

Signature Edition, Inc.

CONSTRUCTION CONTRACT AGREEMENT

Client Name
Client Address

Date

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Purchasing Timeline

**AGREEMENT BETWEEN OWNER AND
SIGNATURE EDITION, INC.**

Where the basis of payment is the
TIME AND MATERIAL PLUS A FEE

THIS AGREEMENT, made as of the [redacted]th day of [redacted]. in the year of 2016

Between Owner: Client Name
Client Address

And the Contractor: Signature Edition, Inc.
P.O. Box 4873
Englewood, CO 80155

The Work Site is located at:

The Architect is:

All parties agree as set forth to the following:

ARTICLE 3
THE SCOPE OF THE PROJECT FOR THIS CONTRACT

- 3.1 Contractor shall perform all the work described in the Contract Documents, except to the extent specifically indicated to be the responsibility of others, necessary to complete the Project as per the drawings and specifications provided.

ARTICLE 4
CHANGES TO THE CONTRACT DOCUMENTS

- 4.1 The Contract Time shall be reasonably extended for any delays caused by the Owner's failure to complete finish selections according to the dates set in the Material Ordering Decision Date Schedule. Additionally, if Contractor is delayed at any time in the progress of the Work by changes to the Scope of Work, by labor disputes, fire, unusual delay in deliveries, abnormal adverse weather conditions, unavoidable casualties, lack of timely payment by Owner, any causes beyond Contractor's control, or by other claims which may justify delay, then the Contract Time shall be reasonably extended.
- 4.2 If the Owner gives direction to one of Contractor's Subcontractors or vendors without first informing the Contractor of the change and the change materially deviates from the original Work, the Owner shall be responsible for the reasonable additional charges and the Contract Time shall be reasonably extended.
- 4.3 In the event that concealed or unknown physical conditions are encountered at the Work Site which materially differ from those disclosed in the Contract Documents and from those conditions ordinarily found to exist and the differences are likely to materially affect the scope of the Work or Contract Time, the Contract Time shall be equitably adjusted as mutually agreed between the Owner and Contractor; provided that the Contractor provides notice to the Owner promptly and before conditions are exasperated.

ARTICLE 5
RELATIONSHIP OF THE PARTIES

- 6.1 Contractor will cooperate with the Architect, provide effective business administration and supervision, and perform the Work. Owner will cooperate with Contractor and agrees to communicate with the Contractor in a prompt and timely manner.

ARTICLE 6
OWNER

- 7.1 Owner shall furnish architectural plans and designs, soils engineering studies, and structural engineering studies, and shall pay for such services.
- 7.2 Owner shall furnish the Work site, easements and rights-of-way for access as necessary and other areas which are designated for use by Contractor and approved by Owner.
- 7.3 Owner shall promptly inform Contractor of events which may adversely affect the Work, including separate contracts to be awarded, impending delays, strikes or work stoppages, and any deterioration of Owner's ability to timely pay for or complete its performance following Owner's receipt of actual knowledge of such matters.
- 7.4 Owner hereby acknowledges that Owner will be responsible for payment of subcontract services for Work actually performed, materials required by the Contract Documents provided by a Subcontractor and incorporated into the Work, and all vendor supplied materials required by the Contract Documents and incorporated into the Work, in the situation that the Owner / Contractor relationship hereunder is terminated and the Contractor has not been previously paid by the Owner for the Subcontractor or vendor invoices for such service and/or materials. No such payment shall be made by the Owner without good and sufficient statutory lien waivers for the materials and/or services for which such payment is being made.

ARTICLE 7
CONTRACTOR

- 8.1 Contractor shall supervise and direct the Work, using Contractor's best skill and attention. Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract Documents.
- 8.2 Contractor shall make timely payments to applicable parties in accordance with the Contract Documents .
- 8.3 Contractor shall enforce strict discipline and good order among Contractor's employees, agents, and subcontractors carrying out the Work.
- 8.4 Contractor shall comply with all ordinances, rules, regulations, and lawful order of public authorities bearing on performance of the Work and in accordance with the State of Colorado, County of Boulder, Colorado mandates. Contractor shall promptly notify the Owner if the Drawings and Specifications are observed by Contractor to be at variance therewith.
- 8.5 Contractor shall promptly and diligently prepare or review, as applicable, approve, and submit to Architect and Owner shop drawings, product data, samples, and

similar submittals required by the Contract Documents. The Work shall be executed in accordance with approved submittals and the Contract Documents.

