

## CONSTRUCTION CONTRACT

**THIS CONSTRUCTION CONTRACT** (this "**Contract**") is entered into this 7th day of January, 2021, by and between Gem Contractors, Inc., an Oklahoma corporation ("**Builder**"), and Robert Vesel, Prisila Vesel, married ("**Owner**").

For and in consideration of mutual covenants, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner and Builder hereby agree as follows:

**Section 1. The Property** Owner owns the real property located in the City of Tulsa, Tulsa County, Oklahoma, more particularly described as Lot 7 block 7 Hyde park at Tulsa hills (with a street address of 8502 s Phoenix Ave) (the "**Property**").

**Section 2. Construction of House.** Builder will construct a house (the "**House**") on the Property in substantial compliance with the following (collectively, the "**Contract Documents**"):

- (a) this Contract and all exhibits attached hereto,
- (b) the building plans and/or the Floor Plan of the House, as applicable, attached hereto as **Exhibit A**,
- (c) the specifications, attached hereto as **Exhibit B**, and
- (d) the list of cost allowances, attached hereto as **Exhibit C**.

All Exhibits to this Contract are incorporated by reference and made a part of this Contract as if fully set forth herein. Builder shall begin construction of the House within the time provided in Section 3 of this Agreement. Once begun, the Builder will diligently pursue completion of construction of the House. Owner understands that Builder may substitute like-quality building materials or change the plans and specifications and/or Floor Plan, for efficient construction of the House, without Owner's consent.

**Section 3. Financing Contingency.** Owner shall have 30 days from the date of this Contract (the "**Financing Contingency Period**") to obtain all financing necessary for the construction of the House. If Owner fails to terminate this Contract by delivering written notice to Builder during the Financing Contingency Period, if applicable, Owner may not terminate this Contract for failure to obtain financing. Owner will provide evidence satisfactory to Builder, including contacting Owner's financial institution and giving permission for Builder to verify with the financial institution Owner's ability to pay cash to construct the House. Builder may, at any time during the construction of the House, require Owner to provide additional confirmation of Owner's financial ability to construct the House, and such confirmation shall be provided to Builder in writing within five (5) business days of the request by Builder.

If Owner does not provide such confirmation, to Builder's satisfaction, Builder may terminate this Contract, retain the Down Payment, any amounts paid by Builder under the Draw Schedule, and any amounts paid to Builder by Owner through Change Orders, and neither party shall have any further obligation under this Contract. Builder agrees to commence construction of the House within a commercially reasonable time period after the waiver or



expiration of Owner's Financing Contingency Period.

**Section 4. Down Payment and Purchase Price.** Subject to adjustment as provided herein, the purchase price for construction of the House shall be \$ 231,000.00 (the "**Purchase Price**"), which will be payable by Owner, as follows:

- (a) \$10,000.00 (the "**Down Payment**") delivered by Owner to Builder upon the signing of this Contract, to be applied against the Purchase Price at Completion. Builder acknowledges receipt of the Down Payment which may be deposited in any account maintained by Builder;
- (b) Owner shall pay Builder the remainder of the Purchase Price in accordance with the draw schedule (the "**Draw Schedule**") set forth on **Exhibit D** attached hereto; and
- (c) any portion of the Purchase Price unpaid as of the Completion Date shall be paid by Owner to Builder by cash, cashier's check or certified funds at Completion.

**Section 5. Lien Notice.** Owner hereby acknowledges that: (i) no labor has heretofore been performed or material furnished as of the date of the execution of this Contract; (ii) they are not aware of any lien or other encumbrances having been filed and/or recorded against the Property; and (iii) Builder shall be entitled to file a lien against the Property in the event Builder is not paid in accordance with this Contract, the enforcement of which could result in the sale of the Property.

