

MASTER AGREEMENT

This Master Agreement ("Agreement") is entered into this ____ day of _____ 20 ____, by and between

_____ and its assigns as set forth herein (collectively, "Builder") and _____, ("Contractor")

on the following terms and conditions. The terms and conditions of this Agreement are effective and apply to all Work performed, including Work performed prior to the date this Agreement was signed that was not subject to another Master Agreement between the parties, beginning on the _____ day of _____ 20____ ("Effective Date"), and continuing in all respects subject to the terms and conditions herein. On and after the Effective Date, this Agreement shall be the sole and exclusive agreement by and between the parties hereto and their assignees (as may be permitted herein) for all Work to be performed by or for Contractor, including all work performed and materials provided by Contractor's employees, agents, subcontractors and suppliers. This Agreement shall be considered evergreen and may be amended or supplemented only as set forth in a subsequent authorized writing specifically referring to this Agreement by name, and shall control all subsequent contractual relationships for all Projects as set forth herein.

Builder is developing and/or constructing improvements, generally for the end-use by subsequent residential owners on lots, in subdivisions and/or properties in multiple locations for which Builder and Contractor may execute further addendums from time to time. Contractor warrants that it is an experienced contractor, knowledgeable and experienced in performing the Work. Contractor is knowledgeable of the requirements, rules and regulations of all governmental authorities regarding the Work. Contractor and Builder shall act reasonably and cooperate with each other in connection with their obligations under this Agreement. Such cooperation shall include informing the other of management decisions that could reasonably be expected to have a material effect on the obligations required to be performed under this Agreement. Builder and Contractor, for and in consideration of the mutual promises, covenants, agreements and provisions stated herein, hereby further agree as follows:

1. Builder wishes to utilize the services of Contractor to provide services and/or materials to Builder. Based upon the nature of the services and/or materials to be provided by Contractor, it is anticipated that specific Project Agreement(s) (herein so called), work order, purchase order contracts and/or land development contracts will be executed. It is further agreed that the terms and conditions of this Agreement shall be incorporated into any future such instruments.
2. In order to expedite the use of Contractor's services and/or materials each time they are needed, the parties agree to enter into and comply with this Agreement prior to any actual Work being performed by Contractor. It is the intent of the parties that the terms and conditions herein shall apply to any Work by Contractor regardless of whether these terms and conditions are subsequently referenced. "Work" means all services, labor and materials furnished by Contractor at the request of Builder from and after the Effective Date, and further consists of the labor, services and/or materials, equipment, transportation, power, and facilities necessary to complete the same, and all things reasonably inferred from the contract documents or customarily furnished by a contractor performing such Work in Contractor's trade in the jurisdiction in which the project is located, whether such Work is described or mentioned in the contract documents, and it is intended that all Work include any and all associated, necessary or related connections, materials, labor, and the like whether specifically stated or not, unless expressly excluded.
3. This Agreement shall be in full force and effect from the Effective Date unless terminated in accordance with the terms herein; no additional signatures or other acts are required to maintain the applicability of this Agreement; this Agreement shall be considered evergreen to the fullest extent allowed under law. The termination of this Agreement shall not negate any of Contractor's obligations under this Agreement, and those obligations shall expressly survive termination, cancellation or otherwise of this Agreement.
4. Entering into this Agreement shall not obligate either Builder or Contractor to agree to any subsequent request for services and/or materials or to any volume of business during the term of this Agreement, and this Agreement shall not be considered an exclusivity contract regardless of the percentage of work between the parties hereto nor create any special relationship under law or in equity. This Agreement does not guarantee or warrant any level of Work to the Contractor. The intent is that if any Work is procured and agreed to by both parties during the term of this Agreement, the terms and conditions of this Agreement shall apply.
5. Contractor acknowledges that the only means by which any Builder employee or agent is authorized to procure services and/or materials from Contractor is in writing on standard forms produced by Builder (purchase order, contract, start authorization form, memo, etc.). Any oral request for services and/or materials is expressly not authorized by Builders' corporate officers, employees, representatives or agents and Contractor may not rely upon any such representation, regardless of any and all prior or future course of dealing, acts or otherwise. This Agreement is effective regardless of whether the parties use invoicing, purchase order system or otherwise.
6. No request for payment by any Contractor will be approved by Builder unless all terms and conditions of this Agreement, including the requirements set forth herein are fulfilled. No payments shall be due under this Agreement unless and until Contractor has timely performed and delivered all Work requested by Builder. No payments will be disbursed until Builder has had a reasonable opportunity to inspect the Work performed and/or delivered, has received an invoice identifying the subject Work and has received

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valid lien waivers executed by Contractor. If Builder agrees to pay Contractor on a monthly basis, Contractor, as a condition precedent to payment, must transmit all applicable invoices to Builder's office by no later than 12:00 o'clock p.m. on Friday with payment to be made within 30 days from that date. It is agreed that Builder shall not be responsible for payment of faxed invoices unless Contractor calls Builder to verify Builder's receipt of the fax transmission. There shall be no exceptions to this requirement.

