



# CONSTRUCTION CONTRACT FOR NEW HOME (Without Lot)



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## RECEIPT

1. Received from \_\_\_\_\_ ("Owner").

2. **Agency Confirmation:** Broker named on Line 17-18 is the agent of (check one):  
3.  the Owner exclusively; or  the Contractor exclusively; or  both the Owner and Contractor.

4. **Earnest Money:** Earnest money shall be held by Broker until offer is accepted. Upon acceptance, Broker shall promptly deposit the  
5. earnest money as indicated below. If the check is payable to Broker, Broker may deposit the check in Broker's trust account or endorse  
6. the check without recourse and deposit it with a duly licensed escrow company. Owner agrees that, if Owner breaches this Contract,  
7. any earnest money is subject to forfeiture. If any check for earnest money is dishonored for any reason, Contractor may, at Contractor's  
8. option, immediately cancel this Contract pursuant to Lines 232-241. Unless otherwise provided herein, all earnest money is consid-  
9. ered to be part of the purchase price for construction of a New Home on the Property described below.

10. a. Amount of Earnest \$ \_\_\_\_\_ b. Form of Earnest Money:  Personal Check  Other: \_\_\_\_\_ c. Deposited With:  Broker's Trust Account  Escrow Company: \_\_\_\_\_  Contractor

12. **ADVANCED DEPOSITS:** OWNER IS ADVISED THAT ANY EARNEST MONEY DEPOSITS, DOWN PAYMENTS AND OTHER  
13. ADVANCED MONIES PAID DIRECTLY TO THE CONTRACTOR MAY BE USED BY THE CONTRACTOR. THIS MEANS THE  
14. OWNER ASSUMES A RISK OF LOSING SUCH MONIES IF THE CONTRACTOR IS UNABLE OR UNWILLING TO PERFORM  
15. UNDER THE TERMS OF THE CONTRACT.

16. **OWNER'S INITIALS REQUIRED** \_\_\_\_\_ OWNER \_\_\_\_\_ OWNER

17. **Received By:** \_\_\_\_\_ (PRINT SALES PERSON'S NAME AND AGENT CODE) \_\_\_\_\_ (SALESPERSON'S SIGNATURE) \_\_\_\_\_ (MO/DA/YR)

18. \_\_\_\_\_ (PRINT NAME OF FIRM) \_\_\_\_\_ (OFFICE CODE) \_\_\_\_\_ (TELEPHONE)

## OFFER

19. Owner and \_\_\_\_\_, a licensed contractor,  
20. Arizona Contractor's License # \_\_\_\_\_ and Bond # \_\_\_\_\_ in the State of Arizona ("Contractor")  
21. agree as follows: Contractor agrees to construct a New Home on the following real property owned by the Owner ("Property").

22. New Home Address: \_\_\_\_\_ Assessor # \_\_\_\_\_  
23. City: \_\_\_\_\_ County: \_\_\_\_\_ AZ, Zip Code: \_\_\_\_\_  
24. Legal Description: \_\_\_\_\_

25. **Personal Property Included:** \_\_\_\_\_  
26. Personal property included herein shall be transferred with no monetary value, in AS-IS CONDITION, FREE AND CLEAR OF ANY  
27. LIENS OR ENCUMBRANCES, and CONTRACTOR MAKES NO WARRANTY of any kind, express or implied (including, without  
28. limitation, ANY WARRANTY OF MERCHANTABILITY).

29. Owner agrees to pay Contractor as follows.  
30. a. \$ \_\_\_\_\_ Full Contract Price, payable as outlined below:  
31. b. \$ \_\_\_\_\_ Earnest Money as indicated above  Non-refundable (**OWNER'S INITIALS REQUIRED**) \_\_\_\_\_ OWNER \_\_\_\_\_ OWNER

32. c. \_\_\_\_\_  
33. d. \$ \_\_\_\_\_ Balance of down payment to be paid by Owner on or before start of construction; or  \_\_\_\_\_  
34. to  Escrow Company  Broker's Trust Account  Contractor;  
35. (**OWNER'S INITIALS REQUIRED**) \_\_\_\_\_ OWNER \_\_\_\_\_ OWNER

