

RESIDENTIAL CONSTRUCTION CONTRACT - COST PLUS

For Construction Projects on an Owner's Property - 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 AGREEMENT, YOU MAY WISH TO CONSULT AN ATTORNEY.

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

2. LOCATION AND GENERAL SCOPE OF WORK TO BE PERFORMED. Owner agrees and promises to pay Builder the "Cost of the Work," a "Builder's Fee" and a "Builder's Percentage" as specified in Paragraph 3 of this Contract, plus any additional authorized expenditures. In consideration of such payments, the Builder hereby agrees to furnish certain labor, services, equipment, materials, and other related activities (collectively referred to as the "Work") for the construction of certain improvements, generally described as a single-family residence (the "Home"), on Lot(s) _____, Block _____, Section _____, out of the _____ Subdivision that is located in _____ County, Texas, and having the following street address: _____ (the "Property").

The Home will be constructed in substantial compliance with certain schematic drawings that have been/will be 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 requirements (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. Should a detail of the construction not be provided 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 reproduction 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.

INITIALED FOR IDENTIFICATION

The Plans and Specifications may be modified, limited or negated as the Parties may subsequently agree in writing through "Change Orders" as defined in Paragraph 8 of this Contract. It is specifically understood and agreed by the Parties that Builder is not responsible for and in no way endorses the accuracy or completeness of the Plans and Specifications to the extent they have been prepared by an independent architect, designer or other third party. ***The compliance of the Plans and Specifications with all applicable building codes, regulations, restrictive covenants or other conditions affecting the Property (including easements and zoning requirements) shall also be the Owner's responsibility.***

Unless otherwise specified, materials used by the Builder in 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 item 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. Owner 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. COST OF THE WORK/BUILDER'S FEE. The Owner agrees to pay the Builder (i) the "Cost of the Work" as defined below, (ii) a "Builder's Fee" in the fixed sum of \$ _____, **and** (iii) the "Builder's Percentage" in an amount equal to _____ percent (___%) of the Cost of the Work. If the scope of the Work performed expands to the degree that the Cost of the Work exceeds the estimated sum below, the Builder's Percentage on all amounts above the estimated sum shall equal _____ percent (___%). The term "Cost of the Work" shall mean the actual costs incurred in performance of the following activities:

- (a) Salary/wages of construction workers and job superintendents directly employed by the Builder to perform or oversee the Work, including unemployment compensation, social security and other standard benefits (but only to the extent allocable to the Work on the Home);
- (b) Payments made by the Builder or the Owner to subcontractors for labor performed and to suppliers for the cost of all materials, temporary facilities, and equipment, whose work product or services are scheduled, coordinated, overseen, and/or insured by the Builder and tools and supplies that are substantially consumed in the performance of the Work, as well as the out-of-pocket rental costs for equipment or tools;
- (c) Cost of transportation, including delivery, handling and storage charges for materials and equipment that is incorporated into the Home (discounts for cash or prompt payment accrue to the Owner);



INITIALED FOR IDENTIFICATION

- (d) Engineer’s fees and related expenses for the preparation of an engineered foundation and structural plan, as well as any testing of the soil and pad compaction, and inspections of these structural elements;
- (e) Architectural/Design fees and costs associated with the preparation and revision of Plans and/or Specifications, as well as survey fees, and charges for copies of any survey plats and construction plans;
- (f) Any costs related to extra Work incurred because of deficiencies in the Plans and/or Specifications prepared by others, or due to circumstances that were not reasonably foreseeable;
- (g) Expenses for insurance and bond premiums directly attributable to the construction of the Home;
- (h) Losses and expenses (including theft and vandalism) and extra material costs, not compensated by insurance (including Builder’s insurance deductible), that arise from errors or omissions by subcontractors or suppliers in connection with the Work; provided that Builder’s purposeful act or omission did not give rise to those losses;
- (i) Sums paid by the Builder for tap charges, standby fees, impact fees, permits, utility hook-up fees, and gas, electricity, water and local telephone service to the Property and Home during construction;
- (j) Sales, use or similar taxes related to the Work and which are imposed on Builder;
- (k) Cost of clean-up and removal of debris from the Property; and
- (l) Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency.