7. In consideration of Builder entering into this Agreement, Contractor agrees the undersigned principal owner(s) of Contractor shall personally guarantee the full and prompt payment of all sums due to all employees, agents, subcontractors, material suppliers and labor suppliers of Contractor who furnish labor or materials pursuant to this Agreement.
8. Contractor expressly agrees that payments may be withheld, and all costs incurred by Builder shall be charged against all monies due Contractor under this Agreement if: i). Work is found defective and not remedied by Contractor, ii). Contractor does not make prompt and proper payments to his employees, agents and/or subcontractors, iii). Contractor does not make prompt and proper payments for labor, materials or equipment furnished by third parties, iv). Another contractor is damaged by an act for which Contractor is responsible, v). Claims or liens are filed on the job as a result of Contractor's failure to make full and timely payments as required in subparagraph 6 above, vi). In the opinion of the Builder, Contractor's Work is not progressing satisfactorily, vii). Builder reasonably believes that the Work cannot or will not be completed in accordance with all the terms and conditions of this Agreement, viii). Contractor fails to perform warranty service under this Agreement or any other prior or contemporaneous agreement with Builder, ix). Builder is fined by any governmental agency on account of or arising out of Contractor's, his employee's or his agent's violation of any law, ordinance, regulation, administrative ruling or court order, x). Contractor does not timely furnish itemized invoices as specified in this Agreement, xi). Any violation, default, or failure to comply with any other term or condition herein.
9. Builder may add to or subtract from the scope of Contractor's Work by authorized and written documentation, and Contractor will promptly perform the Work as modified. Builder shall pay the reasonable costs for the authorized and written change in the scope of the Work if same is not expressly set forth in the subject documents. If Builder and Contractor should dispute whether any Work is within the scope of Contractor's Work, Contractor will promptly follow the written orders of Builder as to the performance of the Work, and same is the sole and exclusive decision of Builder as to the scope of Contractor's Work and shall be final.
10. Contractor expressly agrees to read and become familiar with all relevant plans and specifications (available for inspection/access via FTP site or otherwise at Builder's offices) applicable to this Agreement or any Work requested by Builder before starting any Work, and it is Contractor's obligation to request and remain fully informed at all times of the subject contract documents. Contractor has investigated the nature, locality and sites of the Work and the conditions and difficulties under which the Work is to be performed. Contractor enters into this Agreement on the basis of its own examination, investigation and evaluation of all aspects of the Work, and not in reliance on the opinions or representations of Builder or any affiliate thereof. If there are any inconsistencies or ambiguities in any contract documents, Contractor shall bring such ambiguity or inconsistency to the attention of Builder and request clarification; otherwise, Contractor shall be bound by Builder's resolution of such inconsistencies or ambiguities within its sole and exclusive discretion. Additionally, prior to commencing the Work, Contractor shall fully and completely investigate and study (i) the Work site (ii) the contract documents, plans and specifications for the Work, (iii) any manufacturer's specifications, and (iv) all other conditions that may affect the Work. By commencing the Work, Contractor represents that it has noted no deficiencies or problems with the Work site, the plans and specifications, the manufacturer's specifications, or any other conditions which would impact its ability to perform the Work in accordance with the requirements of this Agreement. If Contractor subsequently discovers any discrepancies among the plans, specifications, manufacturer's specifications, and physical conditions, or any errors and omissions in the plans or specifications or in the layout as given that might affect the Work, Contractor shall immediately notify Builder in writing. Any Work performed by Contractor relating to such discrepancy, error or omission shall be done at Contractor's sole expense and risk. Prior to ordering materials or performing the Work, Contractor shall verify (i) that the materials are adequate for the performance of the Work and in accordance with the specifications and contract documents, and (ii) that all measurements and conditions relevant to Contractor's Work are acceptable. No extra charge or compensation shall be allowed on account of differences between actual dimensions or conditions and the measurements and conditions indicated in the contract documents, plans and specifications. Any soils and geology reports, investigations or borings available to or otherwise provided to Contractor were prepared by third parties and made only for the purpose of study and design. Builder does not warrant or guarantee, either expressly or impliedly, (i) the sufficiency or accuracy of the reports or investigations or borings that have been made or (ii) any of the conditions that exist. Contractor agrees to undertake the Work subject to all site conditions as they now exist or may arise. Builder, or its designated representatives, as well as any public authority, or private authority having inspection rights of and relating to the subject property, shall have the right to review, inspect, or observe Contractor's Work at any time, and Contractor shall assist in and facilitate such reviews, inspections, or observations.
11. Contractor is an independent contractor. Contractor is not an employee, agent, or partner of or a participant in a joint venture with Builder for any purpose. Contractor is responsible for the manner, method and means of accomplishing the Work; hiring, training, disciplining, firing and scheduling its own employees; withholding and paying appropriate amounts for federal, state and local taxes and as otherwise set forth herein; and providing fringe benefits to employees, including, but not limited to, workers' compensation

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benefits. However, Builder reserves the right to (a) inspect all Work to determine, in good faith, whether the Work has been satisfactorily completed, (b) control access to each of Builder's work sites or projects, (c) schedule Work in a logical sequence or to avoid disturbances, and (d) stop Work for safety reasons or to ensure conformity of end product with the contracted-for results. Contractor agrees to comply with and complete any and all federal and state forms available or later developed and available to evidence Contractor's status as an independent contractor, and shall do so with or without request of Builder. Contractor shall provide without request DWC 83/85 forms upon execution of this Agreement. Contractor will coordinate with Builder's requests concerning the scheduling of the performance of the Work in Builder's role as general contractor and such coronation shall not change the independent contractor relationship. Contractor shall supervise and direct the Work to the best of its ability, and give it all attention necessary for such proper supervision and direction. Without limitation of any provision herein, Contractor shall perform all Work in a good and workmanlike manner.

