builder's Responsibilities.

(1) The Builder is not responsible for repair, loss or damage to a component or that part of a component of a home caused by or made worse by any of the following:

- (A) Work performed or material supplied incident to construction, modification or repair to the home performed by anyone other than the Builder or persons providing work or material at the direction of the Builder.
- (B) The negligence, improper maintenance, misuse, abuse, failure to follow manufacturer's recommendations, failure to take reasonable action to mitigate damage, failure to take reasonable action to maintain the residence or other action or inaction of anyone other than the Builder or persons providing work or material at the direction of the Builder.
- (C) Failure of the homeowner to comply with the homeowner's responsibilities as set forth in subsection (c) of this section or as may be stated separately elsewhere in this warranty.
- (D) Alterations to, or the failure to maintain, the grade of the soil that are not in compliance with the Code, applicable governmental regulations or in compliance with an applicable drainage plan.
- (E) Normal wear and tear or normal deterioration to any component of the home.
- (F) Extreme weather conditions.
- (G) Riot, civil commotion, war, terrorism, vandalism, aircraft, vehicle or boat.
- (H) Fire, smoke or water damage unless such loss or damage is a direct result of a construction defect.
- (I) Change in the underground water table that exerts pressure on, seeps, or leaks under the home, sidewalk, driveway, foundation or other structure or causes subsidence or sinkholes.
- (J) Erosion or accretion of soils unless such loss or damage is a direct result of a construction defect.
- (K) Insects, birds, rodents, vermin or other wild or domestic animals unless such loss or damage is a direct result of a construction defect.
- (L) The quality and potability of water unless caused by a construction defect.
- (M) While the home is being used primarily for nonresidential purposes.
- (N) Use for which the home or the component of the home was not designed.
- (O) Use that exceeds the normal design loads prescribed by the Code or the engineer of record.
- (P) Homeowner delay in reporting a known construction defect or failing to take reasonable action necessary to prevent further damage to the home.

- (Q) For remodeling projects, improvements, alterations or additions to an existing residence where the performance standard cannot be achieved due to an existing condition.
 - (R) Abuse or misuse of a home component or manufactured product by anyone other than the Builder or persons providing work or material at the direction of the Builder.
 - (S) Failure and/or violation to meet applicable Code by itself for any element of construction or construction technique for the Property and/or Improvements is not negligence per se, breach of contract or breach of warranty and does not create a cause of action or Builder Responsibility. A claim or allegation that there is a failure to meet or violation of Code must be accompanied by both (1) actual physical resulting damage from that failure or violation of Code to the Property or Improvements and (2) an immediate threat to the health and safety for the occupants or invitees. There is no Builder Responsibility to repair any failure to meet Code or violation of Code that would result in economic waste.
 - (T) 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 this Express Limited Warranty.
- (2) No Actual Physical Damage. The Builder shall not be responsible for any condition that does not result in actual physical damage to the home, including, but not limited to the presence of radon gas, formaldehyde or other pollutants or contaminants, or the presence or effect of mold, mildew, toxic material, or volatile organic compound, unless such condition is a direct result of a construction defect.
- (c) Homeowner's Responsibilities.
- (1) Home Maintenance. Maintenance of the home and the lot on which the home is located are essential to the proper functioning of the home. The homeowner is responsible for maintenance of the home and the lot on which it is located and any contiguous property owned or controlled by the homeowner. The homeowner is responsible for maintenance items described in this paragraph and those maintenance items identified separately in the performance standards set forth in this warranty. Additionally, the homeowner is responsible for ongoing maintenance responsibilities that affect the performance of the home but that may not be expressly stated in this warranty. Such ongoing maintenance responsibilities include, but are not limited to, periodic repainting and resealing of finished surfaces as necessary, caulking for the life of the home, regular maintenance of mechanical systems, regular replacement of HVAC filters, cleaning and proper preservation of grading around the home and drainage systems to allow for the proper drainage of water away from the home.
 - (2) Manufactured Products. The homeowner shall use and perform periodic maintenance on all manufactured products according to the manufacturer's instructions and specifications. The misuse, abuse, neglect or other failure to follow manufacturer's specifications with regard to manufactured products may void the manufacturer's warranty. The Builder has no Builder Responsibility for Manufactured Products.
 - (3) Landscape Planting. The homeowner shall take measures to prevent landscaping materials or plants from contacting the exterior surface of the home and from interfering with the proper drainage of water away from the foundation. The homeowner should not improperly alter the proper drainage pattern or grade of the soil within ten feet of the foundation so that it negatively impacts the home's performance or fails to comply with the Code, governmental regulations or an applicable grading and drainage plan. There is no warranty for landscaping, plants, trees, grass or other plant materials.
 - (4) Subsequent Improvements. The homeowner shall take measures to prevent subsequent improvements, including but not limited to additions, patios, arbors, pools, and retaining walls from interfering with the proper drainage of water away from the foundation. The homeowner should not alter the proper drainage pattern or grade of the soil within ten feet of the foundation so that it negatively impacts the home's performance or fails to comply with the Code, governmental regulations or an applicable grading and drainage plan.

- (5) Humidity or Dryness in the Home. The homeowner should take the following actions to prevent excessive moisture accumulation by:
 - (A) properly using ventilation equipment;
 - (B) preventing excessive temperature fluctuation; and
 - (C) taking any other action reasonably necessary to avoid excessive moisture, dampness, humidity or condensation in the home that may lead to damage due to excessive moisture or dryness.
- (6) Proper Maintenance and Care of Home Components. The homeowner shall properly maintain each component of the home including proper cleaning, care and upkeep of the home. The homeowner shall use home components for the purposes for which they are intended and shall not damage, misuse or abuse home components.
- (7) Self-Help. Upon observation of a circumstance that may cause further damage to the home or a component of the home, the homeowner shall take reasonable action necessary to prevent further damage.

§ 3. Express Limited Home Warranty

- (a) Warranty periods. The warranty periods for residential construction and residential improvements are:
 - (1) one year for workmanship and materials;
 - (2) two years for plumbing, electrical, heating, and air-conditioning delivery systems; and
 - (3) six years for major structural components of the home.
- (b) Manufactured Product Warranties. The Builder will assign to the homeowner, without recourse, the manufacturer's warranty for all manufactured products that are covered by a manufacturer's warranty. Any rights that inure to the homeowner provided under a manufacturer's warranty are the obligation of the manufacturer. The Builder does not assume any of the obligations of the manufacturer resulting from a manufacturer's warranty, but shall coordinate with the manufacturer, suppliers or agents to achieve compliance with the performance standard. If the manufacturer does not comply with the manufacturer's warranty within a reasonable period of time, the Builder will make the affected condition comply with the performance standard and seek redress from the manufacturer.
- (c) Cosmetics, Workmanship and Materials Warranty and Performance Standards. Workmanship and materials in residential construction or residential improvements are warranted to perform to the performance standards that are set forth in this warranty for the minimum period established in subsection (a) paragraph (1) of this section, unless a greater period of warranty is agreed to by the parties.
- (d) Delivery Systems Warranty and Performance Standards. Plumbing, electrical, heating and air-conditioning delivery systems in residential construction and residential improvements shall be warranted to perform to the performance standards that are set forth in this warranty for the minimum period established in subsection (a) paragraph (2) of this section, unless a greater period of warranty is agreed to by the parties.
- (e) Structural Components Warranty and Performance Standards. Major structural components in residential construction and residential improvements shall be warranted to perform to the performance standards set forth herein for the minimum period established in subsection (a) paragraph (3) of this section, unless a greater period of warranty is agreed to by the parties.
- (f) Effective Date of Warranties.

- (1) Unless otherwise provided by a written agreement between the Builder and the initial homeowner or by a manufacturer, a warranty period as described in this section for a new home begins on the earlier of the date of occupancy or transfer of title from the Builder to the initial homeowner.
- (2) A warranty period as described in this section for an improvement other than a new home or for a partially built home, which by agreement between the homeowner and the Builder, someone other than the Builder will complete, begins on the date the improvement is substantially completed or the terms of the construction contract are substantially fulfilled.

ONE YEAR WARRANTY PERIOD

§ 4. Performance Standards for Yard Grading

- (a) Yards shall have grades, swales and/or other measures that provide for proper drainage in accordance with the Code, governmental regulations or otherwise in accordance with an applicable drainage and grading plan, if any, and/or approved variations. The homeowner shall maintain the drainage pattern and protect the grading contours from erosion, blockage, over-saturation or any other changes. The possibility of standing water, not immediately adjacent to the foundation but in the yard, after prolonged or an unusually heavy rainfall event should be anticipated by the homeowner.
- (b) Settling or sinking of soil shall not interfere with the drainage patterns of the lot or have a vertical depth of six inches or more.

