



MODIFICATIONS TO TREC NEW HOME CONTRACT

Incomplete Construction

INSTRUCTIONS: MAKE THE FOLLOWING MODIFICATIONS BY HAND TO THE 2012 TREC NEW HOME CONTRACT FOR INCOMPLETE CONSTRUCTION, THEN DISCARD THIS PAGE.

- Para 5:** Provide for Earnest Money to be deposited with Seller. Delete both references to “escrow agent” and insert “Seller”.
- Para 6.B:** Delete the phrase “Seller shall furnish to Buyer” and insert “Buyer shall obtain” in the first sentence. Delete the last sentence of this paragraph that begins: “If the Commitment and Exception Documents are not delivered”
- Para 7.B:** Delete “with due diligence” and insert: “substantially” before the words “in accordance”.
- Para 7.C:** Delete.
- Para 7.D:** Insert in the blank space “five (5)”.
- Para 7.E:** Delete.
- Para 7.F:** Delete.
- Para 7.I:** Insert after the word “Seller” the following parenthetical: “(acknowledging that no investigation has been undertaken,”.
- Para 9.A:** Insert in the blank space “ten (10) days after written notice from Seller”.
- Para 9.B(1):** Delete the word “general” and insert the word “special” before “warranty deed”.
- Para 9.B(2):** Insert the words “remaining sums owed on” before “the Sales Price”.
- Para 11:** Insert in the space provided: “The Parties acknowledge and agree that the provisions contained in the appended Addendum to Earnest Money Contract signed this date by the Parties will control over any conflicting provisions that may be found in this document.”
- Para 12.B:** Delete the first sentence of this paragraph.
- Para 15:** Insert “or” before the word “seek” and delete the words “or both” from first sentence. Insert “or” before the word “seek” and delete “or both” from last sentence.
- Para 16–18:** Delete.



ADDENDUM TO TREC NEW HOME CONTRACT

Incomplete Construction | Rev. 1/2013

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

Section 1: Parties and General Scope

1.1 This Addendum (the "Addendum") is entered into in connection with and as an integral part of the New Home Contract promulgated by the Texas Real Estate Commission to which this Addendum is attached (the "New Home Contract") (this Addendum and the New Home Contract will be collectively referred to as the "Contract"), both dated _____, 20____, between _____ ("Seller") and _____ ("Buyer") (Seller and Buyer may be referred to collectively as the "Parties" or individually as a "Party"). The purpose of this Contract is the construction and/or sale of a single-family residence (the "Home"), which is located or to be located on Lot _____, Block _____, out of the _____ Subdivision in _____ County, Texas, and which has the following street address: _____ (the "Property").

1.2 The provisions of this Addendum shall SUPERSEDE and CONTROL over any inconsistent provisions found within the New Home Contract, the construction plans, specifications, options sheet(s), and other documents related to the construction of the Home and the "Modifications" (as defined in § 3.1 below). The capitalized terms not defined in this Addendum shall have the meanings specified in the Contract. All of the representations, warranties, covenants, agreements, and disclaimers of the Parties that are contained in the Contract shall remain in full effect after the Closing Date, and shall not be replaced or supplanted by the special warranty deed to be delivered to Buyer at closing.

Section 2: Acceptance of Existing Construction

2.1 Buyer is encouraged to arrange for one or more independent third-party inspectors to evaluate the Home (each called an "Inspection") during the Option Period (if any). All Inspections, and Seller's obligation to correct or adjust items listed on the Inspection report (collectively, the "Adjustments"), shall be subject to the terms and conditions contained within the Independent Property Inspection Guidelines included with this Addendum as Exhibit "A." Upon the expiration of the Option Period (if any), Buyer will be deemed to have inspected the Property and the existing construction to the full extent desired. Based on that Inspection and Seller's agreement to perform the Adjustments (which may occur after the expiration of the Option Period), **and without reliance** on any other considerations, representations, or promises by Seller, Buyer represents that the existing construction is fully satisfactory to Buyer. Buyer further acknowledges that the existing construction reflects minor variances from the plans and specifications originally prepared for the Home (the "Plans and Specifications") that do not affect the inherent value of the Home. Accordingly, Buyer is not relying on Seller's strict adherence to the Plans and Specifications in deciding to purchase the Home.

Section 3: Modifications and Construction Fee

3.1 The Buyer and Seller (**choose one**) **have**/ **have not** agreed to make changes to the existing construction and/or supplement the amenities presently within the Home or delineated in the Plans and Specifications (called the "Modifications"). A descriptive list of the Modifications (if any) is contained in Exhibit "B." After the execution of this Contract, changes in the Home must be reflected in one or more Change Orders (as defined in § 4.1 below).