- 8.6 Contractor shall keep the Work Site and surrounding area free from accumulation of waste materials or rubbish. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus material from and about the Work site, and return it to its condition on the date hereof, ordinary wear and tear excluded.
- 8.7 Contractor shall not be liable for damage or loss attributed to acts or omissions of Owner or Architect or anyone for whose acts either of them may be liable and not attributable to the fault or negligence of Contractor.
- 8.8 Contractor shall provide reasonable and customary measures of security for the Work Site.
- 8.9 Contractor shall take reasonable and customary precautions to protect the Work from damage.
- 8.10 Contractor shall be responsible for the compilation of costs as they are incurred and shall present them to the Owner and the Architect on a monthly basis.
- 8.11 Contractor shall promptly notify Owner and Architect of any: (1) subsurface or latent physical conditions at the Work Site which differ materially from those indicated in the Contract Documents and (2) any previously-unknown physical conditions at the Site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents. Contractor shall promptly inform Owner and Architect of other events which may adversely affect the Work, including impending delays, strikes, work stoppages, and any deterioration of Contractor's ability to timely pay for or complete the Work following Contractor's receipt of actual knowledge of such matters.

ARTICLE 8

SUBCONTRACTS

- 9.1 A Subcontractor is a person or entity with a contract with Contractor or one of Contractor's subcontractors to perform a portion of the Work at the site.
- 9.2 Contracts between Contractor and Subcontractors shall require each Subcontractor to be bound to Contractor by the terms and conditions of the Contract Documents.
- 9.3 To the fullest extent permitted by law, the Contractor shall require each Subcontractor to indemnify Contractor and Owner from and against damages, losses, expenses, and fees arising out of or resulting from the Subcontractor's materials and services.

ARTICLE 9
**CONSTRUCTION BY OWNER OR
BY SEPARATE CONTRACTORS**

- 10.1 Contractor reserves the right to be the only General Contractor on the project and will not relinquish the General Contractor position to another party unless this Agreement is terminated pursuant to Article 24, or unless the parties otherwise agree in an executed Change Order. Persons not contracted directly with the Contractor will not be allowed on the Project Site unless the Owner has authorized access to the Work site and Contractor approves their requested access dates and times, which approval shall not be unreasonably withheld.
- 10.2 Contractor shall not be responsible for any damage, delay, or increased Cost of Work associated with any acts or omissions of any separate Contractor employed by Owner.

ARTICLE 10
TIME

- 11.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, Contractor confirms that the Contract Time is a reasonable period for completing the Work.
- 11.2 For purposes of the Contract Documents, “Contract Time” shall mean the period running from the date of commencement through and including **TBD**, the date on which Substantial Completion shall be achieved.

ARTICLE 11
COMMENCEMENT AND SUBSTANTIAL COMPLETION DATES

- 12.1 The date of commencement will be established as the date on which the Contractor has been issued a building permit from the corresponding county and notice of authorization to proceed by the Owners. Clear access to the project must be provided. Contractor will be diligent in commencing work as soon thereafter as practical.
- 12.2 Contractor shall provide written notice to Owner when the Contractor determines that the Work is substantially complete and ready for final inspection. “Substantial Completion” means the Work has been sufficiently completed, in accordance with the Contract Documents, so that the house can be used for the purposes for which it was intended. Owner and Contractor shall inspect the Work and jointly create a punch list of items to be completed or corrected by Contractor in accord with the Plans and Specifications (hereinafter “Punch List”).

- 12.3 Contractor agrees to achieve Substantial Completion of the Work by **TDB**. The date of Substantial Completion is the date upon which any warranties of Contractor begin.
- 12.4 Contractor shall complete the Punch List in a timely manner, but such completion of Punch List items should be to a limited list that does not affect the Owners moving into the house.
- 12.5 If Contractor does not meet its obligation for the Substantial Completion date, Contractor will be responsible to pay liquidated damages in the amount of \$100 per day until the project has reached Substantial Completion.
- 12.6 Contractor shall not pay any liquidated damages for any delay which supports an extension of the Contract Time hereunder.

