

Lender: **Lender One**  
Borrower: **Isaac Newton and Phyllis Newton, husband and wife**  
Property: **100 Main Street, Arlington, Texas 76017**  
Order Number: **201210230093**

**PeirsonPatterson, LLP**  
**Loan Transmittal Memorandum**

**[www.ppdocs.com](http://www.ppdocs.com)**

**NOTE TO TITLE COMPANY: PeirsonPatterson's fee will not change if our warranty deed is not used or is not provided. PeirsonPatterson still needs to review the deed unless this *review* is waived by the lender.**

This loan package was prepared by: **Ambra Costner**

Comments:

**PLEASE REVIEW THE CLOSING PACKAGE FOR ACCURACY AND COMPLETION.**

**Attorney Invoice**  
**PeirsonPatterson, LLP**  
 2310 Interstate 20 W, Suite 100  
 Arlington, TX 76017  
 Phone: (817) 461-5500 Fax: (817) 856-6060

Invoice To: Jane Doe  
 Busy Bee Title  
 111 Oak Drive  
 Arlington, TX 76017  
 Phone: (817) 555-7979 Fax:  
 GF Number:

Date	Order #	Description	Amount
10/23/2012	201210230093	For professional services in connection with the preparation of real estate documents.	\$200.00

**Lender:**  
 Lender One  
 2310 Interstate 20 W  
 Arlington, TX 76017  
 Phone: (817) 784-2010 Fax:  
 Closer: Ambra Costner  
 Loan # 112233

**Property:**  
 100 Main Street  
 Arlington, TX 76017

**Borrower(s):**  
 Isaac Newton and Phyllis Newton

TO INSURE PROPER CREDIT, PLEASE RETURN COPY OF INVOICE WITH REMITTANCE AND PLEASE REFERENCE OUR INVOICE NUMBER ON YOUR CHECK.

**MAKE CHECK PAYABLE TO: \* PeirsonPatterson, LLP. - ARLINGTON \*  
 DO NOT MAIL TO DALLAS - MAIL CHECK TO ARLINGTON**

The fee(s) on this invoice must be separately itemized on the closing statement and shown as a fee to the Lender's attorney. Please contact this office immediately should the transaction be cancelled so that our billing department can close this account. Please make your payment within three days following the closing.

Please do not staple checks to this invoice.  
 THANK YOU FOR YOUR BUSINESS.

To Settlement Agent:  
**Busy Bee Title**  
**111 Oak Drive**  
**Arlington, TX 76017**  
 Attn: **Jane Doe**  
 Phone No.: **(817) 555-7979**  
 Fax No.:  
 Email: **janedoe@something.com**

From Lender:  
**Lender One**  
**2310 Interstate 20 W**  
**Arlington, TX 76017**  
 Attn: **Ambra Costner**  
 Phone No.: **(817) 784-2010**  
 Fax No.:  
 Email:

## Loan Closing Instructions

### SECTION I. LOAN INFORMATION

Borrower(s): **Isaac Newton and Phyllis Newton**  
 Property Address: **100 Main Street, Arlington, TX 76017**  
 Loan Amount: **\$216,940.00**  
 Loan Type: **First Lien-Other-Borrower Interim**

Loan # **112233**  
 GF No:  
 Order Number: **201210230093**  
 Invoice Number: **2-10-03150**  
 Closing Date: **October 23, 2012**  
 Document Exp. Date:  
 First Payment Date: **November 23, 2012**  
 Final Payment Date: **October 23, 2013**

### SECTION II. LOAN FEES AND ESCROWS

Settlement agent fees are provided as an estimate. Final settlement fees must comply with applicable federal laws, rules and regulations; and any applicable state laws or local ordinances.

#### A. Fees Paid at Closing.

The following fees must be indicated on the HUD-1 Settlement Statement. Collect same unless indicated as "POC" (Paid Outside Closing). Show all "POC"s as such on the HUD-1 Settlement Statement.

<b>100. Gross Amount Due from Borrower</b>		<b>400. Gross Amount Due to Seller</b>	
101. Contract sales price		401. Contract sales price	
102. Personal Property		402. Personal property	
103. Settlement charges to Borrower (line 1400)	\$4,862.70	403.	
104. Construction Holdback	\$216,940.00	404.	
105.		405.	
106. City/town taxes to		406. City/town taxes to	
107. County taxes to		407. County taxes to	
108. Assessments to		408. Assessments to	
109.		409.	
110.		410.	
111.		411.	
112.		412.	
120. Gross Amount Due From Borrower	\$221,802.70	420. Gross Amount Due To Seller	
<b>200. Amounts Paid by or in Behalf of Borrower</b>		<b>500. Reductions in Amount Due to Seller</b>	
201. Deposit or earnest money		501. Excess deposit (see instructions)	
202. Principal amount of new loan(s)	\$216,940.00	502. Settlement charges to seller (line 1400)	
203. Existing loan(s) taken subject to		503. Existing loan(s) taken subject to	
204.		504. Payoff of first mortgage loan	
205.		505. Payoff of second mortgage loan	
206. Deposit with lender		506.	
207.		507.	
208.		508.	
209.		509.	
210. City/town taxes to		510. City/town taxes to	
211. County taxes to		511. County taxes to	
212. Assessments to		512. Assessments to	
213.		513.	

Loan Closing Instructions

214.	
215.	
216.	
217.	
218.	
219.	
<b>300. Case at Settlement from/to Borrower</b>	
301. Gross amount due from borrower (line 120)	\$221,802.70
302. Less amounts paid by/for Borrower (line 220)	(\$216,940.00)
303. Cash <input checked="" type="checkbox"/> From ___ To Borrower	\$4,862.70

514.	
515.	
516.	
517.	
518.	
519.	
<b>600. Case at Settlement to/from Seller</b>	
601. Gross amount due to Seller (line 420)	\$0.00
602. Less reductions in amount due seller (line 520)	\$0.00
603. Cash <input checked="" type="checkbox"/> From ___ To Seller	\$0.00

<b>700. Total Real Estate Broker Fees</b>			
Division of commission (line 700) as follows:			
701. \$0.00			
702. \$0.00			
703. Commission paid at settlement		\$0.00	\$0.00
704.		\$0.00	\$0.00

<b>800. Items Payable in Connection with Loan</b>			
801. Our origination charge (Includes Origination Point 0.500% or \$1,084.70)	\$1,784.70	(GFE #1)	
802. Credit or charge for interest rate			
803. Your adjusted origination charges		(GFE A)	\$1,784.70
804. Appraisal fee to Appraisal Inc.		(GFE #3)	\$400.00
805. Credit report			
806. Tax service			
807. Flood certification to Texas Flood Group		(GFE #3)	\$16.00
808. Doc prep fee to PeirsonPatterson, LLP \$200.00 (included in 801)		(GFE #1)	
809. Form Board Survey to Survey Company		(GFE #3)	\$325.00
810.			
811.			
812.			
813.			
814.			

<b>900. Items Required by Lender to Be Paid in Advance</b>			
901. Daily interest charges from to @ \$ -/day			
902. Mortgage insurance premium for months			
903. Homeowner's insurance for years			
904.			
905.			
906.			

<b>1000. Reserves Deposited with Lender</b>			
1001. Initial deposit for your escrow account			
1002. Homeowner's insurance			
1003. Mortgage insurance			
1004. Property taxes			
1005.			
1006.			
1007. Aggregate Adjustment			
1008.			
1009.			
1010.			

<b>1100. Title Charges</b>			
1101. Title services and lender's title insurance to Busy Bee Title		(GFE #4)	\$2,212.00
1102. Settlement or closing fee to Busy Bee Title	\$750.00		
1103. Owner's title insurance			
1104. Lender's title insurance to Busy Bee Title	\$1,462.00		
1105. Lender's title policy limit \$216,940.00			
1106. Owner's title policy limit			
1107. Agent's portion of the total title insurance premium			
1108. Underwriter's portion of the total title insurance premium			
1109.			
1110.			
1111.			

**Loan Closing Instructions**

1112.		
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1200. Government Recording and Transfer Charges		
1201. Government recording charges to Tarrant County Clerk	(GFE #7)	\$125.00
1202. Deed \$125.00	Mortgage	Releases
1203. Transfer Taxes		
1204. City/County tax/stamps	Deed	Mortgage
1205. State tax/stamps	Deed	Mortgage
1206.		

1300. Additional Settlement Charges		
1301. Additional services that you can shop for		
1302.		
1303.		
1304.		
1305.		
1306.		
1307.		

Comparison of Good Faith Estimate (GFE) and HUD-1 Charges	
Charges That Cannot Increase	HUD-1 Line Number
Our origination charge	# 801
Your credit or charge (points) for the specific interest rate chosen	# 802
Your adjusted origination charges	# 803
Transfer taxes	# 1203

Good Faith Estimate	HUD-1
\$1,784.70	\$1,784.70
\$0.00	\$0.00
\$1,784.70	\$1,784.70
\$0.00	\$0.00

Charges That in Total Cannot Increase More Than 10%	
Government recording charges	# 1201
Appraisal fee	# 804
Flood certification	# 807
Form Board Survey	# 809

Good Faith Estimate	HUD-1
\$125.00	\$125.00
\$400.00	\$400.00
\$16.00	\$16.00
\$325.00	\$325.00

Total
Increase between GFE and HUD-1 Charges

\$866.00	\$866.00
N/A	

Charges That Can Change	
Initial deposit for your escrow account	# 1001
Daily interest charges	# 901 \$0.0000 /day
Homeowner's insurance premium	# 903
Title services and lender's title insurance	# 1101

Good Faith Estimate	HUD-1
\$0.00	\$0.00
\$0.00	\$0.00
\$0.00	\$0.00
\$2,212.00	\$2,212.00

**Loan Terms**

Your initial loan amount is	\$216,940.00
Your loan term is	1 years
Your interest rate is	6.500%
Your initial monthly amount owed for principal, interest, and any mortgage insurance is	\$598.81 includes: <input type="checkbox"/> Principal <input checked="" type="checkbox"/> Interest <input type="checkbox"/> Mortgage Insurance
Can your interest rate rise?	<input checked="" type="checkbox"/> No. <input type="checkbox"/> Yes, it can rise to a maximum of ____%. The first change will be on _____ and can change again every _____ after _____. Every change date, your interest rate can increase or decrease by ____%. Over the life of the loan, your interest rate is guaranteed to never be lower than ____% or higher than ____%.
Even if you make payments on time, can your loan balance rise?	<input checked="" type="checkbox"/> No. <input type="checkbox"/> Yes, it can rise to a maximum of \$_____
Even if you make payments on time, can your monthly amount owed for principal, interest, and mortgage insurance rise?	<input type="checkbox"/> No. <input checked="" type="checkbox"/> Yes, the first increase can be on November 23, 2012 and the monthly amount owed can rise to \$1,197.63. The maximum amount it can ever rise to is \$1,197.63.
Does your loan have a prepayment penalty?	<input checked="" type="checkbox"/> No. <input type="checkbox"/> Yes, your maximum prepayment penalty is \$_____.
Does your loan have a balloon payment?	<input type="checkbox"/> No. <input checked="" type="checkbox"/> Yes, you have a balloon payment of \$216,940.00 due in 1 years on October 23, 2013

**Loan Closing Instructions**



Texas Deletion of Arbitration Provision Return unsigned to Lender for signature, unless signed original forwarded direct by Lender under separate cover.  
Lender's Disbursement Statement Authorization Borrower(s) must sign. Return original to Lender. Give Borrower(s) one (1) copy.  
Disclosure of Right to Receive a Copy of an Appraisal Borrower(s) must sign. Return original to Lender. Give Borrower(s) one (1) copy.  
Document Correction Agreement Borrower(s) must sign. Return original to Lender. Give Borrower(s) one (1) copy.  
Fair Credit Reporting Act Notice Borrower(s) must sign. Return original to Lender. Give Borrower(s) one (1) copy.  
Form Board Survey Letter After execution, return original to Lender. Give Borrower(s) one (1) copy.  
Mineral Rights Acknowledgment Borrower(s) must sign. Return original to Lender. Give Borrower(s) one (1) copy.  
Mortgage Fraud Warning FBI Borrower(s) must sign. Return original to Lender. Give Borrower(s) one (1) copy.  
Notice of No Oral Agreements All Parties must sign. Return original to Lender. Give each Party one (1) copy.  
Residential Construction Loan Borrower's Affidavit (Borrower's name) The executed and acknowledged original must be returned to Lender.  
Residential Construction Contractor's Affidavit Builder/Contractor must sign. Signature must be acknowledged. Return original to Lender. Give Borrower(s) and Builder/Contractor one (1) copy.  
Retainage Notice with waiver option All indicated Parties must sign. Return original to Lender. Give each Party one (1) copy.  
Collateral Protection Insurance Notice (Texas) Borrower(s) must sign. Return original to Lender. Give Borrower(s) one (1) copy.  
Texas Consumer Complaint Process Notice (State Chartered Banks and Trusts) Borrower(s) must sign. Return original to Lender. Give Borrower(s) one (1) copy.  
W-9 Cover Sheet  
Request for Taxpayer Identification Number and Certification - Borrower 1 Each Borrower must complete and sign a separate W-9. Return Original(s) to Lender.  
Request for Taxpayer Identification Number and Certification - Borrower 2 Each Borrower must complete and sign a separate W-9. Return Original(s) to Lender.

#### SECTION IV. ADDITIONAL REQUIREMENTS

##### Title Insurance.

Texas Loan Policy of Title Insurance (T-2) ("Title Policy"). - to be issued in favor of Lender in accordance with the terms, conditions, coverages and exceptions set forth in the Commitment for Title Insurance ("Commitment") previously issued by Settlement Agent and its Underwriter and delivered to Lender in connection with this loan transaction, subject however, to the various deletions, changes, corrections, endorsements and other revisions thereto required by Lender which are listed below, all of which are to be reflected in a revised Commitment to be issued and delivered to Lender prior to the date of Closing. The Title Policy (which shall be issued by Settlement Agent and its Underwriter and delivered to Lender not later than 10 days after the date of Closing) shall insure Lender that the lien(s) securing this loan is/are valid first lien(s) on the fee simple title to the real property described in the Commitment and as described in the Deed of Trust and other of the Loan Documents listed above and delivered herewith;

Lender's Requirements. Lender makes the following requirements ("Requirements") in connection with the issuance of the revised Commitment and the Title Policy, each such Requirement being equally applicable to both such forms when prepared and issued unless one or more of the following Requirements specifies to the contrary:

- \* The "insured" named in Schedule A must read: "[Lender's name as appearing in the Note] and each successor in ownership of the indebtedness secured by the insured mortgage except a successor who is an obligor under the provision of Section 12(c) of the Conditions and Stipulations;"
- \* The "Effective Date" on Schedule A must be the date the Deed of Trust is recorded;
- \* Fee simple title to the real property described in the Deed of Trust must be shown by the Title Policy to be vested in Borrower;
- \* There can be no exception for reversionary rights of any kind in Schedule B;
- \* There can be no exceptions in Schedule B for "parties in possession;"
- \* Item 2 of Schedule B must be modified to read "shortages in area;"
- \* Item 3 of Schedule B must be modified to read "and subsequent assessments, for prior years due to change in land usage or ownership," and must except only to taxes, assessments and stand-by fees for the current calendar year (if taxes for the current year are due and payable when the Closing occurs) and subsequent years, not yet due and payable;
- \* All curative matters in Schedule C of your Commitment shall be resolved to your satisfaction and not carried on as exceptions in the Title Policy;
- \* Provide all common and customary endorsements at Borrower's expense including any endorsements to remove any "pending disbursement" and/or "completion of improvements" exceptions that will later be removed upon completion of construction.
- \* Provide T-36 Environmental Protection Lien Endorsement to the Title Policy at Borrower's expense;
- \* As to any encroachment that is an exception or any exclusion to coverage with respect to minerals in either Schedule A, Item 2 or Schedule B in the Loan Policy of Title Insurance which falls under the provisions of Procedural Rule 50 of the MANUAL OF RULES, RATES AND FORMS FOR THE WRITING OF TITLE INSURANCE IN THE STATE OF TEXAS ("Texas Title Rules"), the Lender hereby requests that any such matter be insured by providing a T-19 Restrictions, Encroachments, Mineral Rights Endorsement at borrower's expenses. If provided, see Master Closing Instructions 4.13(p).

If, however, the title company does not issue the above-referenced T-19 Restrictions, Encroachments, Minerals Endorsement without amendment for any reason, Lender requests the title company to issue, as applicable and pursuant to Texas Title Rules P-5.1, and P-50.1, its Minerals and Surface Damage Endorsement (T-19.2) if the Property insured is one acre or less and is improved or intended to be improved for one-to-four family residential use. If the Property is improved or intended to be improved for office, industrial, retail, mixed use retail/residential or multifamily purposes, lender requests that the title company issue the Minerals and Surface Damage Endorsement (T-19.3). Please see Master Closing Instructions 4.13(i), 4.13(j), and 4.18.

- \* Delete Section 13 of the Conditions and Stipulations of the Loan Policy of Title Insurance relating to Arbitration.

Corrected Title Commitment. In addition to the requirements contained in the Master Closing Instructions, if provided, the Commitment must be amended as follows: (WE REQUIRE THE FOLLOWING ITEMS WITHIN TWENTY-FOUR HOURS OF THE EXECUTION OF THE DOCUMENTATION.)

Schedule A: Reflect our Loan Amount of \$216,940.00.

Schedule A: Proposed Insured to read "Lender Bank".

Schedule A: Borrower(s) name(s) to read exactly as Legal Documents are drawn.

Schedule B: Reflect Tax Deletion. Guarantee all taxes are paid current.

Schedule C: Clear ALL Items. All Liens MUST be paid in full and released. Show LENDER in first lien position.

STRICTLY ADHERE TO THE MASTER CLOSING INSTRUCTIONS.

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#### Loan Closing Instructions

**Provide an amended, original and countersigned Title Commitment, updated within 30 days of closing.**

**Provide all applicable Endorsements @ Borrower's expense.**

**Provide a full T-19 endorsement without deletion.**

**Guarantee legal right of access to and from subject property and if on a private road, an acceptable Maintenance Agreement to Lender must be in place and access easement must be a part of the legal description.**

**Borrower's HUD-1 Settlement Statement.** HUD-1 must reference SETTLEMENT AGENT NAME, ADDRESS and PHONE NUMBER in Section H "Settlement Agent" and at least SETTLEMENT AGENT ADDRESS in "Place of Settlement" box. Three (3) certified copies. The Borrower(s) cannot receive any credit against the Sales Price for repairs or any other matter(s) without Lender's specific approval. Must reflect the name and address, including zip code of the Borrower(s), the Lender and the Settlement Agent.

**Lender's Privacy Requirements.** Maintaining public confidence is important to the success and well-being of Lender. Additionally, Lender is bound by certain state and federal laws and regulations that require Lender and Lender's employees to transact business mindful that information shall be properly safeguarded. These closing instructions hereby put Settlement Agent on notice that the laws, regulations and safeguards that apply to Lender and its employees equally apply to vendors, agents and service providers [VASPs] of Lender. In conducting the business of Lender, certain customer information is obtained, used, created, stored and disposed. It is expected and required that all persons or entities with access to Lender's customer information shall keep that information confidential. VASPs are not authorized to access Lender's customer information except as is minimally necessary to complete assigned work. VASPs are not to make unauthorized copies of customer information. VASPs are not to discuss customer information with anyone other than authorized persons. Casual conversation about customers and customer information is prohibited and should be avoided even with other VASPs or Lender employees. VASPs shall not sell or otherwise share any customer information with any third party persons or companies. It is understood by Settlement Agent that Lender's customer information shall only be obtained, used, stored and disposed by methods and means that are necessary and permitted in order to conduct the business of Lender and Settlement Agent. All such access shall be in a safe guarded manner consistent with Lender's business practices and generally accepted professional business standards.

**Other Items:**

- **Borrower(s) must complete Social Security Number(s) or Tax ID number on any applicable documents.**
- **Provide any and all other state specific documents necessary to properly close and insure this transaction.**
- **HUD-1 must reference SETTLEMENT AGENT NAME, ADDRESS and PHONE NUMBER in Section H "Settlement Agent" and at least SETTLEMENT AGENT ADDRESS in "Place of Settlement" box.**
- **According to information provided to Lender, settlement agent will charge Borrower(s) an escrow fee of \$750.00 and a wire/courier/Fed-X fee (to meet Lender's requirements) of \$0.00. Do not increase or decrease these fees without Lender's prior written consent. These fees have been included as a prepaid finance charge in Borrower(s)' Truth in Lending Disclosure.**
- **No Survey required. Disregard any and all survey requirements throughout our instructions.**
- **Verify all liens against subject property are paid in full and released.**
- **NO CASH BACK TO BORROWERS. NO PRINCIPAL REDUCTIONS ALLOWED.**

**SECTION V: LOAN FUNDING**

All papers must be signed as the legal documentation has been typed. If you have information that the typed names or other factual information are incorrect, please contact Lender immediately. All fees and charges required to be paid and known by Settlement Agent must be reflected on the Settlement Statement. The Settlement Statement must be faxed to Lender for approval prior to Closing. After Lender approval, no charges or fees can be added to the Settlement Statement without lender's written consent. The loan must close and fund by the Document Expiration Date indicated on page one of these Instructions. Do not file the Deed of Trust prior to Lender's funding authorization. The Closing of this loan is contingent upon the Sales Price captioned herein being true and correct. Should you have information indicating a lesser Sales Price or any secondary financing not shown above, do not close this loan and contact Lender immediately.

The escrow agent shall prepare the HUD-1 Settlement Statement in accordance with these instructions and provide it to us for our approval at least 24 hours before the real estate settlement transaction is closed. Then, the escrow agent shall close the transaction and disburse funds only in accordance with the approved HUD-1 Settlement Statement. If any party to the transaction requests that his/her funds be disbursed in any manner different from the approved HUD-1, the escrow agent shall advise us of the request and obtain prior approval from us before any funds are disbursed in a manner different from the approved HUD-1 Settlement Statement.

SUBJECT TO ANY LIMITATIONS IMPOSED BY PROCEDURAL RULE P-35 OF THE BASIC MANUAL OF TITLE INSURANCE IN THE STATE OF TEXAS, THE UNDERSIGNED AS AUTHORIZED AGENT FOR SETTLEMENT AGENT HEREBY ACKNOWLEDGES RECEIPT OF AND AGREES TO FOLLOW ALL THE TERMS AND REQUIREMENTS CONTAINED IN THESE CLOSING INSTRUCTIONS, AND THE REVISED COMMITMENT FOR TITLE INSURANCE ISSUED FOR THIS LOAN WHICH ARE INCORPORATED HEREIN BY REFERENCE PRIOR TO THE REQUEST FOR LOAN FUNDING, UNLESS OTHERWISE AUTHORIZED HEREIN. THIS ACKNOWLEDGEMENT DOES NOT OTHERWISE IMPLY A CERTIFICATION OR GUARANTY OF FACT, INSURANCE COVERAGE OR CONCLUSION OF LAW.

**Busy Bee Title**

By: \_\_\_\_\_

**Settlement Agent Signature**

[ORIGINAL SIGNATURE, NOT STAMP, REQUIRED AS A CONDITION OF FUNDING.]

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**Loan Closing Instructions**



Lender: **Lender One**  
Borrower: **Isaac Newton and Phyllis Newton, husband and wife**  
Contractor: **Custom Homes, LLC**  
Property: **100 Main Street, Arlington, Texas 76017**

## **Subchapter K - Texas Property Code Addendum to Closing Instructions**

**Loan # 112233**

This transaction is subject to Subchapter K of the Texas Property Code. The following will be required:

- Advance Receipt of Loan Documents By Borrowers - Deliver to all Borrowers all documentation relating to the closing of the loan not later than one business day before the date of the closing. If any changes, deletions or amendments are made to those documents after they are given to the Borrowers, unless instructed in writing by Lender, closing must be delayed at least one business day after the revised loan document package is given to Borrower.
  
- Disclosure Statement Required for Texas Residential Construction Contract - Provide the attached Disclosure Statement to Borrowers before the execution of the mechanic's lien contract. Each Borrower must sign and date the original. Return original to Lender. Give each Borrower a copy after signature.
  
- Disbursement Authorization - Each Borrower must sign and date the original. Return original to Lender. Give copy to Borrower after execution.
  
- Borrower's Acknowledgement of Texas Construction Compliance Procedure - Each Borrower must sign and date the original. Return original to Lender. Give copy to Borrower after execution.
  
- Waiver of Advance Delivery of Loan Documents - Borrower must provide detailed reason for request to waive one business day advance delivery of loan documents in their own words and handwriting. Borrower must clearly detail "bona fide financial emergency" or "other good cause." Each Borrower must sign and date. Fax same to lender. If request is approved, Lender will fax back approval.

I agree to follow these additional closing instructions.

**Busy Bee Title**

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<b>Settlement Agent</b>	<b>Date</b>
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Addendum to Closing Instructions

**Texas Notice of Penalties for Making  
False or Misleading Written Statement**

Loan # 112233

**Warning:**

Intentionally or knowingly making a materially false or misleading written statement to obtain property or credit, including a mortgage loan, is a violation of Section 32.32, Texas Penal Code, and, depending on the amount of the loan or value of the property, is punishable by imprisonment for a term of 2 years to 99 years and a fine not to exceed \$10,000.

I/we, the undersigned home loan applicant(s), represent that I/we have received, read, and understand this notice of penalties for making a materially false or misleading written statement to obtain a home loan.

I/we represent that all statements and representations contained in my/our written home loan application, including statements or representations regarding my/our **identity, employment, annual income, and intent to occupy the residential real property** secured by the home loan, are true and correct as of the date of loan closing.

\_\_\_\_\_  
Signature Date  
**Isaac Newton**

\_\_\_\_\_  
Signature Date  
**Phyllis Newton**

*[Sign Originals Only]*

STATE OF TEXAS  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by **Isaac Newton and Phyllis Newton.**

\_\_\_\_\_  
Notary Public  
Printed Name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

**TRUTH-IN-LENDING DISCLOSURE STATEMENT**  
**(THIS IS NEITHER A CONTRACT NOR A COMMITMENT TO LEND)**

Version: 01/30/2011

<b>CREDITOR:</b>	Lender One 2310 Interstate 20 W Arlington, TX 76017	<b>Loan Number:</b>	112233
<b>BORROWER(S):</b>	Isaac Newton and Phyllis Newton	<b>Closing Date:</b>	10/23/2012
<b>MAILING ADDRESS:</b>	100 Main Street, Arlington, TX 76017	<b>Type of Loan:</b>	Other
<b>PROPERTY ADDRESS:</b>	100 Main Street, Arlington, TX 76017		

<b>ANNUAL PERCENTAGE RATE</b>	<b>FINANCE CHARGE</b>	<b>Amount Financed</b>	<b>Total of Payments</b>
The cost of your credit as a yearly rate	The dollar amount the credit will cost you	The amount of credit provided to you on your behalf	The amount you will have paid after you have made all payments as scheduled
<b>9.0647%(e)</b>	<b>\$9,601.25(e)</b>	<b>\$214,389.30(e)</b>	<b>\$223,990.55(e)</b>

**INTEREST RATE AND PAYMENT SUMMARY**

	<b>Rate &amp; Monthly Payment</b>
Interest Rate	6.500%
Principal Payment	-none-
Interest Payment	\$598.81
Est. Taxes + Insurance (Escrow)	N/A
<b>Total Est. Monthly Payment</b>	<b>\$598.81</b>

**You will have a balloon payment of \$216,940.00, plus any interest or charges due, on October 23, 2013**

**There is no guarantee that you will be able to refinance to lower your rate and payments.**

**CONSTRUCTION LOAN:** During construction period: Calculations are estimated using the assumption that one-half of the commitment amount is outstanding at the contract interest rate for the entire construction period, which is assumed to end October 23, 2013. You must pay interest due on the amount of credit outstanding monthly. One payment of \$216,940.00 principal plus accrued but unpaid interest will be paid on October 23, 2013.

**VARIABLE RATE FEATURE:** Your loan does not have a variable rate feature.

**SECURITY:** You are giving a security interest in the property located at:  
 100 Main Street, Arlington, TX 76017  
 certificate no. 11111 in the amount of \$15,000.00 in the name of Isaac Newton

**ASSUMPTION:** Someone buying the property cannot, unless otherwise provided by federal law, be allowed to assume the remainder of the loan on the original terms

**LATE CHARGE:** If your payment is more than 0 days late, you will be charged a late charge of 0.000% of the overdue payment of principal and interest.

# TRUTH-IN-LENDING DISCLOSURE STATEMENT CONTINUED

**PREPAYMENT:** If you pay off early, you will not have to pay a penalty. You will not be entitled to a refund of part of the finance charge.

**DEMAND FEATURE:** N/A

**REQUIRED DEPOSIT:** N/A

**FILING / RECORDING FEES:** \$125.00(e)

**INSURANCE:** The following insurance is required to obtain credit:  
Property insurance  
You may obtain the insurance from anyone you want that is acceptable to Lender.

