

# **RESIDENTIAL SALE & CONSTRUCTION CONTRACT**

For Construction of a Residence on the Builder's Lot - Revised 09/01/09

**THIS DOCUMENT CREATES IMPORTANT LEGAL OBLIGATIONS THAT YOU SHOULD UNDERSTAND PRIOR TO SIGNING. IF YOU ARE UNCERTAIN ABOUT YOUR RIGHTS OR OBLIGATIONS UNDER THIS CONTRACT, YOU MAY WISH TO CONSULT AN ATTORNEY.**

**1. PARTIES.** \_\_\_\_\_ (the "Builder"), who is a member currently in good standing with the Custom Builders Council of the Greater Houston Builders Association, and \_\_\_\_\_ (the "Purchaser") (the Purchaser and Builder together will be referred to as the "Parties") are entering into this Residential Sale & Construction Contract (called the "Contract"). The purpose of this Contract is (i) to establish and define the construction activities that the Builder will perform (the "Work"), and (ii) to delineate the general obligations and responsibilities of the Parties incident to this transaction.

**2. LOCATION AND GENERAL SCOPE OF WORK TO BE PERFORMED.** Purchaser agrees and promises to pay Builder the specified "Purchase Price" as defined below, plus any additional authorized expenditures. In consideration of such payments, the Builder agrees to construct and convey to Purchaser certain improvements generally described as a single-family residence (the "Home"), on Lot(s) \_\_\_\_\_, Block \_\_\_\_\_, Section \_\_\_\_\_, and located within the \_\_\_\_\_ Subdivision in \_\_\_\_\_ County, Texas and having the following street address: \_\_\_\_\_ (the "Property").

Except as noted below, the Home has been or will be constructed in substantial compliance with certain schematic drawings prepared by \_\_\_\_\_, dated \_\_\_\_\_, 20\_\_\_\_, consisting of \_\_\_\_\_ pages, and by \_\_\_\_\_, dated \_\_\_\_\_, 20\_\_\_\_, consisting of \_\_\_\_\_ pages, that have been initialed by the parties for purposes of identification and which by this reference are incorporated into this Contract (the "Plans"). In addition to the Plans, construction of the Home shall incorporate certain materials and equipment, and comply with certain procedures and special requirements of the Purchaser (collectively referred to as the "Specifications") which are detailed in the attached Exhibit "A". In the event of a conflict between the Plans and the Specifications, the Specifications shall control. If a detail of the construction is not specified within the Plans and/or Specifications, or should an alternative building practice be available in lieu of a specified procedure, the Builder may select a construction procedure that complies with applicable building codes.



This contract form has been promulgated by the Custom Builders Council (the "Council") of the Greater Houston Builders Association (the "GHBA"). Each page should reflect the GHBA logo. This copyrighted form is solely for use by Council members. Its use, or the replication of contract provisions, by non-members is strictly prohibited. You are encouraged to call the GHBA at 281.970.8970 to confirm the Builder is currently in good standing with the Council and the GHBA.

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The Purchaser understands and acknowledges that while the Builder used the Plans and Specifications in constructing the Home, variances from those plans and/or specifications may exist. A general description of those follows: \_\_\_\_\_.

The Purchaser acknowledges that the decision to purchase the Home is not premised on, and the Purchaser has not relied upon, the Builder’s strict adherence to the Plans and Specifications. Instead, the Purchaser is relying upon prior inspections of the Home performed by or on behalf of the Purchaser. Future changes of a material nature in the Plans and Specifications, however, must be reflected in writing through a “Change Order” described in Paragraph 9 of this Contract.

Unless otherwise specified, materials used by the Builder in the construction of the Home shall be as prescribed in the Plans and Specifications. In the event specified materials are not reasonably available, or if the procurement of such would cause undue delay in the progress of the Work, Builder may substitute materials of comparable grade and quality. The construction of the Home is also subject to any changes in the Plans and Specifications as may be required by federal, state or local governmental authorities. Any substitution or change shall be specified in a Change Order. Purchaser acknowledges that these substitutions and/or changes may occur during construction and agrees that so long as the Home is substantially in compliance with the Plans and Specifications, acceptance of any such minor deviations will not be unreasonably withheld.

**3. PURCHASE PRICE AND PAYMENT PROCEDURE.** The “Purchase Price,” as that term is used in this Contract, is \$ \_\_\_\_\_. The Purchaser agrees that the components of the Purchase Price listed below shall be payable to Builder as follows:

(a) An initial sum in the amount of \$ \_\_\_\_\_ (the “Earnest Money”) shall be payable upon execution of this Contract, and shall be credited against the Purchase Price.