Initials: \_\_\_\_\_ / \_\_\_\_\_ CONTRACTOR CONTRACTOR Initials: \_\_\_\_\_ / \_\_\_\_\_ OWNER OWNER

- 36. e. \$ \_\_\_\_\_ Balance due on Contract Price (final payment) shall be paid by:
- 37.  Certified check at Closing Date
- 38.  Cash (with draws as indicated on Lines 43-54.)
- 39.  Net Proceeds of a new first loan which shall be:
- 40.  Conventional (refer to Lines 55-83)
- 41.  FHA [Note: Terms of FHA financing to be negotiated by separate agreement between Owner, Contractor and Lender].
- 42.  VA [Note: Terms of VA financing to be negotiated by separate agreement between Owner, Contractor and Lender].

**CASH**

- 43. If this is an all-cash sale with draws, the draw schedule shall be as follows:
- 44. **Draw Schedule:** The Balance due as indicated on Line 36 shall be paid by certified funds directly to the Contractor, based upon the following
- 45. schedule with inspections of completed items to be performed by \_\_\_\_\_ (INSPECTOR'S NAME)
- 46. within two business days of request for draw.
- 47. \$ \_\_\_\_\_ First Draw, to be delivered to Contractor upon completion of \_\_\_\_\_
- 48. \$ \_\_\_\_\_ Second Draw, to be delivered to Contractor upon completion of \_\_\_\_\_
- 49. \$ \_\_\_\_\_ Third Draw, to be delivered to Contractor upon completion of \_\_\_\_\_
- 50. \$ \_\_\_\_\_ Fourth Draw, to be delivered to Contractor upon completion of \_\_\_\_\_
- 51. \$ \_\_\_\_\_ Fifth Draw and Final Payment, to be delivered to Contractor **within five (5) days** of completion of
- 52. construction of the New Home per Lines 116-127.
- 53. Contractor agrees to provide:  notarized lien waivers to the Owner for the completion of work performed for each successive draw; or
- 54.  \_\_\_\_\_

**FINANCING**

- 55. **Type of Financing:**  Conventional  FHA  VA  \_\_\_\_\_
- 56. This sale is contingent upon Owner qualifying for  permanent loan only  permanent loan and interim loan
- 57. **Conditional Loan Approval:** Conditional Loan Approval ("CLA") is attached, or  shall be delivered to Contractor within \_\_\_\_\_ days
- 58. after acceptance of the Contract. The written CLA from the Owner's lender must be based on a loan application and Trimerge
- 59. Residential Credit Report ("TMRCR"). Owner agrees to supply all documentation required by the lender. If such Conditional Loan
- 60. Approval is not received within the time specified, then Contractor may give Owner a five (5) day written notice to perform. If Owner does
- 61. not deliver to Escrow Company written conditional loan approval within said five (5) days, then this Contract shall be deemed cancelled
- 62. and all earnest money shall be released to Owner without further written consent of the parties and without regard to cancellation provi-
- 63. sions provided for elsewhere in this Contract. Owner instructs lender to send copies of such approval to Broker(s) and Contractor. Owner
- 64. authorizes the lender to provide loan status updates to Broker(s).
- 65. **Permanent Loan Amount:** \$ \_\_\_\_\_ If applicable, upfront MIP or VA funding fee may be added to the loan.
- 66. **Term of Loan:** \_\_\_\_\_
- 67. **Type Of Loan:**  Fixed Rate  Adjustable Rate  Other \_\_\_\_\_
- 68. **Interim Loan:** If an interim loan is required, within **twenty (20)** days or  \_\_\_\_\_ days after acceptance of this Contract, Contractor
- 69. and Owner shall agree with the lender upon the terms, conditions and costs of the interim loan.
- 70. **Appraisal:** The Buyer's obligation to complete this contract is contingent upon an appraisal of the Premises by an appraiser acceptable to
- 71. the lender for at least the sales price. The party responsible for paying for the appraisal shall do so within **five (5) days after Contract**
- 72. **acceptance or**  \_\_\_\_\_. Failure to pay for appraisal within the time specified shall
- 73. constitute a material breach of this Contract rendering the Contract subject to cancellation as provided in Lines 232-241 of this Contract.