12. INDEMNIFICATION; WAIVER OF SUBROGATION AND INSURANCE

- 12.1. In addition to any other obligation in this Agreement, to the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless each Indemnitee (as defined below) for, from and against any and all Claims (as defined below), regardless of whether or not the Claim is caused in part by an Indemnitee; provided, however, that Contractor shall not be required to indemnify an Indemnitee for, and solely to the extent of, a Non-Indemnified Matter (as defined below). The parties acknowledge and agree that the existence of a Non-Indemnified Matter shall in no event relieve Contractor of its indemnity, defense and other obligations hereunder for, or with respect to, any other portion of a Claim that is not a Non-Indemnified Matter. Contractor's duty to defend the Indemnitees is entirely separate from, independent of and freestanding from Contractor's duty to indemnify the Indemnitees. Notwithstanding Contractor's duty to defend, Contractor acknowledges and agrees that Builder is entitled to defend any and all Claims with counsel and experts of Builder's choice. Payment by any Indemnitee is not a condition precedent to enforcing such Indemnitee's rights to indemnification and defense under this Agreement. If an arbitrator, court or tribunal of competent jurisdiction refuses to enforce Contractor's obligations hereunder because the scope of such obligations are deemed to be in violation of applicable law, it is expressly understood and agreed that such obligations will not be void for the purpose of such proceedings and the scope of Contractor's obligations will be reduced to the extent necessary to permit the enforcement of such obligations. Nothing in this Agreement shall be construed to negate, abridge or otherwise reduce: (a) any other obligation or liability of Contractor for breaching any of its agreements, covenants, representations, warranties, or obligations under this Agreement and/or any of the other contract documents; or (b) any other right or obligation of indemnity that may otherwise exist in favor of Builder or any Indemnitee. Further, payments by Contractor to any Indemnitee(s) in connection with this provision shall be in addition to any and all other legal remedies available to the Indemnitees and shall not be considered the exclusive remedy of any of the Indemnitees. Contractor's obligations under this provision shall apply without regard to the particular allegations or theories of recovery asserted or omitted by any third party, including, without limitation, Claims based on duties, obligations or liabilities imposed on the Indemnitees by law, and Claims based on theories of peculiar risks or non-delegable duty arising from conditions of the workplace and shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable under any workers' compensation acts, disability benefit acts or other employee benefits acts. The indemnification obligations of Contractor under this Agreement shall not be limited by the amounts or types of insurance (or the deductibles or self-insured retention amounts of such insurance) that Contractor is required to carry under this Agreement. The right to indemnification and defense by Contractor shall be in addition to Builder's separate rights under the insurance to be provided by Contractor under this Agreement. THE PARTIES INTEND FOR THIS INDEMNITY PROVISION TO SATISFY THE EXPRESS NEGLIGENCE AND FAIR NOTICE TESTS, AND SPECIFICALLY AGREE THAT THIS INDEMNITY PROVISION WILL APPLY EVEN WHEN THE CLAIMS OR DAMAGES ARE ALLEGED TO BE CAUSE BY, IN WHOLE OR IN PART, THE NEGLIGENCE OF BUILDER.

Contractor's Initials: _____

For purposes of this provision, the following capitalized terms shall have the following meanings:

"Claim" means (i) any action, administrative action, legal proceeding, claim, demand, obligation and cause of action of every kind and character made or asserted against an Indemnitee, whether based on tort, contract or equitable principles, and whether asserted by one or more owners of any residence, related to any structure or other improvement constructed on any project, any owner's association or any other person or entity; and/or (ii) any damage, loss, liability, lien, judgment, cost and expense (including, without limitation, attorney fees and costs, investigative and expert witness fees and costs and other litigation, mediation, arbitration or judicial reference expenses) suffered or incurred by an Indemnitee; which are in any way occurring, incident to, or arising from or in connection with (A) the performance or nonperformance of the

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Work or any terms or provision of any of the contract documents by or on behalf of Contractor; (B) the failure to comply with applicable laws by Contractor; and (C) any other breach of any provision of any of the contract documents by Contractor. A Claim also includes all costs incurred by the Indemnitees for corrective work performed by Builder or an entity other than Contractor. For purposes of this provision, attorney and other professional and witness fees and costs shall be deemed reasonable if such fees and costs are incurred at the rate customarily charged by the professional or witness rendering the services.

"Indemnitee" means each of the following: Builder and any of its respective subsidiaries, affiliates, members, managers, shareholders, owners, officers, directors, partners, employees, agents, successors and assigns, and lenders and land bankers.

"Non-Indemnified Matter" means any portion (and solely to the extent of such portion) of any Claim against an Indemnitee to the extent the Claim (or portion thereof, if applicable) is determined by entry of a non-appealable final judgment after trial or award after arbitration to have been caused by the negligent act of the Indemnitee sought to be indemnified.

Additionally, Contractor agrees and does hereby waive any and all tort or other subrogation rights for property damage or bodily injury against Builder or its agents, employees or subcontractors arising directly or indirectly out of, relating to, or in connection with this Agreement. The parties further mutually agree that with respect to any loss damage that may occur to the property, persons (employees of Contractor or third-parties) and/or personal property whatsoever by any reason or cause which is or could be insured against under the terms of any insurance policy regardless of the cause or origin, including negligence of the parties hereto, their agents, officers, and employees, Contractor hereby releases Builder from any and all claims with respect to such loss; and without limitation Contractor and Contractor on behalf of its insurance companies agree that its insurance companies shall have no right of subrogation against Builder on account of any such loss, and any and all such rights of subrogation are hereby waived and disclaimed; **CONTRACTOR SHALL HOLD HARMLESS AND INDEMNIFY BUILDER FOR ANY CLAIMS ASSERTED AGAINST IT BY ANY THIRD-PARTY, OR OTHERWISE, REGARDLESS OF ANY ALLEGATION OF BUILDER'S NEGLIGENCE, STRICT LIABILITY, BREACH OF CONTRACT, BREACH OF WARRANTY, OR ANY OTHER CLAIM OR CAUSE OF ACTION. THE AGREEMENTS IN THIS PARAGRAPH SHALL SURVIVE CANCELLATION AND/OR TERMINATION OF THIS AGREEMENT, NOTHING CONTAINED IN THIS PARAGRAPH SHALL BE DEEMED TO MODIFY OR OTHERWISE AFFECT RELEASES OF EITHER PARTY FROM LIABILITY FOR CLAIMS ELSEWHERE HEREIN CONTAINED.**

In the event that it becomes necessary for either Party hereto to file a suit or arbitration to enforce the terms of this Agreement or any provisions contained herein, the Party prevailing in such action shall be entitled to recover, in addition to all other remedies or damages, reasonable attorney's fees and expenses incurred.

- 12.2. If Contractor performs Work that involves operations by Contractor on the premises of Builder or one of its affiliates, agents or customers, Contractor shall take all necessary precautions to prevent the occurrence of any injury to any person or damage to any property during the progress of such Work and/or services performed. Except to the extent that any such injury or damage is due solely and directly to the negligence of Builder or that of its affiliates, employees, or agents, Contractor shall pay Builder for all losses that may result in any way from any act or omission of Contractor, including its affiliates, employees, agents, or subcontractors.
- 12.3. Upon execution of this Agreement, and prior to Contractor's commencing (in the broadest possible sense of the word) any Work, Contractor shall provide proof of coverage as outlined in this Master Agreement.
- 12.4. To the fullest extent permitted by law, Contractor hereby assumes the entire responsibility and liability for all Work, supervision, labor and materials provided hereunder, whether or not erected in place, and for all plant, scaffolding, tools, equipment, supplies and other things provided by Contractor until final acceptance of the Work by Builder. In the event of any loss, damage or destruction thereof from any cause, Contractor shall be liable therefor, and shall repair, rebuild and make good said loss, damage claim, expense or destruction at Contractor's cost. Contractor shall be responsible for protecting its Work, the work of other contractors, and the real and personal property of Builder. Contractor shall, without limitation as it relates to Contractor's Work, be fully responsible for the protection of all existing structures, materials, equipment, curbs, landscaping, flora, fauna, and adjacent property. Contractor shall be responsible for reasonable inspection of the work of other contractors that may affect its own Work and shall immediately report to Builder, in writing, any defects, discrepancies or problems

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Contractor discovers in its reasonable diligence that could adversely affect Contractor's Work or the work of other contractors, or any condition that may result in injury, warranty claims, construction defects or damage of any kind.

