

**WINTON CUSTOM BUILDERS
NEW HOME SALE CONTRACT FOR THE STATE OF TEXAS**

(Please print clearly in ink, fill in all blanks)

1. **PARTIES:** Winton Custom Builders (seller) agrees to sell and convey to:
_____ (buyer) agrees to buy from the Seller
the property described below.

2. **PROPERTY:** Lot _____, Block _____, _____ (full name) Subdivision
El Paso County, State of Texas, otherwise known as:
_____ (address (include dr. st. etc.) city,
state, zip) together with the improvements thereon.

This contract is for a (circle one): **Pre-Sale** **Under Construction** **Completed Construction**

Closing Date as discussed in Section 5: _____, 20____

- 3. **SALES PRICE:** (all numbers must be rounded up to the nearest whole dollar)
 - 1. Cash portion of sales price payable by **BUYER** at closing..... \$ _____
 - 2. Sum of all financing described below..... \$ _____
 - 3. Sales Price (sum of A and B)..... \$ _____

4. **FINANCING:** Buyer agrees to make full application for financing within **5 (FIVE)** business days of this contract, Buyer shall apply for all third-party financing and shall make every effort to obtain financing. A loan commitment letter with documented and underwritten approval acceptable to the Seller must be obtained from the lender: **Bank 34 El Paso Mortgage Center** within **15 (FIFTEEN)** business days of the effective date of this contract. If the buyer elects to pay cash, proof of funds availability acceptable to Seller shall be provided to the Seller within 5 (FIVE) business days of this contract. Buyer agrees that failure to meet stipulations above constitute the Buyer's voluntary withdrawal of the contract, in which case any Builder's Deposits previously paid will not be returned to the Buyer. If buyer has met agreed upon efforts to obtain financing and is unable, all Builder Deposits shall be returned. _____ **initials**
Buyer intends to obtain: (circle one)

Conventional **VA** **FHA** **Other:** _____

Financing shall be 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), This is to occur within 5 (FIVE) business days of completion of the loan and house or on the contract closing date, whichever is sooner as described in section 5 of this contract. For VA/FHA transactions, the Buyer has the right to terminate the contract and receive all builder deposits previously paid in the event of a deficient appraisal. Buyers obtaining Conventional financing hereby agrees to pay any differences between the appraised value and sales price.

5. **CLOSING:** The closing date of the sale shall be on or before _____, 20____ or within 5 (FIVE) business days after improvements have been substantially completed in accordance with the construction documents and the house is ready for occupancy;

Approval of Buyer: _____ **Approval of Seller:** _____

OR within 5 (FIVE) business days after objections to the title have been cured, whichever date is sooner. 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.

6. **BUILDER DEPOSIT:** Buyer shall remit \$_____ as builder's deposit with (seller): **Winton Custom Builders** at 6300 Escondido Dr., El Paso, TX upon execution by both parties. Additional builder deposit of \$_____ shall be remitted by the Buyer with the builder on or before _____, 20___. NO BUILDER DEPOSIT IS REFUNDABLE UNLESS OTHERWISE STATED HEREIN. If the buyer fails to deposit the builder's deposit as required by this contract, the contract is void.
7. **TITLE POLICY:** Seller shall furnish to Buyer an Owner's Policy of Title Insurance issued by **Great Western Abstract and Title Company** in the amount of the sales price to insure buyer against loss under the provisions of the title policy, subject to the promulgated exclusions and exceptions (including existing building and zoning ordinances). ****You are here advised that the title company is owned, in part, by Jack Winton and Herschel Stringfield of which the seller herein is a subsidiary. Such ownership interest will not affect your rights under any title insurance policy that will be issued to you by the title company.**
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 and 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 section 11). In the event that approval of the plans is delayed to the extent that the construction schedule is affected, the start/completion dates 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:** Increases 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 the Change Order(s) or purchase of additional items. All payments made towards change orders are non-refundable in the event this contract does not close, whether by default by buyer, or seller, or by mutual termination. Refer to the contract addendum for other requirements in processing Change Orders.
10. **HOMEOWNERS ASSOCIATION:** As a purchaser of property in the residential community in or where the property is located, you (circle one): **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

