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RESIDENTIAL CONSTRUCTION CONTRACT COST PLUS

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 Vacation Home Builders, Inc. (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, (ii) to delineate the general obligations and responsibilities of the Parties

2. LOCATION AND GENERAL SCOPE OF THE WORK TO BE PERFORMED. Owner agrees and promises to pay Builder the "Cost of the Work", a "Builder's Fee", and a "Builders Percentage" as specified in Paragraph three (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 Lots _____ Block _____ Section _____, out of the Cedar Point 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 or will be prepared by, Von Schmidt Design Group and Home Design Services, Inc. dated, _____, and consisting of _____ pages, that have been initialed by the Parties for the purpose of identification and which by this reference are incorporated in 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 with the Plans and Specifications, the Specifications shall control. Should a detail of the construction not be provided within the Plans and/or Specifications, or

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should an alternative building practice be available lieu of a specified procedure, the Builder may select a construction procedure that complies with applicable building codes.

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 in this contract.

The compliance of the Plans and Specifications with all applicable building codes, regulations, restrictive covenants or any other condition affecting the Property (including easements and zoning requirements) shall also be the Owner's responsibility.

Unless otherwise specified, material 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 to the progress of the Work, Builder may substitute materials of comparable grade in quality. Any material, equipments, or service specified by Owner shall include the manufactures' number and this number not the written description shall be the basis of the identification of the items by builder. The construction of the Home is also subject to changes is the Plans and Specifications as may be required by Federal, State or Local governmental authorities. Any substitutions 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 built in substantial compliance the Plans and Specifications, acceptance of any such minor deviation will not be unreasonably withheld.

3. COST OF THE WORK/BUILDERS FEE. The Owner agrees to pay Builder (i) the cost of the Work as defined below, (ii) a Builder's fee in the fixed amount of \$10,000.00, **and** (iii) the Builders percentage in an amount equal to SEVENTEEN percent (**17%**) of the cost of the Work. If the scope of the Work **not including change orders** performed expands to the degree that the cost of the Work exceeds the estimated sum below, the Builders percentage on all amounts above the estimated sum shall equal **Zero percent (0%)**. The term costs of the Work shall mean the actual costs incurred in the performance of the following activities.

- (a) Salary and or wages of construction Workers and job superintendents directly employed by the Builder to perform or oversee the Work, including, all taxes, insurance, 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 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

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- 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 material and equipment that is incorporated into the Home. **(Any discounts for cash or prompt payment shall accrue to the Owner).**
 - (d) Engineers fees and related expenses for the preparation of an engineered foundation, structural and windstorm plan, as well as any tests in the soil and pad compaction, and inspections of these structural elements
 - (e) Architectural design fees and costs associated to preparation and revision of Plans and or Specifications, as well as survey fees, and charges for copies of any survey plat and construction Plans;
 - (f) Any costs related to designer or implementation of energy efficient designs incorporated into the home.
 - (g) Any extra Work incurred because of deficiencies in the Plans and or Specifications prepared by others, or due to circumstances that were not reasonably foreseeable.
 - (h) Expenses for insurance and bond premiums directly attributable to the construction of the Home.
 - (i) 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 Builders purposeful act or omission did not give rise to those losses.
 - (j) Sums paid by the Builder for tap charges, standby fees, impact fees, permits, utility hookup fees, and gas, electricity, water, cable, and local telephone service to the Property/Home during the construction.
 - (k) Sales, use or similar taxes related to the Work and which are imposed on Builder.
 - (l) Cost of cleanup and removal of debris from the property.
 - (m) Cost incurred in taking action to prevent threatened damage, injury or lost in case of emergency.
 - (n) Any costs associated with the construction of a boat house, dock, or other over water structure.

Although the Cost of the Work is premised on the Builders 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 the Builder will be submitting for reimbursement, will however, represent typical cost the Builder would incur if it were performing the Work for itself under a fixed sum contract.

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It is understood by builder and Owner that the building of said Home is a cost plus contract with a not to exceed price of \$_____ based upon the agreed to plans, specifications, and listing of certain items in those plans and specifications. Any additional cost above the not to exceed price will be agreed to by the Owner and Builder, in writing, prior to beginning of work on that specific item. (see change order clause) ***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 Builders office in Polk county, Texas in one installment, the first such installment in the amount of \$10,000 shall be payable at execution of this contract and shall be followed by No subsequent monthly. The initial installment of the Builders fee is ***not refundable*** under any circumstances and is paid as consideration for the Builders cost of contract preparation, budget formulation, a research on specially fabricated items, material deposits, etc.

The cost of the Work in the Builders 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 or purchased and that portion of Work performed, based on the actual costs incurred or to be incurred by the Builder in purchasing material and performing the Work. Copies of all invoices, materials orders, or sub contractors draw requests shall be included in the draw request. Owner shall pay draw request to build within three (3) days the submission of the draw request. Draw requests not timely paid begin to accrue interest at the rate of 12% per annum on the 10th day after receipt.

The Parties acknowledge understand that in view of the negotiations that preceded agreement on the Builder's fee, no draw request will be subject to withholding a 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 Builders Percentage, and the Builder's Fee they have not been previously paid upon substantial completion to Work as defined in paragraph seven (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 all sums due Builder, Owner shall be entitled to the Builders indemnity against liens and an affidavit of Bills-Paid a copy of each is attached as EXHIBIT B.

Under no circumstances shall the Owner be permitted to occupy the Home without paying the full cost of the Work, the Builder's Fee and the Builders Percentage.

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5. **ACQUISITION OF PROPERTY/FINANCING OF WORK.** Owner represents that Owner has full Ownership of, or 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 a common to the plated 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 Builders fee, neither party assumes any duty or liability in this contract until (a) Owner has acquired the property, (b) the Builder receives and approves the title documentation, and a survey to be provided at Owner's expense in a form acceptable to the Builder, and (c) the Owner provides the Builder with written evidence of the availability of funds to pay the costs the Work, the Builder's fee, and the Builders Percentage (if applicable) in full. The foregoing activities are to be accomplished and information provided within 30 days after the signing this contract. If within that time the Owner cannot qualify for the necessary financing, or Builders 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 initial installment of Builders Fee.

