

WARNINGS TO CONSTRUCTION CONSUMERS WITH DISASTER-DAMAGED PROPERTIES

(Protecting Yourself Is as Easy as 1 -2 -3)

DO NOT Allow any work to begin on your damaged property, even debris removal¹ until you have:

1. Completed all insurance claims:

If you have property insurance coverage, notify the company as soon as possible. They will "adjust" your claim by inspecting the damages and making a settlement offer to pay for rebuilding or for repairing your home. Do this before signing a contract.

2. Hired a licensed contractor²:

You can make a phone call to your city or county building departments (who issue construction permits required to restore your property) about the licensed status of your builder **BEFORE YOU SIGN A CONTRACT**

OR

You can check on-line at www.myfloridalicense.com: type in the first and last name and click "search" at the bottom of the screen to determine if a particular person is properly licensed.

3. Signed a valid contract³:

The Florida Home Builders Association has prepared a "consumer-friendly" contract you can either use or modify to meet your particular needs. Make sure that the licensed contractor's license number appears on your contract.

¹ Florida law allows a **lien** to be placed against your property for debris removal. In addition, a complete record of all damages to your property, including photos, should be made to document any insurance claim and to reflect any required work necessary to restore your home.

² Unless your contractor is properly licensed, you **CANNOT** enforce the contract against them. **THEY** may be prosecuted for unlicensed activities, but you may be without a legal remedy to recover your money or other damages.

³ Many Florida attorneys have volunteered to assist disaster victims with such matters as contract negotiations and review. You can contact The Florida Bar or visit it on-line at www.flabar.org.

Florida's Construction Lien Law

Protect Yourself and Your Investment

According to Florida law, those who work on your property or provide materials, and are not paid-in-full, have a right to enforce their claim for payment against your property. This claim is known as a construction lien.

If your contractor fails to pay subcontractors or material suppliers, the people who are owed money may look to your property for payment, **even if you have paid your contractor in full.**

This means if a lien is filed against your property, it could be sold against your will to pay for labor materials or other services which your contractor may have failed to pay.

Protecting Yourself

If you hire a contractor and the improvements cost more than \$2,500, you should know the following:

- You may be liable if you pay your contractor and he then fails to pay his suppliers or contractors. There is a way to protect yourself. A Release of Lien is a written statement that removes your property from the threat of lien. Before you make any payment, be sure you receive this waiver from suppliers and subcontractors covering the materials used and work performed on your property.
- Request from the contractor, a list of all subcontractors and suppliers who have a contract with the contractor to provide services or materials to your property.
- If your contract calls for partial payments before the work is completed, get a Partial Release of Lien covering all workers and materials used to that point.
- Before you make the last payment to your contractor, obtain an affidavit from your contractor that specifies all unpaid parties who performed labor, services or provided services or materials to your property. Make sure that your contractor provides you with final releases from these parties before you make the final payment.
- Always file a Notice of Commencement before beginning a home construction or remodeling project. The local authority that issues building permits is required to provide this form. You must record the form with the Clerk of the Circuit Court in the county where the property being improved is located. Also post a certified copy at the job site. (In lieu of a certified copy, you may post an affidavit stating that a Notice of Commencement has been recorded. Attach a copy of the Notice of Commencement to the affidavit.)
- In addition, the building department is prohibited from performing the first inspection if the Notice of Commencement is not also filed with the building department. You can also supply a notarized statement that the Notice has been filed, with a copy attached.

The Notice of Commencement notes the intent to begin improvements, the location of the property, description of the work and the amount of bond (if any). It also identifies the property owner, contractor, surety, lender and other pertinent information. Failure to record a Notice of Commencement or incorrect information on the Notice could contribute to your having to pay twice for the same work or materials.

Notice To Owner

Prior to filing a lien, a lienor who does not have a direct contract with the owner, must serve the owner a Notice to Owner. The Notice to Owner must state the lienor's name and address, a description of the real property and the nature of the services or materials being furnished. The

Notice to Owner must be served before commencing, or within 45 days of commencing, to furnish the services or materials. A lien cannot be enforced unless the lienor has served the Notice to Owner as described above.

Whose Responsibility is it To Get These Releases?

You can stipulate in the agreement with your contractor that he must provide all releases of lien. If it is not a part of the contract, however, or you act as your own contractor, YOU must get the releases.

If you borrow money to pay for the improvements and the lender pays the contractor(s) directly, without obtaining releases, the lending institution may be responsible to you for any loss.

What Can Happen If I Don't Get Releases Of Lien?

You will not be able to sell your property unless all outstanding liens are paid. Sometimes a landowner can even be forced to sell his property to satisfy a lien.

Who Can Claim A Lien On My Property?

Contractors, laborers, materials suppliers, subcontractors and professionals such as architects, landscape architects, interior designers, engineers or land surveyors all have the right to file a claim of lien for work or materials. **Always require a release of lien from anyone who does work on your home.**

Contesting A Lien

A lien is valid for one year, unless a lienor files a lawsuit to enforce the lien prior to the expiration of the year. An owner has a right to file a Contest of Lien during the one-year period. Upon the filing of a Contest of Lien, a lienor must file a lawsuit to enforce the lien within 60 days. Failure of the lienor to timely file a lawsuit renders the lien invalid.