§ 5. Performance Standards for Foundations and Slabs

- (a) Performance Standards for Raised Floor Foundations or Crawl Spaces.
 - (1) A crawl space shall be graded and drained properly to prevent surface run-off from accumulating deeper than two inches in areas 36 inches or larger in diameter. Water shall not enter into the basement or crawl space or seep through the basement floor. The homeowner shall not modify improperly the existing grade or allow water from an irrigation system to cause water to accumulate excessively under the foundation. The homeowner shall not allow landscape plantings to interfere with proper drainage away from the foundation. The homeowner shall not use the crawl space for storage of any kind.
 - (2) The homeowner shall not modify improperly the existing grade or allow water from an irrigation system to cause water to accumulate excessively near the foundation. The homeowner shall not allow landscape plantings to interfere with proper drainage away from the foundation.
- (b) Performance Standards for Concrete Slab Foundations, excluding Finished Concrete Floors.
 - (1) Concrete floor slabs in living spaces that are not otherwise designed with a slope for drainage, such as a laundry room, shall not have excessive pits, humps, depressions or unevenness equal to or exceeding 3/8 of an inch in any 32 inches and shall not have separations or cracks that equal or exceed 1/8 of an inch in width or 1/16 of an inch in vertical displacement.
 - (2) Concrete slabs shall not have protruding objects, such as a nail, rebar or wire mesh.
 - (3) Concrete portions of a raised-floor foundation should not have separations or cracks that equal or exceed 1/8 of an inch in width or 1/16 of an inch in vertical displacement.

- (4) A separation in an expansion joint in a concrete slab of a raised-floor foundation shall not equal or exceed 1/4 of an inch vertically or one inch horizontally from an adjoining section.
- (5) Slab-on-ground foundations should not have separations or cracks that equal or exceed 1/8 of an inch in width or 1/16 of an inch in vertical displacement.
- (6) A separation in an expansion joint in a concrete slab shall not equal or exceed 1/4 of an inch vertically or one inch horizontally from an adjoining section.
- (c) Performance Standards for Exterior Concrete including Patios, Stem Walls, Driveways, Stairs or Walkways.
 - (1) Concrete corners or edges shall not be damaged excessively due to construction activities.
 - (2) Exterior concrete shall not contain a protruding object, such as a nail, rebar or wire mesh.
 - (3) The finish on exterior concrete shall not be excessively smooth, so that the surface becomes slippery. A concrete surface that has been designed to be smooth is excepted from this performance standard.
 - (4) A driveway will not have a negative slope unless due to site conditions, it has swales or drains properly installed to prevent water from entering into a garage. If a driveway is sloped such that it allows water to enter a garage in normal weather conditions, the Builder shall take such action as is necessary to prevent water from entering the garage due to driveway slope.
 - (5) Concrete floor slabs in detached garages, carports or porte-cocheres shall not have excessive pits, depressions, deterioration or unevenness equal to or exceeding 3/8 of an inch in any 32 inches. Separations or cracks in these slabs shall not equal or exceed 3/16 of an inch in width, except at expansion joints, or 1/8 of an inch in vertical displacement.
 - (6) A crack in exterior concrete shall not cause vertical displacement equal to or in excess of 1/4 inch or horizontal separation equal to or in excess of 1/4 of an inch. The homeowner shall not over-water surrounding soil or allow the surrounding soil to become excessively dry. The homeowner shall not allow heavy equipment to be placed on the concrete.
 - (7) A separation in an expansion joint in an exterior concrete shall not equal or exceed 1/2 of an inch vertically from an adjoining section or one inch horizontally, including joint material.
 - (8) A separation in a control joint shall not equal or exceed 1/4 of an inch vertically or 1/2 of an inch horizontally from an adjoining section.
 - (9) Concrete stair steepness and dimensions, such as tread width, riser height, landing size and stairway width shall comply with the Code such that they perform their intended function without posing a safety risk.
 - (10) Concrete stairs or stoops shall not settle or heave in an amount such that they cannot perform their intended function without posing a safety risk. Concrete stairs or stoops shall not separate from the home in an amount equal to or exceeding one inch, including joint material.
 - (11) Handrails shall remain securely attached to concrete stairs.
 - (12) Plaster over concrete shall not flake off more than one square foot in one spot within 36 square inches or more than 3 feet over the entire surface of the home.

§ 6. Performance Standards for Framing

- (a) Building and Performance Standard for Walls.

- (1) Walls shall not bow or have depressions that equal or exceed 1/4 of an inch out of line within any 32-inch horizontal measurement as measured from the center of the bow or depression or 1/2 of an inch within any eight-foot vertical measurement.
 - (2) Walls shall be level, plumb and square to all adjoining openings or other walls within 3/8 of an inch in any 32-inch measurement.
 - (3) A crack in a beam or a post shall not equal or exceed 1/2 of an inch in width at any point along the length of the crack.
 - (4) A non-structural post or beam shall not have a warp or twist equal or exceeding one inch in eight-feet of length. Warping or twisting shall not damage beam pocket.
 - (5) Exterior sheathing shall not delaminate or swell. The homeowner shall not make penetrations in the exterior finish of a wall that allow moisture to come in contact with the exterior sheathing.
 - (6) An exterior moisture barrier shall not allow an accumulation of moisture inside the barrier. The homeowner shall not make penetrations through the exterior moisture barrier that permit the introduction of moisture inside the barrier.
- (b) Performance Standards for Ceilings. A ceiling shall not bow or have depressions that equal or exceed 1/2 of an inch out of line within a 32-inch measurement as measured from the center of the bow or depression running parallel with a ceiling joist.
- (c) Performance Standards for Sub-floors.
- (1) Under normal residential use, the floor shall not make excessive squeaking or popping sounds.
 - (2) Sub-floors shall not delaminate or swell to the extent that it causes observable physical damage to the floor covering or visually affects the appearance of the floor covering. Exposed structural flooring, where the structural flooring is used as the finished flooring, is excluded from the standard stated in this paragraph.
 - (3) Sub-flooring shall not have excessive humps, ridges, or depressions within any room that equals or exceeds 3/8 of an inch in any 32-inch direction.
- (d) Performance Standards for Stairs.
- (1) Stair steepness and dimensions such as tread width, riser height, landing size and stairway width shall be constructed in general compliance with the Code such that they perform their intended function without posing a safety risk.
 - (2) Under normal residential use, stairs shall not make excessive squeaking or popping sounds.

§ 7. Performance Standards for Drywall

- (a) A drywall surface shall not have a bow or depression that equals or exceeds 1/4 of an inch out of line within any 32-inch horizontal measurement as measured from the center of the bow or depression or 1/2 of an inch within any eight-foot vertical measurement; such measurement to be made utilizing a straight-edge which is held reasonably parallel to the plane of the wall or ceiling surface.
- (b) A ceiling made of drywall shall not have bows or depressions that equal or exceed 1/2 of an inch out of line within a 32-inch measurement as measured from the center of the bow or depression running parallel with a ceiling joist or within 1/2 of an inch deviation from the plane of the ceiling within any eight-foot measurement; such measurement to be made utilizing a straight-edge which is held reasonably parallel to the plane of the wall or ceiling surface.

- (c) A drywall surface shall not have a crack such that any crack equals or exceeds 1/32 of an inch in width at any point along the length of the crack.
- (d) Crowning at a drywall joint shall not equal or exceed 1/4 of an inch within a twelve-inch measurement centered over the drywall joint. Crowning occurs when a drywall joint is higher than the plane of the drywall board on each side.
- (e) A drywall surface shall not have surface imperfections such as blisters, cracked corner beads, seam lines, excess joint compound or trowel marks that are visible from a distance of six feet or more in normal light. Minor variations in the 'splatter' or 'drag' appearance of texture which are the result of the original installation or subsequent repair work, visible from any distance, are not considered to be warrantable defects under this warranty.
- (f) A drywall surface shall not be out of level (horizontal), plumb (vertical) or square (perpendicular at a 90-degree angle) such that there are variations in those measurements to wall or surface edges at any opening, corner, sill, shelf, etc. shall not equal or exceed 3/8 of an inch in any 32-inch measurement along the wall or surface. This standard shall not apply to remodeling projects where existing conditions do not permit the Builder to achieve the performance standard. At or about the time of discovery of such a preexisting condition, a remodeler shall notify the homeowner, in writing, of any existing condition that prevents achievement of the standard. Accumulations of drywall compound in wall corners, at wallboard joints or outside corners, and at door, window or built-in cabinet openings, may not be the sole determinant that a wall or ceiling section is out of plumb or square.
- (g) Nails or screws shall not be visible in a drywall surface from a distance of 6 feet under normal lighting conditions.

