



Subcontractor/Vendor Packet

Hello Future Southern Creek Home's Vendor:

The below conditions must be fully completed, executed, and provided to Southern Creek Homes in order to approve your company. Doing so helps ensure that you receive payment as quickly as possible and also helps ensure that we provide our customers with the best quality and service. We must receive all of the following items before you are eligible to work or perform services for Southern Creek Homes:

1. **W-9 (Taxpayer ID Number)** – The name on this form is the name used to issue all checks. This name must also match the name on the insurance certificate you submit to us.
2. **Certificate of Insurance for General Liability**: see attached *Vendor Insurance Requirements* for more details.
3. **DWC Form-83 related to Workers' Compensation**
4. **SCH's Rules and Guidelines**
5. **SCH Subcontractor/Supplier Performance Standards**
6. **Independent Contractor Base Agreement**
7. **Summary of Jobs, Scheduling Timeframes, and Pricing Information**: In lieu of using our form, you may attach your own forms or documents containing this information.

It is imperative that the conditions listed above be met in a timely manner in order for subcontractors to receive payment as quickly as possible. If you need further information or have any questions, please do not hesitate to contact us at **979.314.9713**. All documents can be sent by fax to **979.314.9737** or by email to **vendors@southerncreekhomes.com**

We look forward to developing a great working relationship with you and your team!

Request for Taxpayer Identification Number and Certification

Give Form to the requester. Do not send to the IRS.

▶ Go to www.irs.gov/FormW9 for instructions and the latest information.

Print or type. See Specific Instructions on page 3.	1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.		
	2 Business name/disregarded entity name, if different from above		
	3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes.		4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):
	<input type="checkbox"/> Individual/sole proprietor or single-member LLC <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate		Exempt payee code (if any) _____
	<input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ▶ _____ Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is not disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner.		Exemption from FATCA reporting code (if any) _____
	<input type="checkbox"/> Other (see instructions) ▶ _____		(Applies to accounts maintained outside the U.S.)
	5 Address (number, street, and apt. or suite no.) See instructions.		Requester's name and address (optional)
6 City, state, and ZIP code			
7 List account number(s) here (optional)			

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number											
				-			-				
or											
Employer identification number											
				-							

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below); and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign Here	Signature of U.S. person ▶	Date ▶
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General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.



Vendor Insurance Requirements

Certificate of Insurance for General Liability completed in its entirety and signed. Binders are not acceptable.

<u>Minimum Coverages</u>	<u>Limit</u>
• General Aggregate	\$2,000,000
• Products & Completed Operations Aggregate	\$2,000,000
• Personal & Advertising Injury	\$1,000,000
• Each Occurrence	\$1,000,000

EXTREMELY IMPORTANT: Southern Creek Homes, LLC. must be named as an Additional Insured and reflected in Certificate Holder section of the certificate. In addition, in the Description of Operations section of the certificate, we require that the following statement be added:

“Southern Creek Homes, LLC., its subsidiaries and affiliated companies as Owner and General Contractor as Additional Insured”

If you need further information or have any questions, please do not hesitate to contact us by phone at 979.314.9713. The COI can be sent by email to vendors@southerncreekhomes.com or by fax at 979.314.9737. Please reference the contractor’s name in the Subject line.

TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION (TDI-DWC)
7551 Metro Center Drive, Suite 100
Austin, Texas 78744

DO NOT SEND THIS AGREEMENT TO TDI-DWC

If you are not certain whether all parties meet the requirements for entering into this agreement, you may wish to consult an attorney.

Texas Workers' Compensation Act, Texas Labor Code, Section 406.141(2) defines "independent contractor" as follows: (2) "Independent contractor" means a person who contracts to perform work or provide a service for the benefit of another and who: (A) is paid by the job, not by the hour or some other time-measured basis; (B) is free to hire as many helpers as he desires and to determine what each helper will be paid; and (C) is free to work for other contractors, or to send helpers to work for other contractors, while under contract to the hiring employer.

