



CONSTRUCTION AGREEMENT (Cost-Plus A Fee Basis) For Construction on Owner's Land



Owner _____ and Contractor _____
make this Construction Agreement (Cost Plus a Fee Basis for Construction on Owner's Land) agreement
("Agreement") dated _____, 20__.

1. PROPERTY ADDRESS. The address on which the House, as defined below, is to be constructed is:

Street Address _____, City _____,
State _____, Zip Code _____ ("Property"). The full legal description of the Property is as
recorded with the Clerk of the Superior Court in the county and is incorporated by reference.

2. WORK. Contractor will construct a single-family residence and any other improvements, grading and landscaping (collectively "House") on the Property in substantial compliance with the Plans and the Specifications described below. Unless otherwise specified, Contractor, subject to the terms of this Agreement, will provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, transportation and other services necessary for the execution and completion of the House.

3. PLANS AND SPECIFICATIONS. The Plans are attached Exhibit "A," entitled _____, dated _____, and consist of _____ pages. The Specifications are attached Exhibit "B", entitled _____, dated _____, and consist of _____ pages. If there are conflicts between the terms of the rest of this Agreement and the Plans or the Specifications, the terms of the rest of this Agreement govern. If there are conflicts between the Plans and the Specifications, the Specifications govern. Owner warrants and represents that if the Plans and/or the Specifications must be approved by any community association or related entity, they have been approved. Upon request by Contractor, Owner will obtain written evidence of that approval before Contractor's duty to start construction.

4. CONTRACT PRICE. Owner will pay Contractor the total Costs incurred in connection with construction of the House, plus _____ (dollars or percent of total Costs) for Contractor's overhead and _____ (dollars or percent of total Costs) for Contractor's profit. The Costs plus the amounts for overhead and profit will sometimes collectively be referred to as the "Contract Price." Payments will be made per paragraph 8 unless otherwise provided in this Agreement.

5. GUARANTEED MAXIMUM CONTRACT PRICE. Select A or B below:

___ A. The Contract Price will not exceed \$ _____ ("Guaranteed Maximum Contract Price"), subject to additions per Change Orders or as otherwise provided by this Agreement. Costs which cause the Guaranteed Maximum Contract Price to be exceeded will, subject to these additions, be paid by Contractor without reimbursement by Owner. The Guaranteed Maximum Contract Price is based on the Plans and the Specifications identified above.

___ B. There is no Guaranteed Maximum Contract Price.

6. COSTS. The terms “Cost” or “Costs” mean costs or expenses actually and reasonably incurred by Contractor, or for which Contractor actually and reasonably becomes obligated to pay, in connection with the construction or design of the House, including, for example, the following:

- A. Costs of all materials and supplies incorporated into the House, including transportation and storage expenses (discounts for cash or prompt payments will not reduce these Costs);
- B. Wages for labor in the direct employ of Contractor in the performance of work on or relating to the House;
- C. Salaries of Contractor’s employees for the time that they spend in connection with the House, whether on or off site;
- D. Payments to subcontractors for work relating to the House;
- E. Fees and expenses incurred for architectural, engineering and consulting services relating to the construction or design of the House;
- F. Costs of all employee benefits and taxes for items such as unemployment compensation, social security and other benefits for the labor and employees mentioned in paragraph 6.B. and C.;
- G. Costs, including transportation and maintenance, of equipment and hand tools not owned by workmen employed by Contractor which are employed in the construction of the House;
- H. Payments for rental charges for machinery, equipment, facilities and tools used in connection with construction of the House, and payments for installations, repairs, replacements, dismantling, removal, lubrication, transportation and delivery of those rental items;
- I. Other transportation costs incurred in connection with the construction of the House;
- J. That portion attributable to this Agreement of premiums for insurance that is required by this Agreement or by law to be obtained or maintained by Contractor;
- K. Sales, use, gross receipts or other taxes related to the House, imposed by any governmental authority, to the extent that Contractor is responsible for such taxes;
- L. Permit fees, licenses or tests that Contractor is required to obtain or reasonably obtains to design or construct the House;
- M. Costs of corrective work on the House to the extent not caused by Contractor or those for whom Contractor is responsible;
- N. Costs of electronic data transmission internet wifi services and postage relating to work on the House;
- O. Costs of removal of debris from the House or Property;
- P. Costs associated with any Change Order or change as to which Contractor is entitled to payment under this Agreement;
- Q. Costs of data processing services used in connection with the performance of the work required by this Agreement;
- R. Legal Costs reasonably incurred in connection with the prosecution of the work required by this Agreement;
- S. Costs incurred in connection with selections permitted under this Agreement; and,

T. Losses and expenses, not compensated by insurance, sustained by Contractor in connection with the work under this Agreement, provided they resulted from causes other than the fault or neglect of Contractor.

If Contractor has given Owner an estimate of Costs, Owner understands that it is merely an estimate and is not binding on the Parties.

7. **FINANCING.** Select A or B below:

___ **A. Owner Financing:** Owner will pay the Contract Price entirely from its personal funds and does not intend to obtain a construction loan. Owner warrants and represents that it has sufficient funds to pay the Contract Price without obtaining a construction loan. Prior to start of work by Contractor, Owner will provide Contractor evidence of its ability to pay the Contract Price. In addition, upon request by Contractor, at any time prior to final payment, Contractor is entitled to reasonable evidence of Owner's continuing financial ability to fulfill its duties under this Agreement.

___ **B. Loan Options:**

1. *Contingency:* This Agreement is contingent upon Owner's "ability to obtain" the following loan (Select (a.) or (b.) below):

___ (a.) Construction Loan: A construction loan of \$ _____ dollars with these terms: (i) interest rate of not more than _____% per annum on the amount of the loan funds disbursed; (ii) loan and closing costs not exceeding \$ _____ dollars; (iii) secured by a first priority security deed on the Property and House; (iv) interest repayable monthly or _____; (v) principal repayable upon completion or Substantial Completion of the House; and (vi) any escrow account as required by the lender for ad valorem taxes on the Property and House and hazard insurance premiums on the House.

___ (b.) Construction and Permanent Loan: A construction and permanent loan of \$ _____ dollars with these terms: (i) interest rate of not more than _____% per annum on the amount of the loan funds disbursed during the construction phase and at an interest rate of not more than _____% per annum on the unpaid principal balance of the permanent loan; (ii) loan and closing costs not exceeding \$ _____ dollars; (iii) secured by a first priority security deed on the Property and House; (iv) construction loan interest repayable monthly or _____; (v) and principal repayable in consecutive monthly installments of principal and interest over a term of not less than _____ years; and (vi) any escrow account as required by the lender for ad valorem taxes on the Property and House and hazard insurance premiums on the House.

2. *Ability to Obtain:* Ability to obtain means Owner is qualified to receive the loan based on the customary underwriting standards and criteria of any lender to which Owner submits an application for the loan.