(b) The sum of \$ \_\_\_\_\_ (the “Construction Fee”) shall be payable upon the Purchaser’s securing any necessary financing and approval of title as provided in Paragraphs 5 and 6 of this Contract, and prior to the initiation of new construction activities on behalf of the Purchaser. The Construction Fee includes in part payments for changes to be made to existing construction (“Modifications”) identified by Purchaser and as reflected in Exhibit “B”, and shall **not be refundable** under any circumstances except as provided in Paragraphs 15 and 17(a) of this Contract. The Construction Fee is also paid as consideration for the Builder’s costs of contract preparation, budget formulation, research related to specially fabricated items, construction and materials deposits, related overhead, etc.



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(c) The Purchaser shall pay the remaining unpaid portion of the Purchase Price (the “Final Payment”) upon “Substantial Completion” (as later defined) of the Home and Builder’s transfer of title to the Property to the Purchaser (the event of transferring title is referred to as the “Closing”). Purchaser desires that the Closing occur at the offices of \_\_\_\_\_ (the “Title Company”). **The Purchaser will attend the Closing on the date specified by Builder (with at least five (5) days advance written notice) following Substantial Completion of the Home.** The existence of minor cosmetic repairs and adjustments shall not delay the Closing if the Home has reached the stage of Substantial Completion. If Purchaser fails or refuses to attend the scheduled Closing, Builder may, at Builder’s sole option, (i) treat such as a breach of this Contract and retain the Earnest Money and Construction Fee, or (ii) provide the Purchaser with a new date for Closing. If the Purchaser fails to attend the scheduled Closing, and the Builder elects to delay that Closing, Purchaser shall pay the additional ad valorem taxes and interest costs incurred by Builder because of the delay, which are hereby agreed to be \$\_\_\_\_\_ per day until paid at the rescheduled Closing.

**4. ALLOWANCES.** The Parties have established specific budgets (an “Allowance”) for certain amenities and materials to be incorporated into the Home, all of which are detailed in the attached Exhibit “C.” The sums allocable to each listed Allowance *are included within and are part of the Purchase Price.* Each Allowance listed includes the component costs of material and labor (if any), plus any appropriate sales tax, delivery or other costs associated with procurement. These Allowances are also premised on the understanding that purchases will be made from suppliers who are typically used by the Builder, and do not contemplate the payment of deposits, service fees, or the delays that may be encountered when other suppliers are used. As Builder incurs material and labor costs with respect to a specific Allowance, those costs shall be applied against the applicable Allowance. In the event an Allowance for an item or category is exceeded, the overage shall constitute an increase in the Purchase Price and shall be set forth in a Change Order as prescribed in Paragraph 9 of this Contract. Any savings resulting from reduced expenditures for Allowance items shall result in a decrease in the Purchase Price and shall be credited against the Purchase Price at Closing. *Purchaser is solely responsible for the adequacy of the Allowance amounts on appliances, fixtures, floor coverings, etc. since the sums to be spent are determined ultimately by the Purchaser’s subjective considerations of quality, style and functionality.* Purchaser shall make all selections applicable to the Allowances within five (5) days from date of request by Builder; and if selections are not timely made, then Builder shall be authorized to make the selection and proceed with the construction of the Home. Copies of invoices and receipts for expenditures related to Allowances will be available from the Builder on reasonable notice.

**5. FINANCING.** Purchaser has arranged or will arrange for financing, or otherwise has available sufficient funds, to pay the Purchase Price in full, and agrees to provide Builder written evidence of the availability of such funds or financing within \_\_\_\_\_ days after executing this Contract. If within that time the Purchaser cannot qualify for the necessary financing, either party may terminate this Contract and Builder will refund the Earnest Money



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Deposit. If the Builder is not notified within that time about the availability (or absence) of necessary funds, the financing contingency is **WAIVED** by Purchaser, and Purchaser shall remit the Construction Fee to Builder.

**6. MATTERS AFFECTING TITLE TO THE PROPERTY.** Purchaser is encouraged to secure and review a title report on the Property from the Title Company. Purchaser may object to any title exception other than the Permitted Exceptions provided in Paragraph 16 of this Contract. Purchaser must object to any title exception in writing and request that such exception(s) to title be corrected. If Purchaser fails to object to any title exception within \_\_\_\_\_ days after executing this Contract, any such objections to title exceptions shall be **WAIVED**. The Builder shall not be required to incur any expense incident to its curative efforts. If the defects in title cannot be corrected, or the Builder is required, but chooses not to incur any expense to cure the title defect, the Contract shall be terminated and the Earnest Money (and the Construction Fee, if paid) shall be returned to Purchaser. The return of these deposits shall be the Purchaser's sole remedy for title defects.