CHECK BOX OF STATEMENT THAT APPLIES

**JOINT AGREEMENT TO AFFIRM INDEPENDENT
RELATIONSHIP FOR CERTAIN BUILDING
AND CONSTRUCTION WORKERS**

Notice of Declaration

The undersigned Hiring Contractor and the undersigned Independent Contractor hereby declare that the Independent Contractor meets the qualifications of an Independent Contractor under Texas Workers' Compensation Act, Texas Labor Code, Section 406.141, that the Independent Contractor is not an employee of the Hiring Contractor, and that:

- (A) the Independent Contractor and the Independent Contractor's employees shall not be entitled to workers' compensation coverage from the Hiring Contractor; and
- (B) the Hiring Contractor's workers' compensation insurance carrier shall not require premiums to be paid by the Hiring Contractor for coverage of the Independent Contractor or the Independent Contractor's employees, helpers, or subcontractors.

THIS AGREEMENT APPLIES TO ALL HIRING AGREEMENTS EXECUTED BY THE HIRING CONTRACTOR AND THE INDEPENDENT CONTRACTOR UNTIL THE FIRST ANNIVERSARY OF THE DATE THE AGREEMENT WAS FILED WITH THE HIRING CONTRACTOR'S WORKERS' COMPENSATION INSURANCE CARRIER, UNLESS A SUBSEQUENT HIRING AGREEMENT EXPRESSLY STATES THE AGREEMENT DOES NOT APPLY. IN THE EVENT THAT A HIRING AGREEMENT TO WHICH THIS AGREEMENT DOES NOT APPLY IS MADE, THE HIRING CONTRACTOR AND INDEPENDENT CONTRACTOR SHALL SO NOTIFY THE TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION AND THE HIRING CONTRACTOR'S WORKERS' COMPENSATION INSURANCE CARRIER (IF ANY) IN WRITING WITHIN 10 DAYS AFTER THE NON-APPLYING AGREEMENT IS MADE. ONCE THIS AGREEMENT IS SIGNED, THE SUBCONTRACTOR AND THE SUBCONTRACTOR'S EMPLOYEES SHALL NOT BE ENTITLED TO WORKERS' COMPENSATION COVERAGE FROM THE HIRING CONTRACTOR UNLESS A SUBSEQUENT WRITTEN AGREEMENT IS EXECUTED, AND FILED ACCORDING TO DIVISION RULES, EXPRESSLY STATING THAT THIS AGREEMENT DOES NOT APPLY.

Texas Labor Code, Texas Workers' Compensation Act, Section 406.145.

**AGREEMENT TO ESTABLISH EMPLOYER-
EMPLOYEE RELATIONSHIP FOR CERTAIN
BUILDING AND CONSTRUCTION WORKERS**

Notice of Agreement

The undersigned Hiring Contractor and the undersigned Independent Contractor hereby agree that the Hiring Contractor will withhold will not withhold the cost of workers' compensation insurance coverage from the Independent Contractor's contract price and that the Hiring Contractor will purchase workers' compensation insurance coverage for the Independent Contractor and the Independent Contractor's employees. Once this agreement is signed, for the purpose of providing workers' compensation insurance coverage, the Hiring Contractor will be the employer of the Independent Contractor and the Independent Contractor's employees. This agreement makes the Hiring Contractor the employer of the Independent Contractor and the Independent Contractor's employees only for the purposes of workers' compensation laws of Texas and for no other purpose.

TERM (DATES) OF AGREEMENT: FROM: _____
TO: _____

LOCATION OF EACH AFFECTED JOB SITE (OR STATE WHETHER THIS IS A BLANKET AGREEMENT):

ESTIMATED NUMBER OF EMPLOYEES AFFECTED: _____

THIS AGREEMENT SHALL TAKE EFFECT NO SOONER THAN THE DATE IT IS SIGNED.

Texas Labor Code, Texas Workers' Compensation Act, Section 406.144.