Owner acknowledges and agrees, however, that the loan documents the Builders is asked to sign must be in a form reasonably acceptable to the Builder and that such documents will not alter the rights and obligations of the Parties of 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 portion in this contract as identified, annotated, and initialed by the Parties.***

6. **SUITABILITY OF BUILDING SITE/FOUNDATION.** Owner shall have the sole responsibility of designating the location the Home of the Property and securing any necessary encroachment agreements with adjacent land Owner's or easement Owner's. 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 part of the Plans and Specifications. The cost of soils testing, preparation of an engineering foundation and structural framing plan, any pad compaction testing, and foundation frame inspections, as are required by the engineer, shall be borne by the Owner irrespective of whether the sums are include within the Estimated Budget and/or are paid directly to the Engineer directly by Owner or Builder. 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 the framing planned. The Builders reliance on the engineer for soils testing, the suitability of design Specifications of components for the foundation and framing of the Home shall relieve the Builder from responsibility 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 structural Plans.

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7. INITIATION AND COMPLETION OF THE WORK. The Builder shall commence the Work within (15) Working days following the later of (i) the filing of record of a Mechanic's Lien Contract associated with the Owner's construction financing, or (ii) the Builders receipt of all required permits, licenses and other necessary approvals for the commencement of the Work. The Work shall thereafter be continued according to the Builders 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 house for occupancy by any applicable municipal authority or the Texas Residential Construction Commission. Builder **ESTIMATES** that substantial completion of the Home will occur on or about _____, 20____. This date is an ESTIMATE 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 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 directly by the Owner for which Builder is permitted to suspend construction until such disputes are resolved, change orders, governmental direction, fire, or other casually, acts of god, inclement weather which interferes with normal schedule a Work, or failure of the Owner to promptly fund draw request or to timely make decisions or selections of allowances, 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 of the Work. If Builder agrees to implement a change order (and has no present obligation to do so), any additional cost incurred by the Builders as a result of a change order, plus the Builders 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 AS AN ATTORNEY-IN-FACT FOR ANY OTHER OWNER SIGNATORY FOR THIS PURPOSE, AND BUILDER IS ENTITLED TO RELY ON AND ACT ON ANY SUCH CHANGE ORDER SIGNED BY ANY OWNER SIGNATORY.

Change orders deleting Work or materials will reduce the cost the Work by the Builders true cost savings for the deleted items, but Builder may also request a change order fee equal to the applicable Builders percentage for administration of a 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 on such activities at the rate of \$75.00 per hour. Upon request these hourly fees shall be paid to Builder,

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irrespective of Owner's' decision to proceed with the implementation of a change order for the additional Work.

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 of the scheduling and progress of the Work, including superior right to select and arrange for all labor in any way related to the Work. The Builder shall exercise exclusive control over selection of 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, vendors, inspectors, or employees retained by the Builder as to the scheduling of or any details about the Work (including additions or deletions there from) nor shall Owner do our cause any Work to be done, or alter or cause the alteration of any portion of the Home, whether complete are incomplete, before substantial completion is agreed upon and payment has been made in full.

Owner shall not independently contract for any portion of the Work without Builders express written consent, which is hereby granted. If Owner employs a third party to fabricate an element, feature or appliance to be incorporated in the Home, the Owner shall be responsible for the installation of the fabricated item.

ACTS OR OMISSIONS OF, OR LOSSES, DAMAGES OR DELAYS CAUSED BY, ANY THIRD PARTY RETAINED BY OWNER SHALL BE THE RESPONSIBILITY OF THE OWNER, NOT BUILDER. THE BUILDER SHALL NOT WARRANT THE WORK OR MATERIALS PROVIDED BY THIRD PERSONS OR ENTITIES EMPLOYED BY OR WHO HAVE CONTRACTED IN 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 Builders 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 agreed 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 Owner and the Owner's licensees and invitees onto the Property to a minimum.

When Owner chooses to enter the Property during construction, and irrespective of the Builders presence on the Property at such time, **OWNER AGREES TO RELEASE AND OR**

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INDEMNIFY, DEFEND, AND HOLD BUILDER HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, OR CAUSES OF ACTION 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 AN INDEMNITY IS GIVEN TO BUILDER REGARDLESS OF WHETHER THE BUILDER OR ITS AGENTS ARE EMPLOYEES WERE NEGLIGENT IN WHOLE OR IN PART AND EVEN WHEN THE INJURY, DEATH OR DAMAGE TO THE OWNER OR OWNER'S LICENSEE AND INVITEES IS CAUSED BY THE SOLE NEGLIGENCE OF THE BUILDER OR ATTRIBUTABLE TO THE BUILDER'S NEGLIGENCE PER SE OR IMPOSED BY STRICT LIABILITY.

- (b) **Risks to vegetation.** Owner also acknowledges that the contemplated construction poses inherent risks in the health of the trees and vegetation situated on the property, and Owner understands that Builder cannot guarantee the viability of those trees or vegetation. Owner acknowledges this risk and agrees to release the Builder from any claims for damages to or loss of trees and vegetation except which results from the Builders gross negligence.
- (c) **Losses in damage related to Work.** Without minimizing in any way the foregoing indemnification by the Owner, during the construction of the Home, and as between Owner and Builder only, Builder shall indemnify the Owner, as provided herein from losses in damages that may occur incidental to or affect the Work, but not as to any such loss or damage is caused in whole or in part by the negligence of those employed by or under contract 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 THE PROPERTY OR PERSONAL INJURY TO OR DEATH OF BUILDERS 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 written request, copies the following insurance policies;

- (a) Builder's risk insurance in the amount of the estimated cost the Work plus any change orders, naming Owner as loss payee.

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- (b) Comprehensive General Liability Insurance with Limits of \$1,000,000. Per person, per occurrence for personal injury \$1,000,000, with \$2,000,000 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 the Home, its contents, or the Property during construction and after occupancy of the Home, including any such loss or damage arising from negligence or other fault of either party.