**7. SUITABILITY OF BUILDING SITE/FOUNDATION.** Purchaser is advised that the Builder may have contracted with one or more independent professional engineers (the "Engineer") to (i) conduct soils testing, (ii) prepare an engineered foundation plan, and/or (iii) prepare a framing plan for use in constructing the Home. The Builder is not a professional engineer, and has relied on the Engineer's professional judgment as to the soils on the Property, the adequacy of the building pad, the foundation design and the framing plan. The Builder's reliance on the Engineer for such tests, reports or plans shall relieve the Builder from responsibility or liability for the raising, shifting, heaving or settling of the soil or the Home, and any consequential damage to the Home or its contents, *provided* the Builder has constructed the Home in substantial compliance with those tests, reports and plans.

**8. INITIATION AND COMPLETION OF CONSTRUCTION.** Prior to satisfaction of the financing and title contingencies and Purchaser's payment of the Construction Fee, Builder may opt (but is not required) to proceed with construction of those elements of the Home that are unaffected by any Modifications selected by Purchaser. Upon Builder's receipt of sufficient assurances regarding the Purchaser's financing, and Purchaser's acceptance of the status of title to the Property, Builder shall commence the construction of the Home consistent with Purchaser's Modifications within fifteen (15) working days following the Builder's receipt of (i) the Construction Fee, and (ii) all required permits, licenses and other necessary approvals for construction of the Home. The construction activities shall thereafter be continued in accordance with the Builder's normal construction schedule until the Home reaches "Substantial Completion." Substantial Completion shall occur when construction of the Home is sufficiently complete so that the Purchaser can occupy and use the Home for its intended purpose. Substantial Completion shall also be deemed to have occurred once any applicable municipal authority conducts its final building inspection or approves the Home for occupancy. Builder **ESTIMATES** that on or about \_\_\_\_\_, the Home will reach Substantial Completion. This date is estimated since construction activities are subject to delays caused by



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conditions beyond the control of Builder (referred to as “Excused Delays”) which include the unavailability of required materials and labor from subcontractors, as well as delays from acts by or disputes with Purchaser or others employed by Purchaser (any of which will allow Builder to suspend construction until resolved), Change Orders, fire, or other casualty, acts of God, inclement weather which interferes with normal scheduling of construction, or failure of Purchaser to make decisions or make selections of allowance items, colors, or materials. **BUILDER THEREFORE DOES NOT GUARANTEE COMPLETION OF THE HOME ON ANY SPECIFIC DATE.**

**9. CHANGE ORDERS.** In addition to the Purchase Price stated in Paragraph 3, Builder shall be entitled to and shall receive the specified price for labor, materials and other charges that are attributable to one or more Change Orders. A “Change Order” is a written agreement between the Purchaser and Builder to make changes, additions or deletions to the Work. If Builder agrees to perform the extra Work required by a Change Order (and it has no present obligation to do so), the price included in the Change Order will be treated as an increase in the Purchase Price, and the Builder will be entitled to receive an additional fee in the amount of \_\_\_\_% of the Change Order (“Change Order Fee”). The Change Order and the accompanying Change Order Fee shall be paid in full when the Change Order is signed by the Parties. **IT IS EXPRESSLY ACKNOWLEDGED BY PURCHASER (IF MORE THAN ONE), THAT ANY PURCHASER SIGNATORY TO THIS CONTRACT CAN AUTHORIZE AND APPROVE A CHANGE ORDER. EACH OWNER SIGNATORY IS DESIGNATED AN ATTORNEY-IN-FACT FOR THE OTHER PURCHASER SIGNATORY FOR THIS PURPOSE, AND THE BUILDER IS ENTITLED TO RELY ON ANY CHANGE ORDER SIGNED BY ANY PURCHASER SIGNATORY.** If the increase in the Purchase Price for a Change Order cannot be ascertained before commencement of the extra Work, an allowance shall be created for the Change Order with the increase being estimated, and that amount deposited with the Builder. *The Builder shall not be required to commence the Work called for in a Change Order until the specified or estimated increase in the Purchase Price and the accompanying Change Order Fee are paid in full.* Additionally, if Purchaser requests Builder to perform research on and/or provide estimates for extra Work to be incorporated into a proposed Change Order, Builder will be reimbursed for the time expended for such activities at the rate of \$\_\_\_\_ per hour. These hourly charges shall be paid promptly to Builder, irrespective of Purchaser’s decision to proceed with execution of a Change Order for the additional Work.