Initials: \_\_\_\_\_ / \_\_\_\_\_  
CONTRACTOR CONTRACTOR

Initials: \_\_\_\_\_ / \_\_\_\_\_  
OWNER OWNER

74. **Loan Costs:** Private Mortgage Insurance is required for certain types of loans and will be paid by Buyer at the Close of Escrow in a  
 75. manner acceptable to lender. The following may be paid by either party:

76. **Discount points paid by:**  Owner  Contractor  Other \_\_\_\_\_

77. **Discount points shall not exceed:** \_\_\_\_\_ total points. (does not include origination fee)

78. 

	Owner Contractor		Owner Contractor
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79. A.L.T.A. Lender Title Insurance Policy... ..... Loan Origination Fee (Not to exceed \_\_\_\_\_% of loan amount) ..... .....

80. Credit Report ..... .....

81. Appraisal Fee..... ..... ..........Paid by Owner and..... .....Paid by Contractor and

82. \_\_\_\_\_ reimbursed by Contractor at closing \_\_\_\_\_ reimbursed by Owner at closing

83. Any additional loan costs not otherwise agreed upon by Contractor shall be paid by Owner.

**GENERAL LOAN PROVISIONS**

84. **Occupancy:** Owner intends to occupy the New Home as:  primary residence;  secondary residence; or  
 85.  Owner does not intend to occupy the Premises.

86. **Release of Broker:** Any loan described in this Contract will be independently investigated and evaluated by Owner, who hereby  
 87. acknowledges that any decision to enter into any loan arrangements with any person or entity will be based solely upon such indepen-  
 88. dent investigation and evaluation. Owner and Contractor further release, hold harmless and indemnify Broker(s) from any and all liability  
 89. regarding loan arrangements and acknowledge that no Broker is responsible for Owner's or Contractor's decisions concerning the desir-  
 90. ability or acceptability of any loan or any terms thereof.

91. **Changes:** Owner shall not make any changes in the loan program or financing terms described in this Contract without the prior written  
 92. consent of Contractor unless such changes do not adversely affect Owner's ability to qualify for the loan, increase Contractor's costs, or  
 93. delay the closing date.

94. **Return of Earnest Money:** Unless otherwise provided herein, Owner is entitled to a return of the earnest money, if after a diligent and  
 95. good faith effort, Owner does not qualify for a loan(s) described in this Contract. Owner is aware that the failure to have the funds nec-  
 96. essary to obtain the loan and close this transaction shall be considered a material breach of contract and not a failure to qualify for the  
 97. loan. Owner acknowledges that pre-paid items paid separately from the earnest money are not refundable.

**TITLE AND ESCROW**

98. **Escrow:** This Contract will be used as escrow instructions. The Escrow Company employed by the parties to carry out the terms of this  
 99. Contract shall be: \_\_\_\_\_  
 100. \_\_\_\_\_  
 ("ESCROW COMPANY") (TELEPHONE)

101. **Title Insurance:** Owner acknowledges that Owner has the responsibility to acquire Owner's title insurance for the value of the New  
 102. Home. Terms of Owner's title policy to be negotiated by separate agreement between Owner and Escrow Company.

**CONSTRUCTION TERMS**

103. **Construction:** The construction of the New Home shall be completed in compliance with the plans and specifications in any Addendum  
 104. referenced on Lines 316-317 and in compliance with any applicable governmental regulations or deed restrictions. Contractor shall have the  
 105. right to substitute any materials or fixtures specified in the plans and specifications with those of substantially comparable or of better quality  
 106. upon notice to Owner.

107. **Governmental Fees:** Contractor shall be responsible for payment of taxes, license fees, permit fees, inspection fees, and any other  
 108. governmental fees or charges.