12. INSPECTION AND APPROVAL OF HOME. During construction of the Home, Owner shall conduct periodic walkthrough inspections (with due consideration being given to safety concerns) and agrees to timely apprise the Builder in writing if any aspect of the 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 shall constitute an acceptance of the Work.*** Owner acknowledges and agrees, however, that it may be inappropriate and or unreasonably expensive and time consuming to replace, refabricate or repaint a component that exhibits a minor defective condition. In such instances, the Builder, in its sole judgment, may employ an alternative remedy to correct a deficiency in conformance with reasonable building practices, or conclude that conditions are 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 is limited by, the new Home warranty document provided by Builder (the limited warranty) and to be delivered to Owner the closing. (A copy of limited warranty is included with this contract as Addendum F). **UPON COMPLETION AND OWNER'S ACCEPTANCE OF THE HOME, IT IS UNDERSTOOD AND AGREED THE BUILDER'S RESPONSIBILITY FOR CONSTRUCTION THE HOME IS CONFINED TO AND LIMITED BY STATUTORY WARRANTIES AND THE BUILDING AND PERFORMANCE STANDARDS PROMULGATED BY THE TEXAS RESIDENTIAL CONSTRUCTION COMMISSION PURSUANT TO CHAPTER 430 OF THE TEXAS PROPERTY CODE, AS WELL AS THE PERFORMANCE STANDARDS AND REMEDIES PROVIDED IN THE LIMITED WARRANTY. ACCORDINGLY, THE RESOLUTION OF CONSTRUCTION DEFECT CLAIMS FOLLOWING THE OWNER'S OCCUPANCY THE HOME WILL BE SUBJECT TO THE ABOVE SPECIFIED WARRANTY STANDARDS.**

IT IS UNDERSTOOD BY OWNER THAT HOME AS BUILT REQUIRES REGULAR AND SCHEDULED MAINTENANCE BY THE OWNER, FAILURE TO PERFORM SUCH REQUIRED MAINTENANCE MAY INVALIDATE ANY WARRANTY ISSUED BY BUILDER OR ON BUILDERS BEHALF BY A THIRD PARTY.

As to items not of Builders manufacture, such as any air conditioner, water heater, refrigerator, range, dishwasher, and other appliance, electrical, mechanical, or plumbing system, equipment or consumer

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products, as defined by the Federal trade commission, Builder agrees to assign Owner the manufactures' 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 LIMITATIONS 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 breached this contract or abandons all activities on the Property for a period of 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 Builders breach or abandonment as detailed in such notice, Owner shall have the right to terminate this contract and 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 cost of the Work, the Builders fee, and the Builders 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 the terms this contract, or Builder reasonably believes that future payment by Owner is questionable, and Owner fails to cure a same or provide reasonable assurances that are acceptable to Builder within three (3) Work days following written notice from Builder (time being of essence in this regard), then Builder may suspend the Work (to offer additional time to cure) and or any time thereafter, terminate this contract by written notice. The foregoing shall not limit any rights and remedies of the Builder under applicable law which Builder may pursue at its option upon default by Owner, being in addition to the remedies of the Builder as provided for in the Mechanic as Lien Contract (if any) or such other instruments 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 claims, regardless of form, which arises***

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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, electrical and magnetic fields, shifting or instability of soil conditions and contamination to the house or the surrounding air, water, or soil from any source or sources and or in any manner.

16. NAMED EXCLUSIONS FROM CONTRACT. Unless otherwise specified, this contract does not include installation of any landscaping nor Builder performing any other site improvements other than grade modifications for the driveway and house foundation pad. All other site improvements must be specifically identified.

(a) State of Texas Administrative Resolution. Construction defect claims related to the standards of performance under any applicable warranty will be addressed through the administrative procedures established by the Texas Residential Construction Commission Act. The Parties agreed to cooperate and a fully participate in the dispute resolution process as prescribed by that act prior to initiating any Arbitration.

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return receipt requested, not later than the 60th day before that date Owner initiates a claim to recover damages in arbitration proceeding. The notice must refer to chapter 27 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 allow 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 the construction defect.

(c) **Mediation binding arbitration waiver of jury trial.** The Owner and Builder agree that all controversies, claims (and any related settlements), or matters in question arising out of or relating to (i) this contract, (ii) any breach or terminations of contract, (iii) the construction the Home and or its repairs, (iv) any acts or omissions by the Builder (as officers, directors, or agents), and/ or (v) any actual or purported representations or warranties, expressed or implied, relating to the Property and or the Home (herein referred to collectively as dispute) shall be submitted to binding arbitration.

The Parties will attempt to resolve disputes through informal discussions, and the dispute may be submitted to a non binding mediation under the construction industry mediation rules of the American Arbitration Association (AAA). In the event that one or both Parties do not desire to mediate, or the dispute is not resolved by direct discussions and or mediation, the dispute shall be submitted to the AAA for binding arbitration in accordance with the construction industry arbitration rules of the AAA. Each party shall share equally in all filing fees and administrative cost of the arbitration, however, any award rendered may equitably reallocate those costs. The arbitration shall be governed by Texas Law and the U.S. Arbitration Act, 9 U.S.C. SS 1-16, to the exclusion of any provision of state law that are inconsistent with the application of the Federal Act.

In rendering the award, the arbitrator shall be limited by and fully comply with Texas law, and shall state the basis for the award, including any computations or damages or offsets, if applicable. The Parties agreed to abide by and fully perform in accordance with the award rendered by the arbitrator. If the non-prevailing party fails to comply with all aspects of the Award within 30 days following issuance of the award, the prevailing party shall be entitled to seek enforcement of the Award in any court of competent jurisdiction. If enforcement or vacature of the award it is undertaken, the prevailing party in such proceeding shall recover its necessary and reasonable attorney's fees, in addition to any other relief to which the Parties entitled.

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

19. OWNER REPRESENTATIVE. Owner may employ a third party professional [e.g. Architect, engineer, construction consultant, state certified inspector] to inspect or monitor the Work (the" Owner's Agent"). The identity of that person or firm, 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 the Owner's agent. After execution of this contract, the appointment or employment of an 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.

20. 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 notification are reflected under the signatures of the Parties.

21. ATTORNEY'S FEES. If either party employs an Attorney in conjunction with the dispute related to this contract, the party that successfully defends or prosecutes any such claim, or portion of the claim is in entitled to reimbursement from the other party for necessary and reasonable attorney's fees, arbitration fees, court costs, expert witness fees, and expenses related to specific claims successfully defended and or prosecuted, subject to the provisions of Chapter 27 of the Texas Property Code that impose limitations on recovery and attorney's fees.