THE CONSTRUCTION LIEN LAW IS COMPLEX AND CANNOT BE COVERED COMPLETELY IN THIS DOCUMENT. WE RECOMMEND THAT WHENEVER A SPECIFIC PROBLEM ARISES, YOU CONSULT AN ATTORNEY.

To register a complaint (or learn if complaints have been filed against a prospective contractor), contact the Florida Department of Business and Professional Regulation's Customer Contact Center at: 850-487-1395 or CallCenter@dbpr.state.fl.us

Or write to:

Florida Department of Business and Professional Regulation
1940 North Monroe Street
Tallahassee, Florida 32399-1027

Or visit online at:

www.MyFloridaLicense.com

License verification is available 7 days a week by calling our Customer Contact Center at 850-487-1395 or going online to www.MyFloridaLicense.com *Search for a Licensee.*

You may also contact your local building department or the Better Business Bureau.

INSTRUCTIONS FOR THE RESIDENTIAL REBUILDING CONTRACT (8/30/04)

1. This contract is a template or a “suggested standardized agreement form” covering the rebuilding of residential property damaged as a result of a natural disaster, such as a hurricane. It has been developed by several lawyers on behalf of the Florida Home Builders Association (FHBA) in the aftermath of hurricane Charley as a service to home owners who have lost all or a portion of their homes as a result of a natural disaster. **A HOME OWNER IS ADVISED TO COMPLETE ANY INSURANCE CLAIMS PRIOR TO USE OF ANY CONTRACT.**

2. This contract is not the only one you can use. It is designed to be user-friendly, well organized, logical and comprehensive. But no contract is perfect and many contracts are different. FHBA will in all likelihood make modifications to this contract over time as circumstances dictate. But, regardless of what contract you use, it is recommended that a home owner consult with independent legal counsel before using any contract, including this contract, in order to ensure that it accurately describes the particular circumstances and agreement of the parties. Many Florida attorneys, as a result of Hurricane Charley, have volunteered to assist disaster victims with such matters as contract negotiations and review. A contractor or home owner can contact the Florida Bar or visit the Florida Bar on-line at www.flabar.org.

3. This contract can be used or modified to meet particular needs; however, there are certain paragraphs MANDATED by state or federal law that cannot and should not be changed. The following paragraphs contained in this contract are MANDATED paragraphs for any construction contract:

(a) **The opening body of the contract**, identifying the contractor’s registration or certification number, or the certificate of authority number for each Business Organization is required to appear on every offer, proposal, bid, contract or advertisement pursuant to section 489.119(6)(b), F.S. Failure to do so is grounds for disciplinary action against the licensee.

(b) **Paragraph 15**, pertaining to the lien law is mandatory by state law, as portrayed in the contract, including the 18 point type size, bold and underline. Failure to include this statutory requirement may cause the loss of lien rights.

(c) **Paragraph 16**, pertaining to the right-to-cure construction defects law (chapter 558, Florida Statutes) is mandatory IF the parties wish to avail themselves of the protections of the right-to-cure law. The provision should be included in the paragraph in the body of the contract. The right-to-cure notice to owner as provided by the contractor in a contract must be CONSPICUOUS, and the wording must conform to the required statutory wording as provided in this contract. If the parties choose not to include this provision in the body of the contract, please make sure to eliminate all cross references to paragraph 16 in subsequent paragraphs of the body of the contract accordingly.

(d) **Paragraph 23**, pertaining to the construction industries recovery fund is required by section 489.1425, F.S., in every contract for residential repair, restoration or construction of improvements in excess of \$2,500.00. Failure to do so is grounds for disciplinary action against the contractor.

(e) **Paragraph 27**, pertaining to insulation disclosure, is mandatory under federal law. This must include a description of the type, thickness and values of insulation which will be installed in each part of the house to be built, when available. There is a federal statutory fine of \$10,000.00 per violation.

4. This contract is very similar to a Standard Remodeling Contract that is also available for use on FHBA's website for standard remodeling transactions. Some of the provisions of this contract that are particular for natural disasters include:

(a) The warning at the top of the contract emphasizes the need to complete any property insurance claims prior to the execution of any contract;

(b) Paragraph (1) allows the use of original plans or specifications for the original structure that may be on file with the county building department;

(c) Paragraph 8.(E) recognizes that neither the contractor nor home owner can control the price of materials furnished by others; and, demand can cause an increase in the cost of materials and labor following a disaster. There are other laws that prevent "price-gouging" but normal increases in the prices of materials are beyond the control of any party to a contract and may require an adjustment in contract price. In addition, yard debris removal or landscaping debris removal are of paramount importance in a natural disaster, but are not typically part of a rebuild or remodel contract price and are accordingly excluded from the contract price in this contract [paragraph 14.(E)] unless the parties specifically and otherwise agree to yard debris removal.

(d) Paragraph 13.(A) recognizes that the location and extent of other disaster-related damaged property might adversely affect the contractor's ability to timely procure materials or labor necessary to perform the contract; and,

(e) Paragraph 14.(F), dealing with financing, recognizes the use of insurance proceeds;

5. For any questions regarding the use of this contract, please contact a Florida attorney by consulting the Florida Bar per the above OR the yellow pages of your phone book. And ALWAYS hire only a properly licensed contractor to perform work. You can make a call to your city or county building departments (who issue construction permits required to restore your property) about the licensed status of your builder BEFORE YOU SIGN ANY CONTRACT or check on-line at www.myfloridalicense.com: type in the first and last name and click "search" at the bottom of the screen to determine if a particular person is properly licensed.