109. **Tests and Surveys:** Owner and Contractor acknowledge that responsibility for soil tests, percolation tests, surveys, and/or staking  
 110. and flagging shall be by separate written agreement.

111. **Insurance:**  Owner  Contractor shall provide Course of Construction Insurance and Liability Insurance from start of construction  
 112. until construction is complete. If applicable, Contractor agrees to provide Owner proof of insurance at least five (5) days prior to start of  
 113. construction. Owner may wish to carry additional liability insurance during course of construction. Owner's shall have the appropriate  
 114. insurance in place at completion of construction. Contractor and Owner specifically release Broker(s) from any obligations relating to  
 115. such insurance.

116. **Construction Schedule:** (a) Contractor will complete construction of the New Home within  \_\_\_\_\_ days from date of Conditional Loan  
 117. Approval or  \_\_\_\_\_ days from \_\_\_\_\_. The final inspection and approval of the New Home by  
 118. the applicable governmental authority, as evidenced by the issuance of a Certificate of Occupancy or other final approval, shall constitute

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119. completion of the New Home. Contractor makes no representation as to the specific completion date or schedule of construction other than as set forth herein. The time by which the New Home shall be completed may be extended by written agreement of the Contractor and Owner and shall be extended automatically for the length of any delays resulting from matters outside Contractor's control that make timely completion impossible, including, but not limited to: labor strikes, slow-downs, lock-outs, material or labor shortages, any action of the federal, state or local authorities having jurisdiction over the New Home or affecting Contractor's ability to perform, civil disorder, fire, unusual weather conditions, or acts of God. Contractor shall give Owner written notice within twenty-one (21) days after occurrence of the event if any such event is the basis for a claim for an extension of time in which construction will be completed. In the event that construction is not completed within the agreed upon time period, or any extension thereof, Owner shall have the remedies provided herein.

128. **Owner's Construction Obligation:** Owner shall select all of Owner's interior and exterior color and material selections, including, but not limited to, carpeting, flooring, cabinetry, counter tops, and all other selections necessary or appropriate to complete construction, from color and material samples provided by the Contractor, and communicate all Owner's selections to Contractor within  \_\_\_\_\_ days of Contractor's acceptance of this Contract or  \_\_\_\_\_ days of Owner's receipt of samples. Owner's selections shall be final and binding. If Owner has not made selections within the time period allowed, Contractor, at Contractor's discretion, may make such color and material selections for Owner and Owner agrees, understands and accepts that in such case Contractor's selections shall be binding upon Owner. Alternatively, Owner may select certain color schemes, upgrades and appliances not included among the standard selections provided by Contractor, which shall otherwise be known as "Cash Extras" and agreed upon by a separate written agreement.

137. **Termite Pre-Treatment:** Contractor shall provide pre-construction treatment of the soil for control of subterranean termites in accordance with the Structural Pest Control Commission laws and administrative rules. Contractor agrees to provide evidence of pre-construction treatment to Owner within ten (10) days after completion of treatment.

140. **Adverse Excavation:** Owner understands that the Contract Price shall be adjusted according to the time and materials expense charged to Contractor for any adverse grading and excavation. Contractor makes no representation regarding the amount of such adjustment, which shall be charged according to all costs and expenses incurred by Contractor for grading and excavation and a mark up of  \_\_\_\_\_% above actual costs verified by the sub-contractor invoice, not to exceed  \_\_\_\_\_. Contractor agrees to promptly notify Owner of any such possible additional charges.

145. **Site Maintenance:** Contractor shall maintain a clean and safe work site and shall be responsible to remove all waste and rubbish at the end of construction. Owner grants permission for Contractor and Broker(s) to place one sign each on the property not to exceed applicable local regulations.

148. **Insulation:**  Ceiling insulation of \_\_\_\_\_ type will be installed at a thickness of \_\_\_\_\_ and a R-value of \_\_\_\_\_;  Exterior wall insulation of \_\_\_\_\_ type will be installed at a thickness of \_\_\_\_\_ and a R-value of \_\_\_\_\_;  The type of insulation is yet to be determined. Contractor agrees to provide Owner with a receipt stating the type, thickness and R-value of the insulation as soon as the determination regarding insulation is made.