§ 8. Performance Standards for Insulation

- (a) Insulation shall be installed in the walls, ceilings and floors of a home in accordance with the building plan and specifications and the Code.
- (b) Blown insulation in the attic shall not displace or settle so that it reduces the R-value below manufacturer's specifications, the building plans and the Code.
- (c) A gap equal to or in excess of 1/4 of an inch between insulation batts or a gap between insulation batts and framing members is not permitted.
- (d) In vented attics, insulation shall not cover or block a soffit vent to the extent that it blocks the free flow of air.
- (e) In unvented attics, insulation shall be installed in compliance with the Code.

§ 9. Performance Standards for Exterior Siding and Trim

- (a) Performance Standards for Exterior Siding.
 - (1) Exterior siding shall be equally spaced and properly aligned. Horizontal siding shall not equal or exceed 1/2 of an inch off parallel with the bottom course or 1/4 of an inch off parallel with the adjacent course from corner to corner.
 - (2) Siding shall not gap or bow. A siding end joint shall not have a gap that leaks or that equals or exceeds 1/4 of an inch in width. Siding end joint gaps shall be caulked. A bow in siding shall not equal or exceed 3/8 of an inch out of line in a 32-inch measurement.
 - (3) Nails shall not protrude from the finished surface of siding but nail heads may be visible on some products where allowed by the manufacturer's specifications.
 - (4) Siding shall not have a nail stain.
 - (5) Siding and siding knots shall not become loose or fall off.

- (6) Siding shall not delaminate.
- (7) Siding shall not cup in an amount equal to or exceeding 1/4 of an inch in a six-foot run.
- (8) Siding shall not have cracks or splits that equal or exceed 1/8 of an inch in width.

(b) Performance Standards for Exterior Trim.

- (1) A joint between two trim pieces or between a trim piece and the adjoining material shall not have a separation that is equal to or exceeding 1/4 of an inch in width. All trim joints shall be caulked and shall not leak.
- (2) Exterior trim and eave block shall not warp in an amount equal to or exceeding 1/2 of an inch in an eight-foot run.
- (3) Exterior trim and eave block shall not cup in an amount equal to or in excess of a 1/4 of an inch in a six-foot run.
- (4) Exterior trim and eave block shall not have cracks or splits equal to or in excess of 1/8 of an inch in average width.
- (5) Trim shall not have nails that completely protrude through the finished surface of the trim but nail heads may be visible on some products. Some products specify that the nails be flush with the trim surface. When these products are used, visible nail heads are not considered protruding nails as long as they are painted over.
- (6) Trim shall not have a nail stain.

§ 10. Performance Standards for Masonry including Brick, Block and Stone

- (a) A masonry wall shall not bow in an amount equal to or in excess of one inch when measured from the base to the top of the wall. The standard set forth in this subsection does not apply to natural stone products.
- (b) A masonry unit or mortar shall not be broken or loose.
- (c) A masonry mortar crack shall not equal or exceed 1/8 of an inch in width.
- (d) A masonry unit or mortar shall not deteriorate.
- (e) Masonry shall not have dirt, stain or debris on the surface due to construction activities.
- (f) A gap between masonry and adjacent material shall not equal or exceed 1/4 of an inch in average width and all such gaps shall be caulked.
- (g) Mortar shall not obstruct a functional opening, such as a vent, weep hole or plumbing cleanout. The homeowner shall not put any material into weep holes. Weep holes are an integral part of the wall drainage system and must remain unobstructed.

§ 11. Performance Standards for Stucco

- (a) Stucco surfaces shall not be excessively bowed, uneven, or wavy. This standard shall not apply to decorative finishes.
- (b) Stucco shall not be broken or loose.
- (c) Stucco shall not have cracks that equal or exceed 1/8 of an inch in width at any point along the length of the crack. The Builder shall not be responsible for repairing cracks in stucco caused by the homeowner's actions, including but not limited to periodic maintenance, caulking, painting, diversion of water onto the surface of the stucco, attachment of devices to the stucco surface, such as, but not limited to, patio covers, plant holders, awnings and hose racks.

- (d) The homeowner shall not allow water from irrigation systems to contact stucco finishes.
- (e) Stucco shall not have dirt, stain or debris on surface due to construction activities.
- (f) Stucco surfaces shall not have imperfections that are visible from a distance of six feet under normal lighting conditions that disrupt the overall uniformity of the finished pattern.
- (g) The lath shall not be exposed.
- (h) A separation between the stucco joints shall not equal or exceed 1/16 of an inch in width.
- (i) A separation between a stucco surface and adjacent material shall not equal or exceed 1/4 of an inch in width and all separations shall be caulked.
- (j) Stucco shall not obstruct a functional opening, such as a vent, weep hole or plumbing cleanout.
- (k) Stucco screed shall have a minimum clearance of at least 4 inches above the soil or landscape surface and at least 2 inches above any paved surface.
- (l) Exterior Insulation Finish Systems (EIFS) stucco screed shall clear any paved or unpaved surface by 6 inches.

§ 12. Performance Standards for Roofs

- (a) Flashing shall prevent water penetration. The Builder shall not be responsible for leaks caused by extreme weather.
- (b) The roof shall not leak.
 - (1) The Builder shall not be responsible for leaks caused by extreme weather, persistent or unusual weather.
 - (2) The homeowner shall perform periodic maintenance to prevent leaks due to build-up of debris, snow or ice. The homeowner shall take such action as is necessary to prevent downspouts and gutters from becoming clogged.
- (c) A vent, louver or other installed attic opening shall not leak. The Builder shall not be responsible for leaks caused by extreme weather.
- (d) A gutter or downspout shall not leak or retain standing water. After cessation of rainfall, standing water in an unobstructed gutter shall not equal or exceed 1/2 of an inch in depth.
 - (1) The Builder shall not be responsible for leaks caused by extreme weather, persistent or unusual weather.
 - (2) The homeowner shall maintain and clean gutters and downspouts to prevent buildup of debris or other obstructions.
- (e) Shingles, tiles, metal or other roofing materials shall not become loose or fall off in wind speeds less than those set forth in the manufacturer's specifications.
- (f) A skylight shall not leak.
- (g) Water shall drain from a built-up roof within two hours after cessation of rainfall. The standard does not require that the roof dry completely within the time period.
- (h) A roof tile shall not be cracked or broken. No shingle shall be broken so that it detracts from the overall appearance of the home.
- (i) A pipe, vent, fireplace or other object designed to penetrate the roof shall not be located within the area of roof valley centerline without proper "cricketing" or other Code-approved water diversion methods.

- (j) The exterior moisture barrier of the roof shall not allow moisture penetration. The homeowner shall not make penetrations through exterior moisture barrier of the roof.

§ 13. Performance Standards for Doors and Windows

(a) Performance Standards for Both Doors and Windows.

- (1) When closed, a door or window shall not allow excessive infiltration of air or dust.
- (2) When closed, a door or window shall not allow excessive accumulation of moisture inside the door or window.
 - (A) The homeowner shall keep weep holes on windows and doors free of dirt buildup and debris, thereby allowing water to drain properly.
 - (B) Most door and window assemblies are designed to open, close and weep moisture--allow condensation or minor penetration by the elements to drain outside.
- (3) Glass in doors and windows shall not be broken due to improper installation or construction activities.
- (4) A screen in a door or window shall fit properly and shall not be torn or damaged due to construction activities. A screen shall not have a gap equal to or exceeding 1/4 of an inch between the screen frame and the window frame.
- (5) There shall be no condensation between window and door panes in a sealed insulated glass unit. The homeowner shall not apply a tinted window film or coating to window or door panes in sealed insulated glass units.
- (6) A door or window latch or lock shall close securely and shall not be loose or rattle.
- (7) A door or window shall operate easily and smoothly and shall not require excessive pressure when opening or closing.
- (8) A door or window shall be painted or stained according to the manufacturers' specifications.

(b) Performance Standards for Windows. A double hung window shall not move more than two inches when put in an open position.

(c) Performance Standards for Doors.

- (1) A sliding door and door screen shall stay on track. The homeowner shall clean and lubricate sliding door or door screen hardware as necessary.
- (2) The spacing between an interior door bottom and original floor covering, except closet doors, shall not exceed 1.5 inches and shall be at least 1/2 of an inch. The spacing between an interior closet door bottom and original floor covering shall not exceed two inches and shall be at least 1/2 of an inch.
- (3) A door shall not delaminate.
- (4) A door panel shall not split so that light from the other side is visible.
- (5) A door shall open and close without binding.
- (6) A door shall not warp to the extent that it becomes inoperable. A warp in a door panel shall not equal or exceed 1/4 of an inch from original dimension measured vertically, horizontally or diagonally from corner to corner.
- (7) A storm door shall open and close properly and shall fit properly.

- (8) When a door is placed in an open position, it shall remain in the position it was placed, unless the movement is caused by airflow.
- (9) A metal door shall not be dented or scratched due to construction activities.