RESIDENTIAL REBUILDING AGREEMENT

WARNING: MANY CONTRACTS ARE DIFFERENT. THEREFORE, BEFORE USING THIS FORM EACH PARTY SHOULD CONSULT WITH INDEPENDENT LEGAL COUNSEL IN ORDER TO ENSURE THAT THIS CONTRACT ACCURATELY DESCRIBES THE AGREEMENT OF THE PARTIES. BE SURE TO FILL IN ALL BLANKS AND ATTACH ALL EXHIBITS. THIS CONTRACT FORM HAS BEEN DEVELOPED BY THE FLORIDA HOME BUILDERS ASSOCIATION FOR THE PURPOSE OF REBUILDING RESIDENTIAL PROPERTY DAMAGED AS A RESULT OF A NATURAL DISASTER, SUCH AS A HURRICANE. OWNER IS ADVISED TO COMPLETE ANY PROPERTY INSURANCE CLAIMS PRIOR TO THE EXECUTION HEREOF.

THIS REBUILDING AGREEMENT, made and executed this _____ day of _____, 20____, by and between _____ (hereinafter referred to as "Owner"), whose address is: _____ and _____ (hereinafter referred to as "Contractor"), whose address is: _____ and whose Certification or Registration Number or Certificate of Authority Number is _____, which parties for good and valuable consideration each to the other, the receipt and sufficiency of which is conclusively acknowledged, do hereby agree as follows:

1. DESCRIPTION OF PROPERTY AND SCOPE OF REMODELING WORK TO BE PERFORMED.

Contractor agrees to construct improvements on Owner's real property located at _____, in _____ County, Florida, in accordance with the plans and specifications signed and dated by Contractor and Owner on the _____ day of _____, 20____, prepared by _____, dated or latest revision made on _____, and consisting of _____ pages, OR in accordance with the original plans and specifications for same currently on file with the _____ County Building Department. The legal description of the Subject Property is Lot(s) _____, Block _____, _____ subdivision (or, if a metes and bounds description, attach as **Exhibit "A"**).

2. LIMITATIONS AND GENERAL CONDITIONS.

(A) **NON-STRUCTURAL MATTERS:** Contractor shall not be responsible or liable for stress or settlement cracks in any material supplied by contractor where same does not threaten structural integrity.

(B) **TANGIBLE PERSONAL PROPERTY:** Contractor shall have no responsibility or liability for damage or loss to owner's tangible property on the premises, except for Contractor's intentional or negligent acts.

(C) **PATCHING AND MATCHING:** The color, texture and planes between existing and new materials may not match *exactly*, but contractor will use due diligence to obtain such matching as close as reasonably possible. Owner acknowledges that patching may be detectable.

3. **PLANS AND SPECIFICATIONS.** The plans and specifications have been provided by (CHECK ONE) _____ Contractor or _____ Owner, and any loss, cost, damage or expense incurred by the other party as the result of any defects in such plans and specifications shall be borne by the party providing the plans and specifications. In the event of a conflict between the plans and specifications, the specifications shall control.

4. **DEFINITIONS.** The term "cost" means all costs and amounts paid or incurred to third persons by Contractor or by the Owner for labor, services, materials, licenses and permits directly related to this Contract. This term shall also include _____% (175% if blank) of the gross payments to all employees of Contractor for work performed by such employees pursuant to or in preparation of this Contract or in preparation of the plans and specifications referred to herein, (including the income taxes and F.I.C.A. taxes withheld thereon). The term "days" means calendar days, including weekends and holidays, unless otherwise noted; "business days" means week days Monday through Friday which are not legal state holidays. "Substantial completion" occurs when the Certificate of Occupancy or its equivalent has been issued (or has been delayed solely by act or omission of the Owner), when the Owner occupies any part of the remodeled property, or when the Building Authority releases the building permit based upon completion of final inspections. "Consequential damages" consists of costs or expenses which may arise from the special circumstances of either party hereto, including, but not limited to, such things as increases in living expenses, additional storage or interests costs, adverse or aggravated medical conditions or longer travel times and distances, which may be incurred or suffered as a result of, or arising from, a delay in any performance hereunder by either party. "Time" shall be a flat rate per hour change, or prorated amount thereof, for the actual time spent in the performance of this agreement, whether for the Contractor, or his/her employees, agents or subcontractors.

5. **CONTRACT PRICE.** Owner agrees to pay Contractor the following Contract Price, together with adjustments, if any, for Change Orders as described in paragraph 8, and for any material costs increases as described in paragraph 9, if applicable, in accordance with the further provisions of this Contract (check and complete one of the following):

_____ **Fixed Price.** The sum of \$ _____, subject to increases in costs if commencement of construction is delayed through no fault of contractor, for more than sixty (60) days from date of this agreement. This price includes removal of all construction materials debris.

