

**THE WINTON/FLAIR HOMES TEXAS GROUP**  
**BUILDERS NEW HOME SALE CONTRACT FOR THE STATE OF TEXAS**

**1. PARTIES:** \_\_\_\_\_ (Seller) agrees to sell and convey to:  
\_\_\_\_\_  
\_\_\_\_\_ (Buyer) and Buyer agrees to buy from the Seller the property described below:

**2. PROPERTY:** Lot \_\_\_\_\_, Block \_\_\_\_\_, \_\_\_\_\_ Subdivision  
\_\_\_\_\_ County, State of Texas, otherwise known as  
\_\_\_\_\_ together with the improvements thereon.

This contract is for a \_\_\_\_\_ Pre-Sale, \_\_\_\_\_ Under Construction, or \_\_\_\_\_ Completed Construction home.

**3. SALES PRICE:**

- A. Cash portion of sales price payable by Buyer at closing.....\$ \_\_\_\_\_
- B. Sum of all financing described below.....\$ \_\_\_\_\_
- C. Sales price (Sum A and B).....\$ \_\_\_\_\_

**4. FINANCING:** Within **5 (five)** days after the effective date of this contract, Buyer shall apply for all third-party financing and shall make every effort to obtain financing. A commitment letter acceptable to the Seller must be obtained from the lender within **15 (fifteen)** business days after the effective date of this contract. If the Buyer elects to pay cash, proof of funds availability shall be provided to Seller within 5 days. Buyer intends to obtain Conventional \_\_\_\_\_, VA \_\_\_\_\_, FHA \_\_\_\_\_, Other \_\_\_\_\_ Financing shall be deemed to have been obtained when the lender has determined the Buyer has satisfied all of the lender's financial conditions (those items relating to the Buyer's ability to qualify for a loan). If financing (including any financed PMI premium) is not obtained within **30** days after of the effective date of the contract, this contract shall terminate and the Builder Deposit shall be refunded to the Buyer. In the event the property does not appraise for the full sales price or greater, Buyer hereby agrees to pay any differences between the appraised value and the sales price. For VA transactions the Buyer has the right to terminate the contract and receive all builder deposits previously paid in the event of a deficient appraisal.

**5. CLOSING:** The closing of the sale shall be on or before \_\_\_\_\_, 20\_\_\_\_\_, or within 7 days after improvements have been substantially completed in accordance with the Construction Documents and are ready for occupancy, or within 7 days after objections to title have been cured, whichever date is later (the closing date). If either party fails to close this sale by the Closing Date, the non-defaulting party shall be entitled to exercise the remedies available. At closing, Seller shall furnish tax statements showing no delinquent taxes and a Special Warranty deed conveying good and indefeasible title showing no additional exceptions other than those normally permitted. Seller's obligation to complete all improvements shall survive closing.

Approval Buyer: \_\_\_\_\_ Approval Seller: \_\_\_\_\_

**6. BUILDER DEPOSIT:** Buyer shall remit \$ \_\_\_\_\_ as Builder Deposit with \_\_\_\_\_ at 6300 Escondido Drive, El Paso, TX (Address), upon execution by both parties. Additional Builder Deposit of \$ \_\_\_\_\_ shall be remitted by the Buyer with builder on or before \_\_\_\_\_, 20\_\_\_\_. If the Buyer fails to deposit the Builder's Deposit as required by this contract, this contract shall be void. This deposit is to be used to help defray the cost of the construction of the new home and is non-refundable.

**7. TITLE POLICY:** Seller shall furnish to Buyer an Owner Policy of Title Insurance (The Title Policy) issued by Sierra Title Company (The Title Company) in the amount of the Sales Price, insuring Buyer against loss under the provisions of the Title Policy, subject to the promulgated exclusions (including existing building and zoning ordinances).

**8. CONSTRUCTION DOCUMENTS:** For pre-sale and under construction homes, all improvements shall be completed with due diligence in accordance with plans and specifications, finish-out schedules or allowances approved by the parties and any other change orders hereafter agreed to by the parties in writing (all called Construction Documents). Buyer approval of the construction plan and "Items & Allowances" is required for new construction or incomplete construction. The Buyer hereby agrees that timely review and approval of construction documents, when applicable, is required to conform to the construction schedule (refer to par 11). In the event that approval of the plans is delayed to the extent that the construction schedule is affected, the start/completion dates for construction shall be revised. Change orders that affect the completion date will require a contractual change to the completion and closing dates: \_\_\_\_\_ Initials.