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3.2 *Construction Fee.* The sum of \$_____ (the “Construction Fee”) shall be payable to Seller upon the later of: (a) Buyer’s securing any necessary financing within the timelines prescribed by the Third Party Financing Condition Addendum and approval of title as provided in and §§ 6.C. and 6.D. of the New Home Contract; or (b) upon the expiration of the Option Period. The Construction Fee in part includes the sums required to implement the Modifications. The Construction Fee is also paid as consideration for the Seller’s costs of contract preparation, budget formulation, research related to specially fabricated items, construction and materials deposits, related overhead, etc. The Seller will not initiate any new construction activities on Buyer’s behalf until Buyer pays the Construction Fee in full. When paid, the Construction Fee shall ***be non-refundable*** except under § 15 of the New Home Contract or §§ 8.2 and 8.3 below. The Construction Fee shall be credited towards the Sales Price at closing.

3.3 *Allowances.* Certain Modifications may be assigned specified budgets (called “Allowances”) if the exact cost for those Modifications cannot presently be established. The sums allocable to each listed Allowance ***are included within and are part of the Sales Price.*** The budget for each Allowance includes the component costs of material and labor (if any), plus any appropriate sales tax. As Seller incurs material and labor costs with respect to a specific Allowance, those costs shall be applied against that Allowance. If an Allowance category is exceeded, the increase in the Sales Price shall be set forth in a Change Order. If the amount of an Allowance specified for one or more Modifications is not fully consumed, Buyer shall receive a credit for the remaining sum at closing. ***Buyer is solely responsible for the adequacy of the Allowance amounts since the sums to be spent will be determined by Buyer’s subjective considerations of quality, style, and functionality.***

3.4 *Selections.* Buyer shall make all selections applicable to the Modifications within **five (5) “Work Days”** (as defined in § 13.1 below) after the date of request by Seller. If Buyer fails make selections within that time, Seller shall be authorized to make the selection and proceed with the construction of the Home.

3.5 *Initiation of Construction.* Before satisfaction of the financing and title contingencies and Buyer’s payment of the Construction Fee, Seller may opt (but is not required) to proceed with construction of those elements of the Home that are unaffected by any Modifications. Upon Seller’s receipt of sufficient assurances regarding Buyer’s financing, and Buyer’s acceptance of the status of title to the Property, Seller shall commence the construction of the Home consistent with Buyer’s Modifications within **fifteen (15) Work Days** after Seller’s receipt of (a) the Construction Fee, and (b) all required permits, licenses, and other necessary approvals for the work.

Section 4: Change Orders

4.1 A “Change Order” is a written agreement between Buyer and Seller to change, add to, or delete from the work required to build the Home. If Seller agrees to perform the extra work contemplated by a Change Order (and it has no obligation to do so), the price of the Change Order will be treated as an increase or decrease (as applicable) in the Sales Price. The price for one or more Change Orders may include compensation for labor, materials, insurance, specialized supervision, delay, subcontractor surcharges, Seller’s profit and overhead, and other charges. If the increase in the Sales Price resulting from a Change Order cannot be ascertained before commencement of the extra work, an Allowance shall be created for the Change Order with the increase being estimated, and that amount deposited with Seller. In addition to the increase in the Sales Price, Seller will be entitled to receive a fee in the amount of _____ percent (____%) of the Change Order (the “Change Order Fee”), for Seller’s the administration of the Change Order (including preparation, execution, and implementation). Buyer shall pay the amount of the Change Order and the accompanying Change Order Fee in full when the Parties execute the Change Order.

4.2 BUYER(S) (IF MORE THAN ONE) EXPRESSLY ACKNOWLEDGE THAT ANY BUYER SIGNATORY TO THIS CONTRACT CAN INDIVIDUALLY AUTHORIZE A CHANGE ORDER. EACH BUYER SIGNATORY IS DESIGNATED AN ATTORNEY-IN-FACT FOR ALL OTHER BUYER SIGNATORIES FOR THIS PURPOSE, AND SELLER IS ENTITLED TO RELY AND ACT ON ANY

CHANGE ORDER SIGNED BY ANY BUYER SIGNATORY. *Seller shall not be required to commence the work called for in a Change Order until Buyer pays in full the specified or estimated increase in the Contract Price and the accompanying Change Order Fee.*

4.3 If Buyer requests Seller to perform research on and/or provide estimates for extra work to be incorporated into a proposed Change Order, Buyer shall reimburse Seller for the time expended for those activities at the rate of \$_____ per hour. Buyer shall pay those hourly charges promptly to Seller, irrespective of Buyer's decision to proceed with the execution of a Change Order for the additional work.