Although the Cost of the Work is premised on the Builder’s actual costs, the Owner acknowledges that the Builder is not representing or agreeing that actual costs will be the least expensive alternative that is available to the Builder. The actual costs that Builder will be submitting for reimbursement, will however, represent typical costs the Builder would incur if it were performing the Work for itself under a fixed sum contract.

In light of the information presently available to the Builder with respect to the proposed scope of the construction (including any Plans and Specifications produced by others), and taking into account specific budgets or “Allowances” that have been established for certain elements of the Work which remain undetermined at this time, the Builder can only provide an **ESTIMATE** of the Cost of the Work, that sum being: \$_____.

Builder is not able to specify the precise Cost of the Work because of the foregoing limitations and because existing



INITIALED FOR IDENTIFICATION

prices for commodities to be incorporated into the Home (e.g., lumber, cement, sheetrock) could change during the progress of the Work along with the cost of labor and equipment. ***Additionally, the adequacy of the Allowance amounts for appliances, fixtures, floor coverings, etc. are determined ultimately by the Owner's subjective considerations of quality, style and functionality.***

4. PAYMENT PROCEDURE. The Owner agrees that the Builder's Fee, will be paid by Owner to Builder at Builder's office in _____ County, Texas in _____ installments, the first such installment in the amount of \$ _____ shall be payable at execution of this Contract and shall be followed by _____ subsequent monthly installments of \$ _____ each, payable on the first day of each succeeding month until the entire Builder's Fee has been paid. The initial installment of the Builder's Fee is ***not refundable*** under any circumstances and is paid as consideration for the Builder's costs of contract preparation, budget formulation, research on specially fabricated items, materials deposits, etc.

The Cost of the Work and the Builder's Percentage shall be payable through a series of written requests from the Builder for payment (each to be referred to as a "Draw Request") submitted to Owner as the Builder contracts for or purchases materials, and as Work is performed. The Draw Request shall specify in reasonable detail the materials ordered/purchased and that portion of the Work performed, based on the actual costs incurred or to be incurred by the Builder in purchasing materials and performing the Work. The portion of the Builder's Percentage then due shall be calculated on the Cost of the Work shown in the Draw Request. Owner shall pay Draw Requests to Builder within three (3) business days of submission of the Draw Request. Draw Requests not timely paid shall begin to accrue interest at the rate of twelve percent (12%) per annum on the 10th day after receipt. Upon Owner's written request, Builder will have a reasonable time to provide copies of all invoices, proposals, contracts and canceled checks which support the Builder's Draw Requests, although payment of a pending Draw Request is not contingent upon receipt of such records. ***The Parties acknowledge and understand that in view of the negotiations that preceded agreement on the Builder's Fee, no Draw Requests will be subject to withholding or retainage as provided under Section 53.101 et seq. of the Texas Property Code.***

The Owner shall pay any portion of the Cost of the Work, the applicable Builder's Percentage, and the Builder's Fee that have not been previously paid upon Substantial Completion of the Work (as defined in para.7). The existence of minor cosmetic repairs and adjustments shall not delay Substantial Completion and the payments due to Builder at that time. Upon payment in full of sums due Builder, Owner shall be entitled to the Builder's Indemnity Against Liens and Affidavit of Bills Paid (a copy of which is attached as Exhibit "B"). Under no circumstances shall the Owner be permitted to occupy the Home without paying in full the Cost of the Work, the Builder's Fee and the Builder's Percentage.



