

Specimen – Consult with Counsel

This specimen agreement should be reviewed by your legal counsel before being used in whole or in part. This specimen agreement may not fit your specific needs or circumstances. Your legal counsel may determine that your interests are best served by use of alternative forms or a modification of this form.

PURCHASE AGREEMENT

1. THIS PURCHASE AGREEMENT (this “Agreement”) dated effective as of the Effective Date set forth below, is entered into by and between:

SELLER	
Name:	
Address:	
Email:	
Phone:	

(the “Seller”), and

BUYER	
Name(s):	
Address:	
Email:	
Phone:	

(individually and collectively, as applicable, the “Buyer”),

who, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, hereby agree as follows:

2. **Property.** The Seller agrees to sell and the Buyer agrees to buy, the immovable property located in the Parish of _____, State of Louisiana, having the street address of _____, as described on **Exhibit “A”** attached hereto and made a part hereof (the “Property”), subject to the terms, conditions, and for the price set forth herein. The term “Property” shall include the improvements to be completed in accordance with the National Association of Home Builders, Residential Construction Performance Guidelines, Third Edition, as described in the Project

Documents in effect as of the date of the Agreement, and any Change Orders that the Buyer and the Seller enter into in accordance with this Agreement. The term “Project Documents” means the following documents, copies of which are attached hereto *in globo* as **Exhibit “B”**:

- a) Building Drawings and Plans;
- b) Selections Schedule;
- c) Pre-Contract Change Orders; and
- d) The following additional Project Documents, if any are listed below:
- e) _____;
- f) _____;
- g) _____;
- h) _____; and
- i) _____.

3. Change Orders. The Seller has no obligation to respond to requests for changes to the work described in the Project Documents. The Buyer may submit requests for changes to the work described in the Project Documents, to which requests, the Seller may, at the Seller’s sole discretion, accept or reject for any reason or no reason at all, or propose alternatives without regard to reasonableness. If the Buyer and the Seller agree on the cost of any changes to the work described in the Project Documents, the changes shall have no effect without a written change order signed by the Buyer and the Seller describing the changes to be made, any extra work to be done and any changes to the contract price (each, a “Change Order”). Each Change Order shall be signed by all parties and upon execution shall become a part of this Agreement and incorporated into the Project Documents. If more than one Buyer is a party to this Agreement, each Buyer hereby agrees that any of them is authorized to negotiate and execute any Change Order and that the signature of one is binding on the other. The Buyer agrees to make requests concerning any changes, additions or alterations in the work in writing directly to the Seller’s authorized representative named in this Agreement and not to the workers, including subcontractors and subcontractors’ workers, on the job. Any Change Order requested by the Buyer and approved by the Seller shall be paid for by the Buyer as follows: All amounts for additional work shall be due and payable to the Seller in cash prior to commencement of work described in the Change Order, and such amounts shall be fully earned upon payment and shall not constitute a portion of the Deposit or the Purchase Price for the Property. Any delay in payment for a Change Order shall allow the Seller in its sole option and discretion to proceed with the Change Order and collect the amount due for the Change Order from the Buyer, or disregard and consider the Change Order cancelled by the Buyer and continue work on the Property without giving any effect to the Change Order.

4. Buyer Selections. If the Project Documents permit selections by the Buyer, the Buyer’s selections will conform to the Seller’s normal standards as set out in the Project Documents or will not, in the Seller’s judgment, adversely affect the marketability of the Property. The Buyer will make required selections in accordance with the Project Documents or as reasonably required by the Seller. If the Buyer does not make selections within the allotted time frames, the Seller at its sole option may make the selection for the Buyer or stop work on the Property until selections are made. The Buyer shall pay the Seller for any costs associated with the Buyer’s delay in making selections.

5. **Price.** The Buyer agrees to pay and the Seller agrees to accept as full consideration for the conveyance of the Property \$_____ in immediately available funds (the "Purchase Price").