_____ **Cost Plus Fixed Fee.** All costs incurred by Contractor, plus the sum of \$ _____.

_____ **Cost Plus Percentage of Cost.** All costs incurred by Contractor, plus _____ % of all such costs.
 _____ **Cost Plus Percentage of Costs (Limited).** All costs incurred by Contractor, plus _____ % of all such costs, not to exceed \$ _____.
 _____ **Time Plus Materials.** All time incurred by Contractor, its employees, agents or subcontractors at the rate of \$ _____ per hour, and all costs incurred by Contractor for materials.
 _____ **Other.** (Describe) _____.

6. DEPOSIT. Upon the execution of this Contract, Owner shall pay Contractor a deposit in the amount of \$ _____. This deposit is refundable, less contractor's costs, in the event Owner fails to obtain construction loan financing in the minimum amount of \$ _____; provided that the Owner makes complete loan application within five (5) business days of the date of this agreement, actively pursues same in good faith, and obtains a binding loan commitment within thirty (30) days of the date of this agreement, which commitment requires a closing thereof within thirty (30) days thereafter. Upon commencement of construction or the delivery of any materials to the Subject Property, an additional deposit in the amount of \$ _____ is due and payable and all deposits paid hereunder become final and non-refundable.

7. ALLOWANCES AND SELECTION OF FINISH MATERIALS. In establishing the Contract Price or estimating the costs to be incurred, Contractor has made the following allowances for finish materials, which allowances _____ includes or _____ does not include (**check one**) the costs for installation:

- | | | | |
|----------------------------------------------|----------|---------------------------------------|----------|
| a) Floor Covering | \$ _____ | i) Exterior Siding | \$ _____ |
| b) Wall Covering | \$ _____ | j) Cabinet and Mill Work | \$ _____ |
| c) Hardware | \$ _____ | k) Tile and Window Sills | \$ _____ |
| d) Paneling | \$ _____ | l) Roof Coverings | \$ _____ |
| e) Appliances | \$ _____ | m) Patio (Size: _____ square feet) | \$ _____ |
| f) Landscape, Sod & Plants | \$ _____ | n) Driveway (Size: _____ square feet) | \$ _____ |
| g) Exterior Brick | \$ _____ | o) Windows | \$ _____ |
| h) Lighting Fixtures | \$ _____ | p) Walks (Size: _____ square feet) | \$ _____ |
| (including chimes, smoke detectors and fans) | | q) Unforeseen Replacements/Repairs | \$ _____ |

Owner shall submit in writing to Contractor the selection for each such item. Any portion of the costs of such selections which exceeds the allowance for such item is the sole responsibility of Owner and is payable in the same manner as a Change Order. Any portion of the costs of such selections which is less than the allowance for such item shall be credited against the final payment due to Contractor.

8. CHANGE ORDERS. All changes to the plans, specifications or selection of finished materials may be requested by Owner, subject to Contractor's approval. Owner shall pay to Contractor any increase in Contract Price prior to the approved work being performed, or, at contractor's option, at the time of final payment, or as set forth in the change order. To the extent that additional work is performed or materials delivered at the owner's request which is not the subject of a signed change order, the contractor shall be entitled to recover the costs thereof, plus _____ % thereof (15% if blank).

9. CHANGES TO CONTRACT PRICE (BASED ON EVENTS COMMON TO REBUILDING WORK). Owner acknowledges that the process of rebuilding may also consist of demolition or destruction of existing damaged improvements before, during and after any new construction has begun. Additional work is frequently identified during demolition and required to complete the work pursuant to this contract. All such additional required work will constitute a change order and may result in an increase in the Contract Price. Some examples of events or occurrences which may cause increases in the Contract Price include, but are not limited to, the following:

(A) REMOVAL OF CERTAIN ITEMS: The removal of any floor covering includes one layer only, without any rubberized backing; additional layers or rubberized backing will require an increase in Contract Price.

(B) DANGERS INHERENT TO OWNER'S CONTINUED OCCUPANCY: There are certain dangers inherent in remodeling projects since the Owner(s) usually continues to use and occupy the property during the contract performance. Contractor shall be responsible for securing the job site at the end of each work day; however, the Owner(s) acknowledges these inherent dangers and shall take all reasonable precautions to avoid them. As a result, Owner's occupancy of the premises during construction shall be at owner's sole risk, and in the event any such occupancy hinders, delays or increases the cost of contractor's performance of this contract, such damages shall be added to the Contract Price. In addition, Owner shall be solely liable for any personal injuries, whether to Owner, Owner's family members, guests or invitees, or to trespassers.

(C) REPAIR/REPLACEMENT OF UNFORESEEN DAMAGED ITEMS: The parties understand that there may be conditions to pre-existing improvements on the property which constitute latent defects or hidden or unknown conditions, necessitating unforeseen removal, replacement or repairs in order to complete the scope of work to be performed under this agreement. Examples of such situations include, but are not limited to: adverse soil conditions; presence of asbestos materials; inadequate structural support; plumbing, electrical, mechanical systems or appliances or machinery in poor or deteriorated condition, or; other matters which could not have been readily observed by the Contractor prior to commencement of the contract performance. In the event that Contractor discovers such defects or hidden or unknown conditions, Contractor shall immediately notify the Owner(s) and shall prepare an estimate of the increased costs resulting from such defects or hidden or unknown conditions. Owner shall be responsible for the costs incurred in preparing the estimate, such as, but not limited to, engineering fees. If the Owner(s) agree(s) with the estimate, it shall become a Change Order hereunder; otherwise, the Owner(s) shall pay the

Contractor all costs incurred to that date in connection with the work to be performed hereunder, plus twenty (20%) percent thereof, and this contract shall terminate.