(e) means an estimate

## I/We have received these disclosures

\_\_\_\_\_  
Signature Date  
**Isaac Newton**

\_\_\_\_\_  
Signature Date  
**Phyllis Newton**

*[Sign Originals Only]*

## APR & FINANCE CHARGE SUMMARY

**Lender:**  
**Lender One**  
 2310 Interstate 20 W  
 Arlington, TX 76017

**Closing:** 10/23/2012  
**Funding:** 10/23/2012  
**Loan Amount:** \$216,940.00  
**Loan Term:** 12  
**Note Rate:** 6.500%  
**Type of Loan:** Other  
**1st Payment:** 11/23/2012  
**Loan #** 112233

**Borrower(s):** Isaac Newton and Phyllis Newton  
**Mailing Address:** 100 Main Street, Arlington, TX 76017  
**Property Address:** 100 Main Street, Arlington, TX 76017

Annual Percentage Rate	Finance Charge (1)	Amount Financed (2)	Total of Payments (3)	Total Sales Price (4)
9.0647%(e)	\$9,601.25(e)	\$214,389.30	\$223,990.55(e)	

<b>1. Finance Charges:</b>	
Flood certification	16.00
Settlement or closing fee	750.00
Loan origination fee	1,084.70
Lender's inspection fee	500.00
Attorney fee for docprep	200.00
Total Prepaid Finance Charges	2,550.70
Plus Interest for life of loan	7,050.55
<b>TOTAL FINANCE CHARGE</b>	<b>9,601.25</b>
<b>2. Calculation of Amount Financed:</b>	
Total Loan Amount	216,940.00
Less Prepaid Finance Charges	2,550.70
<b>TOTAL AMOUNT FINANCED</b>	<b>214,389.30</b>
<b>3. Calculation of Total of Payments:</b>	
Finance Charge	9,601.25
Plus Amount Financed	214,389.30
<b>TOTAL OF PAYMENTS</b>	<b>223,990.55</b>
<b>4. Calculation of Total Sales Price:</b>	
N/A	
<b>5. APR Tolerance</b>	
Disclosed APR	9.065%
Ending APR	9.065%
Difference	0.000%
Result	<b>IN TOLERANCE</b>

## AMOUNT FINANCED ITEMIZATION

LENDER:  
**Lender One**  
**2310 Interstate 20 W**  
**Arlington, TX 76017**

BORROWERS:  
**Isaac Newton and Phyllis Newton**

ADDRESS:  
**100 Main Street**  
**Arlington, TX 76017**

PROPERTY ADDRESS:  
**100 Main Street, Arlington, TX 76017**

Date: **10/23/2012**  
Funding: **10/23/2012**  
Mortgage Ins: **No**  
Loan Amount: **\$216,940.00**  
Loan Term: **12 months**  
Note Rate: **6.500%**  
Type of Loan: **Other**  
1<sup>st</sup> Payment: **11/23/2012**  
**Loan # 112233**

SETTLEMENT AGENT MUST COMPLETE APPLICABLE BLANKS INDICATED WITH "\*" FOR ALL THIRD PARTY CHARGES PAID BY BORROWER AND SHOWN ON THE SETTLEMENT STATEMENT PRIOR TO BORROWER'S EXECUTION.

Itemization of the Amount Financed of **\$214,389.30** (per Truth in Lending)

\$ \_\_\_\_\_ \* Amount given to you directly

\$ \_\_\_\_\_ \* Amount paid on your account

Amount(s) paid to others on your behalf (excluding Prepaid Finance Charges):

\$400.00 Appraisal fee to Appraisal Inc.  
\$325.00 Form Board Survey to Survey Company  
\$1,462.00 Lender's title insurance to Busy Bee Title  
\$125.00 Government recording charges - Deed to Tarrant County Clerk

Amount of Prepaid Finance Charges paid to other on your behalf:

\$16.00 Flood certification to Texas Flood Group  
\$750.00 Settlement or closing fee to Busy Bee Title  
\$1,084.70 Loan origination fee to Lender One  
\$500.00 Lender's inspection fee to Lender One  
\$200.00 Attorney fee for docprep to PeirsonPatterson, LLP

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Itemization of Amount Financed

# NOTE

**THIS LOAN IS PAYABLE IN FULL AT MATURITY. YOU MUST REPAY THE ENTIRE PRINCIPAL BALANCE OF THE LOAN AND UNPAID INTEREST THEN DUE. THE LENDER IS UNDER NO OBLIGATION TO REFINANCE THE LOAN AT THAT TIME. YOU WILL, THEREFORE, BE REQUIRED TO MAKE PAYMENT OUT OF OTHER ASSETS THAT YOU MAY OWN, OR YOU WILL HAVE TO FIND A LENDER, WHICH MAY BE THE LENDER YOU HAVE THIS LOAN WITH, WILLING TO LEND YOU THE MONEY. IF YOU REFINANCE THIS LOAN AT MATURITY, YOU MAY HAVE TO PAY SOME OR ALL OF THE CLOSING COSTS NORMALLY ASSOCIATED WITH A NEW LOAN EVEN IF YOU OBTAIN REFINANCING FROM THE SAME LENDER.**

Loan # 112233

**October 23, 2012**  
[Date]

**Arlington**  
[City]

**TX**  
[State]

**100 Main Street, Arlington, TX 76017**  
[Property Address]

## 1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. **\$216,940.00**, or the unpaid principal balance outstanding from all sums advanced against this Note, less any amounts repaid, whichever amount is less (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is **Lender One**. I will make all payments under this Note in the form of cash, check, money order or electronic funds transfer. I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder." This Note anticipates multiple advances. The principal amount of this Note shall be advanced incrementally according to the agreement with Lender. Interest shall accrue and be charged only upon the amount of outstanding principal as it changes from time to time.

## 2. INTEREST RATE AND PAYMENTS

### (A) Interest Rate

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of **6.500%**. The interest rate required by this Section 2 is the rate I will pay both before and after any default described in this Note.

### (B) Payments

#### (1) Place of Payments

I will make my **monthly** payments at **2310 W Interstate 20, 100, Arlington, TX 76017** or at a different place if required by the Note Holder.

#### (2) Amount and Time of Payments

I will make payments as follows:

**The principal is due and payable on or before October 23, 2013 (the "Maturity Date") and the interest is payable monthly as it accrues on the twenty-third day of each month beginning November 23, 2012. TIME IS OF THE ESSENCE.**

### (C) Accrual Method

#### (1) Actual / 365 Method

All payments of interest shall be computed on the per annum basis of a year of 365 days (or 366, as the case may be) and for the actual number of days elapsed.

#### (2) True Daily Earnings Method

Interest will be computed according to the true daily earnings method. The true daily earnings method is a method to compute an interest charge by applying a daily rate to the unpaid balance of the amount financed. The

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Note

earned finance charge is computed by multiplying the daily rate by the number of days the actual principal balance is outstanding. The daily rate is the equivalent contract rate for a year with the number of days indicated in (C)(1) above.

### **3. PREPAYMENT**

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a Prepayment. When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the **monthly** payments due under the Note. I may make a full Prepayment or partial Prepayments without paying a Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount, before applying my Prepayment to reduce the Principal amount of the Note. If I make a partial Prepayment, there will be no changes in the due dates of my **monthly** payment unless the Note Holder agrees in writing to those changes.

### **4. LOAN CHARGES**

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

### **5. BORROWER'S FAILURE TO PAY AS REQUIRED**

#### **(A) Default**

If I do not pay the full amount of each **monthly** payment on the date it is due, I will be in default.

#### **(B) Notice of Default**

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal which has not been paid and all the interest that I owe on that amount.

#### **(C) No Waiver By Note Holder**

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

#### **(D) Payment of Note Holder's Costs and Expenses**

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

#### **(E) Not Sufficient Funds Fees**

If not prohibited by applicable law, I agree to pay an amount charged by Lender not to exceed **\$30.00** (or the maximum amount allowed by applicable law if applicable law limits said fee to an amount less than **\$30.00**) for each check, draft, order or other instrument or form of remittance made in payment on this note that is returned to Lender unpaid or dishonored for any reason.

### **6. GIVING OF NOTICES**

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address. Any notice that must be given to the Note Holder under this Note will be given by delivering it or by mailing it by first class mail to the Note Holder at the address stated in Section 2(B) above or at a different address if I am given a notice of that different address.

### **7. OBLIGATIONS OF PERSONS UNDER THIS NOTE**

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Note



If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

## 8. WAIVERS

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

## 9. SECURITY

This Note is secured by the Property referenced herein above [Property Address] on the top of the first page of this Note. As further security for this Note, I grant to the Note Holder a lien and contractual right of offset in and to all my money and property now or at any time hereafter coming within the custody or control of the Note Holder, including, without limitation, all certificates of deposit and other accounts, whether such certificates or accounts have matured or not and whether exercise of such right of offset results in loss of interest or other penalty under the terms of the certificate or account agreement. This Note is further secured by a Deed of trust of even date herewith, to **Michael H. Patterson**, Trustee, covering the real property described to wit:

**LOT 11, BLOCK 1, ARLINGTON, AN ADDITION IN TARRANT COUNTY, TEXAS, ACCORDING TO THE PLAT RECORDED IN PLAT CABINET ABC, SLIDE 111, PLAT RECORDS, TARRANT COUNTY, TEXAS.**

This Note is additionally secured by **certificate of deposit #11111 in the amount of \$15,000.00 in the name of Isaac Newton.**

## 10. APPLICABLE LAW

This Note is being executed and delivered and is intended to be performed in the State of Texas and shall be construed and enforced in accordance with and governed by the laws of the State of Texas and applicable federal law. All legal proceedings brought to enforce or interpret this Note shall be in the appropriate court located in **Tarrant** County, Texas. In the event of a conflict between any provision of this Note and applicable law, the applicable law shall control to the extent of such conflict and the conflicting provisions contained in this Note shall be modified to the extent necessary to comply with applicable law. All other provisions in this Note will remain fully effective and enforceable.

## 11. SECURED NOTE

In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses which might result if I do not keep the promises which I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note.

## 12. DUE ON TRANSFER

In addition to the protections given to the Lender under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Lender from possible losses which might result if Borrower does not keep the promises which Borrower makes in this Note. That Security Instrument describes how and under what conditions Borrower may be required to make immediate payment in full of all amounts Borrower owes under this Note. Some of those conditions are described as follows:

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Note

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

**13. NO ORAL AGREEMENTS**

**THIS NOTE CONSTITUTES A "WRITTEN LOAN AGREEMENT" PURSUANT TO SECTION 26.02 OF THE TEXAS BUSINESS AND COMMERCE CODE, IF SUCH SECTION APPLIES. THIS WRITTEN AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.**

\_\_\_\_\_  
Signature Date  
**Isaac Newton**

\_\_\_\_\_  
Signature Date  
**Phyllis Newton**

*[Sign Originals Only]*

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**Note**

**RETURN TO:**  
**Lender One**  
**2310 W Interstate 20, 100**  
**Arlington, TX 76017**  
**Ambra Costner**

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.**

**DEED OF TRUST**  
**(SECURITY AGREEMENT,**  
**FINANCING STATEMENT)**

**Loan # 112233**

**THE STATE OF TEXAS            }**  
**COUNTY OF Tarrant    }**

**KNOW ALL MEN BY THESE PRESENTS:**

**THE UNDERSIGNED, Isaac Newton and Phyllis Newton, husband and wife**, whose mailing address is as set forth opposite the signature of each, being the debtor(s) and hereinafter called "Grantors", (whether one or more), in consideration of TEN AND NO/100 DOLLARS (\$10.00), in hand paid, and the debt and trust hereinafter mentioned, have Granted, Sold and Conveyed, and by these presents do Grant, Sell and Convey unto **Michael H. Patterson** Trustee(s), whose mailing address is **2310 Interstate 20 W, Suite 100, Arlington, TX 76017**, hereinafter called the "Trustee" (whether one or more), and to his successors in trust, the following described land and other property situated in the County of **Tarrant**, State of Texas, to-wit:

**LOT 11, BLOCK 1, ARLINGTON, AN ADDITION IN TARRANT COUNTY, TEXAS, ACCORDING TO THE PLAT RECORDED IN PLAT CABINET ABC, SLIDE 111, PLAT RECORDS, TARRANT COUNTY, TEXAS.**

which has an address of:

**100 Main Street**  
**Arlington, TX 76017**  
(“Property Address”):

together with all heating, plumbing, refrigeration, lighting fixtures, equipment, appliances and/or other personal property used in connection therewith whether or not now or hereafter attached thereto so as to become fixtures, and all accessions and additions thereto, and all buildings and improvements thereon and hereafter placed thereon: appurtenances, servitudes, rights, ways, privileges, prescriptions and advantages thereunto belonging or in any wise appertaining, hereinafter called the "Mortgaged Premises". To the extent permitted by law, this Deed of Trust shall be construed to be a security agreement and financing statement.

TO HAVE AND TO HOLD the Mortgaged Premises unto the Trustee forever, Grantors hereby bind themselves to warrant and forever defend the title to the Mortgaged Premises, or any part thereof, unto the Trustee

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**Deed of Trust (Security Instrument, Financing Statement)**

against all persons whomsoever claiming or to claim the same or any part thereof.

1. THIS CONVEYANCE, however, is made in trust to secure and enforce the payment of the following described indebtedness, obligations and liabilities:

- a. A promissory note (the "Note") of even date herewith in the principal sum of **Two Hundred Sixteen Thousand Nine Hundred Forty and 00/100 Dollars (\$216,940.00)** executed by the Borrowers therein and payable to the order of **Lender One** whose mailing address is **2310 W Interstate 20, 100, Arlington, TX 76017** (hereinafter called "Beneficiary" or "Bank"), bearing interest as therein provided;
- b. If applicable law allows, all promissory notes evidencing additional loans which Beneficiary may hereinafter make to Grantors (although it is understood that beneficiary is under no obligation to do so);
- c. If applicable law allows, all other indebtedness and liabilities of all kinds of Grantors to Beneficiary now existing or hereafter arising (including overdrafts in bank accounts), whether fixed or contingent, joint and/or several, direct or indirect, primary or secondary and regardless of how created or evidenced, or whether they may, prior to acquisition by Beneficiary, be or have been payable to, or be or have been in favor of some other person, or have been acquired by Beneficiary in a transaction with one other than Grantors;
- d. All sums advanced or costs or expenses incurred by Beneficiary which are made or incurred pursuant to or allowed by, the terms of this instrument, plus interest thereon at the maximum rate allowed by applicable law from the date paid until reimbursed; and
- e. All renewals and extensions of the above, whether or not Grantors execute any renewal or extension agreement.  
All of the described indebtedness being hereinafter sometimes referred to collectively as the "debt" or "indebtedness".

2. As additional security for the payment of said debt, Grantors hereby transfer and assign unto the Beneficiary:

- a. All judgments, awards of damages and settlements hereinafter made resulting from condemnation proceedings or the taking of all or any part of the Mortgaged Premises under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the Mortgaged Premises or any part thereof, or to any rights appurtenant thereto, including any award for change of grade of streets. The Beneficiary is hereby authorized, but shall not be required, on behalf and in the name of Grantors, to execute and deliver acquittances for, and to appeal from, any such judgments or awards. The Beneficiary may apply all such sums or any part thereof so received, after the payment of all expenses, including costs and attorney's fees, on the debt in such manner as the Beneficiary elects;
- b. All bonuses, rents and royalties accrued or to accrue under all oil, gas or mineral leases, now existing or which may hereafter come into existence. Grantors direct payment of the same to the Beneficiary, at the option of the Beneficiary and upon written demand of the Beneficiary therefor, to be applied to the debt until paid, whether due or not, and either before or after any default under the terms of this Deed of Trust or Note; and
- c. All of the rents, royalties, issues, profits, revenue, income and other benefits derived from the Mortgaged Premises (whether now existing or hereafter arising) or arising from the use or enjoyment of any portion thereof or from any lease or agreement pertaining thereto (hereinafter called the "Rents and Profits") are hereby absolutely and unconditionally assigned, transferred, conveyed and set over to Beneficiary to be applied by Beneficiary in payment of the principal and

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**Deed of Trust (Security Instrument, Financing Statement)**

interest and all other sums payable on the Note and any other indebtedness secured hereby. It is intended that this assignment is absolute, unconditional and presently effective and that it shall never be necessary for Beneficiary to institute legal proceedings of any kind whatsoever to enforce the provisions of this Section 2 (c). Prior to the occurrence of any default hereunder, Grantor shall collect and receive all Rents and Profits as Trustee for the benefit of Beneficiary and Grantor, and Grantor shall apply the funds so collected first to the payment of the principal and interest and all other sums payable on the Note and in payment of all other indebtedness secured hereby, and thereafter, so long as no default hereunder has occurred, the balance shall be distributed to the account of the Grantor. Grantor will not (i) execute an assignment of any of its right, title or interest in the Rents or Profits, or (ii) except where the lessee is in default thereunder, terminate or consent to the cancellation or surrender of any lease of the Mortgaged Premises or any part thereof, now or hereafter existing, having an unexpired term of one year or more except that any lease may be canceled, provided that promptly after the cancellation or surrender thereof, a new lease is entered into with a new lessee having a credit standing, in the judgment of Beneficiary, at least equivalent to that of lessee whose lease was canceled, on substantially the same terms as the terminated or canceled lease, or (iii) modify any lease of the Mortgaged Premises or any part thereof so as to shorten the unexpired term thereof or so as to decrease the amount of rent payable thereunder, or (iv) accept prepayments of any installments of rent to become due under any of such leases in excess of one month, except prepayments in the nature of security for the performance of the lessee thereunder, or (v) in any other manner impair the value of the Mortgaged Premises or the security of this Deed of Trust. Grantor will not execute any lease of all or any substantial portion of the Mortgaged Premises except for actual occupancy by the lessee thereunder, and will at all times promptly and faithfully perform, or cause to be performed, each covenant, condition and agreement contained in each lease of the Mortgaged Premises now or hereafter existing, on the part of lessor thereunder to be kept and performed. Grantor shall furnish to Beneficiary, within ten (10) days after a request by Beneficiary to do so, a written statement containing the names of all lessees of the Mortgaged Premises, the terms of their respective leases, the spaces occupied, and the rentals payable thereunder. Beneficiary shall have no liability or obligation with respect to any lease of the Mortgaged Premises or any part thereof.

- d. All of Grantors interest in, to, and under any and all leases, tenant contracts, construction contracts and other contracts, licenses and permits, whether written or oral, now or hereafter affecting all or any part of the Property, and any agreement for the use or occupancy of all or any part of said Property which may have been made heretofore or which may be made hereafter, including any and all extensions, renewals, and modifications of the foregoing and guaranties of the performance or obligations of any tenants thereunder, and all other arrangements of any sort resulting in the payment of money to Grantor or in Grantor becoming entitled to the payment of money for the use of the Property or any part thereof, whether such user or occupier is tenant, invitee, or licensee (all of the foregoing hereafter referred to collectively as the "Leases" and individually as a "Lease", and said tenants, invitees, and licensees are hereafter referred to collectively as "Tenants" and individually as "Tenant" as the context requires), which Leases cover all or any portion of the Property. Grantor agrees to execute and deliver to Beneficiary such additional instruments, in form and substance satisfactory to Beneficiary, as may hereafter be requested by Beneficiary further to evidence and confirm said assignment; provided, however, that acceptance of any such assignment shall not be construed as a consent by Beneficiary to any Lease, or to impose upon Beneficiary any obligation with respect thereto; and provided, further, that permission is hereby given to Grantor unless and until Grantor is in default as provided herein, to collect the income, rents, issues and profits relating to the Property as they become due and payable but not in advance, except as provided herein below.

3. The proceeds of the Note to the extent that the same are utilized to take up any outstanding liens against the Mortgaged Premises, or any portion thereof, have been advanced by the Beneficiary at Grantors' request and upon Grantors' representation that such amounts are due and are secured by valid liens against the Mortgaged Premises. The Beneficiary shall be subrogated to any and all rights, superior titles, liens, and equities owned or claimed by any owner or holder of any outstanding liens and debts, however remote, regardless of whether said liens or debts are acquired by the Beneficiary by assignment or are released by the holder thereof upon payment.

4. Grantors further covenant and agree:

- a. That Grantors will pay the principal of and interest on the Note in accordance with the terms thereof. That Grantors are seized of the Mortgaged Premises and are entitled to convey the same; that Grantors will make such further assurance of title as may be necessary to fully confirm to the Trustee the title to the Mortgage Premises; Grantors shall punctually and properly perform all of Grantors' covenants, obligations, and liabilities under any other security agreement, mortgage, deed of trust, collateral pledge agreement, contract, assignment, loan agreement or any other instrument or agreement of any kind now or hereafter existing as security for, executed in connection with, or related to the indebtedness or other obligations secured hereby, or any part thereof;
- b. That all awnings, door and window screens, storm window screens, storm windows and doors, mantels, cabinets, rugs, carpeting, linoleum, wall and in-a-door beds, stoves, shades, blinds, oil and other fuel-burning systems and equipment, water heaters, radiator covers, and all plumbing, heating, lighting, cooking, ventilating, cooling, air-conditioning and refrigerating apparatus and equipment, and such goods and chattels and personal property as are ever furnished by landlords in letting or operating an unfurnished building, or which are or shall be attached to said building by nails, screws, bolts, pipe connections, masonry or in other manner, and all additions thereto and replacements thereof, and such built-in equipment as shown by plans and specifications, are and shall be deemed to be fixtures and accessions to the Mortgaged Premises, being hereby agreed to be immovables and a part of the realty as between the parties hereto, and shall be deemed to be a part and portion of the Mortgaged Premises;
- c. That Grantors will pay (prior to delinquency) all taxes and assessments levied or assessed upon the Mortgage Premises, or the interest created therein by this Deed of Trust, and exhibit the receipts therefor to the Beneficiary (unless such payments are made by the Beneficiary, as hereinafter provided), and will defend the title and possession of the Mortgaged Premises to the end that this Deed of Trust shall be and remain a first lien on the Mortgaged Premises until the debt is paid. That Grantors will pay all attorney's fees and expenses which may be incurred by the Beneficiary in enforcing the terms of the Note and this Deed of Trust or in any suit which the Beneficiary may become a party where this Deed of Trust or the Mortgaged Premises is in any manner involved, and all expenses incurred in presenting a claim against the estate of a decedent or a bankrupt. The word "assessments" as used in this Deed of Trust, whether in this paragraph or elsewhere, shall include not only assessments by political subdivisions, but also maintenance charges, regular assessments and special assessments assessed by subdivision restrictions, homeowner's declarations for planned unit developments and assessments by condominium agreements, if any;
- d. That Grantors will keep all insurable Mortgaged Premises insured for the protection of the Beneficiary against loss by fire, hazards included within the term "extended coverage" and such other hazards as Beneficiary may require in such manner, in such amounts, and in such companies as the Beneficiary may approve at Beneficiaries sole discretion, and keep the policies

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Deed of Trust (Security Instrument, Financing Statement)

therefor, properly endorsed, on deposit with the Beneficiary with standard mortgagees' clauses. If renewal policies are not delivered to the Beneficiary 30 days before the expiration of the existing policy or policies, with evidence of premiums paid, the Beneficiary may, but is not obligated to, obtain the required insurance on behalf of Grantors (or insurance in favor of the Beneficiary alone) and pay the premiums thereon. Grantors assign to Beneficiary all right and interest in all such policies of insurance and authorize the Beneficiary to collect for, adjust or compromise any losses under any insurance policy on the Mortgaged Premises, and loss proceeds (less expense of collection) shall, at the Beneficiary's option, be applied on the debt, whether due or not, or to the restoration of the Mortgaged Premises, or be released to Grantors, but such application or release shall not cure or waive any default. Grantors shall, at their expense, in addition to all other insurance obligations herein required, maintain or cause to be maintained workers' compensation insurance covering all persons employed by Grantors and Grantors shall provide Beneficiary with proof of insurance, notice of cancellation, and other information relating to such insurance coverage, in the same manner as required with respect to other insurance obligations of Grantor described in this Deed of Trust;

- e. That, when requested by the Beneficiary, Grantors will pay with and in addition to the monthly payments of principal and interest payable under the terms of the Note, on the same day as the principal and interest installments are due and payable, a sum equal to one-twelfth of the estimated annual ground rents, taxes, hazard insurance premiums and assessments, if any, next due on the Mortgaged Premises. If the amount so paid is not sufficient to pay such ground rents, taxes, hazard insurance premiums and assessments when due, then Grantors will deposit immediately with the Beneficiary an amount sufficient to pay such ground rents, taxes, hazard insurance premiums, and assessments. If there is a default under any of the provisions of this Deed of Trust resulting in a sale of the Mortgaged Premises or foreclosure, or if the Beneficiary acquires the Mortgaged Premises otherwise after default, the Beneficiary shall apply, at the time of commencement of such proceedings or at the time the property is otherwise acquired, the balance then remaining of the funds accumulated under this provision as a credit against the amount then remaining unpaid under the Note. No interest shall accrue or be allowed on any payments made under the provisions of this paragraph. If the amount so paid is in excess of the amount needed to pay such ground rents, taxes, hazard insurance premiums and assessments in any calendar year, such excess shall be applied to the next maturing installments of principal and interest. All deposits made pursuant to this paragraph shall be held by the Beneficiary as additional security for the payment of the debt described herein and shall not be assigned, attached or otherwise alienated except when transferred by Grantors to a new owner of the Mortgaged Premises concurrently with a bona fide sale of the Mortgaged Premises;
- f. That Grantors will not commit or permit any waste on the Mortgaged Premises and will keep the buildings, fences and all other improvements now or hereafter erected on the Mortgaged Premises in sound condition and in good repair and will neither do nor permit to be done anything to the Mortgaged Premises that may impair the value thereof and the Beneficiary shall have the right of entry upon the Mortgaged Premises at all reasonable times for the purpose of inspecting the same;
- g. That Grantors will pay for the cost of any appraisal of the Mortgaged Premises which Beneficiary may require from time to time, such appraisal to be prepared by an appraiser and be in form acceptable to Beneficiary.
- h. To comply with all valid governmental laws, ordinances and regulations applicable to the Mortgaged Premises and its ownership, use and operation, and to comply with all, and not violate any easements, restrictions agreements, covenants and conditions with respect to or affecting the Mortgage Premises or any part thereof;
- i. To pay promptly all bills for labor and materials incurred in connection with the Mortgaged

Premises and never to permit to be fixed against the Mortgaged Premises or any part thereof, any lien or security interest, even though inferior to the liens and security interests hereof, for any such bill which may be legally due and payable, and never to permit to be created or exist in respect of the Mortgaged Premises, or any part thereof, any other or additional lien or security interest on a parity with or superior to the liens and security interests hereof;

- j. At any time, and from time to time, upon request by Beneficiary forthwith to execute and deliver to Beneficiary any and all additional instruments and further assurances, and do all other acts and things as may be necessary or proper in Beneficiary's opinion to effect the intent of these presents, more fully evidence and perfect the rights, titles, liens and security interests herein created or intended to be created and protect the rights, remedies, powers and privileges of Beneficiary hereunder;
- k. From time to time, upon request of Beneficiary, to furnish promptly to Beneficiary such financial statements and reports relating to Grantors and Grantors' business affairs as Beneficiary may reasonably request;
- l. If Grantors are a corporation, to maintain continuously Grantors' corporate existence, good standing and its right to do business in Texas and in each other state where any part of Mortgaged Premises is situated;
- m. Upon request of Beneficiary, to deliver to Beneficiary, within sixty (60) days after the end of each calendar year, then current annual statements itemizing the income and expenses of the Mortgaged Premises, all in such detail as shall be satisfactory to Beneficiary;
- n. At any time that any law shall be enacted imposing or authorizing the imposition of any tax upon this Deed of Trust, or upon any rights, titles, liens or security interests created hereby, or upon the debt, or any part thereof, immediately to pay all such taxes; provided, that, in the alternative, Grantors may, in the event of the enactment of such a law, and must, if it is unlawful for Grantor to pay such taxes, prepay the debt in full within sixty (60) days after demand therefor by Beneficiary;
- o. To furnish promptly at any time and from time to time, upon request, a written statement or affidavit in such form as shall be satisfactory to Beneficiary, stating the unpaid balance of the debt and that there are no offsets or defenses against full payment of the debt and the terms hereof, or, if there are any such offsets and defenses, specifying them;
- p. To perform punctually and properly all of Grantors' covenants, duties and liabilities under any other security agreement, mortgage, deed of trust, collateral pledge agreement, loan agreement, contract or assignment of any kind now or hereafter existing as security for or in connection with payment of the debt, or any part thereof (each such being herein called "other security instrument");
- q. To allow Beneficiary to inspect the Mortgaged Premises and all records relating thereto or to the debt, and to make and take away copies of such records; and
- r. Without the prior written consent of Beneficiary (which may be withheld with or without cause), not to cause or permit all or any portion of the Mortgaged Premises which is fixtures or personal property to be removed from the county or state where the real property is located.