13. WARRANTY AND REPRESENTATIONS.

- 13.1. Contractor warrants and represents that all labor and materials furnished by Contractor will be guaranteed for a period of one (1) year after closing of the home against any and all defects or failures of every kind; Contractor's work shall be guaranteed for two (2) years with respect to defects of any kind caused by failure of plumbing, electrical, heating and cooling systems and ten (10) years with respect to defects of any kind caused by failure of the foundation or the framed structure, including but not limited to concrete, post-tension cables and stressing, and within said warranty periods Contractor will make good and correct such defect or failures without cost to the Builder or the homeowner, regardless of the cause of such failure. Contractor shall furnish all warranties and guaranties by manufacturers on appliances, parts, supplies, equipment and/or otherwise furnished by Contractor and shall furnish all certificates required by any municipality and/or federal agency, including the FHA or the VA. Contractor agrees that all of Contractor's warranties are freely transferable without recourse. All of Contractor's prior warranties under any prior agreements with Builder, its affiliates, or predecessors of either, are incorporated herein for all purposes and are in full force and effect and not waived by this Agreement. All warranty obligation under this Agreement is subject to the indemnity provisions herein. Builders termination of this Contract prior to completion of the Contractor's work shall not relive Contractor of its warranty obligations for the completed portion of the Contractors work, including all provisions regarding the timing of the performance.
- 13.2. Contractor shall timely arrive and complete the warranty work on-time and as scheduled for any and all appointments with any homeowner for warranty work. For any occasion upon which Contractor fails to appear as scheduled for a previously confirmed appointment to perform such Warranty Work for any homeowner, Contract shall be charged the sum of \$150. It is agreed that any amounts due from Contractor under this paragraph may be withheld by Builder from any sums due to the Contractor under the Contract.
- 13.3. The remedies provided to Builder for defective Work shall not be exclusive but shall be cumulative and in addition to all other remedies available to Builder at law or in equity with respect to latent defects or fraud. If Builder deems it expedient to correct any defective Work, the cost and expenses thereof shall be charged against Contractor by deducting said amount from the contract sum, or by back charge against other amounts due.
- 13.4. Builder may occupy and use any portion of the Work which has been partially or fully performed by Contractor, and such occupancy or use shall not constitute a waiver of any defects in, or an acceptance of, the Work.
- 13.5. Neither the acceptance of the Work by Builder, nor any payment of the whole or any part of the contract pricing agreement, nor any occupancy, use or possession of the Work by Builder, shall operate as a waiver of any breach or default by Contractor of any of the provisions of this Agreement.
- 13.6. Contractor shall pay all taxes required or imposed by law in connection with the Work.
- 13.7. Contractor shall comply with all Storm Water Pollution Protection Plans and erosion and sedimentation protocols relating to the Work.
- 13.8. Contractor shall not file, nor permit to be filed, any liens or claims of lien against any property where Work is performed. Contractor shall take the necessary action to remove any lien or claims of lien filed by any subcontractor or supplier of Contractor or any other claimant by, through or under Contractor against any property where the Work was performed.

14. DEFECTIVE WORK

- 14.1. When Builder notifies Contractor (orally or in writing) that any part of the Work is defective, incorrect or does not conform to the terms of the contract documents (collectively, Defective Work), Contractor shall make all repairs and correct such Defective Work within eight (8) hours of notice of such Defective Work in an emergency and within seventy-two (72) hours of notice of such Defective Work on a non-emergency basis, and shall bear the entire cost of doing so, including the cost incurred by Builder

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for any disturbance of work being completed by Builder or its other contractors. Builder shall determine if any Defective Work constitutes an emergency. Failure by Contractor to correct Defective Work within the times set forth in this paragraph shall constitute a breach of this Agreement. Builder may withhold funds from further payments to Contractor to account for Contractor's failure to correct defective work or timely perform warranty work on any property.

15. DELAYS IN PERFORMANCE BY CONTRACTOR

- 15.1. Time is of the essence in the performance of Contractor's obligations to Builder.
- 15.2. No payments shall be due under this Agreement unless and until Contractor has timely performed and delivered all Work requested by Builder. No payments will be disbursed until Builder has had a reasonable opportunity to inspect the Work performed and/or delivered, has confirmed the Work is completed and, if requested, has received executed lien waivers and/or an all-bills paid affidavit executed by Contractor and subcontractors, if applicable.
- 15.3. If the contract between Builder and the final purchaser contains provisions relative to delay, excuse for delay, claims for extension of time, damages, or liquidated damages for delay, such provisions shall be applicable to Contractor. **If Builder suffers damage or liquidated damages for delay caused by Contractor, Contractor will indemnify and hold Builder harmless from such damages and shall pay such damages on behalf of Builder or its affiliates.**
- 15.4. Should Contractor fall behind schedule as determined by Builder in its sole discretion, Builder may require Contractor to work overtime, or employ additional personnel to get back on schedule, and all costs associated therewith shall be a Contractor's expense. If Contractor fails to do so after notice and request by Builder, Builder reserves the right to supplement Contractor's work and deduct the cost for same from Contractor's scheduled payment(s).