152. **Change Orders:** Any change orders relating to the construction of the New Home shall be between Owner and Contractor by separate written agreement.

154. **Closing Date:** Contractor and Owner will comply with all terms and conditions of this Contract, including final payment by Owner, within five (5) days of completion of construction of the New Home as provided for on Lines 116-127. Contractor agrees to give Owner written notice of pending Closing Date  \_\_\_\_\_days prior to completion of construction.

157. **Keys:** After final payment Contractor shall provide Owner with keys and/or means to operate all locks, mailbox, security systems/alarms.

### INSPECTIONS AND WARRANTIES

159. **Final Walk-Through:** Upon completion of construction and prior to Closing Date the Owner and/or Owner's representative shall inspect the New Home in the presence of the Contractor. Upon the conclusion of this inspection, the Owner shall immediately notify the Contractor in writing of any claim by the Owner of deficiencies in workmanship or materials. The Contractor shall correct at Contractor's cost within a reasonable period of time any items noted by the Owner or Owner's representative that are, in the good faith judgment of the Contractor, deficient in workmanship and/or materials according to the standard in the industry and the requirements of the Arizona Registrar of Contractors. Unless otherwise required by law, the Contractor has no obligation to correct any items not due to deficient workmanship and/or materials. Owner understands that the Contractor may encounter delays in correcting any defects because the primary responsibility for correcting the defects may be that of a subcontractor or a supplier whose time schedule is not controlled by the Contractor. Contractor's obligation to correct any defects noted by the Owner shall not entitle Owner to delay final payment, or to demand any conditions not specified in this Contract. In the event of substantial deficiencies in workmanship, materials or incomplete work in excess of industry standards, Contractor and Owner shall list such items in writing at walk-through and Contractor shall deliver, in writing, an agreement to complete said items within a reasonable time thereafter. Owner may retain from final payment a sum of equal to 150% or  \_\_\_\_\_ of the agreed upon estimated cost of completing such items and pay the Contractor the amount retained as each of the items is completed.

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173. **SQUARE FOOTAGE: OWNER IS AWARE THAT ANY REFERENCE TO THE SQUARE FOOTAGE OF THE NEW HOME IS APPROXIMATE.**  
174. **IF SQUARE FOOTAGE IS A MATERIAL MATTER TO THE OWNER IT MUST BE VERIFIED PRIOR TO CLOSING DATE.**

175. **Notice to Owner of Swimming Pool Barrier Regulations (Initials Required):** Contractor and Owner acknowledge that the State of  
176. Arizona has swimming pool barrier regulations which are outlined in the Arizona Department of Health Services Private Pool Safety Notice.  
177. A swimming pool is defined as an above or below ground swimming pool or contained body of water intended for swimming, exclusive of  
178. public or semi-public swimming pools ("Swimming Pool"). The parties further acknowledge that the county or municipality in which the  
179. New Home is located may have different swimming pool barrier regulations than the state. Prior to Close of Escrow, Owner agrees to  
180. investigate all applicable state, county, and municipal Swimming Pool barrier regulations and, unless otherwise agreed in writing, agrees  
181. to comply with and pay all costs of compliance with said regulations prior to possession of the New Home. **OWNER'S INITIALS**  
182. **ACKNOWLEDGE 1) EXISTENCE OF SWIMMING POOL BARRIER REGULATIONS and 2) IF THIS NEW HOME CONTAINS A SWIM-**  
183. **MING POOL, RECEIPT OF THE ARIZONA DEPARTMENT OF HEALTH SERVICES APPROVED PRIVATE POOL SAFETY NOTICE**  
184. **AS REQUIRED BY A.R.S. §36-1681 (E). (OWNER'S INITIALS REQUIRED)** \_\_\_\_\_ OWNER \_\_\_\_\_ OWNER

185. Owner and Contractor expressly relieve and indemnify Broker(s) from any and all liability and responsibility for compliance with the  
186. applicable swimming pool barrier regulations.