Change Orders deleting Work or materials will reduce the Purchase Price by the Builder’s true cost savings for the deleted items and credited against the Purchase Price at Closing. In such instances, the Builder may nevertheless request a Change Order Fee for the Builder’s administration of the Change Order.

**10. INDEPENDENT BUILDER STATUS.** Builder, in the performance of the Work does so as an independent contractor, and the Builder (not the Purchaser) shall have the sole control over the scheduling and progress of the construction, including the superior right to select and arrange for all labor in any way related to the



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construction. The Builder shall exercise exclusive control over the selection of the subcontractors; and therefore, the Builder shall not be obligated to employ subcontractors solely on the basis of cost savings that might be achieved in connection with Work under a Change Order or an Allowance. All subcontractors shall perform their work independently, and not as an agent or employee, servant or representative of the Builder. *The Purchaser agrees not to instruct, direct or otherwise communicate with the subcontractors retained by the Builder as to the scheduling of or details about the construction (including additions to or deletions therefrom). The Purchaser shall also not do or cause any work to be done, or alter or cause the alteration of any portion of the Home, whether complete or incomplete, prior to Purchaser's occupancy of the Home.* If, with Builder's express written consent, Purchaser employs a third party to fabricate an element, feature or appliance to be incorporated into the Home, the Purchaser shall be responsible for the installation of that fabricated item. **ACTS OF, OMISSIONS BY, OR LOSSES, DAMAGES OR DELAYS CAUSED BY THIRD PARTIES RETAINED BY THE PURCHASER SHALL BE THE RESPONSIBILITY OF THE PURCHASER, NOT THE BUILDER. FURTHERMORE, THE BUILDER DOES NOT WARRANT THE WORK PERFORMED OR MATERIALS PROVIDED BY THIRD PARTIES EMPLOYED BY, OR WHO HAVE CONTRACTED WITH, THE PURCHASER.**

**11. RELEASE OF/INDEMNIFICATION FOR LOSSES SUSTAINED DURING CONSTRUCTION.**

Because of potential safety and health hazards present during construction of the Home, 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:

To ensure and to protect the personal health and safety of Purchaser and Purchaser's licensees and invitees, Purchaser shall restrict entry by the Purchaser and Purchaser's licensees and invitees onto the Property or into the Home to a minimum. When Purchaser chooses to enter the Property, and irrespective of Builder's presence on the Property at such time, **PURCHASER AGREES TO RELEASE AND/OR INDEMNIFY AND HOLD BUILDER HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS OR CAUSES OF ACTION (INCLUDING ATTORNEY'S FEES) ARISING IN FAVOR OF PURCHASER OR PURCHASER'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 HOME. 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 PURCHASER OR PURCHASER'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.**



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**12. INSPECTION AND APPROVAL OF HOME.** To the extent that portions of the Home have been completed at the time this Contract is executed, Purchaser acknowledges that Purchaser has inspected, noted changes from the Plans and Specifications, and hereby accepts those portions of the Home as built. As construction of the Home proceeds, Purchaser shall conduct periodic walk-through inspections of the Home (with due consideration being given to safety concerns). Purchaser agrees to immediately give Notice (as later defined) to the Builder in writing if any aspect of construction has not been completed in substantial conformity with the Plans and Specifications and this Contract. ***Failure by the Purchaser to reasonably object to the Work performed within any phase of construction shall constitute an acceptance of that Work.*** Purchaser acknowledges and agrees, however, 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, the 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.

**13. LIMITED WARRANTY ON HOME.** Builder warrants the Home against defects in workmanship and materials, but only in accordance with, and as limited by, the new home warranty document provided by Builder (the "Limited Warranty") and to be delivered to Purchaser at the Closing. (A copy of the Limited Warranty is included with this Contract). **UPON COMPLETION AND PURCHASER'S ACCEPTANCE OF THE HOME, IT IS UNDERSTOOD AND AGREED THAT BUILDER'S RESPONSIBILITY FOR THE CONSTRUCTION OF THE HOME IS CONFINED TO AND LIMITED BY THE PERFORMANCE STANDARDS AND REMEDIES PROVIDED IN THE LIMITED WARRANTY.**