Section 5: Completion of Construction and Acceptance of the Home

5.1 *Substantial Completion.* Seller shall continue the progress of the work in accordance with Seller's normal construction schedule until the Home reaches "Substantial Completion," which shall occur when construction of the Home is sufficiently complete so that Buyer can occupy and use the Home for its intended purpose (i.e., as a residence). Substantial Completion shall also be deemed to have occurred if (a) any applicable municipal authority conducts its final building inspection or approves the Home for occupancy; or (b) Buyer occupies any portion of the Home. Seller **ESTIMATES** the Home will reach Substantial Completion on or about _____.

5.2 *Excused Delays.* Seller is only able to specify an estimated date for Substantial Completion because construction activities are subject to delays caused by conditions beyond Seller's control. Those conditions (called "Excused Delays") include but are not limited to the unavailability of required materials and labor from subcontractors; delays or uncertainties caused by or "Disputes" (as defined in § 8.1 below) or disagreements with Buyer or others employed by Buyer (which will allow Seller to suspend construction activities until resolved); Change Orders; fire or other casualty; acts of God; inclement weather that interferes with the normal scheduling of the Work; and Buyer's failure to execute Change Orders in a timely manner, make decisions, or select Allowance items, colors, or materials as required by this Contract. **SELLER THEREFORE DOES NOT GUARANTEE COMPLETION OF THE HOME ON ANY SPECIFIC DATE.**

5.3 *Buyer Orientation.* Within **seven (7) days** after Buyer's receipt of notice from Seller that the Home and any Modifications have reached Substantial Completion, Buyer shall conduct a walk-through orientation (the "Orientation"); if satisfied, Buyer agrees to certify in writing that the Home has been completed in accordance with this Contract. Buyer may conduct an Inspection of the Modifications before the Orientation, but Buyer's right to request Seller to perform any Adjustments based on the Inspection report shall be deemed **WAIVED** unless the Inspection is performed and the Inspection report is delivered to Seller within **four (4) Work Days** after Seller's notice of Substantial Completion. Seller may, at its sole option, delay the closing until Buyer accepts all Adjustments Seller has made, or proceed to closing even though minor cosmetic Adjustments remain to be completed. If any minor cosmetic Adjustments identified during the Orientation cannot be made before closing, Seller shall complete those items after closing. **Seller shall have no obligation to convey the Property to Buyer until the Orientation has been conducted; Buyer's failure or refusal to attend the Orientation or the closing because of the unavailability of a third-party inspection of the Home, or because of Seller's failure or inability to perform minor cosmetic Adjustments before closing, shall permit Seller, at its option and in lieu of the remedies provided elsewhere in the Contract, to cancel the Contract and retain all sums paid by Buyer.** All Inspections, replacements, or Adjustments performed after closing will conform to the standards of performance in the "Limited Warranty" identified in § 6.1 below.

5.4 *Limitations on Cosmetic Adjustments.* Buyer acknowledges and agrees that it may be inappropriate and/or unreasonably expensive and time-consuming to replace, re-fabricate, or repaint a component that exhibits a minor imperfection. In those instances, Seller may in its reasonable judgment (a) employ an alternate remedy to correct the deficiency in conformance with Seller's normal construction practices, or (b) conclude that the condition satisfies the standards of performance prescribed by the Limited Warranty and take no action.

Section 6: Limited Warranty on the Home

6.1 Seller warrants the Home against defects in workmanship and materials but only in accordance with, and as limited by, the written warranty Seller shall deliver to Buyer at the closing (the “Limited Warranty”). A sample copy of the Limited Warranty is included with the Contract as Exhibit “C,” has been initialed by the Parties, and was provided to Buyer before the execution of the Contract. **THE PARTIES UNDERSTAND AND AGREE THAT, AFTER CLOSING AND BUYER’S ACCEPTANCE OR OCCUPANCY OF THE HOME, SELLER’S LIABILITY UNDER THIS CONTRACT FOR THE CONSTRUCTION OF THE HOME IS CONFINED TO REPAIR OR REPLACEMENT, IN ACCORDANCE WITH AND AS LIMITED BY THE PERFORMANCE STANDARDS AND REMEDIES FOUND WITHIN THE LIMITED WARRANTY. SELLER SHALL NOT BE REQUIRED, HOWEVER, TO FULFILL ANY WARRANTY REQUIREMENTS UNTIL BUYER HAS PAID IN FULL ALL SUMS OWED TO SELLER UNDER THIS CONTRACT.**