187. **Contractor Warranties:** Contractor expressly warrants that all work performed by Contractor in connection with the construction of the  
188. New Home will be performed in a workmanlike manner and be of a quality which is standard in the industry, and in conformance with the  
189. requirements of the Arizona Registrar of Contractors. Contractor warrants the construction of the New Home against defects in workman-  
190. ship and materials as provided for by Arizona law and Contractor will, at Contractor's own expense, make any and all repairs and replace-  
191. ments made necessary as a result of defective workmanship of materials, provided however, Contractor is granted reasonable access to  
192. the New Home during normal business hours. This warranty is applicable only to requests for repair and replacement reported in writing to  
193. Contractor. This warranty does not apply to defects caused by normal wear and tear, insubstantial variances or defects, acts of God, faulty  
194. maintenance, operation or abusive use, or other acts or events beyond Contractor's control. Contractor's warranty shall in no event extend  
195. to any consumer product, appliance, air conditioning unit, furnace, water heater, or other products included in the New Home that are con-  
196. sidered "consumer products" as defined by the Federal Trade Commission for purposes of the Magnuson Moss Warranty - Federal Trade  
197. Commission Improvement Act (15 U.S.C. §§ 2301, et seq.) that may be included in this transaction. Contractor hereby assigns to Owner  
198. any manufacturer's warranty issued to Contractor, to be effective upon closing, without recourse to Contractor, all rights under said manu-  
199. facturers' warranties, as are assignable, on appliances and any other consumer products included in the New Home. **OWNER MAY**  
200. **HAVE ADDITIONAL RIGHTS, REMEDIES, AND WARRANTIES BEYOND THOSE CONTAINED IN THIS CONTRACT.**

**REMEDIES**

201. **Remedies for Breach:** If either party breaches in any respect on any material obligations under this Contract, the non-breaching party  
202. may elect to be released from all obligations under this Contract by cancelling this Contract as provided in Lines 232-241. The non-  
203. breaching party may thereafter proceed against the party in breach upon any claim or remedy which the non-breaching party may have  
204. in law or equity including, but not limited to, any and all remedies available to the non-breaching party through the Arizona Registrar  
205. of Contractors. In the case of the Contractor, because it would be difficult to fix actual damages in the event of Owner's breach, the  
206. amount of the earnest money may be deemed a reasonable estimate of the damages; and Contractor may at Contractor's option  
207. accept the earnest money deposit, subject to any compensation to Broker(s), as Contractor's sole right to damages. In the event that  
208. the non-breaching party elects not to cancel this Contract, the non-breaching party may proceed against the party in breach for spe-  
209. cific performance of this Contract or any of its terms, in addition to any claim or remedy which the non-breaching party may have in  
210. law or equity. In the event that either party pursues specific performance of this Contract, that party does not waive the right to cancel  
211. this Contract pursuant to Lines 232-241 at any time and proceed against the breaching party as otherwise provided herein, or in law  
212. or equity. If Owner or Contractor files suit against the other to enforce any provision of this Contract or for damages sustained by rea-  
213. son of its breach, all parties prevailing in such action, on trial and appeal, shall receive their reasonable attorneys' fees and costs as  
214. awarded by the court. In addition, both Contractor and Owner agree to indemnify and hold harmless all Brokers against all costs and  
215. expenses that any Broker may incur or sustain in connection with any lawsuit arising from this Contract and will pay the same on  
216. demand unless the court grants judgment in such action against the party to be indemnified. Costs shall include, without limitation:  
217. attorneys' fees, expert witness fees, fees paid to investigators and court costs.