3. *Loan Application:* Within two (2) days from the date this Agreement has been executed by both Parties, Owner will make application for the financing and notify Contractor of the identity of any lender to which application has been made. Owner will pursue each application diligently and in good faith, execute all documents, provide all documents, perform all other actions necessary to obtain a loan, and accept any such loan if approved by any lender. Owner will provide updates to Contractor, upon request, about progress in obtaining the loan. If Owner has not provided notice to Contractor within thirty (30) days from the date this Agreement has been executed by both Parties that a loan has been obtained

along with evidence of approval, Contractor may terminate this Agreement upon written notification to Owner.

4. *Loan and Closing Expenses* : All fees and expenses of obtaining, maintaining or relating to the loan, including for example closing costs, attorney's fees, discount points, loan origination fees, survey costs, title insurance costs, recording costs, intangible tax, loan discount, private mortgage insurance, credit reports, and inspection costs, will be paid by Owner.

5. *Loan Options*: Owner acknowledges that many different loan programs, available from many different lenders, may fit the description of the contemplated loan. No attempt has been made to precisely describe all loan terms. The economics of this transaction are such that a loan with the described terms will be acceptable to Owner and will satisfy the loan contingency. At its option and without voiding this Agreement, Owner may apply for a loan with different terms provided: (1) all other terms of this Agreement are fulfilled; and (2) the new loan does not increase costs to Contractor. Notwithstanding this option, Owner is obligated to consummate this Agreement if it has the ability to obtain a loan with described terms.

6. *Loan Responsibility*: Owner has not relied upon the advice or representations of Contractor regarding the loan to be obtained by Owner.

7. *Authorization*: Owner authorizes Contractor to request and any lender to provide Contractor information about the status of any loan application, the amount of available loan funds before or during construction, the existence and nature of any default or breach by Owner under loan documents, the reason(s) for any delay in payment, and any other matter reasonably related to Contractor's interests under the Agreement. Contractor is not required to sign a loan agreement or other document with the lender that alters the terms of this Agreement, including but not limited to any warranty, or that imposes obligations on Contractor to the lender.

8. PAYMENTS. The Contract Price will be paid as follows:

A. Deposit:

1. Owner has paid \$ _____ as the Deposit to Contractor in the form of ___ cash or ___ check. Within five (5) banking days, the Deposit will be deposited in ___ Contractor's escrow/trust account or ___ in Contractor's general account and, in the case of an escrow/trust account, will thereafter be held in that account until applied or used as permitted by this Agreement. The Deposit may be deposited in an interest bearing account and Contractor may retain any earned interest. If any check given as the Deposit is not honored, Contractor may terminate this Agreement by notice to Owner. If the Deposit is deposited in Contractor's general account, the funds will not be segregated and Contractor may use the funds for any purpose.
2. The Deposit will be applied to the Contract Price in the manner shown on the applicable Construction Draw Schedule unless any of the following subparagraphs (1), (2), (3) or (4) applies:
 - (a) Owner does not have the "ability to obtain" any loan on which this Agreement is contingent despite having complied with its duties to pursue a loan, in which case the Deposit will promptly be refunded to Owner.

(b) Owner obtains a loan on which this Agreement is contingent and otherwise complies with the preconditions to start of work by Contractor, but Contractor fails to start work and Owner is entitled to and does terminate the Agreement, in which case the Deposit will promptly be refunded to Owner.

(c) Owner fails to comply with its duties to attempt to obtain any loan on which this Agreement is contingent or otherwise fails to comply with any preconditions to start of work by Contractor, in which case Contractor will be entitled to terminate the Agreement and retain the Deposit as Liquidated Damages. As an alternative to retaining the Deposit, Contractor may seek specific performance of the Agreement. If specific performance is granted, the Deposit will be applied to the Contract Price.

(d) This Agreement is terminated after start of work, in which case any unapplied portion of the Deposit or so much as is necessary may be applied by Contractor to the amount owed to Contractor upon termination. Any remaining amount, if any, will be returned to Owner.

B. Balance of Contract Price: Select 1 or 2 below:

___ (1) *Owner Financing:* If Owner is not obtaining a loan, Owner will make payments to Contractor per the Construction Draw Schedule attached as Exhibit "C."

___ (2) *Lender Financing:* If Owner is obtaining a loan, Owner will make payments by authorizing Contractor to make draws on the Construction Draw Schedule approved by the lender in the manner required by the lender. Owner authorizes lender to process the construction draw requests and disburse funds directly to Contractor based on them. Owner's signature will not be required for lender to process the draw requests and Owner will not interfere with Contractor obtaining payment pursuant to the draw requests. Any loan is for the convenience of Owner and will not reduce or eliminate Owner's direct liability to Contractor for any portion of the Contract Price not funded by lender.

(Note: Under either option, the draw schedule will be referred to in this Agreement as the "Construction Draw Schedule," and it should reflect the application of the Deposit.)

(3) *Draw Requests:* Unless otherwise provided in the Construction Draw Schedule, Contractor will submit written draw requests for interim or progress payments as well as for final payment.

(4) *Time for Payments:* Unless otherwise provided on the Construction Draw Schedule, draw payments will be made within five (5) days after submission of a draw request, except for the final payment which will be due upon Substantial Completion and submission of the final draw request.

(5) *Discrepancies:* The Parties intend that Contractor be paid the entire Contract Price as it may be adjusted. If there is a discrepancy between the Contract Price, as adjusted, and the payments required by the applicable Construction Draw Schedule, Owner will pay the Contract Price, as adjusted, with any discrepancy being paid no later than when final payment is due.

(6) *Interest:* Payments due and unpaid by Owner for more than thirty (30) days will bear interest at eighteen percent (18%) per annum. This provision does not create a payment grace period.

(7) *Architects*: Payments will not be withheld or delayed based on determinations by any Owner architect, unless expressly permitted by this Agreement.

9. SELECTIONS. Owner is entitled to make selections relating to the items marked on the Selections Exhibit, attached Exhibit "D". Owner will use every reasonable effort to make selections from Contractor's stock on hand or other stock immediately available. Owner will make selections by the deadlines on the Selections and Allowance Exhibit, absent which, Contractor is authorized to make them. Any other decision required of Owner to complete the House will be promptly made.

10. START. Contractor is not required to start construction of the House or to obtain the building permit until any financing and all other stated contingencies for which Owner is responsible have been met and the insurance certificates, title policy and survey and any other items to be provided by Owner have been provided. Promptly after any such contingencies have been met, Contractor will obtain the building permit for construction of the House and will start work.