6. **Deposit.** Within two (2) business days after the Effective Date, the Buyer will tender to the Seller the sum of \$_____ (the "Deposit"). The Deposit shall not be earnest money. The Deposit shall be applied to the payment of the Purchase Price at Closing, or in the event of a default by either the Seller or the Buyer, or in the event of a termination, then in accordance with this Agreement.

7. **Financing Condition.** The Buyer's obligation to deliver the Purchase Price is conditioned upon the ability of the Buyer to obtain a loan with the Property as security for such loan in the amount of \$_____ or ___% of the Purchase Price at an interest rate not to exceed ___% payable in monthly installments over not less than _____ years or on such other terms approved by the Buyer (a "Qualified Loan"). Buyer shall make a good faith application for the loan within 10 days after the Effective Date of this Agreement. A commitment by a lender to make a loan subject to approval of title, appraisal and/or final inspection of improvements, shall constitute obtaining a Qualified Loan and satisfy the condition provided herein unless the Buyer notifies the Seller of the failure of a commitment to satisfy the requirements of a Qualified Loan within 2 days of the Buyer's receipt of the loan commitment. In the event the said loan cannot be closed within 60 days of the Buyer's application, due to delays in the completion of the Property, the Seller may, at Seller's option, pay discount points and/or buy-down costs necessary to maintain the interest rate of the loan within one percentage point of the committed interest rate. In the event that the prior committed interest rate or a rate within one percentage point of said original rate cannot be obtained by the Seller paying discount points or buy-down costs, the Buyer, at the Buyer's option, may either proceed to Closing or terminate this Agreement. Buyer's termination of this Agreement based on the financing condition described herein shall automatically entitle the Seller to receive the Deposit as a fully earned payment, whether such termination is based upon the failure to obtain a loan or election to terminate after an interest rate has increased for any reason (including construction delays).

8. **Appraisal.** By checking the space before one of the following optional provisions below, the checked provision applies and the unchecked provision does not apply. If neither option is selected, then Option 1 applies:

Option 1 <input type="checkbox"/>	This Agreement is NOT conditioned on appraisal.
Option 2 <input type="checkbox"/>	This sale IS conditioned on the appraisal of the Property being not less than the Purchase Price. If the appraised value of the Property, as set forth in an appraisal report produced by a real estate appraiser licensed in the State of Louisiana (the " <u>Appraisal</u> "), is equal to or greater than the Purchase Price, the Buyer shall pay the Purchase Price. If the appraised value as shown in the Appraisal is less than the Purchase Price, the Buyer shall provide the Seller with a copy of the Appraisal within 3 days of the Buyer's receipt of same, along with the Buyer's written request for the Seller to reduce the Purchase Price to the value as set forth in the Appraisal. Within 2 days after Buyer's submission of a request for a reduction in the Purchase Price, the Buyer shall