6.2 As to items not of Seller’s manufacture—including but not limited to air conditioner(s); water heater(s); refrigerator(s); range(s); dishwasher(s); and other appliances, equipment, windows, doors, and “consumer products” (as defined by the Federal Trade Commission)—Seller agrees to assign Buyer the manufacturer’s warranty, without recourse. Buyer acknowledges and realizes that Seller is making no warranty on those items. **TO THE EXTENT ALLOWED BY LAW, SELLER DISCLAIMS AND EXCLUDES ALL OTHER EXPRESS AND IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF FITNESS, MERCHANTABILITY, AND GOOD-AND-WORKMANLIKE CONSTRUCTION.**

Section 7: Release of and Indemnification for Construction Losses

7.1 Because of potential safety and health hazards that may be present during construction of the Home, and the practical limitations on the Seller’s ability to limit the risk of personal injury by controlling the activities of all persons involved in construction activities, Buyer shall restrict entry by the Buyer and Buyer’s licensees and invitees onto the Property and into the Home to a minimum. When Buyer chooses to enter the Property, and irrespective of Seller’s presence on the Property at that time, **BUYER AGREES, AS SPECIFIED IN THIS SECTION, TO (a) RELEASE SELLER FROM ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION, INCLUDING REASONABLE ATTORNEYS’ FEES, (COLLECTIVELY REFERRED TO AS “DAMAGES”) ARISING IN FAVOR OF BUYER, AND (b) INDEMNIFY, DEFEND, AND HOLD SELLER HARMLESS FROM AND AGAINST ALL DAMAGES ARISING IN FAVOR OF BUYER’S LICENSEES OR INVITEES. THE RELEASE AND INDEMNITY CONTAINED IN THE PREVIOUS SENTENCE APPLIES TO ALL DAMAGES ARISING ON ACCOUNT OF BODILY INJURY, DEATH, OR DAMAGE TO OR LOSS OF PROPERTY IN ANY WAY: (a) OCCURRING ON THE PROPERTY; OR (b) ARISING OUT OF OR INCIDENT TO THE CONDITION OF THE PROPERTY AND/OR THE HOME. THIS RELEASE AND INDEMNITY IS GIVEN TO SELLER REGARDLESS OF WHETHER SELLER OR ITS AGENTS OR EMPLOYEES ARE NEGLIGENT IN WHOLE OR IN PART, AND EVEN WHEN THE INJURY, DEATH, OR DAMAGE TO BUYER OR BUYER’S LICENSEES OR INVITEES IS CAUSED BY SELLER’S SOLE NEGLIGENCE, IS ATTRIBUTABLE TO SELLER’S NEGLIGENCE PER SE, OR IS IMPOSED BY STRICT LIABILITY.**

Section 8: Dispute Resolution

8.1 The Parties desire prompt, inexpensive, and efficient dispute resolution procedures and therefore agree that all controversies, claims (and any related settlements), and matters in question arising out of or relating to (a) this Contract, (b) any breach or termination of this Contract, (c) the construction of the Home and any Modifications or Adjustments, (d) any acts or omissions by Seller (and its officers, directors, agents, subcontractors, suppliers, or affiliated persons or entities), and/or (e) any actual or purported express or implied representations or warranties relating to the Property and/or the Home (referred to collectively as a “Dispute”) shall be governed by this Section.

8.2 *Pre-Closing Default/Stipulated Damages.* If at any time before Closing, a Dispute between Seller and Buyer (which Seller and Buyer have attempted but are unable to resolve) causes the relationship between the Parties to become so strained, contentious, or otherwise unsupportable so as to impact and undermine the continued fulfillment of this Contract, then Seller shall have the option to terminate this Contract. Upon Notice from Seller terminating this Contract under this Section, Seller shall return all sums paid by the Buyer to Seller, plus an additional sum of \$_____ (the “Stipulated Damages”), an amount which the Parties agree to be a reasonable estimate of the damages that might be experienced by the Buyer incident to the cancellation of this Contract (it being difficult if not impossible to ascertain those damages). IF SELLER TERMINATES THIS CONTRACT AND PAYS THE STIPULATED DAMAGES UNDER THIS SECTION, NO CAUSE OF ACTION AGAINST SELLER OR RIGHT TO THE PROPERTY OR THE HOME SHALL ACCRUE TO BUYER, NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN § 15 OF THE NEW HOME CONTRACT. Additionally, Seller shall have no further obligation to complete and sell the Home to Buyer, and Buyer shall not be obligated to acquire the Home. Seller is not required to apply the provisions of this Section to any breach of the Contract or this Addendum by Buyer.