Hiring Contractor's Affirmation

If the Hiring Contractor's workers' compensation carrier changes during the effective period of coverage, it is advisable for the Hiring Contractor to file this form with the new insurance carrier.

Signature of Hiring Contractor Date
Southern Creek Homes, LLC.
Printed Name of the Hiring Contractor

Federal Tax I.D. Number
14550 Torrey Chase Blvd, Ste 465
Address (Street)
Houston, TX 77014
Address (City, State, Zip)

Independent Contractor's Affirmation

Signature of Independent Contractor Date

Printed Name of the Independent Contractor

Federal Tax I.D. Number

Address (Street)

Address (City, State, Zip)

The Hiring Contractor must retain the original. A legible copy of this agreement must be filed with the hiring contractor's workers' compensation insurance carrier within 10 days of the date of execution. An agreement is not considered filed if it is illegible or incomplete. The Independent Contractor should also retain a copy of the agreement.





Rules and Guidelines

As a Southern Creek Homes Independent Contractor, you are obligated to abide by and follow the below rules and guidelines. Any violation of these. Rules and Guidelines may result in contractor dismissal.

Major Infractions:

- Possession of firearms or explosives while at work for Southern Creek Homes.
- Illegal possession of or under the influence of alcoholic beverages or drugs while at work.
- Unwarranted comments to Southern Creek Homes' customers, their clients, visitors, or other vendors.
- Gross misconduct (including language, harassment, etc.).
- Willful destruction of company or customer property.
- Conviction of a major crime.
- Possession of pornographic or other objectionable materials.
- Assault and battery on Southern Creek Homes' employees, contractors, visitors, customers, etc.
- Deliberate violation of safety rules that endangers the life and safety of the contractor or others.
- Theft of company property or personal property.
- Defrauding or attempting to defraud the company.
- Conflicts of interest, disclosure of proprietary information, or other conduct of such a nature as to bring serious discredit to Southern Creek Homes' employees, Southern Creek Homes' vendors, or Southern Creek Homes' customers and/or their clients
- Sexual Harassment.
- NO ALCOHOL OR ILLEGAL DRUGS ARE ALLOWED ON THE JOB SITE

General Guidelines

- All contractors must wear clothing, which is in good taste. Any attire, which causes unwarranted distractions, is unauthorized.
- Lack of a shirt or wearing sandals is not permitted.
- Clothing with offensive wording is prohibited.
- Smoking is only allowed outside of the home.
- Food or drink should be discarded in appropriate designated areas.
- Contractors must comply with all OSHA Safety Standards.
- When using a vehicle for company business, maintain a valid driver's license and state required automobile insurance coverage.
- All contractors and vendors must complete background checks on employees retained and engaged by contractor and/or vendor to do work for Southern Creek Homes or associations. Such background checks must be done pursuant to the requirements of the Fair Credit Reporting Act.

I agree to follow the Southern Creek Homes, LLC. Rules and Guidelines as an Independent Contractor.

Print Name _____ Date _____

Signature _____

Model Home: 2901 Boxelder Drive, Bryan, Texas 77807
14550 Torrey Chase Blvd, Ste 465 | Houston, Texas 77014
Phone 979.314.9713 | Fax 979.314.9737
www.southerncreekhomes.com



Subcontractor/Supplier Performance Standards

The Subcontractor (also referred to commutatively as Supplier) is to furnish all labor, tools, fastening devices, full time supervision, equipment, and anything else necessary to provide strict compliance with all Performance Standards and Scopes of Work. The Subcontractor will comply with all of the Southern Creek Homes, LLC.'s Subcontractor Agreement, Water Intrusion Program, Safety Policy, and any applicable Federal, State, and Municipality codes, laws and regulations, as well as, all OSHA and state safety regulations. The Subcontractor agrees to complete all work per the construction schedule issued by Southern Creek Homes, LLC. Subcontractor understands that customer satisfaction is a top priority of Southern Creek Homes, LLC. and agrees to make it a top priority, as well.