INITIALED FOR IDENTIFICATION

5. ACQUISITION OF PROPERTY AND FINANCING OF WORK. Owner represents that Owner has full ownership of, or a unilateral right to purchase, the Property in fee simple, free and clear of any liens or encumbrances (recorded or unrecorded), except for purchase money liens and such other matters that are common to the platted subdivision in which the Property is located. Owner further represents that there are no restrictions, regulations, rules, proceedings or lawsuits pending which would interfere with the Work contemplated by this Contract. Except for the non-refundable installment of the Builder's Fee, neither Party assumes any duty or liability under this Contract until (a) Owner has acquired the Property, (b) Builder receives and approves title documentation and a survey to be provided at Owner's expense in a form acceptable to Builder, and (c) the Owner provides the Builder with written evidence of the availability of funds to pay the Cost of the Work, the Builder's Fee and Builder's Percentage (if applicable) in full. The foregoing activities are to be accomplished and information provided within thirty (30) days after the signing of this Contract. If within that time the Owner cannot qualify for the necessary financing, or Builder is not reasonably satisfied with the title documentation and survey or that the financing condition has been met, Builder may terminate this Contract and retain the initial installment of the Builder's Fee.

The Builder agrees to accommodate the reasonable requests of Owner's third party lender. Owner acknowledges and agrees, however, that the loan documents that Builder is asked to sign must be in a form reasonably acceptable to Builder and that such documents will not alter the rights and obligations of the Parties under this Contract. *Insofar as the relationship between Owner and Builder is concerned, the terms and conditions of this Contract shall not be superseded or modified by the Owner's construction financing documentation unless the superseded or modified provision in this Contract is identified, annotated and initialed by the Parties.*

6. SUITABILITY OF BUILDING SITE/FOUNDATION. Owner shall have the sole responsibility of designating the location of the Home on the Property and securing any necessary encroachment agreements with adjacent landowners or easement owners. The Owner shall secure one or more independent professional engineers (the "Engineer") to conduct soils testing and prepare an engineered foundation plan and a structural framing plan that will supplement and be a part of the Plans and Specifications. The cost of soils testing, preparation of an engineered foundation and structural framing plan, and any pad compaction testing, and foundation and framing inspections, as deemed necessary by the Engineer, shall be borne by Owner (irrespective of whether these sums are included within the Estimated Budget and/or paid directly to the Engineer by Builder or Owner). 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 soils testing, the suitability of the design and the specification of components for the foundation and framing of the Home shall relieve the Builder from responsibility for or liability to the Owner 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 the foundation and structural plans.



INITIALED FOR IDENTIFICATION

7. **INITIATION AND COMPLETION OF THE WORK.** Builder shall commence the Work within fifteen (15) working days following the later of (i) the filing of record of the Mechanic's Lien Contract associated with Owner's construction financing, or (ii) the Builder's receipt of all required permits, licenses and other necessary approvals for commencement of the Work. The Work shall thereafter be continued in accordance with the Builder's normal construction schedule until the Work reaches "Substantial Completion," which shall occur when construction of the Home is sufficiently complete to allow the Owner to occupy and use the Home for its intended purpose. Substantial Completion will also be deemed to have occurred when the Home is occupied by the Owner, or when a final building inspection is passed and/or approval of the Home for occupancy by any applicable municipal authority. Builder **ESTIMATES** that Substantial Completion of the Home will occur on or about _____. This date is estimated since completion of the Home is subject to delays caused by conditions beyond the control of Builder. Such causes (referred to as "Excused Delays") include, but are not limited to, the unavailability of required materials, labor and services from subcontractors, as well as by interference by or disputes with the Owner and/or Owner's agents or subcontractors employed by Owner (for which Builder is permitted to suspend construction until such disputes are resolved), Change Orders, fire, or other casualty, acts of God, inclement weather which interferes with normal scheduling of the Work, or failure of Owner to promptly fund Draw Requests or to timely make decisions or selections of allowance items, colors, or materials. **BUILDER THEREFORE DOES NOT GUARANTEE SUBSTANTIAL COMPLETION OF THE HOME ON ANY SPECIFIC DATE.**