As to items not of Builder's manufacture, such as any air conditioner, water heater, refrigerator, range, dishwasher and other appliances, equipment or "consumer products," as defined by the Federal Trade Commission, Builder agrees to assign Purchaser the manufacturer's warranty, without recourse. Purchaser acknowledges and realizes that Builder itself is making no warranty on such items. **TO THE EXTENT ALLOWED BY LAW, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF GOOD AND WORKMANLIKE CONSTRUCTION, MERCHANTABILITY, OR FITNESS ARE DISCLAIMED AND EXCLUDED.**

**14. LAND USE AND ENVIRONMENTAL DISCLAIMERS.** The Builder has informed the Purchaser and Purchaser acknowledges the following:

**(a) *Adjacent Land Usage.*** The Builder is neither responsible for nor has control of the use of the land adjacent to or in the vicinity of the Property, and Purchaser acknowledges receipt of a copy of the declarations for any



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applicable homeowners' association. The Builder also has no control over and is not responsible for any easements on, adjacent to, or in the vicinity of the Property. Purchaser understands that individuals, corporations, and/or utilities may have specific rights granted by those easements, if any, including but not limited to access to and use of the land described by the easements, even though the use of any easement may not be evident at the present time.

**(b) Membership in Property Owners' Association.** As a purchaser of property in the residential community in which the Property is located, the Purchaser is obligated to be a member of a property owners' association. Restrictive covenants governing the use and occupancy of the Property and the Home and a dedicatory instrument governing the establishment, maintenance, and operation of this residential community have been or will be recorded in the Real Property Records of the county in which the Property is located. Copies of the restrictive covenants and dedicatory instrument can be obtained from the county clerk. The Purchaser is obligated to pay assessments to the property owners' association. The amount of the assessments is subject to change. The Purchaser's failure to pay the assessments could result in a lien on, and the foreclosure of, the Property.

**(c) Possible Annexation.** If the Property is located outside the limits of a municipality, the Property may now or later be included in the extraterritorial jurisdiction of a municipality and may now or later be subject to annexation by the municipality. Each municipality maintains a map that depicts its boundaries and extraterritorial jurisdiction. To determine if the Property is located within a municipality's extraterritorial jurisdiction, or is likely to be located within a municipality's extraterritorial jurisdiction, the Purchaser should contact all municipalities located in the general proximity of the Property for further information.

**(d) Environmental Risk.** The Builder makes no warranties, express or implied, about existing or future health hazards or environmental conditions on the Property, in the Home, or from adjacent sources, including, but not limited to, exposure to radon gas, electric and magnetic fields, shifting or instability of the soil and contamination of the Home or the surrounding air, water or soil from any sources or in any manner.

**Purchaser is advised that the continued presence of moisture in the Home (from leaks, condensation, spills, etc.) can cause the growth of mold, which may cause allergenic reactions and other health problems in some individuals. Upon assuming possession of the Home, the Purchaser is responsible for implementing an inspection and maintenance program for the discovery and elimination of moisture in the Home that could give rise to the growth of mold or other conditions detrimental to functioning of the Home or the health of its occupants. Any leak or the presence of moisture that is covered by the Builder's limited warranty will be addressed under the warranty, but the Purchaser's failure to implement an effective maintenance program or the failure to promptly notify the Builder of warranty claims will negate the Builder's responsibility (if any)**



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**for any property damage, personal injury, or other loss, damage or liability resulting directly or indirectly from the presence of mold or other harmful organisms.**

*(e) Risks to Trees and Vegetation.* Purchaser recognizes that the construction of the Home imposes an inherent risk to the health of trees and vegetation on the Property, and acknowledges that Builder cannot guarantee the viability of those trees and vegetation before or after Closing. Purchaser acknowledges that upon taking ownership of the Home, Purchaser is responsible for implementing a landscaping maintenance program. It is also understood that Builder does not have any responsibility for removing dead or dying trees after Closing.

*(f) Drainage* The Builder will establish the necessary grades and swales to ensure proper drainage away from the Home. Positive drainage away from the Home is important for maintaining and ensuring that the foundation performs as designed. Purchaser acknowledges that it is Purchaser’s responsibility to maintain these grades and swales. It is understood that raised flower beds in drainage areas or around the foundation may adversely affect the Home, and Purchaser should guard against these and drainage problems generally.