Quality Specifications

The Subcontractor will perform work in compliance to the Subcontractor Performance Standards with the labor and materials being installed with the following minimum tolerances:

- The Subcontractor is responsible for the full time onsite supervision of their employees or subcontractors.
- The Subcontractor will inspect their own work for defects and quality issues and will take appropriate measures to correct defects and to provide a defect-free product.
- Work will be complete per the Scope of Work prior to submittal of any invoices. All work found to be non-compliant with the Scope of Work will be brought into compliance within 24 hours of notification.

Safety Specifications

The Subcontractor will perform the Scope of Work in a safe manner with the following standards:

- All power saws will have guards in place and be properly operational.
- All power tools will be properly maintained and functioning as per the manufacturer's specifications.
- All pertinent safety regulations stipulated both by Southern Creek Homes, LLC. and OSHA will be adhered to rigidly by the Subcontractor. In addition, all safety precautions noted on the manufacturer's product data sheets and labels will be observed for both material and equipment.
- If applicable, the Subcontractor will erect and maintain all required safety rails as required by OSHA, during construction, and will repair any safety rails damaged by subcontractor within 24 hours.
- The Subcontractor will provide and maintain current Material Safety Data Sheets (MSDS) for all hazardous chemicals that may be brought onto any Southern Creek Homes, LLC. job site. The Subcontractor will also be responsible for:
 - Transmitting their hazardous material information to Southern Creek Homes, LLC. employees;
 - Developing training programs for their employees, to inform them with regard to all hazardous chemicals related to their work;
 - Labeling all hazardous chemicals brought onto a Southern Creek Homes, LLC. job site, in accordance with the applicable OSHA requirements;
 - Informing Southern Creek Homes, LLC. employees that MSDS's, pertaining to hazardous chemicals used during other phases of construction, are available at the Southern Creek Homes, LLC. on-site trailer offices.
- No smoking is permitted in the home at any time.



EPA

The Subcontractor will comply with all Environmental Protection Agency (EPA) Federal, regulations when on a Southern Creek Homes, LLC. job site, within Southern Creek Homes, LLC. subdivisions, or when disposing of any material purchased by Southern Creek Homes, LLC. or used on a Southern Creek Homes, LLC. job site.

Pricing

Refer to Subcontractor/Supplier Agreement for procedural information. For contract schedule of values, refer to labor price agreement, bid document, or Schedule A, as applicable.

Plans and Specifications

Contract value is based upon current plans and building specifications issued by Southern Creek Homes, LLC. Any deviation from the above referenced plans and building specifications issued without **written approval** from Southern Creek Homes, LLC. will be the responsibility of the Subcontractor to repair physically or financially.

Model Home / Office Agreement

Refer to Subcontractor/Supplier Agreement, or see attached Model Home / Office Agreement, as applicable.

General Conditions

- Cleanup:
 - The Subcontractor will remain responsible for the **daily** cleanup and removal of all debris and trash (i.e. drinking water bottles, buckets, boxes, scrap materials, etc.) from their respective work area to the nearest trash bin. If for any reason the Subcontractor fails to perform daily cleanup of their work area, the Community Construction Manager (CCM) will perform the necessary cleanup and deduct sufficient monies from monies due the Subcontractor to cover the cost of cleanup. Non-compliance may result in fines in addition to clean up charges. Repeated non-compliance may result in contract termination as deemed appropriate by Southern Creek Homes, LLC.
 - The Subcontractor will notify the Community Construction Manager in the event that the house is not clean **before** commencing work. If notification is not provided, the Subcontractor will be responsible for the clean up of all trash etc. as left by other Subcontractors, regardless of house and lot cleanliness.
- Customer Service:
 - The Subcontractor will respond to all pre-settlement and non-emergency customer service requests within twenty-four (24) hours.
 - Failure to comply within twenty-four (24) hours of notification by either facsimile, e-mail, or phone call and thus minimizing hardship and inconvenience to the homeowner, will result in Southern Creek Homes, LLC. completing the work and back charging the cost to the Subcontractor.