8. **CHANGE ORDERS.** A "Change Order" is a written agreement between the Owner and Builder to make changes, additions or deletions in the Work. If Builder agrees to implement a Change Order (and it has no present obligation to do so), any additional costs incurred by the Builder as a result of the Change Order, plus the Builder's Percentage shall be paid in full when the Change Order is signed by the Parties. **IT IS EXPRESSLY ACKNOWLEDGED BY OWNER (IF MORE THAN ONE), THAT ANY OWNER SIGNATORY TO THIS CONTRACT CAN INDIVIDUALLY AUTHORIZE AND APPROVE A CHANGE ORDER. EACH OWNER SIGNATORY IS HEREBY DESIGNATED AN ATTORNEY-IN-FACT FOR ANY OTHER OWNER SIGNATORY FOR THIS PURPOSE, AND BUILDER IS ENTITLED TO RELY AND ACT ON ANY SUCH CHANGE ORDER SIGNED BY ANY OWNER SIGNATORY.** Change Orders deleting Work or materials will reduce the Cost of the Work by the Builder's true cost savings for the deleted items, but Builder may also request a Change Order fee equal to the applicable Builder's Percentage for administration of the Change Order. Should Owner request Builder to perform research on and/or provide cost estimates for extra Work to be incorporated into a proposed Change Order, Builder will be reimbursed for the time expended for such activity at the rate of \$_____ per hour. Upon request, these hourly fees shall be paid to Builder, irrespective of Owner's decision to proceed with the implementation of a Change Order for the additional Work.



INITIALED FOR IDENTIFICATION

9. INDEPENDENT BUILDER STATUS. Builder, in the performance of the Work does so as an independent contractor, and the Builder (not the Owner) shall have the 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. The Builder shall exercise exclusive control over the selection of the subcontractors, and shall not be obligated to employ subcontractors solely on the basis of cost savings that might be achieved. All subcontractors shall perform their functions independently, and not as an agent or employee, servant or representative of the Builder or the Owner. *The Owner agrees not to instruct, direct or otherwise communicate with the subcontractors retained by the Builder as to the scheduling of or details about the Work (including additions to or deletions therefrom) nor shall Owner do or cause any work to be done, or alter or cause the alteration of any portion of the Home, whether complete or incomplete, before Substantial Completion and payment in full.* Owner shall not independently contract for any portion of the Work without Builder's express written consent. If Owner employs a third party to fabricate an element, feature or appliance to be incorporated into the Home, the Owner shall be responsible for the installation of that fabricated item. **ACTS OR OMISSIONS OF, OR LOSSES, DAMAGES OR DELAYS CAUSED BY, ANY THIRD PARTY RETAINED BY OWNER SHALL BE THE RESPONSIBILITY OF OWNER, NOT BUILDER. THE BUILDER SHALL NOT WARRANT THE WORK OR MATERIALS PROVIDED BY THIRD PERSONS OR ENTITIES EMPLOYED BY, OR WHO HAVE CONTRACTED WITH, OWNER.**

10. 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:

(a) 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 Home to a minimum. When Owner chooses to enter the Property, and irrespective of Builder's presence on the Property at such time, **OWNER AGREES TO RELEASE AND/OR INDEMNIFY, DEFEND AND HOLD BUILDER HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS OR CAUSES OF ACTION (INCLUDING ATTORNEY'S FEES) ARISING IN FAVOR OF OWNER OR OWNER'S 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 OWNER OR OWNER'S LICENSEES AND INVITEES IS CAUSED BY THE SOLE NEGLIGENCE OF BUILDER OR ATTRIBUTABLE TO BUILDER'S NEGLIGENCE PER SE OR IMPOSED BY STRICT LIABILITY.**



INITIALED FOR IDENTIFICATION

(b) 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 AGREES TO RELEASE THE BUILDER FROM ANY CLAIMS FOR DAMAGES TO OR LOSS OF TREES AND VEGETATION EXCEPT THAT WHICH RESULTS FROM THE BUILDER'S GROSS NEGLIGENCE.**