8.3 *Required Opportunity to Inspect and Cure.* **THE REFUSAL OR FAILURE OF BUYER TO AFFORD SELLER THE OPPORTUNITY TO INSPECT AND CURE ANY CONSTRUCTION DEFECT AS PROVIDED BY CHAPTER 27 OF THE TEXAS PROPERTY CODE, BEFORE BUYER TAKES STEPS TO CORRECT THAT CONSTRUCTION DEFECT, WILL PRECLUDE AND OTHERWISE BAR BUYER’S CLAIM AGAINST SELLER FOR THAT CONSTRUCTION DEFECT EXCEPT IN CASES OF AN EMERGENCY INVOLVING IMMEDIATE RISK TO THE HEALTH AND SAFETY OF OWNER OR ANOTHER OCCUPANT OF THE HOME.**

8.4 *Re-Purchase Option.* If during the first five (5) years after the Closing Date Buyer discovers one or more defects in the construction of the Home that exceed in the aggregate _____ percent (___%) of the then fair market value of the Home, upon receipt of written notice and an opportunity to inspect the defects, Seller may elect to re-purchase the Home. If Seller elects this option, Buyer shall be reimbursed (a) the Sales Price and all closing costs incurred by Buyer; (b) the documented costs of any permanent improvements made by Buyer to the Home or the Property; (c) reasonable moving expenses to vacate the Home; and (d) reasonable and necessary attorneys’ fees and inspection costs Buyer incurs to discover, identify, and present the construction defect(s) to Seller. In return, Buyer shall deliver a Special Warranty Deed conveying the Home and the Property to Seller, free and clear of all liens and claims, and shall deliver possession of the Home free of any casualty or damage caused by the Buyer, normal wear and tear excepted.

8.5 *Direct Discussions and Mediation.* The Parties will attempt to resolve all Disputes through informal discussions, and may submit any Dispute to non-binding mediation. If the Parties desire to mediate, the mediation shall be conducted under the Construction Industry Mediation Rules of the American Arbitration Association (“AAA”). The Parties shall share equally in all administrative costs of the mediation.

8.6 *Binding Arbitration and Waiver of Jury Trial.* **If one or both Parties do not desire to mediate, or the Dispute is not resolved by direct discussions and/or mediation, the Parties agree that the Dispute shall be submitted to the AAA for binding arbitration before a single arbitrator who must be an attorney with at least ten (10) years of experience in residential construction disputes. The arbitration shall be conducted in accordance with the Construction Industry Arbitration Rules of the AAA. The Parties will share equally all filing fees and administrative costs of the arbitration, but any award may equitably reallocate those costs. The arbitration shall be governed by Texas law and the U.S. Arbitration Act, 9 U.S.C. §§ 1–16, to the exclusion of any provisions of state law that are inconsistent with the application of the Federal Act. The arbitrator shall render a written award stating the reasons the award was made, including any computations of actual damages or offsets, if applicable. The Parties agree to abide by and fully perform in accordance with any award rendered by the arbitrator. BY SIGNING THIS CONTRACT, THE PARTIES UNCONDITIONALLY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ALL DISPUTES. BUILDER AND PURCHASER ACKNOWLEDGE THAT THEY HAVE EXECUTED THIS WAIVER OF JURY TRIAL KNOWINGLY, INTELLIGENTLY, AND VOLUNTARILY, AND AGREE THAT THIS PROVISION CONSTITUTES PRIMA FACIE EVIDENCE OF THE PARTIES’ WRITTEN CONSENT TO THE BINDING ARBITRATION OF ALL DISPUTES.**

Section 9: Mutual Limitation of Claims and Remedies

9.1 *Limitation of Claims.* The Parties desire reasonable and pragmatic remedies for claims arising out of or related to all Disputes, and therefore agree to limit certain claims and remedies as specified below:

9.1.1 The remedies for defective Work, materials, or products—for which Seller is responsible under this Contract—are limited to repair or replacement, in accordance with and as established by the performance specifications set forth in the Limited Warranty. ***Accordingly, Builder shall not be liable for or obligated in any manner to pay any losses, claims, or demands arising out of any defective work or services performed under this Contract.***

9.1.2 ***Neither Party shall be liable for any special, indirect, or consequential damages, or claims of mental anguish.***

9.2 ***Any Dispute, claim, or cause of action (whether contractual, based in tort, statute or common law) arising out of or relating to this Contract, the Work and/or the Home shall be barred unless brought within two (2) years and one (1) day from the date the cause of action accrues.***