(d) Performance Standards for Garage Doors.

- (1) A metal garage door shall not be dented or scratched due to construction activities.
- (2) A garage door opener, if provided, shall operate properly in accordance with manufacturer's specifications. A homeowner shall maintain tracks, rollers and chains and shall not block or bump sensors to electric garage door openers.
- (3) A garage door shall not allow excessive water to enter the garage and the gap around the garage door shall not equal or exceed 1/2 of an inch in width.
- (4) A garage door spring shall operate properly and shall not lose appreciable tension, break or be undersized.
- (5) A garage door shall remain in place at any open position, operate smoothly and not be off track.

§ 14. Performance Standards for Interior Flooring

- (a) Performance Standards for Carpet, Vinyl Flooring and Wood Flooring. Performance standards for ceramic tile, flagstone, marble, granite, slate, quarry tile, other hard surface floors, and finished concrete floors, are located in this section.

(b) Performance Standards for Carpet.

- (1) Carpet shall not wrinkle and shall remain tight, lay flat and be securely fastened.
- (2) Carpet seams may be visible but shall be smooth without a gap or overlap.
- (3) Carpet shall not be stained or spotted due to construction activities.

(c) Performance Standards for Finished Concrete Floor.

- (1) A finished slab, located in a living space that is not otherwise designed for drainage, shall not have pits, humps, depressions or unevenness that equals or exceeds 3/8 of an inch in any 32 inches. Finished concrete slabs in living spaces that are designed for drainage, such as a laundry room, are excepted from the standards stated in paragraph (1) of this subsection.
- (2) Finished concrete slabs in living spaces shall not have separations, including joints, and cracks that equal or exceed 1/8 of an inch in width or 1/16 of an inch in vertical displacement.

(d) Performance Standards for Wood Flooring.

- (1) Wood flooring shall not have excessive humps, depressions or unevenness that equals or exceeds 3/8 of an inch in any 32-inch direction within any room.
- (2) Wood flooring shall remain securely attached to the foundation or sub-floor unless the wood flooring is designed to be installed without nails, glue, adhesives or fasteners.
- (3) Wood flooring shall not have open joints and separations that equal or exceed 1/8 of an inch. These standards do not apply to non-hardwood species that contain greater moisture and may shrink after installation or structural floors that are designed to serve as the finished floor. If the floor is designed as a structural finish floor, the Builder must provide a written explanation of the characteristics of that floor to the homeowner prior to the execution of the contract or installation of the product, whichever occurs later.

- (4) Strips of floorboards shall not cup in an amount that equals or exceeds 1/16 of an inch in height in a three-inch distance when measured perpendicular to the length of the board. This standard does not apply to non-hardwood species that typically shrink after installation or structural floors that are designed to serve as the finished floor. If the floor is designed as a structural finish floor, the Builder must provide a written explanation of the characteristics of that floor to the homeowner.
- (5) Unless installed as a specialty feature, wood flooring shall not have excessive shade changes or discoloration due to the construction activities of the Builder.
- (6) Unless installed as a specialty feature, wood flooring shall not be stained, spotted or scratched due to construction activities of the Builder.

(e) Performance Standards for Vinyl Flooring.

- (1) Vinyl flooring shall be installed square to the most visible wall and shall not vary by 1/4 of an inch in any six-foot run.
- (2) The seam alignment in vinyl flooring shall not vary such that the pattern is out of alignment in an amount that equals or exceeds 1/8 of an inch.
- (3) Vinyl flooring shall remain securely attached to the foundation or sub-floor.
- (4) A vinyl floor shall not have a depression that equals or exceeds 1/2 of an inch in any six-foot run. If a vinyl floor has a depression that exceeds the standard stated in this paragraph and the depression is due to construction activities, the Builder shall take such action as is necessary to bring the variance within the standard.
- (5) A vinyl floor shall not have a ridge that equals or exceeds 1/2 of an inch when measured as provided in this paragraph. The ridge measurement shall be made by measuring the gap created when a six-foot straight edge is placed tightly three inches on each side of the defect and the gap is measured between the floor and the straight edge at the other end. If a vinyl floor has a ridge that fails to comply with the standard stated in this paragraph and the ridge is due to construction activities, the Builder shall take such action as is necessary to bring the variance within the standard.
- (6) Vinyl floor shall not be discolored, stained or spotted due to the construction activities of the Builder.
- (7) Vinyl flooring shall not be scratched, gouged, cut or torn due to construction activities.
- (8) Debris, sub-floor seams, nails and/or screws shall not be detectable under the vinyl floor from a distance of three feet or more in normal light.
- (9) Sub-flooring shall not cause vinyl flooring to rupture.
- (10) A seam in vinyl flooring shall not have a separation that equals or exceeds 1/16 of an inch in width. Where dissimilar materials abut, there shall not be a gap equal to or greater than 1/8 of an inch.

§ 15. Performance Standards for Hard Surfaces, including Ceramic Tile, Flagstone, Marble, Granite, Slate, Quarry Tile, Finished Concrete or Other Hard Surfaces

(a) Performance Standards for Hard Surfaces Generally.

- (1) A hard surface shall not break or crack due to construction activities.
- (2) A hard surface shall remain secured to the substrate.
- (3) A surface imperfection in floor hard surface shall not be visible from a distance of three feet or more in normal light. A surface imperfection in non-floor hard surface shall not be visible from a distance of two feet or more in

normal light. If a hard surface fails to meet the standards stated in this paragraph due to construction activities, the Builder shall take such action as is necessary to bring the variance within the standard.

- (4) Color variations between field hard surfaces and trim hard surfaces should not vary excessively due to construction activities. Natural products such as flagstone, marble, granite, slate and other quarry tile will have color variation.
- (5) Hard surface areas shall not leak.
- (6) The surfaces of two adjacent hard surfaces shall not vary in an amount equal to or exceeding 1/16 of an inch displacement at a joint (lippage) in addition to the actual manufacturing variations of the hard surface, such as warpage or dimensional differences in the hard surfaces, including thickness. If a joint between two hard surfaces fails to meet the performance standard stated in this paragraph (excluding trim pieces), the Builder shall take such action as is necessary to bring the variance within the standard.
- (7) Hard surface layout or grout line shall not be excessively irregular. Natural products such as flagstone, marble, granite, slate, and other quarry tile will have size variations that may create irregular layouts or grout lines.
- (8) Hard surface countertops shall be level to within 1/4 of an inch in any six-foot measurement.
- (9) Hard surface floors located in a living space that is not otherwise designed for drainage, shall not have pits, depressions, or unevenness that equals or exceeds 3/8 of an inch in any 32 inches. Finished hard surface floors located in living spaces that are designed for drainage, such as a laundry room, are excepted from the standards stated in paragraph (1) of this subsection.

(b) Performance Standards for Grout.

- (1) Grout shall not deteriorate.
- (2) Cracks in grout shall not exceed 1/16 of an inch in width.
- (3) Grout shall not change shade or discolor excessively due to construction activities.

(c) Performance Standards for Concrete Countertops.

- (1) A concrete countertop shall not have excessive pits, humps, depressions, or unevenness that equal or exceed 1/8 of an inch in any 32-inch measurement.
- (2) A concrete countertop shall not have separations or cracks equal to or exceeding 1/16 of an inch in width or 1/64 of an inch in vertical displacement.
- (3) A finished concrete countertop shall not be stained, spotted or scratched due to construction activities.
- (4) A concrete countertop shall not have a chipped edge that extends beyond 1/16 of an inch from the edge of the countertop due to construction activities.
- (5) A concrete countertop shall not change shade or discolor excessively due to construction activities.

§ 16. Performance Standards for Countertops and Backsplashes

(a) Performance Standards for Countertops and Backsplashes Generally.

- (1) A countertop or backsplash shall be secured to substrate in accordance with manufacturer's specifications.
- (2) For non-laminate countertops and backsplashes, the joints between countertop surfaces, between the countertop surface and the backsplash or side-splash and between adjoining backsplash panels may be visible but shall not separate.

- (3) Countertops shall be level to within 1/4 of an inch in any six-foot measurement.
 - (4) A countertop surface or edge shall not be damaged, broken, chipped or cracked due to construction activities.
 - (5) A countertop shall not bow or warp in an amount equal to or exceeding 1/16 of an inch per lineal foot.
 - (6) Counter and vanity top material should not delaminate.
- (b) Performance Standards for Laminate Countertops and Backsplashes.
- (1) Laminate countertops and backsplashes shall not delaminate and shall remain securely attached to the substrate. Delamination is the separation of the finish surface veneer from the substrate material.
 - (2) A seam in a laminate countertop or backsplash may be visible but shall not be separated or displaced.
 - (3) A surface imperfection in a laminate countertop or a backsplash shall not be visible from a distance of three feet or more when viewed in normal light due to construction activities.