ARTICLE 12
CONTRACT SUM

- 13.1 Owner shall pay Contractor for performing the Work on a “Time and Material Basis” in the amount which is equal to the total cost of all material, subcontracting costs, and labor (collectively, “Cost of the Work”) necessary to complete the Work as defined by the Contract Documents plus a Contractor’s fee of 6%.

ARTICLE 13
SCHEDULE OF EMPLOYEE WAGES

- 14.1 Wages of workers directly employed by Signature Edition, Inc. to perform the Work shall be based on the following schedule of values per individual:

Contractor reserves the right to employ additional personnel at market rates. Contractor also reserves the right to change the wage rates set forth in the schedule above not more frequently than once every twelve (12) months per employee, with a maximum individual increase limited to 10%.

ARTICLE 14
REFUNDS, DISCOUNTS, AND REBATES

- 15.1 All discounts, rebates, and refunds for materials, equipment shall accrue to Owner and be credited to the billing during the monthly billing cycles.

ARTICLE 15
ACCOUNTING RECORDS

- 16.1 Contractor shall keep detailed accounts and shall manage the financial records for this Agreement. Owner, Owner’s accountant, the Architect, and their respective agents shall have access to Contractor’s records relating to this Agreement during normal

business hours promptly following request therefor. All records for the project shall be preserved for a period of three years after final payment.

ARTICLE 16
PROGRESS PAYMENTS & DEPOSITS

- 17.1 Contractor shall submit monthly Payment Requests to Owner. The period covered by each Payment Request shall be one calendar month commencing on the twenty-sixth day of the prior month and ending on the twenty-fifth day of the current month. Contractor shall submit payment Requests to Owner by the first day of each month. Payment Requests shall include copies of documentation substantiating the Cost of the Work reflected therein to the reasonable satisfaction of Owner. Owner shall make payment to Signature Edition, Inc. on or before ten (10) days after the Payment Request.
- 17.2 Contractor and its Subcontractors and suppliers shall execute good and sufficient waivers of mechanic's liens for invoices received for the Work reflected in each Payment Request that exceed \$1000.00 before or concurrent with payment being made. The waiver shall state that the applicable payee represents and warrants that all amounts currently due for work or materials provided reflect work performed on the home or materials actually incorporated into the home, and that the payee waives all rights to any mechanic's lien for any work or materials reflected in the Payment Request. Contractor may use a form customarily used for such purposes in Colorado approved by the Owner.
- 17.3 Contractor may advance funds for deposits on windows, cabinets, tile, carpet, appliances, and other materials or services that require money in advance of production or ordering upon receipt of written authorization from the Owner. Contractor will provide Owner with prompt documentation of all such deposit advances and shall request reimbursement, either in a Payment Request or in an additional billing. Owner agrees to reimburse the cost of all such authorized deposits advanced by Contractor within ten days of the date incurred.
- 17.4 The Contractor shall pay each Subcontractor, no later than ten (10) days after receipt of payment, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to sub-subcontractors in similar manner.
- 17.5 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment supplier's amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven (7) days, the Owner shall

have the right to contact Subcontractors to ascertain whether they have been properly paid.

17.6 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate of 10% annually

ARTICLE 17 **FINAL PAYMENT**

18.1 At the time of Substantial Completion, Contractor shall submit a Payment Request reflecting the full Cost of the Work and amounts previously paid by the Owner, less a retainer in the amount of 200% of the value of work on the punch list.

18.2 When Contractor has completed the punch list to Owner's reasonable satisfaction, Owner will pay without delay any retained amount in full.

18.3 In the event that Owner disagrees with the amount of Contractor's Payment Request submitted at the time of Substantial Completion, Owner shall provide written notice to Contractor of the basis of such disagreement within ten days of receipt of the Request, and the parties agree to take prompt steps to resolve the disagreement, including mediation pursuant to Article 21.

ARTICLE 18 **HAZARDOUS MATERIALS**

19.1 A "Hazardous Material" is any substance or material identified now or in the future as hazardous under any federal, state, or local law or regulation, or any other substance or material that may be considered hazardous or otherwise subject to statutory or regulatory requirement governing handling, disposal, and/or cleanup.