(D) PUBLIC OR PRIVATE REGULATIONS/RESTRICTIONS AND SUBSOIL CONDITIONS: In the event any governmental regulations or private restrictions or covenants, or the results of any soil or subsurface tests, requires modifications to the structure or to the subsurface, the cost of such modifications shall be added to the Contract Price and are payable in the same manner as if originally included in the Contract Price, or, at contractor's option, due and payable at the time the costs of such modifications are incurred. Owner shall provide a clear, accessible building site, correctly zoned and otherwise allowable for the improvements to be made.

(E) INCREASES IN MATERIALS COSTS AND CONTRACT PRICE: In the event that, during construction of the improvement described herein, contractor's costs for materials used or to be used herein are increased by more than ____% (110%, if blank) over the contractor's costs for same at the time this agreement was signed, for any cause(s) beyond the control of contractor, then, and in such event(s), contractor shall have the right to pass the entire amount of materials costs increase(s) along to owner by adding the total amount(s) thereof to the Contract Price. **THE PARTIES ACKNOWLEDGE AND AGREE THAT NEITHER OF THEM CAN CONTROL THE PRICE(S) OF MATERIALS FURNISHED BY OTHERS, AND THAT SUCH INCREASES FREQUENTLY OCCUR FOR MATERIALS NEEDED FOLLOWING A NATURAL DISASTER.**

10. DRAW REQUESTS. At such times as Contractor completes each of the items set forth in the draw schedule Contractor shall submit a written draw request to Owner or to Owner's Lender, as applicable, for an amount equal to the percentage of the Contract Price applicable to each item of construction then completed, less the percentage previously requested and paid for each such items. All draw requests are due and payable within _____ days (or, if blank, 10 days) of the date submitted to Owner. **Upon each payment to Contractor made pursuant to this agreement, Contractor shall provide Owner with a lien release from each person who has served a Notice to Owner.**

11. TIME OF PAYMENT, INTEREST, AND FINAL INSPECTION/PUNCH LIST: Owner agrees to pay Contractor the Contract Price specified in paragraph 5, in accordance with the draw schedule identified in **Exhibit "A-1"** attached hereto or in accordance with the lender's required draw schedule, if any. In the event any amounts due to the contractor remain unpaid after the due date thereof, then, and in such event, such amounts shall bear interest thereafter at the rate of 1.5% per month until payment in full has been made. Within five (5) days of notification by Contractor that all work is substantially complete, Owner shall conduct a final inspection of the improvements and prepare a punch list which, if agreeable, shall be signed and dated by both parties. Contractor shall be responsible for completion of all items on the punch list within a reasonable time. The Contractor shall be entitled to receive all remaining amounts due under this Contract, except that the Owner may withhold a reasonable amount of the final payment until completion of all punch list items.

12. WARRANTIES BY CONTRACTOR. CONTRACTOR MAKES NO EXPRESS OR IMPLIED WARRANTIES, EXCEPT AS STATED HEREIN. ALL STATED WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. SEE SPECIAL CLAUSES IN PARAGRAPH 32 FOR ADDITIONAL WARRANTY INFORMATION, IF ANY.

(A) Except as provided in (b) and (d), Contractor **warrants** that all materials will be new materials, unless otherwise specifically agreed upon or disclosed, and that the labor and materials supplied by Contractor and used in performing this contract will be free of defects for a period of one (1) year from the date of the substantial completion; provided, however, that any warranty regarding wood destroying organisms is given only by a licensed pest control operator, is limited to one (1) year from date of initial treatment, and is renewable at the sole option and expense of the Owner.

(B) Owner agrees to rely **solely** on the warranties, if any, of the respective manufacturers of all appliances and equipment included in the property improvements, unless the defect is caused by the improper installation of such appliances or equipment.

(C) Contractor **warrants** that the dimensions of any room shall be within 10% of the dimensions specified on the plans and that the overall heated square footage of the structure shall not be less than the amount specified on the plans.

(D) MOLD IS A NATURALLY OCCURRING GROWTH THAT MAY HAVE ADVERSE HEALTH CONSEQUENCES AND WHICH REQUIRES CERTAIN PREVENTATIVE AND PROPER MAINTENANCE ACTIONS BY THE OWNER. ACCORDINGLY, CONTRACTOR ASSUMES NO LIABILITY WHATSOEVER FROM ANY HARM TO INDIVIDUALS AND DAMAGES TO PROPERTY ARISING AS A RESULT OF MOLD, WHICH IS UNRELATED TO CONSTRUCTION DEFECTS.