11. COMPLETION. For final payment and any completion deadline, the House will be deemed to have reached "Substantial Completion" upon the earliest of: (1) the issuance of a final or temporary certificate of occupancy; (2) the lender's determination that the House is substantially complete; or (3) Owner's occupation of any part of the House. Contractor will use its best efforts to reach Substantial Completion of the House within _____ months from the date on which Contractor gets the building permit. Whether a Change Order is signed to address such delay, the date for Substantial Completion will be extended by the time Contractor is prevented by causes beyond its control from constructing the House, which include for example the unavailability of materials, fire, inclement weather, strikes, lockouts or other labor disputes, differing site conditions, unavoidable casualties, changes in government regulations, unavailability of materials at reasonable cost, acts or inactions of governmental agencies or their employees, government moratoria, acts of God, declarations of war or national emergencies, civil unrest, force majeure, failure or unavailability of adequate sewer, water, electricity, gas or any utility services, interference by Owner, or Owner's failure to perform duties under this Agreement, including for example the failure to make timely selections, and other acts or omissions of Owner causing delay. The date for Substantial Completion will also be extended by the number of days agreed on in any Change Order and, whether a Change Order is signed, by the number of days reasonably required for Contractor to perform other work for which Contractor is entitled to additional compensation. The date for Substantial Completion will also be extended by any delay in any interim payment due to Contractor. Owner will provide Contractor, its employees, subcontractors, and suppliers continual and uninterrupted access to the Property and House to perform work.

12. OWNERSHIP AND ABSENCE OF ENCUMBRANCES. Owner warrants and represents that: (1) it is currently the sole holder of legal and equitable title to the Property; (2) there are currently no leases, restrictions, easements, covenants, rules or regulations or other encumbrances on the Property that would prevent or inhibit construction of the House on the Property as contemplated in the Plans and the Specifications; (3) the Property complies with all zoning, planning, environmental, community association and other building requirements; and (4) all utilities necessary for completion of the House are available at the Property and no easements are required to bring them to the Property. Before Contractor's duty to start construction, Owner will provide to Contractor a copy of an owner's title insurance policy demonstrating the accuracy of items (1) and (2) of this paragraph and, upon request by Contractor, will provide Contractor an updated survey showing all boundary lines, building lines, utility locations, easements, other encumbrances and improvements, if any, on the Property. Except to execute a security deed to obtain a loan per paragraph 7, Owner will not transfer any interest in the Property or House or otherwise encumber the Property or House until Contractor has been fully paid per this Agreement.

13. SUBCONTRACTORS, EMPLOYEES AND SUPPLIERS. Contractor is entitled to select the subcontractors, employees and suppliers who will work on or provide materials to the House. Owner will

not have any work performed on the House by its own subcontractors, employees or suppliers until Contractor has completed all of its work on the House or this Agreement has been terminated. Owner will not direct, supervise or control the subcontractors, employees or suppliers of Contractor and will not interfere with their work.

14. CHANGE ORDERS.

A. *Owner Changes:* Contractor will be organizing labor, subcontractors and materials based on the Plans and the Specifications and the designated items on Exhibit "D." Changes requested by Owner will generally involve additional time, effort, overhead and Costs for Contractor. Therefore, Contractor will not be required to make any changes requested by Owner in the Plans and the Specifications or the Agreement. However, if Owner wants to request a change, it is important that Owner request it in a timely manner to permit Contractor to schedule the change in the normal building process if Contractor agrees to it. At Contractor's option, it will be entitled to full payment of an agreed-upon addition to the Contract Price at the time the Change Order is signed.

B. *Required Changes:* Changes in the Plans and the Specifications might be required by governmental entities or agencies (because of changes in laws or codes or otherwise), job conditions or community associations or related entities. Contractor is entitled to make these changes and that they may also involve additional time, effort, overhead and Costs.

C. *Differing Site Conditions:* Contractor may encounter rock formations, springs, latent or subsurface conditions, or other conditions materially differing from those ordinarily encountered and generally recognized as inherent in the subject work that substantially inhibit work or increase the Costs or time involved in performing the work.

D. *Emergencies:* If during construction, the safety or condition of persons, the House or the Property are threatened by an emergency, not caused by the negligence of Contractor, or its agents, employees, subcontractors or suppliers, Contractor, without seeking instructions from Owner, may act at Contractor's discretion to prevent threatened damage, injury or loss.

E. *Written Change Order:* If Owner requests a change agreed to by Contractor, other changes are agreed to by Parties, there are required changes in the Plans and/or the Specifications, there are differing site conditions or emergencies, the Parties will sign a written Change Order utilizing attached Exhibit "E." Owner will pay Contractor all additional Costs incurred in connection with the Change Order and, absent a specific agreement for a different amount as set forth in the Change Order, will also pay Contractor _____ percent (%) of those additional Costs for overhead and profit combined. For any change that requires Contractor to order a custom or specialized item, Contractor may require prior payment.

F. *Lender Approval:* If a Change Order must be approved by a lender, it is Owner's responsibility to immediately obtain written approval and Contractor will not be required to perform the Change Order until that approval.

G. *Right to Terminate:* If Owner or lender refuses to sign a Change Order for changes covered by paragraphs 14. A, B, C or D, Contractor may terminate this Agreement and recover the amounts provided for in paragraph 23.C. for a breach by Owner or may demand arbitration.

H. *Subcontractors and Suppliers:* No subcontractor or supplier is authorized to agree to a change on behalf of Contractor.

I. *Work Without Change Order:* Notwithstanding the requirement that Change Orders be in writing, signed by the Parties and, if necessary, approved by lender, if Contractor in fact performs or partially performs a change requested by Owner or Owner's architect or other agent or a required

change, or if Contractor incurs additional Costs related to differing site conditions or an emergency, Contractor will be entitled to recover from Owner before Owner's occupancy of the House, unless earlier payment is provided for by the applicable Construction Draw Schedule, the additional Cost of that change, plus a reasonable overhead and profit (which overhead and profit will be no less than fifteen percent (15%) of the Cost) and any deadline for Substantial Completion of the House will be extended a reasonable amount of time.

15. CONSTRUCTION STANDARDS AND INSPECTIONS.

A. *Standards for Construction and Inspections:* Contractor will construct the House in compliance with government codes, regulations and ordinances, in substantial compliance with the Plans and the Specifications, as they may be modified in accordance with this Agreement, and in substantial compliance with any warranty under paragraph 16. Collectively, these standards will be referred to in this Agreement as the "Construction Standards." Contractor is not required to perform any work exceeding the Construction Standards. Contractor is not responsible for addressing or correcting conditions or circumstances located outside the Property even if affecting the Property or House. Contractor has no liability under the Limited Warranty or otherwise, for errors or omissions attributable to its compliance with the Plans or the Specifications prepared by an architect or other agent of Owner, or for following instructions, directions or rules of the architect or agent of the Owner, of any community association or related entity, or a governmental entity or official, and Owner releases Contractor from any claims arising from or relating to such matters and will Indemnify, as defined below, Contractor and its employees, officers, members, partners, agents and representatives arising from or relating to claims about such matters.