9.3 *Waiver of Subrogation.* Seller shall carry insurance fully protecting the Home during construction. Upon the earlier of Closing or Buyer's occupancy of the Home, Buyer shall secure and maintain insurance covering risk of loss and damage to the Home, however caused. ***The Parties agree to waive the rights each may have against the other for insured losses or damage to the Home, its contents, or the Property during construction or after occupancy of the Home, including any insured loss or damage arising from the negligence or other fault of either Party, irrespective of whether any insurance claim is made for those losses.***

Section 10: Attorneys' Fees

10.1 A Party who successfully defends or prosecutes any claim or portion of a claim that is the subject of a Dispute is entitled to reimbursement from the other Party for the necessary and reasonable attorneys' fees, arbitration fees, expert witness fees, and expenses the prevailing Party incurred related to that claim, as well as reasonable attorneys' fees for collection. This Section shall be subject to the provisions of Chapter 27 of the Texas Property Code that impose limitations on the recovery of attorneys' fees. In addition to the costs and fees delineated above, if either Party initiates a proceeding related to a Dispute in court rather than in arbitration, or if either Party seeks enforcement or vacature of an arbitration award in a court of competent jurisdiction, the prevailing Party shall be entitled to reasonable attorneys' fees and court costs related to that proceeding, as well as any other relief to which that Party is entitled.

Section 11: Land Use and Environmental Disclaimers

11.1 *Adjacent Land Usage.* Seller is not responsible for, has no control of, and makes no representations or warranties regarding the zoning or use of the land adjacent to or in the vicinity of the Property. Seller also has no control over and is not responsible for any easements on, adjacent to, or in the vicinity of the Property; Buyer understands that individuals, corporations, and/or utilities may have specific rights granted by those easements, if any, including but not limited to access and use of the land described by the easements, and acknowledges that those easement rights may exist whether or not the easements are being used at the present time.

11.2 *Environmental Risk.* Seller makes no express or implied 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 (a) exposure to radon gas, (b) electric and magnetic fields, (c) shifting or instability of the soil, or (d) contamination of the Home or the surrounding air, water, or soil from any sources or in any manner.

11.3 *Interior Moisture and Mold.* Buyer is advised that the continued presence of moisture on components of the Home (e.g., from leaks, condensation, spills, etc.) can cause the propagation of mold, which may cause allergic reactions and other health problems in some individuals. After Closing and throughout Buyer's ownership or occupancy of the Home, Buyer is responsible for inspecting and maintaining the Home to identify and eliminate moisture that could give rise to the growth of mold or other conditions detrimental to functioning of the Home or the health of its occupants. Any leak or the presence of moisture that is covered by the Limited Warranty will be corrected under that warranty, BUT BUYER'S FAILURE TO INSPECT OR MAINTAIN THE HOME, OR TO PROMPTLY NOTIFY SELLER OF WARRANTY CLAIMS, WILL NEGATE SELLER'S RESPONSIBILITY (IF ANY) FOR ANY PROPERTY DAMAGE, PERSONAL INJURY, OR OTHER LOSS, DAMAGE, OR LIABILITY, RESULTING DIRECTLY OR INDIRECTLY FROM THE PRESENCE OF MOLD OR OTHER HARMFUL ORGANISMS.

Section 12: Reliance on Third Party Information

12.1 SELLER ADVISES OWNER, AND OWNER ACKNOWLEDGES, THAT SELLER HAS RELIED AND WILL RELY ON WRITTEN INFORMATION FROM VARIOUS THIRD PARTIES, ENGINEERS, ARCHITECTS, DESIGNERS, MANUFACTURERS, AND GOVERNMENTAL AGENCIES CONCERNING THE PROPERTY AND THE MATERIALS AND COMPONENTS INCORPORATED INTO THE HOME. THIS WRITTEN INFORMATION CONCERNS MATTERS ABOUT WHICH THOSE OTHER PARTIES HAVE SPECIAL KNOWLEDGE SELLER DOES NOT HAVE, OR WHICH INFORMATION HAS BEEN PROVIDED TO SELLER OR DISSEMINATED TO THE PUBLIC UNDER SPECIFIC STATUTORY OR REGULATORY REQUIREMENTS. THIS WRITTEN INFORMATION PERTAINS TO FLOOD ZONES, THE DEVELOPMENT OF ADJACENT LAND, THE SUITABILITY OF THE PROPERTY AND THE SURROUNDING SUBDIVISION FOR RESIDENTIAL USE, THE ACCURACY OF THE PLANS AND THE DIMENSIONS SHOWN IN THE PLANS, AND THE APPROPRIATENESS OF THE MATERIALS AND COMPONENTS INCORPORATED OR TO BE INCORPORATED INTO THE HOME, INCLUDING BUT NOT LIMITED TO ROOFING MATERIALS, WINDOWS, DOORS, SIDING, INSULATION, PLUMBING FIXTURES, PIPING, APPLIANCES, AND HVAC COMPONENTS.