	<p>elect to either pay the Purchase Price or terminate this Agreement, unless the Seller agrees in writing to reduce the Purchase Price to the requested amount, or the Seller and Buyer mutually agree in writing to a different change to the Purchase Price. The Buyer's failure to timely make the election to terminate this Agreement pursuant to this paragraph shall be deemed an acceptance of the Purchase Price notwithstanding the appraised value.</p>
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9. Final Inspection. The improvements shall be deemed to be substantially completed in accordance with the Project Documents upon final inspection or issuance of a certificate of occupancy (or an equivalent document) from the applicable governmental authorities. In constructing the improvements, Seller shall employ its normal construction schedule and Buyer hereby acknowledges and accepts construction delays that result from forces outside of Seller's direct control, including without limitation, inclement weather, inability to obtain building materials, and problems with labor and sub-contractors. After Seller provides notice of substantial completion of the improvements Buyer shall have 10 days to conduct a complete inspection of the Property on a date that Buyer schedules with the Seller (the "Final Inspection"). Utilities for Final Inspection shall be provided by the Seller. Buyer's failure to participate in the Final Inspection, after receiving reasonable notice thereof from Seller, shall constitute acceptance of the Property as it exists on the date of the proposed Final Inspection. Any inspector who conducts the Final Inspection shall be proficient in the home component being inspected and qualified as a licensed home inspector by the Louisiana Home Inspectors Board, a registered professional engineer licensed by the Louisiana Professional Engineering and Land Surveying Board, or a third-party provider registered with the Louisiana State Uniform Construction Code Council. The standard for completion of the Final Inspection shall be the most recent edition or version of the Residential Construction Performance Guidelines and the Louisiana State Uniform Construction Code. Any deficiency discovered that is beyond an inspector's scope of certification must be verified at the Buyer's sole cost and expense by the appropriate engineer or licensed professional certified in that field. Within 48 hours of the Final Inspection, Buyer shall prepare a written list of any deficiencies requiring corrective action or completion, which items shall be corrected or completed prior to the Closing. The date scheduled for the Closing shall be extended to allow sufficient time to correct any deficiencies identified during the Final Inspection. A certificate of occupancy issued by the governing authority shall constitute compliance with Louisiana State Uniform Construction Code.

10. Closing, Expenses and Deliverables. The closing of the sale of the Property (the "Closing") shall be held at the offices of the settlement agent or notary public selected by the Buyer within 15 days after the later of the Final Inspection or completion of work to correct any deficiencies timely identified during a Final Inspection. Provided that the Buyer has timely applied for the loan described in the Financing Condition, the date for the Closing shall be extended as necessary to accommodate the Financing Condition, but no longer than 60 days after the Buyer's application for the loan.

- a. Seller Deliverables. Seller agrees to deliver merchantable title to the Property at Closing and execute, acknowledge (as appropriate) and deliver to Buyer the following at the Closing: (a) act of sale without warranty of title (except as to Seller's acts) and subject to the waiver of warranties as set forth herein; (b) such possession and lien affidavits (without indemnity) if and as reasonably required by a title insurer; (c) settlement statement; (d) such other documents as may be reasonably required to consummate the transactions set forth herein; and (e) any closing expenses required by the Seller herein. The date of the Closing shall be extended to allow for any curative work necessary to satisfy Seller's obligation to deliver merchantable title. Until all defects in Seller's title have been cured, after a 60-day delay in the original date scheduled for the Closing, the Buyer may at Buyer's option terminate this Agreement and receive a return of the Deposit, less any amount then owed for Change Orders. If the Seller is unable to cure title defects after 90 days from the original date scheduled for the Closing, then the Seller may, at the Seller's option, terminate this Agreement by returning the Deposit to the Buyer.
- b. Buyer Deliverables. Buyer covenants and agrees to deliver to Seller at Closing: (a) the Purchase Price; (b) settlement statement; (c) any amounts owed for Change Orders; and (d) any closing expenses required by the Buyer herein.
- c. Closing Expenses of the Buyer. The Buyer shall be responsible for all abstract, title insurance commitment, title policy, surveys, notary fees, lender's fees and charges, recording charges for recordation of the act of sale, and any fees of the Buyer's attorney.
- d. Closing Expenses of the Seller. The Seller shall be responsible for payment of the fees of the Seller's attorney, mortgage and release certificates and cancellations.
- e. Property Tax Prorations between the Buyer and the Seller. All ad valorem property taxes for the Property shall be prorated between the Seller and the Buyer for the tax year in which the Closing is held on the basis of the tax statements for such year; provided, however, that if tax statements for the current year are not available as of the Closing Date, the tax proration between the Seller and the Buyer shall be made on the basis of the taxes for the immediately prior tax year, which proration shall be final and no adjustment shall be made after the Closing.