16. PAYMENT

- 16.1. With each payment to Contractor and upon request, Contractor shall provide approved, statutory releases, waivers of lien and affidavits of bills paid for itself and for each of its subcontractors, on forms satisfactory to Builder, together with supporting documents as required by Builder. Failure to sign and return the releases, waivers and affidavits provided by Builder will result in all future payments to Contractor being suspended until the required documents have been provided.
- 16.2. Payments to Contractor shall be payable to Contractor as provided in the above paragraph 6. No payment shall be made until all portions of the Work have been completed as outlined and have been accepted and approved by Builder or its affiliate, and further provided that payment is subject to Builder's receipt from Contractor of the required payment documentation as required in this Contract.
- 16.3. Contractor expressly agrees that payments may be withheld and all costs incurred by Builder shall be charged against all monies due Contractor under this Agreement if:
 - 16.3.1. Work is found defective and not remedied by Contractor in a timely manner.
 - 16.3.2. Contractor does not make prompt and proper payments for labor, materials or equipment furnished by third parties.
 - 16.3.3. Another contractor's work is damaged by an act for which Contractor is responsible.
 - 16.3.4. Claims or liens are filed on a job as a result of Contractor's failure to make full and timely payments as set forth herein.
 - 16.3.5. In the opinion of Builder, Contractor's Work is not progressing satisfactorily, and requires supplementation.
 - 16.3.6. Builder reasonably believes that the Work cannot or will not be completed in accordance with all the terms and conditions of this Agreement.
 - 16.3.7. Contractor fails to perform warranty service under this Agreement or any other prior, contemporaneous, or subsequent agreement with Builder.
 - 16.3.8. Builder is fined by any governmental agency for violation of any law, ordinance, regulation, administrative ruling or court order by Contractor its employees, agents or subcontractors.
- 16.4. Contractor shall keep the project site(s) and the premises upon which the Work is performed free of any claim or lien. Should any claim or lien be asserted or filed, Builder may, immediately and without notice to Contractor and in Builder's sole and exclusive discretion, pay an amount sufficient to discharge such claim or lien, bond over or insure around such claim or lien, and charge the cost of doing so against the Contractor by deducting said amount from amount owed to Contractor. Contractor

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must remove all liens and claims of lien per requirements of any lender providing development funds for the project location. IN ADDITION TO THE OBLIGATIONS UNDER LAW, AND WITHOUT LIMITATION ON ANY OTHER INDEMNITY OBLIGATION HEREIN, CONTRACTOR FURTHER AGREES TO HOLD HARMLESS, INDEMNIFY AND DEFEND BUILDER AND/OR ITS AFFILIATES FROM AND AGAINST ALL LOSS, COSTS, DAMAGE, EXPENSE (INCLUDING ATTORNEYS' FEES AND COURT COSTS), LIABILITY, JUDGMENT OR DECREE, WHICH SUBCONTRACTOR OR BUILDER MAY SUSTAIN IN CONNECTION WITH ANY SUCH CLAIM, LIEN AND ANY NOTICE OF INTENT TO LIEN. As a material term to this Agreement, Contractor waives and disclaims any and all rights to file, claim, assert or otherwise a lien or lien claim of any kind for any work performed, labor, materials supplied under this Agreement or otherwise under Chapter 53 of the Texas Property Code, the Texas Constitution, or by virtue of any theory of law or principle of equity against Builder and its assigns and affiliates against any property, subdivision, community, and/or removables related to or installed on the property. Any such violation of this provision by Contractor shall be deemed to be committed with the intent to defraud and is subject to, including but not limited to Chapter 12 of the Texas Civil Practice & Remedies Code. TO BE CLEAR FROM DOUBT, TO THE FULLEST EXTENT ALLOWED UNDER LAW, CONTRACTOR HEREBY WAIVES IN WRITING ITS RIGHT TO FILE AND WAIVES AND DISCLAIMS ANY AND ALL LIEN RIGHTS UNDER THE TEXAS PROPERTY CODE AND TEXAS CONSTITUTION. Contractor shall be in default if any demand is made on Builder for amounts due to Contractor's subcontractors and suppliers, and Builder shall have the right to withhold such amounts claimed out of any and all payments due to Contractor regardless of account, location, due date or otherwise and may pay any subcontractor and/or supplier directly. Contractor has not assigned and shall not assign, any right or claim for payment from Builder or any right to perfect a lien against the Work or real property to any third party. Any assignment or attempted assignment shall be unenforceable against Builder and shall be deemed a material default of this Agreement. Contractor shall include substantially identical language to this section in all subcontracts with any of Contractor's subcontractors and shall require that all subcontractors also waive and release all liens and claims to liens as a condition to their receiving payment in accordance with and to the fullest extent permitted by law. Upon request, Contractor will provide Builder with copies of subcontracts with Contractor's subcontractors for any Work.

- 16.5. All sums owed for Work performed by Contractor shall only be due and payable by Builder or its designated affiliate. Builder and/or any other affiliate shall not be liable unless expressly named in the Project Agreement, Builder-approved invoice, and/or purchase order. Contractor acknowledges and agrees that it (i) shall seek any remedy allowed by the terms of this Agreement only against the Builder or applicable affiliate expressly named in the Project Agreement, Builder-approved invoice and/or purchase order, and (ii) releases and hereby waives any present or future claims against, and covenants not to sue, any affiliate, member, manager, officer, director, agent, or employee of Builder.
- 16.6. Builder may at any time make payment by joint check to Contractor and Contractor's subcontractors and suppliers or pay Contractor's subcontractors and/or suppliers directly and deduct the amount paid from any remaining amounts owed to Contractor in Builder's sole and exclusive discretion. If Builder receives information or has reason to believe that Contractor has not paid for any labor, equipment, materials or any of Contractor's subcontractors or suppliers, then Builder may make payment jointly to Contractor and its subcontractors and/or suppliers, or reserve the remainder of funds, if any, until all such doubt is resolved to Builder's satisfaction; it is not required that Builder has received any formal notice of lien or intent to lien to exercise Builder's rights hereunder. Nothing in this paragraph or otherwise requires Builder to make payments by joint check, and Builder may refuse to make payment pursuant to any other provision herein. Builder may, in Builder's sole and exclusive discretion, credit, debt, offset, pay or otherwise on any of Contractor's funds due on an accounting basis rather than a property-to-property basis; and Builder may further protect Builder's interests in any project by such accounting methods to insure performance by Contractor and the prevention of liens or claims of lien by third-parties; and Builder may further hold Contractor and any of Contractor's affiliates or related companies in cross-default from project-to-project as Builder deems necessary and expedient.