22. NOTICE OF RELIANCE ON WRITTEN INFORMATION FROM THIRD PARTIES AND GOVERNMENT AGENCIES. BUILDER ADVISES OWNER THAT BUILDER IS RELYING ON WRITTEN INFORMATION FROM VARIOUS THIRD PARTIES, ENGINEERS, ARCHITECTS, DESIGNERS, SUPPLIERS, MANUFACTURERS, CONSULTANTS, EDITORS, WRITERS, AND GOVERNMENT 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 SPECIFIC AND SPECIAL KNOWLEDGE NOT POSSESSED BY BUILDER, OR WHICH INFORMATION HAS BEEN PROVIDED TO BUILDER OR DISSEMINATED TO THE PUBLIC PURSUANT TO SPECIFIC STATUTORY OR REGULATORY REQUIREMENTS. THIS WRITTEN INFORMATION PERTAINS TO FLOOD ZONES, DEVELOPMENT OF ADJACENT LAND, THE SUITABILITY OF THE PROPERTY AND THE SURROUNDING SUBDIVISION FOR RESIDENTIAL USE, THE ACCURACY OF THE PLANS, AND THE DIMENSIONS THEREIN,

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AND THE APPROPRIATENESS OF THE MATERIALS AND COMPONENTS TO BE INCORPORATED INTO THE HOUSE, INCLUDING BUT NOT LIMITED TO ROOFING MATERIALS, SIDING, STRUCTURAL FRAMING, LUMBER, INSULATION, PLUMBING FIXTURES, PIPING, APPLIANCES, AND HVAC AND OTHER MECHANICAL COMPONENTS.

IT IS SPECIFICALLY UNDERSTOOD THAT ANY MATERIAL, PROCESS, TECHNIQUE, SYSTEM, OR EQUIPMENT SPECIFIED BY OWNER SHALL BE USED AT THE DISCRETION OF OWNER AND OWNER SHALL BEAR ALL RESPONSIBILITY FOR ITS APPROPRIATENESS AND COMPATIBILITY WHEN INCORPORATED INTO THE HOME.

23. MISCELLANEOUS. Time is of the essence in this contract and all specified time limits must be met. No waiver of right provided by this contract should be effective unless in writing and signed by the party against which the enforcement of the waiver is sought. No waiver by a party of any breach of any provision this contract shall be construed as a waiver of any later breach. All representations, agreements, indemnity's and disclaimers of the Builder and the Owner that are contained in this contract remain in full effect after the substantial completion the Home, and shall not be replaced or limited by any of the 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 this contract is a determined to be unenforceable, the remainder of this contract shall not be affected,

24. PROPRIETARY INFORMATION. The Owner is also advised that photographs of the Home may be taken by the Builder during and subsequent to the performance of the Work. Owner agrees that Builders use of photographs in furtherance of Builders business in any form shall not be limited. Builder may place a Builder sign on the Property during construction the Home and for a period of 90 days after substantial completion. 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., Builders subcontractor/supplier relationships, consultants, technical information, construction techniques, Builders 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.

25. ENTIRE AGREEMENT. This contract, together with all attachments, contains the entire understanding between the 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 THE AUTHORITY TO MAKE ANY ORAL OR WRITTEN STATEMENTS THAT MODIFY OR CHANGE THE TERMS AND CONDITIONS OF THIS CONTRACT.**

INITIALED FOR IDENTIFICATION _____/_____/_____ OWNER _____ BUILDER _____



OWNER REPRESENTS THAT OWNER HAS READ AND UNDERSTANDS THIS ENTIRE CONTRACT, INCLUDING THE AGREEMENT FOR BINDING ARBITRATION AS IT RELATES TO THIS CONTRACT. OWNER ALSO REPRESENTS THAT NO VERBAL STATEMENT, PROMISE, OR CONDITION NOT SPECIFICALLY SET FORTH IN THIS CONTRACT ARE 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.

26. **VENUE** This contract shall be interpreted in accordance with the laws of the State of Texas and both parties agree that proper venue shall be Polk County, Texas.

27. **LIMITATION OF DEBT.** In no event may this Contract secure payment of any debt subject to Chapters 342,343, 345, or 346 of the Texas Finance Code or create a lien otherwise prohibited by law.

28. **NO WORK COMMENCED.** This contract is executed, acknowledged and delivered before any labor has been performed or any material has been delivered for the construction contemplated herein.

29. **BUILDER REGISTRATION.**

STATE LAW REQUIRES A PERSON HOLD A CERTIFICATE OF REGISTRATION FROM THE TEXAS RESIDENTIAL CONSTRUCTION COMMISSION IF THE PERSON CONTRACTS TO CONSTRUCT A NEW HOME OR IF THE PERSON CONTRACTS TO CONSTRUCT A MATERIAL IMPROVEMENT TO AN EXISTING HOME OR CERTAIN IMPROVEMENTS IN THE INTERIOR AND EXISTING HOME AND THE TOTAL COST OF THE IMPROVEMENTS IS \$10,000 OR MORE [INCLUDING LABOR AND MATERIALS].

YOU MAY CONTACT THE COMMISSION AT 877.651.8722 TO FIND OUT WHETHER THE BUILDER HAS A VALID CERTIFICATE OF REGISTRATION. THE COMMISSION HAS INFORMATION AVAILABLE ON THE HISTORY OF THE BUILDER, INCLUDING SUSPENSIONS, REVOCATIONS, COMPLAINTS, AND RESOLUTION OF COMPLAINTS.

THIS CONTRACT IS SUBJECT TO CHAPTER 426, PROPERTY CODE. THE PROVISIONS OF WHICH GOVERN THE PROCESS THAT MUST BE FOLLOWED IN THE EVENT A DISPUTE ARISES OUT OF AN ALLEGED CONSTRUCTION DEFECT. IF YOU HAVE A COMPLAINT CONCERNING A CONSTRUCTION DEFECT YOU MAY CONTACT THE

INITIALED FOR IDENTIFICATION _____/_____ OWNER _____ BUILDER _____



COMMISSION AT THE TOLL FREE NUMBER TO LEARN HOW TO PROCEED UNDER THE STATE SPONSORED INSPECTION AND DISPUTE RESOLUTION PROCESS.

30. 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.

OWNER HERBY ACKNOWLEDGES RECEIPT OF A COPY OF THIS CONTRACT WITH ALL BLANKS FILLED IN AND COMPLETED.