5. If any of the indebtedness hereby secured shall become due and payable, the Trustee or the Beneficiary shall have the right and power to proceed by a suit or suits in equity or at law, whether for the specific performance of any covenant or agreement herein contained or in aid of the execution of any power herein granted, or for any foreclosure hereunder or for the sale of the Mortgaged Premises under the judgment or decree of any court or courts of competent jurisdiction, or for the appointment of a receiver pending any foreclosure hereunder or the sale of the Mortgaged Premises under the order of a court or the sale of the Mortgaged Premises under the order of a court or courts of competent jurisdiction or under executory or other legal process, or for the enforcement of any other appropriate legal or equitable remedy. The Grantors agree, to the full extent that they or it lawfully

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may, that in case one or more of the defaults hereunder shall have occurred and shall not have been remedied, then, and in every such case, the Beneficiary shall have the right and power to enter into and upon and take possession of all or any part of the Mortgaged Premises in the possession of Grantors, their or its successors or assigns, or its or their agents or servants and may exclude the Grantors, its or their successors or assigns and all persons claiming under the Grantors, and its or their agents or servants, wholly or partly therefrom; and holding the same, the Beneficiary may use, administer, manage, operate and control the Mortgaged Premises and conduct the business thereof to the same extent as the Grantors, its or their successors or assigns, might at the time do and may exercise all rights and powers of the Grantors, in the name, place and stead of the Grantors, or otherwise as the Beneficiary shall deem best; and in the exercise of any of the foregoing rights and powers Beneficiary shall not be liable to Grantors for any loss or damage thereby sustained unless due solely to the willful misconduct or gross negligence of Beneficiary.

6. In the event the ownership of the Mortgaged Premises, or any part thereof, becomes vested in a person other than Grantors, the Beneficiary may, without notice to Grantors, deal with such successor or successors in interest with reference to this Deed of Trust and to said debt in the same manner as with Grantors without in any way vitiating or discharging Grantors' liability hereunder or upon the debt. No sale of the Mortgage Premises and no forbearance on the part of the Beneficiary and no extension of the time for the payment of the debt hereby secured, given by the Beneficiary, shall operate to release, modify, change, or affect the original liability of Grantors, either in whole or in part.

7. The Beneficiary, without notice, may release any part of the Mortgaged Premises, or any person liable for the debt, without in any way affecting the lien hereof upon any part of the Mortgaged Premises not expressly released or the liability of any person not expressly released, and may agree with any party obligated on the debt, or having any interest in the Mortgaged Premises, to extend the time for payment of any part or all of the debt. Such agreement shall not in any way release or impair the lien hereof, but shall extend the lien hereof as against the title of all parties having any interest in the Mortgaged Premises which interest is subject to this Deed of Trust. The lien, security interest and other rights granted hereby shall not affect or be affected by any other security taken for the same indebtedness or any part thereof. The taking of additional security, or the extension or renewal of the indebtedness secured hereby, or any part thereof, shall not release or impair the lien, security interest and other rights granted hereby, or affect the liability of any endorser, guarantor or surety, or improve the right of any permitted junior lienholder; and this Deed of Trust, as well as any instrument given to secure any renewal or extension of the indebtedness secured hereby, or any part thereof, shall be and remain a first and prior lien, except as otherwise provided herein, on all of the Mortgaged Premises not expressly released until the indebtedness secured hereby is completely paid.

8. Grantors waive the benefit of all laws now existing or that hereafter may be enacted provided for (i) any appraisalment before sale of any portion of the Mortgaged Premises, commonly known as Appraisalment Laws, and (ii) the benefit of all laws that may be hereafter enacted in any way extending the time for the enforcement of the collection of said debt or creating or extending a period of redemption from any sale made in collecting said debt, commonly known as Stay Laws and Redemption Laws, and Grantors hereby agree and contract that the laws of the State of Texas, save as above excepted, now in force relative to the collection of said debt and the application to the payment thereof, are expressly adopted and made a part hereof. To the extent that Grantors may lawfully do so, Grantors agree that Grantors shall not assert and hereby expressly waive, any right under any statute or rule of law pertaining to the marshalling of assets, the exemption of homestead, the administration of estates of decedents, or other matter whatever to defeat, reduce or affect the right of Beneficiary, under the terms of this Deed of Trust, to sell the Mortgaged Premises for the collection of the indebtedness secured hereby (without any prior or different resort for collection) or the right of Beneficiary, under the terms of this Deed of Trust, to the payment of such indebtedness out of the proceeds of sale of the Mortgaged Premises in preference to every other person and claimant whatever (only reasonable expenses of such sale being first deducted). Grantors

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expressly waive and relinquish any right or remedy which it or they may have or be able to assert by reason of the provisions of Chapter 34 of the Business and Commerce Code of the State of Texas, pertaining to the rights and remedies of sureties.

9. The Beneficiary may, at the Beneficiary's option, without demand or notice and without waiver of any right, pay or discharge any lien or claim upon the Mortgaged Premises or pay any delinquent tax or assessment, and, upon such payment the Beneficiary shall be subrogated respectively to the rights of the holder of such lien or claim or to the rights of the taxing authority; the Beneficiary may advance any unpaid insurance premiums, and whenever Grantors have failed properly to maintain the improvements, the Beneficiary may make repairs necessary for the proper preservation of the security. Grantors agree to pay to the Beneficiary, upon demand, any and all disbursements made under the provisions of the Deed of Trust together with interest thereon at the rate which the principal of the Note shall bear after default from the respective dates of such disbursements, and all such disbursements shall become a part of the debt, payable at the same place specified in the Note, and shall be secured by this Deed of Trust.

10. Acceptance by the Beneficiary of any payment in an amount less than the amount then due on said debt shall be deemed an acceptance on account only, and the failure to pay the entire amount then due shall be and continue to be a default. At any time thereafter, and until the entire amount then due on said debt has been paid, the Beneficiary shall be entitled to exercise all rights conferred upon it in this instrument upon the occurrence of a default.

11. Grantors shall be in default hereunder if Grantors shall default in the prompt payment when due of the indebtedness secured hereby, or any part thereof; or shall fail to keep and perform any of the covenants or agreements contained herein or in any other document securing the Note or any other security instrument; or if Beneficiary discovers that any statement, representation, or warranty in the Note, this Deed of Trust or in any writing delivered to Beneficiary in connection with the indebtedness secured hereby is false, misleading or erroneous in any material respect; or if Grantors, or any person liable for the indebtedness secured hereby, or any part thereof, including any guarantor of or any surety for the performance of any obligation hereunder, files a voluntary petition in bankruptcy; makes an assignment for the benefit of any creditor, is adjudicated as bankrupt or insolvent; admits in writing its inability to pay its debts generally as they become due, applies for or consents to the appointment of a receiver, trustee, or liquidator of Grantors or of any such guarantor or surety or of all or a substantial part of its assets; takes advantage of or seeks any relief under any bankruptcy, reorganization, debtor's relief or other insolvency law now or hereafter existing; files an answer admitting the material allegations of, or consenting to, or defaulting in, a petition against Grantors or any such guarantor or surety, in any bankruptcy, reorganization, or other insolvency proceedings; institutes or voluntarily is or becomes a party to any other judicial proceedings intended to effect a discharge of the debts of Grantors or of any guarantor or surety, in whole or in part, or to effect a postponement of the maturity or the collection thereof, or to effect a suspension of any of the right or powers of Beneficiary granted in the Note, this Deed of Trust or in any other instrument evidencing or securing the indebtedness secured hereby; or if an order, judgment or decree shall be entered by any court of competent jurisdiction appointing a receiver, trustee or liquidator of Grantors or of any guarantor or surety or of all or any substantial part of the assets of Grantors or any such guarantor or surety or if Grantors or any guarantor or surety shall fail to pay any money judgment against it at least ten (10) days prior to the date on which the assets of Grantors or any such guarantor or surety may be sold to satisfy such judgment; or if Grantors or any such guarantor or surety shall fail to have discharged within a period of ten (10) days after the commencement thereof any attachments, sequestration, or similar proceedings against any assets of Grantors or of any guarantor or surety; or if the Mortgaged Premises are placed under control or in the custody of any court, or if Grantors abandon any of the Mortgaged Premises. Upon the occurrence of any such default, Beneficiary, at its option, without notice, may pursue any rights and remedies it may have hereunder or at law, or in equity and Beneficiary may, without limitation and without notice of any kind (including notice of intention to accelerate maturity), declare the entire

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indebtedness secured hereby immediately due and payable, whereupon it shall be so due and payable.

12. If Grantors shall perform faithfully each of the covenants and agreements herein contained, then, and only then, this conveyance shall become null and void and shall be released in due form, at Grantors' expense; otherwise, it shall remain in full force and effect. No release of this conveyance, or of the lien, security interest of assignment created and evidenced hereby, shall be valid unless executed by Beneficiary.

13. If Grantors shall default hereunder, Grantors hereby authorize and empower the Trustee, at the request of Beneficiary, at any time during the continuance of any default, to sell all or any portion of the Mortgaged Premises, at public auction, to the highest bidder, for cash, at the door of the County Courthouse of the county in Texas in which such Mortgaged Premises or any part thereof, is situated, as herein described, between the hours of 10:00 o'clock a.m. and 4:00 o'clock p.m. on the first Tuesday of any month after giving notice of the time, place and terms of said sale, and the property to be sold, as follows:

Notice of such proposed sale shall be given by posting written notice thereof at least twenty-one days preceding the date of the sale at the Courthouse door of the county in which the sale is to be made, and if the property to be sold is situated in more than one county, one notice shall be posted at the Courthouse door of each county in which the property to be sold is situated. In addition, Beneficiary shall, at least twenty-one days preceding the date of sale, serve written notice of the proposed sale by certified mail on each debtor obligated to pay the debt secured hereby according to the records of Beneficiary. Service of such notice shall be completed upon deposit of the notice, enclosed in a postpaid wrapper, properly addressed to such debtor at the most recent address as shown by the records of Beneficiary, in a post office or official depository under the care and custody of the United States Postal Service. The affidavit of any person having knowledge of the facts to the effect that such service was completed shall be prima facie evidence of the fact of service.

Any notice that is required or permitted to be given to Grantors may be addressed to Grantors at Grantors' address as stated herein. Any notice that is to be given by certified mail to any other debtor may, if no address for such other debtor is shown by the records of Beneficiary, be addressed to such other debtor at the address of Grantors as is shown by the records of Beneficiary. Notwithstanding the foregoing provisions of this paragraph, notice of such sale given in accordance with the requirements of the applicable law of the State of Texas in effect at the time of such sale shall constitute sufficient notice of such sale. Grantors hereby authorize and empower the Trustee to sell all or any portion of the Mortgaged Premises, together or in lots of parcels, as the Trustee may deem expedient, and to execute and deliver to the purchaser or purchasers of such property, good and sufficient deeds of conveyance of fee simple title with covenants of general warranty made on behalf of the Grantors. In no event shall the Trustee be required to exhibit, present or display at any such sale any of the personalty described herein to be sold at such sale. The Trustee making such sale shall receive the proceeds thereof and shall apply the same as follows: (i) first, he shall pay the reasonable expense of executing this trust including a reasonable Trustee's fee for commission and attorney's fees and costs of title evidence; (ii) second, he shall pay, so far as may be possible, the indebtedness secured hereby, discharging first that portion of the indebtedness arising under the covenants or agreements herein contained and not evidenced by the Note; (iii) third, he shall pay the residue, if any, to the person or persons legally entitled thereto. Payment of the purchase price to the Trustee shall satisfy the obligation of the purchaser at such sale therefor, and such purchaser shall not be bound to look after the application thereof. The sale or sales by the Trustee of less than the whole of the Mortgaged Premises shall not exhaust the power of sale herein granted, and the Trustee is specifically empowered to make successive sale or sales under such power until the whole of the Mortgaged Premises shall be sold; and if the proceeds of such sale or sales of less than the whole of such Mortgaged Premises shall be less than the aggregate of the indebtedness secured hereby and the

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expense of executing this trust, this Deed of Trust and the lien, security interest and assignment hereof shall remain in full force and effect as to the unsold portion of the Mortgaged Premises just as though no sale or sales had been made; provided, however, that Grantors shall never have any right to require the sale or sales of less than the whole of the Mortgaged Premises but Beneficiary shall have the right, at its sole election, to request the Trustee to sell less than the whole of the Mortgaged Premises. If default is made hereunder, the holder of the indebtedness or any part thereof on which the payment is delinquent shall have the option to proceed with foreclosure in satisfaction of such item either through judicial proceedings or be directing the Trustee to proceed as if under a full foreclosure, conducting the sale as herein provided without declaring the entire indebtedness secured hereby due and if sale is made because of default of an installment, or a part of an installment, such sale may be made subject to the unmatured part of the Note and other indebtedness secured by this Deed of Trust; and it is agreed that such sale, if so made, shall not in any manner affect the unmatured part of the indebtedness secured by this Deed of Trust, but as to such unmatured part, this Deed of Trust shall remain in full force and effect as though no sale had been made under the provisions of this paragraph. Several sales may be made hereunder without exhausting the right of sale for any unmatured part of the indebtedness secured hereby.

14. In case of any sale hereunder, all prerequisites to the sale shall be presumed to have been performed, and in any conveyance given hereunder, all statements of facts, or other recitals therein made as to the nonpayment of money secured, or as to the request to the Trustee to enforce this trust, or as to the proper and due appointment of any substitute trustee, or as to the advertisement of sale, or time, place, and manner of sale, or as to any other preliminary fact or thing, shall be taken in all courts of law or equity as prima facie evidence that the facts so stated or recited are true. The purchaser at any trustee's or foreclosure sale hereunder may disaffirm any easement granted, or rental, lease or other contract made, in violation of any provision of this Deed of Trust, and may take immediate possession of the Mortgage Premises free from, and despite the terms of, such grant of easement and rental or lease contract.

15. At the option of the Beneficiary, with or without any reason, a successor substitute trustee may be appointed by the Beneficiary without any formality other than a designation in writing of a successor or substitute trustee, who shall thereupon become vested with and succeed to all the powers and duties given to the Trustee herein named, the same as if the successor or substitute trustee had been named original Trustee herein; and such right to appoint a successor substitute trustee shall exist as often and whenever the Beneficiary desires. If Beneficiary is a corporation and such appointment is executed in its behalf by any officer of such corporation, such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer of the corporation.

16. Neither the exercise of, nor the failure to exercise, any option given under the terms of this Deed of Trust shall be considered as a waiver of the right to exercise the same, or any other option given herein, and the filing of a suit to foreclose this Deed of Trust, either on any matured portion of the debt or for the whole debt, shall never be considered an election so as to preclude foreclosure under the power of sale after a dismissal of the suit; nor shall the filing of the necessary notices for foreclosure, as provided in this Deed of Trust, preclude the prosecution of a later suit thereon.

17. In the event of a trustee's sale hereunder and if at the time of such sale the Grantors occupy the portion of the Mortgaged Premises so sold, or any part thereof, Grantors shall immediately become the tenant of the purchaser at such sale, which tenancy shall be a tenancy from day to day, terminable at the will of either tenant or landlord, at a reasonable rental per day based upon the value of the portion of the Mortgaged Premises so occupied, such rental to be due and payable daily to the purchaser. An action of forcible detainer shall lie if the tenant holds over after a demand in writing for possession of such Mortgaged Premises; and this agreement and any trustee's deed shall constitute a lease and agreement under which the tenant's possession, each and all, arose and continued.

18. Grantors will not, without the prior written consent of Beneficiary, execute or deliver any pledge, security agreement, mortgage or deed of trust covering all or any portion of the Mortgaged Premises (hereinafter called "Subordinate Mortgage"). In the event of consent by Beneficiary to the foregoing or in the event the foregoing prohibition is determined by a court of competent jurisdiction to be unenforceable by the provisions of any applicable law, Grantors will not execute or deliver any Subordinate Mortgage unless there shall have been delivered to Beneficiary not less than ten (10) days prior to the date thereof a copy thereof which shall contain express covenants to the effect:

- a That the Subordinate Mortgage is in all respects unconditionally subject and subordinate to the lien, security interest and assignment evidenced by this Deed of Trust and each term and provision hereof;
- b That if any action or proceeding shall be instituted to foreclose the Subordinate Mortgage (regardless of whether the same is a judicial proceeding or pursuant to a power of sale contained therein), no tenant of any portion of the Mortgaged Premises will be named as a party defendant, nor will any action be taken with respect to the Mortgaged Premises which would terminate any occupancy or tenancy of the Mortgaged Premises without the prior written consent of Beneficiary;
- c That the Rents and Profits, if collected through a receiver or by the holder of the Subordinate Mortgage, shall be applied first to the obligations secured by this Deed of Trust, including principal and interest due and owing on or to become due and owing on the Note and the other indebtedness secured hereby and then to the payment of maintenance, operating charges, taxes, assessments, and disbursements incurred in connection with the ownership, operating and maintenance of the Mortgaged Premises; and
- d That if any action or proceedings shall be brought to foreclose the Subordinate Mortgage, written notice of the commencement thereof will be given to Beneficiary contemporaneously with the commencement of such action or proceeding.

19. Nothing herein contained shall be so construed or operate as to require Grantors to pay interest on the Note or Notes, or any other liability or debt now existing or hereafter to exist hereunder at a rate greater than that allowed by Law, and if any provisions herein contained do, or would, presently and prospectively, operate to make this Deed of Trust or any part thereof void, voidable or ineffective, then such provisions only shall be held for naught and as though not herein contained and shall be without effect upon or prejudice to the remaining provisions, which shall nevertheless remain operative. Any of said contracts for interest shall be held subject to reduction to the highest amount allowed under applicable law as now or hereafter construed by courts having jurisdiction.

20. If, while this trust is in force, the title of the Trustee to, or the interest of Beneficiary in, the Mortgaged Premises hereby conveyed or any part thereof, shall be endangered or shall be attached directly, or indirectly, Grantors hereby authorize Beneficiary, at Grantors' expense, to take all necessary and proper steps for the defense of such title or interest, including the employment of counsel, the prosecution or defense of litigation, and the compromise or discharge of claims made against such title or interest. At any time any law shall be enacted imposing or authorizing the imposition of any tax upon this Deed of Trust, or upon any rights, titles, liens, or security interests created hereby, or upon the Note, or any part thereof, or any other indebtedness secured hereby, Grantors shall immediately pay all such taxes; provided that, in the alternative Grantors may, in the event of the enactment of such a law, and must, if it is unlawful for Grantors to pay such taxes, prepay the Note, and any other indebtedness secured hereby, in full with sixty (60) days after demand therefor by Beneficiary. Grantors shall at any time and from time to time, furnish promptly, upon request, a written statement or affidavit in such form as may be required by Beneficiary, stating the unpaid balance of the Note, and any other indebtedness secured hereby,

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and that there are no offsets or defenses against full payment of the Note, and any other indebtedness secured hereby, and performance of the terms hereof, or if there are any such offsets and defenses, specifying them.

21. Unless Grantors have provided a survey of the Mortgaged Premises which shows to the contrary, Grantors represent and warrant that none of the Mortgaged Premises, or any part thereof, is situated within a flood plain, flood prone areas, special flood hazardous areas or the like, as so designated by the applicable Flood Hazard Boundary Map or any such similar map or plat issued or controlled by The Flood Insurance Administration and/or any other federal agency appointed to regulate such matters under the Federal Flood Disaster Protection Act, as amended, and Grantors hereby indemnify and hold Beneficiary harmless, from any claims and/or costs arising against or waived by Beneficiary if the Mortgaged Premises are, in fact, determined to be in such an area. In the event that the foregoing blank is checked, Grantors will keep the Mortgaged Premises insured for the protection of Beneficiary against loss by flood, and the provisions of this Deed of Trust concerning amounts of coverage, payment of premiums, endorsements, payment and application of insurance proceeds, and other matters regarding hazard insurance shall apply with equal force to Grantors' obligation herein to obtain flood insurance.

22. If the lien of this Deed of Trust is invalid or unenforceable as to any part of the debt, or if the lien is invalid or unenforceable as to any part of the Mortgaged Premises, the unsecured or partially secured portion of the debt shall be completely paid prior to the payment of the remaining and secured or partially secured portion of the debt, and all payments made on the debt, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid on and applied to the full payment of that portion of the debt which is not secured or fully secured by the lien of this Deed of Trust.

23. Whenever used the singular number shall include the plural, the plural the singular, the use of any gender shall include all genders. The words "Grantors" and "Beneficiary" shall include their heirs, executors, administrators, successors and assigns and the word "Trustee" shall include his successors and substitute trustees.

24. Beneficiary shall have the right to become the purchaser at all sales to enforce this trust, being the highest bidder, and to have the amount for which such property is sold credited on the debt then owing.

25. Grantors will pay all reasonable attorney's fees and expenses which may be incurred by the Beneficiary or Trustee, in enforcing the terms of the Note and this Deed of Trust, or in any suit to which the Beneficiary or Trustee may become a party where the Deed of Trust or the Mortgaged Premises are in any manner involved and all expenses incurred in presenting a claim against the estate of a decedent or a bankrupt and will also pay any attorney's fees and expenses reasonably incurred in connection with the assignment to Beneficiary of any leases subsequently entered into by Grantors which by the terms hereof are required to be assigned to Beneficiary as additional collateral to secure payment of the indebtedness herein secured as well as any and all such fees and expenses reasonably incurred prior to full and final payment of such indebtedness relating to future advances, transfer of title to the premises and similar matters not otherwise provided for herein.

26. With respect to any personal property herein described this Deed of Trust shall constitute a Security Agreement between Grantors and Beneficiary, and, cumulative of all other rights of Beneficiary hereunder, Beneficiary shall have all of the rights conferred upon secured parties by the Uniform Commercial Code, as amended, as to this property. This Deed of Trust, as a Financing Statement, covers the following types property: Minerals, crops and goods that are, or are to become, fixtures as more fully described herein, and related to the real estate described herein, and it is intended that as to those goods and the proceeds thereof, this Deed of Trust shall be effective as a Financing Statement filed as a mineral, crop and fixture filing from the date of its filing for record in the Real Estate Records of the County in which the land is located. Information concerning the security interest created by this instrument may be obtained from the holder of this indebtedness and secured party at the Post Office address as shown in Paragraph numbered 1 of this Deed of Trust. Until the lien of this Deed of

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**Deed of Trust (Security Instrument, Financing Statement)**

Trust is released or satisfied of record, Grantors agree, if requested by Beneficiary so to do, to execute one or more Financing Statements covering such personal property, in the manner and form required by law and to the satisfaction of Beneficiary. Grantors agree to pay Beneficiary's charge, to the maximum amount permitted by law, for any statement by Beneficiary regarding the obligations secured by this Deed of Trust, requested by Grantors or on behalf of Grantors. On demand, Grantors will promptly pay all costs and expenses of filing Financing Statements, continuation statements, partial releases and termination statements deemed necessary or appropriate by Beneficiary to establish and maintain the validity and priority of the security interest of Beneficiary or any modification thereof, and all costs and expenses of any searches reasonably required by Beneficiary. Beneficiary may exercise any or all of the remedies of a secured party available to it under the Uniform Commercial Code, as amended, with respect to such personal property, and it is expressly agreed that if upon default Beneficiary should proceed to dispose of the collateral in accordance with the provisions of the Uniform Commercial Code, as amended, ten (10) days notice by Beneficiary to Grantors shall be deemed to be reasonable notice under any provision of the Uniform Commercial Code, as amended, requiring such notice; provided, however, that Beneficiary may at its option dispose of the collateral in accordance with Beneficiary's rights and remedies in respect of the real property pursuant to the provisions of this Deed of Trust, in lieu of proceeding under the Uniform Commercial Code, as amended.

27. It shall be a default hereunder if Grantors should sell (be executory Contract for Deed or otherwise), assign or convey any part or all of the Mortgaged Premises (regardless of whether the buyer or assignee "assumes" the indebtedness hereby secured or takes "subject to" such indebtedness) without first obtaining the written Consent of Beneficiary; provided, however, this paragraph shall not apply to sales of standard inventory items of personal property in the ordinary course of Grantors' business.

28. This Deed of Trust constitutes a "construction mortgage" as defined in the Uniform Commercial Code as enacted in Texas, and secures an obligation incurred for the construction of improvements on the real property described herein. Grantors shall use the proceeds of such construction loan to construct improvements on the Mortgaged Premises according to Plans and Specifications submitted to Beneficiary, and any such improvements, and all building materials and supplies placed on the Mortgaged Premises, shall constitute additional security for the repayment of such construction loan and other obligations hereby secured. Further, all plans and specifications, permits and all contracts and subcontracts, all accounts and monies due Grantors and any and all other rights, interests and privileges of Grantors in connection with said construction project shall constitute additional security for the indebtedness and obligations hereby secured. Grantors further covenant and agree that they will comply with all state, federal and other governmental architectural barriers laws and regulations governing such construction, and will not make any changes to the plans and specifications provided to Bank, without Bank's prior written consent.

29. Expenses; Indemnification. To the extent not prohibited by applicable law, Grantors will pay all costs and expenses and reimburse Bank for any and all expenditures of every character, including, but not limited to, the fees and expenses of counsel for Bank, incurred or expended from time to time, regardless of whether a default or event of default shall have occurred in connection with: (a) Bank's evaluating, monitoring, administering and protecting the Mortgaged Premises; and (b) Bank's creating, perfecting or realizing upon Bank's security interest in and liens on the Mortgaged Premises, and all costs and expenses relating to Bank's exercising any of its rights and remedies under this or any of the other security instruments or at law, including, without limitation, all appraisal fees, consulting fees, filing fees, taxes, brokerage fees and commissions, title review and abstract fees, Uniform Commercial Code search fees, other fees and expenses incident to title searches, reports and security interests, escrow fees, attorneys' fees, legal expenses, court costs, fees and expenses incurred in connection with it; provided, that no right or option granted by Grantors to Bank or otherwise arising pursuant to any provision of this or any other instrument shall be deemed to impose or admit a duty on the Bank to supervise, monitor or control any aspect of the character or condition of the Mortgaged Premises or any operations conducted

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**Deed of Trust (Security Instrument, Financing Statement)**

in connection with it for the benefit of Grantors or any other person or entity other than the Bank. The Grantors agree to indemnify, defend and hold the Bank, its directors, officers and employees (collectively, "Indemnified Parties") harmless from and against any and all loss, liability, obligation, damage, penalty, judgment, claim, deficiency and expense (including interest, penalties, attorneys' fees and amount paid in settlement), regardless of whether the same was caused in whole or in part by the negligence of any of the Indemnified Parties, to which the Indemnified Parties may become subject arising out of or in connection with this Agreement, the Note, any other security instruments hereto or any transaction contemplated herein to therein (other than those which arise by reason of the gross negligence of the Bank). Any amount to be paid hereunder by the Grantors to the Bank shall be a demand obligation owing by the Grantors to the Bank and shall bear interest from the date of expenditure at the highest lawful rate.

30. Environmental Matters. Without the Bank's prior written consent, Grantors shall not use, store, treat, generate, release, discharge, dispose or transport any Hazardous Materials on, under, in, above, to or from the Mortgaged Premises. For the purposes of this section, "Hazardous Materials" shall refer to any underground storage tank, petroleum, polychlorinated biphenyls or other substances, materials and wastes that are or become regulated as hazardous or toxic substances under any applicable local, state or federal law, regulation or order, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act and the Resource Conservation and Recovery Act, each as amended from time to time (herein collectively called "Environmental Laws"). Grantors shall indemnify, defend and hold Bank harmless from and against; (a) any loss, costs, expense, claim or liability arising out of any investigation, monitoring, clean-up, containment, removal, storage, remedial or restoration work ("Remedial Work") required by Bank, or any non-governmental entity or person, or any governmental agency or political subdivision which requires Remedial Work upon a reasonable belief that the Remedial Work is required by the Environmental Laws; and (b) any claims of third parties for loss, injury, expense or damage arising out of the use, presence, treatment, generation, release, discharge, disposal or transportation of any Hazardous Materials on, under, in, above, to or from the Mortgaged Premises. In the event any Remedial Work is so required under applicable Environmental Laws, Grantors shall perform or cause to be performed the Remedial Work in compliance with all Environmental Laws. All Remedial Work shall be performed by one or more contractors under the supervision of a consulting engineer, each contractor and the consulting engineer being selected by Grantors and approved in advance in writing by Bank. Grantors shall promptly provide the Bank with copies of the remedial plan and allow the Bank to attend meetings among Grantors, the consulting engineer, the contractors and any regulatory authority. In the even Grantors shall fail to commence the Remedial Work in a timely fashion or fail to prosecute diligently the Remedial Work to completion, Bank may, but shall not be required to, cause the Remedial Work to be performed, subject fully to the indemnification provisions of this section. It shall not be necessary for the Bank to incur any expense to enforce this indemnification, and the indemnification contained herein shall survive repayment of the Note and release of the lien of this Deed of Trust and shall be fully applicable notwithstanding any negligence on the part of any Indemnified Party. The liabilities and covenants of Grantors hereunder may not be assigned and any such assignment shall be null and void without the Bank's prior written consent.