17. LEGAL COMPLIANCE; PERMITS; LICENSES; CONTROL; ASSIGNMENT; ADDITIONAL GENERAL TERMS

- 17.1. Contractor shall comply with all applicable Federal, State and local laws, including without limitation, all state and federal employment compensation, worker's compensation, Social Security and Occupational Safety and Health Laws and requirements. Contractor shall at all times be licensed or qualified under all applicable law or regulations necessary for the lawful performance of the Work. All permits, licenses and bonds necessary for the prosecution of the Work shall be secured and paid for by Contractor at its sole cost and expense. All certificates of every kind (except the certificate of occupancy) which any municipal department or other agency may issue with respect to the Work shall be procured and delivered to Builder at Contractor's sole cost and expense immediately upon completion of the Work.
- 17.2. Contractor shall, at its sole cost and expense, conform to the job rules established by Builder, if Builder chooses to do so. Regardless, Contractor shall comply with all specific safety requirements of all applicable federal, state and local laws, statutes, ordinances, rules or regulations. Contractor shall have and exercise full responsibility for compliance with such safety requirements by its agents, employees, subcontractors and suppliers, and shall directly receive, respond to, defend and be

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responsible for all citations, assessments, fines or penalties which may be incurred by reason of its failure, or failure on the part of its affiliates, to so comply.

Without in any manner limiting or restricting the covenants in the foregoing subparagraph, (i) Contractor acknowledges and confirms that it is thoroughly familiar with the standards, requirements and obligations of the Occupational Safety and Health Act [42 U.S.C. §651] ("OSHA"), has trained its employees and affiliates on such standards, requirements and obligations, and represents that its performance of the Work shall at all times be in full compliance with such standards, requirements and obligations; and (ii) **IN THE EVENT ANY FINE OR PENALTY IS LEVIED AGAINST BUILDER OR ITS AFFILIATES ARISING OR RESULTING FROM ANY OSHA VIOLATIONS BY CONTRACTOR OR ITS AFFILIATES, CONTRACTOR SHALL PROMPTLY REIMBURSE BUILDER AND/OR ITS AFFILIATES FOR THE FULL AMOUNT OF SUCH FINE OR PENALTY AND SHALL HOLD HARMLESS, DEFEND AND INDEMNIFY BUILDER AND/OR ITS AFFILIATES FROM AND AGAINST ALL LOSSES, COSTS, EXPENSES (INCLUDING ATTORNEY'S FEES AND COURT COSTS), JUDGMENTS AND DECREES RESULTING THEREFROM.**

- 17.3. Contractor shall maintain at all times strict discipline among his employees, agents, subcontractors and suppliers, and agrees not to employ or subcontract for Work by any person unfit or without sufficient skill to perform the job he/she is contracted to perform. If the project is a residence and Contractor is an In-home Service Company or Residential Delivery Company within the meaning of Chapter 145 of the Texas Civil Practice and Remedies Code ("TCPRC"), Contractor represents that it is in compliance with TCPRC Section 145.003(b), and shall obtain a criminal history background check as described by TCPRC Section 145.002 on any employee or agent of Contractor being sent to deliver, place, assemble, repair or install an item at the project, before such person is sent. Contractor agrees that this paragraph constitutes a request under TCPRC Sec. 145.004(2). Contractor shall not send any person for whom the criminal history record information shows a felony conviction in the 20 years preceding the date the information was obtained or a misdemeanor conviction in 10 years preceding the date the information was obtained for (a) an offense in this state classified as: (i) an offense against the person or the family; or (ii) an offense against property; or (iii) public indecency; or (b) an offense in another jurisdiction that would be classified in a category described by (a) above if the offense had occurred in this state.
- 17.4. Contractor warrants and agrees that all of Contractor's employees, subcontractors and agents who will be performing Work contemplated by this Agreement will be of legal age and otherwise legally authorized to perform such Work. Contractor further agrees to fully comply with the requirements of all applicable immigration laws including the Immigration Reform and Central Act (IRCA) with respect to all of Contractor's employees. Specifically, Contractor agrees to (1) obtain properly completed Employment Eligibility Verification Forms (Form I-9) for all of Contractor's employees as required by the IRCA and (2) verify the Social Security Numbers and other documentation submitted with each Form I-9. **CONTRACTOR AGREES TO DEFEND, HOLD HARMLESS AND UNCONDITIONALLY INDEMNIFY BUILDER AND ITS AFFILIATES AGAINST ANY AND ALL LIABILITY, COSTS, EXPENSES (INCLUDING ATTORNEY'S FEES), FINES, PENALTIES, AND CLAIMS WHICH BUILDER MAY AT ANY TIME SUFFER OR SUSTAIN OR BECOME LIABLE FOR BY REASON OF CONTRACTOR'S FAILURE TO COMPLY WITH THE PROVISIONS OF THIS PARAGRAPH.**

Contractor shall bear the cost for all physical damages that it causes to the work of other contractors and subcontractors and shall promptly repair all damages to streets, curbs, utilities, sidewalks and other property caused by Contractor or its employees, agents, subcontractors or suppliers.