**9. COST ADJUSTMENTS:** Increase in costs resulting from Change Orders or items selected by the Buyer which exceed the allowances specified in the Construction Documents shall be paid by the Buyer at the time of signing of the Change Order(s) or purchase of additional items. Decrease(s) in costs resulting from Change Orders and unused allowances shall reduce the Sales Price accordingly. Refer to contract addenda for other requirements for processing Change Orders.

**10. HOMEOWNERS ASSOCIATION:** As a purchaser of property in the residential community in which this property is located, you are \_\_\_\_\_, are not \_\_\_\_\_ obligated to be a member of the property owner's association. Restrictive covenants governing the use and occupancy of the property and a dedicatory instrument governing the establishment, maintenance, and operation of this residential community have been or will be recorded in the Real Property Records of the county in which the property is located. If required by the Association, you will be obligated to pay assessments to the property owner's association. The amounts of the assessments are subject to change. Your failure to pay the assessments could result in a lien on the property and foreclosure. Buyer's initials hereby acknowledge receipt of the restrictive covenants\_\_\_\_\_. Copies of the dedicatory instrument may be obtained from the county clerk.

**11. BUYER'S SELECTIONS:** Buyer selections, if applicable, will conform to Seller's Normal standards and will not, in Seller's judgment, adversely affect the marketability of the property. Buyer will make

Approval Buyer:\_\_\_\_\_ Approval Seller:\_\_\_\_\_

required selections within 7 days after receipt of notice from the Seller. Refer to "Items & Allowances" for Buyer selections (if applicable). **For pre-sale and under construction homes, Buyer agrees that all selections of materials and processes will be complete no less than 60 days prior to closing.**

**Buyer initials** \_\_\_\_\_

**12. COMPLETION:** Construction shall commence no later than \_\_\_\_\_, 20\_\_\_\_\_, or within 15 days after approval of the construction plan, construction loan and building permit, whichever is later. Subject to the start date for construction, the improvements shall be completed in accordance with the Construction Documents and be ready for occupancy no later than \_\_\_\_\_, 20\_\_\_\_\_, or \_\_\_\_\_ days after the slab has been poured, whichever is later. The improvements shall be deemed to be substantially completed upon the earliest of either the issuance of a certificate of occupancy by a governmental entity or the date of occupancy by Buyer. **If delay of construction is caused by reason of the Buyer's acts or omissions, Buyer agrees to pay Seller the carrying cost for the construction loan.** Provided Seller has exercised reasonable and continued diligence, construction delays caused by acts of God, fire, or other casualty loss, strikes, boycotts, or materials availability, shall automatically extend the completion date for such delays. In no event shall such automatic time extensions exceed a total period of 30 days.

**13. WARRANTIES:** In addition to the warranties provided by the manufacturers of the various components and equipment included with the home, Seller provides a two year warranty for defects in materials and workmanship for all items related to the home, excluding landscaping. Landscaping has a 90 day warranty. In addition to the two year warranty, Seller also provides additional warranties as described in the Bonded Builders Home Warranty, BB-W602. BB-W602 includes the following coverage:

- Two years for defects in electrical, plumbing and mechanical systems
- Ten years for major structural defects

Buyer acknowledges, understands, and agrees:

- By signing this contract, Buyer is waiving any claim under the theory of implied warranty of good and workmanlike construction and that such implied warranty to the extent it exists in Texas, is expressly replaced by the terms of the limited warranty provided under this contract.
- The Limited Warranty specified in BB-W602 and the Two Year Seller Warranty is the only warranty.
- Maintenance is required by the homeowner to ensure proper performances of improvements for the limited warranty to remain in effect.

**14. INSULATION:** As required by the Federal Trade Commission regulations, the information relating to the insulation installed or to be installed in the home being purchased under this contract is as follows:

- Exterior walls for living areas: Insulated with blown-in CELLULOSE (type) to a thickness of 3½ inches, which yields an R-Value of 13.

Approval Buyer: \_\_\_\_\_

Approval Seller: \_\_\_\_\_

- Interior walls in non-living areas: (Bathrooms and Equipment Closets) insulated with BATT (type) to a thickness of 3½ inches, which yields an R-Value of 11.
- Ceilings in the living area: Insulated with blown-in CELLULOSE (type) to a thickness of 10 inches, which yields an R-Value of 38.
- Floors in living areas over unconditioned space (other than slab): insulated with blown-in CELLULOSE to a thickness of 8 inches, this yields an R-Value of 30.