Executed in multiple copies this _____ day of _____, 20 ____.

OWNER:

_____ Owner 1

_____ Address

_____ City, State, Zip

Tel _____

Fax _____

Email _____

BUILDER

Vacation Home Builders, Inc.

By: _____

Charles Von Schmidt, President

185 Cedar Point Drive

Livingston, Texas 77351

TRCC Registration # 28138

936 646 6767 Fax 936 646 7970

corporate@vacationhomebuilders.com

INITIALED FOR IDENTIFICATION _____/____ OWNER _____ BUILDER _____



SCHEDULE OF EXHIBITS

- A Specifications
- B Indemnity against liens, and Affidavit of Bills Paid
- C Contractors Disclosure Statement for Residential Construction
- D Insulation addendum
- E Brokerage addendum
- F Warranty sample

INITIALED FOR IDENTIFICATION _____/_____ OWNER _____ BUILDER _____



ADDENDUM "A"

CONSTRUCTION SPECIFICATIONS

Description of Improvements:

The Improvements shall consist of constructing an approximate _____ square foot single-family residence including ____ car garage on the real property identified in the New home Construction Contract. The home shall be placed on an concrete slab and constructed in accordance with the architectural drawing, plans, details, schedule attached hereto and made a part hereof by this reference and referred to herein collectively as the "Plans". In addition to the Plans the following construction specifications are incorporated herein.

Survey:

- Owner to provide survey with all improvements sited prior to construction and an elevation certificate and site plan post construction.

Permits:

- Builder shall obtain all necessary permits from Polk County, TRA, and the State of Texas prior to commencement of construction.

Utility Tap Fees:

- All utility tap fees shall be paid by and be the responsibility of the owner.
- Builder will coordinate and act on behalf of owner on property in dealing with utilities, and is hereby appointed as agent for this limited purpose.
- Electrical service is provided by Sheco which can be reached at 936 653 5400
- Telephone service is provided by Eastex which can be reached at 936 327 5224
- Water and sewer is provided by Aqua source
- No Cable is provided

INITIALED FOR IDENTIFICATION _____/_____/_____ OWNER _____ BUILDER _____

Inspections:

This home is to be built in full accordance with the current State required Construction Inspection rules to include but not limited to:

- Pre Pour
- Frame Tech, wiring, and plumbing Inspection prior to insulation
- Pre cover final before sheetrock
- Final

Grading:

- Builder shall insure that lot grade is cut so that water slopes away from the home for at least 10 feet, and that water does not stand in yard for more than 24 hours after normal rain.

Foundation:

- Foundation shall be constructed as indicated in the Plans and based upon the engineering reports and plans with field verification prior to pile placement by designer.
- All concrete shall be a minimum of 4 inches thick and poured with minimum 3000 psi concrete over 6 mil poly vapor barrier.
- Floor Joists where needed shall be laid on 16" centers made of 2x10 #2 pine.
- Floor Joists shall be blocked to Cross Members and cross blocked at 6 foot mid points with a 2x12 blocks nailed each side with three 3.25" galvanized nails.
- All sub-flooring shall be attached to the Floor Joists with Chemical Bond and nailed every 6 inches with 3.25" style or SENCO nails.
- Sub-flooring material shall be ¾" T&G 4x8 Plytanium or equivalent Panels.
- Exterior decking material shall consist of 2x6 #2 treated pine laid in accordance with the Plans.

Flatwork:

- All concrete shall be a minimum of 4 inches thick and poured with minimum 3000 psi concrete.
- Driveway and walkways to be brushed with sweeping finish
- Parking and storage area to be minimum 4 inches 3000 psi over 6 mil poly vapor barrier

INITIALED FOR IDENTIFICATION _____/_____/_____ OWNER _____ BUILDER _____

Framing:

- All exterior walls shall be constructed with 2x4 #2 pine studs on 16-inch centers with 3 nails top and bottom. Top plate shall be doubled, bottom plate to be chemical and mechanically bonded.
- All headers shall be constructed of 2x12 #2 pine with ½" plywood between layers all external headers shall have insulated cavity.
- All cutouts for windows and doors shall be made with full-length header and cripple stud.
- All locations where walls join shall be lock-blocked in accordance with National Code. California corners for insulation.
- All walls requiring fire resistance shall be fire-blocked at 4 feet above sill.
- Overhead ceiling joists where used shall be 2x6 #2 Pine crowned with no more than 3 deg curve.
- Exterior wall sheathing shall consist of 7/16" OSB, Quiet Brace, or Dow SIS, nailed according to specs.
- Exterior walls shall be wrapped with tyvec or similar moisture barrier openings shall be back-strapped and taped.
- Exterior walls shall be sided with Stucco" installed with fit-to-full seal trim boards. Installation shall be in accordance with product specifications. Trim to be placed over full run of Hardi to give maximum extension.
- Exterior windows and doors shall be installed as to maintain airtight status according to manufacturer's specifications and all seams shall be sealed with 30-year rated silicone caulk.
- Roof Rafters shall be 2x6 #2 grade pine with 12" soffit.
- Roof Rafters shall be covered with 7/16" OSB.

Insulation (Sub-Contracted):

- Exterior walls of improved living areas will be insulated with ½# Foam to a thickness of 3.5 inches which yields an "R-Value" of at least "R-15";
- Walls in other areas of the home (if required) will be insulated with Fiberglass Insulation to a thickness of 3.5 inches which yields an "R-Value" of "R-13";
- Roof deck underside above HVAC improved areas will be insulated with ½# Foam to a thickness of 5.5 inches which yields an R-Value of "R-20".