B. *Inspection Rights:* Owner, at its expense, has the right and responsibility to inspect, examine and test the House at reasonable times during normal business hours. While engaging in these activities, Owner will not interfere with progress of the work. Contractor or its representative may be present during these activities. Owner assumes all responsibility for its own acts and those of its representatives in exercising these rights and, will Indemnify Contractor and its employees, officers, members, partners, agents and representatives from claims arising out of or relating to such activities. If Owner becomes aware of any problem during any such inspection, it will promptly notify Contractor.

C. *Owner Inspection Waiver:* Owner acknowledges that it has read paragraph 15.B. By initialing below, Owner waives the inspections described in that subparagraph. In doing so, Owner: (1) accepts the House, **AS IS**, despite any provision in this Agreement to the contrary, except as provided in paragraph 15.D. and any express limited warranty under paragraph 16; and, (2) otherwise waives and releases Contractor, its agents, employees and subcontractors and brokers, if any, from any claim, right of action, suit or arbitration, seeking legal or equitable relief, including damages, relating to the House or Property, to the fullest extent permitted by Georgia law.

Owner(s) Initials _____ Contractor Representative Initials _____.

D. *New Home Orientation Walk Through Inspection:* Whether Owner has earlier inspected the House, when Contractor requests at or near the time of Substantial Completion of the House, the Parties will inspect the House and prepare, sign and date a New Home Orientation Walk Through List, specifying all items, including any noted in previous inspections, that fail to comply with the Construction Standards. The Construction Standards are the only standards that will be used in inspections under this Agreement and in compiling any New Home Orientation Walk Through List. The inclusion of an item on the New Home Orientation Walk Through List that does not fail to meet the Construction Standards will not obligate Contractor to address that item. The existence of items

on the New Home Orientation Walk Through List will not be grounds for the failure to make final payment to Contractor as long as the House has reached Substantial Completion. Contractor will make its best efforts to complete all of the items on the New Home Orientation Walk Through List that fail to comply with the Construction Standards as soon as reasonably possible after its compilation.

E. *Private Inspectors:* If Owner chooses to use a private home inspector or consultant for inspections, the inspector must at the time of an inspection: (a) maintain all business licenses required by law; (b) be a member of the American Society of Home Inspectors, the Georgia Association of Home Inspectors, or other professional inspection association mutually agreed upon in writing prior to the inspection; and (c) have general liability insurance and professional liability errors and omission insurance of at least \$500,000 each. At the beginning of the inspection, Owner must provide Contractor with proof the inspector meets these requirements. Arrangements for a private inspection must be made at least one (1) week in advance. If the inspector concludes that there are code violations, the Owner must require the inspector to provide a written list specifying the applicable code(s) and section(s) for each alleged violation. Any inspection must evaluate construction solely under the Construction Standards.

F. *Owner Acceptance:* By signing the New Home Orientation Walk Through List, Owner expressly acknowledges acceptance of the House and the Property and waives and releases Contractor, its agents, employees and subcontractors and any brokers from any claim, right of action, suits or arbitrations, seeking legal or equitable relief based upon or relating to any condition or circumstances in the House or on the Property, except for items on the New Home Orientation Walk Through List that fail to meet the Construction Standards and items covered by any express limited warranty under paragraph 16. Upon satisfactory disposition of items in the New Home Orientation Walk Through List, this acceptance, waiver and release will apply to those items too, except as covered by any express limited warranty under paragraph 16.

16. LIMITED WARRANTY. Select applicable option(s):

_____ **A. *Contractor Limited Warranty:*** Exhibit "F" is Contractor's Limited Warranty.

_____ **B. *An Insured Limited Warranty:*** Exhibit "F" is a limited warranty that is insured by a third party authorized to insure warranties under a state or federal insurance or risk retention statute.

THE SELECTED WARRANTY IS THE ONLY WARRANTY, EXPRESS OR IMPLIED, BY CONTRACTOR TO OWNER. CONTRACTOR DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING FOR EXAMPLE WARRANTIES OF MERCHANTABILITY, HABITABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Unless otherwise provided in the selected warranty, the warranty's effective date will be the date of Substantial Completion.

17. TRANSFER OF MANUFACTURERS' WARRANTIES. Within five (5) days after final payment by Owner, Contractor will transfer to Owner all of Contractor's interests, if any, in all manufacturers' warranties that by their terms are transferable by Contractor to Owner.

18. PERMITS AND FEES. Subject to being reimbursed, Contractor is responsible for obtaining and paying for all building permits. Owner authorizes and appoints Contractor to obtain these permits from governmental agencies and authorizes Contractor to execute permit applications in Owner's name. Upon request by Contractor, Owner will assist Contractor in obtaining these permits by completing all related applications and forms.

19. TAXES. Owner is responsible for paying all taxes and assessments on the House and Property, including, for example, ad valorem taxes and is liable to Contractor for any damages or adverse effect on lien rights resulting to Contractor as a result of its failure to do so.

20. OCCUPANCY BY OWNER. Without Contractor's express written consent, Owner will not occupy any part of the House or move household items into any part of the House until a final or temporary certificate of occupancy has been issued and all amounts owed to Contractor under this Agreement have been paid.

21. INSULATION. Insulation will be installed in the House, which, according to the manufacturer, will yield the following R-values:

A. Exterior Walls: Exterior walls in living areas will be insulated with _____ insulation to a thickness of ____ inches with an R-value of _____.

B. Ceilings: Ceilings below attic areas will be insulated with _____ insulation to a thickness of ____ inches with an R-value of _____.

C. Vaulted Ceiling: Vaulted ceilings are insulated with _____ insulation to a thickness of ____ inches with an R-value of _____.

D. Floor Overhangs: Floor overhangs are insulated with _____ insulation to a thickness of ____ inches with an R-value of _____.

HAZARDOUS MATERIALS. Owner represents that it is not aware of any hazardous materials or substances on the Property, including without limitation asbestos and polychlorinated biphenyl (PCB). If Contractor encounters or in good faith believes that it has encountered hazardous materials or substances, Contractor may stop work and remove its employees from affected area(s) until the nature of the materials or substances has been determined, and, if necessary, removed or rendered harmless. Contractor has no duty to investigate or discover hazardous materials and is not responsible for hazardous materials unless brought onto the Property by Contractor. Owner will Indemnify, as defined below, Contractor and its employees, officers, members, partners, agents and representatives from any claims arising from or relating to hazardous materials or substances on the Property.

22. INSURANCE.

A. Contractor's Insurance: During construction, Contractor will maintain at its expense any required workers compensation and any general liability insurance.

