



PROMULGATED BY THE TEXAS ASSOCIATION OF BUILDERS (TAB)
INDEPENDENT CONTRACTOR BASE AGREEMENT

1. **PARTIES:** This Base Agreement (Agreement) is between _____ (Builder) and _____ (Contractor).
2. **CONTRACTOR:** Contractor is a (check one of the following): Corporation Partnership Sole Proprietorship. The SS# or Tax ID# is _____.
If Contractor is a Corporation, the name(s) of its principal officers are: _____
If Contractor is a Partnership or Sole Proprietorship, the name(s) of its partners or owners are: _____
Contractor's business address is: _____
Contractor's telephone: _____ Fax: _____
Contractor's email address is: _____
Contractor's mailing address is: _____
3. **WORK:** The work and/or materials (collectively, the Work) to be supplied by Contractor pursuant to this Agreement include all labor and materials furnished by Contractor at the request of Builder from and after the date of this Agreement. This Agreement shall be effective from the date hereof and shall continue until terminated by either party upon thirty (30) days written notice to the other; provided, however, that Contractor's obligations and warranties shall survive termination with respect to all Work supplied by or through Contractor prior to termination. Except for change orders, Contractor agrees to honor all bid prices submitted to Builder for a period of _____ days from the date of each subject bid.
4. **PAYMENTS:**
- A. **TIMELY PERFORMANCE** - No payments shall be due under this Agreement unless and until Contractor has timely performed and delivered all Work requested by Builder. No payments will be disbursed until Builder has had a reasonable opportunity to inspect the Work performed and/or delivered, has received an invoice identifying the subject Work and has received valid lien waivers executed by Contractor. If Builder agrees to pay Contractor on a _____ basis, Contractor, as a condition precedent to payment, must transmit all applicable invoices to Builder's office by no later than 12:00 o'clock p.m. on _____ with payment to be made by _____ o'clock p.m. on the following _____. It is agreed that Builder shall not be responsible for payment of faxed invoices unless Contractor calls Builder to verify Builder's receipt of the fax transmission. There shall be no exceptions to this requirement.
- B. **PERSONAL GUARANTY** - In consideration of Builder entering into this Agreement, Contractor agrees the undersigned principal owner(s) of Contractor shall personally guarantee the full and prompt payment of all sums due to all employees, agents, subcontractors, material suppliers and labor suppliers of Contractor who furnish labor or materials pursuant to this Agreement.
- C. **PAYMENTS WITHHELD** - Contractor expressly agrees that payments may be withheld and all costs incurred by Builder shall be charged against all monies due Contractor under this Agreement if:
- 1) Work is found defective and not remedied by Contractor.
 - 2) Contractor does not make prompt and proper payments to his employees, agents and/or subcontractors.

- 3) Contractor does not make prompt and proper payments for labor, materials or equipment furnished by third parties.
 - 4) Another contractor is damaged by an act for which Contractor is responsible.
 - 5) Claims or liens are filed on the job as a result of Contractor's failure to make full and timely payments as required in subparagraph 2) above.
 - 6) In the opinion of the Builder, Contractor's Work is not progressing satisfactorily.
 - 7) Builder reasonably believes that the Work cannot or will not be completed in accordance with all the terms and conditions of this Agreement.
 - 8) Contractor fails to perform warranty service under this Agreement or any other prior or contemporaneous agreement with Builder.
 - 9) Builder is fined by any governmental agency on account of or arising out of Contractor's, his employee's or his agent's violation of any law, ordinance, regulation, administrative ruling or court order.
 - 10) Contractor does not timely furnish itemized invoices as specified in this Agreement.
 - 11) Violation, default or failure to comply with any other term or condition herein.
- D. **RETAINAGE** - At all times during the performance of this Agreement, Builder shall be entitled to retain ten percent (10%) of each payment for Work satisfactorily performed and/or delivered and, if Builder elects to do so, the retained funds shall be paid to Contractor thirty-five (35) days after the date of final acceptance of the Work by Builder and Builder's receipt of valid lien waivers executed by Contractor and all of Contractor's subcontractors, laborers, and suppliers. This retainage amount may be withheld pursuant to §53.101 *et seq.* of the Texas Property Code.
- E. **UNTIMELY SUBMISSION OF PAYMENT** - To the maximum extent allowed by law, all requests or demands for payment of any kind that are submitted after ninety (90) days from the earlier of the date of completion of the Work (i.e. the cessation of labor and the provision of professional services, materials or equipment) or the date a certificate of occupancy or equivalent approval has been issued with regard to the house for which the Work was completed, will not be paid, and Builder shall be and is released of all liability for payment under the terms of this Agreement for such delinquent requests or demands for payment.
- F. **BOOKS AND RECORDS** - Upon reasonable notice, at reasonable times, and at Builder's cost, Builder or a third party retained by Builder shall have the right to access Contractor's non-proprietary and non-confidential books, records and documentation related to this Agreement for the purpose of verifying Contractor's performance of its obligations under this Agreement.
- G. **COURSE OF DEALING** - Any oral request for services and/or materials is expressly not authorized by Builders' corporate officers, employees, representatives or agents and Contractor may not rely upon any such representation, regardless of any and all prior or future course of dealing, acts or otherwise, including but not limited to payment outside of the terms and conditions herein.
5. **CONTRACTOR'S SUPPLIERS:** Contractor agrees to provide Builder with the names and addresses of Contractor's suppliers upon Builder's request for same. Builder may at its discretion, request written verification direct from Contractor's suppliers that Contractor has paid all bills currently due for materials and/or labor related to Work performed under this Agreement. In the event Contractor's accounts with his suppliers are more than 15 days past supplier's due date, Builder may, in its discretion, elect to withhold payment from Contractor and pay Contractor's suppliers to bring Contractor's accounts current. Builder may also, in its discretion, elect to pay various suppliers and subcontractors of Contractor by joint check. Any residual due Contractor after outstanding bills with Contractor's suppliers have been satisfied will then be paid to Contractor.
6. **INDEPENDENT CONTRACTOR:** Contractor certifies that Contractor is an "independent contractor" and not an employee of Builder and as such, certifies that Contractor is solely responsible for all applicable taxes and charges including, but not limited to, withholding taxes, social security taxes and unemployment taxes on Contractor and