**Section 6. Site Conditions.** As a condition precedent to Builder's commencement of construction of the House, Owner shall provide to Builder: (i) at Builder's request, a current survey of the Property showing the boundary lines of the Property (which boundary lines shall be physically staked on the Property), all easements, all building setback lines and any other monuments or matter which would affect Builder's ability to construct the House on the Property; (ii) a copy of any building restrictions which affect the Property; and (iii) copies of any other documents which reflect matters which would affect or impair Builder's ability to construct the House on the Property.

**Section 7. Differing Site Conditions.** . A "Differing Site Condition" is a physical characteristic or unforeseen condition of the Property that materially changes the construction techniques from those reasonably expected at the time this Contract is executed. Before disturbing any Differing Site Condition, Builder shall notify Owner in writing of such condition, except in the case of eminent danger to persons or property. Owner shall investigate the Differing Site Condition within two (2) business days. If Owner and Builder agree that the Differing Site Condition will cause an increase in (i) Builder's cost of performance of any part of the work under this Contract or (ii) the time required for that work, then Builder and Owner shall execute a Change Order, as provided herein, to make appropriate adjustments to the Purchase Price. Owner's failure or refusal to investigate the Differing Site Condition, as provided in this Section 7, shall entitle Builder to cease all work on the House until such time as Owner completes the investigation and provides Builder with written acknowledgement of the Differing Site Condition. If the parties cannot agree on the existence or consequences of a Differing Site Condition, the parties will arbitrate the matter as provided in this Contract.

**Section 8. Access to Property and House.** Except for the Owner's rights listed below, Builder shall have



exclusive access to the Property during the term of this Contract. Owner shall at all times have access to the Property and the right to inspect the work. However, Owner acknowledges that construction sites are an inherently dangerous place, and that minor children should not be allowed on the Property until Completion. If Owner enters the Property during the course of construction, or if Owner allows any invitees, guests or children to enter the Property, Owner does so at their own risk, and Owner hereby releases Builder and does hereby indemnify and hold Builder harmless from any and all claims for injury or damage to their person or property, and to the person or property of any agent, employee, or invitee of Owner's or of any person accompanying Owner. Owner shall not in any manner interfere with work on the job nor with any trade contractor or worker. Owner will not communicate directly with Builder's workers, employees, agents or trade contractors regarding the means, method or manner in which they are to perform their work. Any such communication by Owner which results in additional work or cost shall result in a Change Order as defined in Section 10. If Owner delays the progress of the work, causing loss to Builder, Builder shall be entitled to reimbursement from Owner of such loss.

**Section 9. Dwelling Construction Standards.** The House shall be constructed in substantial compliance with: (i) the Plans and Specifications; (ii) applicable state and local building codes; and (iii) the "Standards for Residential Construction" provided in the Warranty. Whether or not associated with conditions covered by the Warranty, builder expressly disclaims all warranties, including but not limited to, any express or implied warranties related to the presence of mold, mildew, fungi, or spores. Owner agrees to hold Builder, its agents, employees, representatives and assigns, harmless from any or all loss, damage, claim, injury, loss of income, emotional distress, death, loss of use, loss of value, adverse health effects or any other effects, illness, allergic reaction which Owner, Owner's family, or invitees may sustain as a result of the presence of mold, mildew, fungi, or spores, which is or may be present in or associated with the House or the Property.

**Section 10. Change Orders.** Any requests for changes, variation, alterations, upgrades, deletions or additions from the Contract Documents shall require the mutual written agreement of Builder and Owner (each, a "Change Order"). Any items selected by Owner which exceed any cost allowances specified in the Contract Documents shall also be deemed a Change Order. Builder may elect not to accept any request by Owner for a Change Order, in Builder's sole discretion. Owner shall only request changes, variations, alterations, upgrades, deletions or additions to the Contract Documents from Builder, and Owner agrees not to issue instructions or negotiate for additional work with Builder's subcontractors, vendors or suppliers. Upon Builder's request, Owner shall pay in advance for any and all changes or alterations in the Contract Documents that increase the Purchase Price, plus 10.00% of the cost of such change or alteration. Additionally, Owner will pay Builder an administrative fee equal to \$100.00 per Change Order. The amount listed in a Change Order representing the cost of implementing a change is merely Builder's estimate of the cost of work to be performed or the materials to be purchased, and Owner agrees to pay Builder's actual cost plus the administrative fee . In Builder's sole discretion, Builder shall elect that Owner will either (a) pay Builder cash in advance for any Change Order, or (b) the Purchase Price for the construction of the House shall be increased by such amount. Owner acknowledges that the appraised value of the Property does not necessarily increase by the value or cost of any Change Order. Any sums paid or due by Owner to Builder pursuant to a Change Order shall not be refunded under any circumstances (even in the event of termination of this Contract by either party), and are separate from and in addition to the Down Payment and the Purchase Price. Builder acknowledges that Owner will need the prices of various options from the Builder in order to make decisions which