Approval of Buyer: _____ Approval of Seller: _____

county in which the community 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. Copies of the dedicatory instrument may be obtained from the county clerk. Buyer has received the restrictive covenants: _____ initials

11. BUYER'S SELECTIONS: Buyer's selections, if applicable, will conform to the Seller's Normal standards and will not, in the Seller's judgment, adversely affect the marketability of the property. Buyer will make required selections within 5 (FIVE) business days after receipt of notice from the Seller. Refer to "Items and Allowances" for Buyer selections (if applicable). **For pre-sale homes, buyer agrees that all selections of materials and processes will be complete no less than 60 (SIXTY) days prior to closing.** _____ initials

12. COMPLETION: Construction shall commence no later than _____, 20____, or within 10 (TEN) business days after approval of the construction plan, construction loan, and obtaining the 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 delayed in accordance with the number of days that the Start date is delayed. 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 the occupancy by the buyer. If a delay in construction is caused by reason of the Buyer's acts or omissions, Buyer agrees to pay Seller for the carrying costs of the construction loan. Provided the seller has exercised reasonable and continued diligence, construction delays caused by acts of God, fire, other casualty loss, strike, boycotts, or materials availability, shall automatically extend the completion date for such delays.

13. WARRANTIES: In addition to the warranties provided by the manufacturers of the various components and equipment included with the home, the seller provides a two year warranty for defects in materials and workmanship for all items related to the home, excluding landscaping. Landscaping has a 60 (SIXTY) day warranty. In addition to the two year warranty, the seller also provides additional warranties as described in the Bonded Builders Home Warranty, BB-W602. BB-W602 including the following coverage:

- 1. Two years for defects in electrical, plumbing, and mechanical systems**
- 2. Ten years for major structural defects**

Buyer acknowledges, understands, and agrees:

1. 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 provide under this contract
2. The limited warranty specified in BB-W602 and the Two Year Seller Warranty is the only warranty.
3. Maintenance is required by the homeowner to ensure proper performances of improvements for the limited warranty to remain in effect. _____ initials

Approval of Buyer: _____ Approval of Seller: _____

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 the contract is as follows:

1. Exterior walls for living areas – insulated with blown in blanket system (BIBS) to a thickness of 3.5 inches, which yields an R-Value of 15.
2. Ceilings in the living are: insulated with blown fiberglass to a thickness of 13.8 inches, which yields an R-Value of 38.
3. Floors in living areas over unconditioned space (other than slab): insulated with blown fiberglass to a thickness of 8 inches for an R-Value of 30.
4. All R-Values are based on information provided by the manufacturer of the insulation.

15. CONSTRUCTION MATERIALS/SUBCONTRACTORS: The buyer agrees that the selection of materials/products and subcontractors shall be the responsibility of the seller. _____initials

16. POSSESSION: Seller shall deliver possession to the buyer after **Closing and Funding**

17. SALES EXPENSES: To be paid at closing if using preferred lender listed in Section 4

1. Seller shall pay all related expenses associated with buyer's closing costs, prepaid items and other loan and closing fees associated with the buyer's financing described below. In the event that the buyer elects to use alternate financing, the seller will pay up to 1% of the lesser of the original sales price or base loan amount towards closing costs. Any alternate financing must be agreed upon in writing by both parties. Given financing is obtained with the agreed upon preferred lender, Bank 34 El Paso Mortgage Center.
2. It is understood and agreed upon that the buyer is NOT required to use Bank 34 El Paso Mortgage Center for financing as a condition for purchase. Buyer may obtain financing from any qualified lending institution. Broker and/or real estate agent along with the buyer are aware and acknowledge the provision above. Seller's expense: Lender completion requirements, releases of existing loan(s) including prepayment penalties and recording fees; tax statements; preparation of deed; one-half escrow fee; other expenses stipulated to be paid by seller when specified in this contract
3. Buyer's expenses paid for by seller shall include: Expenses incident to the loan(s) obtained by buyer, i.e., application, appraisal, commitment fee, survey costs, recording fees, endorsements required by lender, mortgagee title policy, loan-related inspection fees, credit reports, tax deletion, EPA endorsements, final compliance inspection, loan related expenses, (appraisals, one-half of escrow fee, preparation of loan documents, courier fee, repair inspections, underwriting fee, wire transfer fee, delivery fee, tax service and research fee), any legal fees associated with the closing which are normally paid by the buyer, pre-paid items (premiums for flood and hazard insurance, reserves deposited for insurance, ad valorem taxes and special governmental assessments) not to exceed 4 months' worth of expenses (taxes or insurance) for escrow no discount or loan buy down fees will be considered as part of the seller paid costs; also including any other expenses stipulated to be paid by buyer when specified in this contract.