- 17.5. Contractor's rights and obligations under this Agreement are nontransferable and non-assignable, and Contractor shall not subcontract all or any part of the Work contemplated by this Agreement without obtaining the prior written consent of Builder, which consent may be withheld in Builder's sole and absolute discretion. No such written consent shall release Contractor from any obligation of Contractor to Builder. Any purported assignment or subcontract in violation of this section shall be unenforceable as to Builder. Subject to the foregoing restrictions and prohibitions on assignments and subcontracts, each and all of the covenants and conditions of this Agreement will inure to the benefit of the successors in interest of Builder, and bind the successors, heirs, representatives, assigns or otherwise of Contractor. As used in this section, "successors" means successors to the parties' interest in the Work, successors to all or substantially all of the parties' assets, and successors by merger or consolidation. This Agreement shall be construed as evergreen and will remain controlling and applicable to all Work and projects as set forth herein. As such, Builder may freely assign this Agreement and all such maturations, supplements, amendments and/or otherwise without recourse to any third-party whatsoever, including but not limited to one or more other entities not yet in existence or as may be expedient for Builder, and such assignment may be effectuated with or without notice to Contractor and without a need for approval from Contractor.
- 17.6. Contractor is advised that Builder may be associated with one or more publicly-traded entities and, as such, Contractor may be subject to certain additional requirements and audit compliance. Importantly, Contractor shall avoid any conflicts of interest in

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the performance of the Work, including but not limited to the taking or giving of anything of value outside the terms and conditions of this Agreement. Builder believes in proper reporting of internal and external unlawful and other wrongful behavior. General examples of illegal or dishonest activities include violations of federal, state or local laws; billing for services not performed or for goods not delivered; and other fraudulent financial reporting. If Contractor has knowledge or concern of illegal, dishonest or fraudulent activity, Contractor shall promptly provide written notice of same to Builder.

- 17.7. Any and all funds paid to Contractor hereunder are hereby deemed to constitute trust funds in the hands of Contractor, and upon receipt of such funds Contractor shall apply such funds to each residence as required by applicable law and as follows: (1) to the payment of all direct labor costs and related taxes and fringe benefits; (2) to claims of Contractor's subcontractors and suppliers; (3) to claims for any utilities furnished and taxes imposed; (4) to the payment of premiums of surety bonds and other bonds filed and premiums on insurance accruing during the construction of the Work; and (5) to the payment of all other expenses associated with the Work. Contractor shall satisfy all of the foregoing before Contractor applies any funds payable to Contractor for any other purpose, including but not limited to Contractor's own use. Contractor shall provide an accounting to Builder immediately upon request to evidence compliance with this provision and/or the other terms and conditions herein.
- 17.8. To the maximum extent allowed by law, all requests or demands for payment of any kind that are submitted after ninety (90) days from the earlier of the date of completion of the Work (i.e. the cessation of labor and the provision of professional services, materials or equipment) or the date a certificate of occupancy or equivalent approval has been issued with regard to the house for which the Work was completed, will not be paid, and Builder shall be and is released of all liability for payment under the terms of this Agreement for such delinquent requests or demands for payment.
- 17.9. Contractor acknowledges and understands that all information relating in any way to Builder or its business or affairs, whether written or oral, obtained by Contractor in connection with the Work provided as part of this Agreement or otherwise and any information regarding the terms and conditions set forth in this Agreement ("Confidential Information") shall, unless otherwise specified by Builder in writing, be deemed confidential. Contractor acknowledges and understands that Contractor's unauthorized disclosure of any Confidential Information would be extremely prejudicial to Builder, and Contractor is liable for any damages associated therewith.
- 17.10. Contractor understands and agrees that the failure to enforce any provision of this Agreement by Builder is not to be deemed an amendment of this Agreement and is not to be treated as a waiver of Builder's right to enforce said provision for all purposes at any time.
- 17.11. If any provision of this Agreement is determined to be invalid, illegal or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect as if such provision did not exist. In the event of any such determination, the parties agree to negotiate in good faith to modify this Agreement to fulfill as closely as possible the original intent and purposes hereof. To the extent permitted by law, the parties hereby to the same extent waive any provisions of law that renders any provision hereof prohibited or unenforceable in any respect.
- 17.12. In no event shall either party be entitled to any interest on any sum due hereunder in excess of that permitted by applicable law. Notwithstanding anything to the contrary herein, any reference herein to interest accruing on any sum due hereunder shall be deemed to be the lower of the interest rate stated herein or the maximum rate allowed by law.
- 17.13. Any covenants, terms and conditions of a continuing nature shall survive final payment, completion, and acceptance of the Work under this Agreement and any termination of this Agreement.
- 17.14. This Agreement shall be deemed executed and approved in Texas. The terms and conditions of this Agreement shall be interpreted and applied in accordance with the laws of the state where the Work is or was performed.
- 17.15. Contractor agrees to perform all of its obligations in strict accordance with the terms of this Agreement.
- 17.16. The venue for any disputes between Builder and Contractor shall be as follows: (1) third party actions - if Builder is involved in litigation or arbitration with a third party and Builder or any other party joins Contractor as a party to the litigation or arbitration, Contractor consents to be joined in that forum and venue; (2) other actions or disputes - in all other situations, venue shall be in the state or federal court, or in the arbitration tribunal or service as applicable, located in the state and county where the subject Work is located.
18. **INSURANCE.** The Contractor, at its own expense, shall obtain and maintain in full force and effect, without interruption during the term of the Agreement, the following minimum levels of insurance:
 - 18.1. Workers' Compensation insurance covering the legal liability of the Contractor and its subcontractors under the applicable

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workers' compensation or occupational disease laws. The Subcontractor shall also obtain a minimum of \$500,000 of Employers' Liability insurance.