impact the cost and the construction of the House. Owner acknowledges that excessive requests for prices take valuable time from the Builder and its suppliers and subcontractors. Therefore, the Builder may assess an administrative fee of \$0.00 per price request. Builder will waive this administrative fee for the first 6 price requests. This provision to pay any overages due on any Change Orders shall survive this Contract and termination of this Contract.

**Section 11. Construction Delays.** Contractor agrees to diligently pursue the work through completion. Significant delays can and do result in any construction project. Owner understands that unexpected delay is common in residential construction. Such delays may include, but are not limited to: (1) any act by Owner or Owner's lender, if applicable, which causes or contributes to any delay in construction or any act of omission by Owner or Owner's lender, if applicable, and/or (2) any Differing Site Condition discovered, or any event of force majeure, act of God, fire or other casualty, delay in deliveries, strikes, boycotts, or the non-availability of materials, and/or (3) any other causes beyond Builder's reasonable control. Builder shall use good-faith reasonable efforts to comply with Owner's reasonable time constraints if the constraints have been communicated to Builder, but shall not be liable for any delay or failure in the performance beyond Builder's control.

OWNER WAIVES AND RELEASES BUILDER FOR ANY CONSEQUENTIAL DAMAGES, INCIDENTAL DAMAGES, DAMAGES FOR LOSS OF USE OF THE HOUSE OR PROPERTY OR DAMAGES FOR ANY DELAY OR FAILURE IN PERFORMANCE.

**Section 12. Punchlist; Inspections.** Prior to Completion, Owner shall inspect the House. If Owner is satisfied that the House is in substantial compliance with the Plans and Specifications, then Owner shall sign the Certificate of Acceptance (a copy of which is attached to this Contract as **Exhibit E**). Owner understands that Owner shall not occupy, or move any personal property into, the House until Owner has signed and delivered to Builder the Certificate of Acceptance. Owner will provide a signed detailed list (the "**Punchlist**") of any defects or uncompleted work or any repair or completion items at least one (1) day before the Completion. Failure to timely provide Builder with the Punchlist shall constitute absolute and complete acceptance of the House by Owner, and Builder will have no obligations to make repairs to the House except as otherwise described in the Warranty. After Builder and Owner agree on the Punchlist, Builder will remedy such items. If any Punchlist items cannot be completed before Completion, Builder shall have a reasonable time after Completion to complete any Punchlist items (in any event, Builder shall have at least sixty (60) days after Completion to complete the Punchlist items). All warranty work and repairs and completion of Punchlist items will be done Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m., except holidays. Owner must make arrangements to be at the House for warranty work to be performed. This Section 12 shall expressly survive the Completion and the termination of this Contract.