INITIALED FOR IDENTIFICATION _____/_____ OWNER _____ BUILDER _____



- GFI breakers shall be installed on Kitchen and Bathroom Circuits
- Arc prevented breakers shall be used in Bedroom circuits.
- All light and 110 outlets circuits shall be run in with #12/2 grounded wire.
- Kitchen appliances shall be run with #8/3 grounded wire.
- AC/Heat shall be wired run with #6/3 grounded wire.
- All wires shall be secured within 6 inches of switch or outlet points.
- All splices shall be located in J Box
- Outlets and switch boxes shall be 21 cu in type for single gang.
- Standard light switches and outlets shall be used.
- Ceiling fans shall be installed in location designated on the Plans and shall be wired with #12/3 grounded wire. The make and model of each Fan will be 52" Triton by Harbor Breeze, Model #136954

Plumbing (Sub-contracted):

- All Plumbing shall conform to National Code, Polk County Provisions, TRA Requirements, Texas Clearwater and Aqua Texas (the utility provided).
- Service shall be placed underground in dedicated utility area at 24 inches below ground level. Line shall be marked with signal reflective tape for relocation. Service shall be constructed of 1" water SCH-40 PVC from meter-to-master distribution point.
- From Master Distribution point pipe entire hot and cold circuit to be PEX
- All vents shall be dry type 2" SCH-40 PVC with roof penetration jackets.
- All stud penetrations will be blocked by nail plates and stud support shoes as required.
- Cleanouts shall be provided as per the Plans.
- With the exception of the following, all plumbing fixtures shall be of "standard builder grade" unless otherwise noted:

INITIALED FOR IDENTIFICATION _____/_____ OWNER _____ BUILDER _____

Roofing:

- Roof decking material shall consist of 7/16" OSB covered with 30 LB felt affixed to the decking with orange disk roofing nails on 12" centers.
- The type of shingle that shall be installed over the decking shall be Decra Stone Coated Steel Roofing System.

HVAC (Sub-contracted):

- Contractor will insure that all equipment is installed in a workman like manner to current code and Federal Regulation on Energy Efficiency.
- System to be designed to have a 25 degree differential.
- System Seer to be 16 or better.
- Load calculations shall be checked prior to commencement of installation with notice of any changes to "Contractor" prior to installation.
- Exterior equipment shall be located at deck height in area designated in plan with air handler located in Utility room or Attic space as directed.
- System to be a 2 stage heat pump

Doors & Windows:

- Doors shall be Solid core or louvered according to plan
- Windows shall be Jeld wen builders insulated two pane low e glass per plan.
- Door hardware to be builders spec in _____ like finish.

Interior Paint & Finishes:

- The Interior wall surfaces shall be painted with premium grade paint one color with primer. Ceilings shall be painted with finish coat according to schedule with Builders Grade Interior Paint Flat.

INITIALED FOR IDENTIFICATION	/	OWNER	BUILDER
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- All interior trim surfaces shall be primed and painted.

Exterior Paint & Finishes:

- The exterior shall be done in stucco to the factory color specified by client.
- The exterior trim surfaces shall be painted with Builders Grade Exterior Semi Gloss White Paint.

Railings on exterior decks

- Shall be built with 4 inch maximum gap and to height of 34 inches above deck. To be left natural or stained at customer request.

Interior Flooring:

- Bathrooms, utility room, utility hall, and kitchen floors shall be covered with Contractors standard ceramic tile.
- Great room bedrooms, closets, shall be covered as per owner's specifications in allowances.

Selected Upgrades:

See attached Spreadsheet

INITIALED FOR IDENTIFICATION _____/_____ OWNER _____ BUILDER

ADDENDUM "B"

INDEMNITY AND AFFIDAVIT AS TO PAY THE BILLS AND RELEASES OF LIENS

THE STATE OF TEXAS

COUNTY OF POLK

Before me, the undersigned authority, on this date appeared, Vacation Home Builders, Inc., acting by and through Charles Von Schmidt, it's President and duly authorized representative, known by me to be the person whose name is signed below and, who having been duly sworn on his oath did state as follows:

Vacation Home Builders, Inc. [the Builder], under the construction contract dated, 24 May, 2011 [the contract] with Thomas M Jesiolowski (Owner), has supplied materials and perform labor in connection with the construction of a single family residence and related improvements (the project) located on that certain real property situated in Polk county, Texas, at Sec 6 Blk 1 Lot 25 Livingston, Texas 77351 [the property]

All debts and obligations the builder or anyone acting on the builders behalf for work performed on the Property or for materials and supplies delivered to the Property in conjunction with the Project and that are presently due and payable by the Builder have been fully paid and satisfied, except the following sums the remain owing to the indicated contractor/supplier

<u>NAME AND ADDRESS OF CONTRACTOR SUPPLIER</u>	<u>AMOUNT REMAINING UNPAID</u>
<hr/>	<hr/>
<hr/>	<hr/>
<hr/>	<hr/>

The foregoing sums will be paid or otherwise resolved by the Builder in the normal course of its business. There may be other invoices for work done or materials delivered to the property that remain outstanding at this time. Until the invoices are received, the exact amount to be paid and in some cases the identity of the specific contractor and or supplier involved, cannot be specified by the Builder. In any event, whether sums are payable to the above listed contractors and or suppliers, or sums will be

INITIALED FOR IDENTIFICATION _____/____ OWNER _____ BUILDER _____



ADDENDUM "C"

**CONTRACTOR'S DISCLOSURE STATEMENT FOR
RESIDENTIAL CONSTRUCTION**

DATE: _____, 20____

OWNER: _____

CONTRACTOR: VACATION HOME BUILDERS, INC.

LENDER: _____.

PROPERTY: Sec __ Blk __ Lot ____, _____, Texas 77351

KNOW YOUR RIGHTS AND RESPONSIBILITIES UNDER THE LAW. You are about to enter into a transaction to build a new home or remodel an existing residential property. Texas Law requires your contractor to provide you with this brief overview of some of your rights, responsibilities, and risks in this transaction.

CONVEYANCE TO CONTRACTOR NOT REQUIRED. Your contractor may not require you to convey your real property to your contractor as a condition to the agreement for the construction of the improvements to your property.

KNOW YOUR CONTRACTOR. Before you enter into an agreement for the construction of improvements to your real property, make sure that you have investigated your contractor. Obtain and verify references from other people who have used the contractor for the type and size of construction project on your property.

GET IT IN WRITING. Make sure that you have a written agreement with your contractor that includes (1) a description of the work the contractor is to perform; (2) the required or estimated time for completion of the work; (3) the cost of the work or how the cost will be determined; and (4) the procedure and method for payment, including provisions for statutory retainage and conditions for final payments. If your contractor made a promise, warranty or representation to you concerning the work the contractor is to perform make sure that promise, warranty, or representation is specified in the written agreement. An oral promise that is not included in a written agreement may not be enforceable under Texas Law.