Contractor's employees. Contractor certifies that, as an independent contractor, Contractor is not under the direction and control of Builder and certifies that Contractor may be employed by or contract with other companies in the trade. Contractor certifies that Contractor uses its own tools, offices at the business address shown above and there has never been, nor will there be, during the term of this Agreement, an employer/employee relationship with Builder. Contractor certifies that this Agreement went into effect from the date of first performance as a Contractor for Builder.

7. **OTHER CONTRACTS:** Builder reserves the right to enter into other contracts in connection with any job or project. Contractor shall cooperate with all other contractors to the effect that their work shall not be impeded by Contractor's Work, and Contractor shall give all other Builder's contractors access to the job site necessary to perform such work, labor and supply materials, etc.

8. **INSPECTION:** Contractor shall be responsible for inspecting any work of another contractor that may affect his own Work and shall report in writing to Builder any defects in such work upon discovery of the defect prior to commencing Work or shall be deemed to have accepted such work as correct and fit to be accommodated into Contractor's own Work.

9. **CONTRACT DOCUMENTS:**

A. **CONTRACT DOCUMENTS** - This Agreement, together with any and all relevant work orders, bids, bonds (where applicable or required), change orders, or complete construction plan sets (which include but are not limited to applicable foundation plans, frame plans, floor plans, elevation plans, construction sheet details and specifications), shall constitute the entire Contract Documents (Contract Documents) and there are no other agreements, oral or written, by and between the parties hereto, except as to Contractor's warranties under any prior or contemporaneous agreement with Builder which warranties are incorporated by reference herein for all purposes.

B. **PLANS AND SPECIFICATIONS** - Contractor expressly agrees to read and become familiar with all relevant plans and specifications (available for inspection in Builder's Office) applicable to this Agreement or any Work requested by Builder before starting any Work. Contractor shall be solely responsible for all construction under this Agreement, including techniques, sequences, procedures, and means for the coordination of all Work. Contractor shall supervise and direct his Work to the best of his ability and give it all attention necessary for such proper supervision and direction. Contractor shall perform all labor in a good and workmanlike manner.

10. **CONTRACTOR'S EMPLOYEES, SUBCONTRACTORS AND AGENTS:**

A. **DISCIPLINE AND CONTROL** - Contractor shall maintain at all times strict discipline among his employees, subcontractors and agents, and agrees not to employ or subcontract for Work on any project any person unfit or without sufficient skill to perform the job he is contracted to do. If the project is a residence and Contractor is an In-home Service Company or Residential Delivery Company within the meaning of Chapter 145 of the Texas Civil Practice and Remedies Code ("TCPRC"), Contractor represents that it is in compliance with TCPRC Section 145.003(b), and shall obtain a criminal history background check as described by TCPRC Section 145.002 on any employee or agent of Contractor being sent to deliver, place, assemble, repair or install an item at the project, before such person is sent. Contractor agrees that this paragraph constitutes a request under TCPRC Sec. 145.004(2). Contractor shall not send any person for whom the criminal history record information shows a felony conviction in the 20 years preceding the date the information was obtained or a misdemeanor conviction in 10 years preceding the date the information was obtained for (a) an offense in this state classified as: (i) an offense against the person or the family; or (ii) an offense against property; or (iii) public indecency; or (b) an offense in another jurisdiction that would be classified in a category described by (a) above if the offense had occurred in this state.

B. **ELIGIBILITY** - Contractor warrants and agrees that all of Contractor's employees, subcontractors and agents who will be performing Work contemplated by this Agreement will be of legal age and otherwise legally authorized to perform such Work. Contractor further agrees to fully comply with the requirements of all applicable immigration

laws including the Immigration Reform and Central Act (IRCA) with respect to all of Contractor's employees. Specifically, Contractor agrees to (1) obtain properly completed Employment Eligibility Verification Forms (Form I-9) for all of Contractor's employees as required by the IRCA and (2) verify the Social Security Numbers and other documentation submitted with each Form I-9. CONTRACTOR AGREES TO DEFEND, HOLD HARMLESS AND UNCONDITIONALLY INDEMNIFY BUILDER AND ITS AGENTS, PRINCIPALS, AND EMPLOYEES, AGAINST ANY AND ALL LIABILITY, COSTS, EXPENSES (INCLUDING ATTORNEY'S FEES), FINES, PENALTIES, AND CLAIMS WHICH BUILDER MAY AT ANY TIME SUFFER OR SUSTAIN OR BECOME LIABLE FOR BY REASON OF CONTRACTOR'S FAILURE TO COMPLY WITH THE PROVISIONS OF THIS PARAGRAPH.