- True emergencies are to be responded to immediately. Emergencies include, but are not limited to, items such as air/heat not working, water leaks, electrical issues, and any other item that could be considered imminent to life safety or property damage issues.
 - It is the Subcontractor's responsibility to keep Southern Creek Homes, LLC. updated of any and all emergency numbers.
- Warranty:
 - The Subcontractor will be responsible for all customer service and walkthrough items, as well as, all deficiencies in labor and materials supplied by Subcontractor pertaining to their scope of work/contract for one (1) year from closing of the house and/or the requirements of the local or state jurisdiction, whichever is greater, **as well as**, the Home Builder's Limited Warranty, PWC Form No. 117, latest revision.
 - Manufacturer's warranty that exceeds (1) year will apply to all items as stated by manufacturer.
 - Water Intrusion:
 - The Subcontractor will perform their Scope of Work in a manner in which will not compromise the integrity of a water tight home in accordance with the following standards:
 - Report any and all water leaks to the Community Construction Manager immediately.
 - Look for signs of moisture and mold. When mold is suspected, immediately report it to a Southern Creek Homes, LLC. Construction Management Associate.
 - The Subcontractor will develop a water intrusion training program and protocol that matches the Southern Creek Homes, LLC. program.
 - At a minimum, their program will provide training for the Subcontractor's employees and Subcontractors in recognizing potential water intrusion situations, the underlying reasoning and concerns of water intrusion, as well as the proper techniques to avoid potential mold growth issues. In addition, the program will develop a protocol to recognize and safely deal with the removal of mold.
 - All materials will be mold free.
 - All materials will be stored in a way as to prevent them from getting wet and promoting mold growth.
 - Cutting and Patching:
 - All cuts in I-joint webs will be in accordance with the manufacturer's hole cutting schedule.
 - Any cuts in framing members will be approved by the CCM, and sufficiently and properly repaired.
 - The Subcontractor will not cut, drill, notch or displace any gusset/nail plates on any floor or roof trusses. In addition, under no circumstance will the top or bottom chords of any I-joists be disturbed.
 - The cost of any and all repairs including, but not limited to, engineering costs will be the sole responsibility of the Subcontractor that damaged the truss or I joist.
 - Drawings:
 - The Subcontractor will be responsible for securing up-to-date construction drawings, specifications, detail sheets, and selection sheets. Prior to commencing work on each home site these may be obtained from the CCM.



- Meetings:
 - The Subcontractors and their employees will attend all Southern Creek Homes, LLC. training seminars as required and per scheduled notice.
 - The Subcontractor will attend weekly community safety meeting/toolbox talks and production meetings scheduled by Southern Creek Homes, LLC. as required and per scheduled notice.

- Access:
 - The Subcontractor will not drive or park vehicles on driveways, yards, or in garages except to load/unload materials and only with the express permission of the CCM. If damage occurs, Subcontractor will be responsible for all repairs.
 - The Subcontractor will not disturb any sediment control devices including, but not limited to, the silt fence, curlex, diversion dikes, and inlet protection systems. If damage occurs, Subcontractor will be responsible for all repairs.
 - The Subcontractor will cross curbs only at the designated areas and only with prior permission from the CCM.
 - The Subcontractor will not walk on any concrete that looks recently poured. If in doubt, the Subcontractor will ask the CCM. If damage occurs, subcontractor will be responsible for all repairs.
 - The Subcontractor acknowledges that if there are problems with concrete (i.e. cracking, oil drips, footprints, scratches, etc.), as a result of the Subcontractor being on these surfaces, the Subcontractor will be responsible for repairs or replacement.
 - The Subcontractor will completely clean off the tires of all vehicles or machines prior to driving on any paved surface. The Subcontractor will be solely responsible for the immediate removal of any dirt, gravel, mud, and/or mud clods that end up on any paved surface, due to their failure to adequately clean tires and/or tracks.

- Back charges:
 - The CCM will give proper notice of repair to Subcontractor's failure to comply within twenty-four (24) hours of notification, either via facsimile, e-mail, or phone call. This will result in Southern Creek Homes, LLC. completing the work and back charging the cost to the Subcontractor.
 - The CCM will have the final word on all back charges.