**Section 13. Completion.** "Completion" is defined in this Contract as satisfaction of both of the following: (i) a Certificate of Occupancy has been issued by the relevant municipal or county agency, where applicable; and (ii) the House has been constructed in substantial compliance with the Plans and Specifications. Within seven (7) days after Completion, Builder and Owner shall meet at a mutually agreed date, time and location to exchange the following: Builder shall provide Owner with: (i) applicable manufacturer's warranties and manuals; (ii) a



Subterranean Termite Soil Treatment Certification; and (iii) the Warranty, if not already delivered to Owner; the Owner shall deliver to the Builder: (i) the balance of the Purchase Price, via cashier's check or other certified funds; (ii) the Certificate of Acceptance (if not already delivered to Builder); and (iii) any other documents necessary to complete the Contract. If Owner fails or refuses to make full delivery of the Purchase Price by the Completion date, Owner shall pay Builder a per diem charge equal to one and one half percent (1 1/2%) per month of the unpaid Purchase Price, plus any other unpaid charges due (i.e., Change Orders, Price Requests , etc.) from the date of Completion until all such amounts are paid in full. Owner and Builder shall each pay their own attorney's fees, if applicable.

**Section 14. Warranty; Waiver; Release.** At Completion, Builder agrees to provide Owner with a limited warranty (the "**Limited Warranty**") on the constructed Work in accordance with the Limited Warranty, attached hereto as **Exhibit F**. OWNER RECOGNIZES THAT THE LIMITED WARRANTY AS ATTACHED IS THE ONLY WARRANTY OF ANY KIND BEING OFFERED TO OWNER FROM BUILDER, AND THAT BUILDER IS ABSOLUTELY NOT RESPONSIBLE FOR ANY CLAIMS OF ANY KIND THAT ARE NOT SPECIFICALLY COVERED BY THE LIMITED WARRANTY. Except for the specific terms of the Limited Warranty, the Work is being provided from Builder to Owner strictly in an AS- IS, WHERE-IS, WITH ALL FAULTS CONDITION. The Limited Warranty is NOT transferable and not assignable by Owner to any person or entity and is personal to Owner only. EXCEPT FOR THE LIMITED WARRANTY, ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ALL IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY OR HABITABILITY, WORKMANSHIP AND MATERIALS ARE ABSOLUTELY AND SPECIFICALLY DISCLAIMED BY BUILDER AND COMPLETELY EXCLUDED. This Section 14, in its entirety, shall expressly survive the Completion and the termination of this Contract.

Buyer has examined, studied, accepted, and approved the Contract Documents, including but not limited to the scope of work and building plans and specifications for the House, and Buyer absolutely waives and releases Builder for any design or plan defects in same to the extent that such documents, plans and/or specifications were provided by Buyer or other third party. BUYER ACKNOWLEDGES: THAT THE LIMITED WARRANTIES, DISCLAIMERS AND WAIVERS CONTAINED IN THIS CONTRACT ARE REASONABLE UNDER THE CIRCUMSTANCES AND FREELY ENTERED INTO; THAT BUYER AND BUILDER HAVE PARITY IN THIS CONTRACT; AND THAT THIS CONTRACT IS EQUITABLE AND EVEN-HANDED BETWEEN BUYER AND BUILDER; THAT WITHOUT THE LIMITATIONS, DISCLAIMERS AND WAIVERS PROVIDED BY THIS CONTRACT, BUILDER WOULD NOT ENTER INTO THIS CONTRACT.

**Section 15. Post-Completion Repairs.** This section is intended to comply with the provisions of 15 O.S. § 765.6 (the "Act"). Builder and Owner agree to resolve any issues, after the Completion Date, relating to an alleged Construction Defect in accordance with this section. For purposes of this Contract a "**Construction Defect**" shall have the same meaning as defined in the Act as of the date of this Contract. The method of dispute resolution provided in this section is a mandatory condition precedent to pursuing any such matter in arbitration. The provisions of this section shall expressly survive the Completion and the termination of this Contract.