**15. RISK OF LOSS.** Should the Home be substantially or wholly destroyed by fire, windstorm, or other casualty prior to Closing, the Builder will have the option of (i) repairing any damage or (ii) canceling this Contract. If Builder opts to rebuild/repair the Home, Builder shall communicate this to Purchaser in writing within twenty (20) days of the loss, otherwise this Contract shall be cancelled and all sums paid to Builder by Purchaser shall be returned. Purchaser agrees that it shall have no claim to or interest in any insurance proceeds attributable to the loss.

**16. CLOSING.** At Closing, the Builder will convey the Property to Purchaser by special warranty deed containing a reference to the limited warranty on the Home as set forth in Paragraph 13 of this Contract. The Property shall be conveyed free and clear of all liens except those created incident to the funding of the Purchaser’s purchase money loan (if any) and free of all other limitations except those covenants and restrictions, easements, and other matters of record which affect the Property and are common to the subdivision within which the Property is located (collectively referred to as the “Permitted Exceptions”). Current year’s ad valorem taxes will be prorated to the date of Closing. The special warranty deed shall be prepared and filed at the Builder’s expense, and Builder shall pay the brokerage commission, if applicable, upon the funding of the Closing. Purchaser shall be responsible for all remaining Closing costs, including but not limited to, the premium for the Owner’s and/or Mortgagee’s Policy of Title Insurance, any appraisal fees, discount points, prepaid expenses and reserves.

**17. RESOLUTION OF DISPUTES.** The Parties desire prompt, inexpensive and efficient dispute resolution procedures and therefore agree that their disputes shall be governed by the following:



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**(a) Pre-Closing Default/Stipulated Damages.** If during the construction process, the relationship between the Builder and Purchaser becomes so strained, contentious or otherwise unsupportable (through differences of opinion and/or Excused Delays caused by Purchaser) so as to impact and undermine the continued fulfillment of this Contract, then Builder shall have the option to terminate this Contract. Upon written Notice from the Builder terminating this Contract pursuant to this Paragraph, Builder shall return all sums paid by the Purchaser, plus an additional sum of \$ \_\_\_\_\_, an amount which the parties agree to be a reasonable and foreseeable estimate of the damages that might be experienced by the Purchaser incident to the cancellation of this Contract (it being difficult, if not impossible to ascertain those damages). **UPON SUCH TERMINATION OF THIS CONTRACT BY BUILDER AND PAYMENT OF THE STIPULATED DAMAGES, NO CAUSE OF ACTION AGAINST BUILDER OR RIGHT TO THE PROPERTY SHALL ACCRUE TO PURCHASER.** Additionally, the Builder shall have no further obligation to complete and sell the Home to Purchaser, and Purchaser shall not be obligated to acquire the Home. The Builder is not required to apply the provisions of this Subparagraph (a) to any breach of this Contract by Purchaser.

**(b) Re-Purchase Option.** Should the Purchaser discover, during the first five (5) years after Closing, one or more defects in the construction of the Home that exceed in the aggregate \_\_\_\_\_ percent (\_\_\_%) of the fair market value of the Home, upon receipt of written notice and an opportunity to inspect the defects, the Builder may elect to re-purchase the Home. If the Builder elects this option, the Purchaser shall be reimbursed the Purchase Price and all Closing costs incurred by the Purchaser, plus reimbursement of the cost of any permanent improvements made by the Purchaser to the Home and the Property, reasonable moving expenses to vacate the Home, and reasonable and necessary attorney's fees and inspection costs incurred by the Purchaser to discover, identify and present the construction defects to the Builder. In return, the Purchaser will deliver a Special Warranty Deed conveying the Home and the Property to the Builder, free and clear of all liens and claims and deliver possession of the Home free of any casualty or damage caused by the Purchaser, normal wear and tear excepted.

**(c) Statutory Notice.** This Contract is subject to Chapter 27 of the Texas Property Code. The Provisions of that Chapter may affect the Purchaser's right to recover damages arising from the performance of this contract. **If the Purchaser has a complaint concerning a construction defect arising from the performance of this contract and that defect has not been corrected through normal warranty service, the Purchaser must provide notice required by Chapter 27 of the Texas Property Code to the Builder by Certified Mail, return receipt requested, not later than the 60<sup>th</sup> day before the date the Purchaser initiates a claim to recover damages in an arbitration proceeding. The notice must refer to Chapter 27 of the Texas Property Code, and must describe the construction defect. If requested by the Builder, the Purchaser must provide the Builder an opportunity to inspect and cure the defect as provided by Section 27.004 of the Texas Property Code. THE REFUSAL OR FAILURE OF PURCHASER TO AFFORD THE BUILDER THE OPPORTUNITY TO INSPECT AND CURE ANY CONSTRUCTION DEFECT, PRIOR TO PURCHASER TAKING STEPS TO**