(c) Losses and Damage Related to the Work. Without minimizing in any way the foregoing indemnification by the Owner, and as between Owner and Builder only, Builder shall indemnify the Owner as here provided from losses and damages that may occur incident to or in connection with the Work, **BUT NOT** as to any such loss or damage caused in whole or in part by the negligence of those employed by or contracting with the Owner. **BUILDER AGREES, DURING THE PROGRESS OF THE WORK, TO PROTECT OWNER AND TO INDEMNIFY, DEFEND AND SAVE OWNER HARMLESS FROM (i) ANY AND ALL LIENS, CONTRACT DAMAGES, SUITS, CLAIMS AND CAUSES OF ACTION RELATED TO THE CONSTRUCTION OF THE HOME, AND (ii) ANY SUITS, CLAIMS AND CAUSES OF ACTION FOR DAMAGES TO PROPERTY OR PERSONAL INJURY TO OR DEATH OF BUILDER'S EMPLOYEES, AGENTS, REPRESENTATIVES AND INDEPENDENT CONTRACTORS (AND THEIR EMPLOYEES) ASSOCIATED WITH PERFORMANCE OF THE WORK BY THE BUILDER.**

11. INSURANCE/WAIVER OF SUBROGATION. Builder shall keep in force during progress of the Work, and shall furnish to Owner, upon Owner's request, copies of the following insurance policies:

- (a) Builder's Risk Insurance in the amount of the estimated cost of the Work (plus any Change Orders), naming Owner as loss payee;
- (b) Statutory Worker's Compensation Insurance for Builder's employees; and
- (c) Commercial General Liability Insurance with limits of \$ _____ per person, per occurrence for personal injury, (\$ _____ aggregate), with \$ _____ coverage for completed operations.

Supplemental to the Builder's obligation to carry insurance fully protecting the Home during construction, after occupancy the Owner shall secure and maintain insurance covering risk of loss and damage to the Home, however caused. The Parties agree to waive the rights that each may have against the other for such insured losses or damage to the Home, its contents, or the Property during construction and after occupancy of the Home, including any such loss or damage arising from the negligence or other fault of either Party.



INITIALED FOR IDENTIFICATION

12. INSPECTION AND APPROVAL OF HOME. During construction of the Home, Owner shall conduct periodic walk-through inspections (with due consideration being given to safety concerns) and agrees to timely apprise 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 Owner to reasonably object to the Work performed within any phase of construction (excluding a latent defect, if any) shall constitute an acceptance of that Work.* Owner 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 Owner at the Closing. (A copy of the Limited Warranty is included with this Contract). **UPON COMPLETION AND OWNER’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 Owner the manufacturer’s warranty, without recourse. Owner 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 FITNESS, MERCHANTABILITY, OR GOOD AND WORKMANLIKE CONSTRUCTION, ARE DISCLAIMED AND EXCLUDED.**

14. REMEDIES FOR BREACH OF CONTRACT/LIMITATION OF CLAIMS. The Parties are entitled to the following notification and opportunity to cure any impermissible act/omission that would constitute a material breach of this Contract, and agree to the mutual limitations of certain claims and damages as outlined below:

(a) If Builder materially breaches this Contract or abandons all activities on the Property for a period of ten (10) consecutive work days for any reason except Excused Delays, and Builder fails to cure the breach or resume work within seven (7) days after receipt of written notice from Owner (time being of the essence in this regard) specifying the Owner’s intention to terminate this Contract by reason of the Builder’s breach or abandonment as detailed in such



INITIALED FOR IDENTIFICATION

notice, Owner shall have the right to terminate this Contract and to have the Work completed by another contractor selected by Owner. In the event of a termination of this Contract by Owner, Builder shall be entitled to be paid that portion of the Cost of the Work, the Builder's Fee and the Builder's Percentage fairly attributable to the Work completed in accordance with the Plans and Specifications and pursuant to this Contract and any Change Orders. The foregoing shall not limit any rights and remedies of Owner under applicable law which may be pursued at Owner's option upon a material breach of this Contract by Builder.