INITIALED FOR IDENTIFICATION _____/_____ OWNER _____ BUILDER _____



READ BEFORE YOU SIGN. Do not sign any written document before you have read and understand it. NEVER SIGN DOCUMENT THAT INCLUDES AN UNTRUE STATEMENT. Take your time reviewing documents. If you borrow money from a lender to pay for the improvements, you are entitled to have the loan closing documents furnished to you for review at least one (1) business day before the closing. Do not waive this requirement unless a bona fide emergency or another good cause exists, and make sure you understand the documents before you sign them. If you fail to comply with the terms of the documents, you could lose your property. You are entitled to have your own attorney review any documents. If you have any questions about the meaning of documents, consult an attorney.

GET A LIST OF SUBCONTRACTORS AND SUPPLIERS. Before construction commences, your contractor is required to supply you with a list of subcontractors and suppliers the contractor intends to use on your project. Your contractor is required to supply updated information on any subcontractors and suppliers added after the list is provided. Your contractor is not required to supply information if you sign a written waiver of your rights to receive this information.

MONITOR THE WORK. Lenders and governmental authorities may inspect the work in progress from time to time for their own purposes. These inspections are not intended as quality control inspections. Quality control is a matter for you and your contractor. To ensure that your home is being constructed in accordance with your wishes and specifications, you should inspect the work yourself or have your own independent inspector review the work in progress.

MONITOR PAYMENTS. If you use a lender, your lender is required to provide you with a periodic statement showing the money disbursed by the lender from the proceeds of your loan. Each time your contractor requests payment from you or your lender for work performed, your contractor is also required to furnish you with a disbursement statement that lists the name and address of each subcontractor or supplier that the contractor intends to pay from the requested funds. Review these statements and make sure that the money is being properly disbursed.

CLAIMS BY SUBCONTRACTORS AND SUPPLIERS. Under Texas Law, if a subcontractor or supplier who furnishes labor or materials for the construction of improvements on your property is not paid, you may become liable and your property may be subject to a lien for the unpaid amount, even if you have not contracted directly with the subcontractor or supplier. To avoid liability, you should take the following actions:

1. If you receive a written notice from a subcontractor or supplier, you should withhold payment from your contractor for the amount of the claim stated in the notice until the dispute between your contractor and the subcontractor or supplier is resolved. If your lender is disbursing money directly to your contractor, you should immediately provide a copy of the notice to your lender and instruct the lender to withhold payment in the amount of the claim stated in the notice. If you continue to pay the contractor after receiving the written notice without withholding the amount of the claim, you may be liable and your property may be subject to a lien for the amount you failed to withhold.
2. During construction and for thirty days after final completion, termination, or abandonment of the contract by the contractor, you should withhold or cause your lender to withhold ten percent (10%) of the amount of payments made for the work performed by your contractor. This is sometimes referred to as "statutory retainage" If you choose not to withhold the ten percent

INITIALED FOR IDENTIFICATION _____/_____ OWNER _____ BUILDER

(10%) for at least thirty days after final completion, termination or abandonment of the contract by the contractor and if a valid claim is timely made by a claimant and your contractor fails to pay the claim, you may be personally liable and your property may be subject to a lien up to the amount that you failed to withhold.

If a claim is not paid within a certain time period, the claimant is required to file a mechanic’s lien affidavit in the real property records in the county in which the property is located. A mechanic’s lien affidavit is not a lien on your property, but the filing of the affidavit could result in a court imposing a lien on your property if the claimant is successful in litigation to enforce the lien claim.

SOME CLAIMS MAY NOT BE VALID. When you receive written notice of a claim or when a mechanic’s lien is filed on your property, you should know your legal rights and responsibilities regarding the claim. Not all claims are valid. A notice of claim by a subcontractor or supplier is required to be sent, and the mechanic’s lien affidavit is required to file, within strict time periods. The notice and the affidavit must contain certain information. All claimants may not fully comply with the legal requirements to collect on a claim. If you have paid the contractor in full before receiving a notice of a claim and have fully complied with the law regarding statutory retainage, you may not be liable for that claim. Accordingly, you should consult your attorney when you receive a written notice of a claim to determine the true extent of your liability or potential liability for that claim.

OBTAIN A LIEN RELEASE AND BILLS-PAID AFFIDAVIT. When you receive a notice of claim, do not release withheld funds without obtaining a signed and notarized release of lien and claim from the claimant. You can also reduce the risk of having a claim filed by a subcontractor or supplier by requiring as a condition of each payment made by you or your lender that your contractor furnish you with an affidavit stating that all bills have been paid. Under Texas Law, on final completion of the work and before the final payment, the contractor is required to furnish you with an affidavit stating that all bills have been paid. If the contractor discloses any unpaid bill in the affidavit, you should withhold payment in the amount of the unpaid bill until you receive a waiver of lien or release from that subcontractor or supplier.

OBTAIN TITLE INSURANCE PROTECTION. You may be able to obtain a title insurance policy to insure that the title to your property and the existing improvements on your property are free from liens claimed by subcontractors and suppliers. If your policy is issued before the improvements are completed and covers the value of the improvements to be completed, you should obtain, upon the completion of the improvement and as a condition of your final payment, a “completion of improvements” policy endorsement. This endorsement will protect your property from liens claimed by subcontractors and suppliers that may arise from the date the original title policy is issued to the date of the endorsement.

ACKNOWLEDGEMENT AND WAIVER. By execution hereof, Owner acknowledges that Owner has received a copy of this Contractor’s Disclosure Statement for Residential Construction prior to the execution of any residential construction contract and that Owner hereby waives owner’s right to receive a list of all subcontractors and suppliers by Contractor pursuant to Section 53.256 of the Texas Property Code.

IN WITNESS WHEREOF, this Contractor’s Disclosure Statement and Residential Disclosure is executed effective as of the day and date first written above.

OWNER:

INITIALED FOR IDENTIFICATION _____/_____ OWNER _____ BUILDER _____



STATE OF TEXAS

COUNTY OF POLK

BEFORE ME, the undersigned authority, this instrument was acknowledged on this ____ day of _____,
20__ by _____.