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**CORRECT THAT CONSTRUCTION DEFECT, WILL PRECLUDE THE PURCHASER'S CLAIM AGAINST THE BUILDER FOR THAT CONSTRUCTION DEFECT EXCEPT IN CASES ON AN EMERGENCY INVOLVING IMMEDIATE RISK TO THE PURCHASER'S HEALTH AND SAFETY.**

*(d) Mediation-Binding Arbitration/Waiver of Jury Trial.* The Purchaser and Builder agree that all controversies, claims (and any related settlements), or matters in question arising out of or relating to (i) this Contract, (ii) any breach or termination of this Contract, (iii) the construction of the Home and/or its repairs, (iv) any acts or omissions by the Builder (and its officers, directors or agents), and/or (v) any actual or purported representations or warranties, express or implied, relating to the Property and/or the Home (herein referred to collectively as a "Dispute") shall be submitted to binding arbitration. The Parties will attempt to resolve any Dispute through informal discussions, and the Dispute may be submitted to non-binding mediation under the Construction Industry Mediation Rules of the American Arbitration Association ("AAA"). In the event that one or both Parties do not desire to mediate, or the Dispute is not resolved by direct discussions and/or mediation, the Dispute shall be submitted to the AAA for binding arbitration in accordance with the Construction Industry Arbitration Rules of the AAA. The Parties will share equally all filing fees and administrative costs of the arbitration, however, any Award rendered may equitably reallocate those costs. The arbitration shall be governed by Texas law and the U.S. Arbitration Act, 9 U.S.C. §§ 1-16, to the exclusion of any provisions of state law that are inconsistent with the application of the Federal Act.

In rendering the Award, the arbitrator shall state the reasons therefor, including any computations of actual damages or offsets, if applicable. The Parties agree to abide by and fully perform in accordance with any Award rendered by the arbitrator. If either Party seeks enforcement or vacature of the Award in any court of competent jurisdiction, the prevailing Party shall recover its necessary and reasonable attorney's fees related to that proceeding, as well as any other relief to which that Party is entitled.

**18. MUTUAL LIMITATION OF CLAIMS AND REMEDIES.** The Parties further desire pragmatic and logical limitations on claims and remedies to ensure effective and realistic dispute resolution. Accordingly:

*(a) Limitation of Claims.* Under no circumstances shall either Party be liable for any special, indirect or consequential damages (including claims of mental anguish). Any action or claim, regardless of form, which arises from or relates to this Contract, the Work and/or the Home is barred unless it is brought by Purchaser or Builder not later than two (2) years and one (1) day from the date the claim or cause of action accrues.

*(b) Waiver of Subrogation.* The Parties agree that the Builder shall carry insurance fully protecting the Home during construction and that after occupancy, the Purchaser shall secure and maintain insurance covering



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*risk of loss and damage to the Home, however caused. The Parties further agree to waive the rights of subrogation in favor of each other with respect to any insurance policy for such insured losses or damage to the Home, its contents, or the Property, including any such loss or damage arising from the negligence or other fault of either Party.*

**19. BROKERAGE COMMISSION.** Builder and Purchaser represent to each other that, unless specified in an attached addendum, there will be no claims for payment from any real estate broker, finder or other party in connection with this Contract. EACH PARTY HEREBY INDEMNIFIES AND AGREES TO HOLD THE OTHER HARMLESS FROM ANY LOSS, LIABILITY, DAMAGE, COST, OR EXPENSE (INCLUDING REASONABLE ATTORNEY'S FEES) RESULTING FROM A BREACH OF THIS REPRESENTATION.

**20. ATTORNEYS' FEES.** If either Party employs an attorney in conjunction with a Dispute related to this Contract, a Party who successfully defends or prosecutes any such claim, or portion of a claim is entitled to reimbursement from the other Party for necessary and reasonable attorneys' fees, arbitration fees, court costs, expert witness fees, and expenses related to the specific claims successfully defended and/or prosecuted, subject to the provisions of Chapter 27 of the Texas Property Code that impose limitations on the recovery of attorney's fees.

**21. NOTICES.** Any notice or demand permitted, required, or desired to be given concerning this Contract ("Notice") shall be in writing and is effective when received by the addressee (whether faxed, delivered, mailed, or transmitted by electronic mail). The addresses for Notice are reflected under the signatures of the Parties.

