

CONSTRUCTION AGREEMENT

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



Owner and Contractor make this agreement ("Agreement") dated _____, 20__.

OWNER

CONTRACTOR

Name

Full Company Name

Address

Address

City, State, Zip

City, State, Zip

Phone

Phone

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 Specifications described below. Unless otherwise specified, Contractor 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 as Exhibit "A," entitled _____, dated _____, and consist of _____ pages. The Specifications are attached hereto as 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 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, to the extent that the Plans and Specifications have been provided by or on behalf of Owner and are required to 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, including, for example, Costs incurred in connection with selections and changes under this Agreement, 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 herein.

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 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 or consumed 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 long-distance telephone calls, telephone service at the site 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 hereunder;
- 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.

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, it 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 _____; (vi) principal repayable upon completion or Substantial Completion of the House; and (vii) 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 Costs:* All fees and expenses of obtaining and of maintaining 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. *Inspection Fees:* Owner will pay the cost of any inspection fees charged by or on behalf of lender for the inspection of construction.

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

8. *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.

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

A. Earnest Money and/or Non-Refundable Construction Deposit: Select 1 and/or 2:

___ 1. *Non-Refundable Construction Deposit* (see attached Non-Refundable Construction Deposit Exhibit).

___ 2. *Earnest Money:*

a. Owner has paid \$ _____ as earnest money to Contractor in the form of ___ cash or ___ check.

b. Within five (5) banking days, the earnest money 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 earnest money may be deposited in an interest bearing account and Contractor may retain any earned interest.

c. If any check given as earnest money is not honored, Contractor may terminate this Agreement by notice to Owner.

d. If the earnest money is to be deposited in Contractor's general account, the funds will not be segregated and Contractor may use the funds for any purpose.

e. The earnest money 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:

(1) 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 earnest money will promptly be refunded to Owner.

(2) 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 earnest money will promptly be refunded to Owner.

(3) 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 retain the earnest money as liquidated damages for damages other than those damages covered by any Non-Refundable Construction Deposit. The Parties agree that it would be extremely difficult to ascertain the actual damages that would be incurred by Contractor in that event, the earnest money is a reasonable estimate of those actual damages, and the retention of the earnest money is not intended as a penalty but rather as full liquidated damages to Contractor other than for damages covered by any Non-Refundable Construction Deposit. As an alternative to the earnest money, Contractor may seek specific performance of the Agreement. If specific performance is granted, the earnest money will be applied to the Contract Price.

(4) This Agreement is terminated after start of work, in which case any unapplied portion of the earnest money 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 Construction Draw Schedule should reflect the application of the earnest money and any Non-Refundable Construction 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 listed on the Selections and Allowance Exhibit, attached Exhibit "D," 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. 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 thereafter, 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, 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 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 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 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 Specifications and the designated items on Exhibit "D" that are part of the Agreement when it is executed. Changes requested by Owner may 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 Specifications or the Agreement. If Owner wants to request a change, it is important that it do so in a timely manner to permit Contractor to schedule the change in the normal building process if Contractor agrees to it.

B. *Required Changes:* Changes in the Plans and 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 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 that 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 will be 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 subparagraphs 14. A., B., C. or D., Contractor may terminate this Agreement and recover the amounts provided for in paragraph 24.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 per applicable building codes, in substantial compliance with the Plans and Specifications, as they may be modified in accordance with this Agreement, and in accordance with 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.

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 duty or liability for errors or omissions, under the Limited Warranty or otherwise, attributable to its compliance with Plans and Specifications prepared by an architect or other agent of Owner or for following instructions, directions or rules of the architect or agent or of any community association or related entity.

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, to the fullest extent permitted by Georgia law, will indemnify, hold harmless, and defend Contractor from any claims, including ones based on Contractor's own, but not sole, negligence, arising out of or relating to that exercise. 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 subparagraph 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 subparagraph 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 inspector must 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. HOME WARRANTY DISCLOSURE. 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. 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 the House or move household items into the House until a 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 _____.