13. RESPONSIBILITIES OF CONTRACTOR.

(A) TIME AND MANNER OF PERFORMANCE BY CONTRACTOR: Contractor shall commence work within _____ days (30 days if blank) of the issuance of all building permits, recordation of a Notice of Commencement has been recorded, and written verification from Owner that all funds necessary for payment of the Contract Price are available, whichever shall last occur. Contractor shall diligently pursue and substantially complete all work to be performed under this Contract within a reasonable period of time, taking into consideration delays that are beyond the control of the Contractor, including, but not limited to, weather conditions, delays in selection or delivery of materials, change orders requested by Owner

and delays in obtaining all necessary licenses or permits or the certificate of occupancy. Contractor may cease construction work at such time, and from time to time, that the balance in the bank draw account is ever less than the balance of the Contract Price then due for completion, plus any increased costs for all Change Orders. Contractor shall not be liable to Owner for any losses, costs or damages resulting from or arising out of a delay or inability to perform this Contract as described herein or caused by any event beyond the control of the contractor. **THE PARTIES ACKNOWLEDGE THAT THE NATURE, LOCATION(S) AND EXTENT OF OTHER DISASTER-RELATED DAMAGED PROPERTIES MAY ADVERSELY IMPACT THE CONTRACTOR'S ABILITY TO TIMELY PROCURE MATERIALS OR LABOR NECESSARY TO THE PERFORMANCE OF THIS CONTRACT, BUT THAT THE CONTRACTOR SHALL USE REASONABLE EFFORTS AND DUE DILIGENCE IN DOING SO.**

(B) LICENSES, APPROVALS AND PERMITS: Contractor shall obtain and pay for all licenses, permits or approvals required for the scope of work, except that the owner shall be responsible for obtaining and paying for any approval(s) required from a Homeowner's Association or its committees.

(C) INSURANCE: Contractor shall, at contractor's expense, maintain all insurance required by law, including workers compensation and general liability, in connection with the work to be performed under this Contract. In the event that the builder's risk insurance policy does not provide for wind and hail-storm damage, Owner shall provide for such coverage at Owner's expense, unless otherwise checked here by contractor (____Contractor, if applicable) Additionally, under no circumstances will Contractor be liable for anything covered in any home warranty program or product. The Owner shall bear the sole risk of loss of or damages to all materials delivered to the Property, and the Contractor is hereby relieved of any and liability for any such loss and damages, except to the extent any such loss or damage is covered by an insurance policy owned by the Contractor.

14. RESPONSIBILITIES OF OWNER. Owner warrants and represents to Contractor, and agrees to be responsible for, the following:

(A) TITLE: Owner has fee simple marketable title to the subject property, free and clear of all liens or encumbrances that would prevent the Contractor's performance of this contract, and Owner shall submit proof of same to Contractor immediately upon request.

(B) RIGHT OF ACCESS: Owner has legal right of access to the Subject Property and all rights of title, including easements necessary for the construction, use and occupancy of the structure, and Owner grants adequate access to Contractor as required for Contractor to perform this contract.

(C) BOUNDARIES/SURVEYS: It shall be the sole responsibility of Owner to mark the boundaries of the Subject Property and the location on such property where the structure is to be constructed, and to obtain boundary, foundation and final surveys as may be required by Owner's Lender, as well as any other professional reports required for Contractor to perform this contract, with any loss or damage suffered by Contractor or any third party as the result of a defect in title or incorrect designation of the boundaries or location of the structure to be borne solely by Owner.

(D) UTILITIES: Owner shall furnish and pay for all utilities necessary for the performance of this contract, including, but not limited to: water, sewer and electricity.

(E) YARD DEBRIS REMOVAL, LANDSCAPING AND SPRINKLERS: The removal of yard (non-construction) debris, existing landscape and sprinkler system (if any), and other site development costs, shall be the responsibility and expense of the owner, unless otherwise described in the scope of work. None of the removed landscape need be maintained by contractor; if maintained by owner, it must be kept clear of all work hereunder. Contractor shall not be responsible for damages or repairs to existing or removed landscaping resulting from the normal course of construction.

(F) FINANCING: It shall be the sole responsibility of Owner to obtain insurance claims proceeds or financing necessary to create and maintain a bank draw account balance sufficient to make all the payments set forth in this Contract, and Owner shall have sole responsibility to pay all fees, charges or other costs of such financing, including inspection fees charged by any such lender. The nonperformance of any such lender shall not affect the obligation of Owner to Contractor; provided, however, the draw schedule designated by the construction loan lender shall supersede and replace the draw schedule set forth herein. In the event any portion of the Contract Price is to be paid from the proceeds of a construction loan, Owner agrees to provide Contractor with written verification of a construction loan commitment, subject only to standard conditions, as a condition precedent to Contractor beginning any work. Owner shall furnish, and hereby authorizes and directs the Lender to furnish, the Contractor with any information regarding the status and amount(s) of undisbursed loan proceeds from time to time, upon Contractor's request.

(G) USE OF CONTRACTOR'S EMPLOYEES, AGENTS, SUBCONTRACTORS, OR MATERIAL SUPPLIERS: Owner and Owner's family members or agents shall not in any manner, utilize, unreasonably interfere, communicate, or contract with Contractor's employees, subcontractors, subcontractor's employees or agents, or material suppliers, nor perform or permit any work on the Subject Property, without the prior written approval of the Contractor, which approval may be withheld in the Contractor's unrestricted discretion; provided, however, that if such consent is given, then Owner shall be solely responsible for the payment, shipment, delivery, insurance, installation, and damages for delay.