- C. WORKING CONDITIONS - Contractor agrees to take all necessary measures to achieve project and site safety, including, but not limited to, the following:
 - 1) Contractor shall be responsible for immediately reporting any suspected unsafe work practice or job condition to Builder.
 - 2) Contractor shall provide safe working procedures including equipment, training and supervision for his employees, subcontractors and agents.
- D. LEGALLY AUTHORIZED - Contractor warrants that all his employees, subcontractors and agents are at least eighteen (18) years old and legally authorized to perform the Work and that he will not allow or hire any employees, subcontractors or agents under eighteen (18) years of age or not legally authorized to perform the Work contemplated under this agreement.
- E. NONDISCRIMINATION - Contractor will not discriminate against any employee or applicant for employment because of race, religion, sex, color, or national origin. Contractor will take affirmative action to ensure that applicants are employed and that employees are treated appropriately during their employment, without regard to their race, religion, sex, color or national origin. Such action shall include but not be limited to the following: employment, upgrading, transfer, recruitment or recruitment advertising, layoff or termination, raises of pay or other forms of compensation, and selection for training. Contractor further agrees that all solicitations and advertisements for employees placed by or on behalf of Contractor will state that all qualified applicants will receive consideration for employment without regard to race, religion, sex, color or national origin.
- F. OSHA COMPLIANCE - Contractor will comply with all provisions of the 1970 Occupational Safety and Health Act (OSHA) and all other applicable OSHA rules and regulations. This includes, but is not limited to:
 - 1) Compliance with OSHA's Hazard Communication Standard and provide Builder a copy of all Materials Safety Data Sheets for all hazardous or toxic chemicals used in connection with the Work;
 - 2) Compliance with OSHA's Fall Protection in the Construction Industry; and
 - 3) Contractor shall immediately notify Builder of any job related injury to or death of any person employed by Contractor, or otherwise under the control of Contractor, in connection with the Work at Builder's site.
- G. FULL RESPONSIBILITY - Contractor agrees to assume full responsibility for all acts, negligence or omissions of any of Contractor's employees, agents, subcontractors and their employees, and for all other persons doing work under any oral or written contract between Contractor and any third parties.
- H. LIEN CLAIMS - Contractor shall keep the project site(s) and the premises upon which the Work is performed free of any claim or lien. Should any claim or lien be asserted or filed, Builder may, immediately and without notice to Contractor and in Builder's sole and exclusive discretion, pay an amount sufficient to discharge such claim or lien, bond over or insure around such claim or lien, and charge the cost of doing so against the Contractor by deducting said amount from amount owed to Contractor. Contractor must remove all liens and claims of lien per requirements of any lender providing development funds for the project location. IN ADDITION TO THE OBLIGATIONS UNDER LAW, AND WITHOUT LIMITATION ON ANY OTHER INDEMNITY OBLIGATION HEREIN, CONTRACTOR FURTHER AGREES TO HOLD HARMLESS, INDEMNIFY AND DEFEND BUILDER AND/OR ITS AFFILIATES FROM AND AGAINST ALL LOSS, COSTS, DAMAGE, EXPENSE (INCLUDING ATTORNEYS' FEES AND COURT COSTS), LIABILITY, JUDGMENT OR DECREE, WHICH BUILDER MAY SUSTAIN IN CONNECTION WITH ANY SUCH CLAIM, LIEN AND ANY NOTICE OF INTENT TO LIEN. As a material term to this Agreement, Contractor

waives and disclaims any and all rights to file, claim, assert or otherwise a lien or lien claim of any kind for any work performed, labor, materials supplied under this Agreement or otherwise under Chapter 53 of the Texas Property Code, the Texas Constitution, or by virtue of any theory of law or principle of equity against Builder and its assigns and affiliates against any property, subdivision, community, and/or removables related to or installed on the property. Any such violation of this provision by Contractor shall be deemed to be committed with the intent to defraud and is subject to, including but not limited to Chapter 12 of the Texas Civil Practice & Remedies Code. TO BE CLEAR FROM DOUBT, TO THE FULLEST EXTENT ALLOWED UNDER LAW, CONTRACTOR HEREBY WAIVES IN WRITING ITS RIGHT TO FILE AND WAIVES AND DISCLAIMS ANY AND ALL LIEN RIGHTS UNDER THE TEXAS PROPERTY CODE AND TEXAS CONSTITUTION. Contractor shall be in default if any demand is made on Builder for amounts due to Contractor's subcontractors and suppliers, and Builder shall have the right to withhold such amounts claimed out of any and all payments due to Contractor regardless of account, location, due date or otherwise and may pay any subcontractor and/or supplier directly. Contractor has not assigned and shall not assign, any right or claim for payment from Builder or any right to perfect a lien against the Work or real property to any third party. Any assignment or attempted assignment shall be unenforceable against Builder and shall be deemed a material default of this Agreement. Contractor shall include substantially identical language to this section in all subcontracts with any of Contractor's subcontractors and shall require that all subcontractors also waive and release all liens and claims to liens as a condition to their receiving payment in accordance with and to the fullest extent permitted by law. Upon request, Contractor will provide Builder with copies of subcontracts with Contractor's subcontractors for any Work.