- Subcontractor Supplied Materials:
 - The Subcontractor will exercise due care in the use of materials provided by Southern Creek Homes, LLC. and will be responsible for any misuse or waste of said materials. All materials will be installed in a workman-like manner, consistent with the manufacturer's specifications, the manufacturer's installation instructions, as well as, recognized building standards and practices.
 - Unused materials will be neatly stacked and properly protected on site, in a manner which is consistent with the Southern Creek Homes, LLC. water intrusion program. Location is to be coordinated with the CCM.

- Quality:
 - The Subcontractor will achieve "First Time Quality".
 - It will be the sole responsibility of the Subcontractor to identify and correct all defects to assure "First Time Quality".



- All work will be representative of the best of the trade and will include, but not be limited to, their signed Subcontractor Performance Standard and Phase Sheet/Scope of Work. Failure of the Subcontractor to notify Southern Creek Homes, LLC. of problem areas prior to commencement of work, will indicate acceptance of previous work done by other Subcontractors, as well as, full responsibility for the installation of the work being performed by themselves.
- The Subcontractor will be responsible for making any adjustments or corrections of their own error, as necessary, to comply with plans, specifications, code inspections, testing and/or third party inspections performed by in Southern Creek Homes, LLC., including the cost of materials, labor, equipment, and re-inspection fees.
- The Subcontractor will be responsible for repairing or replacing and the costs incurred therein with any work performed as a result of defective materials or labor.
- The Subcontractor will inspect their own work for defects and quality issues and will take appropriate measures to correct defects and provide a defect-free scope of work.
- The Subcontractor has included in their Scope of Work the quality control process as outlined below:
 - At a minimum, their program will develop quality control checklists, a quality assurance review process, quality control audits and proper ongoing training to all of the trade partner's employees and Subcontractors in their trade to assure "First Time Quality".
- Insurance:
 - Prior to commencement of work on the site, the Subcontractor will comply with all of the Southern Creek Homes, LLC. insurance requirements, per Subcontractor/Supplier Agreement.
- Schedule:
 - The Subcontractor will adhere to the weekly Southern Creek Homes, LLC. Production Schedule and promptly notify the Operations Center and Community Construction Manager of any scheduling conflicts.
- Other:
 - The Subcontractor will perform their work in such a manner to achieve "clean site, done right, on time".
 - Before commencing work on any Southern Creek Homes, LLC. home site, regardless of Division or location, the Subcontractor will accept total responsibility under the latest signed contract, contract addendums, prices and Phase Sheet/Scope of Work and current plans. The selection sheet shall be verified with CCM.
 - The Subcontractor will be responsible for the timely notification of the appropriate utility location service as required by local or state law, prior to beginning of any underground work. Under no circumstance will any underground work occur before utilities are marked.
 - At no time will the Subcontractor negotiate and/or perform work for customers in homes that have not closed. Any work done directly for customers will be negotiated and completed after the customer closes and takes ownership of their home. Violation of this rule will result in the termination of the Subcontractor.
 - The Subcontractor will respect the installation of the prior trades' work while performing their work. Any damages to existing work that, in the Community Construction Manager's judgment, should have been avoided will be back charged to the offending Subcontractor.
 - The Subcontractor will follow Southern Creek Homes, LLC. Work Rules posted in each community. Homes under construction are Southern Creek Homes, LLC. homes and will be respected at all times. At a minimum these rules will include:



- **No** smoking, drinking, or eating in the house at any time.
 - No tools on finished surfaces and no shoes on any finished flooring installed.
 - No bathrooms are to be used in any house at any time.
 - No appliances will be used for any reason.
- At the end of day, the last Subcontractor in the home will be responsible for securing the home, including closing and locking all windows and doors, where applicable, to ensure home is secured. Windows may be left partially open no more than 2" for drying sheetrock joint compound and texture.