31. Grantor(s) will not occupy the Property, nor allow any others to occupy the Property, until construction is complete and municipal approvals have been issued, if required, and Bank gives written consent following final inspection. Grantor(s) will not store any item in or on the Property, or allow others, that is not related to the construction of improvements on the Property.

32. Grantor also grants to the trustee a security interest in all oil, gas, and other minerals that might be produced from the land covered by this deed of trust. This deed of trust (i) is to be filed in the real property records of the county in which the land is located, (ii) covers all "as-extracted collateral," as defined in Texas Business and Commerce Code §9.102, attributable to the land, (iii) serves as a security agreement covering the as-extracted collateral, (iv) serves as an assignment of all payments made for damages or anticipated damages to the

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**Deed of Trust (Security Instrument, Financing Statement)**



land, and (v) serves as a financing statement covering as-extracted collateral and fixtures as provided in Texas Business and Commerce Code §9.502. The provisions of this paragraph are cumulative of all other provisions of this deed of trust.

ADDITIONAL PROVISIONS:

- The note secured hereby is secured by the Vendor's Lien retained in the Deed of even date herewith conveying the property to Grantors, which Vendor's Lien has been assigned to Lender, this Deed of Trust being additional security therefore.
- The note secured hereby is in renewal and extension, but not in extinguishment of that certain indebtedness described on Renewal and Extension Exhibit attached hereto.
- Acknowledgement of Cash Advanced Against Non-Homestead Property.** The note represents funds advanced to Borrower on this day at Borrower's request and Borrower acknowledges receipt of such funds. Borrower states that Borrower does not now and does not intend ever to reside on, use in any manner, or claim the Property secured by this Security Instrument as a business or residential homestead. Borrower disclaims all homestead rights, interests and exemptions related to the Property.

**THIS WRITTEN LOAN AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.**

**THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.**

EXECUTED this **Twenty-third** day of **October, 2012**

\_\_\_\_\_  
 Signature Date  
**Isaac Newton**  
 Mailing address:  
 100 Main Street  
 Arlington, TX 76017

\_\_\_\_\_  
 Signature Date  
**Phyllis Newton**  
 Mailing address:  
 100 Main Street  
 Arlington, TX 76017

*[Sign Originals Only]*

STATE OF TEXAS  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by **Isaac Newton and Phyllis Newton.**

\_\_\_\_\_  
 Notary Public  
 Printed Name: \_\_\_\_\_  
 My commission expires: \_\_\_\_\_

Deed of Trust (Security Instrument, Financing Statement)



**TO BE ATTACHED TO DEED OF TRUST**

**Renewal and Extension Exhibit**

This RENEWAL AND EXTENSION EXHIBIT is incorporated into and shall be deemed to amend and supplement the Deed of Trust ("Security Instrument") of even date herewith. Such Security Instrument is granted by the Borrower ("Borrower") to secure Borrower's indebtedness ("Note") to Lender (sometimes referred to as the "Beneficiary" or "Holder of the Note"), the Note secured hereby is in renewal and extension but not in extinguishment of that indebtedness whether one or more, described as follows:

**Residential Construction Contract and Lien executed by Isaac Newton and Phyllis Newton, husband and wife securing a Residential Construction Note in the amount of \$288,107.00 payable to the order of Custom Homes, LLC and assigned therein to the extent of \$216,940.00 to Lender One . Said Lien is dated October 23, 2012, and is or will be recorded of record in the Real Property Records of Tarrant County, Texas.**

THE LENDER HEREBY SECURED IS EXPRESSLY SUBROGATED TO ALL RIGHTS, LIENS, EQUITIES AND REMEDIES SECURING THE ORIGINAL HOLDER(S) OF SAID DEBT(S) AND THE ORIGINAL LIEN(S) SECURING THE SAME ARE HEREBY RENEWED AND EXTENDED TO DATE OF MATURITY OF THE INDEBTEDNESS HEREBY SECURED IN RENEWAL AND EXTENSION THEREOF. IN THE EVENT ANY PORTION OF THE SUMS INTENDED TO BE SECURED BY THE SECURITY INSTRUMENT CANNOT BE LAWFULLY SECURED THEREBY, PAYMENTS IN REDUCTION OF SUCH SUMS SHALL BE APPLIED FIRST TO THOSE PORTIONS NOT SECURED THEREBY. BORROWER(S) ACKNOWLEDGES THAT THE LIEN(S) SECURING THE PRIOR NOTE IS VALID, THAT IT SUBSISTS AGAINST THE PROPERTY, AND THAT BY THIS INSTRUMENT IT IS RENEWED AND EXTENDED IN FULL FORCE UNTIL THE NOTE IS PAID, EVEN THOUGH THE PRIOR LIEN(S) IS RELEASED AND NOT ASSIGNED TO LENDER.

INITIAL FOR IDENTIFICATION

\_\_\_\_\_

# Residential Construction Note

Loan # 112233

October 23, 2012  
[Date]

Arlington  
[City]

TX  
[State]

100 Main Street, Arlington, Texas 76017  
[Property Address]

## 1. BORROWER'S PROMISE TO PAY

In return for the furnishing of work and materials used in constructing improvements to the Property described above, I promise to pay U.S. \$288,107.00 (this amount is called "Principal") to the order of **Custom Homes, LLC** (the "Contractor"). I understand the Contractor may transfer this Note. Contractor or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder".

## 2. INTEREST

Interest will not be charged on Principal.

## 3. PAYMENT(S)

This Note is payable upon completion and acceptance of construction.

Payment(s) will be made at Contractor's address, or at a different place if required by the Note Holder.

## 4. BORROWER'S FAILURE TO PAY AS REQUIRED

(a) Default. If I do not pay the full amount of the required payments when due, I will be in default.

(b) Notice of Default. If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of the Principal which has not been paid that I owe on that amount. That date must be at least twenty (20) days after the date on which the notice is delivered or mailed to me.

(c) No Waiver By Note Holder. Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(d) Payment of Note Holder's Costs and Expenses. If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorney's fees.

(e) Prepayment. I may prepay this Note in part or full without penalty at any time before final maturity, whether by cash, a new loan, renewal, or otherwise.

## 5. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at an address provided in writing by me. Any notice to be given to the Note Holder under this Note will be given by mailing it by first class mail to the Note Holder at an address provided in writing by Note Holder.

## 6. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed.

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Residential Construction Note - No Interest (No Retainage)

**7. WAIVERS**

I and any other person who has obligations under this Note, to the extent permitted by law, waive demand for payment, presentment for payment, notice of acceleration of maturity, notice of dishonor, protest and notice of protest. "Presentment" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

**8. NOTICE OF NO ORAL AGREEMENT**

**THE WRITTEN LOAN AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.**

\_\_\_\_\_  
Signature Date  
**Isaac Newton**

\_\_\_\_\_  
Signature Date  
**Phyllis Newton**

*[Sign Originals Only]*

CONTRACTOR ENDORSEMENT:

Pay to the order of  
**Lender One**  
without recourse.

**Custom Homes, LLC**

\_\_\_\_\_  
Signature Date  
**By: Mr. President**

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.**

## **RESIDENTIAL CONSTRUCTION CONTRACT**

**(Texas – Creating and Assigning Lien to Construction Lender)**

Date: **October 23, 2012**

Words used in this Residential Construction Contract (“Contract”) are defined below. Words in the singular mean and include the plural and vice versa.

“Contract Sum” is **\$288,107.00**

“Contractor” or “Builder” is **Custom Homes, LLC.**

“Contractor’s Mailing Address” is **PO Box 271423, Flower Mound, Texas 75027.**

“Improvements” are the improvements made to a single-family residence or new construction of a single-family residence.

“Lender” is **Lender One .**

“Owner” is **Isaac Newton and Phyllis Newton, husband and wife.**

“Owner’s Mailing Address” is **100 Main Street, Arlington, TX 76017.**

“Property Address” is **100 Main Street, Arlington, Texas 76017.**

“Property” legal description is **LOT 11, BLOCK 1, ARLINGTON, AN ADDITION IN TARRANT COUNTY, TEXAS, ACCORDING TO THE PLAT RECORDED IN PLAT CABINET ABC, SLIDE 111, PLAT RECORDS, TARRANT COUNTY, TEXAS.**

Contractor has agreed to construct the Improvements for the Contract Sum, as may be amended herein or the Supplement to Contract. Owner agrees to pay Contractor the Contract Sum for the construction of the Improvements. Contractor and Owner have executed another unrecorded document further detailing the agreement for construction between Contractor and Owner of Improvements on the Property, including any agreement for retainage or waiver of retainage, (“Supplement to Contract”). That document is incorporated herein by reference. However, such incorporation is not intended to and shall not supersede, conflict or contradict in any way the terms and conditions of this Contract and to the extent said Supplement to Contract contains conflicting provisions; the provisions of this Contract shall control.

Contractor does hereby warrant, certify and represent that Contractor has complied with all legal requirements regarding the execution of the Contract and Supplement to Contract. Contractor agrees to comply with any delivery deadlines of notices, disclosures, and other documentation to Owner and Lender as prescribed by law and

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Residential Construction Contract (Texas-Creating and Assigning Lien to  
Construction Lender)

to construct the Improvements (whether new or existing), including without limitation, Subchapter K of Chapter 53 or the Texas Property Code and Section 50(a)(5), Article XVI of the Texas Constitution. Contractor and Owner do further hereby represent (to the best of their actual knowledge) that Contractor and Owner are aware of, and have complied with or will comply with, the following legal rights and obligations:

- a. **Joinder of Spouse.** The Contract and Supplement to Contract have been entered into by all owners with the consent of each owner's spouse, as evidenced by their signatures below.
- b. **No Work Commenced.** Contractor and Owner do hereby affirm that no work of any kind, including the destruction or removal of any existing improvements, site work, clearing, grubbing, draining or fencing of the Property) has commenced or been performed on the Property, no labor or materials have been ordered or furnished to or on behalf of Owner for use in such construction, and no contracts or agreements (verbal or written) for the furnishing of labor, materials, or services for use in the construction of improvements on the Property have been executed (except the above referenced Supplement to Contract) or in trust and Owner warrants and agrees to defend the title to the Property by and through Owner and not otherwise.
- c. **Receipt of Disclosure Statement.** Before execution, acknowledgement and delivery of the Contract and Supplement to Contract, Owner received from Contractor the disclosure statement required by Section 53.255(b) of the Texas Property Code.
- d. **Receipt of List of Subcontractors.** Unless Owner has waived the right to receive from Contractor a list of the subcontractors and suppliers, or any updated information required to be given, evidenced by a separate written and signed waiver of rights to this information, before execution, acknowledgement and delivery of the Contract and Supplement to Contract, Contractor provided Owner with a list of subcontractors and suppliers and will provide Owner and Lender with an updated list of subcontractors and suppliers not later than the 15th day after the date a subcontractor or supplier is added to or deleted from the list.
- e. **Receipt of Closing Documents.** At least one business day before obtaining this extension of credit for Improvements, Owner did receive from Lender all documentation relating to the extension of credit, unless Owner waived the right to one business day advance delivery of the disclosure from Lender and the other closing documents because of a bona fide emergency or other good cause.
- f. **Disbursement of Funds.** Contractor shall provide Owner and Lender with signed periodic statements that list the bills or expenses that Contractor is requesting payment for. Said requests will be in writing on forms reasonably acceptable to Lender and subject to inspection by Lender or Lender's designee indicating satisfactory progress. No further disbursement will be made by Lender if Contractor or Owner is in default with any term or condition of the contract or any related document associated herewith. It is up to Owner and not the Lender, at Owner's election, to withhold any "statutory retainage" as defined in the attached Disclosure Statement Required For Texas Residential Construction Contract.
- g. **Final Bills-Paid Affidavit.** At the time of final payment, Contractor shall provide Owner and Lender with a Final Bills-Paid Affidavit.
- h. **Alterations and Extras.** It is expressly agreed that the terms of the Contract and Supplement to Contract authorize the making of changes by the Owner and Contractor only upon execution of written change orders by Owner and Contractor. Owner shall notify Lender of any changes agreed to by Owner and Contractor before the changes are made. Lender must approve in writing any changes that decrease the value of the Property.
- i. **Mechanic's Lien.** To secure payment of the Contract and Supplement to Contract, a mechanic's, artisan's, and materialman's lien on the Property and on all improvements and fixtures on the Property at any time is granted to Contractor. To enforce the lien and to further secure payment of the Contract, Owner hereby transfers and conveys the Property to **Michael H.**

**Patterson** , Trustee, in trust and warrants and agrees to defend the title to the Property by and through Owner and not otherwise. If Owner performs all the covenants and pays the Contract according to the terms of this Contract, this conveyance shall become void and have no further effect, and at Owner's expense, Contractor shall release the lien created by this Contract and Supplement to Contract. Contractor may appoint, in writing, a substitute or successor trustee, succeeding to all rights and responsibilities of the Trustee. If Owner defaults on the payments to Contractor or fails to perform any of Owner's obligations, and the default continues after Contractor gives Owner 10 days advance written notice of the default and at least 10 days within which it must be cured, then Contractor may:

- (a) request Trustee to foreclose this lien, in which case, Contractor or Contractor's agent shall give notice of the foreclosure sale as provided by the Texas Property Code as then amended; and
- (b) purchase the Property at any foreclosure sale by offering the highest bid and then have the bid credited to the Note.

If requested by Contractor to foreclose this lien, Trustee shall:

- (a) either personally or by agent give notice of the foreclosure sale as required by the Texas Property Code, as then amended;
- (b) sell and convey all or part of the Property to the highest bidder for cash with a general warranty deed binding Owner, subject to prior liens and to other exceptions to conveyance and warranty; and
- (c) from proceeds of the sale, pay in this order:
  - 1. expenses of foreclosure, including a reasonable commission to Trustee;
  - 2. to Contractor, the full amount of charges due and unpaid;
  - 3. any amounts required by law to be paid before payment to Owner; and
  - 4. to Owner, any balance.
- j. Recording.** Contractor and Owner contemplate the recording of this Contract in the Official Real Property Records of the County in which the Property is located as permitted by Section 53.254 and Section 41.001 of the Texas Property Code.
- k. THIS CONTRACT CONSTITUTES A CONSTRUCTION MORTGAGE WITHIN THE MEANING OF SECTION 9.334 OF THE TEXAS BUSINESS & COMMERCE CODE.**
- l. Waiting Period.** If applicable, Owner shall not sign the Contract before the 5th day after Owner makes written application for any extension of credit for the work and material to repair or renovate existing improvements.
- m. Place of Execution.** If applicable, Owner and Owner's spouse shall execute the Contract only at the office of a third-party lender making an extension of credit for the work and material, an attorney at law, or a title company.
- n. Right of Rescission.** IF APPLICABLE, OWNER MAY RESCIND THE CONTRACT, THE SUPPLEMENT TO CONTRACT (AND ANY OTHER PROPOSALS, AGREEMENTS OR CONTRACTS WITH CONTRACTOR REGARDING THE REPAIR OR RENOVATION OF EXISTING IMPROVEMENTS), WITHOUT PENALTY OR CHARGE, WITHIN THREE (3) DAYS AFTER THE EXECUTION OF THE CONTRACT BY ALL PARTIES.

**IMPORTANT NOTICE: YOU AND YOUR CONTRACTOR ARE RESPONSIBLE FOR MEETING THE TERMS AND CONDITIONS OF THE CONTRACT. IF YOU SIGN THE CONTRACT AND**

Residential Construction Contract (Texas-Creating and Assigning Lien to Construction Lender)



**YOU FAIL TO MEET THE TERMS AND CONDITIONS OF THE CONTRACT, YOU MAY LOSE YOUR LEGAL OWNERSHIP IN YOUR HOME. KNOW YOUR RIGHTS AND DUTIES UNDER THE LAW.**

**This contract is subject to Chapter 27 of the Texas Property Code. The provisions of that chapter may affect your right to recover damages arising from a construction defect. If you have a complaint concerning a construction defect and that defect has not been corrected as may be required by law or by contract, you must provide the notice required by Chapter 27 of the Texas Property Code to the contractor by certified mail, return receipt requested, not later than the 60th day before the date you file suit to recover damages in a court of law or initiate arbitration. The notice must refer to Chapter 27 of the Texas Property Code and must describe the construction defect. If requested by the contractor, you must provide the contractor an opportunity to inspect and cure the defect as provided by Section 27.004 of the Texas Property Code.**

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

OWNER:

\_\_\_\_\_  
Signature Date  
**Isaac Newton**

\_\_\_\_\_  
Signature Date  
**Phyllis Newton**

*[Sign Originals Only]*

CONTRACTOR:

**Custom Homes, LLC**

\_\_\_\_\_  
Signature Date  
**By: Mr. President**

# ASSIGNMENT

Contractor hereby assigns its rights to receive payment under the foregoing Contract, together with the lien above created, to **Lender One** ("Assignee"). Contractor reserves the right to claim a lien(s) for any amounts he is due and not paid, but agrees lien(s) shall be subordinate to this lien assigned to Assignee. This Assignment is made without recourse, representation or warranty.

CONTRACTOR:

**Custom Homes, LLC**

\_\_\_\_\_  
Signature Date  
**By: Mr. President**

STATE OF TEXAS  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by **By: Mr. President of Custom Homes, LLC, on behalf of said entity.**

\_\_\_\_\_  
Notary Public  
Printed Name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

STATE OF TEXAS  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by **Isaac Newton and Phyllis Newton.**

\_\_\_\_\_  
Notary Public  
Printed Name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

**WHEN RECORDED RETURN TO:**  
**Lender One**  
**2310 W Interstate 20, 100, Arlington, TX 76017**  
**Ambra Costner**

\_\_\_\_\_  
Residential Construction Contract (Texas-Creating and Assigning Lien to  
Construction Lender)

Lender: **Lender One**  
Borrower: **Isaac Newton and Phyllis Newton, husband and wife**  
Contractor: **Custom Homes, LLC**  
Property: **100 Main Street, Arlington, Texas 76017**

**Disclosure Statement Required for  
Texas Residential Construction Contract  
Sec. 53.255(B) Texas Property Code**

**Loan # 112233**

**KNOW YOUR RIGHTS AND RESPONSIBILITIES UNDER THE LAW.** You are about to enter into a transaction to build a new home or remodel existing residential property. Texas law requires your contractor to provide you with this brief overview of some of your rights, responsibilities, and risks in this transaction.

**CONVEYANCE TO CONTRACTOR NOT REQUIRED.** Your contractor may not require you to convey your real property to your contractor as a condition to the agreement for the construction of improvements on your property.

**KNOW YOUR CONTRACTOR.** Before you enter into your agreement for the construction of improvements to your real property, make sure that you have investigated your contractor. Obtain and verify references from other people who have used the contractor for the type and size of construction project on your property.

**GET IT IN WRITING.** Make sure that you have a written agreement with your contractor that includes: (1) a description of the work the contractor is to perform; (2) the required or estimated time for completion of the work; (3) the cost of the work or how the cost will be determined; and (4) the procedure and method of payment, including provisions for statutory retainage and conditions for final payment. If your contractor made a promise, warranty, or representation to you concerning the work the contractor is to perform, make sure that promise, warranty, or representation is specified in the written agreement. An oral promise that is not included in the written agreement may not be enforceable under Texas law.

**READ BEFORE YOU SIGN.** Do not sign any document before you have read and understood it. **NEVER SIGN A DOCUMENT THAT INCLUDES AN UNTRUE STATEMENT.** Take your time in reviewing documents. If you borrow money from a lender to pay for the improvements, you are entitled to have the loan closing documents furnished to you for review at least one business day before the closing. Do not waive this requirement unless a bona fide emergency or another good cause exists, and make sure you understand the documents before you sign them. If you fail to comply with the terms of the documents, you could lose your property. You are entitled to have your own attorney review any documents. If you have any question about the meaning of a document, consult an attorney.

**GET A LIST OF SUBCONTRACTORS AND SUPPLIERS.** Before construction commences, your contractor is required to provide you with a list of the subcontractors and suppliers the contractor intends to use on your project. Your contractor is required to supply updated information on any subcontractors and suppliers added after the list is provided. Your Contractor is not required to supply this information if you sign a written waiver of your rights to receive this information.

**MONITOR THE WORK.** Lenders and governmental authorities may inspect the work in progress from time to time for their own purposes. These inspections are not intended as quality control inspections. Quality control is a matter for you and your contractor. To ensure that your home is being constructed in accordance with your wishes and specifications, you should inspect the work yourself or have your own independent inspector review the work in progress.

**MONITOR PAYMENTS.** If you use a lender, your lender is required to provide you with a periodic statement showing the money disbursed by the lender from the proceeds of your loan. Each time your Contractor requests payment from you or your lender for work performed, your Contractor is also required to furnish you with a disbursement statement that lists the name and address of each subcontractor or supplier that the Contractor intends to pay from the requested funds. Review these statements and make sure that the money is being properly disbursed.

**CLAIMS BY SUBCONTRACTORS AND SUPPLIERS.** Under Texas law, if a subcontractor or supplier who furnishes labor or materials for the construction of improvements on your property is not paid, you may become liable and your property may be subject to a lien for the unpaid amount, even if you have not contracted directly with the subcontractor or supplier. To avoid liability, you should take the following actions:

(1) If you receive a written notice from a subcontractor or supplier, you should withhold payment from your contractor for the amount of the claim stated in the notice until the dispute between your contractor and the subcontractor or supplier is resolved. If your lender is disbursing money directly to your contractor, you should immediately provide a copy of the notice to your lender and instruct the lender to withhold payment in the amount of the claim stated in the notice. If you continue to pay the contractor after receiving the written notice without withholding the amount of the claim, you may be liable and your property may be subject to a lien for the amount you failed to withhold.

(2) During construction and for 30 days after final completion, termination, or abandonment of the contract by the contractor, you should withhold or cause your lender to withhold 10 percent of the amount of payments made for the work performed by your contractor. This is sometimes referred to as a 'statutory retainage.' If you choose not to withhold the 10 percent for at least 30 days after final completion, termination, or abandonment of the contract by the contractor and if a valid claim is timely made by a claimant, and your Contractor fails to pay the claim, you may be personally liable and your property may be subject to a lien up to the amount that you failed to withhold.

If a claim is not paid within a certain time period, the claimant is required to file a mechanic's lien affidavit in the real property records in the county where the property is located. A mechanic's lien affidavit is not a lien on your property, but the filing of the affidavit could result in a court imposing a lien on your property if the claimant is successful in litigation to enforce the lien claim.

**SOME CLAIMS MAY NOT BE VALID.** When you receive a written notice of a claim or when a mechanic's lien affidavit is filed on your property, you should know your legal rights and responsibilities regarding the claim. Not all claims are valid. A notice of a claim by a subcontractor or supplier is required to be sent, and the mechanic's lien affidavit is required to be filed, within strict time periods. The notice and the affidavit must contain certain information. All claimants may not fully comply with the legal requirements to collect on a claim. If you have paid the contractor in full before receiving a notice of a claim and have fully complied with the law regarding statutory retainage, you may not be liable for that claim. Accordingly, you should consult your attorney when you receive a written notice of a claim to determine the true extent of your liability or potential liability for that claim.

**OBTAIN A LIEN RELEASE AND A BILLS-PAID AFFIDAVIT.** When you receive a notice of claim, do not release withheld funds without obtaining a signed and notarized release of lien and claim from the claimant. You can also reduce the risk of having a claim filed by a subcontractor or supplier by requiring as a condition of each payment made by you or your lender that your contractor furnish you with an affidavit stating that all bills have been paid. Under Texas law, on final completion of the work and before final payment, the contractor is required to furnish you with an affidavit stating that all bills have been paid. If the contractor discloses any unpaid bill in the affidavit, you should withhold payment in the amount of the unpaid bill until you receive a waiver of lien or release from that subcontractor or supplier.

**OBTAIN TITLE INSURANCE PROTECTION.** You may be able to obtain title insurance policy to insure that the title to your property and the existing improvements on your property are free from liens claimed by subcontractors and suppliers. If your policy is issued before the improvements are completed and covers the value of the improvements to be completed, you should obtain, on the completion of the improvements and as a condition of your final payment, a 'completion of improvements' policy endorsement. This endorsement will protect your property from liens claimed by subcontractors and suppliers that may arise from the date the original title policy is issued to the date of the endorsement.

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Signature \_\_\_\_\_ Date \_\_\_\_\_  
**Isaac Newton**

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Signature \_\_\_\_\_ Date \_\_\_\_\_  
**Phyllis Newton**

*[Sign Originals Only]*

Lender: **Lender One**  
Borrower: **Isaac Newton and Phyllis Newton, husband and wife**  
Contractor: **Custom Homes, LLC**  
Property: **100 Main Street, Arlington, Texas 76017**

## **Borrower's Acknowledgement of Texas Construction Compliance Procedures**

**Loan # 112233**

Owner/Borrower acknowledges that:

**1) Construction Contract Disclosure**

Before a residential construction contract was executed, Contractor delivered to Owner a Disclosure Statement Required For Texas Residential Construction Contract, Sec. 53.255(b) Texas Property Code ("Construction Contract Disclosure").

**2) List of Sub Contractors and Materialman**

Unless Owner/Borrower waived same in writing according to Texas Property Code 53.256(d), the Contractor attached to the Texas Residential Construction Contract Disclosure a written list that identified by name, address and telephone number, each subcontractor and supplier the Contractor intends to use in the work to be performed. If the list wasn't attached to the Construction Contract Disclosure provided by Contractor, unless Owner/Borrower waived same in writing according to Texas Property Code 53.256(d), it has since been provided to Owner by the Contractor.

**3) Advance Delivery of Loan Documents and Construction Contract Disclosure**

Lender has delivered to the Owner all documentation relating to the loan (including the Construction Contract Disclosure) not later than one business day before the date of the closing or, in the alternative, Owner has waived said right to one business day advance delivery of the Construction Contract Disclosure from Lender and the other closing documents because of a bona fide emergency or other good cause.

\_\_\_\_\_  
Signature Date  
**Isaac Newton**

\_\_\_\_\_  
Signature Date  
**Phyllis Newton**

*[Sign Originals Only]*

## **Residential Construction Loan Agreement (Borrower's Name)**

This RESIDENTIAL CONSTRUCTION LOAN AGREEMENT (the "Agreement") is entered into among **Isaac Newton and Phyllis Newton, husband and wife** (the "Borrower" whether one or more), **Lender One** ("Lender") and **Custom Homes, LLC** (the "Contractor").

### **RECITALS:**

WHEREAS, Borrower owns or intends to purchase the land (the "Property") which is described as:

**LOT 11, BLOCK 1, ARLINGTON, AN ADDITION IN TARRANT COUNTY, TEXAS, ACCORDING TO THE PLAT RECORDED IN PLAT CABINET ABC, SLIDE 111, PLAT RECORDS, TARRANT COUNTY, TEXAS.**

WHEREAS, Borrower desires to construct certain improvements (the "Improvements") thereon; and

WHEREAS, Borrower and Contractor have executed a Residential Construction Note and Residential Construction Contract ("Contract"), in which Borrower grants a residential construction lien to Contractor and Contractor agrees to construct the Improvements. The Improvements are to be built in accordance with the plans and specifications previously provided to and approved by Lender and attached to the Supplement to Contract, as that term is defined in the Residential Construction Contract (the "Plans and Specifications"); and

WHEREAS, in consideration of Lender's agreement to advance funds to Borrower for the purchase of the property or refinance of such purchase and to advance funds to Contractor for the purpose of financing the construction of the Improvements, Contractor has endorsed the Residential Construction Note to Lender without recourse and assigned the Contract and liens therein to Lender.

### **AGREEMENT:**

NOW, THEREFORE, in consideration of the promises herein contained, and for Ten Dollars (\$10.00) and other good and valuable consideration paid by each to the other, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Agreement to Advance.** Lender shall make a loan (the "Loan") to Borrower, not to exceed the principal amount of the Promissory Note executed on this day evidencing the Loan (the "Note"), to pay Contractor for the costs for labor performed and materials furnished (collectively called the "Work") by Contractor pursuant to the Contract. All advances made by the Lender for financing construction of the Improvements shall be charged against the Note. Borrower will pay all interest which accrues on the Note within ten (10) days after billing by Lender.

Borrower shall place with Lender, or its designee, on this date the sum of **\$0.00**, for credit to a "Construction Loan Account" (hereinafter referred to as the Construction Loan Account) to be opened on the books of Lender on behalf of the Borrower, and disbursed by Lender pursuant to this Agreement. Use of the Construction Loan Account is restricted to the above-referenced transaction and to the terms of this Agreement and shall not be used for any other purpose. The funds distributed from said Construction Loan Account shall be referred to as Construction Loan Funds.

Withdrawals shall be made from the Construction Loan Account before any of the funds of the Lender will be

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**Residential Construction Loan Agreement - Borrower's Name**

advanced. If the funds to be advanced under the Loan, together with the funds in the Construction Loan Account, appear to the Lender at any time to be insufficient to complete the Improvements in accordance with the Plans and Specifications, the Borrower agrees to promptly deposit in the Construction Loan Account funds to cover the insufficiency. Any excess funds will be refunded to the Borrower or credited against any completion costs at Borrower's option.