§ 17. Performance Standards for Painting, Stain and Wall Coverings

- (a) Performance Standards for Caulking. Interior caulking shall not deteriorate or crack excessively.
- (b) Performance Standards for Painting and Stain.
- (1) Paint or stain shall not have excessive color, shade or sheen variation. This standard shall not apply to stained woodwork.
 - (2) Paint shall cover all intended surfaces so that unpainted areas shall not show through paint when viewed from a distance of six feet in normal light.
 - (3) Interior paint or stain shall not deteriorate.
 - (4) Exterior paint or stain shall not deteriorate excessively.
 - (5) Paint over-spray shall not exist on any surface for which it was not intended.
 - (6) Interior varnish, polyurethane or lacquer finish shall not deteriorate.
 - (7) Exterior varnish, polyurethane or lacquer finishes shall not deteriorate excessively. Exterior varnish, polyurethane or lacquer finishes that are subject to direct sunlight are excluded from this standard.
 - (8) Interior painted, varnished or finished surface shall not be scratched, dented, nicked or gouged due to construction activities.
 - (9) A paint product shall perform as represented by the manufacturer to meet manufacturer's specifications for washability and/or scrubability.
- (c) Performance Standards for Wall Coverings.
- (1) A wall covering shall be properly secured to the wall surface and shall not peel or bubble.
 - (2) Pattern repeats in wall coverings shall match. Wall coverings shall be installed square to the most visible wall. Pattern repeats shall not vary in an amount equal to or exceeding 1/4 of an inch in any six-foot run.
 - (3) A wall covering seam shall not separate or gap.
 - (4) Lumps or ridges in a wall covering shall not be detectable from a distance of six feet or more in normal light.
 - (5) Wall coverings shall not be discolored, stained or spotted due to construction activities.

- (6) Wall coverings shall not be scratched, gouged, cut or torn due to construction activities.
- (7) Wall coverings shall perform as represented by the manufacturer to meet manufacturer's specifications for washability and/or scrubability.

§ 18. Performance Standards for Interior Trim

(a) Performance Standards for Trim.

- (1) An interior trim joint separation shall not equal or exceed 1/8 of an inch in width or shall not separate from adjacent surfaces equal to or in excess of 1/8 inch and all joints shall be caulked or puttied.
- (2) The interior trim shall not have surface damage, such as scratches, chips, dents, gouges, splits, cracks, warping or cupping that is visible from a distance of six feet or more in normal light due to construction activities.
- (3) A hammer mark on trim shall not be visible from a distance of six feet or more when viewed in normal light.
- (4) A nail or nail hole in interior trim shall not be visible from a distance of six feet or more when viewed in normal light.

(b) Performance Standards for Shelving. Shelving, rods and end supports shall be installed in accordance with the measurements stated in this subsection. The length of a closet rod shall not be shorter than the actual distance between the end supports in an amount equal to or exceeding 1/4 of an inch. The length of a shelf shall not be shorter than the actual distance between the supporting walls by an amount equal to or exceeding 1/4 of an inch. End supports shall be securely mounted.

(c) Performance Standard for Cabinet Doors. Cabinet doors shall open and close with reasonable ease. Cabinet doors shall be even and shall not warp more than 1/4 inch when measured from the face to the point of the furthest point of the door or drawer front when closed. Some warping, cupping, bowing or twisting is normally caused by surface temperature and humidity changes.

§ 19. Performance Standards for Mirrors, Interior Glass and Shower Doors

- (a) A mirror, interior glass or shower door shall not be loose and shall be securely mounted or attached to the supporting surface. Fixtures, such as towel bars or door handles, shall be securely mounted.
- (b) A mirror, interior glass or shower door shall not be damaged due to construction activities.
- (c) A shower door shall not leak due to Builder fault or construction activities.
- (d) Imperfections in a mirror or shower door shall not be visible from a distance of two feet or more when viewed in normal light.
- (e) When opening and closing, a shower door shall operate easily and smoothly without requiring excessive pressure.

§ 20. Performance Standards for Hardware and Ironwork

(a) Performance Standards for Hardware.

- (1) Hardware finishes shall not be tarnished, blemished, corroded or stained due to construction activities, unless the finish is installed as a specialty feature. The Builder is not responsible for tarnished, blemished, or stained

hardware finishes that have been damaged by factors that are beyond the manufacturer's or the Builder's control such as the homeowner's use of abrasive pads or cleaners, harsh chemicals, alcohol, organic solvents or deterioration caused by exposure to outdoor elements such as salt air or humidity.

- (2) Hardware shall function properly, without catching binding or requiring excessive force to operate.
- (3) Hardware shall not be scratched, chipped, cracked or dented due to construction activities.
- (4) Hardware shall be installed securely and shall not be loose. The homeowner shall not exert excessive force on hardware.

(b) Performance Standards for Interior Ironwork.

- (1) Interior ironwork shall not rust.
- (2) The Builder is not responsible for ironwork finishes that rust due to factors that are beyond the manufacturer's or the Builder's control such as the homeowner's use of abrasive pads or cleaners, harsh chemicals, alcohol, organic solvents or deterioration caused by exposure to humidity.

§ 21. Performance Standards for Fireplaces

- (a) A refractory panel shall not crack or separate. The homeowner shall not use synthetic logs or other materials if not approved by the manufacturer.
- (b) A fireplace door shall operate properly. Fireplace doors shall meet evenly and shall not be out of alignment from one another in an amount equal to or exceeding 1/8 of an inch in any direction.
- (c) A fireplace shall not have a gas leak.
- (d) Gas logs shall be positioned in accordance with the manufacturer's specifications. The homeowner shall not incorrectly reposition or relocate the logs after the original placement. The homeowner shall not place the logs in a manner that does not allow the flame to flow through the logs according to the manufacturer's specifications.
- (e) A crack in masonry hearth or facing shall not be equal to or exceed 1/4 of an inch in width.
- (f) A fireplace or chimney shall draw properly.
- (g) A firebox shall not have excessive water infiltration under normal weather conditions.
- (h) A fireplace fan shall not exceed the noise level established by the manufacturer's specifications.

§ 22. Performance Standards for Irrigation Systems

- (a) An irrigation system shall not leak, break or clog due to construction activities or due to soil settlement.
- (b) An irrigation system shall be installed such that sprinkler coverage shall be complete and water shall not spray an unintended area due to construction activities.
- (c) The irrigation system control shall operate in accordance with manufacturer's specifications. The Builder shall provide the homeowner with instructions on the operation of the irrigation system at closing.

§ 23. Performance Standards for Fencing

- (a) A fence shall not fall over and shall not lean in excess of two inches out of plumb due to construction activities.
- (b) A wood fence board shall not be broken due to construction activities. Wood fence board shall not become detached from the fence due to construction activities of the Builder.
- (c) A masonry unit or mortar in a fence shall not be broken or loose. A crack in a masonry unit shall not occur. A crack in the mortar shall not equal or exceed 1/8 of an inch in width.
- (d) A masonry wall shall have adequate weep holes in the lowest course as required by the Code to allow seepage to pass through the wall.

§ 24. Performance Standards for Pest Control.

- (a) Eave returns, truss blocks, attic vents and roof vent openings shall not allow rodents, birds, and other similar pests into the home or attic space.

§ 25. Performance Standards for Plumbing

(a) Performance Standards for Plumbing Accessories.

- (1) A fixture surface shall not have a chip, crack, dent or scratch due to construction activities.
- (2) A fixture shall not have tarnish, blemishes or stains unless installed as a specialty feature. Fixture finishes that are tarnished, blemished or stained due to high iron, manganese or other mineral content in water are excluded from this standard.
- (3) A fixture or fixture fastener shall not corrode. A Builder is not responsible for corrosion caused by factors beyond the manufacturer's or the Builder's control, including the homeowner's use of corrosive chemicals or cleaners or corrosion caused by water content.
- (4) A decorative gas appliance shall be installed in accordance with manufacturer's specifications and when so installed shall function in accordance with manufacturer's representations.
- (5) Fixtures shall be secure and not loose. The homeowner shall not exert excessive force on a fixture.
- (6) A fixture stopper shall operate properly and shall retain water in accordance with the manufacturer's specifications.
- (7) The toilet equipment shall not allow water to run continuously. If toilet equipment allows water to run continuously, the homeowner shall shut off the water supply or take such action as is necessary to avoid resulting damage.
- (8) A toilet shall be installed and perform in accordance with the manufacturer's specifications. In the event of water spillage, the homeowner shall shut off the water supply and take such action as is necessary to avoid resulting damage.
- (9) A tub or shower pan shall not crack.
- (10) A tub or shower pan shall not squeak excessively.
- (11) A water heater shall be installed and secured according to the manufacturer's specifications and the Code.
- (12) A waste disposal unit shall be installed and operate according to the manufacturer's specifications.