15. ACCORDING TO FLORIDA'S CONSTRUCTION LIEN LAW (SECTIONS 713.001 – 713.37, FLORIDA STATUTES), THOSE WHO WORK ON YOUR PROPERTY OR PROVIDE MATERIALS AND ARE NOT PAID-IN-FULL HAVE A RIGHT TO ENFORCE THEIR CLAIM FOR PAYMENT AGAINST YOUR PROPERTY. THIS CLAIM IS KNOWN AS A CONSTRUCTION LIEN. IF YOUR CONTRACTOR OR A SUBCONTRACTOR FAILS TO PAY SUBCONTRACTORS, SUB-SUBCONTRACTORS, OR MATERIAL SUPPLIERS OR NEGLECTS TO MAKE OTHER LEGALLY REQUIRED PAYMENTS, THE PEOPLE WHO ARE OWED MONEY MAY LOOK TO YOUR PROPERTY FOR PAYMENT, EVEN IF YOU HAVE PAID YOUR CONTRACTOR IN FULL. IF YOU FAIL TO PAY YOUR CONTRACTOR, YOUR CONTRACTOR MAY ALSO HAVE A LIEN ON YOUR PROPERTY. THIS MEANS IF A LIEN IS FILED YOUR PROPERTY COULD BE SOLD AGAINST YOUR WILL TO PAY FOR LABOR, MATERIALS, OR OTHER SERVICES THAT YOUR CONTRACTOR OR A SUBCONTRACTOR MAY HAVE FAILED TO PAY. FLORIDA'S CONSTRUCTION LIEN LAW IS COMPLEX AND IT IS RECOMMENDED THAT WHENEVER A SPECIFIC PROBLEM ARISES, YOU CONSULT AN ATTORNEY.

16. RIGHT-TO-CURE: CHAPTER 558 NOTICE OF CLAIM. CHAPTER 558, FLORIDA STATUTES CONTAINS IMPORTANT REQUIREMENTS YOU MUST FOLLOW BEFORE YOU MAY BRING ANY LEGAL ACTION FOR AN ALLEGED DEFECTIVE CONSTRUCTION IN YOUR HOME. SIXTY DAYS BEFORE YOU BRING ANY LEGAL ACTION, YOU MUST DELIVER TO THE OTHER PARTY TO THIS CONTRACT A WRITTEN NOTICE REFERRING TO CHAPTER 558 OF ANY CONSTRUCTION CONDITIONS YOU ALLEGE ARE DEFECTIVE AND PROVIDE SUCH PERSON THE OPPORTUNITY TO INSPECT THE ALLEGED CONSTRUCTION DEFECTS AND TO CONSIDER MAKING AN OFFER TO REPAIR OR PAY FOR THE ALLEGED CONSTRUCTION DEFECTS. YOU ARE NOT OBLIGATED TO ACCEPT ANY OFFER WHICH MAY BE MADE. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER THIS FLORIDA LAW WHICH MUST BE MET AND FOLLOWED TO PROTECT YOUR INTERESTS.

17. DEFAULT/NOTICE OF DEFAULT. Other than for claims of defective construction, which are governed solely by the "right-to-cure" law disclosed in paragraph 16, Contractor shall be in default under this Contract if Contractor abandons work on the structure or otherwise refuses to carry out contractor's obligations under this Contract (unless such abandonment or refusal is based upon a prior default by Owner which Owner has failed to cure after written notice thereof). Contractor shall be deemed to have abandoned work if Contractor shall fail to perform or cause any work to be performed on the {TL051441;1}

Subject Property for twenty-one (21) consecutive days, unless such failure is the result of any event beyond the control of the Contractor. Owner shall be in default under this Contract if Owner refuses to permit Contractor to complete performance, fails to pay any amounts when due, or otherwise refuses to carry out the obligations of Owner under this Contract (unless such refusal or nonpayment is based upon a prior default by Contractor which Contractor has failed to cure after written notice thereof). In the event of default, the defaulting party shall be entitled to receive written notice, by certified mail return receipt requested or by hand delivery to the address shown below, which specifies the event(s) of default. The defaulting party shall have ten (10) days from the receipt of the notice in which to begin the curing of any default, which actions shall be continuously pursued and completed within a reasonable time in light of the nature of the default; provided, however, the cure of any default in payment must be completed within ten (10) days from the date of notice of default. If any default is timely cured, each party agrees that this Contract shall remain in full force and effect and neither party may assert any claims as the result of such default. All notices shall be to the respective addresses of the parties as set forth on page 1, or as otherwise set forth in written notice to the other party.

18. REMEDIES AFTER DEFAULT:

(A) BY CONTRACTOR. Except for claims by the Owner of defective construction, which are governed solely by the "right-to-cure" law disclosed in paragraph 16, in the event of default by Contractor which is not cured within the time specified, the Owner may declare the Contract terminated and seek damages only for the reasonable and necessary costs to complete construction in accordance with the original plans and specifications and for the Contract Price (adjusted by Change Orders to the date of termination), less any balance of the adjusted Contract Price not paid to Contractor, and excluding any other damages whatsoever, such as: damages for delay, or for any consequential damages.