(a) **Notice of Defects.** At least thirty (30) days before submitting any Dispute involving a Construction



Defect to arbitration, Owner shall send Builder a notice of defects by certified mail, return receipt requested. The notice (the "**Notice of Defect**") shall state that the Owner asserts a claim involving a Construction Defect, and shall include the following: (i) the name, address and telephone number of the Owner; (ii) the address of the House; (iii) a detailed list of every item which Owner alleges is a Construction Defect; and (iv) copies of any and all documentation produced by any third-parties who inspected the Construction Defect for Owner. Within five (5) business days after receipt of the Notice of Defects, Builder shall provide a written response to Owner with either: (i) an offer to repair, replace or compensate the Owner, or (ii) a request for an inspection of the House. If Builder's response to the Notice of Defect includes a request for an inspection of the House, Owner shall make the House available for such an inspection within five (5) days after Owner receives Builder's response. Builder may inspect the House and conduct tests to determine the nature and cause of the alleged Construction Defects and the appropriate remedy. If Builder has sent Owner a request for an inspection, Builder will provide Owner with a written response to Owner with either: (i) an offer to repair, replace or compensate the Owner or (ii) a statement that Builder will not proceed to further remedy the alleged Construction Defect. Within five (5) days after Owner receives the response of Builder (whether or not an inspection has been conducted), Owner shall provide a written response to Builder and may include a counteroffer to Builder's original offer to repair, replace or compensate Owner, if applicable. Within five (5) days after Builder receives the response of Owner, Builder may make a final offer to repair, replace or otherwise compensate Owner for the alleged Construction Defect .

**Section 16. Suspension of Work - Cancellation.** Rights to suspend work or cancel this Contract shall be controlled by the following:

(a) **Suspension of Work.** If Owner fails to make any payment due, or fails to comply with any other material obligation under this Contract, Builder at his sole option and without penalty is authorized to suspend work until payment is made and/or Owner has fully complied with the terms of the Contract.

(b) **Cancellation by Mutual Consent.** This Contract may be cancelled by mutual consent at any time upon execution of a termination agreement signed by both parties.

(c) **Cancellation by Builder.** In addition to the right to suspend work, if Owner fails to make any payment due, or fails to comply with any other material obligation under this Contract, Builder at his sole option, and unless cured, may cancel the Contract in accordance with the cancellation procedures stated below.

(d) **Cancellation by Owner.** If the Builder fails to supply proper materials or skilled workers, fails to pay for materials, labor or equipment, fails to perform this Contract in a timely manner, or otherwise materially breaches the Contract provisions, Owner at their sole option, and unless cured, may cancel this Contract in accordance with the cancellation procedures stated below.

(e) **Cancellation Procedures.** Owner or Builder will deliver to the other party a written notice of intention to cancel. Such notice will be dated and signed, and will list the specific cause or causes that would justify cancellation. The recipient party will have seven (7) days from the date of the notice (or such additional time as the parties may agree to in writing) to remedy or cure all listed causes that would justify cancellation. Upon the





expiration of seven (7) days without remedy or cure, the Contract may be cancelled upon delivery to the other party of a written cancellation document. Any cancellation sought by Owner will be contingent on payment in full to the Builder of all costs and expenses incurred as of the date of cancellation, inclusive of change orders. Upon cancellation by the Builder, Owner shall be liable for and shall pay to the Builder all costs and expenses incurred as of the date of cancellation, inclusive of change orders, and liquidated damages (not as a penalty, since both Parties acknowledge that it would be difficult, or impossible to ascertain Builder's damages or losses in the event of Owner's breach of this Contract). Upon cancellation, Builder shall remove all his tools, equipment, and materials from the Property, and shall not thereafter go upon the Property, except by invitation, by the terms of the Warranty and/or to make repairs or replacements, or as otherwise may be permitted by law.

(f) **Other Default and Remedies.** If Builder breaches this Contract for reasons other than those specified above, Owner may, as Owner's sole and exclusive remedy hereunder, submit this matter to binding arbitration in accordance with Section 18, after compliance with Section 15, if applicable. EXCEPT AS PROVIDED HEREIN, IN NO EVENT SHALL OWNER OR BUILDER BE LIABLE TO EACH OTHER FOR ANY PUNITIVE, SPECULATIVE, CONSEQUENTIAL, SPECIAL, TREBLE, EXEMPLARY, OR OTHER RELATED DAMAGES OF ANY KIND. The prevailing party in any legal proceeding or arbitration based upon this Contract shall be entitled to recover reasonable attorneys' fees, including expenses and court or dispute resolution costs.

**Section 17. Risk of Loss.** All risk of loss to the Property from fire, casualty or other causes shall be on Owner, however, Builder shall maintain a "builder's risk" insurance policy. Owner shall carry, at Owner's sole cost and expense, broad form property insurance and general liability insurance covering the House and the Property, in such amounts as are reasonably determined by Builder. Builder shall be named an additional insured on any and all of Owner's insurance policies affecting the Property or the House. Upon the earliest of Completion, transfer of possession or any occupancy of the House by Owner, Owner shall be responsible for all insurance relative to the House and the Property.

#### **Section 18.**

**MEDIATION.** Any controversy arising out of the condition of the improvement to the realty or the interpretation of the warranty, including, but not limited to, what constitutes a defect, any claim for damages against the Builder or any claim of negligence, fraud, breach of express warranty, breach of implied warranty, consumer protection act violations, and breach of contract shall be decided by alternative dispute resolution. The parties agree to mediate in good faith and to achieve resolution of any dispute. This shall be accomplished by using a local attorney, agreed upon by both parties, who specializes in mediating construction disputes. Each party shall be responsible for its own legal expenses and the cost of any expert witnesses. The fee for mediation services shall be divided equally between the Builder and the owner.

**Section 19. Broker Commissions.** Owner shall be exclusively responsible for and agrees to indemnify Builder from any claim for real estate commissions in connection with this Contract.



**Section 20. Waiver, Amendments, Entire Agreement.** This Contract may be modified or amended or any term of this Contract waived only by a written instrument signed by both Builder and Owner. The failure of any party at any time or times to require performance of any provision hereof shall in no manner affect its or their right at a later time to enforce the same. This Contract and the exhibits attached hereto set forth the entire understanding and agreement among the parties hereto with respect to the subject matter hereof and supersede all prior agreements, arrangements and understandings, written or oral, relating to the subject matter hereof.

**Section 21. Assignment.** Owner may not assign or transfer Owner's rights or obligations under this Contract without the prior written consent of Builder. Subject to the foregoing, this Contract shall inure to the benefit of and be binding upon only the heirs, personal representatives, successors and assigns of the parties.

**Section 22. Miscellaneous.** Time is of the essence of this Contract. This Contract may be executed in one or more counterparts, each of which will be an original instrument, but all of which will constitute one agreement. Each term, provision, condition, and covenant contained in this Contract shall be jointly and severally binding on each of the Owners. The section headings in this Contract are for reference purposes only and are not intended in any way to describe, interpret, define or limit the scope, extent or intent of this Contract or any part hereof. In case any one or more provisions contained in this Contract will for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provision hereof, and this Contract will be construed as if such invalid, illegal or unenforceable provision had never been contained herein. This Contract shall be governed, construed and interpreted in accordance with the laws of the State of Oklahoma.

**Section 23. Copyrighted Material; Disclaimer.** This Contract is copyrighted and may not be reproduced in whole or in part, without the express written consent of the Oklahoma State Home Builders Association. This Contract may be utilized only by members in good standing of the Oklahoma State Home Builders Association (the "Association"). NOTHING CONTAINED IN THIS CONTRACT SHALL BE DEEMED THE RENDERING OF LEGAL ADVICE BY THE ASSOCIATION. OWNER AND BUILDER DO HEREBY RELEASE, REMISE AND FOREVER DISCHARGE THE ASSOCIATION, ITS AGENTS, EMPLOYEES, ASSIGNS AND REPRESENTATIVES OF AND FROM ANY AND ALL CLAIMS, DEMANDS, LIABILITIES, CONTROVERSIES OR CAUSES OF ACTION, OF WHATSOEVER NATURE, IN LAW OR IN EQUITY, WHETHER KNOWN OR UNKNOWN, WHICH OWNER OR SELLER HAVE OR MAY HAVE ARISING OUT OF OR RELATED TO THIS CONTRACT OR ANY PROVISIONS THEREOF BY BUILDER AND OWNER. Owner and Builder are encouraged to seek independent legal advice before executing this Contract.