Approval of Buyer: _____ Approval of Seller: _____

4. Seller agrees that the closing costs constituted in this section are for normal and customary expenses only. The rate must be "Par" or no cost added. Any rate buy downs or additional fees not covered above must be selected and paid for by the buyer regardless of closing cost contributions.

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

19. 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. In any event, by the Closing Date, if the Seller is unable to do so without fault, Buyer may either (a) terminate this contract, receiving the Builder Deposit, or (b) extend the time for performance as needed and the Closing Date will be extended accordingly.

20. DEFAULT: If Buyer fails to comply with this contract, Buyer shall be in default. Seller may either enforce specific performance; seek such other relief as may be provided by law, or both. Seller may instead 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 (THIRTY) days along with the Closing Date, or terminate this contract as the sole remedy and receive the Builder Deposit thereby releasing both parties from this contract.

21. 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 receive the Builder Deposit. All representations contained in this contract and an agreement for mediation shall survive closing.

22. DISPUTE RESOLUTION:

1. 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 profession mediation service. Each party agrees to pay their own attorney's fees and expenses of the mediation
2. 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. The prevailing party is entitled to recover its attorney fees and expenses for the arbitration proceeding or as awarded by the arbitrator.

23. 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 this right, all items

Approval of Buyer: _____ Approval of Seller: _____

paid by the Buyer except for upgrade charges and change orders, shall be reimbursed to the Buyer. _____ initials

24. STATUTORY DISCLOSURES:

1. **STATUTORY TAX DISTRICTS:** This property **is not** situated in a utility or other statutory tax district. If the property is located in a statutory tax district, a disclosure notice will be attached.
2. **ANNEXATION:** The property **is not** located outside of the stated 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.
3. **PROPERTY IS LOCATED IN A CERTIFICATED SERVICE AREA OF A UTILITY SERVICE PROVIDER:** Notice required by 13.257, water code: the real property, described in Section 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.
4. **PUBLIC IMPROVEMENT DISTRICTS:** The property **is not** in a public improvement district.

25. 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.

26. 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.

1. **Buyer's Attorney:** _____ **OR,**
2. I am understanding of the terms of this contract and have chosen not to consult an attorney. _____ initials

27. BROKER/REAL ESTATE AGENT REPRESENTATION:

1. Customer certifies that there is _____ is not (circle one) an agreement for representation from a Real Estate Broker or Agent. _____

Approval of Buyer: _____ **Approval of Seller:** _____

2. _____, a licensed real estate agent affiliated with a licensed broker of the state of Texas, has represented the buyer in this transaction and was the procuring cause of this transaction. Seller agrees to pay the buyer's agent commission as agreed and entered into this contract only.
3. Buyer represents that the buyer has not dealt with any other Agents, Brokers, or salesperson other than disclosed here in writing. Buyer agrees to indemnify and hold the seller harmless from and against any and all liabilities, expenses, or attorney's fees sustained or incurred by the seller from any actions by the buyer. The provisions here shall survive closing.
4. Broker and/or real estate agent acknowledges that there shall not be any payment, rebate, or otherwise transfer of any commissions or referral fees to the buyer, relative of the buyer, or any member of the buyer's household.
5. No commission shall be earned, due or payable if closing and funding do not occur for any reason.