218. **Liquidated Damages for Delay:** Should Owner not timely perform all of Owner's obligations on Closing Date as provided in  
219. Lines 154-156, Owner shall pay to Contractor to compensate Contractor for the delay, as liquidated damages and not as a penalty, the  
220. amount of \$ \_\_\_\_\_ per day from the day following completion of construction until Owner's obligations are performed, unless  
221. Contractor elects to pursue Contractor's remedies as set forth on Lines 201-217, or unless such non-performance by the Owner  
222. is caused by the Contractor's non-performance of any terms or conditions hereof. Should Contractor not timely perform all of  
223. Contractor's obligations hereunder, including, but not limited to, the failure to complete construction by the date set forth on  
224. Lines 116-127, Contractor shall pay to Owner, to compensate Owner for the delay, as liquidated damages and not as a penalty,  
225. the amount of \$ \_\_\_\_\_ per day from the date construction should have been completed, until the date that completion of  
226. construction actually occurs, unless Owner elects to pursue Owner's remedies as set forth on Lines 201-217, or unless such non-  
227. performance by the Contractor is caused by the Owner's non-performance of any terms or conditions hereof.

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228.  
229.  
230.  
231.

**UNDER ARIZONA REVISED STATUTES SECTION 32-1155, A BUYER OF A DWELLING HAS THE RIGHT TO FILE A WRITTEN COMPLAINT AGAINST THE HOMEBUILDER WITH THE ARIZONA REGISTRAR OF CONTRACTORS WITHIN TWO YEARS OF THE COMMISSION OF AN ACT IN VIOLATION OF ARIZONA REVISED STATUTES SECTION 32-1154, SUBSECTION A.**

**(BUYER'S INITIALS REQUIRED)** \_\_\_\_\_

BUYER

BUYER

232. **Cancellation:** Except as otherwise provided herein, any party who wishes to cancel this Contract because of any material breach by  
233. another party, and who is not himself in breach of this Contract, except as occasioned by a breach by the other party, may cancel this  
234. Contract by delivering a notice to either the breaching party or the Escrow Company stating the nature of the breach and that this  
235. Contract shall be cancelled unless the breach is cured within \_\_\_\_\_ days following the delivery of the notice. If this  
236. notice is delivered to the Escrow Company, it shall contain the address of the party in breach. Any notice delivered to any party must  
237. be delivered to the Brokers and the Escrow Company. Within three (3) days after receipt of such notice, the Escrow Company shall  
238. send the notice by mail to the party in breach at the address contained in the notice. No further notice shall be required. In the event  
239. that the breach is not cured within the stated days following the delivery of the notice to the party in breach or to the Escrow Company,  
240. this Contract shall be cancelled; and the non-breaching party shall have all rights and remedies available at law or equity for the breach  
241. of this Contract by the breaching party.

242. **Release of Earnest Money:** In the event of a dispute between Owner and Contractor regarding earnest money deposited with Escrow  
243. Company, Owner and Contractor authorize Escrow Company to release earnest money pursuant to the terms and conditions of this  
244. Contract. Owner and Contractor specifically authorize Escrow Company to act in its sole and absolute discretion in the release of  
245. earnest money. Owner and Contractor agree to hold harmless and indemnify Escrow Company against any claim, action or lawsuit  
246. of any kind, and from any loss, judgment, or expense, including costs and attorneys' fees, arising from or relating in any way to the  
247. release of earnest money.

248. **Mediation:** Owner and Contractor agree to mediate any dispute or claim arising out of or relating to this Contract, any alleged breach  
249. of this Contract or services provided in relation to this Contract before resorting to court action. Any agreement signed by the parties  
250. pursuant to the mediation conference shall be binding. All mediation costs will be paid equally by the parties to the Contract. Disputes  
251. shall include claims for earnest money or representations made by the Owner or Contractor in connection with the New Home to which  
252. this Contract pertains, including without limitation allegations of concealment, misrepresentation, negligence and/or fraud.

253. **Exclusions from Mediation:** The following matters are excluded from mediation hereunder: (a) any action brought in the Small Claims  
254. Division of an Arizona Justice Court (up to \$2500), so long as the matter is not thereafter transferred or removed from the Small Claims  
255. Division; or (b) judicial or nonjudicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage, or agreement for  
256. sale; (c) an unlawful entry or detainer action; (d) the filing or enforcement of a mechanic's lien; (e) any matter which is within the juris-  
257. diction of a probate court. The filing of a judicial action to enable the recording of a notice of pending action, or order of attachment,  
258. receivership, injunction, or other provisional remedies, shall not constitute a waiver of the obligation to mediate under this provision,  
259. nor shall it constitute a breach of the duty to mediate.

