

RESIDENTIAL CONSTRUCTION AGREEMENT

THIS AGREEMENT is made this _____ day of _____, 20_____,
by and between Owners _____ and
Builder _____ for the construction of a single-family
residence for the owners of property located at _____, and
legally described as _____

The Builder and Owners agree as set follows:

Contract Documents.

The terms of this contract include the conditions of this contract and by reference the provisions in the other documents specifically listed. The terms of this agreement shall prevail over any conflicting provisions in the documents incorporated by reference. If a conflict exists between the plans and the specifications, the specifications shall govern.

The Work.

Unless otherwise specifically noted, Builder shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, transportation, and other facilities and services necessary for the proper execution and completion of the residence. The work shall be done substantially in conformance with the plans and specifications that have been initialed or signed by each party. These plans and specifications are attached to this contract and incorporated into it.

Builder shall not be responsible for the following work: Any other work not described in the Plans and Specifications. Plans and Specifications shall be fully inspected and acknowledged to be complete.

This contract is contingent upon Owners obtaining a construction loan in the amount of _____ Dollars (\$_____).

All fees and expenses of obtaining a loan including all commissions, title charges,
and credit reports shall be borne by Owners.

Builder is not required to begin construction until Owners provide Builder with written notice from the lender that Owners have closed on said loan. If Owners cannot obtain financing within thirty (30) days from the date Builder approves this contract, either party has ten (10) days thereafter to elect to terminate this contract by giving written notice to the other party. Builder shall refund to Owners all money paid less costs and obligations incurred by Builder at Owners' request.

Contract Price.

Owners agree to pay the total contract price for all labor and materials furnished and work performed by Builder, of Two Hundred and Ten Thousand and Six Hundred Dollars (\$ _____), subject to additions and deletions by change order as provided in paragraph 11. The contract price includes the allowances listed in the Allowance Schedule attached to this contract and incorporated into this agreement.

The allowance includes both materials and installation unless expressly noted otherwise. The parties agree that the allowances are not to be construed as bids by Builder and that the allowances may vary from the actual cost based on Owners' selections. If the cost of Owner-selected materials or their installation exceeds the material or installation allowance, the amount of that excess will be added to the next progress payment or the final payment. If the amount is less than the allowance amount, that amount will be subtracted from the final amount of the contract.

Payments.

The contract payments will be paid as follows:

\$ _____ as a deposit upon signing the contract, receipt of which is hereby acknowledged.

Based on applications for payment submitted by Builder, Owners shall make progress payments toward the contract price in accordance with the Construction Draw Schedule of Owners construction lender as work is completed and certified by Owners' construction lender. Owners will pay the cost of each inspection for each draw request.

Owners agree to make the progress payments within five (5) days of certification by Owners' construction lender. If Owners' construction lender fails to pay Builder within seven (7) days of the date the payment is due through no fault of Builder, upon three (3) additional days written notice to Owners, Builder may stop the work. Builder may keep the job idle until such time as payments that are due to Builder are paid.

Acceptance, Final Payment, and Occupancy.

Upon receipt of written notice that the work is ready for final inspection and acceptance, Owners will promptly inspect the work. When the Work receives a certificate of occupancy, Owners will promptly pay (or cause to be paid) the balance due under the contract.

Builder agrees to provide Owners with a Contractor's Final Affidavit stating that all subcontractors and suppliers have been paid or showing those unpaid and the amounts thereof. Occupancy will be granted to Owners when construction is substantially completed, the certificate of occupancy is issued, and Builder receives payment of the final draw (including payment for all change orders and overages of allowances).

Commencement and Completion.

The work will begin promptly after Owners have obtained the financing referred to above, any other contingencies are cleared, all permits have been issued and Owners provide Builder with a title report containing a correct statement of (a) the recorded legal title to the property on which the residence is to be built and (b) Owners' interest therein at the time of the signing of this contract. The work will be substantially completed within _____ days (_____) from the date all the contingencies are met.

Any time lost by reason of change in plans or specifications requested by Owners, other acts of Owners, strikes, weather conditions not reasonably anticipated, or any other conditions that are not within Builder's control shall be added to the specified time of completion and Builder shall not be liable for such delay. For any delays not the responsibility of Builder, the contract price shall increase by the difference, if any, in Builder's costs occasioned by such delay.

Selections

Builder will provide Owners with information to help them select allowance items, materials, and colors required during the construction process. All selections must be made within_Five_days of request by Builder.

Permits, Fees, and Tests.

Builder shall secure and pay for only Building Permit. Owners shall be responsible for all other fees and permits including any impact fees and connection fees. If necessary, Owners agree to assist Builder in obtaining any such permits and licenses by completing all necessary applications and forms. If a covenant or an architectural review committee requires the approval of plans and specifications, Owners shall be responsible for obtaining these approvals and paying for any fees connected with them. If no soil report is currently available for sanitary waste and foundation design, owners shall obtain soil reports.

Taxes.

Owners shall pay all real property taxes and taxes imposed upon the improvements on the residence when they are due. Builder shall pay all necessary sales, use, and similar taxes on materials used in construction that are legally enacted at the time this contract is signed.