(B) BY OWNER. In the event of default by Owner which is not cured within the time specified, the Contractor, at Contractor's option: (1) shall provide a notice of default, upon which contractor shall be entitled to all costs incurred by Contractor from the last draw payment to the date of notice of default, together with profits in the amount of fifteen (15%) percent thereof, and excluding any other damages whatsoever, such as: damages for delay, or for any consequential damage; or (2) may complete the construction and seek damages for breach of contract. The parties have agreed to this amount of profits due to the difficulties and uncertainties associated with the calculation of actual damages for lost profits which Contractor is likely to incur as the result of a default by Owner.

19. ARBITRATION. Except for claims by the Owner of defective construction, which are governed solely by the "right-to-cure" law disclosed in paragraph 16 the parties agree that any other action to enforce this Contract shall be exclusively by arbitration proceedings as described herein, to be held in the county in which the real property described herein is located, and both parties agree to be bound by the decision rendered in such proceedings. Within thirty (30) days of a written request for arbitration, each party shall select an arbitrator. If either party fails to select an arbitrator within this time frame, the first arbitrator selected may select the second arbitrator. Within ten (10) days thereafter the two arbitrators shall select a third arbitrator. All arbitrators shall be persons with experience or knowledge in the construction industry. The arbitration shall be conducted in accordance with the Florida Arbitration Code (Chapter 682, Florida Statutes); provided, however, the final hearing shall be held not more than ninety (90) days after the receipt of the request for arbitration and the final decision shall be rendered not more than thirty (30) days after the conclusion of the final hearing.

20. ATTORNEY FEES. In the event of any disputes arising out of or in connection with this contract, the prevailing party therein shall be entitled to recover reasonable attorney fees and costs, whether same were incurred prior to or during any judicial proceedings, including, but not limited to, any trial or appellate proceedings, as well as prior to or during any of the alternative dispute resolution mechanisms, whether described in paragraphs 16 and 19 or otherwise ordered by a court of competent jurisdiction.

21. GOVERNING LAW, ASSIGNMENT AND RECORDING. This Contract shall be construed and enforced in accordance with the laws of the State of Florida, and may not be assigned or recorded except with the prior approval of both parties, which approval may be withheld for any reason whatsoever.

22. INTEGRATION CLAUSE. This Contract and the additional contract documents attached hereto, as indicated in paragraph 9 hereof, constitutes the complete agreement between the parties and may not be modified except in writing signed by all parties hereto.

23. CONSTRUCTION RECOVERY FUND. PAYMENT MAY BE AVAILABLE FROM THE FLORIDA HOMEOWNER'S CONSTRUCTION RECOVERY FUND IF YOU LOSE MONEY ON A PROJECT PERFORMED UNDER CONTRACT, WHERE THE LOSS RESULTS FROM SPECIFIED VIOLATIONS OF FLORIDA LAW BY A STATE-LICENSED CONTRACTOR. FOR INFORMATION ABOUT THE RECOVERY FUND AND FILING A CLAIM, CONTACT THE FLORIDA CONSTRUCTION INDUSTRY LICENSING BOARD AT THE FOLLOWING TELEPHONE NUMBER AND ADDRESS:
Construction Industry Licensing Board
1940 N. Monroe Street, Tallahassee, Florida, 32399-0784.
Telephone: 850-487-1395

24. CONTROLLING PROVISIONS AND HEADINGS. All handwritten or typewritten provisions herein shall control over any printed provisions in conflict therewith, unless otherwise provided. The headings on each paragraph are for the sole convenience of the parties and shall not be construed to be a part of this Contract.

25. ADDITIONAL CONTRACT DOCUMENTS. If marked, the following additional documents are a part hereof and each party acknowledges receipt of a copy thereof:

Exhibit "A" (Metes & Bounds)
 Exhibit "A-1" (Draw Schedule)
 Exhibit "A-2" (Mold Disclosure)
 Other Allowances
 Other Specifications
 Other (_____)

26. SPECIAL CLAUSES (If Any): _____

27. INSULATION DISCLOSURE. In accordance with 16 C.F.R., Chapter 1, Section 460.16, the following disclosure is made regarding the insulation which has been or will be installed in the improvements described herein, as follows (if known):

<u>Location</u>	<u>Type</u>	<u>Thickness</u>	<u>Manufacturer's R-Value</u>
Exterior Walls	_____	_____ "	R=_____
Interior Walls	_____	_____ "	R=_____
Flat Ceiling Walls	_____	_____ "	R=_____
Sloped Ceiling Walls	_____	_____ "	R=_____
Other (_____)	_____	_____ "	R=_____
Common Walls (such as house and garage)	_____	_____ "	R=_____

Note: If any of the above information is incomplete, it is either because this information has already been included in the plans or specifications identified herein, or because this information is unknown at the time this agreement was entered into. However, if any of the above information is incomplete and has not been included in the plans or specifications identified herein, then it will be furnished to the Buyer when the information becomes available. Buyer hereby acknowledges that this R-value information is based solely upon information supplied by the manufacturer or installer and that Contractor does not represent or warrant the accuracy of this information. Buyer further acknowledges that the actual R-values may vary based upon normal construction variances in insulation thickness and openings in walls.

WITNESSES (Optional)

OWNER(S):

1. _____

Print Name: _____

2. _____

Print Name: _____

WITNESSES (Optional)

PRINT CONTRACTOR'S NAME

License # _____

1. _____

By: _____
Print Name: _____

2. _____

Print Title: _____