**ADDITIONAL TERMS AND CONDITIONS**

260. **Risk of Loss:** If there is any loss or damage to the New Home between the date hereof and the Close of Escrow by reason of fire,  
261. vandalism, flood, earthquake or act of God, the risk of loss shall be on the Contractor.

262. **Permission:** Owner and Contractor grant Broker(s) permission to advise the public of this Contract.

263. **Arizona Law:** This Contract shall be governed by Arizona law.

264. **Time is of the essence.**

265. **Compensation:** Contractor and Owner acknowledge that Broker(s) shall be compensated for services rendered as previously agreed by  
266. separate written agreement(s). Any separate written agreement(s) shall be delivered to Escrow Company for payment at Close of  
267. Escrow, if not previously paid, and shall constitute an irrevocable assignment of Contractor's proceeds at Close of Escrow and/or pay-  
268. ment will be collected from Owner as a condition of closing. If any Broker hires an attorney to enforce the collection of the commission  
269. payable pursuant to this Contract, and is successful in collecting some or all of such commission, the party(ies) responsible for paying  
270. such commission agree(s) to pay such Broker's costs including, but not limited to: attorneys' fees, expert witness fees, fees paid to  
271. investigators, and court costs. COMMISSIONS PAYABLE ARE NOT SET BY ANY BOARD OR ASSOCIATION OF REALTORS®, OR  
272. MULTIPLE LISTING SERVICE, OR IN ANY MANNER OTHER THAN BETWEEN THE BROKER AND CLIENT.

273. **Additional Compensation:** The Real Estate Settlement Procedures Act (RESPA) prohibits the paying or receiving of any fee, kick  
274. back, or thing of value for the referral of any business related to settlement or closing of a federally-related mortgage loan, includ-  
275. ing, but not limited to, any services related to the origination, processing, or funding of a federally-related mortgage loan and  
276. includes such settlement related business as termite inspections and home warranties. RESPA does not prohibit fees, salaries,  
277. compensation or other payments for services actually performed. If any Broker performs any such services for a fee, Contractor  
278. and Owner consent to the payment of this additional compensation for such services actually performed as follows:

279. \_\_\_\_\_  
280. \_\_\_\_\_

281. **Construction of Language:** Unless otherwise specified, all references to days in this Contract shall be construed as calendar days.

Initials: \_\_\_\_\_ / \_\_\_\_\_  
CONTRACTOR CONTRACTOR

Initials: \_\_\_\_\_ / \_\_\_\_\_  
OWNER OWNER

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316. **Addenda incorporated:**  Contractor's Construction Specifications Addendum;  Plan dated \_\_\_\_\_; or  
 317.  Other \_\_\_\_\_

318. **Entire Agreement:** This Contract, and any addenda and attachments, shall constitute the entire agreement between Contractor and  
 319. Owner, and shall supersede any other written or oral agreement between Contractor and Owner. This Contract can be modified only by a  
 320. writing signed by Contractor and Owner. A fully executed facsimile copy of the entire agreement shall be treated as an original Contract.  
 321. The failure to initial any page of this Contract will not affect the validity or terms of this Contract. This Contract may be executed in any  
 322. number of counterparts, and will become effective upon delivery as provided for herein. All counterparts shall be deemed to constitute one  
 323. instrument, and each counterpart shall be deemed an original. Neither Contractor, Owner nor any Broker shall be bound by any under-  
 324. standing, agreement, promise or representation, express or implied, written or verbal, not specified herein. The Contractor and the  
 325. Owner acknowledge that the Broker(s) are third-party beneficiaries of this Contract.

Initials: \_\_\_\_\_ / \_\_\_\_\_  
CONTRACTOR CONTRACTOR

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Initials: \_\_\_\_\_ / \_\_\_\_\_  
OWNER OWNER