(b) If Owner fails or refuses to comply with the terms of this Contract, or Builder reasonably believes that future payments by Owner are questionable, and Owner fails to cure same or provide reasonable assurances that are acceptable to Builder within three (3) work days following written notice from Builder (time being of the essence in this regard), then Builder may suspend the Work (to offer additional time to cure) and/or at any time thereafter, terminate this Contract by written notice. The foregoing shall not limit any rights and remedies of Builder under applicable law which Builder may pursue at its option upon default by Owner, being in addition to the remedies of Builder as provided for in the Mechanic's Lien Contract (if any) or such other instrument executed by the Parties.

Under no circumstances shall Builder or Owner be liable for any special, indirect, or consequential damages, including claims for 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 Owner or Builder not later than two (2) years and one (1) day from the date the cause of action accrues.

15. ENVIRONMENTAL RISK. The Builder disclaims any warranties 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 soil conditions and contamination of the Home or the surrounding air, water or soil from any sources and/or in any manner.

Owner 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 occupying the Home, the Owner is responsible for implementing an inspection and maintenance program for the identification and elimination of moisture in the Home that could give rise to the growth of mold or other conditions detrimental to the 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 Owner'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) 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.



INITIALED FOR IDENTIFICATION

16. **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:

(a) Statutory Notice. This Contract is subject to Chapter 27 of the Texas Property Code. The Provisions of that Chapter may affect Owner’s right to recover damages arising from the performance of this Contract. If Owner 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, Owner 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 60th day before the date Owner 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, Owner 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 OWNER TO AFFORD THE BUILDER THE OPPORTUNITY TO INSPECT AND CURE ANY CONSTRUCTION DEFECT, PRIOR TO OWNER TAKING STEPS TO CORRECT THAT CONSTRUCTION DEFECT, WILL PRECLUDE THE OWNER’S CLAIM AGAINST THE BUILDER FOR THAT CONSTRUCTION DEFECT EXCEPT IN CASES ON AN EMERGENCY INVOLVING IMMEDIATE RISK TO THE HEALTH AND SAFETY OF THE OWNER.**

(b) Mediation-Binding Arbitration/Waiver of Jury Trial. The Owner and Builder agree that all controversies, claims (and 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 before a single arbitrator who must be an attorney with at least ten (10) years experience in residential construction disputes, and conducted 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 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 limited by and fully comply with Texas law, and shall state the bases for the Award, including any computations of damages or offsets, if applicable. The Parties agree to abide by and fully perform in accordance with the Award rendered by the arbitrator. If either Party seeks



INITIALED FOR IDENTIFICATION

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.

17. BROKERAGE COMMISSION. Builder and Owner 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 BREACH OF THIS REPRESENTATION.

18. OWNER REPRESENTATIVE. Owner may employ a third party professional (*e.g.*, architect, engineer, construction consultant) to inspect or monitor the Work (the “Owner’s Agent”). The identity of that person, however, must be communicated to Builder in writing, prior to the execution of this Contract to permit Builder to review the Plans and Specifications and Allowances with Owner’s Agent. After execution of this Contract, the appointment of a Owner’s Agent shall require approval of Builder, which approval may not be unreasonably withheld by Builder. If an Owner’s Agent is designated, Builder may rely on any representations, statements, or approvals made by Owner’s Agent concerning construction of the Home.

19. 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 Parties (whether faxed, delivered, mailed, or transmitted by electronic mail). The addresses for Notice are reflected under the signatures of the Parties.