All R-Values are based on information provided by the manufacturer of the insulation.

**15. CONSTRUCTION MATERIALS/SUBCONTRACTORS:** The Buyer agrees that selection of materials/products and subcontractors shall be the responsibility of the Seller. (Buyer) Initials: \_\_\_\_\_

**16. POSSESSION:** Seller shall deliver possession to the Buyer after closing and funding.

**17. SPECIAL PROVISIONS:** \_\_\_\_\_

**18. SALES EXPENSES:** To be paid at closing if using preferred lender.

- Seller shall pay \_\_\_\_\_% of the lesser of the loan amount or sales price towards Buyer's closings costs, prepaid items and other loan and closing fees associated with Buyer's financing. The total fees paid by Seller on behalf of Buyer shall not exceed \$\_\_\_\_\_ and any excess associated fees shall be paid by Buyer. In the event Buyer's fees are less than the stated dollar amount, the actual amount shall prevail.
- **Sellers Expenses:** Lender completion requirements, releases of existing loan(s) including prepayment penalties and recording fees; tax statements; preparation of deed; one-half of escrow fee; other expenses stipulated to be paid by Seller when specified by this contract.
- **Buyer Expenses:** Expenses incident to any loan obtained by Buyer, i.e., application, appraisal, origination, and commitment fee, survey costs, recording fees, endorsements required by lender, mortgage title policy, loan-related inspection fees, credit reports, all prepaid items (premiums for flood and hazard insurance, reserves deposits for insurance, ad valorem taxes and special governmental assessments), tax deletion, EPA endorsements, final compliance inspection, loan related expenses (photo, amortization schedules, appraisals, one-half of escrow fee, preparation of loan documents, courier fee, repair inspections, underwriting fee, wire transfer fee, tax service and research fee), any legal fees associated the closing which are normally paid by the buyer, and other expenses stipulated to be paid by Buyer when specified by this contract.

**19. PRORATIONS AND TAXES:** Current taxes, any rents and property owner association dues, maintenance fees and assessment shall be prorated through the Closing Date.

**20. CASUALTY LOSS:** If any part of the property is damaged or destroyed by fire or other casualty loss, Seller shall restore the property to its previous condition as soon as reasonably possible, but in any event by the Closing Date. If Seller is unable to do so without fault, Buyer may either (a) terminate this contract

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Approval Seller: \_\_\_\_\_

and the Builder Deposit shall be refunded to the Buyer, or (b) extend the time for performance up to 15 days and the Closing Date shall be extended as necessary.

**21. DEFAULT:** If Buyer fails to comply with this contract, Buyer shall be in default, and Seller may either enforce specific performance, seek such other relief as may be provided by law, or both, or terminate this contract and receive the Builder Deposit as liquidated damages, thereby releasing both parties from this contract.

If Seller is unable, without fault, to make any non-casualty repairs or deliver the property as agreed, Buyer and Seller may either extend the time for performance up to 30 days and the closing date will be extended as necessary, or terminate this contract as the sole remedy and receive the Builder Deposit, thereby releasing both parties from this contract.

**22. REPRESENTATIONS:** Seller represents that as of the closing date there will be no liens, assessments, or other security interests against any of the property, which will not be satisfied out of the sales price unless securing payment of any loans being assumed by the Buyer. If any representation in this contract is untrue on the closing date, the Buyer may terminate this contract and the Builder Deposit shall be refunded to the Buyer. All representations contained in this contract and an agreement for mediation shall survive closing.

**23. DISPUTE RESOLUTION:**

A. Mediation: It is agreed and understood that should any dispute arise between the parties relating to this transaction, the parties will attempt in good faith to resolve it by mediation in accordance with the rules of the Texas Arbitration Mediation Services, Inc. or in the event the parties agree, some other professional mediation service.

B. Arbitration: Any and all disputes arising out of this contract which are not resolved by mediation shall be submitted to arbitration under the Federal Arbitration Act. The arbitration shall take place in El Paso County, Texas with an arbitrator who is agreed upon by both parties. A judgment upon the award rendered by the arbitrator may be entered by any court having proper jurisdiction.

Costs of the mediation and/or arbitration shall be split evenly between the parties.