- I. JOINT CHECK AGREEMENT / ACCOUNTS PAYABLE - Builder may at any time make payment by joint check to Contractor and Contractor's subcontractors and suppliers or pay Contractor's subcontractors and/or suppliers directly and deduct the amount paid from any remaining amounts owed to Contractor in Builder's sole and exclusive discretion. If Builder receives information or has reason to believe that Contractor has not paid for any labor, equipment, materials or any of Contractor's subcontractors or suppliers, then Builder may make payment jointly to Contractor and its subcontractors and/or suppliers, or reserve the remainder of funds, if any, until all such doubt is resolved to Builder's satisfaction; it is not required that Builder has received any formal notice of lien or intent to lien to exercise Builder's rights hereunder. Nothing in this paragraph or otherwise requires Builder to make payments by joint check, and Builder may refuse to make payment pursuant to any other provision herein. Builder may, in Builder's sole and exclusive discretion, credit, debt, offset, pay or otherwise on any of Contractor's funds due on an accounting basis rather than a property-to-property basis; and Builder may further protect Builder's interests in any project by such accounting methods to insure performance by Contractor and the prevention of liens or claims of lien by third-parties; and Builder may further hold Contractor and any of Contractor's affiliates or related companies in cross-default from project-to-project as Builder deems necessary and expedient.
- J. PAYMENTS AS TRUST FUNDS - Any and all funds paid to Contractor hereunder are hereby deemed to constitute trust funds in the hands of Contractor and, upon receipt of such funds, Contractor shall apply such funds to each residence as required by applicable law and as follows: (1) to the payment of all direct labor costs and related taxes and fringe benefits; (2) to claims of Contractor's subcontractors and suppliers; (3) to claims for any utilities furnished and taxes imposed; (4) to the payment of premiums of surety bonds and other bonds filed and premiums on insurance accruing during the construction of the Work; and (5) to the payment of all other expenses associated with the Work. Contractor shall satisfy all of the foregoing before Contractor applies any funds payable to Contractor for any other purpose, including but not limited to Contractor's own use. Contractor shall provide an accounting to Builder immediately upon request to evidence compliance with this provision and/or the other terms and conditions herein.

11. TAXES: Contractor shall pay all taxes required or imposed by law in connection with Work under this Agreement including sales, use and similar taxes, and Contractor shall secure and pay for all licenses and permits necessary for

proper completion of the Work. Contractor stipulates and agrees that the prices paid to Contractor by Builder include all sales tax.

12. COMPLIANCE WITH LAWS, ORDINANCES AND BUILDING CODES:

- A. COMPLIANCE - Contractor shall comply with all current applicable laws, ordinances, building codes and all rules, regulations, or orders of all public or regulatory authorities relating to the performance of the Work. If any of the Contract Documents are at variance therewith, Contractor shall notify Builder promptly upon a variance discovery.
- B. STORM WATER POLLUTION PROTECTION PLAN - Contractor acknowledges that any job site may be subject to a storm water discharge permit issued by applicable governmental authorities. In addition, certain erosion, sedimentation and storm water control measures and devices known as best management practices (BMPs) have been or will be installed and maintained in accordance with a Storm Water Pollution Protection Plan (SWPPP) adopted or approved by Builder for the job site. Contractor acknowledges and agrees that: (1) Contractor has reviewed the SWPPP for any applicable job site to the extent necessary for the performance of the Work, (2) in the performance of the Work, Contractor and its employees, agents, representatives, subcontractors and suppliers present at or performing any Work or delivering materials to a job site shall comply in all respects with the requirements of any applicable SWPPP and applicable soil erosion, sedimentation and storm water permits and regulations and will not damage, alter, remove or destroy any BMPs without the express approval of Builder, (3) Contractor shall immediately notify Builder if Contractor becomes aware of any compromised or ineffective BMPs or other violations of storm water regulations, and (4) Contractor shall, upon demand, defend and indemnify Builder and pay all costs to repair or replace any BMP and any expenses, fines and penalties incurred by or assessed against Builder or any other person or entity that result from any violation of the foregoing by Contractor or any of its employees, agents, representatives, subcontractors or suppliers. Builder may charge back any such cost, expense or amount to Contractor and/or offset such amounts against subsequent payments otherwise due to Contractor under this Agreement.
- C. FINAL INSPECTION - If, after final completion, the Work is subject to inspection and approval pursuant to any applicable governmental law, ordinance, rule or regulation, Contractor certifies and guarantees that all of Contractor's work and materials shall conform to all applicable regulations and standards.

13. LABOR AND MATERIALS: Contractor represents and warrants to Builder that all equipment and materials provided by Contractor and used or installed in connection with the Work will be new unless otherwise specified in the Contract Documents, of good quality, free of defects, and in strict conformity with the Contract Documents. It is understood between the parties hereto that all labor, equipment and materials not so in conformity are defective. Contractor further warrants that all labor and materials furnished by Contractor will be free of defects for a period commensurate with the applicable time periods specified in the Express Limited Home Warranty given by Builder to any homeowner where Work is supplied by Contractor or the manufacturer of materials from the date of transfer of title of the improvements of property the subject of this Agreement to the end residential user. Such warranty period shall commence on the first sale of the property to Builder's consumer. Contractor shall furnish all warranties and/or guarantees by manufacturers on appliances and equipment furnished by Contractor and shall further furnish all certificates required by any municipality and/or FHA and/or VA. Contractor shall be responsible for all latent construction defects of or relating to its Work and any and all resulting damages.