B. Owner's Insurance: During construction and until Contractor has been fully paid, Owner will maintain at its expense its own liability insurance on the Property and builder's risk insurance covering loss to the House from vandalism, theft, fire or other casualty to the full insurable value of the House (including the additional value attributed to any Change Order). The liability insurance will name Contractor as an additional insured. The builder's risk insurance will be on an all-risk policy form and include the interests of Owner, Contractor and all subcontractors, sub-subcontractors, materialmen and suppliers performing work on the House or providing supplies or materials to the House. Owner's liability and property insurance will be from companies authorized to do business in Georgia. Owner and Contractor waive all rights against each other and any of their subcontractors, lower-tier subcontractors, agents and employees for damages caused by fire or other causes of loss to the extent covered by the builder's risk policy required by this Agreement, except such rights as they have to proceeds of such insurance held by Owner as fiduciary. The builder's risk policy shall provide such a waiver of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of

indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

C. *Certificates of Insurance:* Each Party will provide current insurance certificates to the other Party before start of construction.

23. DEFAULT.

A. *Owner's Rights:* If Contractor breaches a duty under this Agreement, Owner may, after giving Contractor written notice of the breach and ten (10) days to substantially cure it, demand arbitration or to terminate this Agreement in writing.

B. *Contractor's Rights:* If Owner fails to timely make any payment required by this Agreement, Contractor may immediately terminate this Agreement with written termination notice to Owner or demand arbitration. If Owner otherwise breaches a duty under this Agreement, Contractor, after giving Owner written notice of the breach and ten (10) days to substantially cure it, may demand arbitration or terminate this Agreement in writing. As an interim step, Contractor may, with notice to Owner, suspend its duties under this Agreement pending that cure.

C. *Payments Upon Termination:* If Owner terminates under paragraph 23.A. after start of work, Owner will pay Contractor any: (1) amounts then due under paragraph 8; (2) amounts agreed upon in a Change Order or to which Contractor is otherwise entitled under paragraph 14, in proportion to which the related work has been performed, unless those amounts are already covered by payments then due under paragraph 8; and (3) all Costs incurred by Contractor in connection with the House that are not covered by other payments provided for by this subparagraph. If Contractor terminates under paragraph 23.B, Owner will pay Contractor all amounts to be paid upon termination by Owner, plus any portion of the overhead and profit provided for by paragraph 4 that has not already been paid or is not otherwise covered by other payments required by this subparagraph. As an alternative to termination, Contractor may seek specific performance of the Agreement.

D. *Timing of Payments:* Notwithstanding any later date for payment specified in this Agreement, any Construction Draw Schedule, any Change Order or otherwise, the payments required upon termination will be made within seven (7) days from the date of termination.

E. *Interest:* Payments due under this paragraph and unpaid for more than thirty (30) days bear interest at eighteen percent (18%) per annum.

24. STATUTORY ALTERNATIVE DISPUTE RESOLUTION:

A. *“Act:”* Under this paragraph “Act” means O.C.G.A. §§ 8-2-35 through 8-2-43.

B. *Notice:* GEORGIA LAW CONTAINS IMPORTANT REQUIREMENTS YOU MUST FOLLOW BEFORE YOU MAY FILE A LAWSUIT OR OTHER ACTION FOR DEFECTIVE CONSTRUCTION AGAINST THE CONTRACTOR WHO CONSTRUCTED, IMPROVED, OR REPAIRED YOUR HOME. NINETY DAYS BEFORE YOU FILE YOUR LAWSUIT OR OTHER ACTION, YOU MUST SERVE ON THE CONTRACTOR A WRITTEN NOTICE OF ANY CONSTRUCTION CONDITIONS YOU ALLEGE ARE DEFECTIVE. UNDER THE LAW, A CONTRACTOR HAS THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR OR PAY FOR THE DEFECTS OR BOTH. YOU ARE NOT OBLIGATED TO ACCEPT ANY OFFER MADE BY A CONTRACTOR. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER STATE LAW, AND FAILURE TO FOLLOW THEM MAY AFFECT YOUR ABILITY TO FILE A LAWSUIT OR OTHER ACTION.

C. **“Construction Defect:”** For application of the Act, the term “construction defect” means: any matter concerning the design, construction, or repair of a “dwelling,” as that term is defined in O.C.G.A. § 8-2-36, or an alteration of or repair or addition to an existing dwelling, or of an appurtenance to a dwelling on which a person has a complaint against a “contractor,” as that term is defined in O.C.G.A. § 8-2-36; and any physical damage to the dwelling or real property on which it is located that is caused by a construction defect. This definition does not change or expand the definition of “Construction Standards” in this Agreement or obligations relating to design, construction, repair or replacement under this Agreement, any limited warranty, the law or otherwise. The term “construction defect” is incorporated into this Agreement to make it clear that any “action,” as that term is defined in O.C.G.A. § 8-2-36, whether based on breach of contract, breach of warranty, negligence, fraud or other statutory or common-law grounds, that alleges a “construction defect” is subject to the Act.

D. **Interaction of Act and Agreement:** Owner’s obligations under this Agreement are in addition to those under the Act.

E. **Failure to Follow Act:** Except as permitted by O.C.G.A. § 8-2-38 (o), if Owner files an “action,” as that term is defined in O.C.G.A. § 8-2-36, without first complying with the requirements of the Act, Owner will be liable for the reasonable attorney’s fees and expenses incurred by Contractor in obtaining a stay or dismissal of that action. Owner agrees that a dismissal, not just a stay, is appropriate given the arbitration and mediation provisions below.

25. ARBITRATION AND MEDIATION.

A. Arbitration:

(1) Claims between the Parties: The Parties will cooperate in good faith to avoid and informally resolve any claims or disputes between them. Warranty procedures first apply to any such unresolved warranty claims or disputes. Any warranty claim, if any, that thereafter remains unresolved and any other claim or dispute of any kind or nature between the Parties arising out of or relating to this Agreement or the breach of it, the House or the Property, must be resolved by binding arbitration per O.C.G.A. § 9-9-1 *et seq.*, and the rules and procedures of the arbitrator.

(2) Non-Parties:

(A) *Owner Claims against Non-Parties:* Any claim or dispute, if any, of any kind or nature between Owner and the person signing this Agreement on behalf of Contractor that arises out of or relates to the House or the Property must be resolved by binding arbitration per O.C.G.A. § 9-9-1 *et seq.*, and the rules and procedures of the arbitrator. The Contractor signatory’s execution of this Agreement on behalf of Contractor shall constitute that person’s agreement to the arbitration and mediation provisions of this paragraph, but shall not otherwise make that signatory a party to this Agreement. The arbitration of any such claim or dispute shall be consolidated with the arbitration of any claim or dispute by Owner against Contractor relating to the House or the Property.

(B) *Contractor Claims against Non-Parties:* If Contractor or its signatory has any claim against any non-party to this Agreement, such as a subcontractor, architect, engineer, consultant, manufacturer or supplier, that relates to a claim by Owner against Contractor or its signatory, Owner consents to that claim being addressed in an arbitration with Owner or Contractor’s signatory if Contractor or its signatory chooses to assert it in that arbitration and if the non-party is subject to or agrees to arbitration before the arbitrator.