- (13) A faucet or fixture shall not drip or leak. This standard does not include drips or leaks due to debris or minerals from the water source, unless it is due to construction activities.
- (14) A sump pump shall be installed in accordance with the manufacturer's specifications and shall operate properly when so installed.

(b) Performance Standards for Pipes and Vents.

- (1) A sewer gas odor originating from the plumbing system shall not be detectable inside the home under conditions of normal residential use. The homeowner shall keep plumbing traps filled with water.
- (2) A vent stack shall be free from blockage and shall allow odor to exit the home.
- (3) A water pipe shall not make excessive noise such as banging or hammering repeatedly. A water pipe subject to expansion or contraction of the pipe as warm or cool water flows through the pipe may cause a "ticking" sound temporarily. The standard stated in this subsection does not require a Builder to remove all noise attributable to water flow and pipe expansion.

§ 26. Performance Standards for Heating, Cooling and Ventilation

(a) Performance Standards for Heating and Cooling.

- (1) A condensation line shall not be obstructed due to construction activities. The homeowner shall periodically check for the free flow of condensate (water) from the line and clear the line when necessary.
- (2) A drip pan and drain line shall be installed under a horizontal air handler as per the Code. The homeowner shall periodically check for the free flow of condensate (water) from the line and clear the line when necessary.
- (3) Insulation shall completely encase the refrigerant line according to Code. The homeowner shall ensure that insulation on the refrigerant line is not damaged or cut due to home maintenance or landscape work.
- (4) An exterior compressor unit shall be installed in accordance with the manufacturer's instructions and specifications. The bottom of the exterior compressor unit support shall not be below ground level. The homeowner shall ensure that settlement of the exterior compressor unit pad does not occur due to home maintenance, landscape work or excessive water from irrigation.

(b) Performance Standards for Venting.

- (1) An appliance shall be vented according to the manufacturer's specifications.
- (2) Back draft dampers shall be installed and function according to the manufacturer's specifications.

(c) Performance Standards for Ductwork. Ductwork shall not make excessive noise.

- (1) The flow of air, including its velocity, or the expansion of ductwork from heating and cooling may cause common "ticking" or "crackling" sounds. The Builder shall have no responsibility for correction in such cases.
- (2) The homeowner shall not place any object on the ductwork.

§ 27. Performance Standards for Electrical Systems and Fixtures

- (a) Excessive air infiltration shall not occur around electrical system components or fixtures.
- (b) A fixture or trim plate shall not be chipped, cracked, dented or scratched due to construction activities.
- (c) A fixture or trim plate finish shall not be tarnished, blemished or stained due to construction activities.

- (d) A fixture, electrical box or trim plate shall be installed in accordance with the Code and shall be plumb and level.
- (e) Fixtures, such as lights, fans and appliances shall operate properly when installed in accordance with the manufacturer's specifications.
- (f) A smoke detector shall operate according to the manufacturer's specifications and shall be installed in accordance with the Code.
- (g) An exhaust fan shall operate within the manufacturer's specified noise level.
- (h) A carbon monoxide detector shall operate according to the manufacturer's specifications and shall be installed in accordance with the Code.

TWO YEAR WARRANTY PERIOD

§ 28. Performance Standards for Plumbing Delivery Systems

- (a) Performance Standards for Pipes including Water and Gas Pipes, Sewer and Drain Lines, Fittings and Valves but not including pipes included in a Landscape Irrigation System.
 - (1) Pipes shall be installed and insulated in accordance with the Code and manufacturer's specifications.
 - (A) If a water pipe bursts, the Builder shall take such action as is necessary to bring the variance within the standard stated in paragraph (1) of this subsection.
 - (B) The homeowner is responsible for insulating and protecting exterior pipes and hose bibs from freezing weather and for maintaining a reasonable temperature in the home during periods of extremely cold weather. The homeowner is responsible for maintaining a reasonable internal temperature in a home regardless of whether the home is occupied or unoccupied and for periodically checking to ensure that a reasonable internal temperature is maintained.
 - (2) A water pipe shall not leak. The homeowner shall shut off water supply immediately if such is required to prevent further damage to the home.
 - (3) A gas pipe shall not leak, including natural gas, propane or butane gas. If a gas pipe is leaking, the homeowner shall shut off the source of the gas if the homeowner can do so safely.
 - (4) Water pressure shall not exceed 80 pounds per square inch in any part of the water supply system located inside the home. Minimum static pressure at the building entrance for either public or private water service shall be 40 pounds per square inch in any part of the water supply system. This standard assumes the public or community water supply reaches the home side of the meter at 40 pounds per square inch. The Builder is not responsible for water pressure variations originating from the water supply source.
 - (5) A sewer, drain, or waste pipe shall not become clogged or stopped up due to construction activities.
 - (A) The Builder shall take such action as is necessary to unclog a sewer, drain or waste pipe that is clogged or stopped up due to construction activities.
 - (B) The homeowner shall shut off water supply immediately if such is required to prevent damage to the home.
- (b) Performance Standards for Individual Wastewater Treatment Systems. A wastewater treatment system should be capable of properly handling normal flow of household effluent in accordance with the Texas Commission on Environmental Quality requirements.

- (1) The Builder shall take such action as is necessary for the wastewater treatment system to perform within the standard stated in this subsection.
- (2) The Builder is not responsible for:
 - (A) system malfunctions or damage due to the addition of a fixture, equipment, appliance or other source of waste or water into the septic system by a person other than the Builder or a person working at the Builder's direction; or
 - (B) malfunctions or limitations in the operation of the system attributed to a design restriction imposed by state, county or local governing agencies; or
 - (C) malfunctions caused by freezing, soil saturation, soil conditions, changes in ground water table or any other acts of nature.

§ 29. Performance Standards for Heating, Air Conditioning and Ventilation Delivery Systems

- (a) A refrigerant line shall not leak. Condensation on a refrigerant line is not a leak.
- (b) Performance Standards for Heating and Cooling Functions.
 - (1) A heating system shall produce an inside temperature of at least 68-degrees Fahrenheit as measured two feet from the outside wall of a room at a height of three feet above the floor under local outdoor winter design conditions as specified in the Code. Temperatures may vary up to 4-degrees Fahrenheit between rooms but no less than the standard set forth above in paragraph (1) of this subsection. If the homeowner modifies or changes the size or configuration of the system or the square footage associated property or dwelling, the heating system or the ductwork shall negate the Builder's responsibility to take measures to meet this performance standard.
 - (2) An air-conditioner system shall produce an inside temperature of at most 78-degrees Fahrenheit as measured in the center of a room at height of five feet above the floor, under local outdoor summer design conditions as specified in the Code. (In the case of outside temperatures exceeding 98 degrees Fahrenheit, the system shall keep the inside temperature 20 degrees cooler than the outside temperature.) This standard does not apply to evaporative or other alternative cooling systems or if the homeowner makes changes to the size or configuration of the home, the air-conditioning system or the ductwork. Internal temperatures may vary up to 4-degrees Fahrenheit between rooms but no more than the standard set forth above in paragraph (2) of this subsection. If the homeowner modifies or changes the size or configuration of the system or the square footage associated property or dwelling, the cooling system or the ductwork shall negate the Builder's responsibility to take measures to meet this performance standard.
 - (3) A thermostat reading shall not differ by more than 4-degrees Fahrenheit from the actual room temperature taken at a height of five feet above the floor in the center of the room where the thermostat is located. The stated performance standard is related to the accuracy of the thermostat and not to the performance standard of the room temperature.
 - (4) Heating and cooling equipment shall be installed and secured according to the manufacturer's instructions and specification and shall not move excessively.
- (c) Performance Standards for Vents, Grills or Registers.
 - (1) A vent, grill or register shall operate easily and smoothly when applying normal operating pressure. If a vent, grill or register does not operate easily and smoothly when applying normal pressure when adjusting, the Builder shall repair the vent, grill or register so that it operates with ease of use when applying normal operating pressure.

- (2) A vent, grill or register shall be installed in accordance with the Code and manufacturer's instructions and specifications and shall be secured to the underlying surface.

(d) Performance Standards for Ductwork.

- (1) Ductwork shall be insulated in unconditioned areas according to Code.
- (2) Ductwork shall be secured according to the manufacturer's instructions and specifications and it shall not move excessively.
- (3) Ductwork shall be sealed and shall not separate or leak in excess of the standards set by the Code.

§ 30. Performance Standards for Electrical Delivery Systems

(a) Performance Standards for Electrical Wiring.