REALTOR: _____ LICENSE #: _____

PHONE: _____ EMAIL: _____

REALTY COMPANY: _____

COMMISSION OR REFERRAL _____%

28. EXISTING HOME ACKNOWLEDGEMENT (must initial one)

_____ Buyer represents to Seller that Buyer does not currently own other real estate

Or

_____ Buyer represent to Seller that Buyer does currently own other real estate.
Buyer intends to (circle one) sell rent other real estate currently owned.

Addenda that are part of this contract:

___ Items and Allowance

___ Finance Addendum

___ Construction Plans

___ Contingency Sale Agreement

___ Subdivision Specific Disclosures

___ Special Provisions Agreement

___ Landscaping Addendum

___ Other: _____

Approval of Buyer: _____ Approval of Seller: _____

BUYER (full legal name, please print): _____ Date: _____

BUYER (full legal name, please print): _____ Date: _____

BUYER'S ADDRESS: _____

BUYER'S PHONE: (1) : _____ (2): _____

BUYER'S EMAIL: (1) _____ (2): _____

SELLER: Winton Custom Builders

SELLER'S ADDRESS: 6300 ESCONDIDO DR. EL PASO TX 79912

SELLER'S PHONE: (O): 915-584-8629 (F): 915-225-0087

BUILDER'S SALES REPRESENTATIVE: _____ PHONE: _____

EMAIL: _____ COMMISSION _____ %

EXECUTED (EFFECTIVE DATE): The _____ Day of _____, 20_____

Buyer and Seller hereby understand and agree to this contract and terms as stated.

Buyer Signature: _____ **Date:** _____

Co-Buyer(s) Signature: _____ **Date:** _____

Seller: _____ **Date:** _____

Builder Deposit: \$_____ has been received. Must be either a Personal Check or Cashier's Check made out to builder. Received by: _____ Date: _____

Notice to Buyer

PROCEDURES DURING CONSTRUCTION AND CLOSING PROCESS

- 1) Construction changes/upgrades; the buyer hereby agrees that any changes to the amenities or plans of the house may warrant a cost increase. **The buyer agrees that upon notification of any additional costs for changes or upgrades, the additional costs will be paid for upfront unless otherwise agreed upon in writing.**
- 2) Construction schedule; buyer agrees that builder will adhere to scheduling as described in this contract. Any changes, upgrades, or delay in product selection or product availability by the buyer or vendor will directly result in a delay in construction and closing.
- 3) Walk Through; buyer agrees to complete a scheduled walk through during normal business hours no less than 5 days prior to closing. Buyer is aware and responsible for gas meter being installed prior to walk through. If buyer chooses to hire a third party inspector, buyer agrees inspection and walk through both will be completed at the scheduled time no less than 5 days prior to closing.
- 4) Upon completion of walk through items, prior to closing, buyer agrees to verify completion and acceptance of property 2 days prior to closing, or accept house 'as is' if final walk through is not completed as agreed.
- 5) The closing appointment will be set with Great Western after the financing documents have been sent to the title company for closing. Appointments can be made at 915-317-1880.
- 6) Occupational Safety & Health Administration has certain safety standards that we must abide by in order to be in compliance with their rules and regulations. Please be advised that accessibility to the houses is not allowed while workers are working on them, unless escorted by a company supervisor during working hours.

SELLER CONTRIBUTIONS TOWARDS CLOSING COSTS

The Buyer is hereby notified that closing cost contributions by the Seller (if any) will be paid according to the lender used. The seller has a working relationship with their preferred lender who will comply with this contract. **If any contribution is advertised for the property listed, that contribution will exist with the preferred lender only.**

The buyer is hereby notified that the seller has no Associated Business Agreement with any financing institution. Any mortgage company selected by the buyer that cannot comply with the dates stipulated within this contract, 15 day full underwriting approval from the execution date of this contract and closing date as stated, may be subject to a voided contract and loss of any monies rendered to the builder.

A change in the financing company as stated in section 4 of this contract requires a contract amendment and agreement by both parties. Failure to notify seller of a change in financing may result in loss of any agreed upon closing contribution.

_____ initials _____ Date

Approval of Buyer: _____ **Approval of Seller:** _____