Borrower shall deposit with Lender, or its designee, on this date the sum of **\$0.00**, for credit to a "Retainage Account" (hereinafter referred to as the Retainage Account. This Retainage Account shall be available only to Lender to cover any expense incurred by Lender as a result of any default by Builder or Borrower under this Agreement or any document incorporated herein, including, but not limited to payment of any mechanic's liens filed against the Property or to otherwise satisfy any retainage requirement. Any remaining balance shall be returned to Borrower at the earlier of 1) thirty (30) days after the Improvements have been completed or 2) the Loan has been fully paid off.

2. **Assignment of Vendor's Lien.** If Borrower does not currently own the Property, the first disbursement of the proceeds of the Loan shall be used to purchase such Property, and the Vendor's Lien shall be assigned or otherwise transferred to Lender. The remaining Loan proceeds shall be advanced by Lender to Borrower to be paid to Contractor by Borrower as portions of the Work are completed pursuant to the provisions of this Agreement.

3. **Assignment of Residential Construction.** Lender has no obligation to make the Loan until Contractor assigns its Residential Construction Contract to Lender, such assignment to be in form and substance satisfactory to Lender. The Contract price shall be payable to Contractor in installments as the Work progresses. To the extent that Lender advances proceeds under the Loan or from the Account to pay Contractor for indebtedness arising from the Work, less the retainage, if any, such proceeds are advanced at Borrower's and Contractor's request, and Lender shall be subrogated to all rights, security interests, charges or encumbrances arising from the work; provided, further, the contractual mechanic's, artisan's and materialman's lien granted under the Contract shall be and remain in full force and effect to secure all advances made hereunder. If any portion of the indebtedness owing under the Contract or under any document executed in connection with the Loan cannot lawfully be secured by the lien granted therein, any payment made on such indebtedness shall be applied first to the discharge of such unsecured portion of the indebtedness. Contractor agrees that the assignment of the Contract to Lender is an assignment of only the rights accruing to Contractor thereunder, whether now existing or hereafter acquired, together with the lien securing the payment thereof, and not an assignment (or an assumption by Lender) of the portion of the Contract obligating Contractor to perform or warrant work thereunder. Contractor shall remain obligated to Borrower to perform its obligations under the Contract until Contractor has completed the Work as provided therein, or unless the Supplement to Contract is terminated as provided therein, or performance of the Work is stopped as provided therein and the assignment to Lender does not evidence any agency, joint venture partnership, fiduciary or special relationship or suretyship, or other such arrangement between Contractor, Borrower, and Lender, or any of them.

4. **Contractor's Representations and Warranties.** Contractor represents and warrants that at the time of the assignment of the Contract, (i) Contractor has full right, power and authority to endorse and assign the Residential Construction Note and Contract to Lender; (ii) no Work has commenced nor have any materials been delivered on or to the Property or specially manufactured or prefabricated items been ordered; (iii) no written or oral agreement regarding the construction of all or any portion of the Improvements thereof has been entered into by Contractor or to the best of Contractor's knowledge by any subcontractor; (iv) Contractor has not subordinated the lien and security interest granted under the Contract to any other lien or security interest which may affect the Property; (v) Contractor has not pledged, assigned or otherwise encumbered the Contract or the Residential Construction Note; and (vi) the funds to be advanced hereunder, together with other funds in the Account are sufficient to fully construct the Improvements, pay all expenses necessary for such construction and otherwise

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Residential Construction Loan Agreement - Borrower's Name



discharge contractor's obligations under the contract unless the Supplement to Contract is modified via Change Order or there is an overage due for an allowance selected by Borrower.

5. **Procedure for Construction Advances.** Lender shall have no obligation, either express or implied, to Borrower, or to any third parties, to verify that advances made hereunder are actually used to pay for labor or materials used in connection with the construction of the Improvements. Borrower understands that if amounts properly owing are not actually paid, laborers or materialmen may file liens against the Property. Borrower understands that Borrower has selected the Contractor, and thereby agrees to assume all risks in the event Contractor fails to pay for all labor and material furnished, or otherwise fails to perform under the Contract. The proceeds of the Loan and any funds held in the Account shall be advanced at such times as Contractor has earned a portion of amounts due under the approved Contract (the "Completed Work"). A written draw request for each advance shall be delivered to Lender at least three (3) business days prior to the date on which such advance is to be made. The draw request shall be in a form acceptable to Lender. If requested by Lender, each such request must be accompanied by certificates, lien waivers and other documents. Lender shall have no obligation to make any advance if, at the time the request for such advance is made, Borrower or Contractor is in default with respect to any provision of this Agreement or of any instrument referred to herein. Each draw request shall be deemed a representation and warranty by Borrower and Contractor that no such default exists. The amount of each construction advance shall be for the items listed in the draw request, as approved by Lender, less the total of all amounts previously advanced and not covered by the funds in the Account. Each amount paid to Contractor by Borrower from the Loan proceeds shall be an advance of the Loan on behalf of Borrower, and shall be delivered directly to Contractor as an installment payment owing to Contractor under the Contract. Unless Borrower authorizes in writing disbursements to be paid directly to the Contractor, all advances shall be evidenced by a check issued jointly to Borrower and Contractor or shall be wire transferred to Borrower's account. The checks/wire transfers shall be delivered by Lender to Borrower based upon progress made in the Work, in such amounts and at such times as Lender, in its discretion, determines as being reasonable based upon inspections made by Lender or its agent from time to time. Borrower understands that the draw request shall be deemed acceptance of the Work completed to date, and concurrence with the amount requested. Unless such individuals have been already paid, Contractor will use the Loan proceeds to pay all subcontractors, artisans, laborers and materialmen contributing to the Work which has been accomplished to date. Borrower agrees to endorse and deliver the check or checks issued by the Lender for Completed Work. Lender has the right as a condition precedent to the issuance of a check to require an inspection of the Work by the inspector or appraiser of its choice, at the expense of the Borrower, and to require a title search of the Property or title policy endorsement. A minimum of three (3) and a maximum of ten (10) inspections may be required by Lender. The expense to the Borrower of each inspection shall not exceed **\$500.00 total**. Borrower agrees to utilize the checks and wire transfers delivered to it by Lender for delivery to the Contractor strictly in accordance with the provisions of this Agreement. Borrower will not endorse or deliver to Contractor any of the checks received from Lender evidencing the Loan proceeds until the portion of the Work for which each check is to pay has been completed by the Contractor, and until Contractor, has represented to Borrower that it either has paid, or with the proceeds of the check to be received, will pay for all labor and material contributed to the Work up to the date of payment. Contractor represents to Lender that it will not request payment from Borrower or accept payment from Borrower from the proceeds of the Loan unless the portion of the Work to be paid from such payment has been completed, and Contractor either has paid or with the proceeds of each check will pay all subcontractors, artisans, laborers and materialmen for the work they have performed or furnished up to the date of payment. Borrower and Contractor acknowledge and agree with Lender that a failure by either of them to comply with the covenants made in this Paragraph, or to follow the procedures for disbursement of the Loan proceeds designated in this Paragraph or any use of the Loan proceeds for a purpose different from that specified in this Agreement shall constitute a default on the Loan by Borrower, thereby enabling Lender, at its option, to accelerate maturity of the Loan and to exercise all remedies provided to it under the provisions of the Note, Security Instrument and the Contract. If at the time any such draw request is made Lender determines that there are insufficient funds remaining to be advanced to

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Residential Construction Loan Agreement - Borrower's Name

complete the Improvements in accordance with the Contract, Lender shall have no obligation to advance funds hereunder until such time as Borrower has deposited sufficient funds into the Account which, when added to the remaining funds to be advanced, are sufficient in the opinion of Lender to complete said Improvements in accordance with the Contract.

6. **Conditions Precedent for the Initial Construction Advance.** As a condition precedent to the initial advance of funds for the construction of the Improvements, and in addition to the requirements for all additional advances, all of the following conditions shall have been satisfied, which satisfaction shall be determined solely by Lender.

- a. **Documentation.** Borrower shall have delivered the following documents:
  - (i) This Agreement, fully executed and acknowledged.
  - (ii) A copy of the recordable Warranty Deed (if applicable) conveying the Property to Borrower with the vendor's lien assigned to the Lender.
  - (iii) The original Residential Construction Note, properly endorsed to the Lender, and a copy of the original, fully executed, acknowledged and recorded Contract, with assignment thereof from Contractor to Lender.
  - (iv) The original executed Note, and any applicable allonge.
  - (v) A fully executed and acknowledged Deed of Trust and applicable Riders (the "Security Instrument") covering the Property and all Improvements thereon, whether now existing or hereafter constructed.
  - (vi) Any other documentation required by Lender.
- b. **Mortgagee Title Policy.** Borrower shall furnish to Lender an acceptable Mortgagee Policy of Title Insurance, insuring that the lien created by the Security Instrument constitutes a valid lien on the Property. Such policy shall in form and substance be acceptable to Lender, and contain only the Lender approved exceptions. It must evidence that all due and payable real estate taxes, including subsequent assessments for prior years due to change in land usage or ownership, have been paid in full. At the completion of construction, the Borrower shall be responsible for the cost of any endorsements or additional title coverage necessary to satisfy Lender.
- c. **Budget.** Borrower shall have furnished to Lender, in form and content acceptable to Lender, the budget prepared for the project.
- d. **Plans and Specifications.** Borrower shall have furnished to Lender two final sets of the executed and dated Plans and Specifications for the Improvements and any modifications thereof with, if required, the appropriate governmental approval(s), which shall be reviewed and approved by Lender. Furthermore, Borrower shall provide such additional sets of the executed and dated Plans and Specifications as may be required by any governmental authorities. The executed and dated Plans and Specifications shall be attached to this Agreement. If any change order is agreed to by the parties, the executed and dated Plans and Specifications shall be amended, and a modified set shall be provided to Lender at Borrower's sole cost and expense.
- e. **Soil Test.** If requested to do so by Lender, Borrower shall furnish to Lender a copy of all fault line maps, soil and subsoil test reports for the Property prepared by a registered engineer qualified to do soil testing and acceptable to Lender.
- f. **Building Permit.** Borrower shall have furnished to Lender building permits and all other

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Residential Construction Loan Agreement - Borrower's Name

necessary approvals, including approval from any appropriate environmental agency, issued by the appropriate governmental authority with respect to the Improvements. Borrower shall provide Lender with satisfactory evidence that all Plans and Specifications for construction of the Improvements have been approved by all governmental units having jurisdiction and, if applicable, by the appropriate home owners association or architectural review committee, and that construction shall comply with applicable zoning, building use, occupancy codes, and restrictions. Borrower represents and warrant to the Lender that all utility services and facilities necessary for the construction and utilization of the Improvements are unconditionally available to the Property and any costs associated therewith are included in the Contract Price.

- g. **Survey.** Borrower further agree to furnish Lender, prior to the pouring of a concrete foundation for the Improvements, a preliminary form board survey, prepared by a registered surveyor or engineer acceptable to Lender, which survey shall show that the foundation will comply with the minimum slab level regulations promulgated by the Federal Housing Administration and the regulations of the municipality in which the Property is located. If the Property contains existing Improvements, a current survey made and certified by a registered public surveyor or professional engineer in a form acceptable to Lender, which survey will include a flood stamp, shall be furnished to Lender.
- h. **Insurance.** Borrower or Contractor shall have obtained or cause to have been obtained from an insurance company acceptable to Lender, builder's all risk extended coverage insurance against loss or damage, which coverage in no event shall be less than the total amount of the Loan. Such insurance policy shall name the Lender as a "loss-payee" as its interest may appear, and shall contain a mortgagee clause acceptable to Lender. Borrower or Contractor shall furnish Lender with a certificate that such insurance is in full force and effect. Each such policy shall be in an amount and form and issued by an insurer acceptable to Lender. Each such policy shall also provide that Lender receive written notice thirty (30) days prior to cancellation of said policy and shall be otherwise satisfactory in content to the Lender. The originals of such policies shall be deposited with the Lender, or in lieu thereof, certified copies of the original policies along with original certificates of insurance coverage. In case of loss, Lender, at its option, shall be entitled to receive and retain the proceeds of the insurance policies, applying the proceeds to the balance of the Note, and the balance of such proceeds, if any, shall be paid to the Borrower.
- i. **Flood Insurance.** Lender shall have been provided with evidence, satisfactory to the Lender, that the Property is not situated in an area designated by the Federal Emergency Management Agency as being located in a special flood hazard area, or Borrower shall provide flood insurance from an insurer acceptable to Lender and in form and amount satisfactory to Lender.
- j. **Affidavit of Commencement.** As a condition precedent to the first advance for labor, materials or construction services (whether or not it is the first advance) Lender may require Borrower and Contractor to jointly execute and date in order for Lender to record with the County Clerk of the County in which the Property is located an Affidavit of Commencement as authorized by Section 53.124 of the Texas Property Code (or such other subsequent provision replacing said section). Such Affidavit shall designate the date of commencement of construction of the Improvements, which date shall be subsequent to the recording date of the Security Instrument.

7. **Additional Advances.** Each advance is subject to the satisfaction, as determined solely by Lender, of the following conditions at the time of such advance. In the absence of a Work Schedule, Lender shall make advances in its sole discretion. The Borrower and the Contractor agree to fulfill each of these conditions, and to furnish to

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Residential Construction Loan Agreement - Borrower's Name

the Lender such evidence of compliance therewith as the Lender may require:

- a. The Borrower and Contractor have fully complied with all of their obligations under this Agreement and are entitled to such advance, it being understood that the making of any advance when the Undersigned are not entitled thereto will not constitute a waiver by the Lender of such compliance in that or any other case.
- b. A foundation survey, if required by Lender, shall have been furnished to Lender within ten (10) days after laying of the foundation of the Improvements, showing no encroachments of the Improvements on any boundary line, or easement, setback line or other restricted area.
- c. No fire or other casualty has occurred which could reasonably be expected to make it impossible for the Improvements to be completed by the completion date stated in the Contract. There have been no notifications from any municipal authority of any potential fire or environmental hazard.
- d. If requested by Lender, the Borrower will furnish to the Lender a title insurance policy endorsement insuring the lien on the Security Instrument to be a valid lien, containing only such exclusions and exceptions as the Lender may approve, issued by a title insurance company satisfactory to the Lender, current to the date of the advance and covering that advance and all prior advances.
- e. The Contract shall be in full force and free from default, all amounts then payable for labor and materials with respect to construction of Improvements have been or will be paid with the requested advance; that the Lender has been informed in writing as to whether or not the Borrower and Contractor have been served with any written notice or otherwise informed that a lien will be claimed for any amounts unpaid for materials furnished or labor performed by any person, firm, or corporation furnishing materials or performing labor of any kind entering into the construction of any of the Improvements, and that a copy of any such notice is thereto attached to the written notice.
- f. The Lender has been furnished with sworn statements by the Contractor and Borrower as specially requested to do so by the Lender as follows:
  - (i) The Contract between the Contractor and Borrower is in full force and free from default, and the names, and the amounts due as well as the amounts already paid or to be paid contemporaneously with the requested advance to each contractor, subcontractor or other person or entity furnishing materials or performing work entering the construction of any improvements are accurate.
  - (ii) The stage of completion of the construction and the overall cost of construction theretofore incurred, and that no material changes from the Plans and Specifications have been made.
  - (iii) The estimated overall cost of completing the Improvements, to be in such form and with such supporting details as the Lender shall require, including (without limitation) certification by the Contractor of the estimated cost of completing construction pursuant to the Contract, demonstrating to the satisfaction of the Lender that the amount to be subsequently advanced will be sufficient to pay the remaining overall cost of completing construction.

- (iv) That all Work performed to the date of the advance in question has been performed in substantial compliance with the applicable building and performance standards, promulgated by the Texas Residential Construction Commission.
- (v) That no default exists under the Note, the Security Instrument, the Contract, or this Agreement, and that no event has occurred which, with the giving of notice, or otherwise, would constitute an event of default under said Note, Security Instrument, Contract, or this Agreement. Any advance made by Lender prior to the fulfillment by Borrower of any requirements made by Lender, or of any condition precedent set forth in this Agreement shall not be deemed a waiver of Lender's right to have such requirement or condition precedent fulfilled prior to advancing future Loan proceeds. Lender may, but shall not be obligated to, advance an amount that exceeds the face amount of the Note.
- (vi) That there are no liens or encumbrances against said Property other than the liens created by the Contract or those otherwise approved by Lender.

8. **Retainage Fund.** It is understood by both Contractor and Borrower that Section 53.101 of the Texas Property Code requires Borrower to retain ten percent (10%) of the Contract Price or the value of the Work (the "Retainage") during the progress of construction and thirty (30) days after completion of the construction. Borrower acknowledges that failure to retain such funds may result in all qualified lien claimants having a lien against the Property in lieu of such Retainage Fund, and personal liability on the part of the Borrower may be the result. Borrower may elect to waive the retainage period if acceptable title insurance can be obtained, and Borrower accepts full responsibility for such waiver. In no event shall Lender be considered a fiduciary for the administration of the fund, nor shall Lender incur any liability for Borrower's failure to hold the Retainage.

9. **Right of Inspection.** The Borrower shall furnish the Lender with a complete duplicate set of Plans and Specifications. The Lender has the right, but not the obligation, during construction of the Improvements to inspect the same and require to be repaired or replaced, at Borrower's expense, any material or workmanship that does not comply with the Plans and Specifications. Such inspection shall not cost more than **\$500.00 total**. A minimum of three (3) to a maximum of ten (10) shall be required by Lender. Such inspections shall be deemed to be for the benefit of the Lender only and shall create no liability or responsibility to the Borrower; the parties expressly acknowledge that Lender has no obligation to monitor or control the work for Borrower. Lender's agreement to advance funds under this Agreement is expressly conditioned upon its continuing right to inspect the Property. Lender may inspect the Property at any reasonable time to determine the progress and quality of the Work and the condition of the Improvements, but Lender shall not be liable for the performance or default of any contractor or subcontractor, or for any failure to construct, complete, protect or insure the Improvements or materials, or for the payment of any cost or expense incurred in connection therewith, or for the performance or non-performance of any obligation of Borrower or Contractor; and nothing, including without limitation any disbursement hereunder or the deposit or acceptance of any document or instrument, shall be construed as a representation, warranty, or waiver express or implied, on Lender's part. Irrespective of a default under the Contract or work agreement by Contractor or for its failure to complete or perform all Work required of it under the Contract, Borrower shall have no right to offset, counterclaim or defense against Lender because of any claim Borrower may have against Contractor. The obligations arising under the Contract or Plans and Specifications between Contractor and Borrower are separate and independent of any obligations arising hereunder among the undersigned. Lender may perform any inspection by or through any employee, agent, or independent contractor.

10. **Right of Lender to Complete or Secure.** Borrower and Contractor agree that, if construction of the Improvements is delayed or suspended for a period in excess of thirty (30) days, or if Contractor fails to supply

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Residential Construction Loan Agreement - Borrower's Name

workmen and materials which are satisfactory to Lender at any time during the progress of the construction, or if Contractor or any other persons engaged in such construction or any part thereof refuses, omits or neglects to supply a quantity of material or workmen necessary to complete the Work within the required time period, or if Borrower or Contractor shall be in default with respect to any provision hereof or any provisions of the instruments attached hereto, Lender may (but is not obligated) and is hereby authorized, in its sole discretion, upon five (5) days written notice to Borrower and Contractor, to proceed with the construction of the Improvements. For these purposes, Lender, and any persons authorized or employed by it, are expressly authorized to enter into and upon said Property and Improvements and take charge thereof, together with all materials, equipment and other personal property thereon and to proceed with the construction of said Improvements, or to require Borrower and Contractor to complete construction, with any such changes, alterations, additions or modifications as may be deemed necessary or expedient by Lender, and to do whatever Lender may, in its sole discretion, deem necessary to insure completion of the construction, all to the end that the Property shall constitute the best practicable security for the Loan. If construction is delayed or suspended, Lender, in Lender's discretion, and without notice to Borrower or Contractor, may take such steps as Lender deems reasonable to secure the Property and Improvements from the elements or intruders. Any costs so incurred shall be at Borrower's expense.

11. **Power-of-Attorney.** Borrower does hereby irrevocably constitute and appoint Lender to be their true and lawful attorney-in-fact for them and in their name to sign any and all draw requests for the advances to be made hereunder, as the Lender may in its sole discretion deem necessary and proper to secure the continuance and completion of said Improvements according to the terms hereof, and to pay all sums necessary for incidental expenses in connection therewith, all of which disbursements and sums shall be considered advances made by Lender to Borrower under the provisions of this Agreement and the Note. Lender shall not be required to make such payments unless in its sole discretion it consents to waive the signing of such draw requests by Borrower and Contractor. Borrower hereby also irrevocably authorizes and empowers Lender to do and perform for them and in their name, place and stead all actions which Lender may in its judgment deem necessary and proper to be done to effect the construction of said Improvements, including but not limited to the execution and recording of any notice or other instrument which Lender may in its sole discretion deem necessary to protect its interest or security. Further, Lender has the option but not the obligation to commence, appear in or defend any action or proceeding which may affect the Property. The Power-of-Attorney contained herein shall be a power coupled with an interest.

12. **Substitution of Contractor.** In the event that Borrower and Contractor agree to release the Contractor from its obligations under the Contract, and this Agreement and substitute a different Contractor, Borrower and Contractor agree to execute an Agreement for Substitution of Contractor. Lender's consent is a condition precedent for any substitution of contractor.

13. **Right to Withhold Advances.** Lender shall have no obligation to make any advance hereunder if, at the time of the request for such advance, Borrower or Contractor is in default with respect to any provisions of this Agreement or any of the instruments referred to herein. Each request for an advance hereunder shall be deemed a representation and warranty by Borrower and Contractor that no default exists under the Contract or under this Agreement. If at the time any such draw request is made Lender determines that there are insufficient funds remaining to be advanced to complete the Improvements in accordance with the Contract, Lender shall have no obligation to advance funds hereunder until such time as Borrower has deposited sufficient funds with Lender which, when added to the remaining funds to be advanced, are sufficient in the opinion of Lender to complete said Improvements in accordance with the Contract.

14. **Costs to be Paid by Borrower.** Borrower will reimburse Lender for all expenses contemplated in this Agreement of any kind which may be incurred by Lender in connection with this transaction, and Lender may deduct from any advance to be made hereunder any amount necessary for the payment of any unpaid interest owing to Lender hereunder or any fees and expenses of or relating to the examination of the title to the Property, surveys,

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Residential Construction Loan Agreement - Borrower's Name

appraisals, re-appraisals, inspection fees, recording fees, wire transfer fees, architect's fees, attorney fees and legal expenses incurred in the enforcement by Lender of any of the provisions contained in this Agreement, and any other amounts necessary for the payment of the costs of said Improvements, whether incurred by an escrow agent or by Lender, and all sums so deducted or applied shall be deemed advances under this Agreement. In addition, Lender has the option, but not the obligation, to pay or discharge any lien or claim upon the Property and to pay any delinquent tax or assessment thereon, and upon such payment, Lender shall be subrogated to the rights of the holder of such lien or claim or the rights of the taxing authority. Lender may also advance any unpaid insurance premiums and obtain and maintain insurance not provided by Borrower or Contractor. Borrower hereby expressly agrees to pay Lender, upon demand, any and all disbursements made under this Agreement together with interest thereon at the rate stated in the Note from the date each disbursement is made, and Borrower agrees that all such disbursements shall become a part of the indebtedness represented by the Note.

15. **Construction Delays Permanent Loan.** If the Work is not completed on or before **October 23, 2013** (Completion Date), Lender shall be entitled to charge the following Delay Payment. Owner recognizes that time is of the essence as to the Completion Date. By executing this Contract, Owner confirms that the Completion Date establishes a reasonable period for performing the work. Owner recognizes that Lender will suffer financial loss if the work is not completed within the time specified, and that Owner agrees that because such loss cannot now be ascertained, Lender will be compensated in the amount of  $\frac{1}{2}$  of 1% of the loan amount if the Improvements are not completed before the Completion Date; and for any portion of a 90 day period thereafter, 1% will be collected until the Improvements are complete, herein referred to as "Delay Payments". The parties agree this is reasonable compensation and not a penalty.

16. **Completion.** For purposes of this Agreement, the Work shall be deemed completed as provided in the Supplement to Contract, subject only to the completion of the usual punch list items. Upon completion of the Improvements, Borrower agrees, if required by Lender:

- a. To deliver an acceptable final survey which would allow the title insurer to remove the survey exceptions from the Mortgagee Title Policy.
- b. To deliver an appraiser's final inspection, which is commonly referred to as a recertification.
- c. To deliver a hazard insurance policy, acceptable to Lender and, if applicable, flood insurance application reflecting the correct property address.
- d. To file a Completion Affidavit, in a form acceptable to Lender, of record in the county where the Property is located.
- e. To execute, acknowledge and deliver to Lender an indemnification acceptable to Lender holding Lender harmless if Borrower elects not to hold retainage.
- f. To execute, acknowledge and deliver to Lender any documentation deemed necessary by Lender.
- g. To obtain any further documentation required by Lender.

The Improvements shall not be considered complete unless and until all the Work requiring inspection by any homeowners association or similar entity, or municipal or other governmental authorities having jurisdiction, has been duly inspected and approved by such entities or authorities and all requisite certificates of occupancy and other approvals have been duly issued; and provided, further, that Borrower may withhold final payment to Contractor until satisfactory evidence shall have been presented to Lender showing payment in full of all

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Residential Construction Loan Agreement - Borrower's Name

obligations incurred in connection with construction of the Improvements, and waiver of all liens in conjunction with such obligations as required by the Supplement to Contract.

17. **Default.** If the Contractor does not proceed diligently and continuously with an adequate supply of labor and materials to construct and complete the Improvements, except for a period of not more than thirty (30) days (or of such greater length of time as the Lender may agree to in writing in any given case); or if any statement, representation, or warranty contained herein or in any certificate or other instrument at any time delivered to the Lender pursuant to this Agreement shall be untrue in any material respect at the time such statement, representation, or warranty was made; or if default occurs in the observance and performance of any of the covenants, agreements, or obligations of the Borrower hereunder or under the Security Instrument or the Note secured thereby; or if default occurs in the observance or performance of any of the covenants, agreements or obligations of the Contractor hereunder; then, in any such event, all obligation on the part of the Lender to make any further advance hereunder or under the Security Instrument shall, at Lender's election, cease and all amounts previously advanced shall, at the option of the Lender, become immediately due and payable.

18. **Remedies of the Lender.**

- a. In the event of the occurrence of any of the contingencies described in this Agreement which would give the Lender the right to refrain from making any further advances hereunder, the Lender, at its option (and whether or not it exercises any other rights hereunder), may thereupon or at any time thereafter (i) take possession of the Property, together with all materials, equipment, and Improvements thereon, whether or not affixed to the Property; (ii) perform any and all Work and labor and purchase any and all materials necessary to complete the Improvements substantially according to the Plans and Specifications and to equip the same; and (iii) incur and pay such other costs and expenses as are reasonably connected with any of the foregoing. The authorization granted hereby shall be deemed irrevocably vested in Lender for the purpose of protecting Lender's security interest in the Property and shall constitute a power coupled with an interest, and may not be revoked by Borrower. Lender has any rights and/or remedies given to Lender in the Note, Security Instrument, or any other document executed in connection with the Loan, and any remedy at law or in equity under the laws of the State of Texas.
- b. All costs and expenses paid or incurred by the Lender pursuant to the foregoing subparagraph of this Paragraph shall be deemed to be advanced to the Borrower and shall be a part of the indebtedness evidenced by the Note and secured by the Security Instrument. At the option of the Lender, such sums may be deducted from any advance thereafter becoming due.
- c. Nothing herein contained shall be deemed to waive any right given to Lender pursuant to the applicable law relating to mechanic's, artisan's and materialman's liens.

19. **Use of Proceeds by the Lender.** The Lender or its escrow agent may at any time without the consent of the Borrower or Contractor, pay bills and continue the construction pursuant to this Agreement in accordance with the Plans and Specifications on file with the Lender, using for such purposes the unadvanced net proceeds of the Loan and such sums as may be available in the Account provided, however, that nothing herein shall in any way be construed to obligate the Lender to pay bills or to complete construction.

20. **Approval of Changes to the Construction.** Except as otherwise agreed herein, Borrower and Contractor agree and understand that, with respect to the construction of the Improvements, no modification, deletion, addition, and/or amendment to the Residential Construction Contract, Plans and Specification or any Work

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Residential Construction Loan Agreement - Borrower's Name



agreement, subsequent to the execution of this Agreement, may be made without the prior written approval of Lender.

21. **Third Parties.** This Agreement is made for the sole protection and benefit of the Borrower, Contractor and the Lender, and no other person shall be deemed to have any privity of contract hereunder nor any right of action of any kind hereon. The Borrower and Contractor agree that, without the written consent of the Lender, the Borrower and Contractor will not assign this Agreement or any interest herein, or assign or issue an order on the Lender for any advances or any part thereof, and that any such purported assignment or order shall be null and void, and the Lender shall not be obligated to recognize, accept, or fulfill any such assignment or order.

22. **Environmental.**

- a. Borrower and Contractor have made such inspections of the Property as each deems reasonable and necessary, regarding the presence of hazardous waste or other toxic substances in or on the Property. Borrower and Contractor each warrant and represent to the Lender that it is not aware of any presence of any hazardous waste or toxic substance in or on the Property, whether in containers or otherwise, any storage medium or facilities for hazardous waste or other toxic substances in or on the Property, or the use of any part of the Property, for processing or storage of any hazardous waste or other toxic substance. There is excepted from this provision such matters as may pertain to normal utility service to the Property.
- b. Contractor warrants and represents to Borrower and Lender that all chemicals, compounds, paints, sealants, adhesives and construction materials used in the Work will be transported, stored, installed, applied, removed and disposed of in strict accordance with their instructions and any governmental regulations pertaining to them, and shall only be handled by persons properly qualified to handle them.
- c. Borrower herein indemnifies and agrees to hold Lender harmless from any and all liability or claims or causes of action arising from any applicable statute, which Lender may at any time be subject to arising from any interest of Lender in the Property related to the Loan.

23. **Governing Law: Conflicts Between Documents.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. If there is a conflict between the terms of the various loan documents, the following order of priority shall control: (a) Note; (b) this Agreement; and (c) Security Instrument.

24. **Assignment.** The Borrower and Contractor agree that, without the written consent of the Lender, the Borrower and Contractor will not assign this Agreement or any interest therein, or assign or issue an order on the Lender for any advances or any part thereof, and that any such purported assignment or order shall be null and void, and the Lender shall not be obligated to recognize, accept, or fulfill any such assignment or order. This Agreement shall be binding upon Borrower and Contractor and Lender, and their respective heirs, devisees, successors, representatives and assigns.

25. **Notices.** Any notice, request or other communication required or permitted to be given under this Agreement shall be in writing and deemed given and received on the date mailed to the addressee at the address indicated below for each respective party, or on the date delivered if delivered in person.

Borrower's Address: **100 Main Street  
Arlington, TX 76017**

Telephone No.:

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Residential Construction Loan Agreement - Borrower's Name

Contractor's Address: **PO Box 271423**  
**Flower Mound, Texas 75027**

Telephone No.:

Lender's Address: **2310 Interstate 20 W**  
**Arlington, TX 76017**

Telephone No.: **(817) 784-2010**

**26. General Provisions.**

- a. Failure by Lender to exercise or enforce any right, power or remedy under this Agreement shall not constitute a waiver of such right, power or remedy.
- b. Any applicable representation made by Borrower and/or Contractor herein shall survive the repayment of the indebtedness and the termination of this Agreement.
- c. This Agreement may be amended only by contemporaneous or subsequent written agreement executed by the parties to be bound thereby.
- d. All rights, powers and remedies of Lender contained in this Agreement are cumulative and in addition to all other rights, powers and remedies created in any other document or existing at law or in equity.
- e. In the event any part or provision of this Agreement is held unenforceable or void, the enforceability or validity of the remaining parts and provisions shall remain unaffected.
- f. Whenever this Agreement so requires, the masculine shall include the feminine and the neuter, and the singular shall include the plural and vice versa, unless the context clearly requires a different interpretation.
- g. The headings contained in this Agreement are for reference purposes only and shall not in any way affect the meanings or interpretations hereof.
- h. Lender may record this Agreement.
- i. Borrower and Contractor hereby acknowledge receipt of a copy of this Agreement.
- j. The parties further acknowledge and agree that, in the event Borrower brings any legal or quasi-legal proceeding against Lender regarding any of the terms, conditions, duties and obligations of this Agreement, including, without limitation, to rescind, reform, enforce, construe or seek any other legal or equitable relief arising out of, this Agreement, and, in the event Lender prevails in that proceeding or adjudication, including any without prejudice adjudication, Lender shall be entitled to recover the reasonable attorneys' fees, expenses and costs of court incurred by Lender in defending those claims upon which Borrower was unsuccessful through trial and upon appeal.

**BORROWER UNDERSTANDS THAT DURING THE DISBURSEMENT PERIOD OF THE LOAN, BORROWER WILL PAY INTEREST ONLY ON THE OUTSTANDING PRINCIPAL WHICH LENDER HAS ADVANCED PURSUANT TO THE TERMS OF THIS AGREEMENT.**

EXECUTED on the **Twenty-third** day of **October**, 2012, by all parties, as evidenced by the signatures hereafter.

\_\_\_\_\_  
Signature Date  
**Isaac Newton**

\_\_\_\_\_  
Signature Date  
**Phyllis Newton**

*[Sign Originals Only]*

**Custom Homes, LLC**

\_\_\_\_\_  
Signature Date  
**By: Mr. President**

**Lender One**

\_\_\_\_\_  
By: \_\_\_\_\_

STATE OF TEXAS  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by **Isaac Newton and Phyllis Newton.**

\_\_\_\_\_  
Notary Public  
Printed Name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

\_\_\_\_\_  
**Residential Construction Loan Agreement - Borrower's Name**

STATE OF TEXAS  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by **By:  
Mr. President of Custom Homes, LLC, on behalf of said entity.**

\_\_\_\_\_  
Notary Public  
Printed Name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

STATE OF TEXAS  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by  
\_\_\_\_\_ **of Lender One, on behalf of said state bank.**

\_\_\_\_\_  
Notary Public  
Printed Name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

**EXHIBIT "B" - WORK SCHEDULE AND CONSTRUCTION COST BREAKDOWN**

<u>START-UP COSTS</u>	<u>BUDGETED COST</u>	<u>ALLOCATED COST</u>	<u>INITIAL ADVANCE</u>
Land Cost			
Appraisal Fee			
Architect Fees			
Building Permits			
Tap Fees			
Insurance			
Title Policy			
Builder's Risk			
Interest Fees			
Loan Origination Fees			
Other			
<b>Totals:</b>			
<u>ADDITIONAL COSTS</u>			
Title Searches *			
Inspection & Administration Work *			
Surveys *			
Realtor Fees			
* Cost will be deducted from draw			
<u>CONSTRUCTION COSTS</u>			<u>AVAILABLE AFTER RETAINAGE</u>
1. Layout, Excavation & Permits			
2. Rough Plumbing/Sewer Taps			
3. Slab			
4. Forms Pulled/Cables Stressed			
5. Wall Framing			
6. Roof Framing/Decked			
7. Finished Roof			
8. Cornice & Facia			
9. Exterior Doors & Windows			
10. Exterior Veneer			
11. Plumbing:			
Topout			
Finished			
12. Electrical:			
Rough-In			
Finished			
Fixtures			

Residential Construction Loan Agreement - Borrower's Name

13. Heat & A/C:	_____	_____	_____
Rough-In	_____	_____	_____
Furnace Set	_____	_____	_____
Compressor & Final	_____	_____	_____
14. Exterior Painting	_____	_____	_____
15. Insulation:	_____	_____	_____
Walls	_____	_____	_____
Ceilings	_____	_____	_____
16. Sheetrock/Tape, Bed, Texture	_____	_____	_____
17. Fireplace	_____	_____	_____
18. Interior Trim, Doors & Paneling	_____	_____	_____
19. Ceramic Tile	_____	_____	_____
20. Cabinets & Vanities	_____	_____	_____
21. Interior Paint	_____	_____	_____
22. Concrete Walks & Drives	_____	_____	_____
23. Counter Tops	_____	_____	_____
24. Landscape	_____	_____	_____
25. Appliances	_____	_____	_____
26. Finished Floor	_____	_____	_____
27. Hardware	_____	_____	_____
28.	_____	_____	_____
29.	_____	_____	_____
30. Final Punch Out Ind. Wallpaper	_____	_____	_____
<b>Totals:</b>	_____	_____	_____
<b><u>POOL COSTS</u></b>			
Dig & Steel Ties	_____	_____	_____
Gunite Blown	_____	_____	_____
Plaster & Finish Out	_____	_____	_____
<b>Totals:</b>	_____	_____	_____
<b>PROJECT COST/GRAND TOTAL</b>	_____	_____	_____

**Custom Homes, LLC**

\_\_\_\_\_  
Signature Date  
**By: Mr. President**

\_\_\_\_\_  
Signature Date  
**Isaac Newton**

\_\_\_\_\_  
Signature Date  
**Phyllis Newton**

\_\_\_\_\_  
**Residential Construction Loan Agreement - Borrower's Name**



Lender: **Lender One**  
Borrower: **Isaac Newton and Phyllis Newton, husband and wife**  
Property: **100 Main Street, Arlington, Texas 76017**

## **Flood Insurance Coverage Subject to Possible Change**

**Loan # 112233**

If your property is or becomes zoned for required flood insurance and we assign, sell or transfer the servicing of your mortgage loan, your new lender/servicer may require more flood insurance coverage than the minimum amount that has been identified in your Notice of Special Flood Hazards (NSFH). The new lender/servicer may require coverage in an amount greater than the minimum, and has the right to require flood coverage at least equal to 100% of the insurable value (also known as replacement cost value) of the building(s) used as collateral to secure the loan or the maximum available under the National Flood Insurance Program (NFIP) for the particular type of building. You should review your exposure to flood damage with your insurance provider, as you may wish to increase your coverage above the minimum amount required at the time of closing your loan versus what subsequently the new lender/servicer may require.

Acknowledged by Borrower(s) this **Twenty-third** day of **October, 2012**.

\_\_\_\_\_  
Signature Date  
**Isaac Newton**

\_\_\_\_\_  
Signature Date  
**Phyllis Newton**

*[Sign Originals Only]*



# Affidavit of Non-Commencement

THE STATE OF **Texas**  
COUNTY OF **Tarrant**

BEFORE ME, the undersigned authority, on this day personally appeared **Isaac Newton and Phyllis Newton, husband and wife** and **Custom Homes, LLC**, (“Affiant(s)”), known to me to be the person(s) whose name(s) are subscribed below, and who, being by me first duly sworn, did each on his or her oath state as follows:

1. **Isaac Newton and Phyllis Newton, husband and wife** has inspected the real property (the “Property”) situated in **Tarrant** County, **Texas**, more particularly described as follows:

**LOT 11, BLOCK 1, ARLINGTON, AN ADDITION IN TARRANT COUNTY, TEXAS, ACCORDING TO THE PLAT RECORDED IN PLAT CABINET ABC, SLIDE 111, PLAT RECORDS, TARRANT COUNTY, TEXAS.**

on which Improvements (herein so called), will be constructed.

2. Affiant(s) hereby certify that no work has begun and no materials have been delivered to or were located upon said Property as of the signing of this Affidavit and the related loan documents.

3. This affidavit has been made by and through an authorized representative of Affiant, and may be recorded by any person with the county clerk of the county in which the Property is located.

EXECUTED this **Twenty-third** day of **October, 2012**.

\_\_\_\_\_  
Signature Date  
**Isaac Newton**

\_\_\_\_\_  
Signature Date  
**Phyllis Newton**

*[Sign Originals Only]*

**Custom Homes, LLC**

\_\_\_\_\_  
Signature Date  
**By: Mr. President**

SUBSCRIBED AND SWORN TO BEFORE ME on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by **Isaac Newton and Phyllis Newton.**

\_\_\_\_\_  
Notary Public  
Printed Name of Notary: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

Affidavit of Non-Commencement

SUBSCRIBED AND SWORN TO BEFORE ME on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by **By: Mr. President of Custom Homes, LLC, on behalf of said entity.**

\_\_\_\_\_  
Notary Public

Printed Name of Notary: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

## Assignment of Deposit Accounts

THE STATE OF **Texas**

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF **Tarrant**

The undersigned (jointly and severally if more than one, in consideration of the loan or loans, advance or advances made or to be made, or other financial accommodation afforded to the undersigned by **Lender One** (hereinafter called the "Lender"), does hereby ASSIGN and TRANSFER to and pledge to Lender all right, title and interest of the undersigned, as members or depositors, in and to the following property of the undersigned in **Lender One** (hereinafter called the "Institution"): (1) **certificate no. 11111 in the amount of \$15,000.00 in the name of Isaac Newton**, (2) all renewals, extensions, increases, replacements and substitutions for any of the foregoing, (3) all sums now or at any time hereafter on deposit therein or represented thereby, including but not limited to any Retainage Account and/or Construction Loan Account established in connection with any construction loans between the undersigned and Lender, (4) all proceeds thereof and interest thereon and (5) all shares, deposits, investments and interests of every kind of the undersigned evidenced by any pass book, certificate or deposit account. The foregoing property is herein called "Account."

This pledge and assignment is made to secure any and all indebtedness and liability of any kind and nature of the undersigned or any of them to Lender, however evidenced, whether now existing or hereafter arising, direct or indirect, absolute or contingent, or joint or several.

The undersigned agrees that so long as any of the secured indebtedness is unpaid, the undersigned will not pledge, assign, transfer or attempt to withdraw from the Account and agrees that the Account will be held by the Institution as security for the secured indebtedness.

In the event of default under this agreement or in the payment of all or part of the secured indebtedness, or in the event of the insolvency or bankruptcy of the undersigned, the undersigned grants the right and power to Lender, with or without notice or demand, to apply all or part of the Account without notice to or further consent by the undersigned, and the undersigned constitutes and appoints Lender the true and lawful attorney of the undersigned with power of substitution to ask, demand, collect, receive, receipt for, sue for, compound and give acquittance for any and all amounts which may be or become due or payable under the Account, to execute any and all withdrawal receipts or other orders for the payment of money drawn on the Account and to endorse the name of the undersigned on all commercial paper, drafts, checks and other instruments given in payment or in part payment thereof, and in its discretion to file any claim or take any other action or proceeding, either in its own name or in the name of the undersigned or otherwise, which Lender may deem necessary or appropriate to protect and preserve the right, title and interest of Lender hereunder, and without limiting the foregoing, Lender shall have and is hereby given full power and authority to transfer the Account into the name of or its nominee.

The undersigned authorizes and directs the Institution to pay over to Lender, its officers, agents or assigns, upon demand, all or any part of the Account without the Institution making any inquiries as to the status or balance of the indebtedness of the undersigned to Lender and without any notice to or further consent by the undersigned. The undersigned, jointly and severally if more than one, agree to indemnify the Institution and hold it harmless from all expenses and losses which it may incur or suffer as a result of any payment it makes to Lender pursuant to this or the preceding paragraph.

The undersigned represents and warrants that the Account is genuine in all respects and what it purports to be; that the undersigned is the owner thereof free and clear of all liens and encumbrances of any nature

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Assignment of Deposit Accounts (Account in Possession of Lender)

whatsoever; that the undersigned has full power, right and authority to execute and deliver this pledge and assignment; that, if requested by Lender, the undersigned shall deliver to Lender all pass books, certificates and/or deposit receipts evidencing the Account contemporaneously with the execution of this pledge and assignment.

This pledge and assignment shall in no wise be affected by any indulgence or indulgences, extension or extensions, change or changes, in the form, evidence, maturity, rate of interest or any other terms of the secured indebtedness, nor by want of presentment, notice, protest, suit or indulgence upon any of such indebtedness, nor shall any release of any security or any of the parties liable for the payment of any such indebtedness in any manner affect or impair this pledge and assignment, and the same shall continue in full force and effect in accordance with its terms, until such indebtedness secured hereby shall have been fully paid and the Account may thereupon be redeemed. Any other or additional security taken for the payment of any of the indebtedness secured hereby shall not in any manner affect the security given by this instrument. This instrument and all representations and warranties, powers and rights herein contained or resulting herefrom are binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. All of the undersigned's rights of marshalling of assets or sale in inverse order of alienation are expressly waived.

In the event Lender deems itself insecure, the undersigned agrees to deliver additional security to Lender upon demand and Lender, at its option, without notice to the undersigned, may declare all secured indebtedness to be immediately due and payable.

Lender shall be entitled, as further security for the payment of any indebtedness of the undersigned, to a first lien upon any money, deposits, drafts, bills, receipts or other property in its custody or possession.

EXECUTED on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

SIGNATURE OF OWNER AND/OR DEBTOR

\_\_\_\_\_  
**Isaac Newton**    Date

\_\_\_\_\_  
Date

Lender: **Lender One**  
Borrower: **Isaac Newton and Phyllis Newton, husband and wife**  
Property: **100 Main Street, Arlington, Texas 76017**

## **Attorney Representation Notice**

**Loan # 112233**

This Attorney Representation Notice (“Notice”) is entered into between PeirsonPatterson, LLP (“We”, “our” or “us”) and Isaac Newton and Phyllis Newton, husband and wife (“you” or “your” whether one or more), herein referred to as “Borrower”.

**LOAN DOCUMENTATION.** PeirsonPatterson, LLP (We”, “us” or “our”) has prepared the legal instruments involved in this loan using information supplied by the Lender and other third parties. We have acted only on behalf of the Lender. We and the Lender have not assisted or rendered legal advice to Borrower with respect to the loan or the Property securing it or the documents executed in connection with it. If Borrower has any questions about the meaning of any document or Borrower’s legal rights, Borrower should retain personal legal counsel for advice in this transaction.

**DESCRIPTION OF LEGAL SERVICES PERFORMED.** We may have prepared all or part of the following legal instruments affecting title to the Property: Deed (if a purchase transaction), Note, Security Instrument and Assignment of Lien (if requested).

**DISCLAIMER OF REPRESENTATION OR WARRANTY.** We have not conducted a title search on the Property, and make no representation or warranty about condition of the title, access to the Property or any other matters that might be revealed from Borrower’s examination of a survey, title information, or the Property itself. **Borrower is cautioned to make sure the Deed delivered to Borrower conveys what Borrower has contracted to purchase.**

**DATA SUPPLIED BY LENDER.** The disclosure calculations and fee data have been supplied by the Lender. We make no representations regarding the value of the Property, conformance with any limitations on fees, waiting periods or any other matters outside our control.

**RESPONSIBILITY FOR PAYMENT OF FEES.** As part of Borrower’s obligation to pay the expenses of the Lender in connection with the preparation of the legal documentation, Borrower agrees to pay directly to us at loan closing, the amount indicated on the Attorney Invoice, unless Lender has noted otherwise in their closing instructions.

**BASIS FOR FEE.** The document preparation fee charged by us is based on a per transaction charge rather than an hourly fee. This fee is intended to provide fair compensation for our services, taking into consideration the time and labor required, the complexities of the questions involved, and the skill required to perform the services. Other considerations include our expertise in the complexities of the real estate practice, the necessary overhead associated with the rendering of the services and our assumption of risk in the rendering of the services. There has been no charge made for any disclosures or information required by the Real Estate Settlement and Procedures Act, the Truth-in-Lending Act or the Homeowners’ Protection Act.

**NOTICE TO BORROWER REGARDING DEED PREPARATION.** We represent Lender and only Lender in this transaction. If we have prepared a draft deed, it has been at the request of Lender. Borrower is advised to consult its legal counsel with any questions before signing the draft deed. We have provided the draft deed as a convenience. **IF THE DRAFT DEED WE PREPARED IS USED, BORROWER (OR ITS ATTORNEY)**

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Attorney Representation Notice

SHOULD REVIEW AND AMEND IT, IF NECESSARY, TO MAKE CERTAIN THAT IT IS CONSISTENT WITH THE SALES CONTRACT AND CORRECTLY REFLECTS THE CONDITION OF TITLE FOR THE PROPERTY AND THE OBLIGATIONS OF THE PARTIES TRANSFERRING RIGHTS TO REAL PROPERTY, AND IF APPLICABLE RESERVING CERTAIN RIGHTS, FOR EXAMPLE MINERAL INTEREST, IS AN INHERENTLY COMPLEX MATTER AND CONTEMPLATES THE INVOLVEMENT OF ATTORNEYS. IF APPLICABLE, THE DEED SHOULD BE AMENDED TO REFLECT ANY MINERAL OR OTHER RESERVATION. BE CERTAIN THAT THE DEED EXPRESSES THE INTENT OF SELLER AND BORROWER. Another deed, or amendments to the draft deed, must be reviewed and approved by us prior to its execution.

Borrower hereby acknowledges receiving and reading a copy of this Notice and affirms the accuracy of the statements contained herein.

**BORROWER(S):**

\_\_\_\_\_  
Signature Date  
**Isaac Newton**

\_\_\_\_\_  
Signature Date  
**Phyllis Newton**

*[Sign Originals Only]*

Lender: **Lender One**  
Borrower: **Isaac Newton and Phyllis Newton, husband and wife**  
Property: **100 Main Street, Arlington, Texas 76017**

## Borrower's Closing Affidavit

Loan # 112233

Before me, the undersigned authority duly authorized to take acknowledgements and administer oaths, personally appeared the above referenced Borrower(s) who, upon being duly sworn depose and says as follows:

Words used in this Affidavit are defined below. Words in the singular mean and include the plural and vice versa.

“**Borrower**” is **Isaac Newton and Phyllis Newton, husband and wife**

“**Lender**” is **Lender One**, and its successors or assigns.

“**Loan**” means the debt evidenced by the Note and all sums due under the Security Instrument.

“**Note**” means the promissory note(s) dated **October 23, 2012**, signed by Borrower in favor of Lender.

“**Property**” means the property commonly known as **100 Main Street, Arlington, Texas 76017**.

“**Security Instrument**” means the Deed of Trust/Mortgage/Security Deed/Security Instrument signed by Borrower in favor of Lender, securing payment of the Note.

“**Settlement Agent**” is **Busy Bee Title**.

BEFORE ME, the undersigned authority, on this day, personally appeared Borrower, known to me to be the person whose name is subscribed below and after being duly sworn by me did each on his or her oath state the following:

1. **OCCUPANCY STATUS.** [Check applicable box.]

- Primary Residence.** The Property is/will be Borrower's primary residence. This means at least one (1) Borrower who executes the Note and Security Instrument will take title to and occupy the Property. The Property is now occupied as Borrower's primary residence or will be occupied as Borrower's primary residence no later than sixty (60) days after this date or the date the Property shall first become ready for occupancy as a habitable dwelling. That Borrower shall continue to occupy the Property as that Borrower's primary residence for at least one (1) year after the execution of the Loan documentation unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond that Borrower's control. Furthermore, all bills for utilities, water, and/or sewerage are in that Borrower's name.

If applicable,

Borrower(s) will not occupy the Property, nor allow any others to occupy the Property, until construction is complete and municipal approvals have been issued, if required, and Lender gives written consent following final inspection. Borrower(s) will not store any item in or on the Property, or allow others, that is not related to the construction of improvements on the Property.

Borrower(s) hereby certify that upon completion the Property will be Borrower's principal residence. This means at least one of the Borrowers who executes the Note and Security Instrument has title to and upon completion, shall occupy the Property. Borrower shall continue to occupy the Property as Borrower's principal residence for at least one year after completion of the improvements unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld or unless extenuating circumstances exist which are beyond Borrower's

control.

**BORROWER(S) ACKNOWLEDGE THAT THIS OCCUPANCY AFFIDAVIT IS GIVEN AS A MATERIAL INDUCEMENT TO CAUSE LENDER TO MAKE A LOAN TO BORROWER(S) AND THAT ANY FALSE STATEMENTS, MISREPRESENTATIONS OR MATERIAL OMISSIONS SHALL CONSTITUTE A BREACH OF THE BORROWER(S) OBLIGATION TO LENDER AND THAT ALL THE PROVISIONS OF THE MORTGAGE/DEED OF TRUST INDENTURE CONCERNING DEFAULT IN THE NOTE WILL THEREUPON BE IN FULL FORCE AND EFFECT.**

- Secondary Residence.** The Property is/will be Borrower's secondary residence. A secondary residence is a single-family property that is currently or will be occupied by at least one (1) Borrower in addition to that Borrower's primary residence. **The property will not be income-producing.**
- Investment Property.** The Property is/will be investment property. The Property will not be occupied or claimed as a primary or secondary residence by any Borrower, and may produce revenue. Each Borrower now owns, resides, uses, and claims another property or properties as a primary residential or homestead.
2. **FINANCIAL STATUS.** Borrower understands that Lender is granting the Loan based on the representations made in the Loan application given by Borrower to Lender. Borrower hereby certifies that all statements related to the Loan application, including but not limited to, financial, marital, and employment status, have not changed, and to the best of Borrower's knowledge, will not change in the foreseeable future. If the Property is being purchased by Borrower, the funds for down payment and closing costs are being paid from the source stated on the Loan application. There is no secondary financing in this transaction that has not been disclosed to Lender. Borrower certifies that if the Loan application states that other real estate was to be sold, that such transaction has taken place and Borrower no longer has title to that real estate. If the Property is currently owned by Borrower, Borrower certifies that there are no delinquent state, county, city, school, water district, utility district, or other governmental taxes or assessments due or owing against the Property and that no tax suit has been filed by any state, county, municipality, water district, utility district, or other governmental agency for taxes or assessments levied against Borrower which have not been disclosed in writing to Lender. Borrower also certifies that there are no unpaid paving or utility assessments or delinquent owner association dues. There are no suits filed by or pending against Borrower in any federal or state court which have not been disclosed in writing to Lender.
3. **PROPERTY ACCEPTANCE.** Borrower acknowledges that the Property and all of its improvements, fixtures, appliances, and other parts are in good and satisfactory working order and in the conditions contracted for. If the Property is new construction, Borrower finds that the improvements erected on the Property have been completed substantially in accordance with the plans and specifications. If this is the purchase of an existing dwelling, Borrower has accepted the condition thereof, and all terms of the sales contract (including any required repairs and inspections) have been met. If the Property is or will be initial construction, Borrower will sign an affidavit of completion once Borrower finds the improvements are completed substantially in accordance with the plans and specifications and to Borrower's satisfaction and that the terms of the contract between Borrower and the contractor have been fully carried out. The matters acknowledged in this paragraph are to the best of Borrower's knowledge and belief, and nothing in this Affidavit is to be construed as a waiver of any claims, damages, causes of action, or rights under any warranty, expressed or implied, against any party other than Lender.
4. **SURVEY.**



**If a Survey is required then,** Borrower hereby certifies that Borrower has received, reviewed, and approved a copy of the survey which is incorporated herein by reference and has signed or initialed and dated same for identification purposes. Borrower is aware of the indicated encroachments, protrusions, easements, limitations, access, dimensions, and/or other conditions shown on the survey. In consideration of Lender making the Loan to Borrower, Borrower hereby indemnifies and holds Lender harmless from any claims, costs, damages, causes of action, and expenses in any way arising as a result of the Property condition or any matters indicated in the survey.

**If a current Survey is acceptable then,** since the date of the survey provided by Borrower, which survey has been signed or initialed and dated for identification purposes, Borrower certifies and represents that no improvements or structural changes or additions to the Property have been made. Borrower is aware of the indicated encroachments, protrusions, easements, limitations, access, dimensions, and/or other conditions shown on the survey. In consideration of Lender making the Loan to Borrower, Borrower hereby indemnifies and holds Lender harmless from any claims, costs, damages, causes of action, and expenses in any way arising as a result of the Property condition or any matters indicated in the survey.

**If a Survey is not required then,** Borrower understands that a current survey is not required by Lender for this transaction, however, if Borrower desires, Borrower may have a current survey made. Borrower represents to Lender that Borrower understands that a survey would indicate existing encroachments, protrusions, easements, limitations, access, dimensions, or other conditions.

Borrower represents to Lender that Borrower has not received from any third party any notice or claim of any limitation of the use and enjoyment of the Property not indicated by the most recently obtained survey.

5. **TITLE INSURANCE.** If Title Insurance is required by Lender, Borrower certifies that Settlement Agent has provided Borrower with a copy of the Commitment for Title Insurance and that Borrower has reviewed and consents to all of the exceptions to title which would appear in an Owner's Title Policy for the Property.

In consideration of Lender making the Loan to Borrower, Borrower hereby indemnifies and holds Lender harmless from any claims, costs, damages, causes of action and expenses in any way arising as a result of the Property condition and performance under any contract of sale between Borrower and any Seller of the property, or any matters indicated as exceptions stated in the Commitment for Title Insurance, and the Owner's and Mortgagee's Title Insurance Policies.

6. **HOLD HARMLESS.** Borrower has been made aware of the following specific conditions affecting the Property and does hereby indemnify and hold harmless Lender from any claims, costs, damages, causes of action, and expenses in any way arising from the following conditions or other matters:

### **ACKNOWLEDGMENT OF RECEIPT**

Borrower acknowledges that this Borrower's Closing Affidavit is given as a material inducement to cause Lender to make the Loan to Borrower. Borrower understands that it is illegal to provide false information in an application for a mortgage loan. Mortgage fraud is punishable by up to 30 years in federal prison or a fine up to \$1,000,000 or both under the provisions of title 18, United States Code, Sec. 1001, et seq. The agreements and covenants contained herein shall survive the closing of this Loan transaction.