14. DEFECTIVE WORK: When Builder notifies Contractor (orally or in writing) that any part of the Work is defective, incorrect or does not conform to the terms of the Contract Documents (collectively, Defective Work), Contractor shall make all repairs and correct such Defective Work within eight (8) hours of notice of such Defective Work in an emergency and within seventy-two (72) hours of notice of such Defective Work on a non-emergency basis and shall bear the entire cost of doing so, including the cost incurred by Builder for any disturbance of work being completed by Builder or its other contractors. Builder shall determine if any Defective Work constitutes an emergency. Failure by

Contractor to correct Defective Work within the times set forth in this paragraph shall constitute a breach of this Agreement.

15. WASTE: Contractor agrees to keep the Work premises and adjoining ways free of waste material and rubbish caused by the Work or the work of his subcontractors. Contractor further agrees to remove all waste material and rubbish on termination of the Work together with all tools, equipment and machinery. Contractor agrees, on terminating the Work at the site, to conduct general clean-up operations, including the cleaning of all glass surfaces, paved streets and walks, steps, and interior floors and walls, where applicable. Contractor shall move all materials (usable and waste) to a location designated by Builder.

16. INDEMNITY AGREEMENT: CONTRACTOR AGREES TO DEFEND, HOLD HARMLESS AND UNCONDITIONALLY INDEMNIFY BUILDER, ITS AGENTS AND EMPLOYEES, AGAINST AND FOR ALL LIABILITY, COSTS, EXPENSES (INCLUDING ATTORNEY'S FEES), FINES, PENALTIES, LOSSES, CLAIMS AND DAMAGES (INCLUDING LOSS OF USE) THAT BUILDER MAY AT ANY TIME SUFFER OR SUSTAIN OR BECOME LIABLE FOR BY REASON OF ANY ACCIDENTS, DAMAGES OR INJURIES TO BUILDER, CONTRACTOR, CONTRACTOR'S PROPERTY, AGENTS, EMPLOYEES AND/OR SUBCONTRACTORS, AND/OR ANY OTHER PARTIES, IN ANY MANNER, ARISING FROM THE WORK PERFORMED HEREUNDER, REGARDLESS OF BUILDER'S SOLE NEGLIGENCE, INCLUDING BUT NOT LIMITED TO:

- A. CONTRACTOR'S OR BUILDER'S NEGLIGENCE (INCLUDING BUT NOT LIMITED TO NEGLIGENT HIRING);
- B. CONTRACTOR'S OR BUILDER'S GROSS NEGLIGENCE;
- C. STRICT LIABILITY;
- D. FAILURE OF CONTRACTOR, ITS AGENTS OR EMPLOYEES TO COMPLY WITH ANY OSHA, FEDERAL, STATE OR LOCAL LAWS OR REGULATIONS RELATING TO HEALTH AND SAFETY; OR
- E. BREACH OF EXPRESS OR IMPLIED WARRANTY BY BUILDER OR CONTRACTOR, THEIR AGENTS OR EMPLOYEES.

CONTRACTOR'S INDEMNIFICATION AND DEFENSE OBLIGATIONS HEREUNDER SHALL EXTEND TO CLAIMS OCCURRING AFTER THIS AGREEMENT IS TERMINATED AS WELL AS WHILE IT IS IN FORCE AND SHALL CONTINUE UNTIL IT IS FINALLY ADJUDICATED THAT ANY AND ALL ACTIONS AGAINST BUILDER AND ALL OTHER INDEMNIFIED PARTIES ARE FULLY AND FINALLY BARRED BY APPLICABLE LAW. CONTRACTOR ACKNOWLEDGES THAT IT IS INDEMNIFYING BUILDER FOR ITS OWN SOLE AND PARTIAL NEGLIGENCE.

17. ROYALTY AND LICENSE FEES: Contractor agrees to pay all royalties and license fees necessary for the Work, to defend all actions and settle all claims for infringement of copyright or patent rights, and to hold Builder harmless therefrom.

18. INSURANCE:

A. **INSURANCE REQUIREMENTS** - Before commencing the Work as contemplated herein, Contractor and its subcontractors shall procure and maintain at their sole cost and expense, until completion and a final acceptance of the Work and for twelve years after such completion, the following minimum insurance coverages from insurance companies satisfactory to Builder:

- 1) **COMMERCIAL GENERAL LIABILITY INSURANCE:** Commercial general liability insurance written on an Occurrence form for not less than the limits of liability as follows:
 - \$1 million each occurrence, \$2 million general aggregate;
 - \$1 million personal and advertising injury;
 - \$2 million products-completed operations aggregate;
 - \$50,000 damage to rented premises; and
 - \$5,000 medical expense.

Additionally, the Commercial General Liability insurance policy shall provide coverage for X, C, U (explosion, collapse and underground), contractual liability, products/completed operations, personal injury, broad form property damage, and an endorsement providing that the coverage is primary and any insurance provided by Builder is excess and non-contributory. CLAIMS MADE COVERAGE IS NOT ACCEPTABLE. The Commercial General Liability insurance policy shall name the Builder and Builder's affiliates, parents and subsidiaries as Additional Insureds with an express provision of such status or include a blanket additional insured endorsement and contain a full waiver of subrogation clause, and to be clear from doubt, Contractor hereby waives and disclaims any and all rights of subrogation and shall further defend, indemnify and hold Builder harmless for any claim by, through or under Contractor or Contractor's carrier for any such claim.