**24. SELLER'S RIGHT OF TERMINATION:** Seller reserves the right to unilaterally terminate this agreement at any time, with or without cause. In the event Seller exercises said right, all items paid by Buyer except for upgrade charges and change orders, shall be reimbursed by Seller.

**25. STATUTORY DISCLOSURES:**

A. STATUTORY TAX DISTRICTS: The Property is \_\_\_\_, or is not X situated in a utility or other statutory tax district. If the Property is located in a statutory tax district, a disclosure notice is attached.

B. ANNEXATION: The Property is \_\_\_\_, or is not X located outside the city limits. Each municipality maintains a map that depicts its boundaries and extraterritorial jurisdiction. To determine if the Property is located within a municipality's extraterritorial jurisdiction or is likely to be located within a municipality's extraterritorial jurisdiction, contact all municipalities located in the general proximity of the Property for further information.

Approval Buyer: \_\_\_\_\_

Approval Seller: \_\_\_\_\_

C. PROPERTY IS X, OR IS NOT \_\_\_ LOCATED IN A CERTIFICATED SERVICE AREA OF A UTILITY SERVICE PROVIDER: Notice required by 13.257, Water Code: The real property, described in Paragraph 2, that you are about to purchase may be located in a certificated water or sewer service area, which is authorized by law to provide water or sewer service to the properties in the certificated area. If your property is located in a certificated area there may be special costs or charges that you will be required to pay before you can receive water or sewer service. There may be a period required to construct lines or other facilities necessary to provide water or sewer service to your property. You are advised to determine if the property is in a certificated area and contact the utility service provider to determine the cost that you will be required to pay and the period, if any, that is required to provide water or sewer service to your property. The undersigned Buyer hereby acknowledges receipt of the foregoing notice at or before the execution of a binding contract of purchase of the real property.

D. PUBLIC IMPROVEMENT DISTRICTS: The Property is \_\_\_ or is not X in a public improvement district.

**26. AGREEMENT OF PARTIES:** This contract contains the entire agreement of the parties; the parties (Buyer and Seller) are not bound by any oral expression or representation of any agent of either party. All agreements are documented in this contract, and can only be changed by written agreement.

**27. CONSULT YOUR ATTORNEY:** This is intended to be a legally binding contract. **READ IT CAREFULLY.** If you do not understand the effect of the contract, consult your attorney **BEFORE** signing.

Buyer's Attorney: \_\_\_\_\_ Date: \_\_\_\_\_

Seller's Attorney: \_\_\_\_\_ Date: \_\_\_\_\_

**Addends that are part of this contract:**

- |  |                                  |
|--|----------------------------------|
| _____ Items and Allowances             | _____ Finance Addendum           |
| _____ Construction Plan                | _____ Contingency Sale Agreement |
| _____ Subdivision Specific Disclosures | _____ Other                      |

**EXECUTED** in multiple originals the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
(THE EFFECTIVE DATE)

BUYER: \_\_\_\_\_ DATE: \_\_\_\_\_

BUYER: \_\_\_\_\_ DATE: \_\_\_\_\_

BUYER'S ADDRESS: \_\_\_\_\_

BUYER'S TELEPHONE (S): (home) \_\_\_\_\_ (cell) \_\_\_\_\_

BUYER'S EMAIL ADDRESS: \_\_\_\_\_

Approval Buyer: \_\_\_\_\_ Approval Seller: \_\_\_\_\_

SELLER: \_\_\_\_\_ BY: \_\_\_\_\_

SELLER'S ADDRESS: 6300 Escondido Drive  
El Paso, TX 79912  
915-584-8629  
915-225-0087 FAX

WINTON SALES REPRESENTATIVE \_\_\_\_\_ PHONE: \_\_\_\_\_

REALTOR: \_\_\_\_\_ PHONE: \_\_\_\_\_

COMPANY: \_\_\_\_\_ % COMMISSION

Buyer \_\_\_\_\_

Receipt of \_\_\_\_\_ Sales Contract and \$ \_\_\_\_\_ Builder Deposit in the form of  
Check \_\_\_\_\_ Cash \_\_\_\_\_ Other \_\_\_\_\_ is acknowledged.

Builder: \_\_\_\_\_ Winton Rep. \_\_\_\_\_ Date: \_\_\_\_\_

Approval Buyer: \_\_\_\_\_

Approval Seller: \_\_\_\_\_