The Subcontractor/Supplier Performance Standards defined above will be considered an integral part of the Subcontractor/Supplier Agreement referenced above. Southern Creek Homes, LLC. reserves the right to modify and/or amend the above Performance Standards at any time and will notify the Subcontractor as soon as any change is initiated.

Acceptance

I, _____, have completely reviewed the above Subcontractor Performance Standards and unconditionally agree to comply with it in its entirety.

Subcontractor/Supplier:

Southern Creek Homes, LLC.

Company

Purchasing Manager

Signature

Signature

Date

Date



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

1. **PARTIES:** This Base Agreement (Agreement) is between _____ (Builder) and _____ (Contractor).
2. **CONTRACTOR:** Contractor is a (check one of the following): Corporation Partnership Sole Proprietorship. The SS# or Tax ID# is _____.
If Contractor is a Corporation, the name(s) of its principal officers are: _____

If Contractor is a Partnership or Sole Proprietorship, the name(s) of its partners or owners are: _____

Contractor's business address is: _____

Contractor's telephone: _____ Fax: _____
Contractor's email address is: _____
Contractor's mailing address is: _____

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

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

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

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

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

9. CONTRACT DOCUMENTS:

- A. **CONTRACT DOCUMENTS** - This Agreement, together with any and all relevant work orders, bids, bonds (where applicable or required), change orders, or complete construction plan sets (which include but are not limited to applicable foundation plans, frame plans, floor plans, elevation plans, construction sheet details and specifications), shall constitute the entire Contract Documents (Contract Documents) and there are no other agreements, oral or written, by and between the parties hereto, except as to Contractor's warranties under any prior or contemporaneous agreement with Builder which warranties are incorporated by reference herein for all purposes.
- B. **PLANS AND SPECIFICATIONS** - Contractor expressly agrees to read and become familiar with all relevant plans and specifications (available for inspection in Builder's Office) applicable to this Agreement or any Work requested by Builder before starting any Work. Contractor shall be solely responsible for all construction under this Agreement, including techniques, sequences, procedures, and means for the coordination of all Work. Contractor shall supervise and direct his Work to the best of his ability and give it all attention necessary for such proper supervision and direction. Contractor shall perform all labor in a good and workmanlike manner.

10. CONTRACTOR'S EMPLOYEES, SUBCONTRACTORS AND AGENTS:

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

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

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

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

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

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

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

12. COMPLIANCE WITH LAWS, ORDINANCES AND BUILDING CODES:

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

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

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

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

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

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

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

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

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

18. INSURANCE:

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

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

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

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

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

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

liquidated damages shall not relieve Contractor of any obligations arising under this Agreement. Contractor understands that Builder is not and will not provide insurance to Contractor notwithstanding Builder's election to withhold liquidated damages as specified above.