19.2 Contractor shall not be obligated to commence or continue work until any Hazardous Materials discovered on the Site has been removed, rendered or determined to be harmless by an independent testing laboratory and approved by the appropriate government agency.

19.3 If after the commencement of the Work Hazardous Material is discovered at the Site, Contractor shall be entitled to stop work immediately in the affected area. Contractor shall report the condition to Owner and Owner's consultants, and, if required, to the government agency with jurisdiction.

19.4 Contractor shall not be required to perform any Work relating to or in the area of Hazardous Material without written mutual agreement with Owner.

19.5 Unless the material in question was introduced to the Site by Contractor, a Subcontractor, or either of their agents, Owner shall be responsible for retaining an independent testing laboratory to determine the nature of the material encountered and whether such material requires corrective measures and/or remedial action. Such measures shall be the sole responsibility of Owner, and shall be performed in a

manner minimizing adverse effects upon the Work, before Contractor is obligated to resume any Work.

19.6 If the material in question was introduced to the Site by Contractor, a Subcontractor, or either of their employees or agents, Contractor shall be responsible for retaining an independent testing laboratory to determine the nature of the material encountered and whether such material requires corrective measures and/or remedial action. Such measures shall be the sole responsibility of Contractor, and shall be performed in a manner minimizing adverse effects upon the Work.

19.7 If Hazardous Material is encountered on the site and results in a delay of the project the Contractor may seek additional compensation for lost profits.

19.8 Contractor shall not store or discharge any Hazardous Material in connection with the Work or otherwise at the Site and shall hold the Owner harmless and indemnify the Owner for any breach of this provision.

ARTICLE 19 **INDEMNITY**

20.1 To the fullest extent provided by law, Contractor shall defend, indemnify, and hold Owner, its consultants, and agents, harmless from all claims of bodily injury and property damage arising from or related to the Work. Contractor shall not be required to defend, indemnify, or hold harmless Owner, Owner's consultants, any person performing work pursuant to Owner's Separate Contracts, and any other of Owner's agents for any negligent act of Owner, its consultants or agents.

20.2 To the fullest extent provided by law, Owner shall defend, indemnify and hold Contractor, its officers, directors, members, consultants, agents, employees, and subcontractors, harmless from all claims of bodily injury and property damage, other than to the Work itself, that may arise from the performance of work by Owner or its consultants, to the extent of their negligence in performing such acts or omissions.

ARTICLE 20 **ALTERNATIVE DISPUTE RESOLUTION-MEDIATION**

21.1 In the event of any claims, disputes and other controversies between Owner and Contractor arising out of or relating to the Contract Documents or any breach thereof which cannot be settled through direct discussion, the parties agree to first endeavor to settle the dispute by mediation. Either party may make a written request for mediation. Either party may suggest a mediator, or if the parties cannot agree upon a mediator, each party shall select a mediator, who together shall select a third mediator who will mediate the dispute. The costs of mediation shall be born equally by the parties. Mediation shall take place as soon as possible, but in no event later than 30 days after a written request.

- 21.2 All claims, disputes and other controversies between Owner and Contractor arising out of or relating to the Contract Documents or any breach thereof, which are not resolved through mediation, may be, if agreed to by the parties in writing, but shall not be required to be, resolved by arbitration before a single arbitrator. Either party may initiate arbitration by service of a written demand. The arbitration shall be conducted according to the Construction Industry Arbitration Rules of the American Arbitration Association. Either party may suggest an arbitrator, or if the parties cannot agree upon an arbitrator, each party shall select an arbitrator, who together shall select a third arbitrator who will arbitrate the dispute.
- 21.3 Any arbitration shall be initiated within a reasonable time after mediation efforts have failed and not later than the date when commencement of any legal action on the claim, dispute or other controversy would be barred by any applicable statute of limitations or repose.
- 21.4 The award rendered by the arbitrator shall be final and binding, may be filed with any court of competent jurisdiction in accordance with applicable law and judgment obtained thereon, and execution may issue.
- 21.5 This agreement to arbitrate and any other agreement to arbitrate with any third parties shall be specifically enforceable by any court of competent jurisdiction.
- 21.6 Should it be necessary for either party to this Agreement to retain the services of an attorney to enforce any provisions of this Agreement, the prevailing party in any arbitration or other enforcement proceeding shall receive reimbursement in full for all costs and attorneys fees thereby incurred. However, no attorneys' fees incurred by either party prior to completion of mediation shall be subject to this provision.
- 21.7 Nothing herein shall affect Contractor's right to stop Work for non-payment or to enforce or foreclose any rights to a mechanic's lien, nor shall it affect either party's right to apply to a court for legal or equitable relief.
- 21.8 This Agreement is entered into in Colorado, and the laws of the State of Colorado shall apply in its interpretation and enforcement.
- 21.9 In the event of any legal action to enforce the rights of a party hereto, the prevailing party shall be awarded all court costs and attorneys' fees in such action.