- 2) WORKERS' COMPENSATION INSURANCE: Contractor shall be responsible for satisfying any statutory requirements related to worker's compensation *as required by the State of Texas*. Contractor is required by law to give notice to the Texas Workers' Compensation Commission and its employees stating whether Contractor has elected to carry workers' compensation. Builder is not responsible for obtaining workers' compensation coverage for Contractor. Contractor will provide a Waiver of Subrogation from its insurance carrier, in favor of Builder, its agents and employees for all damages covered by insurance. The minimum required Employers Liability limits are \$1,000,000. Contractor hereby waives and disclaims any and all rights of subrogation and shall further defend, indemnify and hold Builder harmless for any claim by, through or under Contractor or Contractor's carrier for any such claim.
- 3) MOTOR VEHICLE INSURANCE: Automobile and motor vehicle (owned, non-owned, and hired) insurance written for not less than \$1,000,000 Combined Single Limit for bodily injury and property damage or loss.
- 4) LOSS OF TOOLS, EQUIPMENT, ETC.: Contractor shall insure or assume responsibility for losses to tools, clothes, equipment, and materials owned by it, its subcontractors, employees, or others used to perform the Work.
- 5) POLICY REQUIREMENTS: Each policy of insurance carried pursuant to this Agreement shall:
 - a. Be issued by companies reviewed in the most recent A.M. Best rating having not less than an A-VII rating. Policies will be made available to Builder within three (3) days of request.
 - b. Provide that the total of all deductibles and self insured retentions applicable to any specific insurance policy required under this Agreement shall not exceed \$10,000. Contractor shall be required to obtain Builder's express written approval for any higher deductible or self insured retention.

These minimum limits and coverages are subject to higher limits and coverage as required by the Builder.

- B. INSURANCE CERTIFICATES - Contractor shall, prior to the commencement of the Work hereunder, furnish Builder with satisfactory Certificates of Insurance and an Additional Insured form complying with the above requirements, naming Builder as an additional insured as set forth herein and providing that no cancellation or other material change in the terms of the policy may be made without thirty (30) days prior written notice to Builder. Builder's receipt of satisfactory insurance certificates complying with the above requirements shall be a prerequisite to payment under this Agreement or any particular purchase order or invoice. Should Contractor fail to procure or maintain at least the minimum coverages shown above, Builder shall have the right, but in no way be obligated, to procure and maintain the insurance for and in the name of Contractor, at Contractor's sole expense and with Contractor's cooperation. Failure of Contractor to so obtain coverage shall be an event of default under this Agreement and Builder shall have the right to terminate this Agreement. No action or omission by Builder shall constitute a waiver of the requirements of this section. Notwithstanding the foregoing, if Contractor fails to provide the aforesaid Certificates of Insurance and related forms, or if Builder receives notice of cancellation thereof, Builder shall be entitled to withhold as liquidated damages from payments due Contractor an amount equal to five percent (5%) of all amounts due Contractor to compensate Builder for any additional costs that Builder may incur as a result of Contractor's failure to comply with this paragraph. Builder shall have the right to continue such withholding until the Contractor furnishes a Certificate of Insurance complying with this paragraph. Builder will have no obligation to refund amounts withheld as liquidated damages, to apply the amounts to insurance premiums on behalf of

Contractor, or to obtain insurance on behalf of Contractor. It is further agreed that withholding of the aforesaid liquidated damages shall not relieve Contractor of any obligations arising under this Agreement. Contractor understands that Builder is not and will not provide insurance to Contractor notwithstanding Builder's election to withhold liquidated damages as specified above.