(C) *Representative Status*: Owner may not bring claims against Contractor or its signatory as a representative or member of a class. Owner's claims shall not be consolidated with the any claim arising from other houses constructed or sold by Contractor.

(3) Arbitrator: Absent a subsequent agreement to a different arbitrator, Construction Arbitration Associates, Ltd. shall be the arbitrator. Any questions about the interpretation of this arbitration paragraph or the arbitrability of a dispute under it shall be decided by the arbitrator, unless specifically required by law to be decided by a court, and those decisions shall be binding. Should someone subject to arbitration under this Agreement fail or refuse to participate in arbitration proceedings, the arbitrator is authorized to proceed with the arbitration.

(4) Award: The arbitrator's award is final and may be enforced in a court having jurisdiction and venue.

(5) Arbitrator Charges: The fees and charges of the arbitrator and arbitration service shall initially be shared evenly by Owner, Contractor and any non-parties, but the arbitrator may otherwise allocate those fees and charges in the award.

(6) Attorney's Fees, Expert Fees and Other Expenses:

(A) *Lawsuit Attorney's Fees and Expenses*: If a Party files a lawsuit that is subject to arbitration under this Agreement, that Party shall be liable for the reasonable attorney's fees and expenses incurred by the other Party or Contractor's signatory in obtaining a stay or dismissal of that lawsuit. The Parties agree that, under those circumstances, a dismissal is appropriate unless the non-filing party waives arbitration.

(B) *Arbitration Attorney's Fees, Expert Fees and Expenses*: For claims or disputes between Owner and Contractor or its signatory, the arbitrator is authorized to award attorney's fees and expenses in favor of the Party or person in proportion to which the arbitrator determines that Party or person prevailed in the arbitration.

B. Mediation: Either Party may require the other Party (and Contractor's signatory may require Owner) to mediate a claim or dispute that is otherwise subject to arbitration as a condition to initiating or proceeding with an arbitration. If either Party (or Contractor's signatory) requires mediation, those mediating shall attempt to agree on a mediator. If they cannot, the mediator shall be selected by Miles Mediation & Arbitration Services, LLC from among its mediators with significant construction litigation experience. If Contractor or its signatory has a claim against any non-party to this Agreement, such as a subcontractor or architect, that relates to a claim by Owner against Contractor, Owner consents to that claim against that non-party being addressed in the mediation with Owner if Contractor chooses to assert it in that mediation and if the non-party is subject to or agrees to mediation before the mediator. The fees and charges of the mediator and mediation service will be shared evenly by Owner, Contractor and any non-parties.

C. Insured Warranties: If an insured warranty is provided to Owner under this Agreement, its arbitration and mediation provisions, if any, shall prevail to the extent that they conflict with those provisions in paragraph 25.

D. Termination and Rescission: The arbitration and mediation terms of paragraph 25 shall apply even if the Agreement is terminated or rescinded or if termination or rescission is sought.

26. BROKERS. Unless otherwise stated in the Agreement, Owner and Contractor each warrants and represents that it has not utilized a real estate broker or licensee in connection with the construction contemplated by this Agreement. If breached, the breaching Party will indemnify, hold harmless, and defend

the other Party to the fullest extent permitted by Georgia law from claims by brokers or licensees for commissions or compensation. This obligation by the breaching Party shall include attorney's fees and legal proceeding expenses and costs incurred by the non-breaching Party.

27. DISCLOSURES.

A. *Toxic and Hazardous Substances:* Various substances used in the construction of the House may now or in the future be determined to be toxic or hazardous and may need to be specially treated, handled and/or removed from the House or Property. The Owner or other persons with an interest in the House or Property may be required by law to undertake the cleanup of those substances, which may be very costly. Contractor is not an expert regarding toxic and hazardous substances, and shall not be liable for repair or remediation costs relating to them.

B. *Mold:* Mold cannot be completely eliminated from inside a house. It will grow when moisture or water accumulates inside. If Owner discovers moisture or water after occupancy, Owner should promptly control its source.

C. *Photographs:* Contractor may use photographs and videos of the House and Property for marketing purposes at any time.

D. *Sounds:* Water and other sounds may be heard in plumbing and waste water lines.

E. *Wood Products:* Grain patterns and colors in wood products may vary.

F. *Stone Products:* Veins and colors in marble, slate or other stones may vary.

G. *Hardwood Floors:* Hardwood floors may be damaged from normal wear and tear, including from moving furniture, high heels and dog nails.

H. *Cleaning Products:* Owner should carefully review directions for cleaning products to make sure they are appropriate for the area being cleaned.

I. *Perfection:* Although Contractor takes great pride in its work, the construction process necessarily depends on labor and materials from others, and is too complicated for any contractor to construct a perfect house. There is no such thing as a perfect house. Owner recognizes and accepts this reality.

28. OTHER PROVISIONS.

A. *Time of Essence:* Time is of the essence of this Agreement. Contractor's acceptance of one or more late payments will not waive Contractor's right to insist on strict compliance with the remainder of payments.

B. *Transfer or Assignment:* This Agreement may not be transferred or assigned without consent of all Parties and any permitted assignee must fulfill all respective terms of this Agreement.

C. *Governing Law:* This Agreement will be governed by, construed, and interpreted in accordance with Georgia law, other than its conflicts of law.

D. *Cooperation:* The Parties will produce, execute and/or deliver those documents reasonably necessary to carry out this Agreement. Contractor is not required to assume duties to a lender or anyone else that are in excess of those assumed by Contractor in this Agreement.

E. *IRS Compliance:* The Parties will comply with, execute and deliver certifications, affidavits and statements, if any, required to meet requirements of Internal Revenue Code.

F. *Entire Agreement:* This Agreement is the Parties' sole and entire agreement. No representation, promise or inducement outside this Agreement is binding.

G. Definition of Agreement: “Agreement” means this Agreement, which includes attached or referenced exhibits, amendments and addenda.

H. Modifications: This Agreement may not be modified, altered or amended except in writing executed by all Parties, but this subparagraph will not affect Contractor’s rights under paragraph 14.I.

I. Terminology and Captions: All pronouns, singular or plural, masculine, feminine or neuter, mean the person or entity to which they refer under the context. When the context requires, the singular includes the plural and vice versa.

J. Successors and Assigns: This Agreement inures to the benefit of and is binding on the Parties and their heirs, successors, administrators, executors and assigns.

K. Severability: Each provision of this Agreement is severable from every other of its provisions. If any provision is determined to be unenforceable, the rest of the Agreement will remain valid and enforceable. If any provision of the Agreement is determined to be unenforceable in a particular context or part, the Agreement will remain enforceable in all other contexts and parts.