22. 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. To the fullest extent permitted by Georgia law, Owner will indemnify, hold harmless, and defend Contractor from any claims, including ones based on Contractor's own, but not sole, negligence, arising out of or relating to hazardous materials and substances.

23. 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 property 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 property 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. To the fullest extent permitted by Georgia law, Owner waives all rights against Contractor for damages caused by fire, theft, vandalism or other perils to the extent covered by this property insurance, except the rights it may have to insurance proceeds. The Owner's liability and property insurance will be from companies authorized to do business in Georgia.

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

24. DEFAULT.

A. ***Owner's Rights:*** If Contractor materially breaches a material 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 materially breaches a material 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 24.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 24.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.

25. 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.

25. MANDATORY BINDING ARBITRATION. The Parties will cooperate in avoiding and informally resolving their disputes. Warranty procedures first apply to any unresolved warranty claims. Any warranty claim 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, 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 arbitrator’s award is final and may be enforced in a court having jurisdiction and venue. If the Parties do not agree on the arbitrator, Construction Arbitration Associates, Ltd. will be the arbitrator. Any questions regarding the interpretation of this arbitration provision 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 that decision shall be binding on the Parties.

The Parties’ initials below evidence their agreement to the provisions of this paragraph:

_____ / _____ (Owner’s initials) _____ (Contractor’s initials)

The fee to initiate arbitration will be shared evenly by the Parties, but the arbitrator may allocate filing fees and arbitration costs in the award.

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.

27. 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 in this Agreement, all notices or demands required or permitted under it must be in writing and provided to the address on the signature page: (1) in person; (2) by overnight delivery service prepaid; (3) by facsimile (Fax) transmission; or (4) by the United States Postal Service, postage prepaid, registered or certified, return receipt requested. The notice will be deemed given when received by the Party to whom it is directed. Refusal to accept or inability to deliver because of changed address of which no notice was given will be deemed receipt. Any Party, by written notice to the other, may designate a new address.

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 hereby authorizes and empowers any other Owner to act on its behalf 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.

28. SPECIAL STIPULATIONS. The following special stipulations are part of this Agreement and, if conflicting with any preceding paragraph, will control:

29. EXHIBITS AND ADDENDA. These attached exhibits and/or addenda are part of this Agreement:

- 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"
- ___ Non-Refundable Construction Deposit, Exhibit " _____ "
- ___ Other, _____ Exhibit " _____ "
- ___ Other, _____ Exhibit " _____ "

30. 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__.

31. 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.

Owner's Signature

Print or Type Name: _____
 Home Phone: _____
 Business Phone: _____
 FAX: _____
 Address: _____

Owner's Signature

Print or Type Name: _____
 Home Phone: _____
 Business Phone: _____
 FAX: _____
 Address: _____

Contractor Signature
 (Use full legal name)

Print or Type Name: _____
 By: _____
 Title: _____
 Business Phone: _____
 FAX: _____
 Address: _____

**Plans
Exhibit "A"**

**Specifications
Exhibit "B"**

**Allowances
Exhibit "C"**

**Selections Exhibit
Exhibit "D"**

**Change Order
Exhibit "E"**



This Change Order, made _____, 20____, modifies the Construction Agreement ("Agreement") between the Parties. For the consideration below, Contractor will furnish all labor and materials necessary to complete the following:

This work is governed by the terms of the Agreement, including as to Costs, fees, and overhead. Owner will pay the Change Order Costs, fees, and overhead as follows: _____. As a result of this Change Order, the estimated date for Substantial Completion is extended by ____ days.

Owner's Signature

Date

Owner's Signature

Date

Contractor's Signature
(Use full legal name)

Date

The Greater Atlanta Home Builders Association, Inc. provides this document for voluntary use by its builder members, and makes no warranty or representation, express or implied, about it. Neither its builder members nor any consumer is required to use it, and both should completely review it and consult legal counsel before using it.