11. Waiver of Warranties. Except as otherwise provided in the New Home Warranty Act, La. Rev. Stat. § 9:3141-3150, the Buyer hereby waives any and all warranties, and acknowledges that the Seller has provided ample opportunity for the Buyer to inspect and investigate the Property, and understands that at Closing, the Buyer shall accept the Property on an as-is, where-is basis, and accordingly the Buyer and Seller shall incorporate the paragraph on **Exhibit "C"** into the act of sale at Closing. The Buyer hereby acknowledges that the Seller has made no guarantees, warranties, understandings, or representations that are not included in this Agreement.

12. Default. If the Buyer fails to comply with this Agreement, the Buyer will be in default, and the Seller may either (a) enforce specific performance, and seek all such other relief as may be provided by law, or (b) terminate this Agreement and retain the entire Deposit above as liquidated

damages, thereby releasing both parties from any further obligation under this Agreement. If the Seller fails to comply with this contract for any other reason, the Seller will be in default and the Buyer may, as the Buyer's sole and exclusive remedy, terminate this contract and receive the Deposit less any amounts owed for Change Orders, as agreed liquidated damages, thereby releasing both parties from this Agreement. The prevailing party to any dispute resulting in litigation or arbitration shall be entitled to an award of reasonable attorney's fees and costs.

13. Arbitration Agreement. The Seller and Buyer hereby incorporate the Arbitration Agreement attached hereto as **Exhibit "D"** as part of this Agreement.

14. Notices. Any notice, demand, approval or disapproval, consent or submission for approval or consent permitted or required hereunder (hereinafter, collectively, any "Notice") shall be in writing, shall be given only in accordance with the provisions of this Article, shall be addressed to the parties in the manner set forth on the first page of this Agreement, and shall be conclusively deemed to have been properly delivered: (a) upon receipt when hand delivered; (b) one business day after the notice has been deposited with either FedEx or United Parcel Service to be delivered by overnight delivery (provided that, the sending party receives a confirmation of actual delivery from the courier); or (c) upon transmission when sent by electronic mail attachment to the address set forth below:

15. Amendments. This Agreement may only be amended or modified in writing executed by both the Buyer and the Seller. No oral waivers or extensions shall be binding on the parties.

16. Applicable Law. This Agreement shall be construed in accordance with the laws of the State of Louisiana and the ordinances of the Parish, city or township, as applicable.

17. Counterparts. This Agreement may be executed in any number of identical counterparts, and each counterpart hereof shall be deemed to be an original instrument, but all counterparts hereof taken together shall constitute but a single instrument.

18. Entire Agreement; Binding Effect; Assignment. This Agreement, including all exhibits attached hereto or expressly referred to herein, contains the entire agreement between the parties hereto with respect to the transactions contemplated herein and supersedes and supplants any and all prior agreements with respect thereto. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors, assigns and legal representatives. This Agreement may not be assigned to any other person without first obtaining the written consent of the Seller, which consent may be withheld for any reason in the Seller's sole discretion.

19. Electronic Transmission. This Agreement may be executed by the parties utilizing transmission by email attachment and such transmission of electronically transmitted signatures shall be binding and legally effective for all purposes.

20. No Recordation. The Buyer is obligated not to record this Agreement in the public records of any parish or county. If the Buyer shall so record this Agreement, the Buyer shall execute a cancellation of the recordation of this Agreement in recordable form on demand of the Seller, and the Buyer shall pay any documentary transaction tax or other tax and/or fee due to any

governmental agency as result of the recordation of this Agreement. The Buyer shall defend and indemnify the Seller against any such tax or fee. The provisions of this paragraph shall survive the termination or merger of this Agreement.

21. Expiration of Offer. If a counterpart of this Agreement is submitted by a party as communication of an offer, such offer remains irrevocable until _____, 20__, at __:__ o'clock __p.m./__a.m., at which time such offer shall automatically be deemed revoked unless at such time the offer has been duly accepted in writing and actually delivered to the other party.