- 18.2. Commercial General Liability insurance covering the legal liability (including liability assumed contractually, whether incidental or not) of the Contractor who may be engaged in the Work, for claims for personal injuries (including death) and property damage resulting therefrom arising out of the services to be performed by the Contractor, in an amount not less than \$1,000,000 for any one occurrence, \$2,000,000 general aggregate (subject to a per project general aggregate provision), \$1,000,000 Products/Completed Operations aggregate limit.
 - 1) Commercial General Liability insurance shall be obtained and shall include coverage for ongoing and products/completed operations.
 - 2) Builder as well as its directors, officers and employees shall be named as additional insureds on such Commercial General Liability policy regarding liability arising out of ongoing and completed operations.
 - 3) Any additional insured form must provide coverage for ongoing operations and Products/Completed Operations. Acceptable forms include ISO Forms GC 2010 and CG 2037.
 - 4) ISO Form CG 22 94 or its equivalent language (removing the subcontractor exception from the "Your Work" exclusion) shall not be used.
- 18.3. Automobile Liability insurance covering the legal liability (including liability assumed contractually, whether incidental or not) of the Contractor who may be engaged in the services, and caused by vehicles licensed for public road use used by the Contractor in an amount not less than: \$300,000 combined single limit. Automobile Liability insurance shall provide coverage for owned, hired or non-owned automobile or other automotive equipment. Builder shall be named as an additional insured under any such auto policies. Contractor and its carrier waive any and all rights of subrogation against Builder and its affiliates and employees.
- 18.4. The "additional insured" insurance coverage provided by the Contractor shall be primary and non-contributory, and name Builder and its affiliates as and additional insured.
- 18.5. With respect to each Project, Contractor shall maintain general liability insurance which includes products completed operation coverage for a minimum of ten (10) years following issuance of a certificate of occupancy for each such Project or substantial completion, whichever is later.
- 18.6. Any insurance or self-insurance maintained by Builder will be considered excess of the Contractor's insurance.
- 18.7. All certificates of insurance must be provided by Contractor prior to any Work.
- 18.8. The Contractor, in its agreements with subcontractors, shall require subcontractors to obtain insurance meeting the minimum limits and incorporating the contractual requirements prescribed by this Section.
- 18.9. The Contractor hereby waives and relinquishes any right of subrogation against Builder and its agents, representatives, employees, and affiliates they might possess for any policy of insurance provided or otherwise available.
- 18.10. Contractor shall require its insurer to notify Builder thirty (30) days prior to the effective date of any cancellation or material change in any of the required policies.
19. **INSPECTION OF DOCUMENTS.** Upon reasonable notice, at reasonable times, and at Builder's cost, Builder or a third party retained by Builder shall have the right to access Contractor's non-proprietary and non-confidential books, records and documentation related to this Agreement for the purpose of verifying Contractor's performance of its obligations under this Agreement.
20. **TERMINATION**
 - 20.1. Termination for Cause. Builder reserves the right to terminate this Master Agreement and/or any Work, in whole or in part, upon written notice to Contractor, if Contractor breaches this Agreement, including but not limited to, failing to provide necessary services and/or materials in a diligent, timely and good and workmanlike manner, and which is in accord with the highest industry standards for such services and materials, as determined by Builder in its sole and absolute discretion. If Contractor disputes Builder's termination for cause, and if it is finally determined by the finder or fact or agreed that such termination was improper or wrongful, then the parties agree that such termination shall be deemed a Termination for Convenience, as defined herein. Further, without limitation of any other provision herein, Builder may hold Contractor in cross-default and material breach of this Agreement and withhold, offset or back charge any and all payments to Contractor and/or take any other action necessary to protect the interests of Builder, and Builder's exercise of its right to withhold such amounts

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claimed out of any and all payments to Contractor regardless of account, location, due date or otherwise shall not be a breach of this or any other Agreement.

- 20.2. Termination for Convenience. Builder may, at any time, terminate this Master Agreement and/or any Work, in whole or in part, for its convenience and without cause, immediately effective upon written notice to the Contractor. Contractor waives any claims for damages, including lost profits, arising from any such termination, and Contractor's sole and exclusive remedy will be reimbursement for the value of all proper material actually delivered and/or services actually rendered in the standards required in this Master Agreement. All other obligations shall survive such termination and are not waived by any such termination.
- 20.3. Limitation of Liability. Under no circumstances will Builder be liable to Contractor for loss of profits or revenue, or incidental, consequential, special, or exemplary damages of any nature, by reason of termination or any other cause.
21. **MEDIATION, ARBITRATION AND WAIVER OF TRIAL BY JURY**. The parties to this Agreement specifically agree that the transactions contemplated herein involve interstate commerce.

MEDIATION OR ARBITRATION BETWEEN BUILDER AND FINAL PURCHASER – At its own expense, Contractor agrees to and shall participate in any mediation or arbitration between Builder and final purchaser, if so requested by Builder. The mediation and, if applicable, arbitration of any disputes involving Builder, a final purchaser and Contractor shall be conducted before the mediator or arbitrator named in the warranty documents given by Builder to the final purchaser, if any, or the mediator or arbitrator selected under the provisions of the contract between Builder and the final purchaser.

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

Notwithstanding anything herein to the contrary, these mediation and arbitration provisions shall conform the intent of Builder in having any and all multiple party disputes resolved in one mediation and arbitration to the extent possible. Moreover, the parties hereby unconditionally and voluntarily waive the right to trial by jury and trial by a judge. Any party or successor in interest to this Agreement who prevails in any court proceeding to compel arbitration and/or stay litigation commenced in disregard of this arbitration agreement, or any opposed proceeding to confirm or vacate an arbitration award, shall recover reasonable attorney's fees from the non-prevailing party.

ARBITRATION - In any arbitration proceeding involving the parties:

- 21.1.1. All applicable Federal and State law shall apply, but the proceeding shall be conducted in accordance with the AAA Construction Industry Arbitration Rules;
- 21.1.2. All applicable claims, causes of action, remedies and defenses that would be available in court shall apply;
- 21.1.3. The proceeding shall be conducted by a single arbitrator selected by a process designed to ensure the neutrality of the arbitrator;
- 21.1.4. The parties shall be entitled to conduct reasonable and necessary discovery;
- 21.1.5. The arbitrator shall render a written award and, if requested by any party, a reasoned award;
- 21.1.6. Any award rendered in the proceeding shall be final and binding and judgment upon any such award may be entered in any court having jurisdiction.

22. **PERSONAL GUARANTY**. In consideration of Builder entering into this Agreement, Contractor agrees the undersigned

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principal owner(s) of Contractor shall be individually bound to this Agreement, each of whom hereby personally guarantee the full and prompt payment of all sums due to all employees, agents, subcontractors, material suppliers and labor suppliers of Contractor who furnish labor or materials to Contractor under this Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

[Signature Page Follows]

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date indicated herein.

CONTRACTOR:

[Contractor corporate entity name]

By: _____
Name: _____
Title: _____

BUILDER:

[Builder entity name]

By: _____
Name: _____
Title: _____

INFORMATION FOR NOTICES:

CONTRACTOR:

Address: _____

Fax No.: _____
Main Telephone: _____
Email address: _____
Principal Contact: _____
Phone: _____
Field Contact: _____
Phone: _____
Federal Tax ID: _____
State Tax ID: _____

BUILDER:

Address: _____

Fax No.: _____
Telephone: _____
Email address: _____
Principal Contact: _____