- (1) Electrical wiring installed inside the home shall be installed in accordance with the Code and any other applicable electrical standards and shall function properly from the point of demarcation, as determined by the respective utility. The Builder shall not be responsible for utility improvements from the meter/demarcation point to the utility poles or the transformer.
- (2) Electrical wiring shall be capable of carrying the designated load as set forth in the Code. All electrical equipment shall be used for the purposes and/or capacities for which it was designed and in accordance with manufacturer's specifications.

(b) Performance Standards for the Electrical Panel, Breakers and Fuses.

- (1) The electrical panel and breakers shall have sufficient capacity to provide electrical service to the home during normal residential usage. The Builder is not responsible for electrical service interruptions caused by external conditions such as power surges, circuit overloads and electrical shorts.
- (2) The electrical panel and breakers shall have sufficient capacity to provide electrical service to the home during normal residential usage such that a circuit breaker shall not trip and fuses shall not blow repeatedly under normal residential electric usage. The Builder is not responsible for circuit breaker trips or blown fuses that have functioned as designed to protect the home from external conditions such as power surges, circuit overloads and shorts.

(c) Performance Standards for Electric Outlets with Ground Fault Interrupters.

- (1) Electrical outlets with ground fault interrupters shall be installed and operate in accordance with the Code and manufacturer's specifications. If ground fault interrupters trip repeatedly under normal residential usage, the Builder shall take such action as is necessary to ensure that the electrical outlets with ground fault interrupters are installed in accordance with the Code and manufacturer's instructions and specifications and that they operate properly during normal residential electrical usage.
- (2) The homeowner shall not plug appliances that require constant electrical flow, such as refrigerators and freezers, into an outlet with a ground fault interrupter.

(d) Performance Standards for Fixtures, Outlets, Doorbells and Switches.

- (1) An outlet, doorbell or switch shall be installed in accordance with the manufacturer's specifications and the Code and shall operate properly when installed in accordance with the manufacturer's specifications and the Code.
- (2) A fixture, electrical box or trim plate shall be installed in accordance with the Code and manufacturer's specifications and shall be properly secured to the supporting surface.

- (3) A light shall not dim, flicker or burn out repeatedly under normal circumstances. A lighting circuit shall meet the Code.
- (e) Performance Standards for Wiring or Outlets for Cable Television, Telephone, Ethernet or Other Services.
- (1) Wiring or outlets for cable television, telephone, ethernet or other services shall be installed in accordance with the Code and any applicable manufacturer's specifications. A Builder is not responsible for the failure of wiring or other utility service connectors or conduits that begin before the point at which the service enters the home.
- (2) Wiring or outlets for cable television, telephone, ethernet or other services inside the home or on the home side of the meter/demarcation point shall function properly when installed in accordance with the performance standard in paragraph (1) of this subsection. A Builder is not responsible for the failure of wiring or other utility service connectors or conduits that begin before the point at which the service enters the home.

SIX YEAR WARRANTY PERIOD

§ 31. Performance Standards for Major Structural Components

- (a) Performance Standards for Slab-on-Ground Foundations.
- (1) Slab-on-ground foundations should not move differentially after they are constructed, such that a tilt or deflection in the slab in excess of the standards defined below arises from actual post-construction movement. The protocol and standards for evaluating slab-on-ground foundations shall generally follow the provisions of the ASCE Guidelines with the following modifications:
- (A) Overall deflection from original construction shall be no greater than the overall length over which the deflection occurs divided by 360 ($L/360$) and must not have more than one associated symptom of distress resulting from said overall deflection, as described in Section 5 of the ASCE Guidelines, and that results in actual observable physical damage to the home. L shall be defined as the edge-to-edge distance across any slab cross-section for which overall deflection is calculated, but the minimum L shall be not less than 25 feet. Calculations of overall deflection shall be based upon the change in elevation at each point for which an Original Construction Elevation was taken. A deflection analysis must be based upon a minimum of three co-planar relative elevation data points – two end points that form a straight reference line along the evaluated section and a third point anywhere along the deformed surface that reflects a deviation of the foundation surface from the reference line. The distance from the deformed surface to the reference line shall be measured perpendicular to the reference line.
- (B) The slab shall not tilt after construction in excess of one percent across any edge-to-edge dimension of the home or cause structural component(s) or masonry veneer to rotate into a structurally unstable position such that the weight vector of the component part falls outside the middle third of its bearing area. Calculations of overall tilt shall be based upon the change in elevation at the respective edge points for which an Original Construction Elevation was taken.
- (2) If measurements and associated symptoms of distress show that a slab-on-ground foundation does not meet the deflection or tilt standards stated in paragraph (1) of this subsection, the Builder shall implement the recommendations of a Texas licensed professional engineer, which shall be based on the appropriate remedial measures as described in Section 7 of the ASCE Guidelines. Localized measurements of deflection that are claimed to be outside of performance standards, Code or tolerances are not warranted and there is no Builder Responsibility for correction or otherwise. By definition, tilt is a global mechanism of planar rotation across the entire foundation, edge-to-edge; therefore, local tilt does not exist and cannot be analyzed.

(b) Performance Standards for Raised-Floor Foundations (i.e. Pier-and-Beam, Elevated Concrete Slabs on Forms, etc.).

- (1) Raised-floor foundations should not move differentially after they are constructed, such that a tilt or deflection in the floor surface in excess of the standards defined below arises from actual post-construction movement. The protocol and standards for evaluating raised-floor foundations shall follow the ASCE Guidelines with the following modifications:
 - (A) A raised-floor foundation shall not deflect more than $L/360$ from original construction and have that movement create actual observable physical damage to the components of the home identifiable in Section 5.3 of the ASCE Guidelines. L shall be defined as the edge-to-edge distance across any foundation cross-section for which overall deflection is calculated. Calculations of overall deflection shall be based upon the change in elevation at each point for which an Original Construction Elevation was taken. A deflection analysis must be based upon a minimum of three co-planar relative elevation data points – two end points that form a straight reference line along the evaluated section and a third point anywhere along the deformed surface that reflects a deviation of the floor surface from the reference line. The distance from the deformed surface to the reference line shall be measured perpendicular to the reference line.
 - (B) A raised-floor foundation shall not tilt after construction in excess of one percent across any edge-to-edge dimension of the Improvements or cause structural component(s) or masonry veneer to rotate into a structurally unstable position such that the weight vector of the component part falls outside the middle third of its bearing area. Calculations of overall tilt shall be based upon the change in elevation at the respective perimeter points for which an Original Construction Elevation was taken.
 - (C) If a raised-floor foundation deflects more than $L/360$ from its original construction elevation and the movement has created actual observable physical damage to the components of a home identifiable in Section 5.3 of the ASCE Guidelines, the Builder shall implement the recommendations of a Texas licensed Professional Engineer, which shall be based on applicable remedial measures as described in Section 7 of the ASCE Guidelines.
- (2) If measurements and associated symptoms of distress show that a raised floor foundation does not meet the deflection or tilt standards stated in paragraph (1) of this subsection, the Builder shall implement the recommendations of a Texas licensed professional engineer, which shall be based on the appropriate remedial measures as described in Section 7 of the ASCE Guidelines. Localized measurements of defection that are claimed to be outside of performance standards, Code or tolerances are not warranted and there is no Builder Responsibility for correction or otherwise. Attempted measurements of tilt in which L is not an edge-to-edge distance across the foundation cross-section are actually measurements of localized slopes, not tilt, which are not warranted, and there is no Builder Responsibility for correction or otherwise.

(c) Major Structural Components other than Slab-on-Ground Foundations and Raised Floor Foundations.

- (1) A defined structural component, other than the concrete elements of a slab-on-ground foundation or a raised floor foundation, shall not crack, bow, become distorted or deteriorate, such that it compromises the structural integrity of a home or the performance of a structural system of the home resulting in actual observable physical damage to a component of the home.
- (2) If a structural component of a home, other than the concrete elements of a slab-on-ground foundation or a raised floor foundation, cracks, bows, is distorted or deteriorates such that it results in actual observable physical damage to a component of the home, the Builder shall take such action as is necessary to repair, reinforce or replace such structural component to restore the structural integrity of the home or the performance of the affected structural system.

- (3) Deflected structural components.
- (A) A structural component, other than the foundation, shall not deflect more than the ratios allowed by the Code.
 - (B) If a structural component of the home, other than the foundation, is deflected more than the ratios allowed by the Code, the Builder shall repair, reinforce or replace such structural component to restore the structural integrity of the home or the performance of the affected structural system.
- (4) Damaged structural components.
- (A) A structural component, other than the foundation, shall not be so damaged that it compromises the structural integrity or performance of the affected structural system.
 - (B) If a structural component, other than the foundation, is so damaged that it compromises the structural integrity or performance of a structural system of the home, the Builder shall take such action as is necessary to repair, reinforce or replace such structural component to restore the structural integrity of the home or the performance of the affected structural system.
- (5) Separated structural components.
- (A) A structural component, other than the foundation, shall not separate from a supporting member more than 3/4 of an inch or such that it compromises the structural integrity or performance of the system.
 - (B) If a structural component, other than the foundation, is separated from a supporting member more than 3/4 of an inch or separated such that it compromises the structural integrity or performance of a structural system of the home, the Builder shall take such action as necessary to repair, reinforce or replace such structural component to re-establish the connection between the structural component and the supporting member, to restore the structural integrity of the home and the performance of the affected structural system.