- C. PROHIBITED EXCLUSIONS - THE POLICIES SHALL NOT CONTAIN ANY PROVISION, DEFINITION OR EXCLUSION OR ENDORSEMENT THAT WOULD SERVE TO ELIMINATE THIRD-PARTY ACTION OVER CLAIMS COVERAGE FOR THE BENEFIT OF BUILDER. ADDITIONALLY, THE FOLLOWING EXCLUSIONS/LIMITATIONS (OR THEIR EQUIVALENT(S)) ARE PROHIBITED: CONTRACTUAL LIABILITY LIMITATION, e.g., CG 21 39; AMENDMENT OF INSURED CONTRACT DEFINITION, e.g., CG 24 26; LIMITATION OF COVERAGE TO DESIGNATED PREMISES OR WORK, e.g., CG 21 44; EXCLUSION-DAMAGE TO WORK PERFORMED BY SUBCONTRACTORS ON YOUR BEHALF, e.g., CG 22 94 or CG 22 95; ANY ENDORSEMENT MODIFYING OR DELETING THE EXCEPTION TO THE EMPLOYER'S LIABILITY EXCLUSION; ANY ENDORSEMENT THAT LIMITS THE GENERAL AGGREGATE LIMIT SHOWN IN THE DECLARATIONS PAGE OF THE POLICY; ANY ENDORSEMENT MODIFYING OR DELETING EXPLOSION, COLLAPSE OR UNDERGROUND COVERAGE; ANY "INSURED VS. INSURED" EXCLUSION EXCEPT FOR CLAIMS MADE BETWEEN INSURED WITHIN THE SAME ECONOMIC FAMILY; "COMMON AREA" EXCLUSIONS OR LIMITATIONS; VOLUME, BULK HOME/UNIT, SPEC HOME, MULTI-UNIT, SUBDIVISION AND/OR ITS EQUIVALENT; ANY EXCLUSION FOR CONTRACTOR'S POLLUTION LIABILITY, INCLUDING BUT NOT LIMITED TO CG2149; ANY PUNITIVE, EXEMPLARY OR MULTIPLIED DAMAGES EXCLUSION; ANY EXCLUSION FOR RESIDENTIAL CONSTRUCTION; ANY EXCLUSION FOR ROOFING OR FRAMING; ANY EXCLUSION FOR TOWNHOMES OR CONDOMINIUMS; ; ANY EXCLUSION FOR MULTI-FAMILY, CONNECTED PRODUCTS AND/OR VOLUME BUILDING; AND ANY EXCLUSION CONCERNING THE WORK CONTEMPLATED BY THIS EXCLUSION and/or ANY SUBSIDENCE, SOIL/EARTH MOVEMENT AND/OR ITS EQUIVALENT EXCLUSION. CONTRACTOR'S POLICY SHALL NOT HAVE ANY FORM OF EXCLUSION FOR RESIDENTIAL, SINGLE-FAMILY, MULTI-FAMILY, CONDOMINIUM, TOWNHOME OR OTHERWISE ANY DEFINITION THAT WOULD EXCLUDE "RESIDENTIAL," "HOME," AND/OR "DWELLING" AS DEFINED BY TEXAS LAW OR ACCEPTED INDUSTRY TERM.
- D. AUTHORIZATION FOR RELEASE OF POLICIES - BY SIGNING THIS AGREEMENT, CONTRACTOR ACKNOWLEDGES AND AUTHORIZES ANY AND ALL OF CONTRACTOR'S INSURANCE AGENTS AND/OR CARRIERS TO RELEASE CERTIFIED COPIES OF ANY AND ALL INSURANCE POLICIES AND ENDORSEMENTS OR EXCLUSIONS THERETO TO BUILDER OR THEIR REPRESENTATIVES AT ANY TIME FOR ANY REASON WHATSOEVER. IF FOR WHATEVER REASON, CONTRACTOR'S INSURANCE CARRIERS OR AGENTS REQUIRE ADDITIONAL APPROVAL, CONTRACTOR AGREES TO PROVIDE WHATEVER AUTHORIZATION NECESSARY SUCH THAT BUILDER CAN OBTAIN CONTRACTOR'S INSURANCE POLICIES.

19. BONDS: Builder may, where it deems such necessary, require Contractor to submit bonds covering the faithful performance of this Agreement and the payment of all obligations arising thereunder, in such form and with such surety or sureties as are satisfactory to the Builder. Failure to obtain such bonds within seven (7) days when requested to do so in writing by Builder shall constitute a breach of this Agreement and shall, at Builder's election, automatically terminate this Agreement, except as to Contractor's warranties.

20. CONTRACTOR'S DEFAULT: Contractor shall continually perform the Work and correct defective Work designated to be performed by Contractor on any project, and in the event Contractor shall not substantially perform in a continuous, satisfactory manner and if Contractor should fail to do so for two (2) consecutive days under any job requested by Builder, or in the event Contractor fails to perform warranty service under this Agreement or any other agreement with Builder, Builder shall have the right, upon written notice to Contractor (delivered by hand or U.S. Postal Service), to declare Contractor in breach of this Agreement and terminate this Agreement. In the event of a breach of this Agreement by Contractor, or breach of any other agreement with Builder, Builder shall be entitled to retain all sums due

Contractor and shall be entitled to cause the work to be performed by others, and shall apply any sums then due Contractor against such cost of completion and thereafter to the cost of an obligation arising under the provisions of this Agreement and, after all warranties have expired, any excess shall be paid to Contractor. In the event cost of such completion results in a deficiency, Contractor shall be fully responsible to Builder for such deficiency, together with any damages, costs of court and reasonable attorney's fees incurred by Builder.

21. CHANGE ORDERS: Builder reserves the right, from time to time, to order Work changes in the nature of additions, deletions, or modifications, without invalidating this Agreement and agrees to make corresponding adjustments in the payments to be made to Contractor. All changes will be authorized by a written change order (Change Order) signed by Builder. Work shall be changed and the payment(s) to be made to Contractor shall be modified only as set out in the written Change Order.

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

Contractor: _____ Builder: _____

Phone: _____ Phone: _____

Fax: _____ Fax: _____

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

23. ALTERNATIVE DISPUTE RESOLUTION: The parties to this Agreement specifically agree that the transactions contemplated herein involve interstate commerce.

A. MEDIATION OR ARBITRATION BETWEEN BUILDER AND ANY HOMEOWNER - Contractor agrees to and shall participate in any mediation or arbitration between the Builder and any homeowner/customer of Builder if so requested by the Builder. The mediation, and if applicable, the arbitration of any disputes involving Builder, a homeowner/customer of Builder and Contractor shall be conducted before the mediator or arbitrator named in the warranty documents given by Builder to the homeowner/customer of Builder, if any, or the mediator or arbitrator selected under the provisions of the contract between Builder and the homeowner/customer of Builder.