L. Notices: Except as otherwise provided for in this Agreement, all notices or demands required or permitted hereunder must be in writing to the address provided in this Agreement and delivered either:

- (1) in person;
- (2) by courier or overnight delivery service prepaid;
- (3) by e-mail or facsimile (Fax) transmission; or
- (4) by the United States Postal Service, postage prepaid, registered or certified, return receipt requested.

A notice will be deemed to have been delivered as of the date and time actually received by the Party to whom the notice was directed. Prior to occupancy, Buyer’s address for purposes of this subparagraph will be as indicated on the signature page. After occupancy, it will be the Property address. Refusal to accept or inability to deliver because of changed physical or e-mail address of which no notice was given will be deemed receipt of notice. Any Party, by written notice to the others in the manner provided in this Agreement, may designate a new physical or e-mail address. If Owner is more than one person, notice to one shall be deemed notice to all.

M. Construction of Agreement: The Parties have reviewed this Agreement and had an opportunity to have it reviewed by an attorney. The Agreement will not be construed against either of the Parties as the drafting Party.

N. Multiple Owners: If there is more than one Owner, each Owner authorizes and empowers any other Owner to act on behalf of all of them in connection with any matters relating to this Agreement, including for example changes in the work and Change Orders, and each Owner authorizes Contractor to rely on that action. This authorization does not preclude Contractor from requiring that each Owner agree to matters relating to the Agreement.

O. Keys, Etc.: Upon full payment of the Contract Price, Contractor shall give Owner all keys, door openers, codes and similar items for the House.

P. Indemnify: The capitalized term “Indemnify,” as used in this Agreement, means that the Owner will indemnify, hold harmless, and defend Contractor and its employees, officers, members, partners, agents and representatives to the fullest extent permitted by Georgia law as to any claims relating to the stated subject matter, including as to attorney’s fees and legal proceeding costs and

expenses arising from such claims. The capitalized term "Indemnify" does not cover claims arising from Contractor's or its employees, officers, members, partners, agents and representatives sole negligence or intentional misconduct.

Q. *Liquidated Damages:* The term "Liquidated Damages," as used in this Agreement, means that the Parties have agreed that the actual damages are difficult or impossible to determine, that the stated amount of damages in lieu of actual damages is a reasonable estimate of actual damages, and that the stated amount is not intended as a penalty.

R. *Spoilation:* Except for an emergency, Owner will notify Contractor of any alleged construction defect that may be a basis for a claim by Owner against Contractor or any subcontractor of Contractor, and give Owner and any such subcontractor an opportunity to inspect that alleged defect before repairing or disturbing it. Owner's failure to do so will be spoliation, and will waive and release Owner's claim against Contractor and such subcontractor relating to that alleged defect and the consequences of it.

S. *Waiver of Consequential Damages:* Contractor and Owner waive claims against each other for consequential damages arising out of or relating to this Agreement. This mutual waiver includes, without limitation, and except if expressly elsewhere permitted in the Agreement: (i) damages incurred by the Owner for rental expenses, for losses of use, income, profit, for increased cost of and loss of financing, and for damages to reputation; and (ii) damages incurred by Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's permissible termination of this Agreement. Nothing contained in this subparagraph shall be deemed to preclude the Liquidated Damages allowed by this Agreement.

29. SPECIAL STIPULATIONS. The following special stipulations are part of this Agreement and, if conflicting with the rest of the Agreement, will control:

30. EXHIBITS AND ADDENDA. These attached exhibits and/or addenda marked below are part of this Agreement. The terms of any of these exhibits or addenda that conflict with other terms of the Agreement shall control, except for the terms of Special Stipulations.

- Plans, Exhibit "A"
- Specifications, Exhibit "B"
- Construction Draw Schedule, Exhibit "C"
- Selections and Allowance Exhibit, Exhibit "D"
- Change Order Form, Exhibit "E"
- Limited Warranty, Exhibit "F"
- Other, _____ Exhibit " _____ "
- Other, _____ Exhibit " _____ "

31. TIME LIMIT OF OFFER. This instrument is an offer by Contractor or Owner, whichever first signs, to the other and is open for acceptance by the other until ___ o'clock __ M, on the ___ day of _____, 20__.

32. ACCEPTANCE. The offer is accepted, at ___ o'clock __ M, on the ___ day of _____ 20__. This instrument will become a binding Agreement when written acceptance or a facsimile (FAX) transmission of acceptance is received by offeror.

<p>OWNER</p> <p>_____</p> <p>Print or Type Name</p> <p>_____</p> <p>Signature</p> <p>_____</p> <p>Date</p> <p>_____</p> <p>Phone #</p> <p>_____</p> <p>Fax #</p> <p>_____</p> <p>Physical Address for Notices</p> <p>_____</p> <p>E-Mail Address</p>	<p>OWNER</p> <p>_____</p> <p>Print or Type Name</p> <p>_____</p> <p>Signature</p> <p>_____</p> <p>Date</p> <p>_____</p> <p>Phone #</p> <p>_____</p> <p>Fax #</p> <p>_____</p> <p>Physical Address for Notices</p> <p>_____</p> <p>E-Mail Address</p>
<p>CONTRACTOR</p> <p>_____</p> <p>Print or Type Full Legal Name of Contractor</p> <p>By: _____</p> <p>Signature</p> <p>Title: _____</p>	

Date	
_____ Phone #	
_____ Fax #	
_____ Physical Address for Notices	
_____ E-Mail Address	

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Plans Exhibit "A"





Specifications Exhibit "B"





Construction Draw Schedule Exhibit "C"





Selections Exhibit "D"



This is Exhibit D to the Construction Agreement (Cost-Plus Basis for Construction on Owner's Land) ("Agreement") between _____ ("Owner") and _____ ("Contractor"). Owner is entitled to make selections relating to the items for which an allowance has been specified. Owner will use every reasonable effort to make selections from Contractor's stock on hand or other stock immediately available.

1. Appliances:

Mark with X Items to be Selected by Owner	Item	Make, Model & Color	Selection Deadline
	Trash Compactor		
	Disposal		
	Dishwasher		
	Oven		
	Double Oven		
	Stove		
	Microwave		
	Refrigerator		
	Other		

2. Others:

Item	Location	Selection Deadline
Wallpaper		
Carpets		
Vinyl		
Tile		
Foyer Floor		
Light Fixtures		
Landscaping		
Paint		
Other		
Other		

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Change Order Exhibit "E"



Change Order # _____

This is a Change Order to the Construction Agreement, (Cost-Plus Basis for Construction on Owner's Land) ("Agreement") between _____ ("Contractor") and _____ ("Owner").

1. Work: Describe the change in the work to be performed by Contractor:

_____ (attach additional pages if appropriate).

2. Price: The Contract Price will be increased or decreased by the change in total Costs relating to this Change Order. If the Agreement provides for a Contractor's fee for overhead and profit based on a percentage of Costs, that fee will likewise be increased or decreased based on the change in total Costs relating to this Change Order. If the Agreement provides for a Contractor's fee for overhead and profit based on a dollar amount, that dollar amount for overhead and profit will change by \$ _____ as a result of this Change Order.