22. Effective Date. The date on which the last party executes this Agreement is the "Effective Date" of this Agreement.

This instrument has been executed by Buyer in the City of _____, State of _____, on this _____ day of _____, 20__.

BUYER:

This instrument has been executed by Seller in the City of _____, State of _____, on this _____ day of _____, 20__.

SELLER:

EXHIBIT “A”
(Insert/Attach Legal Description of Property)

Exhibit “A” – Legal Description
Purchase Agreement
Home under Construction on Builder’s Lot

EXHIBIT “B”
(Insert Project Documents)

Building Drawings and Plans

Schedule of Selections

Pre-Contract Change Orders

EXHIBIT "C"

Except as otherwise provided in the New Home Warranty Act, La. Rev. Stat. § 9:3141-3150, the sale and conveyance of the Property pursuant hereto is made and accepted on an "AS IS, WHERE IS" basis, without any representations or warranties, express or implied, whatsoever, as to its physical conditions, including without limitation, as to (a) workmanship, structure, stability and quality of the improvements, (b) the water tightness of the improvements, including without limitation roofs, walls, doors, and windows, (c) the status, stability and quality of soil conditions, equipment, stairways, appliances, fixtures and furniture, (d) any defects, termite infestation or damage and any other condition whether latent or discoverable by reasonable inspection, (e) merchantability or fitness for any particular purpose, (f) the presence of or damage related to any form or type of mold, mushroom or mildew or any other funguses or such the reproductive body or other spores produced by or arising out of any such funguses, or any substance, vapor or gas produced by or arising out of any funguses or spores, or any material, product, building component, building or structure that contains, harbors, nurtures or acts as a medium for any such funguses or spores, and (g) the existence of any violation of any applicable laws relating to the environment, including without limitation those pertaining to the generation, use, handling, storage, treatment or disposal of hazardous waste or hazardous substances, Buyer expressly waives the warranty of fitness and the warranty against redhibitory vices and defects as to title, and physical condition, whether apparent or latent, imposed by applicable state or federal law, and the jurisprudence thereunder. Buyer also waives any rights it may have in redhibition or to a reduction of the Purchase Price pursuant to Louisiana Civil Code Articles 2520 through 2548, inclusive, in connection with the Property. All implied warranties with respect to the Property, including those related to fitness for a particular purpose, will be, and are hereby disclaimed by Seller in any controversy, claim, demand, or litigation arising from or in connection with the Property. Buyer hereby accepts the Property in its existing environmental condition and waives, discharges, and releases Seller from any and all claims and/or causes of action which Buyer or its assigns or transferees may have or hereafter be otherwise entitled to, whether affecting person and/or property, for any environmental liabilities arising from the Property, including any claims, demands, causes of action (both public and private), judgments, attorneys' fees, costs, expenses, penalties and fines, imposed or assessed under any federal, state or local environmental law, rule or regulation. It is specifically agreed and understood that Seller makes no warranty as to the condition of the soil. By its signature, Buyer expressly acknowledges all such waivers and its exercise of the right to waive warranty pursuant to Louisiana Civil Code Article 2503.

EXHIBIT "D"

Arbitration Agreement

This Arbitration Agreement is entered into on this ____ day of _____, 20__, by and between _____