B. MEDIATION OR ARBITRATION BETWEEN BUILDER AND CONTRACTOR - Contractor agrees that any dispute between Builder and Contractor (whether contract, warranty, tort, statutory, or otherwise) shall first be submitted to mediation and, if not settled during mediation, shall be submitted to binding arbitration as provided by the Federal Arbitration Act (9 U.S.C. §§ 1 et. seq.) or, if applicable, by similar state statute, and not by or in a court of law. All decisions respecting the arbitrability of any dispute shall be decided by the arbitrator. The arbitrator shall have the right to award reasonable attorneys' fees and expenses, including those incurred in mediation and arbitration. The parties agree to work together in good faith to select a mediator and, if all disputes are not resolved by mediation, an arbitrator in the county where the subject property is located. If the parties are unable to agree on the appointment of a mediator and/or arbitrator, then the mediation or arbitration, or both, shall be conducted by the American Arbitration Association ("AAA") in accordance with its applicable rules and procedures provided, however, if there is any conflict between this Agreement and such rules or procedures, the provisions of this Agreement shall control. If for any reason the AAA 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.

C. ARBITRATION - In any arbitration proceeding involving the parties:

1) All applicable Federal and State law shall apply;

- 2) All applicable claims, causes of action, remedies and defenses that would be available in court shall apply;
- 3) The proceeding shall be conducted by a single arbitrator selected by a process designed to ensure the neutrality of the arbitrator;
- 4) The parties shall be entitled to conduct reasonable and necessary discovery;
- 5) The arbitrator shall render a written award and, if requested by any party, a reasoned award;
- 6) Any award rendered in the proceeding shall be final and binding and judgment upon any such award may be entered in any court having jurisdiction.

D. SURVIVAL - Builder and Contractor agree that notwithstanding anything to the contrary contained herein, the rights and obligations set forth in the mediation/arbitration provisions set forth above shall survive (1) the termination of this Agreement by either party; or (2) the breach of this Agreement by either party. The waiver or invalidity of any portion of the mediation/arbitration provisions set forth above shall not affect the validity or enforceability of the remaining portions of those provisions and/or this Agreement. Builder and Contractor further agree (1) that any dispute involving the directors, officers, employees and agents of either Builder or Contractor shall be resolved as set forth herein and not in a court of law; and (2) that Builder shall have the option to include Contractor as a party in any mediation and arbitration between Builder and any customer or client of Builder and, if Builder does opt to include Contractor in such mediation and arbitration, Contractor shall fully participate therein pursuant to the terms set forth above. If any party to this Agreement files a proceeding in any court to resolve any controversy, dispute or claim, such action shall not constitute a waiver of the right of such party or a bar to the right of any other party to seek arbitration of that or any other claim, dispute or controversy, and the court shall, upon motion of any party to the proceeding, direct that such controversy, dispute or claim be arbitrated in accordance with this Agreement.

24. WARRANTIES SURVIVE AGREEMENT: Contractor expressly agrees that all warranties made by Contractor in this Agreement shall survive this Agreement in the event it is terminated or expires for any reason prior to the running of the applicable warranty period.

25. INVALIDITY: It is understood and agreed by the parties hereto that if any of the clauses or provisions of this Agreement shall contravene or be invalid under the laws of the State of Texas, such contravention of invalidity shall not invalidate the entire Agreement, but it shall be construed as if not containing the particular clause or provision held to be invalid, and the rights and obligations of Contractor and Builder shall be construed and enforced accordingly.

26. GENDER: The words "Builder," "Contractor" and "subcontractor" include singular or plural, individual, partnership or corporation, and the respective heirs, executors, administrators, successors, and assigns of Builder, Contractor and subcontractors, as the case may be. The use of any gender applies to all genders. If more than one party is named as Contractor, the obligation hereunder of each such party is joint and several.

27. BINDING AGREEMENT: The Contract Documents are complimentary, and what is called for by any one shall be binding as if called for by all. This Agreement shall remain in full force and effect from the execution date and until terminated in writing. This Agreement and the terms and covenants herein contained shall apply to and be binding upon the parties hereto, their heirs, successors and assigns. None of the rights, interests or obligations created by this Agreement may be assigned, transferred, or delegated in whole or in part by the parties hereto, and any such purported assignment transfer or delegation shall be void.

28. ASSIGNMENT: Contractor shall not assign this Agreement or any payments due or to become due hereunder without the prior written consent of Builder.

29. ENTIRE AGREEMENT: This Agreement contains the entire agreement among the parties, and no oral statements or prior written matters not specifically incorporated herein shall be of any force and effect. No variation, modification or changes hereof shall be binding on either party hereto unless set forth in a document executed by all the parties hereto. If there is a conflict between this Agreement and any terms contained in any proposal, invoice or other agreement between Builder and Contractor, the terms of this Agreement shall control.

30. TIME OF THE ESSENCE: Time is of the essence in the performance of Contractor's obligations hereunder.

31. GOVERNING LAWS: The laws of the State of Texas shall govern the validity, enforcement and interpretation of this Agreement. The obligations of the parties are performable in _____ County, Texas and the parties hereto consent to such venue for purposes of any action arising out of this Agreement. The parties agree that the normal rule of construction that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

Executed on _____, 20_____.

Contractor: _____

Builder: _____

By: _____

By: _____

Printed name: _____

Printed name: _____

Title: _____

Title: _____

Address: _____

Address: _____

Email Address: _____

Email Address: _____

I/We personally and unconditionally guarantee the full and prompt payment to all employees, agents, subcontractors, material suppliers and labor suppliers of Contractor.

Principal Owner of Contractor

Principal Owner of Contractor

Principal Owner of Contractor

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