\_\_\_\_\_  
Signature Date  
**Isaac Newton**

\_\_\_\_\_  
Signature Date  
**Phyllis Newton**

*[Sign Originals Only]*

SUBSCRIBED AND SWORN TO BEFORE ME on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by **Isaac Newton and Phyllis Newton.**

\_\_\_\_\_  
Notary Public  
Printed Name of Notary: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

Lender: **Lender One**  
Borrower: **Isaac Newton and Phyllis Newton, husband and wife**  
Property: **100 Main Street, Arlington, Texas 76017**

**Deletion of Arbitration Provision**  
**(Not applicable to the Texas Residential Owner Policy)**

**Loan # 112233**

ARBITRATION is a common form of alternative dispute resolution. It can be a quicker and cheaper means to settle a dispute with your Title Insurance Company (“the Company”). However, if you agree to arbitrate, you give up your right to take the Company to court and your rights to discovery of evidence may be limited in the arbitration process. In addition, you cannot usually appeal an arbitrator’s award.

**Your policy contains an arbitration provision (shown below). It allows you or the Company to require arbitration if the amount of insurance is \$1,000,000 or less. If you want to retain your right to sue the Company in case of a dispute over a claim, you must request deletion of the arbitration provision before the policy is issued. You can do this by signing this form and returning it to the Company at or before the closing of your real estate transaction or by writing to the Company.**

The Arbitration provision in the Policy is as follows:

“Unless prohibited by applicable law or unless this arbitration section is deleted by specific provision in Schedule B of this policy, either the Company or the Insured may demand arbitration pursuant to the Title Insurance Arbitration Rules or the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this Policy, and service of the Company in connection with its issuance or the breach of a policy provision or other obligation. All arbitrable matters when the Amount of Insurance is \$1,000,000 or less SHALL BE arbitrated at the request of either Company or the Insured, unless the Insured is an individual person (as distinguished from a corporation, trust, partnership, association or other legal entity). All arbitrable matters when the Amount of Insurance is in excess of \$1,000,000 shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to this Policy and under the Rules in effect on the date the demand for arbitration is made or, at the option of the Insured, the rules in effect at the Date of Policy shall be binding upon the parties. The award may include attorneys’ fees only if the laws of the state in which the land is located permit a court to award attorney’s fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

The Law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules.

A copy of the Rules may be obtained from the Company upon request.

I request deletion of the Arbitration provision.

**Lender One**

\_\_\_\_\_

By: \_\_\_\_\_

Lender: **Lender One**  
Borrower: **Isaac Newton and Phyllis Newton, husband and wife**  
Contractor: **Custom Homes, LLC**  
Property: **100 Main Street, Arlington, Texas 76017**

## Lender's Disbursement Statement Authorization

**Loan # 112233**

I/We, the above referenced Borrowers, hereby direct Lender to disburse construction advances on the above referenced loan as follows:

- 1)  All disbursements are to be made by deposit from Lender into an account maintained at Lender's office created by Borrower for the disbursement of construction advances with signing privileges according to the account agreement. Use of the Construction Loan Account is restricted to the above-referenced transaction and as set out in the Construction Loan Agreement and shall not be used for any other purpose.
- 2)  All disbursements are to be made payable solely to Contractor into an account established by the Contractor with approval from Borrower. Use of the Construction Loan Account is restricted to the above-referenced transaction and as set out in the Construction Loan Agreement and shall not be used for any other purpose.
- 3)  All disbursements are to be made as jointly payable checks to Contractor and Borrower.
- 4)  All disbursements will be made solely to the Borrower. Contractor will request funds directly from the Borrower.
- 5)  All disbursements will be made as jointly payable checks to Contractor and Subcontractor.

If Lender disburses pursuant to options 1 or 2 above, Lender shall obtain from the Contractor the signed periodic statement (draw request) that covers the funds for which the Contractor is requesting payment and provide to the Borrower a statement of funds disbursed (disbursement statement) by the Lender since the last statement was provided to the Borrower. The disbursement statement and copy of the draw request will be provided to Borrower on the same day that Lender disburses to Contractor. Lender will provide said disbursement statement and draw request to Borrower. Lender, at Lender's option, may provide the disbursement statement to Borrower by either 1) hand delivery to Borrower before disbursement, 2) depositing the disbursement statement in the United States mail, postage prepaid on the same day of disbursement, or 3) faxed to Borrower before disbursement. Borrower agrees that any of these delivery methods are acceptable to Borrower and will constitute constructive notice at the time Lender places said documents in the mail. Lender may request Borrower's signature and return of each Disbursement Statement.

These directions supersede conflicting language in any construction loan agreement or any other documents to the contrary.

\_\_\_\_\_  
Signature Date  
**Isaac Newton**

\_\_\_\_\_  
Signature Date  
**Phyllis Newton**

**Lender's Disbursement Statement Authorization**

*[Sign Originals Only]*

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**Lender's Disbursement Statement Authorization**

Lender: **Lender One**  
Borrower: **Isaac Newton and Phyllis Newton, husband and wife**  
Property: **100 Main Street, Arlington, Texas 76017**

## Disclosure of Right to Receive a Copy of an Appraisal

Loan # 112233

Applicant(s) name(s) / Address(es) ("You", "Your") <b>Isaac Newton and Phyllis Newton, husband and wife</b>  <b>100 Main Street</b> <b>Arlington, TX 76017</b>	Lenders name / Address ("We", "Us") <b>Lender One</b> <b>2310 Interstate 20 W</b> <b>Arlington, Texas 76017</b>
--	--

DATE: **October 23, 2012**

Under the Equal Credit Opportunity Act (ECOA) you have the right to receive a copy of the appraisal report used in connection with your application for credit. If you wish to receive a copy, please follow the instructions provided below.

We must hear from you no later than 90 days after we notify you about the action taken on your loan application (the credit decision). If you withdraw your application before we take action, we must hear from you no later than 90 days after you withdraw your application.

To request a copy of the appraisal report, you must contact us by writing to us at the address provided above. Please provide us with the following information at the time you make your request:

- The names of the applicant(s)
- The date of your application
- The address of the appraised property
- The address to which we should send the copy of the report

The ECOA requires that we mail or deliver a copy of the appraisal report promptly (generally within 30 days) after we receive your request, receive the appraisal report, or receive reimbursement from you for the report, whichever occurs last.

\_\_\_\_\_  
Signature **Isaac Newton** Date

\_\_\_\_\_  
Signature **Phyllis Newton** Date

*[Sign Originals Only]*

Lender: **Lender One**  
Borrower: **Isaac Newton and Phyllis Newton, husband and wife**  
Property: **100 Main Street, Arlington, Texas 76017**

## Document Correction Agreement

Loan # 112233

**AGREEMENT TO CORRECT OR PROVIDE ADDITIONAL DOCUMENTATION OR FEES:** In consideration of Lender disbursing funds for the closing of the Loan secured by the Property being encumbered, and regardless of the reason for any loss, misplacement, or inaccuracy in any loan documentation, Borrower(s) agrees as follows: That, should a document be lost or misplaced, misstated or inaccurately reflect the true and correct terms and conditions of the Loan, upon the request of the Lender (including persons acting on behalf of the Lender) or Settlement Agent, Borrower(s) will comply with Lender's request to execute, acknowledge, initial and deliver to Lender any documentation Lender deems necessary to replace or correct the lost, misplaced, misstated or inaccurate documents(s). Borrower's completed and accepted final application and any disclosure statements provided by Lender shall be evidence of Borrower's and Lender's intent regarding the agreed terms and conditions of the loan. If a replacement note is executed, the Lender hereby indemnifies the Borrower(s) against any loss associated with a demand on the original executed note. The documents Lender requests Borrower(s) to execute, acknowledge, initial and deliver pursuant to this Paragraph shall hereinafter be referred to as "Replacement Documents." Borrower(s) agrees to deliver the Replacement Documents within ten (10) days after receipt by Borrower(s) of a written request from Lender for such replacement. Borrower(s) also agrees that upon the request of the Lender (including persons acting on behalf of the Lender) or Settlement Agent, Borrower(s) will comply with Lender's reasonable request to supply additional documentation and/or to pay Lender any additional sums previously disclosed to Borrower(s) as a cost or fee associated with the Loan which for whatever reason was not collected at closing. The documents or fees Lender requests Borrower(s) to provide pursuant to this Paragraph shall hereinafter be referred to as "Additional Documents or Fees."

**REQUEST BY LENDER:** Any request by the Lender, (including persons acting on behalf of the Lender) or Settlement Agent for any Additional Documents or Fees shall be prima facie evidence of the necessity for same. A written statement from Lender, (including persons acting on behalf of the Lender) or Settlement Agent, addressed to Borrower(s) at the address indicated in the documentation shall be considered conclusive evidence of the necessity for said Additional Documents or Fees or corrections thereof.

**FAILURE TO DELIVER REPLACEMENT OF ADDITIONAL DOCUMENTS OR FEES MAY CONSTITUTE DEFAULT:** Borrower(s)'s failure or refusal to comply with the terms of the Lender's request may, at Lender's election, constitute a default under the note and/or mortgage/deed of trust and give Lender the option of declaring all sums secured by the loan documents immediately due and payable.

**BORROWER LIABILITY:** If Borrower(s) fails or refuses to execute, acknowledge, initial and deliver the Replacement Documents or provide the Additional Documents or Fees to Lender more than ten (10) days after being requested to do so by Lender, and understanding that Lender is relying on these representations, Borrower(s) agree(s) to be liable for any and all loss or damage which Lender sustains thereby including but not limited to all attorney's fees and costs incurred by Lender.



This Agreement shall inure to the benefit of Lender's successors and assigns and be binding upon the heirs, devisees, personal representatives, successors and assigns of Borrower(s).

---

Signature \_\_\_\_\_ Date \_\_\_\_\_  
**Isaac Newton**

---

Signature \_\_\_\_\_ Date \_\_\_\_\_  
**Phyllis Newton**

*[Sign Originals Only]*

Lender: **Lender One**  
Lender Address: **2310 Interstate 20 W, Arlington, TX 76017**  
Borrower: **Isaac Newton and Phyllis Newton, husband and wife**  
Property: **100 Main Street, Arlington, Texas 76017**

**Fair Credit Reporting Act Notice**  
**(Prior to Furnishing Negative Information to**  
**Nationwide Consumer Reporting Agency)**

**Loan # 112233**

Pursuant to the Fair Credit Reporting Act and Regulation V, we are required to provide you with the following information:

We may report information about your loan and/or account to credit bureaus. Late payments, missed payments, or other defaults on your loan and/or account may be reflected in your credit report.

**ACKNOWLEDGMENT**

I/We have read the above statement and acknowledge receiving a copy by signing and dating below.

\_\_\_\_\_  
Signature Date  
**Isaac Newton**

\_\_\_\_\_  
Signature Date  
**Phyllis Newton**

*[Sign Originals Only]*

Lender: **Lender One**  
Borrower: **Isaac Newton and Phyllis Newton, husband and wife**  
Property: **100 Main Street, Arlington, Texas 76017**

## Form Board Survey Requirement

**Loan # 112233**

It is the Contractor's and Borrower's sole responsibility to determine the placement of all improvements to be located on the Property so as not to violate or encroach over any property lines, building set back lines, or any other legal and/or zoning restriction. Prior to pouring the foundation, Contractor and Borrower must obtain a "Form Board Survey" prepared by a Lender approved surveyor at Borrower's expense showing the location of form boards for the proposed foundation pour and showing no encroachments that would be caused by the proposed pour. Lender may require as a condition of a subsequent draw to pay for foundation related expenses a copy of the Form Board Survey showing no encroachments or violations. If Lender does not require the delivery of the Form Board Survey to Lender, Contractor and Borrower acknowledge it is still their responsibility to obtain same prior to the foundation pour.

By signing below the undersigned agrees to comply with the above terms.

\_\_\_\_\_  
Signature Date  
**Isaac Newton**

\_\_\_\_\_  
Signature Date  
**Phyllis Newton**

*[Sign Originals Only]*

**Custom Homes, LLC**

\_\_\_\_\_  
Signature Date  
**By: Mr. President**

Lender: **Lender One**  
Borrower: **Isaac Newton and Phyllis Newton, husband and wife**  
Property: **100 Main Street, Arlington, TX 76017**

## Mineral Rights Acknowledgment

**Loan # 112233**

Words used in this Acknowledgment are defined below. Words in the singular mean and include the plural and vice versa.

“**Borrower**” is **Isaac Newton and Phyllis Newton, husband and wife**

“**Lender**” is **Lender One**, and its successors or assigns.

“**Loan**” means the debt evidenced by the Note and all sums due under the Security Instrument.

“**Note**” means the promissory note(s) dated **October 23, 2012**, signed by Borrower in favor of Lender.

“**Property**” means the property commonly known as **100 Main Street, Arlington, Texas 76017**.

“**Security Instrument**” means the deed of trust/mortgage/security deed/security instrument signed by Borrower in favor of Lender, securing payment of the Note.

Borrower understands that the Property may be subject to mineral development rights held by others and the exercise of those rights could result in a taking of or damage to some or all of the Property. Borrower further understands that the party desiring to exercise its mineral development rights may be liable to Borrower and Lender for reimbursement for exercising such mineral development rights.

The Reimbursement may be considered “Miscellaneous Proceeds” under the Security Instrument.

Borrower hereby acknowledges that Borrower has read this Acknowledgment and fully understands its terms and implications and Borrower is executing it the same day as the Note and Security Instrument, as a material inducement to Lender to make this Loan.

\_\_\_\_\_  
Signature Date  
**Isaac Newton**

\_\_\_\_\_  
Signature Date  
**Phyllis Newton**

*[Sign Originals Only]*

# MORTGAGE FRAUD IS INVESTIGATED BY THE FBI



**Mortgage Fraud is investigated by the Federal Bureau of Investigation and is punishable by up to 30 years in federal prison or \$1,000,000 fine, or both. It is illegal for a person to make any false statement regarding income, assets, debt, or matters of identification, or to willfully overvalue any land or property, in a loan and credit application for the purpose of influencing in any way the action of a financial institution.**

*Some of the applicable Federal criminal statutes which may be charged in connection with Mortgage Fraud include:*

- 18 U.S.C. § 1001 - Statements or entries generally
- 18 U.S.C. § 1010 - HUD and Federal Housing Administration Transactions
- 18 U.S.C. § 1014 - Loan and credit applications generally
- 18 U.S.C. § 1028 - Fraud and related activity in connection with identification documents
- 18 U.S.C. § 1341 - Frauds and swindles by Mail
- 18 U.S.C. § 1342 - Fictitious name or address
- 18 U.S.C. § 1343 - Fraud by wire
- 18 U.S.C. § 1344 - Bank Fraud
- 42 U.S.C. § 408(a) - False Social Security Number

*Unauthorized use of the FBI seal, name, and initials is subject to prosecution under Sections 701, 709, and 712 of Title 18 of the United States Code. This advisement may not be changed or altered without the specific written consent of the Federal Bureau of Investigation, and is not an endorsement of any product or service.*

\_\_\_\_\_  
Signature Date  
**Isaac Newton**

\_\_\_\_\_  
Signature Date  
**Phyllis Newton**

*[Sign Originals Only]*

---

Mortgage Fraud Warning

Lender: **Lender One**  
Borrower: **Isaac Newton and Phyllis Newton, husband and wife**  
Property: **100 Main Street, Arlington, Texas 76017**

## Notice of No Oral Agreements

Loan # 112233

**THIS WRITTEN LOAN AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.**

**THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.**

**Receipt of Notice:** The undersigned hereby represents and warrants that I/we have each received and read a copy of this Notice on or before the execution of the "Loan Agreement." "Loan Agreement" means one or more promises, promissory notes, agreements, undertakings, security agreements, deeds of trust or other documents, or commitments, or any combination of those actions or documents, pursuant to which a financial institution loans or delays repayment of or agrees to loan or delay repayment of money, goods, or any other thing of value or to otherwise extend credit or make a financial accommodation.

\_\_\_\_\_  
Signature Date  
**Isaac Newton**

\_\_\_\_\_  
Signature Date  
**Phyllis Newton**

*[Sign Originals Only]*

Lender: **Lender One**  
Borrower: **Isaac Newton and Phyllis Newton, husband and wife**  
Property: **100 Main Street, Arlington, Texas 76017**

## **Residential Construction Loan Borrower's Affidavit**

**Loan # 112233**

BEFORE ME, the undersigned authority on this day personally appeared the undersigned (hereinafter called "Borrower"), personally known to me to be the person whose name is subscribed hereto, and upon having been lawfully sworn upon oath deposes and states in connection with a transaction involving the construction of certain improvements on the property ("Property") described above:

Borrower hereby warrants and represents (which warranties, covenants, agreements and representations shall survive the making of any and all advances) as follows:

1. **Reliance.** The Borrower has been advised by the Lender that Lender is relying upon the recitals herein contained in connection with, among other things, negotiating and establishing the interest charges to Borrower in connection with a mortgage loan ("Loan"), and that this Affidavit has been executed by Borrower in connection with that mortgage loan, and that this Affidavit has been executed by Borrower for the purpose of (i) inducing Lender's reliance on the recitals herein contained and (ii) inducing Lender to advance funds under the Residential Loan Agreement ("Construction Loan Agreement") executed by Lender, Borrower and Contractor to be dated as of funding, which funds will finance the construction of certain Improvements.
2. **Title.** Borrower is, or will be at the time of closing, the fee simple owner of the Property. The Property is the same as the property described in the Deed of Trust securing the note (which evidences the Loan) executed by Borrower to Lender, both dated the same date as this Affidavit. There are no liens, claims or charges against the Property, other than those that are allowed in the loan documents, or that have been previously approved and agreed to by Lender.
3. **No Work Performed** No work of any kind (including the destruction or removal of any existing improvements, site work, clearing, grubbing, draining or fencing of the land) has been commenced or performed on the Property, no materials or supplies have been delivered to the Property, and no specially manufactured or prefabricated items have been ordered that are to be used in the construction of the Improvements by or for Borrower.
4. **Selection of Contractor.** Borrower acknowledges that Borrower has selected and investigated the background, experience and reputation of all architects, engineers and contractors who will furnish labor, material or other services for the construction of said improvements and that Lender will not have any responsibility or liability whatever for such persons or for the quality of their materials or workmanship.
5. **No Previous Written or Oral Contracts.** Prior to signing and acknowledging of the Mechanic's Lien Contract ("Contract") and the Deed of Trust renewing and extending such contract, no written Contract regarding the construction of all or any portion of the improvements to be constructed by or for Borrower on the Property has been recorded or filed for record in the Office of the County Clerk of the county where the Property is located, and no affidavit regarding any oral contract for the construction of all or any portion of the improvements to be constructed by or for Borrower has been recorded or filed for record in

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Residential Construction Loan Borrower's Affidavit (Borrower's Name)

the Office of the County Clerk of the county where the Property is located. To the best of Borrower's knowledge, no person has taken or permitted any action that would cause the inception or priority of any mechanic's or materialman's lien, or any other lien, charge, or encumbrance upon the Property to be prior to or superior to the liens and security interest of the Deed of Trust executed by Borrower in connection with this transaction.

6. **Contract is Entire Agreement.** The Contract incorporates any work agreement between the Borrower and the Contractor and Loan Agreement which includes the Plans and Specifications as an exhibit constitute the entire agreement between Borrower and Contractor in connection with the construction of the improvements. The funds to be advanced to Borrower, together with Borrower's equity, down payment and other funds to be placed in an account as provided in the Loan Agreement, are sufficient to fully construct the improvements and pay all expenses necessary for such construction.
7. **Commencement of Construction.** That five (5) days after execution of the Contract, Borrower will cause Contractor to commence construction of the improvements, that said improvements will be completed substantially in accordance with the provisions of the Plans and Specifications and Contract, and that the improvements will be completed on or before the completion date stated in the Contract. That all material delivered to and upon the Property for the purpose of being incorporated in the improvements shall be considered annexed to the Property and become a part thereof, and shall be subject, as against Borrower, to the rights of Lender under the Contract and Security Instrument. That each advance made under the Loan Agreement will be used solely for the payment of and for material, labor, services, costs, and expenses, provided for or incurred in connection with the construction of the improvements, as such materials are incorporated into and/or services, costs and expenses are provided thereto, or for such costs and expenses agreed to by Lender in writing.
8. **Change Orders.** Borrower shall not change the Plans and Specifications or request the Contractor to perform any changes without first securing Lender's written consent to such change order.
9. **Hazardous Waste.** That the Property has not been and is not now being used in violation of any federal, state or local environmental law, ordinance or regulation. Borrower has not filed nor been required to file any federal, state or local reports of hazardous substances found or disposed on any real property now or previously owned by Borrower. No proceedings have been commenced, or notices received concerning any alleged violation of any environmental laws, ordinances or regulations. The Property is free of underground storage tanks, out-of-use transformers, hazardous, radioactive or toxic wastes, contaminants, oil, or other material. The Property will not be used in conjunction with, or for any activity involving, directly or indirectly, the generation, treatment, storage, transportation, manufacture, use or disposition of hazardous or toxic chemicals, materials, substances or hazardous waste of any kind. Neither the Property, the soil making up any portion thereof, nor the ground water thereunder making up any portion thereof shall be contaminated so as to be subject to any "clean-up", or similar requirement, regulation, ordinance, or law of governmental authority, which would in any way inhibit, impair, delay or increase the cost of the improvement, operation, or use of the improvement, operation, or use of the Property. Borrower will not install, or allow to remain upon the Property, any chemical, material or substance, exposure to which is prohibited, limited or regulated by any federal, state, county, regional or local authority, or which, even if not so regulated, may or could pose a hazard to the health and safety of the occupants of the Property or to the owners of the Property.
10. **Information/Other Documentation.** Borrower agrees to disclose to Lender in writing, on demand, the names of all persons with whom Borrower or Contractor have contracted, or intended to contract, for the furnishing of labor and materials for the construction of the improvements. Borrower agrees to obtain and

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Residential Construction Loan Borrower's Affidavit (Borrower's Name)



furnish all such bonds, lien waivers surveys, releases and other documents as Lender may deem necessary or may request from time to time.

11. **Borrower's Financial Status.** That there are no pending lawsuits, judgments or garnishments against Borrower which may in any way impair the ability of Borrower to fully perform all obligations provided in the Contract or Construction Loan Agreement, or which may affect the Property, Contract, or Security Instrument. All warranties, representations and certifications made, and all information and material submitted or caused to be submitted to Lender in connection with the Loan are true and correct, and there have been no material changes in the conditions affecting any of such warranties, representations, certifications, information or material prior to the date of this Affidavit.
12. **Covenants of Borrower.** The execution and delivery of all documents executed or delivered by or on behalf of Borrower and pertaining to the Loan have been duly authorized and approved by the party executing such documents and constitute the valid and binding obligations of Borrower enforceable in accordance with their respective terms, and the payment or performance thereof will be subject to no offsets, claims or defenses of which Borrower is aware. Borrower shall perform all obligations under the Contract, Note and Security Instrument, and promptly pay when due, from the proceeds of the Loan, all costs, charges and expenses, incurred in connection with the construction of improvements. Borrower shall keep the Property free and clear of any and all liens other than the Mechanic's Lien Contract as renewed and extended by the Security Instrument, and protect the Property and improvements from events and circumstances which would cause said Property or improvements to decrease in value.
13. **Reimbursement.** To reimburse lender for all expenses of any kind which may be incurred by Lender in connection with or arising out of the Loan, and that Lender may deduct from any advance to be made, any amount necessary for the payment of any unpaid interest owing to Lender or any fees, expenses, charges, liens, or encumbrances relating to the construction of the improvements or upon the Property, or any other amounts necessary for the payment of the cost of constructing the improvements, and all sums so deducted or applied shall be deemed advances under the Loan Agreement.
14. **Indemnification.** That Borrower herewith indemnifies and holds Lender harmless from any and all actions, claims, demands, damages, costs, expenses, and other liabilities, including, but not limited to, attorney's fees, which Lender may incur that in any way relate to or arise out of the construction of the Improvements.

Borrower understands that this Affidavit is made for the purpose of inducing the Lender to advance the money pursuant to the terms of the Loan documents, and the Lender is relying upon the truth and accuracy of the statements made in this Affidavit in advancing such loan proceeds. Further, Borrower agrees to indemnify and save Lender harmless against costs, damages, attorney's fees, expenses and liabilities which it may incur or sustain in connection with the incorrectness of any of these representations or any court action arising therefrom and will pay the same upon demand. Borrower further agrees to indemnify and save Lender harmless from any claims by or against the Contractor or any subcontractors or material suppliers.

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Signature Date  
**Isaac Newton**

\_\_\_\_\_  
Signature Date  
**Phyllis Newton**

**Residential Construction Loan Borrower's Affidavit (Borrower's Name)**

[Sign Originals Only]

SUBSCRIBED AND SWORN TO BEFORE ME on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by **Isaac Newton and Phyllis Newton.**

\_\_\_\_\_  
Notary Public  
Printed Name of Notary: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

Lender: **Lender One**  
Borrower: **Isaac Newton and Phyllis Newton, husband and wife**  
Contractor: **Custom Homes, LLC**  
Property: **100 Main Street, Arlington, Texas 76017**

## **Residential Construction Loan Contractor's Affidavit**

**Loan # 112233**

**BEFORE ME**, the undersigned authority, on this day personally appeared the undersigned (hereinafter called "**Contractor**"), personally known to me to be the person (if an individual) or authorized officer, employee or agent of the business entity whose name is subscribed hereto, and upon his oath deposes and states in connection with a transaction involving the construction of certain Improvements on the property ("**Property**") described above:

**Contractor** for itself and for all subcontractors claiming under **Contractor**, and for each of their respective successors and assigns hereby warrants and represents that the following statements are true and correct:

1. **Reliance.** The **Contractor** has been advised by the **Lender** that **Lender** is relying upon the recitals herein contained in connection with a mortgage loan, and that this **Affidavit** has been executed by Contractor for the purpose of (i) inducing **Lender's** reliance on the recitals herein contained, and (ii) inducing **Lender** to advance funds under the **Residential Construction Loan Agreement** ("**Construction Loan Agreement**") executed by **Lender** and **Borrower**.
2. **No Work Performed.** No work of any kind (including the destruction or removal of any existing improvements, site work, clearing, grubbing, draining, or fencing of the land) has been commenced or performed on the **Property** and no equipment, or materials have been delivered to the **Property** for any purpose whatsoever.
3. **No Contract Filed.** No written contract or oral agreement regarding the construction of all or any portion of the improvements or a memorandum or affidavit thereof has been recorded by or for **Contractor** in the county where the **Property** is located or in any other county. No contract, or any memorandum or affidavit thereof, for the construction of any improvements, performance of labor, furnishing of materials or providing of specially fabricated materials in connection with the contemplated construction has, to the knowledge of **Contractor**, been filed by or for a subcontractor in the county where the Property is located or in any other county.
4. **Construction Cost.** To the best of **Contractor's** knowledge and belief, the improvement construction costs as detailed in the Draw Schedule and Construction Loan Advance Request attached hereto as EXHIBIT A and made a part hereof are accurate and consistent with Contractor's agreement with **Borrower**.
5. **Continued Performance.** Upon receipt of written notice from **Lender** that **Borrower** is in default to **Lender** and instruction to continue work on Lender's behalf, **Contractor** shall continue work on the **Property** provided that **Contractor** shall be reimbursed by Lender in accordance with its agreement with **Borrower**.
6. **Lender Not Liable.** Nothing herein shall be construed to impose upon Lender any duty to advance the proceeds of the loan to the **Contractor** in accordance with contractor's agreement with **Borrower** or the terms of the **Construction Loan Agreement**. **Contractor** acknowledges that Lender is obligated under the **Construction Loan Agreement** only to **Borrower** and to no other person or entity.

7. **Building Permits.** Any and all approvals, permits or licenses (including, without limitation, a building permit) for the clearing and grading of the **Property**, the preparation of the surface and subsurface of the Property, and the placement, appearance and construction of the improvements, have been applied for and received by **Contractor**, in either the name of **Contractor** or **Borrower**.

8. **Change Orders.** Contractor shall not perform any work under any change order that decreases the contract price, increases the contract price by more than \$5,000, or materially changes the scope of work without first securing Lender's written consent to such change order. Lender's written consent shall not constitute an assumption by Lender of any obligations, unless such obligations are expressly set forth in such consent.

9. **Independent Contractor.** Contractor hereby covenants and warrants that all work performed by **Contractor** shall be as an independent contractor under the sole supervision, management, direction and control of **Contractor** and not as an employee, partner, agent or joint venturer of Lender. **Contractor** further agrees at all times to maintain in full force and effect Builder's Risk Insurance. Contractor agrees that it will comply with any and all applicable State and Federal laws now in force and which may hereafter become effective and applicable, including but not limited to laws and or regulations regarding Unemployment Insurance, Social Security, Old Age Pension, Wage and Hour, the Federal Labor Standards Act, OSHA and EEOC requirements.

10. **Hazardous Waste.** To **Contractor's** knowledge there are no hazardous wastes or toxic substances on or beneath the surface of the Property, excepting as applicable, such utilities as normally serve a residential property. **Contractor** will cause all chemicals, compounds and building materials to be used, applied, stored and disposed of in strict accordance with manufacturer's directions and government regulations.

11. **Subordination.** **Contractor** hereby expressly subordinates, to the extent that Lender advances sums pursuant to the **Residential Construction Loan Agreement**, all contractual, statutory and constitutional mechanic's, artisan's and materialman's liens to which **Contractor** may be or become entitled to any liens and security interests securing the loan contemplated by the **Construction Loan Agreement**. Such subordination includes any and all increases, renewals, modifications, extensions, substitutions, replacements and/or consolidation of the Security Instrument securing such Loan.

This **Affidavit** may not be modified orally or in any manner other than by an agreement in writing signed by the **Lender** and **Contractor** or their respective successors and assigns. This **Affidavit** shall inure to the benefit of and be binding upon the **Lender** and **Contractor**, their successors and assigns, and any purchasers at foreclosure of the Property, and their respective heirs, personal representatives, successors and assigns. This **Affidavit** shall be construed in accordance with the laws of the State in which the **Property** is located and the laws of the United States applicable to transactions in said state.

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**Custom Homes, LLC**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**By: Mr. President**

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Residential Construction Contractor's Affidavit

SUBSCRIBED AND SWORN TO BEFORE ME on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by **By: Mr. President of Custom Homes, LLC, on behalf of said entity.**

\_\_\_\_\_  
Notary Public

Printed Name of Notary:\_\_\_\_\_

My Commission Expires:\_\_\_\_\_

Borrowers: **Isaac Newton and Phyllis Newton, husband and wife**  
Property: **100 Main Street, Arlington, Texas 76017**  
Loan No.: **Loan # 112233**  
Case No.:

## Notice of Retainage

Under the Texas Property Code, during the progress of work under an original contract for which a mechanic's lien may be claimed and for 30 days after the work is completed, the Owner shall retain ten (10) percent of the contract price of the work, or ten (10) percent of the value of work, measured by the proportion that the work done bears to the work to be done, using the contract price or, if there is no contract price, using the reasonable value of the completed work.

The retained funds secure the payment of artisans and mechanics who perform labor or service and the payment of other persons who furnish material, material and labor, or specially fabricated material for any contractor, subcontractor, agent or receiver in the performance of the work.

A claimant has a lien on the related funds if the claimant sends the proper notices in the time and manner required, and files an affidavit claiming a lien not later than the 30th day after the work is completed.

If the owner fails or refuses to comply with the retainage requirement, the claimants complying with the law have a lien, at least to the extent of the amount that should have been retained from the original contract under which they are claiming, against the house, building structure, fixture or improvement and all of its properties and against the lot or lots of land necessarily connected.

The undersigned Owners of the above referenced property state that we have read and understood the above notice.

\_\_\_\_\_  
Signature Date  
**Isaac Newton**

\_\_\_\_\_  
Signature Date  
**Phyllis Newton**

*[Sign Originals Only]*

## Waiver of Retainage

I hereby request the Lender to disburse to Borrower and/or General Contractor all of the loan proceeds without regard to retainage. I understand that compliance with the retainage statute will then be the sole responsibility of the Owner of the property. Accordingly, and in consideration of the Lender financing the construction of the improvements described in the Mechanic's Lien Contract, I hereby release and relinquish any and all claims against the Lender by reason of Lender's failure to withhold retainage and indemnify and agree to hold Lender harmless from and against all claims arising out of any failure by Lender to withhold retainage, including but not limited to its reasonable attorney's fees, costs and expenses incurred in defense of any claim based on an assertion of Lender liability arising from the presence or absence of any retainage.

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Signature

**Isaac Newton**

Date

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Signature

**Phyllis Newton**

Date

Lender: **Lender One**  
Borrower: **Isaac Newton and Phyllis Newton, husband and wife**  
Property: **100 Main Street, Arlington, Texas 76017**

## **Collateral Protection Insurance Notice (Texas)**

**Loan # 112233**

Pursuant to Texas law (Tex. Finance Code § 307.052), Lender is required to give the following notice at the time the credit agreement is executed.

You have entered into a credit agreement that requires you to maintain Collateral Protection Insurance for the above property. As part of this agreement, you are required to:

1. **Keep the collateral insured against damage in the amount the Lender specifies;**
2. **Purchase the insurance from an insurer that is authorized to do business in this state or an eligible surplus lines insurer;**
3. **Name Lender as the party to be paid under the policy in the event of a loss; and**
4. **If required by Lender, deliver to Lender a copy of the policy and proof of the payment of premiums.**

If you fail to meet any requirement listed above, Lender may obtain Collateral Protection Insurance on your behalf and at your expense.

### **ACKNOWLEDGMENT**

I/We hereby acknowledge receipt of this Collateral Protection Insurance Notice and further acknowledge that I/we understand its provisions.

\_\_\_\_\_  
Signature Date  
**Isaac Newton**

\_\_\_\_\_  
Signature Date  
**Phyllis Newton**

*[Sign Originals Only]*



# Texas Consumer Complaint Process Notice State Chartered Bank & Trusts

The **Lender One** is chartered under the laws of the State of Texas and by state law is subject to regulatory oversight by the Texas Department of Banking. Any consumer wishing to file a complaint against the **Lender One** should contact the **Consumer Complaints Administrator** of the Texas Department of Banking through one of the means indicated below:

<b>In Person or by U.S. Mail:</b>	<b>2601 N. Lamar Boulevard, Suite 300 Austin, Texas 78705-4294.</b>
<b>Telephone No.:</b>	<b>877-276-5554 (Toll Free)</b>
<b>Fax No.:</b>	<b>512-475-1313</b>
<b>E-mail:</b>	<b>consumer.complaints@dob.texas.gov</b>
<b>Website:</b>	<b><a href="http://www.dob.Texas.gov/bnt/ccbank.htm">http://www.dob.Texas.gov/bnt/ccbank.htm</a></b>

By signing below, I/we acknowledge receipt of a copy of this Texas Consumer Complaint Process Notice.

\_\_\_\_\_  
Signature Date  
**Isaac Newton**

\_\_\_\_\_  
Signature Date  
**Phyllis Newton**

*[Sign Originals Only]*

Settlement Agent:

Please complete Social Security Number(s) on each W-9 attached.

Thank you.

## Request for Taxpayer Identification Number and Certification

**Give Form to the  
 requester. Do not  
 send to the IRS.**

<b>Print or type See Specific Instructions on page 2.</b>	Name (as shown on your income tax return) <b>Isaac Newton</b>	
	Business name/disregarded entity name, if different from above	
	Check appropriate box for federal tax classification: <input checked="" type="checkbox"/> Individual/sole proprietor <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate  <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶  <input type="checkbox"/> Other (see instructions) ▶	
	<input type="checkbox"/> Exempt payee	
	Address (number, street, and apt. or suite no.) <b>100 Main Street</b>	Requester's name and address (optional)
City, state, and ZIP code <b>Arlington, TX 76017</b>		
List account number(s) here (optional)		

### Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Social security number									

**Note.** If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Employer identification number									

### Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (defined below).

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 4.

<b>Sign Here</b>	Signature of U.S. person ▶	Date ▶
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### General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

#### Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

**Note.** If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

**Definition of a U.S. person.** For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

**Special rules for partnerships.** Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,
- The U.S. grantor or other owner of a grantor trust and not the trust, and
- The U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

**Foreign person.** If you are a foreign person, do not use Form W-9. Instead, use the appropriate Form W-8 (see Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

**Nonresident alien who becomes a resident alien.** Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a “saving clause.” Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

**Example.** Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity not subject to backup withholding, give the requester the appropriate completed Form W-8.

**What is backup withholding?** Persons making certain payments to you must under certain conditions withhold and pay to the IRS a percentage of such payments. This is called “backup withholding.” Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

#### **Payments you receive will be subject to backup withholding if:**

1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the Part II instructions on page 3 for details),
3. The IRS tells the requester that you furnished an incorrect TIN,
4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or
5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See the instructions below and the separate Instructions for the Requester of Form W-9.

Also see *Special rules for partnerships* on page 1.

### **Updating Your Information**

You must provide updated information to any person to whom you claimed to be an exempt payee if you are no longer an exempt payee and anticipate receiving reportable payments in the future from this person. For example, you may need to provide updated information if you are a C corporation that elects to be an S corporation, or if you no longer are tax exempt. In addition, you must furnish a new Form W-9 if the name or TIN changes for the account, for example, if the grantor of a grantor trust dies.

### **Penalties**

**Failure to furnish TIN.** If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

**Civil penalty for false information with respect to withholding.** If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

**Criminal penalty for falsifying information.** Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

**Misuse of TINs.** If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

### **Specific Instructions**

#### **Name**

If you are an individual, you must generally enter the name shown on your income tax return. However, if you have changed your last name, for instance, due to marriage without informing the Social Security Administration of the name change, enter your first name, the last name shown on your social security card, and your new last name.

If the account is in joint names, list first, and then circle, the name of the person or entity whose number you entered in Part I of the form.

**Sole proprietor.** Enter your individual name as shown on your income tax return on the “Name” line. You may enter your business, trade, or “doing business as (DBA)” name on the “Business name/disregarded entity name” line.

**Partnership, C Corporation, or S Corporation.** Enter the entity's name on the “Name” line and any business, trade, or “doing business as (DBA) name” on the “Business name/disregarded entity name” line.

**Disregarded entity.** Enter the owner's name on the “Name” line. The name of the entity entered on the “Name” line should never be a disregarded entity. The name on the “Name” line must be the name shown on the income tax return on which the income will be reported. For example, if a foreign LLC that is treated as a disregarded entity for U.S. federal tax purposes has a domestic owner, the domestic owner's name is required to be provided on the “Name” line. If the direct owner of the entity is also a disregarded entity, enter the first owner that is not disregarded for federal tax purposes. Enter the disregarded entity's name on the “Business name/disregarded entity name” line. If the owner of the disregarded entity is a foreign person, you must complete an appropriate Form W-8.

**Note.** Check the appropriate box for the federal tax classification of the person whose name is entered on the “Name” line (Individual/sole proprietor, Partnership, C Corporation, S Corporation, Trust/estate).

**Limited Liability Company (LLC).** If the person identified on the “Name” line is an LLC, check the “Limited liability company” box only and enter the appropriate code for the tax classification in the space provided. If you are an LLC that is treated as a partnership for federal tax purposes, enter “P” for partnership. If you are an LLC that has filed a Form 8832 or a Form 2553 to be taxed as a corporation, enter “C” for C corporation or “S” for S corporation. If you are an LLC that is disregarded as an entity separate from its owner under Regulation section 301.7701-3 (except for employment and excise tax), do not check the LLC box unless the owner of the LLC (required to be identified on the “Name” line) is another LLC that is not disregarded for federal tax purposes. If the LLC is disregarded as an entity separate from its owner, enter the appropriate tax classification of the owner identified on the “Name” line.

**Other entities.** Enter your business name as shown on required federal tax documents on the "Name" line. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on the "Business name/disregarded entity name" line.

## Exempt Payee

If you are exempt from backup withholding, enter your name as described above and check the appropriate box for your status, then check the "Exempt payee" box in the line following the "Business name/disregarded entity name," sign and date the form.

Generally, individuals (including sole proprietors) are not exempt from backup withholding. Corporations are exempt from backup withholding for certain payments, such as interest and dividends.

**Note.** If you are exempt from backup withholding, you should still complete this form to avoid possible erroneous backup withholding.

The following payees are exempt from backup withholding:

1. An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2),
  2. The United States or any of its agencies or instrumentalities,
  3. A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or instrumentalities,
  4. A foreign government or any of its political subdivisions, agencies, or instrumentalities, or
  5. An international organization or any of its agencies or instrumentalities.
- Other payees that may be exempt from backup withholding include:
6. A corporation,
  7. A foreign central bank of issue,
  8. A dealer in securities or commodities required to register in the United States, the District of Columbia, or a possession of the United States,
  9. A futures commission merchant registered with the Commodity Futures Trading Commission,
  10. A real estate investment trust,
  11. An entity registered at all times during the tax year under the Investment Company Act of 1940,
  12. A common trust fund operated by a bank under section 584(a),
  13. A financial institution,
  14. A middleman known in the investment community as a nominee or custodian, or
  15. A trust exempt from tax under section 664 or described in section 4947.

The following chart shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 15.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt payees except for 9
Broker transactions	Exempt payees 1 through 5 and 7 through 13. Also, C corporations.
Barter exchange transactions and patronage dividends	Exempt payees 1 through 5
Payments over \$600 required to be reported and direct sales over \$5,000 <sup>1</sup>	Generally, exempt payees 1 through 7 <sup>2</sup>

<sup>1</sup> See Form 1099-MISC, Miscellaneous Income, and its instructions.

<sup>2</sup> However, the following payments made to a corporation and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, gross proceeds paid to an attorney, and payments for services paid by a federal executive agency.

## Part I. Taxpayer Identification Number (TIN)

**Enter your TIN in the appropriate box.** If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN. However, the IRS prefers that you use your SSN.

If you are a single-member LLC that is disregarded as an entity separate from its owner (see *Limited Liability Company (LLC)* on page 2), enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN.

**Note.** See the chart on page 4 for further clarification of name and TIN combinations.

**How to get a TIN.** If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local Social Security Administration office or get this form online at [www.ssa.gov](http://www.ssa.gov). You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at [www.irs.gov/businesses](http://www.irs.gov/businesses) and clicking on Employer Identification Number (EIN) under Starting a Business. You can get Forms W-7 and SS-4 from the IRS by visiting [IRS.gov](http://IRS.gov) or by calling 1-800-TAX-FORM (1-800-829-3676).

If you are asked to complete Form W-9 but do not have a TIN, write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

**Note.** Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

**Caution:** A disregarded domestic entity that has a foreign owner must use the appropriate Form W-8.

## Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if item 1, below, and items 4 and 5 on page 4 indicate otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). In the case of a disregarded entity, the person identified on the "Name" line must sign. Exempt payees, see *Exempt Payee* on page 3.

**Signature requirements.** Complete the certification as indicated in items 1 through 3, below, and items 4 and 5 on page 4.

**1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983.** You must give your correct TIN, but you do not have to sign the certification.

**2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983.** You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

**3. Real estate transactions.** You must sign the certification. You may cross out item 2 of the certification.

**4. Other payments.** You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

**5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions.** You must give your correct TIN, but you do not have to sign the certification.

### What Name and Number To Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account)	The actual owner of the account or, if combined funds, the first individual on the account <sup>1</sup>
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor <sup>2</sup>
4. a. The usual revocable savings trust (grantor is also trustee) b. So-called trust account that is not a legal or valid trust under state law	The grantor-trustee <sup>1</sup> The actual owner <sup>1</sup>
5. Sole proprietorship or disregarded entity owned by an individual	The owner <sup>3</sup>
6. Grantor trust filing under Optional Form 1099 Filing Method 1 (see Regulation section 1.671-4(b)(2)(i)(A))	The grantor*
For this type of account:	Give name and EIN of:
7. Disregarded entity not owned by an individual	The owner
8. A valid trust, estate, or pension trust	Legal entity <sup>4</sup>
9. Corporation or LLC electing corporate status on Form 8832 or Form 2553	The corporation
10. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
11. Partnership or multi-member LLC	The partnership
12. A broker or registered nominee	The broker or nominee
13. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity
14. Grantor trust filing under the Form 1041 Filing Method or the Optional Form 1099 Filing Method 2 (see Regulation section 1.671-4(b)(2)(i)(B))	The trust

<sup>1</sup> List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

<sup>2</sup> Circle the minor's name and furnish the minor's SSN.

<sup>3</sup> You must show your individual name and you may also enter your business or "DBA" name on the "Business name/disregarded entity" name line. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

<sup>4</sup> List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see *Special rules for partnerships* on page 1.

\*Note. Grantor also must provide a Form W-9 to trustee of trust.

**Note.** If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

### Secure Your Tax Records from Identity Theft

Identity theft occurs when someone uses your personal information such as your name, social security number (SSN), or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN,
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

If your tax records are affected by identity theft and you receive a notice from the IRS, respond right away to the name and phone number printed on the IRS notice or letter.

If your tax records are not currently affected by identity theft but you think you are at risk due to a lost or stolen purse or wallet, questionable credit card activity or credit report, contact the IRS Identity Theft Hotline at 1-800-908-4490 or submit Form 14039.

For more information, see Publication 4535, Identity Theft Prevention and Victim Assistance.

Victims of identity theft who are experiencing economic harm or a system problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

#### Protect yourself from suspicious emails or phishing schemes.

Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to [phishing@irs.gov](mailto:phishing@irs.gov). You may also report misuse of the IRS name, logo, or other IRS property to the Treasury Inspector General for Tax Administration at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at: [spam@uce.gov](mailto:spam@uce.gov) or contact them at [www.ftc.gov/idtheft](http://www.ftc.gov/idtheft) or 1-877-IDTHEFT (1-877-438-4338).

Visit [IRS.gov](http://IRS.gov) to learn more about identity theft and how to reduce your risk.

### Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons (including federal agencies) who are required to file information returns with the IRS to report interest, dividends, or certain other income paid to you; mortgage interest you paid; the acquisition or abandonment of secured property; the cancellation of debt; or contributions you made to an IRA, Archer MSA, or HSA. The person collecting this form uses the information on the form to file information returns with the IRS, reporting the above information. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation and to cities, states, the District of Columbia, and U.S. possessions for use in administering their laws. The information also may be disclosed to other countries under a treaty, to federal and state agencies to enforce civil and criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. You must provide your TIN whether or not you are required to file a tax return. Under section 3406, payers must generally withhold a percentage of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to the payer. Certain penalties may also apply for providing false or fraudulent information.

## Request for Taxpayer Identification Number and Certification

**Give Form to the  
requester. Do not  
send to the IRS.**

Print or type See Specific Instructions on page 2.	Name (as shown on your income tax return) <b>Phyllis Newton</b>	
	Business name/disregarded entity name, if different from above	
	Check appropriate box for federal tax classification: <input checked="" type="checkbox"/> Individual/sole proprietor <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ <input type="checkbox"/> Other (see instructions) ▶	
	<input type="checkbox"/> Exempt payee	
	Address (number, street, and apt. or suite no.) <b>100 Main Street</b>	Requester's name and address (optional)
City, state, and ZIP code <b>Arlington, TX 76017</b>		
List account number(s) here (optional)		

### Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Social security number									

**Note.** If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Employer identification number									

### Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (defined below).

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 4.

<b>Sign Here</b>	Signature of U.S. person ▶	Date ▶
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### General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

#### Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

**Note.** If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

**Definition of a U.S. person.** For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

**Special rules for partnerships.** Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,
- The U.S. grantor or other owner of a grantor trust and not the trust, and
- The U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

**Foreign person.** If you are a foreign person, do not use Form W-9. Instead, use the appropriate Form W-8 (see Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

**Nonresident alien who becomes a resident alien.** Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a “saving clause.” Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

**Example.** Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity not subject to backup withholding, give the requester the appropriate completed Form W-8.

**What is backup withholding?** Persons making certain payments to you must under certain conditions withhold and pay to the IRS a percentage of such payments. This is called “backup withholding.” Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

#### **Payments you receive will be subject to backup withholding if:**

1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the Part II instructions on page 3 for details),
3. The IRS tells the requester that you furnished an incorrect TIN,
4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or
5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See the instructions below and the separate Instructions for the Requester of Form W-9.

Also see *Special rules for partnerships* on page 1.

### **Updating Your Information**

You must provide updated information to any person to whom you claimed to be an exempt payee if you are no longer an exempt payee and anticipate receiving reportable payments in the future from this person. For example, you may need to provide updated information if you are a C corporation that elects to be an S corporation, or if you no longer are tax exempt. In addition, you must furnish a new Form W-9 if the name or TIN changes for the account, for example, if the grantor of a grantor trust dies.

### **Penalties**

**Failure to furnish TIN.** If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

**Civil penalty for false information with respect to withholding.** If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

**Criminal penalty for falsifying information.** Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

**Misuse of TINs.** If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

### **Specific Instructions**

#### **Name**

If you are an individual, you must generally enter the name shown on your income tax return. However, if you have changed your last name, for instance, due to marriage without informing the Social Security Administration of the name change, enter your first name, the last name shown on your social security card, and your new last name.

If the account is in joint names, list first, and then circle, the name of the person or entity whose number you entered in Part I of the form.

**Sole proprietor.** Enter your individual name as shown on your income tax return on the “Name” line. You may enter your business, trade, or “doing business as (DBA)” name on the “Business name/disregarded entity name” line.

**Partnership, C Corporation, or S Corporation.** Enter the entity's name on the “Name” line and any business, trade, or “doing business as (DBA) name” on the “Business name/disregarded entity name” line.

**Disregarded entity.** Enter the owner's name on the “Name” line. The name of the entity entered on the “Name” line should never be a disregarded entity. The name on the “Name” line must be the name shown on the income tax return on which the income will be reported. For example, if a foreign LLC that is treated as a disregarded entity for U.S. federal tax purposes has a domestic owner, the domestic owner's name is required to be provided on the “Name” line. If the direct owner of the entity is also a disregarded entity, enter the first owner that is not disregarded for federal tax purposes. Enter the disregarded entity's name on the “Business name/disregarded entity name” line. If the owner of the disregarded entity is a foreign person, you must complete an appropriate Form W-8.

**Note.** Check the appropriate box for the federal tax classification of the person whose name is entered on the “Name” line (Individual/sole proprietor, Partnership, C Corporation, S Corporation, Trust/estate).

**Limited Liability Company (LLC).** If the person identified on the “Name” line is an LLC, check the “Limited liability company” box only and enter the appropriate code for the tax classification in the space provided. If you are an LLC that is treated as a partnership for federal tax purposes, enter “P” for partnership. If you are an LLC that has filed a Form 8832 or a Form 2553 to be taxed as a corporation, enter “C” for C corporation or “S” for S corporation. If you are an LLC that is disregarded as an entity separate from its owner under Regulation section 301.7701-3 (except for employment and excise tax), do not check the LLC box unless the owner of the LLC (required to be identified on the “Name” line) is another LLC that is not disregarded for federal tax purposes. If the LLC is disregarded as an entity separate from its owner, enter the appropriate tax classification of the owner identified on the “Name” line.



**Other entities.** Enter your business name as shown on required federal tax documents on the "Name" line. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on the "Business name/disregarded entity name" line.

## Exempt Payee

If you are exempt from backup withholding, enter your name as described above and check the appropriate box for your status, then check the "Exempt payee" box in the line following the "Business name/disregarded entity name," sign and date the form.

Generally, individuals (including sole proprietors) are not exempt from backup withholding. Corporations are exempt from backup withholding for certain payments, such as interest and dividends.

**Note.** If you are exempt from backup withholding, you should still complete this form to avoid possible erroneous backup withholding.

The following payees are exempt from backup withholding:

1. An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2),
  2. The United States or any of its agencies or instrumentalities,
  3. A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or instrumentalities,
  4. A foreign government or any of its political subdivisions, agencies, or instrumentalities, or
  5. An international organization or any of its agencies or instrumentalities.
- Other payees that may be exempt from backup withholding include:
6. A corporation,
  7. A foreign central bank of issue,
  8. A dealer in securities or commodities required to register in the United States, the District of Columbia, or a possession of the United States,
  9. A futures commission merchant registered with the Commodity Futures Trading Commission,
  10. A real estate investment trust,
  11. An entity registered at all times during the tax year under the Investment Company Act of 1940,
  12. A common trust fund operated by a bank under section 584(a),
  13. A financial institution,
  14. A middleman known in the investment community as a nominee or custodian, or
  15. A trust exempt from tax under section 664 or described in section 4947.

The following chart shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 15.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt payees except for 9
Broker transactions	Exempt payees 1 through 5 and 7 through 13. Also, C corporations.
Barter exchange transactions and patronage dividends	Exempt payees 1 through 5
Payments over \$600 required to be reported and direct sales over \$5,000 <sup>1</sup>	Generally, exempt payees 1 through 7 <sup>2</sup>

<sup>1</sup> See Form 1099-MISC, Miscellaneous Income, and its instructions.

<sup>2</sup> However, the following payments made to a corporation and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, gross proceeds paid to an attorney, and payments for services paid by a federal executive agency.

## Part I. Taxpayer Identification Number (TIN)

**Enter your TIN in the appropriate box.** If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN. However, the IRS prefers that you use your SSN.

If you are a single-member LLC that is disregarded as an entity separate from its owner (see *Limited Liability Company (LLC)* on page 2), enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN.

**Note.** See the chart on page 4 for further clarification of name and TIN combinations.

**How to get a TIN.** If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local Social Security Administration office or get this form online at [www.ssa.gov](http://www.ssa.gov). You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at [www.irs.gov/businesses](http://www.irs.gov/businesses) and clicking on Employer Identification Number (EIN) under Starting a Business. You can get Forms W-7 and SS-4 from the IRS by visiting [IRS.gov](http://IRS.gov) or by calling 1-800-TAX-FORM (1-800-829-3676).

If you are asked to complete Form W-9 but do not have a TIN, write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

**Note.** Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

**Caution:** A disregarded domestic entity that has a foreign owner must use the appropriate Form W-8.

## Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if item 1, below, and items 4 and 5 on page 4 indicate otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). In the case of a disregarded entity, the person identified on the "Name" line must sign. Exempt payees, see *Exempt Payee* on page 3.

**Signature requirements.** Complete the certification as indicated in items 1 through 3, below, and items 4 and 5 on page 4.

**1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983.** You must give your correct TIN, but you do not have to sign the certification.

**2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983.** You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

**3. Real estate transactions.** You must sign the certification. You may cross out item 2 of the certification.

**4. Other payments.** You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

**5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions.** You must give your correct TIN, but you do not have to sign the certification.

### What Name and Number To Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account)	The actual owner of the account or, if combined funds, the first individual on the account <sup>1</sup>
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor <sup>2</sup>
4. a. The usual revocable savings trust (grantor is also trustee) b. So-called trust account that is not a legal or valid trust under state law	The grantor-trustee <sup>1</sup> The actual owner <sup>1</sup>
5. Sole proprietorship or disregarded entity owned by an individual	The owner <sup>3</sup>
6. Grantor trust filing under Optional Form 1099 Filing Method 1 (see Regulation section 1.671-4(b)(2)(i)(A))	The grantor*
For this type of account:	Give name and EIN of:
7. Disregarded entity not owned by an individual	The owner
8. A valid trust, estate, or pension trust	Legal entity <sup>4</sup>
9. Corporation or LLC electing corporate status on Form 8832 or Form 2553	The corporation
10. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
11. Partnership or multi-member LLC	The partnership
12. A broker or registered nominee	The broker or nominee
13. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity
14. Grantor trust filing under the Form 1041 Filing Method or the Optional Form 1099 Filing Method 2 (see Regulation section 1.671-4(b)(2)(i)(B))	The trust

<sup>1</sup> List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

<sup>2</sup> Circle the minor's name and furnish the minor's SSN.

<sup>3</sup> You must show your individual name and you may also enter your business or "DBA" name on the "Business name/disregarded entity" name line. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

<sup>4</sup> List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see *Special rules for partnerships* on page 1.

\*Note. Grantor also must provide a Form W-9 to trustee of trust.

**Note.** If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

### Secure Your Tax Records from Identity Theft

Identity theft occurs when someone uses your personal information such as your name, social security number (SSN), or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN,
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

If your tax records are affected by identity theft and you receive a notice from the IRS, respond right away to the name and phone number printed on the IRS notice or letter.

If your tax records are not currently affected by identity theft but you think you are at risk due to a lost or stolen purse or wallet, questionable credit card activity or credit report, contact the IRS Identity Theft Hotline at 1-800-908-4490 or submit Form 14039.

For more information, see Publication 4535, Identity Theft Prevention and Victim Assistance.

Victims of identity theft who are experiencing economic harm or a system problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

#### Protect yourself from suspicious emails or phishing schemes.

Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to [phishing@irs.gov](mailto:phishing@irs.gov). You may also report misuse of the IRS name, logo, or other IRS property to the Treasury Inspector General for Tax Administration at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at: [spam@uce.gov](mailto:spam@uce.gov) or contact them at [www.ftc.gov/idtheft](http://www.ftc.gov/idtheft) or 1-877-IDTHEFT (1-877-438-4338).

Visit [IRS.gov](http://IRS.gov) to learn more about identity theft and how to reduce your risk.

### Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons (including federal agencies) who are required to file information returns with the IRS to report interest, dividends, or certain other income paid to you; mortgage interest you paid; the acquisition or abandonment of secured property; the cancellation of debt; or contributions you made to an IRA, Archer MSA, or HSA. The person collecting this form uses the information on the form to file information returns with the IRS, reporting the above information. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation and to cities, states, the District of Columbia, and U.S. possessions for use in administering their laws. The information also may be disclosed to other countries under a treaty, to federal and state agencies to enforce civil and criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. You must provide your TIN whether or not you are required to file a tax return. Under section 3406, payers must generally withhold a percentage of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to the payer. Certain penalties may also apply for providing false or fraudulent information.

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OF THE PACKAGE**