Section 13: Miscellaneous

13.1 Time is of the essence of the Contract. As the term is used in this Contract, "Work Days" shall mean Monday through Friday. Unless Work Days are specified, any computation of days shall refer to calendar days.

13.2 All remedies of Seller under the Contract shall be cumulative. No waiver of a right provided by the Contract shall be effective unless stated in writing and signed by the party against whom enforcement of the waiver is sought. No waiver by Seller or Buyer of a breach of any provision of the Contract shall be construed as a waiver of any later breach of the same or any other provision. The Contract is binding upon the Parties' heirs, executors, administrators, successors, and assigns, and those persons who would have a claim by, through, or under the Parties. If any provision of this Contract is found to be unenforceable, the remainder of the Contract shall not be affected.

Section 14: Entire Agreement

14.1 The Contract, together with all attachments, addenda, and exhibits, contains the entire agreement between Seller and Buyer with respect to the purchase of the Property and the construction of the Home and the Modifications, and replaces all prior oral and written agreements and understandings, if any. Seller is not bound by any statement, promise, condition, or stipulation not specifically set forth in the Contract. **NO SALESPERSON OR REPRESENTATIVE OF SELLER HAS AUTHORITY TO MAKE ANY ORAL STATEMENTS, AGREEMENTS, OR REPRESENTATIONS THAT MODIFY THIS CONTRACT.**

14.2 BUYER REPRESENTS THAT BUYER HAS READ AND UNDERSTANDS THIS ENTIRE CONTRACT, INCLUDING THE LIMITED WARRANTY AND THE AGREEMENT FOR BINDING ARBITRATION OF DISPUTES RELATED TO THIS CONTRACT. BUYER ALSO REPRESENTS THAT BUYER HAS NOT RECEIVED AND IS NOT RELYING ON ANY VERBAL STATEMENTS, PROMISES, OR CONDITIONS NOT SPECIFICALLY SET FORTH IN THIS CONTRACT. THE PARTIES ACKNOWLEDGE THAT SELLER IS RELYING ON THESE REPRESENTATIONS AND WOULD NOT ENTER INTO THIS CONTRACT WITHOUT THIS UNDERSTANDING.

EXECUTED in multiple copies this ___ day of _____, 20___.

BUYER(S):

SELLER: _____

By: _____

Name: _____

Title _____

Tel: (_____) _____ - _____

Tel: (_____) _____ - _____

Fax: (_____) _____ - _____

Fax: (_____) _____ - _____

E-mail: _____

E-mail: _____

Address: _____

Address: _____

SCHEDULE OF EXHIBITS

A Independent Property Inspection Guidelines

D Insulation Addendum

B Modifications

E _____

C Warranty Sample



EXHIBIT "A"

Independent Property Inspection Guidelines

This Exhibit establishes requirements that govern Buyer's use of a third-party property inspector, and is appended to and incorporated into that certain Addendum (the "Addendum") to the Texas Real Estate Commission ("TREC") New Home Contract (collectively, the "Contract"), both executed on _____, 20____ by and between _____ ("Buyer" whether one or more) and _____ ("Seller"). The subject of the Contract is the construction and/or sale of a single-family residence on certain real property described as Lot _____, Block _____, Section _____, out of the _____ Subdivision in _____ County, Texas, and which has the following street address: _____ (the "Property"). The capitalized terms not defined in this Exhibit shall have the meanings specified in the Addendum.

Buyer shall have the right to enter upon the Property during construction and before closing to conduct inspections (each an "Inspection") using an independent professional inspector (the "Inspector"). The Inspector's safety while on the Property will be governed by § 7.1 of the Addendum. The Inspector will use the TREC Standard Report Form and the inspection shall be subject to and comply with the following terms and conditions:

- 1. The Inspection may only be conducted during normal business hours (8:00 a.m. to 6:00p.m.) on Work Days.
2. Buyer must provide Seller forty-eight (48) hours' advance notice of the date and time Buyer desires to conduct the Inspection. Seller shall have the right to have a representative to be present during the Inspection.
3. Before the Inspection, Buyer must provide satisfactory written evidence to Seller that the Inspector possesses the following:
a. A current license or certification from TREC as a Real Estate Inspector or a Professional Inspector, and/or a designation as a Certified Residential Combination Inspector for the International Code Congress; and
b. A Commercial General Liability Insurance policy with limits of not less than \$1,000,000 (per occurrence).
4. Buyer and Inspector understand and agree that the Inspection must be conducted so as not to interfere with or cause delays of any kind in the construction of the Home and shall take reasonable precautions to ensure that the Inspection does not increase the risk of personal injury or property damage.
5. Buyer agrees to pay all fees and charges of any kind relating to the Inspection, including inspection fees, engineering fees, and other expenses.
6. The Inspection report must be submitted to Seller in writing within five (5) days after the Inspection, except for any Inspection conducted upon completion of the Home, in which case the Inspection Report must be provided before the Orientation.
7. Seller agrees to correct—subject to § 5.4 of the Addendum—any structural defect or code violation discovered by Buyer or Inspector before closing and shall address cosmetic adjustments as soon as reasonably practical, either before or after closing. Buyer will confirm in writing to Seller once all items have been completed.
8. Buyer and Inspector, reflected by their signatures below, understand and agree that Buyer's right to secure the Inspection is granted in exchange for Buyer's and Inspector's strict compliance with the terms and conditions contained within this Exhibit.

BUYERS: _____ SELLER: _____ INSPECTOR: _____
NAME: _____ BY: _____ BY: _____
DATE: _____ NAME: _____ NAME: _____
TITLE: _____ TITLE: _____
DATE: _____ DATE: _____
NAME: _____
DATE: _____

Initialed for Identification _____

INSERT:

**EXHIBIT “B” — MODIFICATIONS
AND
EXHIBIT “C” — WARRANTY SAMPLE**

THEN DISCARD THIS PAGE.



EXHIBIT "D"

Insulation Addendum

As required by the Federal Trade Commission Regulations, the information relating to the insulation to be installed in the Home being purchased under this Contract is as follows:

1. Exterior walls of improved living areas: insulated with _____ insulation to a thickness of _____ inches, which yields an R-Value of _____.
2. Interior walls and walls in other areas of the Home: insulated with _____ insulation to a thickness of _____ inches, which yields an R-Value of _____.
3. Under-side of roof decking and cold floors: insulated with _____ insulation to a thickness of _____ inches, which yields an R-Value of _____.
4. Party walls of improved living areas: insulated with _____ insulation to a thickness of _____ inches, which yields an R-Value of _____.
5. Other insulation: _____

The thickness of insulation in certain areas may be less than specified above if the design of the Home or structural elements of the Home 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.

**INSTRUCTIONS FOR THE USE OF
EXHIBIT “E”: DISPUTE RESOLUTION**

If you prefer bench trials in a court of law (i.e., trials to a judge with no jury) over binding arbitration as called for in the Addendum, then (i) strikethrough § 8.6 of the Addendum; (ii) fill in “Dispute Resolution” in the blank space designated for Exhibit “E” in the Schedule of Exhibits on the last page of the Addendum; and (iii) insert the following Exhibit “E.”

DISCARD THIS PAGE WHETHER EXHIBIT “E” IS USED OR NOT.



EXHIBIT "E"
Dispute Resolution Addendum

The undersigned Parties agree to the terms of this Exhibit as an integral part of the Addendum (the "Addendum") to the Texas Real Estate Commission New Home Contract (collectively, the "Contract"), for the construction and/or sale of a single-family residence on certain real Property located at the following address: _____ (address). The capitalized terms not defined in this Exhibit shall have the meanings specified in the Addendum.

The Parties specifically agree to Strike § 8.6 in the Addendum in its entirety and replace it with the following:

8.6 Waiver of Jury Trial. If the Parties do not desire to mediate, or the Dispute is not resolved by direct discussions and/or mediation, Buyer and Seller agree that all Disputes shall be submitted to a bench trial in a court of competent jurisdiction in the County in which the Property is located (the "Court"). This Contract is subject to and shall be governed by Texas law. BY SIGNING BELOW, THE PARTIES UNCONDITIONALLY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL FOR THE RESOLUTION OF ANY DISPUTE. SELLER AND BUYER ACKNOWLEDGE THAT THEY HAVE EXECUTED THIS WAIVER OF JURY TRIAL KNOWINGLY, INTELLIGENTLY, AND VOLUNTARILY, AND AGREE THAT THIS PROVISION CONSTITUTES PRIMA FACIE EVIDENCE OF THE PARTIES' WRITTEN CONSENT TO A TRIAL BY THE COURT.

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

BUYER(S):

SELLER: _____

By: _____

Name: _____

Title _____

Tel: (_____) _____ - _____

Tel: (_____) _____ - _____

Fax: (_____) _____ - _____

Fax: (_____) _____ - _____

E-mail: _____

E-mail: _____

Address: _____

Address: _____