_____ (“Buyer”) and _____ (“Seller”) (together, the “Parties”), who hereby agree that any controversy or claim or matters in question between the Parties including, but not limited to, any matter arising out of or relating to (a) the Louisiana Residential Agreement to Buy or Sell, by and between Buyer and Seller, dated on even date herewith (the “Purchase Agreement”), and any amendments thereto, (b) any breach thereof, (c) the design or construction of the property described in the Purchase Agreement (the “Property”), (d) any alleged fraud, misrepresentations or breach of warranties, express or implied, (e) claims for defective design or construction of the Property, (f) intentional and/or negligent infliction of emotional distress, (g) violations of Louisiana law, and/or (h) any other cause of action relating to or arising out of the construction and/or sale of the Property (herein referred to collectively as a “Dispute”), shall be submitted to binding arbitration pursuant to Title 9 of the United States Code, which the parties hereto acknowledge and agree applies to the transaction involved herein, and in accordance with the Construction Industry Arbitration Rules of the AAA or such other rules as the AAA may deem applicable. If Title 9 of the United States Code is inapplicable to any such claim, dispute or controversy for any reason, such arbitration shall be conducted by the AAA pursuant to the Louisiana Binding Arbitration Law and in accordance with the Construction Industry Arbitration Rules of the AAA or such other rules as the AAA may deem applicable. In any such arbitration proceeding: (i) all federal and state law and all statutes of limitations and prescriptive and preemptive periods which would otherwise be applicable shall apply; and (ii) the proceeding shall be conducted by a single arbitrator. The arbitrator shall be selected by the process of appointment from a panel pursuant to the applicable procedures of the AAA. Any award rendered in any such arbitration proceeding shall be final and binding, and judgment upon any such award may be entered in any court having jurisdiction.

This Arbitration Agreement shall inure to the benefit of, and be enforceable by, the Seller’s subcontractors, agents, vendors, suppliers, design professionals, insurers, and any other person alleged to be responsible for the Buyer’s claims pertaining to the Property. The prevailing party shall be entitled to recover reasonable attorney’s fees and costs incurred in enforcing this Arbitration Agreement. Any disputes concerning the interpretation or the enforceability of this Arbitration Agreement, including without limitation, its revocability or voidability for any cause, the scope of arbitrable issues, and any defense based upon waiver, estoppel or laches, shall be decided by the arbitrator.

The initiation of or participation by any party in any judicial proceeding concerning this Arbitration Agreement or any matter arbitrable hereunder shall not be deemed a waiver of the right to enforce this Arbitration Agreement, and notwithstanding any provision of law to the contrary,

Exhibit “D” – Arbitration Agreement
Purchase Agreement
Home under Construction on Builder’s Lot

shall not be asserted or accepted as a reason to delay, to refuse to participate in, or to refuse to enforce this Arbitration Agreement.

The arbitrator shall possess sufficient knowledge in the residential construction industry as determined by the arbitration service. The arbitration hearing shall occur whenever possible in the home which is the subject of the arbitration.

All administrative fees of the arbitration service and fees of the arbitrator shall be borne equally by the parties to the arbitration, subject to the discretion of the arbitrator to reallocate such fees in the interest of justice.

The Seller shall have the right, in advance of the arbitration proceeding, to reinspect the Property.

The parties expressly agree that the warranty and this Arbitration Agreement involve and concern interstate commerce and are governed by the provisions of the Federal Arbitration Act, 9 U.S.C. § 1, *et seq.*, now in effect and as the same may from time to time be amended, to the exclusion of any different or inconsistent state or local law, ordinance or judicial rule; and to the extent that any state or local law, ordinance or judicial rule shall be inconsistent with any provision of the rules of the arbitration service under which the arbitration proceeding shall be conducted, the latter rules shall govern the conduct of the proceeding.

If any provision of this Arbitration Agreement shall be determined by the arbitrator or by any court to be unenforceable or to have been waived, the remaining provisions shall be deemed to be severable therefrom and enforceable according to their terms.

[Signatures on following page]

This instrument has been executed by Buyer in the City of _____, State of _____, on this _____ day of _____, 20__.

BUYER:

This instrument has been executed by Seller in the City of _____, State of _____, on this _____ day of _____, 20__.

SELLER:

Specimen – Consult with Counsel

This specimen agreement should be reviewed by your legal counsel before being used in whole or in part. This specimen agreement may not fit your specific needs or circumstances. Your legal counsel may determine that your interests are best served by use of alternative forms or a modification of this form.