3. Payment: Any increase in the Contract Price relating to this Change Order shall be paid as follows: _____).

4. Closing Date Adjustment: Because of this Change Order, the estimated Substantial Completion date is modified as follows: _____.

5. Other Terms: All other terms of the Agreement, including those relating to Change Orders, shall apply to this Change Order, including the Limited Warranty.

<p>_____ Owner's Signature</p> <p>Date: _____</p> <p>_____ Owner's Signature</p> <p>Date: _____</p>	<p>Contractor's Full Legal Name: _____</p> <p>_____ Signature for Contractor</p> <p>By: _____</p> <p>Title: _____</p> <p>Date: _____</p>
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Limited Warranty Ex. F



This Limited Warranty is Exhibit F to the Construction Agreement (Cost Plus for Construction on Owner's Land) ("Agreement") dated this _____ day of _____, 20____ between _____ ("Owner") and _____ ("Contractor") for the purchase of the property ("Property") described in the Agreement:

1. LIMITED WARRANTY. Subject to the terms of this Limited Warranty, Contractor agrees that, for the term of this Limited Warranty, the House will substantially conform with the Construction Standards of the Agreement, which shall include, but not be limited to one of the following:

- The terms of the current version of the Homeowner Handbook published by the Greater Atlanta Home Builders Association, Inc. that cover the House (provided that the term "closing" in the Homeowner Handbook will be deemed to be the date of Substantial Completion), supplemented by any higher standards in the current version of the Residential Construction Performance Guidelines for Professional Builders & Remodelers, published by the National Association of Home Builders.
- The current version of the Residential Construction Performance Guidelines for Professional Builders & Remodelers, published by the National Association of Home Builders.

Owner acknowledges that, before Owner executed the Agreement or this Limited Warranty, Owner was given or reviewed the current version of the Residential Construction Performance Guidelines for Professional Builders & Remodelers published by the National Association of Home Builders, and, if applicable, the current version of the Homeowner Handbook published by the Greater Atlanta Home Builders Association, Inc.

- 2. TERM.** The term of this Limited Warranty ("Warranty Term") is one (1) year beginning the date of Substantial Completion, except, if applicable, for items in the Homeowner Handbook mentioned above that are only warranted to meet a standard on the date of "closing" (which shall mean Substantial Completion for purposes of this paragraph.).
- 3. NOTICE TO CONTRACTOR.** If there is an item for which Contractor has responsibility, Owner must provide written notice of that item to Contractor. The notice must be given in the manner required by the Agreement for notices. The notice must specify the item in detail and must be given to Contractor within the Warranty Term. Contractor shall not be responsible for items for which a required, timely notice has not been given. Owner shall permit Contractor and/or Contractor's agents, employees or contractors reasonable access to the Property during normal business hours (Monday - Friday, 9:00 a.m. - 5:00 p.m.) to inspect or perform work required under this Limited Warranty and, if requested by Contractor until 7:00 p.m., unless prohibited by local law or recorded community covenants.
- 4. EXCLUSIONS.** Excluded from this Limited Warranty are the following:
 - a. Any items for which Contractor is not responsible under the Construction Standards;
 - b. Bodily or personal injury of any kind;
 - c. Mental and emotional pain and suffering;
 - d. Loss or damage to personal property;

- e. Loss or damage resulting from Owner's failure to comply with Owner's obligations or otherwise resulting from Owner's improper maintenance or improper operation;
- f. Loss or damage resulting from Owner's failure to provide prompt notice to Contractor of a problem;
- g. Any defect, damage, or loss resulting from actions or inactions of persons other than Contractor, such as independent contractors retained by Owner;
- h. Consequential or incidental damages of any kind or nature;
- i. Loss or damage caused by external forces, such as acts of God, windstorm, fire, explosion, smoke, water, hail, lightning, falling trees, flood, earthquakes, radon or other gases, pollution, toxic substances, civil disturbance, changes in the level of the underground water table which are not reasonably foreseeable at the time of construction, or criminal acts of a third party;
- j. Any loss, damage, defect, cost or expense which is caused by an occurrence for which compensation is provided by state legislation, or which is covered by insurance of Owner;
- k. Any loss or damage by insects or vermin;
- l. Any loss or damage arising while the Property is being used primarily for nonresidential purposes or from the Property being used for nonresidential purposes;
- m. Expenses of shelter, transportation, food, moving, storage, or other incidental expenses related to relocation during repair, or any other cost or damages relating to loss of use, inconvenience, or annoyance;
- n. Normal wear and tear, normal deterioration, or normal changes that are the result of characteristics common to the materials used;
- o. Loss or damage resulting from Owner's failure to comply with warranty requirements of manufacturers;
- p. Any appliances, piece of equipment, or other item that is a consumer product for the purpose of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, *et. seq.*, installed or included in the Property, including but not limited to any heating and air conditioning equipment, heat pump, electric air cleaner, exhaust fan, thermostat, space heater, furnace, air conditioning system, humidifier, whirl pool bath, garbage disposal, water heater, water softener, sump pump, refrigerator, freezer, trash compactor, range, oven, kitchen center, dishwasher, oven hood, clothes washer, clothes dryer, ice maker, central vacuum system, smoke detector, fire alarm, fire extinguisher, garage door opener, chime, water pump, intercom, burglar alarm, electric meter, gas meter, or electric barbecue grill;
- q. Defects in swimming pools and other recreational facilities;
- r. Defects in landscaping, including sodding, seeding, shrubs, trees, plants, and fences;
- s. Exterior hardware;
- t. Loss or damage resulting from abnormal loading on floors by Owner which exceed design loads as mandated by applicable building codes; and
- u. Damage, including but not limited to fading and ghosting of paint or other surfaces, resulting from the use of candles.

5. OPTIONS AVAILABLE TO CONTRACTOR. In lieu of repairing any item covered by the Limited Warranty, Contractor has the option of replacing such item or paying reasonable sums to Owner with which to have that item addressed by Owner or third party. Unless an item is an emergency or additional material damage would result from delay in addressing it, Contractor has the option of waiting to address all or several items at once or in groups.

6. MISCELLANEOUS. This Limited Warranty is part of the Agreement and incorporates its terms and provisions (including without limitation those requiring mandatory binding arbitration and mediation), except to

the extent they conflict with the terms of this Limited Warranty, in which event the terms of this Limited Warranty shall prevail.

<p>_____ Owner's Signature</p> <p>Date: _____</p> <p>_____ Owner's Signature</p> <p>Date: _____</p>	<p>Contractor's Full Legal Name:</p> <p>_____</p> <p>_____ Signature for Contractor</p> <p>By: _____</p> <p>Title: _____</p> <p>Date: _____</p>
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