Change Orders.

Owners may, from time to time, order changes in the work which will be authorized by a written Change Order. Owners shall pay the reasonable cost of any such changes including overhead of ____% and profit of _____. In the event the Builder is required by the Owners to perform additional work for which the amount of compensation is not previously agreed upon, the Builder shall prepare and submit to the Owners a proposal describing the estimated quantities and cost involved. The Builder shall keep accurate, detailed and itemized records of the costs of any such change and shall report such costs to the Owners. The Builder shall furnish to the Owners all documents required by the Owners, to evidence the expenditures of the Builder as a result of such change.

Builder is not responsible for unknown conditions that cannot be observed in a non-destructive inspection of the premises or conditions that differ materially from those (a) indicated or referred to in the contract documents or (b) ordinarily encountered and generally recognized as inherent in the work of the character provided for in this contract.

Insurance

Builder shall purchase and maintain at Builder's own expense, necessary Builder's Risk insurance, and additional _____ insurance to protect the home while under construction. Owners will be responsible for any additional insurance that may be required for an interim and permanent loan.

Owners' Obligations.

Owners shall (a) furnish all surveys describing the physical characteristics, and utility locations for the residence and (b) secure and pay for easements necessary for the completion of the work. Owners shall furnish information and services under their control to Builder promptly to avoid delay.

Owners warrant that the property upon which the residence is to be built conforms to all zoning, planning, environmental, and other building requirements. Owners warrant that all utilities necessary for the completion of construction are to the property line.

Supervision. Owners agree that the supervision of the work performed under this Agreement is under the exclusive direction of the Builder, and Builder shall have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the work. Owners shall not interfere with the work, nor cause additional work to be carried on without the written consent of the Builder. All of the work shall be done by the Builder or subcontractors in direct contract with the Builder.

Disputes.

Should any dispute arise relative to the performance of this contract that the parties cannot satisfactorily resolve, then the parties agree that the dispute shall be resolved by binding arbitration conducted by the American Arbitration Association. The party demanding arbitration shall give written notice to the opposite party and the American Arbitration Association promptly after the matter in dispute arises. In no event, however, shall a written notice of demand for arbitration be given after the date on which a legal action concerning the matter in dispute would be barred by the appropriate statute of limitations.

If Builder fails to supply proper materials and skilled workers; make payments for materials, labor, and subcontractors in accordance with their respective agreements; disregards ordinances, regulations, or orders of a public authority; or fails to materially comply with the provisions of the contract, Owners may give Builder written notice to terminate. After seven (7) days if Builder has failed to remedy the breach of contract, Owners can give a second notice to terminate. If Builder still fails to cure the breach within three (3) days after the second notice, Owners may terminate the contract.

Warranties.

Builder agrees to promptly make good, without cost to Owners, any and all defects due to faulty workmanship and/or materials which may appear within one (1) year from the date of completion and acceptance of the work by Owners.

THIS LIMITED WARRANTY IS THE ONLY EXPRESS WARRANTY PROVIDED BY Builder. IMPLIED WARRANTIES, INCLUDING (BUT NOT LIMITED TO) WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, HABITABILITY, AND GOOD WORKMANSHIP ARE DISCLAIMED AND LIMITED TO THIS WARRANTY. Right to Cure. TEXAS LAW CONTAINS IMPORTANT REQUIREMENTS YOU MUST FOLLOW BEFORE YOU MAY FILE A LAWSUIT FOR DEFECTIVE CONSTRUCTION AGAINST A CONTRACTOR, SUBCONTRACTOR, SUPPLIER, OR DESIGN PROFESSIONAL FOR AN ALLEGED CONSTRUCTION DEFECT IN YOUR HOME. SIXTY DAYS BEFORE YOU FILE YOUR LAWSUIT, YOU MUST DELIVER TO THE CONTRACTOR, SUBCONTRACTOR, SUPPLIER, OR DESIGN PROFESSIONAL A WRITTEN NOTICE OF ANY CONSTRUCTION CONDITIONS YOU ALLEGE ARE DEFECTIVE AND PROVIDE YOUR CONTRACTOR AND ANY SUBCONTRACTORS, SUPPLIERS, OR DESIGN PROFESSIONALS THE OPPORTUNITY TO INSPECT THE ALLEGED CONSTRUCTION DEFECTS AND MAKE AN OFFER TO REPAIR OR PAY FOR THE ALLEGED CONSTRUCTION DEFECTS.

Representations.

This Agreement constitutes the entire agreement between Owners and Builder, and supersedes all prior negotiations, representations, understandings and agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owners and Builder. Owners acknowledge that Builder has made no guarantees, warranties, understandings, nor representations (nor have any been made by any representatives of Builder) that are not included in the contract documents. Plans and Specifications attached shall be fully inspected and acknowledged.

Effective Date and Signature.

This contract shall become effective on the day it is signed by both parties. We the undersigned, have read, understand and agree to each of the provisions of this contract and hereby acknowledge receipt of a copy of this contract.

Owner _____ Date _____

Owner _____ Date _____

Builder _____ Date _____