C. **PROHIBITED EXCLUSIONS** - THE POLICIES SHALL NOT CONTAIN ANY PROVISION, DEFINITION OR ENDORSEMENT THAT WOULD SERVE TO ELIMINATE THIRD-PARTY ACTION OVER CLAIMS COVERAGE FOR THE BENEFIT OF BUILDER. ADDITIONALLY, THE FOLLOWING EXCLUSIONS/LIMITATIONS (OR THEIR EQUIVALENT(S)) ARE PROHIBITED: CONTRACTUAL LIABILITY LIMITATION, e.g., CG 21 39; AMENDMENT OF INSURED CONTRACT DEFINITION, e.g., CG 24 26; LIMITATION OF COVERAGE TO DESIGNATED PREMISES OR WORK, e.g., CG 21 44; EXCLUSION-DAMAGE TO WORK PERFORMED BY SUBCONTRACTORS ON YOUR BEHALF, e.g., CG 22 94 or CG 22 95; ANY ENDORSEMENT MODIFYING OR DELETING THE EXCEPTION TO THE EMPLOYER'S LIABILITY EXCLUSION; ANY ENDORSEMENT THAT LIMITS THE GENERAL AGGREGATE LIMIT SHOWN IN THE DECLARATIONS PAGE OF THE POLICY; ANY ENDORSEMENT MODIFYING OR DELETING EXPLOSION, COLLAPSE OR UNDERGROUND COVERAGE; ANY "INSURED VS. INSURED" EXCLUSION EXCEPT FOR CLAIMS MADE BETWEEN INSURED WITHIN THE SAME ECONOMIC FAMILY; "COMMON AREA" EXCLUSIONS OR LIMITATIONS; VOLUME, BULK HOME/UNIT, SPEC HOME, MULTI-UNIT, SUBDIVISION AND/OR ITS EQUIVALENT; ANY EXCLUSION FOR CONTRACTOR'S POLLUTION LIABILITY, INCLUDING BUT NOT LIMITED TO CG2149; ANY PUNITIVE, EXEMPLARY OR MULTIPLIED DAMAGES EXCLUSION; and/or ANY SUBSIDENCE, SOIL MOVEMENT AND/OR ITS EQUIVALENT EXCLUSION. CONTRACTOR'S POLICY SHALL NOT HAVE ANY FORM OF EXCLUSION FOR RESIDENTIAL, SINGLE-FAMILY, MULTI-FAMILY, CONDOMINIUM, TOWNHOME OR OTHERWISE ANY DEFINITION THAT WOULD EXCLUDE "RESIDENTIAL," "HOME," AND/OR "DWELLING" AS DEFINED BY TEXAS LAW OR ACCEPTED INDUSTRY TERM.

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

20. CONTRACTOR'S DEFAULT: Contractor shall continually perform the Work and correct defective Work designated to be performed by Contractor on any project, and in the event Contractor shall not substantially perform in a continuous, satisfactory manner and if Contractor should fail to do so for two (2) consecutive days under any job requested by Builder, or in the event Contractor fails to perform warranty service under this Agreement or any other agreement with Builder, Builder shall have the right, upon written notice to Contractor (delivered by hand or U.S. Postal Service), to declare Contractor in breach of this Agreement and terminate this Agreement. In the event of a breach of this Agreement by Contractor, or breach of any other agreement with Builder, Builder shall be entitled to retain all sums due Contractor and shall be entitled to cause the work to be performed by others, and shall apply any sums then due Contractor against such cost of completion and thereafter to the cost of an obligation arising under the provisions of this Agreement and, after all warranties have expired, any excess shall be paid to Contractor. In the event cost of such completion results in a deficiency, Contractor shall be fully responsible to Builder for such deficiency, together with any damages, costs of court and reasonable attorney's fees incurred by Builder.

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

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

Contractor: _____ Builder: _____

Phone: _____ Phone: _____

Fax: _____ Fax: _____

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

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

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

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

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

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

D. SURVIVAL - Builder and Contractor agree that notwithstanding anything to the contrary contained herein, the rights and obligations set forth in the mediation/arbitration provisions set forth above shall survive (1) the termination of this Agreement by either party; or (2) the breach of this Agreement by either party. The waiver or invalidity of any

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

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

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

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

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

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

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

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

31. GOVERNING LAWS: The laws of the State of Texas shall govern the validity, enforcement and interpretation of this Agreement. The obligations of the parties are performable in _____ County, Texas and the parties hereto consent to such venue for purposes of any action arising out of this Agreement. The parties agree that

the normal rule of construction that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

Executed on _____, 20_____.

Contractor: _____

Builder: _____

By: _____

By: _____

Printed name: _____

Printed name: _____

Title: _____

Title: _____

Address: _____

Address: _____

Email Address: _____

Email Address: _____

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

Principal Owner of Contractor

Principal Owner of Contractor

Principal Owner of Contractor

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Summary of Jobs, Scheduling Timeframes, and Pricing Information

In lieu of using this form, you may attach your own forms or documents containing this information.

Please provide a summary of jobs and services you can provide:

Critical timeframe and benchmarks. List timeframe for services to be used in scheduling:

If possible, please provide some standard pricing to assist us in bidding:
