

## **CONSTRUCTION CONTRACT**

THIS CONSTRUCTION CONTRACT (Contract), is made and entered into as of 08/29/2018 by and between Sposen Signature Homes LLC, a Florida Limited Liability Company, having an address at 2311 Santa Barbara Blvd, Suite 111, Cape Coral, FL 33991 (Builder), and John Doe, having an address at 123 Sunny Place, Cape Coral, FL 33991 (Owner).

WHEREAS, Owner owns that that certain real property in Lee County, Florida, located at 999 SE 99th St, Cape Coral, FL 33991; with a legal description of 12312312313.

WHEREAS, Owner desires to have constructed upon the Property a single family home (Home) pursuant to and in accordance with the terms and provisions of this Contract; and

WHEREAS, Builder desires to construct the Home for Owner pursuant to and in accordance with the terms and provisions of this Contract.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. RECITALS/EXHIBITS AND ATTACHMENTS. The recitals set forth in this Contract and the exhibits and attachments hereto are true and correct in all respects and are a part of and incorporated into the terms and provisions of this Contract as if fully set forth herein for all purposes.

### 2. DESCRIPTION OF HOME

(a) Model, Floor Plan and Standard Features. Builder shall construct the Home with respect to the 1791-Hardwyn-Express Model, the floor plan, the elevation and the standard features as described on the attached model sheet labeled as Attachment A attached hereto and made a part hereof (collectively, the Model).

Owner understands, acknowledges and agrees that the location of the Home on the Property will be located with regard to minimum setbacks as required by applicable law and centered if at all possible. At the time of the execution of this Contract, certain selections to be made by Owner with respect to the Model have not yet been made by Owner. Owner shall, within seven (7) days of Builder's request for a particular Owner's selection, provide Builder with Owner's selection. In the event that Owner does not provide Builder with such selection in such seven (7) day period, Builder shall have the right in its sole and absolute discretion to make the selection on Owner's behalf which selection shall be final and irrevocable in all respects.

(b) Substitutions. Builder reserves the right to substitute materials that are part of the Model without any prior notice, provided, that the substitution meets all requirements of applicable law. In the event that Builder for any reason (whether because of unavailability, undue delays in delivery or otherwise) needs to substitute any other materials, Owner must, within seven (7) days of receiving written notice from Builder, make an alternative selection. In the event that such alternative selection is not made within such seven (7) day period, Owner hereby waives in all respects Owner's right to make such alternative selection and Builder shall make the selection on Owner's behalf which selection shall be final and irrevocable in all respects.

(c) No Construction by Owner. Owner will not under any circumstance construct nor cause to be built anything on the Property, or otherwise provide labor or materials with respect to the Model or the Upgrades, nor contract with other parties for any construction on the Property, without the prior written consent of Builder in each instance, which consent shall be at the sole discretion of Builder in each instance. In the event (and only in the event) Owner receives the written consent of Builder, Owner may cause work to be done at the Property as limited by such consent, provided, that (and not in limitation of any other requirements with respect thereto that Builder shall determine in its sole and absolute discretion) (i) Owner hereby expressly releases Builder for any damages, delays, injuries and costs resulting therefrom as determined exclusively by Builder, (ii) Owner agrees to use only licensed persons, and must supply Builder with a valid certificate of liability and worker's compensation insurance that names Builder as an additional insured, as well as applicable licenses, prior to commencement of any work on the Property and such persons shall understand and agree to cooperate in all respects as required by Builder hereunder so as not to interfere with the work being performed by Builder hereunder, (iii) such work shall be done at the times set forth by Builder so as not to interfere with the other work being performed by Builder hereunder as Builder shall determine in its sole and absolute discretion, and (iv) Owner shall indemnify Builder and hold Builder harmless from and against any and all delays, damages, injuries and costs which may result in any way as a result of such persons at the Property at any time and from time to time. In the event that Builder incurs any extra costs as a result of any consent hereunder for Owner to perform any work at the Home, such extra costs shall be deemed a Change Order (as defined herein) for which Owner shall be immediately responsible to pay to Builder hereunder. By way of example, but not in limitation of the foregoing, in the event that work fails an inspection as a result of Owner's work hereunder as determined by Builder, such costs to re-inspect shall be at Owner's expense.

(d) Builder's Work Product. The design and other planning materials related to the Model and the Upgrades (including, without limitation, all plans, specifications and drawings related thereto) are and shall remain the exclusive property of Builder and are not to be used by Owner in any manner whatsoever, nor is Owner permitted to share the same with any third parties.

### 3. CONSTRUCTION PRICE.

(a) Construction Price Components. The price (Construction Price) to be paid under this Contract is comprised of the following components:

TOTAL CONSTRUCTION PRICE	
Base House Price:	\$ -
Additional Allowances:	\$ -
Options:	\$ -
Structural Options:	\$ -
Pool Options:	\$ -
<b>TOTAL CONTRACT AMOUNT:</b>	<b>\$ -</b>
LESS DEPOSIT:	\$ -
BALANCE DUE AND PAYABLE AS SET FORM ON THE DRAW SCHEDULE (AS DEFINED IN SECTION 5 HEREIN):	\$ -

(b) Deposit. Upon the execution of this Contract, Owner shall pay directly to Builder the amount set forth in Section 3(a) hereof described as the deposit (Deposit) in cash.

(c) WAIVER OF ESCROW OF DEPOSIT AND OTHER MONIES. OWNER HEREBY WAIVES ANY RIGHT OWNER MAY HAVE TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW FOR THE DEPOSIT OR ANY OTHER MONIES PAID BY OWNER HEREUNDER TO BE DEPOSITED INTO AN ESCROW ACCOUNT. SUCH WAIVER IS HEREBY GIVEN KNOWINGLY, OPENLY AND FREELY BY OWNER. ALL PAYMENTS MADE TO BUILDER TOWARD THE CONSTRUCTION PRICE PURSUANT HERETO PRIOR TO COMPLETION (AS DEFINED HEREIN) MAY AND SHALL BE USED FOR CONSTRUCTION PURPOSES BY BUILDER.

(d) Upon receipt of initial deposit Contractor will begin preliminary work necessary to expedite preparation of building permits. This includes but is not limited to the following: visiting and inspecting the site, ordering a lot survey, preparing house plans/engineering and filing a notice of commencement. Should buyer not close on contract for any reason, contractor will deduct an administration fee equivalent to 1% of the total contract price to cover the hard costs and time involved for this work.

(e) This Construction Contract is contingent (Financing Contingency) upon Owner obtaining a written loan commitment for a loan within thirty (30) days after the Effective Date (Loan Commitment Date) in the amount of the contract price, less the deposit amount (Financing). Owner shall make a mortgage loan application for the Financing within five (5) days after the Effective Date and use good faith and diligent effort to obtain a written loan commitment for the Financing (the "Loan Commitment") and thereafter to close as required hereby. Owner shall keep Builder fully informed about the status of Owner's mortgage loan application and the Loan Commitment and authorizes Owner's mortgage broker and Owner's lender to disclose such status and progress to Builder. Upon Owner's receipt of the Loan Commitment on or prior to the Loan Commitment Date, Owner shall immediately provide written notice of the same to Builder. If Owner does not receive the Loan Commitment by the Loan Commitment Date, then either party may cancel this Construction Contract within five (5) days after the expiration of the Loan Commitment Date. If either party timely cancels this Construction Contract pursuant to this Section 3 (b) (ii) and Owner is not otherwise in default under the terms of this Construction Contract, Owner shall be refunded the Deposit less a portion equal to 1% of the total Construction Contract, which portion shall be retained by Builder for all purposes and under all events, thereby releasing Owner and Builder from all further obligations under this Construction Contract other than with respect to those provisions that expressly survive hereunder. If neither party has timely canceled this Construction Contract pursuant to this Section 3 (b) (ii), then the Financing Contingency shall be deemed waived by Owner in all respects and Owner shall be obligated to close hereunder as required hereby. If Owner obtains the Loan Commitment on or before the Loan Commitment Date, the Financing Contingency shall be satisfied in all respects notwithstanding that the Loan Commitment may contain certain conditions that may or may not be satisfied at the Closing; it being understood that any of such conditions contained in the Loan Commitment are at Owner's sole risk and Owner shall thereafter be obligated to close hereunder as required hereby.

NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, OWNER UNDERSTANDS, ACKNOWLEDGES AND AGREES THAT UPON RECEIPT OF THE LOAN COMMITMENT ON OR PRIOR TO THE LOAN COMMITMENT DATE (REGARDLESS OF ANY CONDITIONS THAT MAY BE SET FORTH THEREIN) OR UPON WAIVER OF THE FINANCING CONTINGENCY FOLLOWING THE LOAN COMMITMENT DATE PURSUANT HERETO, THE PURCHASE HEREUNDER SHALL NO LONGER UNDER ANY CIRCUMSTANCE BE CONTINGENT IN ANY RESPECT ON OWNER OBTAINING FINANCING OF ANY TYPE OR KIND WHATSOEVER AND ALTHOUGH OWNER MAY BE OBTAINING FINANCING FOR ITS PURCHASE HEREUNDER, THE SAME SHALL NOT AFFECT OWNERS'S OBLIGATIONS HEREUNDER TO PAY THE CONTRACT AMOUNT AS REQUIRED HEREBY PURSUANT TO THE DRAW SCHEDULE AND TO OTHERWISE CLOSE AS SET FORTH HEREIN.

(f) Upgrades and Allowances. Builder shall include the upgrades and allowances to the Model as more fully described on Attachment B attached hereto and made a part hereof (collectively, the "Upgrades & Allowances"). With respect to the items set forth on Attachment B attached hereto and made a part hereof that are identified as "Allowances", Owner understands, acknowledges and agrees that the amounts set forth on either Attachment B as the case may be with respect to Allowances, with respect to each of the Allowances is an estimate of the cost for such items and that the actual price with respect thereto may be higher or lower than the actual cost. In the event that the actual cost with respect to any of the Allowances is higher, Owner shall be responsible for the payment of such increase, such increase will be subject to a Change Order and the same shall be payable by Owner to Builder in full in cash no later than five (5) days after the issuance of the Change Order therefor. In the event that the actual cost with respect to any of the Allowances is lower, Builder shall provide to Owner a credit on the final draw due and payable to Builder as set forth on the Draw Schedule (as defined herein).

4. OWNER CLOSING COSTS & BUILDER CONCESSION. Owner shall pay all of the following costs associated with the Owners Closing regarding their acquisition and construction financing: (i) documentary stamp taxes payable on the Deed, (ii) recording charges payable with respect to the recordation of the Deed in the county where the Property is located, (iii) any and all costs associated with Owner's financing obtained by Owner with respect hereto, (iv) all title and municipal lien searches and any other costs associated with the preparation and delivery of the Title Commitment (as defined herein) to be issued as set forth herein, the owner's policy of title insurance to be issued by the Title Company pursuant to the Title Commitment insuring Owner's title to the Property and all other items as may be necessary in order to convey title to the Property to Owner pursuant to the requirements of this construction contract, and (v) a survey of the Property. In the event that Owner shall use Builders' preferred title company and Builder's preferred lender with respect to the transaction contemplated hereby, Builder shall provide to Owner at the Closing a credit of 2,000.00 (two thousand dollars) to be used and only used toward closing costs to be paid by Owner hereunder related to those associated with Builder's preferred title company if so used by Owner and/or related to those associated with Builder's preferred lender if so used by Owner (the "Builder Concession"). If Owner is entitled to the Builder Concession and (a) the closing costs to be paid by Owner hereunder and permitted to be paid from the builder concession as set forth herein exceed the builder concession, Owner shall be obligated to pay such excess closing costs from Owner's own funds or (b) the closing costs to be paid by Owner hereunder are less than the closing costs permitted to be paid from the builder concession as set forth herein, Owner shall only be entitled to receive that portion of the builder concession necessary to pay such closing costs and not any of the excess builder concession.

5. CONSTRUCTION DRAW SCHEDULE/DEFINITION OF COMPLETION. The Construction Price shall be due and payable by Owner to Builder during the course of construction pursuant to the construction draw schedule attached hereto and made a part hereof as Attachment C (the "Draw Schedule"). Owner understands, acknowledges and agrees that all payments made by Owner to Builder in connection with the Draw Schedule shall be due and payable within five (5) days after Builder notifies Owner of the completion of the portion of the construction applicable to the draw to be paid with respect thereto and the same shall be non-refundable to Owner under all circumstances and under all events with no exceptions unless and only unless otherwise expressly set forth herein. All payments made to Builder toward the Construction Price pursuant to this Contract, prior to the final draw due and payable to Builder pursuant to the Draw Schedule, may be used for construction purposes by Builder. In the event that Owner fails to pay any amount set forth on the Draw Schedule when due as set forth thereon, in addition to any other remedy of Builder with respect to such default of Owner, Owner agrees to, and shall, pay interest to Builder on such overdue amounts at the rate of one and one half percent (1½%) per month until such overdue amounts are paid to Builder in full in cash. In addition, in the event that Owner fails to make the final payment as set forth on the Draw Schedule (together with all other monies then due and owing hereunder to Builder as set forth herein) to Builder in the time required hereby, Owner shall pay to Builder a penalty in the amount of \$500.00 for each day such final payment and other amounts are not paid to Builder in full in cash. Owner is advised that correction of red tag items or completion of inspections by the applicable governmental authorities having jurisdiction over the construction of the Home is not, in any way, relevant to Owner's obligations to pay to Builder the amounts set forth on the Draw Schedule at the times required thereby and hereby. Any and all of such red tag items and inspections shall be completed either on or prior to Completion or as part of the "punch list" procedure described in this Contract. For purposes of this Contract, the term "Completion" shall mean that the governmental authorities having jurisdiction over the Home have issued a certificate of occupancy for the Home.

6. CHANGE ORDERS. Any and all changes, extras, alterations or modifications to the Home, the Model or the Upgrades after the date hereof shall be defined herein as a "Change Order" and must be in writing executed by Builder and Owner. Costs associated with any Change Order shall be paid for by Owner in full in cash prior to any work associated with any Change Order commencing and paid for in full at the time such Change Order is executed by Builder and Owner. Any Change Order requested by Owner is subject to an additional \$350.00 fee.

7. DISCLAIMERS AND DISCLOSURES.

(a) General Disclaimer Regarding Property Location. In entering into this Contract, Owner understands, acknowledges and agrees that Owner has made the sole choice to build the Home and, accordingly, takes sole and full responsibility in all respects to obtain and/or confirm any information about zoning, land use, future use, schools, public works (including all utilities) and all other matters related to the location of the Property and its intended use and purposes for Owner.

(b) Land Disclaimer. Owner understands that the Property is owned by Owner and not by Builder and, in connection therewith, further understands and acknowledges that Builder did not perform any due diligence or other inspections in connection with the Property. Accordingly, it is understood that any and all risks associated with the Property that are discovered by Builder and impair Builder's ability to obtain a certificate of occupancy for the Home or otherwise result in increased costs not anticipated as part of the scope of work associated with the Construction Price as set forth herein shall be at the sole risk and expense of Owner whether or not such discoveries could have been uncovered by performing due diligence and other inspections. Accordingly, without in any way in limitation of the foregoing, the following additional provisions shall apply to this Contract with respect to the foregoing by way of example:

(i) Owner acknowledges that Builder is making certain assumptions regarding the site conditions of the Property. In the event that Builder encounters unforeseen conditions, Owner shall be responsible for all costs associated with the same.

(ii) Owner shall be responsible for changes made to the Property by any governmental entity or utility and all costs associated therewith.

(iii) Owner shall take full responsibility and pay any necessary costs for subsoil tests, soil boring tests and soil inspections and for any necessary subsoil rehabilitation for the suitable construction of the Home.

(iv) Owner shall be responsible for all costs associated with rock removal that may be necessary in connection with the construction of the Home.

(v) Owner shall be responsible for any and all costs associated with water testing for any reason and/or purpose.

(vi) Owner shall be responsible for all costs associated with any additional well depth in excess of 200 feet if well equipment is included.

(vii) Owner shall be responsible for all costs associated with tree/shrub removal that may be necessary in the area of the house slab, around concrete, in septic areas, swales, canals or lakes.

(viii) Owner shall be responsible for all costs associated with extended service for lots larger than 80' x 125' and/or power pole locations requiring same.

(ix) Owner shall be responsible for all costs associated with additional fill, grass, landscaping, sprinklers and driveways needed for lots large than 80' by 125'.

(x) Owner shall be responsible for all costs associated with any endangered species in complying with the requirements of the Department of Environmental Protection, the Health Department or any other governmental authority having jurisdiction thereover.

(xi) Owner shall be responsible for all costs associated with fill/excavating, other than the stem-wall fill.

(xii) Owner shall be responsible for all costs associated with assessments, betterment fees or impact fees.

(xiii) The Home will be constructed on the Property with the garage side placed closest to the available electric service from the street. If Owner elects to reverse the garage location, the cost for any extended electric service will be at an additional cost. An additional cost will also be incurred for lots larger than 80' x 125'. All such additional costs will be quoted separately after the final Home placement on the Property is determined and approved by Owner. If the power company sets the pole opposite the garage, there will be an additional charge of \$1,250.00 to Owner for standard lots of 80' x 125' and an additional charge for larger lots to be determined at that time. Owner's blueprints that make up the Model will not necessarily be correct with regard to the above information.

(xiv) The work to be done by Builder does not include grading after completion of the construction other than as necessary to meet applicable final inspections for occupancy, seeding, landscaping or any other site improvement work.

(c) Oral Representations. Oral representations made by Builder, Builder's employees, Builder's representatives and/or any other third-party cannot be relied upon for any circumstance or purpose whatsoever and are not binding.

(d) Changes and Measurements. Owner understands that prices, plans, specifications, features, designs, dimensions, materials and the availability of the same are subject to change as set forth herein without notice. All measurements shown on any floor plans are approximate and may vary as a result of construction materials, construction practices and field conditions.

(e) Removal of Trees, Etc. Builder shall not be held liable for the removal, damage or life of any trees, shrubs or grass before, during or after Completion. Builder may remove any tree or trees if, in Builder's judgment, it is necessary for the proper construction of the Home in any respect.

(f) Radon. Pursuant to statute, Builder hereby notifies Owner as follows: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

(g) Construction Defects. CHAPTER 558, FLORIDA STATUTES, CONTAINS IMPORTANT REQUIREMENTS THAT OWNER MUST FILE BEFORE OWNER MAY BRING ANY LEGAL ACTION FOR AN ALLEGED CONSTRUCTION DEFECT IN THE HOME. SIXTY (60) DAYS BEFORE OWNER BRINGS ANY LEGAL ACTION, OWNER MUST DELIVER TO BUILDER A WRITTEN NOTICE REFERRING TO CHAPTER 558 OF ANY CONSTRUCTION CONDITIONS OWNER ALLEGES ARE DEFECTIVE AND PROVIDE BUILDER THE OPPORTUNITY TO INSPECT THE ALLEGED CONSTRUCTION DEFECTS AND TO CONSIDER MAKING AN OFFER TO REPAIR OR PAY FOR THE ALLEGED CONSTRUCTION DEFECTS. OWNER IS NOT OBLIGATED TO ACCEPT ANY OFFER WHICH MAY BE MADE. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER FLORIDA LAW WHICH MUST BE MET AND FOLLOWED TO PROTECT OWNER'S INTEREST.



(h) Construction Recovery Fund. PAYMENT MAY BE AVAILABLE FROM THE FLORIDA HOMEOWNER'S CONSTRUCTION RECOVERY FUND IF OWNER LOSES MONEY ON A PROJECT PERFORMED UNDER A CONTRACT WHERE THE LOSS RESULTED FROM SPECIFIED VIOLATIONS OF FLORIDA LAW BY A 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:

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION  
FLORIDA HOMEOWNER'S CONSTRUCTION RECOVERY FUND  
CONSTRUCTION INDUSTRY LICENSING BOARD  
1940 NORTH MONROE STREET  
TALLAHASSEE, FLORIDA 32399  
(850) 921-6593

(i) Construction Lien Law Disclosure. ACCORDING TO FLORIDA'S CONSTRUCTION LIEN LAW (SECTIONS 713.001-713.37, FLORIDA STATUTES), THOSE WHO WORK ON YOUR PROPERTY OR PROVIDE MATERIALS AND SERVICES 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, THOSE PEOPLE WHO ARE OWED MONEY MAY LOOK TO YOUR PROPERTY FOR PAYMENT, EVEN IF YOU HAVE ALREADY 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. TO PROTECT YOURSELF YOU SHOULD STIPULATE IN THIS CONTRACT THAT BEFORE ANY PAYMENT IS MADE, YOUR CONTRACTOR IS REQUIRED TO PROVIDE YOU WITH A WRITTEN RELEASE OF LIEN FROM ANY PERSON OR COMPANY THAT HAS PROVIDED TO YOU A "NOTICE TO OWNER." FLORIDA'S CONSTRUCTION LIEN LAW IS COMPLEX, AND IT IS RECOMMENDED THAT YOU CONSULT AN ATTORNEY.

8. INSURANCE. During the term of construction pursuant to this Contract and until Completion and the payment in full to Builder by Owner of the Construction Price and all other monies due and payable to Builder hereunder, Builder will purchase and maintain (a) at Owner's expense as part of the Construction Price builder's all-risk hazard insurance insuring (i) the improvements to be constructed upon the Property in an amount not less than the Construction Price (to be increased for any Change Orders as required by Builder) and (ii) the goods and materials delivered to and/or stored on the Property but not yet incorporated into the construction of the Home (provided, however, that Builder may, at its election, require Owner to purchase and maintain the insurance required in this clause (b) and in such event, Owner shall do the same and the cost of the same will be deducted from the Construction Price and paid for separately by Owner) and (c) workmen's compensation insurance as required by law. In addition, Builder and Owner shall each purchase and maintain public liability insurance in an amount not less than Two Million Dollars (\$2,000,000.00). Each policy of Builder and Owner shall name Builder and Owner as insureds or loss payees, as their interests appear, and shall provide for thirty (30) days' prior notice to each party before cancellation, modification or amendment thereto. The parties hereto shall furnish to each other original certificates of all such required coverage prior to the commencement of construction of the Home Residence as described hereunder.

9. CASUALTY. If a casualty occurs during the construction of the Home, Builder shall retain all deposits and other payments made hereunder which have already been paid, collect any insurance proceeds payable as a result of the event of casualty, and rebuild the Home in accordance with the requirements of this Contract at Owner's continued expense. The Construction Price shall be equitably adjusted by Builder to reflect increased costs resulting from changed circumstances, revisions to the applicable building code and other government regulations and increased costs to Builder for labor, material, equipment and any other costs to be incurred in connection with the construction process and otherwise as set forth in this Contract.

10. ADDITIONAL OWNER PROVISIONS.

(a) Costs. Any and all costs of Builder not contemplated in the Construction Price or otherwise due to be paid by Builder hereunder prior to Completion pursuant to the terms hereof shall be payable by Owner at the time of the payment of the final draw as set forth in the Draw Schedule. By way of example and not in any way in limitation, such costs may include overnight delivery charges for the delivery of documentation, if applicable, relating to a particular request for funds under the Draw Schedule.

(b) Utilities. Water, sewer, fuel and other utility bills and assessments, if any, shall be the responsibility of Owner in all respects, whether public or private. Electricity shall be the responsibility of Builder until Completion or any earlier termination of this Contract pursuant to the terms hereof.

(c) No Sale, Etc. Owner shall not, at any time, sell, transfer, convey or encumber the Property (in whole or in part) or otherwise modify the title thereto or any interest therein or in Owner (whether directly or indirectly) in any respect without the prior written consent of Builder until Owner has fulfilled of its obligations under this Contract and Builder has been paid in full the Construction Price and all other monies due and payable to Builder hereunder.

(d) Understanding Regarding Occupancy. Owner acknowledges and agrees that Owner cannot move into the Home or obtain any keys or make copies of any keys unless and until Completion has occurred and Owner has paid to Builder in full the Construction Price and all other monies due and payable to Builder hereunder. Until such time, Owner shall remain off of the Property unless and if accompanied by Builder or its representative pursuant to an agreed upon appointment. IF OWNER FOR ANY REASON WITH OR WITHOUT CONSENT OF BUILDER (UNLESS MODIFIED IN SUCH A CONSENT OF BUILDER AND THEN STRICTLY PURSUANT THERETO) TAKES POSSESSION OF AND/OR OCCUPIES THE HOME BEFORE SUCH COMPLETION AND PAYMENT, OWNER SHALL BE DEEMED TO HAVE ACCEPTED THE HOME IN ITS "AS IS" CONDITION, BUILDER SHALL NOT BE OBLIGATED TO PERFORM ANY ADDITIONAL WORK IN CONNECTION THEREWITH (INCLUDING "PUNCHLIST"), ANY AND ALL WARRANTIES HEREUNDER SHALL IMMEDIATELY BE TERMINATED AND NULL AND VOID AND BUILDER SHALL BE DEEMED RELEASED THEREFROM AND INDEMNIFIED IN CONNECTION THEREWITH AND ANY PORTION OF THE CONSTRUCTION PRICE AND ALL MONIES DUE AND PAYABLE TO BUILDER HEREUNDER THAT REMAIN UNPAID SHALL BE DUE AND PAYABLE TO BUILDER IMMEDIATELY.

(e) Access. Owner irrevocably grants possession of the Property to Builder until Completion and the payment in full by Owner to Builder of the Construction Price and all other monies due and payable to Builder hereunder.

(f) Moving, Etc. It is the responsibility of Owner to make arrangements for moving, furniture delivery and storage. Builder will not be held responsible for any of the above expenses, whether directly or indirectly, relating thereto in any respect.

(g) Fee Simple Ownership. Owner hereby warrants and represents that Owner is the sole owner, in fee simple, of the Property upon which the Home is being constructed, and there are no other parties with any rights or claims of possession thereto and that the Property is free and clear of all encumbrances and liens.

11. NOTICE OF COMMENCEMENT/TERM. In accordance with Florida Statutes, Section 713.13, Owner agrees to record in the Public Records in the county where the Property is located a Notice of Commencement that in all respects complies with such statute simultaneously with the execution of this Contract and to provide a certified copy of the same to Builder no later than ten (10) days after the execution of this Contract. Builder shall make all commercially reasonable efforts to achieve Completion within one (1) year from the delivery to Builder of the certified copy of such Notice of Commencement. This Contract shall be in full force and effect until the date that is the earlier of (i) when all "punch list" items hereunder have been completed by Builder in Builder's determination, (ii) any date this Contract is terminated prior to the completion of such "punch list" items pursuant to the terms hereof, and (iii) two (2) years following the date hereof, unless extended by mutual written agreement of the parties by the execution of an amendment to this Contract, and subject to extension for delays due to (a) Change Orders and/or (b) acts of God, strikes, lockouts, material shortages, lack of availability of utility services, fire, storm, theft, vandalism or other causes beyond Builder's control (each of such events in this clause (b), an "Event of Force Majeure"). In no event shall Builder be liable to Owner for any damages for such delays and Owner hereby waives any such claims.

## 12. DEFAULT AND RIGHT TO TERMINATE.

(a) Builder Default. Subject to an Event of Force Majeure (as defined herein) and provided that Owner is not in default hereunder, in the event that Builder fails to perform any of the items required of Builder hereunder within the time allowed therefor or otherwise persistently fails or neglects to carry out the work required hereunder following the expiration of thirty (30) days after receipt of written notice from Owner to Builder of such failure or neglect, Owner may, without prejudice to any other remedy Owner may have, cure such defaults and set off the costs of curing such deficiencies against monies otherwise due to Builder. In addition, Owner may, at its option, proceed in law or equity to enforce its rights under this Contract which rights include, but are not limited to, terminating this Contract without any liability to Builder therefor and finishing all work to be performed by Builder hereunder in a commercially reasonable manner consistent with the construction methods utilized by contractors experienced in the construction of structures similar to the Home. If such expenses exceed the unpaid balance of the Construction Price, Builder shall be liable to pay to Owner the difference. Under no circumstances and under no events shall Owner be entitled to seek from Builder consequential, punitive, special or any other damages from Builder other than actual damages as set forth herein.

(b) Owner Default. If Owner shall fail to perform any of the non-monetary items required of Owner hereunder within the time allowed therefor following the expiration of ten (10) business days after receipt of written notice from Builder to Owner of such failure or shall fail to perform any of the monetary items required of Owner hereunder within the time required hereby, if any, without any notice or a cure period, Builder shall have the right to immediately stop work (and under no circumstances shall Builder be in default hereunder or subject to any liability or damages or other adverse consequence to Builder hereunder in any manner whatsoever for so exercising its right to stop the work hereunder) and terminate this Contract and shall be entitled to liquidated and agreed-upon damages in the amount of the sum of all payments received by Builder as of the date of termination in connection with the Construction Price, payments for Changes Orders paid by Owner, any additional payments that are due Builder under the Construction Price and all other monies due and payable to Builder hereunder through such date. The parties acknowledge that it would be extremely difficult if not impossible to determine the actual damages incurred by Builder by reason of Owner's breach. Therefore, the foregoing provisions with regard to damages are an attempt by the parties to liquidate the same and are not to be construed or considered as a forfeiture or penalty. The remedies provided for in this clause (b) shall not prevent Builder from exercising rights under the mechanics' lien laws of the State of Florida or any other rights Builder may have hereunder and at law or in equity if applicable.

13. BROKER. Each of Builder and Owner represent and warrant to the other that neither has engaged or dealt with any broker or agent with respect to the sale and purchase contemplated hereby other than Sposen Realty & Development LLC and N/A (Broker).

Each of Builder and Owner shall indemnify and hold the other harmless from and against any and all liability, loss, cost, damage and expense (including, but not limited to, reasonable attorneys' fees and costs of litigation and appeals) the other party shall ever suffer or incur because of any claim by any broker or agent claiming to have dealt with the indemnifying party, whether or not meritorious, for any commission or other compensation with respect to this construction contract and/or the transaction contemplated hereby in accordance herewith. Builder shall pay the broker commission payable to Broker at the Closing. The obligations of Builder and Owner under this Section shall survive the Closing hereunder or any earlier termination of this construction contract.

14. EXHIBITION BY BUILDER. Builder shall, at all times prior to Completion and payment in full to Builder by Owner of the Construction Price and all other monies due and payable hereunder, have the right to exhibit the Property to any and all persons and permit representatives of governmental authorities and financial institutions to inspect the same.

15. LICENSE NUMBER OF BUILDER. Builder's license number is CBC008854.

16. WARRANTIES AND PUNCHLIST.

(a) Warranty Manual. Upon payment in full to Builder by Owner of the Construction Price and all other monies due and payable hereunder, Builder shall provide to Owner a warranty on the Home strictly pursuant to the terms and provisions of the warranty manual in the form attached hereto and made a part hereof as **Attachment D** (the "Warranty Manual"). OTHER THAN AS SET FORTH IN THE WARRANTY MANUAL, NO OTHER WARRANTIES ARE MADE BY BUILDER HEREUNDER, EITHER EXPRESS OR IMPLIED, IN CONNECTION HEREWITH.

(b) Assignment of Manufacturer Warranties. Builder shall furnish to Owner an assignment of all warranties in connection with any and all fixtures, equipment, appliances and personal property installed by Builder and provided by (and if provided by) the manufacturer's thereof.

(c) Items Not Warranted. Notwithstanding anything contained herein or in the Warranty Manual to the contrary, and in no way in limitation thereof, Owner understands, acknowledges and agrees that there shall be no warranty on any of the following:

(i) Materials or labor provided by Owner or otherwise not provided by Builder and/or any of its subcontractors.

(ii) With respect to water, if the Property is without public water and a well is installed, Builder does not warrant the quality of the water as Builder only provides the well equipment to access the water. Other equipment may be available at Owner's expense to improve the quality of the water.

(iii) Builder is not responsible for mold in the Home. Mold is solely a maintenance issue and must be attended to by Owner in all respects.

(iv) If Builder installs a septic system or other system at the Property, Builder is not responsible if Owner experiences problems due to any misuse of the septic or any such other system. Any misuse of any system or any other item at or in the Home shall be at Owner's sole risk and shall be Owner's sole and absolute responsibility.

(v) Owner is responsible to maintain the Home and its systems in a manner consistent with and as customary for homes similar to the Home in the jurisdiction where the Property is located and any alleged warranty claims that may have arisen as a result in any respect because of Owner's neglect or lack of so maintaining the Home and its systems shall result in any warranty obligations of Builder hereunder to be immediately voided forever and Builder shall be released with respect to any obligations thereto in all respects.

(vi) Builder shall not be responsible for conditions, defects or damages to the Home that are the result of contraction, expansion or other normal or ordinary characteristics of building materials and normal wear and tear or the result or lack of improper maintenance. Owner understands and agrees that cracking is inherent in all areas of construction where concrete or other similar materials are used.

(vii) Owner acknowledges that building materials, especially wood and solid surfaces, will vary in color and design. Any sample or model provided by Builder or observed by Owner is purely an example and a like or similar result cannot be guaranteed by Builder.

(d) Punchlist. Upon Completion, Builder and Owner shall inspect the Home and prepare a written "punch list" executed by each of Builder and Owner of the items remaining to be completed and/or repaired by Builder using standards customary in the construction of homes similar to the Home in the jurisdiction where the Property is located. All items on the "punch-list" shall be completed by Builder as soon as reasonably practicable after Completion and payment in full to Builder of the Construction Price and all other monies due and payable to Builder hereunder. Under no circumstances and under no events shall the items on the "punch list" delay payment to Builder of the Construction Price and all other monies due and payable to Builder hereunder in the time required hereby or otherwise be subject to an escrow or holdback of any kind or nature whatsoever.

17. ENTIRE AGREEMENT. This Contract constitutes the entire agreement between the parties with respect to the transaction contemplated herein, and it supersedes all prior understandings or agreements between the parties.

18. BINDING EFFECT/ASSIGNMENT. This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, devisees, personal representatives, successors and permitted assigns. Neither party hereto may assign its rights hereunder without the consent of the other party; provided, however, that Builder shall at all times be permitted to assign all of its right, title and interest hereunder to any affiliate of Builder and the named Builder hereunder shall be released from its obligations hereunder as a result thereof.

19. WAIVER; MODIFICATION. The failure by Builder or Owner to insist upon or enforce any of their rights shall not constitute a waiver thereof, and nothing shall constitute a waiver of the parties' rights to insist upon strict compliance with the terms of this Contract. Either party may waive the benefit of any provision or condition for its benefit that is contained in this Contract. No oral modification of this Contract shall be binding upon the parties and any modification must be in writing and signed by the parties hereto.

20. GOVERNING LAW; VENUE. This Contract shall be governed by, and construed in accordance with the laws of, the State of Florida. The venue of any litigation arising out of this Contract shall be in the county where the Property is located.

21. HEADINGS. The section headings as set forth in this Contract are for convenience of reference only and shall not be deemed to vary the content of this Contract nor limit the provisions or scope of any section herein.

22. NOTICES. Any notice, request, demand, instruction or other communication to be given to either party shall be in writing and shall be sent by registered or certified mail, return receipt requested, or by a nationally recognized overnight courier, or by receipted hand delivery or by facsimile, as follows:

If to Builder:

Sposen Signature Homes LLC  
2311 Santa Barbara Blvd, Suite 111, Cape Coral, FL 33991  
Attention: Thomas H. Kimble, Jr.  
Telephone: 239-244-8886  
Facsimile: 239-244-8886  
Email: thomas.kimble@sposenhomes.com

If to Owner:

Name: John Doe

Address: 123 Sunny Place, Cape Coral, FL 33991

Telephone: 239-555-1212

Email: email@email.com

Notice shall be deemed given if forwarded by certified mail through the facilities of the United States Postal Office three (3) business days following the date that the notice in question is deposited in the facilities of the United States Postal Service. If notice is forwarded by express overnight courier, it shall be deemed given one (1) business day after that the notice in question is deposited in the facilities of an express overnight courier. If notice is forwarded by hand delivery, it shall be deemed given upon proof of successful receipt or refusal of delivery on a business day. If notice is forwarded by facsimile, it shall be deemed given upon proof of successful transmission on a business day. Attorneys for the parties shall be permitted to send and receive notices on behalf of their client and such notice shall be effective notice for all purposes. Copies of notices are for convenience only and any failure to properly copy any party shall not affect the effectiveness of any notice given or received hereunder.

23. ATTORNEYS' FEES. In the event that it becomes necessary for either party to bring suit to enforce the terms of this Contract, then the prevailing party shall be entitled to recover all costs, including reasonable attorneys' fees, incurred in connection with such litigation (including appellate proceedings) against the non-prevailing party. This Section shall survive the termination of this Contract.

24. TIME OF THE ESSENCE. Time is of the essence with respect to each provision of this Contract that requires action be taken by either party within a stated time period, or upon a specified date, provided, however, if the date for performance is on a Saturday, Sunday or federal holiday, the date for performance shall be extended to the next business day. The term "days" as used herein shall in all cases mean calendar days, with the exception of the provisions in this Contract that expressly state "business days", which term shall mean each day except for any Saturday, Sunday or federal holiday under the laws of the United States of America.

25. COUNTERPARTS; FACSIMILE OR ELECTRONIC SIGNATURES. This Contract may be executed in multiple counterparts, each of which shall be deemed an original but all of which, together, shall constitute but one and the same instrument. This Contract shall be effective when the parties have forwarded their respective signatures by facsimile or by electronic mail either to the other party or to the other party's counsel. Facsimile or electronic signatures shall have the same legal effect as original signatures.

26. NO RECORDATION. In no event shall this Contract or any memorandum of this Contract be recorded. Any such recordation or attempted recordation shall be null and void and constitute a default of this Contract by the party performing such recordation or attempted recordation.

27. CONSTRUCTION. Each party hereto hereby acknowledges that all parties hereto participated equally in the drafting of this Contract and that, accordingly, no court construing this Contract shall construe it more stringently against one party than the other.

28. SEVERABILITY. In the event that any part or all of any term, covenant, condition, agreement, provision or section of this Contract shall be adjudged invalid or unenforceable by a court of competent and final jurisdiction, the same shall be severable from the remainder of this Contract and this Contract shall not terminate or be deemed void or voidable, but shall continue in full force and effect and the remainder of this Contract shall be enforced.

29. DISPUTE RESOLUTION. Any dispute between Builder and Owner as to the interpretation of this Contract or the rights and obligations of any party hereto that cannot be resolved amicably between the parties shall be resolved first through mandatory non-binding mediation by one party notifying the other party of the same in writing. After receipt of such notice, the parties shall have five (5) business days to mutually select a mediator. If the parties cannot mutually select a mediator, the mediator shall be selected in accordance with the rules of the American Arbitration Association in effect in the State of Florida within ten (10) days after such initial five (5) business day period. The parties agree to make best faith efforts to resolve any such dispute or claim through the mediation process which shall be conducted in all respects pursuant to the rules of the American Arbitration Association in the State of Florida. The mediator should be a person with experience in connection with the business of building homes substantially similar to the Home whether from the business or legal perspective. All costs and expenses associated with the mediator and/or the mediation process shall be shared equally between the parties hereto. In the event that the parties are unable to resolve a dispute after having attempted to do so during such mediation process, then the parties shall be entitled to pursue litigation. Venue for any litigation shall be in the State of Florida.

30. WAIVER OF JURY TRIAL. EACH PARTY HEREBY WAIVES ANY RIGHT TO A JURY TRIAL IN CONNECTION WITH ANY DISPUTE BETWEEN THE PARTIES ARISING FROM THIS CONTRACT FROM ANY CLAIM ARISING HEREUNDER OR IN ANY COURSE OF CONDUCT RELATED HERETO WHETHER DIRECTLY OR INDIRECTLY.

31. NO THIRD PARTY BENEFICIARIES. This Contract is a contract between Builder and Owner for their mutual benefit and no third person shall be entitled to any right, claim or benefit by virtue of the provisions hereof.

32. WORKMANSHIP & ACCEPTABLE TOLERANCES. All workmanship and accepted tolerances shall conform to the guidelines found in the publication Residential Construction Performance Guidelines for Professional Builders and Remodelers, [5th edition], National Association of Home Builders. If an item is not covered in that publication, standard local industry practice shall govern.

**\*\*THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK\*\***



The parties hereto have executed this Contract as of the date and year set forth above.

**BUILDER:**

Sposen Signature Homes LLC, a Florida Limited Liability Company.

Builder license number CBC008854.

By: \_\_\_\_\_  
Signature Date

**OWNER(S):**

By: \_\_\_\_\_  
Signature Date

By: \_\_\_\_\_  
Signature Date

Including:

- Attachment A - Elevation
- Attachment B - Floorplan
- Attachment C - Allowances
- Attachment D - Standards & Options
- Attachment E - Structural Options
- Attachment F - Pool Options
- Attachment G - Draw Schedule
- Attachment H - Misc.
- Attachment I - Affiliated Business Arrangement
- Attachment J - Granite Waiver