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. NOTICE OF RELIANCE ON WRITTEN INFORMATION FROM THIRD PARTIES AND GOVERNMENT AGENCIES. BUILDER ADVISES OWNER THAT THE BUILDER IS RELYING ON WRITTEN INFORMATION FROM VARIOUS THIRD PARTIES, ENGINEERS, ARCHITECTS/ DESIGNERS, MANUFACTURERS AND GOVERNMENTAL AGENCIES CONCERNING THE PROPERTY AND THE MATERIALS AND COMPONENTS TO BE 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



INITIALED FOR IDENTIFICATION

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 TO BE INCORPORATED INTO THE HOME, INCLUDING BUT NOT LIMITED TO ROOFING MATERIALS, SIDING, INSULATION, PLUMBING FIXTURES, PIPING, APPLIANCES, AND HVAC COMPONENTS.

22. 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. All representations, agreements, indemnities and disclaimers of the Builder and the Owner that are contained in this Contract shall remain in full effect after the Substantial Completion of the Home, and shall not be replaced or limited by any other document or agreement except as explicitly provided in this Contract. This Contract is binding upon the heirs, executors, administrators, successors and assigns of the Parties, and those persons who would have a claim by, through or under the Parties. If any provision of this Contract is determined to be invalid or unenforceable, the remainder of this Contract shall not be affected.

23. PROPRIETARY INFORMATION. The Owner is also advised that photographs of the Home may be taken by the Builder during and subsequent to performance of the Work. Owner agrees that Builder's use of the photographs in furtherance of Builder's business shall not be limited. Builder may place one of Builder's signs on the Property during construction of the Home. Owner acknowledges and agrees that the business practices and associated information disclosed and to be disclosed by Builder incident to the formation and implementation of this Contract (e.g., Builder's subcontractor/supplier relationships; Builder's margins and pricing procedures) constitute proprietary information that is to be protected and not divulged to third parties. Owner's failure to protect the confidentiality of this information will constitute a material breach of this Contract.

24. ENTIRE AGREEMENT. This Contract, together with all attachments, contains the entire understanding between Builder and Owner 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 authority to make any oral or written statements that modify or change the terms and conditions of this Contract.

OWNER REPRESENTS THAT OWNER HAS READ AND UNDERSTANDS THIS ENTIRE CONTRACT, INCLUDING THE AGREEMENT FOR BINDING ARBITRATION OF DISPUTES RELATED TO THIS



INITIALED FOR IDENTIFICATION

CONTRACT. OWNER ALSO REPRESENTS THAT NO VERBAL STATEMENT, PROMISE OR CONDITION NOT SPECIFICALLY SET FORTH IN THIS CONTRACT IS BEING RELIED UPON BY OWNER. IT IS ACKNOWLEDGED THAT BUILDER IS RELYING ON THESE REPRESENTATIONS AND WOULD NOT ENTER INTO THIS CONTRACT WITHOUT THIS UNDERSTANDING.

25. IMPORTANT NOTICE. YOU AND YOUR CONTRACTOR ARE RESPONSIBLE FOR MEETING THE TERMS AND CONDITIONS OF THIS CONTRACT. IF YOU SIGN THIS CONTRACT AND YOU FAIL TO MEET THE TERMS AND CONDITIONS OF THIS CONTRACT, YOU MAY LOSE YOUR LEGAL OWNERSHIP RIGHTS IN YOUR HOME. KNOW YOUR RIGHTS AND DUTIES UNDER THE LAW.

EXECUTED in multiple copies this ____ day of _____, 20__.

OWNER:

BUILDER: _____

By: _____
Name/Title: _____

Tel: (____) _____ Fax: (____) _____

Tel: (____) _____ Fax: (____) _____

Email: _____

Email: _____

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 or any other aspect of the contract by the GHBA.

Schedule of Exhibits

- A - Specifications
- B - Indemnity Against Liens and Affidavit of Bills Paid
- C - Warranty Sample
- D - Insulation Addendum
- E - Brokerage Addendum



INITIALED FOR IDENTIFICATION

Acknowledgments

THE STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on this ____ day of _____, 20____, by _____, _____ of _____.

NOTARY PUBLIC, STATE OF TEXAS

THE STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on this ____ day of _____, 20____, by _____ and _____.

NOTARY PUBLIC, STATE OF TEXAS



INITIALED FOR IDENTIFICATION