PROMULGATED BY THE TEXAS ASSOCIATION OF BUILDERS (TAB)

Homeowner Maintenance Guidelines

The following list is designed to address some of the more common home maintenance guidelines and does not encompass the entirety of items that a homeowner must maintain for the proper use, maintenance and enjoyment of a home. Following or ignoring these guidelines does not create any liability on the part of a builder/contractor for any home defects or standards of performance. Always follow the manufacturer's recommendations for maintenance schedules.

The following items should be completed upon occupancy:

- Attach floor protectors under furniture legs to protect floor finishes.
- Complete the HVAC, appliances and other manufacturer warranty registrations. Most manufacturer's warranties require registration within 60 days of the installation to receive the warranty.
- Read the manufacturers' instruction manuals for all HVAC, appliances and other manufactured products before first use.
- Test all systems while present for proper operation and to insure no leaks, smells or other operational errors. Run your washer for the first time without clothes to clear the line of any debris and check for leaks.
- Run a few gallons of water through water line before connecting any ice makers.
- Purchase a general-purpose fire extinguisher for each floor of your home and one extinguisher specifically for the kitchen.
- Locate the main water line shut-off valve and all individual plumbing fixture valves.
- Locate the natural gas shut-off valve by the gas meter. **This should be done by your utility provider.**

The following items should be completed every month:

- Replace air filters as recommended by the manufacturer.
- Vacuum air supply and air return registers to remove dust and lint.
- Run both hot and cold water in any bathrooms that are not frequently used by running the sink, showers, and bathtubs for a few minutes and flushing the toilets.
- Repair any grout cracks in wet areas around your bathtubs, showers, or any tiled areas. Repair any caulk cracks in wet areas with 100% silicone caulk
- Clean garbage disposal blades.
- Clean out yard drains and catch basins to remove any leaves or debris. Ensure that drainage swales are clear, and downspouts are secure.
- Check moisture at the foundation. Do not let the yard around your foundation go more than 30 days without moisture.

The following items should be completed every six months:

- Lubricate door hinges as necessary.
- Clean and lubricate window tracks as needed.
- Clean out faucet aerators, spray nozzles, and sink drains.
- Check pipes and drains for water leakage. Check underneath sinks and around plumbing fixtures.
- Pour one cup of bleach down sink drains to break up potential drain clogs.
- Ensure that fire extinguishers are fully charged.
- Test smoke detectors and change batteries as needed.

- Check blown insulation in the attic and move any insulation covering the recessed can lights. Move insulation as needed to cover any voids on the attic floor. This should be done by a professional if you are not confident using attic access.
- Check attic walkways for proper support and warn trades servicing equipment.
- Using a funnel, pour half a gallon of bleach down the HVAC drain line in the attic.
- Clean or replace the vent hood fan filter as necessary.
- Lubricate moving parts of the garage door with a sprayed silicone lubricant or as recommended by the manufacturer.
- Visually inspect roof from the ground for broken or missing shingles and gaps in flashing. Call a professional to make repairs as needed.
- Clean out gutters and downspouts as needed.
- Prune shrubs and trees as needed and fertilize grass before summer/high temperature season and plants.
- Walk the perimeter of your foundation, checking for mounded dirt piles, which may indicate the presence of destructive or hazardous insects, such as termites.
- Have preventative pest control services performed.
- Repair cracks or separations in interior and exterior caulking as needed. Check around sinks, bathtubs, toilets, faucets, counter tops, back splashes, tile walls, tile floors, windowsills, and doors. Use silicone caulk in wet areas.

The following items should be completed once a year:

- Replace frayed or split electrical extension and appliance cords as necessary.
- Tighten and adjust cabinet drawers and hinges as necessary. Apply a light coat of furniture polish or lemon oil to the stained wood cabinets to protect the finish.
- Repair cracks or separations in interior and exterior caulking as needed. Check around sinks, bathtubs, toilets, faucets, counter tops, back splashes, tile walls, tile floors, windowsills, and doors. Use silicone caulk in areas that can potentially become wet.
- Repair or replace weather stripping around windows and exterior doors as necessary.
- Check silicone sealant on the security system sensors and refresh as necessary.
- Check water supply lines and valves to sinks, toilets, refrigerator, and washer, and tighten if loose.
- Check inside attic for signs of roof leaks and call a professional if leaks are found.
- Drain water heater per manufacturer's instructions and drain the water heater until hot water is no longer running. Allow several hours for the water heater to refill and heat up before running the hot water again.
- Remove any lint inside the clothes dryer hose.
- Touch up exterior paint and refinish exterior doors as necessary.
- Clean siding by spraying with a mixture of ten parts water and one-part bleach to remove mildew. Be sure to wear rubber gloves and eye protection.
- Wash driveway, patio, and walkways as necessary.
- Clear debris from brick weep holes.
- Visually inspect fireplace vent and other exterior vents for nests or excess soot/build-up.
- Hire a professional roofer to inspect the roof annually and after any major storms.

The following items should be completed seasonally:

- To keep the airflow balanced, adjust the air register grills or switch the ceiling fan rotation as necessary.
- Prepare for hurricane season in May by following the instructions found on the National Red Cross website: www.redcross.org.
- Add water around the foundation during droughts.
- When the heat is turned on after a long period of non-use, you may notice a burnt smell; this is generally normal and should dissipate after a few hours.
- Turn your fireplace on regularly to test.



PROMULGATED BY THE TEXAS ASSOCIATION OF BUILDERS (TAB)

LEGAL DESCRIPTION

(For Use With Custom Construction Jobs On The Owner's Property)

CONCERNING THE PROPERTY AT

(Street Address and City)

LEGAL DESCRIPTION:

DRAFT

Executed on _____, 20____.

Owner

Builder: _____

By: _____

Printed Name: _____

Owner

Title: _____

Initials: Owner(s) _____ Builder _____

Solo Page

TAB A-1 ©

09/01/2023



PROMULGATED BY THE TEXAS ASSOCIATION OF BUILDERS (TAB)
WAIVER OF THE LIST OF SUBCONTRACTORS AND SUPPLIERS
(For Use With Custom Construction Jobs On The Owner's Property)

CONCERNING THE PROPERTY AT

(Street Address and City)

WAIVER OF LIST OF SUBCONTRACTORS AND SUPPLIERS: TIPLER Design & Build LLC (Builder) and _____ (Owner) have heretofore entered into a Contract for construction of Improvements on the above described Property.

Owner(s) and Builder, pursuant to Section 53.256 of the Texas Property Code, acknowledge that, before the commencement of construction of certain improvements to be done at the above described Property by Builder, said Builder is obligated to furnish Owner a written list that identifies by name, address, and telephone number each subcontractor and supplier the Builder intends to use in the work to be performed and to provide Owner with an updated list of subcontractors and suppliers not later than the 15th day after the date a subcontractor or supplier is added or deleted. **WE UNDERSTAND AND ACKNOWLEDGE THAT AN OWNER IS NOT REQUIRED TO WAIVE THE RIGHT GRANTED BY SECTION 53.256, PROPERTY CODE, TO RECEIVE FROM THE BUILDER AN ORIGINAL OR UPDATED LIST OF SUBCONTRACTORS AND SUPPLIERS. NONETHELESS, BY SIGNING THIS DOCUMENT, OWNER(S) AGREE TO WAIVE OUR RIGHT TO RECEIVE FROM THE BUILDER AN ORIGINAL OR UPDATED LIST OF SUBCONTRACTORS AND SUPPLIERS AND OWNER(S) HEREBY RELEASE BUILDER AND ITS SHAREHOLDERS, DIRECTORS, OFFICERS, AGENTS, AND EMPLOYEES FROM ALL OBLIGATIONS TO FURNISH AN ORIGINAL OR UPDATED LIST OF SUBCONTRACTORS AND SUPPLIERS. WE UNDERSTAND AND ACKNOWLEDGE THAT, AFTER SIGNING THIS DOCUMENT, THIS WAIVER MAY NOT BE CANCELED AT A LATER DATE. WE HAVE VOLUNTARILY CONSENTED TO THIS WAIVER.**

Executed on _____, 20____.

Owner

Builder: _____

By: _____

Printed Name: _____

Owner

Title: _____