ARTICLE 21 **INSURANCE**

- 22.1 Contractor shall furnish and maintain: commercial general liability, contractual liability and commercial automobile liability and property damage insurance; workers' compensation insurance and employer's liability insurance; and such other insurance as may be required elsewhere in the Contract Documents or by law,

regulation, custom, or practice. The liability insurance shall include premises - operations (including explosion, collapse and underground coverage), elevators, independent contractors, products, completed operations, and blanket contractual liability on all written contracts, all including broad form property damage coverage. Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. Each policy shall contain a provision that the policy will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. The Contractor shall cause the commercial liability coverage required by the Contract Documents to include the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions.

- 22.2 All coverage shall be maintained without interruption from the date of commencement of Contractor's performance of any services or work and remain in effect until the date of final payment or termination of any coverage required to be maintained after final payment, whichever is later. With respect to completed operations coverage and any coverage written on a claims-made basis, such coverage will remain in effect for at least two years after final payment.
- 22.3 Contractor shall ensure that all Subcontractors performing the Work purchase and maintain commercial general liability insurance; workers' compensation insurance and employer's liability insurance; and such other insurance as may be required elsewhere in the Contract Documents or by law or regulation.
- 22.4 Owner shall carry liability insurance and such other coverage as required by its lender (if any). Owner shall purchase and maintain Builder's Risk Insurance on the project for the full cost of replacement as of the time of any loss. This insurance shall identify Contractor and the Lender as additional named insured. Owner's Builder's Risk insurance shall insure against perils from fire, extended coverage and shall include "all risk" insurance for physical loss or damage including, without duplication of coverage, at least theft, vandalism, malicious mischief, transit and collapse.
- 22.5 Contractor has the right, but not the obligation, to obtain Builder's Risk insurance upon Owner's failure to do so. Owner shall pay Contractor for the cost of such insurance upon Contractor's request.
- 22.6 If Contractor is damaged by any failure of Owner to purchase or maintain Builder's Risk insurance without notifying Contractor, Owner shall bear all risk of loss.
- 22.7 By execution of this Agreement, Owner and Contractor waive all rights against each other, all of Contractor's Subcontractors, any Separate Contractors and all of their agents and employees, for damages caused by fire or other perils to the extent covered by property insurance, excepting any rights they may have to any insurance proceeds. Insurance proceeds received by either Owner or Contractor shall be applied to the Work and the Property and shall reduce the liability of either party.

22.8 Upon request of either party hereto, the other party shall furnish the requesting party with a copy of each policy that provides the insurance coverage required by this section.

ARTICLE 22
MISCELLANEOUS PROVISIONS

- 23.1 Whenever the safety of persons or of work or property is threatened in an emergency situation, Contractor shall immediately notify the Owner of such situation. If Owner is not available to immediately respond to the situation, without seeking instructions from Owner, Contractor shall act at its reasonable discretion to prevent any injury or damage. For any reasonable actions taken or reasonable expenses incurred that are not due to the negligence of the Contractor or any Subcontractors involved in the project or their failure to strictly comply with the Contract Documents or ordinary and customary practices, Contractor shall prepare a Change Order reflecting additional Cost of the Work or an extension of the Contract Time and include any such changes in the Payment Request of the following month.
- 23.2 Notice shall be deemed made 5 days after either party places in the U. S. Mail, postage prepaid return receipt requested, notice addressed to the other party to the address set forth in the first paragraph of this Agreement. Proof of actual written notice by any means to any party shall also constitute Notice under this Agreement.
- 23.3 The failure of either Owner or Contractor to insist upon the performance of any of the terms and conditions of this Agreement, or the waiver of any breach of any of the terms and conditions of this Agreement, shall not be construed as thereafter waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.
- 23.4 This Agreement, and the incorporated Contract Documents, constitute the entire agreement between the parties and supersede all prior written or oral agreements, promises, and communications of any kind whatsoever. Any modification of this Agreement or additional obligation assumed by either Owner or Contractor in connection with this Agreement shall be binding only if evidenced in a Change Order duly executed by both Owner and Contractor.
- 23.5 This Agreement shall not be assigned by either party without the prior written consent of the other party.
- 23.6 This Agreement is binding upon the heirs, representatives, successors, and assigns of the parties.

ARTICLE 23
TERMINATION OF THE CONTRACT

- 24.1 Subject to the terms and conditions of the Contract Documents, if, through no fault of Contractor: (1) the Work is suspended for a period of at least 14 days due to an order of court or any public authority; or (2) Owner fails to pay any Payment

Request for a period of more than 14 days, subject to any delays attributable to a good faith dispute; then Contractor shall have the right, upon not less than 14 additional days written notice to Owner, to terminate this Agreement. Contractor shall be entitled to recover from Owner all costs of the Work incurred to the date of termination, and to the unpaid amount of Contractor's Fee, calculated as a percentage of the total Cost of the Work completed. If, within the time allowed in Contractor's written notice, Owner cures the deficiency, the notice of termination shall have no further force or effect.

24.2 If Contractor persistently refuses or fails to prosecute the Work, or fails to make prompt payment to its workers, subcontractors, or suppliers, disregards laws, rules, or orders of any public authority having jurisdiction, or otherwise commits a material breach of this Agreement, Contractor may be deemed in default. If Contractor fails within 14 days after receiving written notice of default to commence satisfactory correction of such default, then Owner may notify Contractor that Owner intends to terminate this Agreement for default absent appropriate corrective action within 14 additional days. After the expiration of the 14 day period without corrective action by Contractor to Owner's satisfaction, Owner may terminate this Agreement by written notice. In the event of such termination for cause, Owner shall remain liable for the Cost of the Work incurred to date, amounts justly owed to subcontractors and suppliers under the Contract Documents and not previously paid to Contractor, and the Contractor's Fee calculated as a percentage of the total Cost of the Work completed as certified by the Architect. Contractor shall furnish an accounting to Owner within 14 days of such termination listing all unpaid costs and Fee. In the event that Owner has claims against Contractor offsetting such costs and Fee, Owner shall nevertheless promptly pay all amounts owed to subcontractors and suppliers that are unrelated to such claims.

ARTICLE 24 **BUILDER'S ONE-YEAR LIMITED WARRANTY**

25.1 This **Warranty** shall extend for a period of One Year, commencing on the date of Substantial Completion, pursuant to Article 11 ("the Limited Warranty Period").

25.2 This **Warranty Is Not** Transferable.

25.3 Contractor expressly warrants that the Work will be free from defects. In determining whether a defect exists, the parties shall consult and give strong weight to the guidelines contained in **Residential Construction Performance Guidelines, 4th Edition** published by the National Association of Home Builders. Owner

acknowledges and agrees that materials used in the construction process may contain minor imperfections and inconsistencies. Such imperfections and inconsistencies include but are not limited to: color, texture, grain, knots, minor warping, fit, finish, lumber straightness, dimensional lumber milling variances, plywood texture, floor joist trueness, roof truss trueness, interior trim material graining, shrinkage of wood flooring due to moisture content and minor cracking of concrete foundations. Natural material imperfections are normal and customary and can cause minor variances in finish uniformity, consistency and appearance in actual as-built dimensions from constructions drawings. Such minor material imperfections and/or construction variances shall in no way be considered defective, nor shall the Work be considered defective insofar as it is completed in a good and workmanlike manner in conformity with the Contract Documents.

- 25.4 For purposes of this Limited Warranty, the term “consumer products” means all appliances, equipment and other items which are consumer products for the purposes of the Magnuson-Moss Warranty Act (15 USC, Sections 2301-2312) and which are located in the home on the commencement date of this Limited Warranty. Contractor hereby assigns to Homeowners all rights under manufacturers’ warranties covering consumer products. Defects in items covered by manufacturers’ warranties are excluded from coverage of this Limited Warranty, and Owner should follow the procedures in the manufacturers’ warranties if defects appear in these items.
- 25.5 If a covered defect occurs during the applicable Limited Warranty Period, Contractor will, at Contractor’s sole option and discretion, promptly repair, replace, or pay Owner the reasonable cost of repairing or replacing the defective item. Contractor shall have reasonable discretion as to the methods for repairing and/or replacing any defective item. Contractor’s total liability under this Limited Warranty is limited to the purchase price of the home, but excludes the cost attributable to the parcel of land on which the home was constructed. Any steps taken by Contractor to correct defects shall not act to extend the term of this Limited Warranty.
- 25.6 It shall be a condition precedent to Contractor’s obligation to provide remedy pursuant to this Limited Warranty that Owner shall notify Contractor, in writing, of any claim under this Limited Warranty during the Limited Warranty Period. Owner’s failure to provide such written notice shall relieve Contractor of any obligations under this Article with respect to such defect.
- 25.7 Owner shall provide access to Contractor Monday through Friday during the hours of 8:00 a.m. and 4:30 to accomplish the warranty work. The Owner must take all reasonable and appropriate steps to mitigate damage until the appropriate repair is completed.
- 25.8 **This Limited Warranty excludes remedy for the following:** 1.) defects to structures not built by Contractor. 2.) Damage to any property that is not part of the Work performed by Contractor or its employees, subcontractors, or agents. 3.) damage or defects caused by or made worse (but only to the extent made worse) by:

a) negligence, improper maintenance, or improper operation by Owner or its agents; b) Owner's failure to comply with the warranty requirements of manufacturers of appliances, equipment or fixtures; c) Owner's changing of grading of the ground adjacent to the Work except to the extent disclosed to the Contractor prior to the commencement of the Work; d) any work performed installed by Owner, its agents, or anyone other than an authorized agent of Contractor; e) failure to adequately ventilate for dampness or condensation; f) insect or animal presence and/or damage; g) ordinary wear and tear; or h) weather, snow removal, or application of ice melting agents except to the extent exacerbated by a defect.

25.9 Contractor shall have no liability, and hereby disclaims any responsibility for, claims or causes of action relating to the development of mold, fungus, or rot of any type in the Work, now or in the future, including but not limited to any claims of property damage, personal injury, or consequential damages of any type except to the extent caused or exacerbated by a defect.

25.10 Contractor's Limited Warranty shall not provide remedy for, and Contractor shall have no liability for, damage resulting from expansion of soils except to the extent exacerbated by methods or materials selected by Contractor. Owner acknowledges that the Architect, Engineer or other consultant of Owner has provided an analysis of the soils in the area of the Work, that the Construction Documents reflect a design that is sufficient to accommodate anticipated soil movement, and that Owner has been advised regarding appropriate landscaping and grounds maintenance to avoid unanticipated soil expansion or movement.

25.11 **Claims For Repairs under this Limited Warranty will be performed according to the following schedule:** Owner must submit a Claim for each item requiring repair and provide Contractor an opportunity to correct the item. Contractor will have up to thirty (30) days to correct a non-emergency item. All emergency claims will be fully addressed on an expedited basis.

ARTICLE 25 **OTHER CONDITIONS OR PROVISIONS**

26.1 Wood floors and trim will shrink and expand because of moisture content in wood, humidity changes, and humidifiers.

26.2 Concrete slabs will crack.

26.3 The heating and air conditioning temperature swings are designed for Colorado. The design temperature assumes a 15 to 20 degree swing of ambient temperature. I.E. if the temperature is 100 degrees outside the temperature inside might only reach 80 degrees. This house is designed with a partial air conditioning system (upper bedrooms, supply duct to kitchen, supply duct to master bedroom).

26.4 Materials or products that are supplied by the Owners or outside source that are not part of the Contractors or the Contractors Agents or Subcontractors Work will not be warranted.

This Agreement is made and entered into as of the day and year first written above.

OWNER:

CONTRACTOR:

(Signature)

Nicholas J. Gengozian
(Digital Signature)

(Printed name and title)

Nick Gengozian
(Principal Officer)