Notary Public, State of Texas

After Recording, Return to:

Vacation Home Builders, Inc
185 Cedar Point Drive
Livingston, Texas 77351

INITIALED FOR IDENTIFICATION ____/____ OWNER ____ BUILDER ____



ADDENDUM "D"

INSULATION ADDENDUM

The Home will have insulation installed as follows:

A. Exterior walls adjacent to living areas will be insulated with ½ # Foam to a minimum thickness of 3.5 inches, which according to the manufacturer; will yield a minimum R-Value of 18.

B. Walls in other areas of the Home will be insulated with Fiberglass Batts to a minimum thickness of 3.5 inches, which according to the manufacturer; will yield a minimum R-Value of 13.

C. Attics over improved living areas will be insulated with ½ # foam having a minimum thickness of 5 inches, which according to the manufacturer; will yield a minimum R-Value of 22.

D. Sloped ceilings will be insulated with ½ # foam having a minimum thickness of 5 inches, which according to the manufacturer; will yield a minimum R-Value of 22.

E. Floors of improved living areas not applied to a slab foundation will be insulated with NA having a minimum thickness of _____ inches, which according to the manufacturer; will yield a minimum R-Value of _____.

The thickness of insulation in certain areas may be less than specified above if the design of the Home or structural elements do not permit greater thicknesses. Examples of where the thickness of the insulation, and therefore R-values, may vary are wall stud locations, corners, windows, where roof rafters attach to outside walls, and locations purposefully not insulated so as to maximize ventilation.

INITIALED FOR IDENTIFICATION _____/_____/_____ OWNER _____ BUILDER _____



Addendum E

Greater Houston Builders Association

Broker Registration and Fee Agreement for Custom Transactions

This form may be used to register a prospect with a Member of the Greater Houston Builders Association

PARTIES/EFFECTIVE DATE: As of, , the following parties have entered into this Agreement: (Builder), (Broker), and (Prospect).

PROPERTY: The real property that is the subject of this Agreement is located at Lot _____, Block _____, Section _____ of the Cedar Point Subdivision, in the City of Livingston, Polk County, Texas. The address for the residence located or to be located on the Property is _____, Livingston Texas 77351 . The residence and the real property described above will be referred to in this Agreement as the "Property."

NOTICES: The Property is is not subject to a mandatory membership in an owners' association and its assessments and requirements. The Property is is not located within a municipal utility district and/or a levee improvement district.

BROKER'S FEES: If Builder and Prospect enter into a contract to sell and/or to build a residence on the Property (the "Contract") on or before , 20 , Broker shall become eligible to receive a fee from Builder for services performed as specified below:

- a. **Amount:** Builder shall pay to Broker, in cash, a fee of (i) \$; or (ii) % of the total sales/construction price set forth in the Contract. Upgrades and allowance credits and debits will or will not increase or decrease the total sales/construction price as specified in the Contract.
- b. **Entitlement and Payment Schedule:** It shall be a condition precedent to the payment of any fee (or portion thereof) to Broker that Builder have received payment under the Contract. If a lump sum is specified as Broker's Fee, that amount will be paid (i) paid at or (ii) prorated over the time period as and when payments are received by Builder. If a percentage is specified as Broker's Fee, that percentage shall be paid as and when payments are received by Builder.

BROKER'S SERVICES: Builder and Prospect acknowledge receipt of the attached *Information About Brokerage Services*, which is incorporated into this Agreement for all purposes. During negotiations for the sale of the Property, Broker: (a) will represent Builder only; (b) will represent Prospect only; (c) will act as an intermediary between Builder and Prospect. As an intermediary, Broker will assist both Prospect and Builder in the sale of the Property. Broker shall appoint a licensed associate(s) to communicate with, carry out instructions of and provide opinions and advice during negotiations to Builder, and appoint another licensed associate(s) to communicate with, carry out instructions of and provide opinions and advice during the negotiations to Prospect. Broker shall treat all Parties honestly and comply fully with the Real Estate License Act.

BROKER'S DISCLOSURES: As an intermediary, Broker may not disclose to Prospect that Builder will consider an amount less than the asking price unless otherwise instructed in a separate writing signed by Builder. Broker may also not disclose to Builder that Prospect will consider paying a price greater than the amount submitted in a written offer to Builder unless otherwise instructed in a separate writing signed by Prospect. Whether serving as an intermediary or not, Broker may not disclose any information that Builder or Prospect characterize as confidential or proprietary unless Broker is specifically instructed in writing by Builder or Prospect to communicate the confidential information to the other Party. This restriction on the disclosure of confidential or proprietary information shall not supersede Broker's obligation to disclose material information about the property as required by the Real Estate License Act or other applicable law.

RESOLUTION OF DISPUTES: The Parties acknowledge the need for and desirability of prompt, inexpensive and efficient dispute resolution procedures and therefore agree that their disputes shall be governed by the following:

Mediation; Arbitration/Waiver of Jury Trial. All Parties agree that all controversies, claims or matter in question arising out of or relating to (i) this Agreement, (ii) any breach thereof, (iii) the relationship between the Prospect, Broker and Builder, and (iv) any representations of warranties, express or implied, relating to the Property and the residence located thereon (herein referred to collectively as a "Dispute") shall be submitted to mediation before

INITIALED FOR IDENTIFICATION _____/_____ OWNER _____ BUILDER _____



**WAIVER RELATING TO LISTING
OF SUBCONTRACTORS AND SUPPLIERS**

**AN OWNER IS NOT REQUIRED TO WAIVE THE RIGHT GRANTED BY SECTION 53.256,
PROPERTY CODE, TO RECEIVE FROM THE CONTRACTOR AN ORIGINAL OR UPDATED
LIST OF SUBCONTRACTORS AND SUPPLIERS.**

**BY SIGNING THIS DOCUMENT, I AGREE TO WAIVE MY RIGHT TO RECEIVE FROM
THE CONTRACTOR AN ORIGINAL OR UPDATED LIST OF SUBCONTRACTORS AND
SUPPLIERS.**

**I UNDERSTAND AND ACKNOWLEDGE THAT, AFTER SIGNING THIS DOCUMENT, THIS
WAIVER MAY NOT BE CANCELED AT A LATER DATE.**

I HAVE VOLUNTARILY CONSENTED TO THIS WAIVER.

ACKNOWLEDGED AND AGREED

this day of _____

[Homeowner]

[Homeowner]

INITIALED FOR IDENTIFICATION ____/____ OWNER ____ BUILDER ____