**22. NOTICE OF RELIANCE ON WRITTEN INFORMATION FROM THIRD PARTIES.** *BUILDER ADVISES PURCHASER THAT THE BUILDER HAS RELIED UPON WRITTEN INFORMATION FROM VARIOUS THIRD PARTIES, ENGINEERS, ARCHITECTS/DESIGNERS, MANUFACTURERS AND GOVERNMENTAL AGENCIES CONCERNING THE PROPERTY AND THE MATERIALS AND COMPONENTS INCORPORATED INTO THE HOME. THIS WRITTEN INFORMATION CONCERNS MATTERS ABOUT WHICH THESE OTHER PARTIES HAVE SPECIAL KNOWLEDGE NOT POSSESSED BY BUILDER, OR WHICH INFORMATION HAS BEEN PROVIDED TO BUILDER OR DISSEMINATED TO THE PUBLIC PURSUANT TO SPECIFIC STATUTORY OR REGULATORY REQUIREMENTS. THIS WRITTEN INFORMATION PERTAINS TO FLOOD ZONES, DEVELOPMENT OF ADJACENT LAND, THE SUITABILITY OF THE PROPERTY AND THE SURROUNDING SUBDIVISION FOR RESIDENTIAL USE, THE ACCURACY OF THE PLANS AND DIMENSIONS THEREIN, AND THE APPROPRIATENESS OF THE MATERIALS AND COMPONENTS INCORPORATED INTO THE HOME, INCLUDING BUT NOT LIMITED TO ROOFING MATERIALS, SIDING, INSULATION, PLUMBING FIXTURES, PIPING, APPLIANCES, AND HVAC COMPONENTS.*



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**23. MISCELLANEOUS.** Time is of the essence of this Contract and all specified time limits must be met. No waiver of a right provided by this Contract shall be effective unless in writing and signed by the party against whom enforcement of the waiver is sought. No waiver by a party of any breach of any provision of this Contract shall be construed as a waiver of any later breach. If any provision of this Contract is determined to be invalid or unenforceable, the remainder of this Contract shall not be affected.

**24. ENTIRE CONTRACT/CONTINUING AGREEMENT.** This Contract, together with all attachments, contains the entire understanding between Builder and Purchaser with respect to the construction of the Home, and replaces all prior agreements or understandings, if any. BUILDER IS NOT BOUND BY ANY STATEMENT, PROMISE, CONDITION OR STIPULATION NOT SPECIFICALLY SET FORTH IN THIS CONTRACT. No representative of Builder has any authority to make any oral or written statements that modify, add to or change the terms and conditions of this Contract.

PURCHASER REPRESENTS THAT PURCHASER HAS READ AND UNDERSTANDS THIS ENTIRE CONTRACT, INCLUDING THE AGREEMENT FOR BINDING ARBITRATION OF DISPUTES RELATED TO THIS CONTRACT. PURCHASER ALSO REPRESENTS THAT NO VERBAL STATEMENT, PROMISE OR CONDITION NOT SPECIFICALLY SET FORTH IN THIS CONTRACT IS BEING RELIED UPON BY PURCHASER. IT IS ACKNOWLEDGED THAT BUILDER IS RELYING ON THESE REPRESENTATIONS AND WOULD NOT ENTER INTO THIS CONTRACT WITHOUT THIS UNDERSTANDING.

All representations, agreements, indemnities and disclaimers of Builder and Purchaser that are contained in this Contract shall remain in full effect after the Closing, and shall not be replaced or limited by any other document or agreement. This Contract is binding upon the heirs, executors, administrators, successors and assigns of the respective parties, and those persons who would have a claim by, through or under the parties.

EXECUTED in multiple copies this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**PURCHASER:**

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

\_\_\_\_\_

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

\_\_\_\_\_

Name/Title: \_\_\_\_\_

Tel: (\_\_\_\_) \_\_\_\_\_ Fax: (\_\_\_\_) \_\_\_\_\_

Tel: (\_\_\_\_) \_\_\_\_\_ Fax: (\_\_\_\_) \_\_\_\_\_

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

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



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This contract form was prepared by the Custom Builders Council of the GHBA as a service to its members and the public. No representation is made by the Council or the GHBA as to the adequacy of the form for any specific transaction. Use of this form by the Builder does not constitute an endorsement or sponsorship of the Builder by the GHBA.

**SCHEDULE OF EXHIBITS**

- A - Specifications
- B - Modifications
- C - Allowances
- D - Warranty Sample
- E - Insulation Addendum
- F - Brokerage Addendum