**Section 24. Notice.** All notices or other communications which may be or are required to be given under this Contract to any party hereto shall be in writing and be (a) delivered in person to such party or to an officer or agent of such party; (b) sent by fax; (c) sent by a recognized overnight courier service, such as Federal Express; (d) sent by email; or (e) sent by United States Postal Service certified mail, postage prepaid, return receipt requested, to such party:





BUILDER:

OWNER:

Name : Gem Contractors, Inc.

Name : Robert Vesel, Prisila Vesel

Address : PO Box 1340 Jenks OK, 740371340

Address : 8503 s Phoenix Ave. Tulsa OK, 74037

Fax :

Phone : 973-984-0489

Phone : (918) 492-1226

Email : www.plvesel@att.net

Email :

Such notice or other communication shall be deemed to have been given, delivered and received upon the earlier of: (i) on the third (3rd) day after mailing, or (ii) the date of actual receipt.

**Section 25. Acceptance.** The effectiveness of this Contract is subject to the execution of this Contract by Owner and Builder on or before \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ .m. If this Contract is not fully executed by Owner and Builder, and a fully-executed original delivered to Builder, on or before such time, this Contract is automatically null and void and of no further force and effect.

**Section 26. List of Exhibits.** The following exhibits are attached to this Contract and incorporated into this Contract by reference:

**Section 27. Special Provisions.**

**IN WITNESS WHEREOF** , the parties have executed this Contract as of the date first set forth above.

OWNER:

\_\_\_\_\_

\_\_\_\_\_

Name :Robert Vesel

Name :Prisila Vesel

BUILDER :

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

Gary Soderstrom,  
Owner/President  
Gem Contractors, Inc.  
an Oklahoma corporation



EXHIBIT E

CERTIFICATE OF ACCEPTANCE

Robert Vesel, Prisila Vesel ("**Owner**") certifies that all of the terms and conditions of the Construction Contract ("**Contract**") entered into by Owner and Gem Contractors, Inc., an Oklahoma corporation ("**Builder**") for the construction and purchase of a house ("**House**") located at Tulsa, Tulsa have been met, and Owner and Builder further acknowledge and agree as follows:

1. While the House has generally been constructed in substantial compliance with the Plans and Specifications contained (as defined in the Contract), Owner understands that the House may not correspond in some respects with those Plans and Specifications because changes may have been made before or during construction. These changes may be attributed to a variety of events, including changes in topography, construction techniques, building codes, the availability of material, or other events. Owner understands that Builder is not obligated to furnish any as-built plans, specifications, or drawings of the House. Owner also understands that the House may differ in some respects from the models, drawings, maps, pictures, or other depictions of the House Owner was shown. Owner acknowledges that minor variations may exist in the outside and inside dimensions, configurations, colors, location, general appearance, and other characteristics. Owner has had an opportunity to inspect all aspects of the House and real property upon which it is located (the "Property") and has done so or elected not to do so.
2. Owner has inspected the House and the Property. Owner may have also delivered to Builder the Punchlist (as defined in the Contract). Except as noted on the Punchlist (if delivered) or as provided in the Warranty, Owner accepts the House and Property as is and acknowledges that from now on Owner will have no claim against Builder for any item that was not listed on the Punchlist that could reasonably have been ascertained or observed during Owner's inspection. Owner has no objections relating to color, appearance, type or brand of equipment, dimension or size, location, breakage or cracks, or any other conditions that reasonably could have been discovered by Owner during the inspection.
3. Owner understands that no warranties are being made by Builder except those appearing in the written limited warranty provided by Builder as part of the Contract (the "**Warranty**"). All statements, representations, promises, and warranties made by Builder or any agent of Builder are superseded by the Warranty and that Owner is not relying on any representations, promises, or warranties except for the Warranty that is included by reference in this Certificate of Acceptance. **THE WARRANTY OPERATES TO THE EXPRESS EXCLUSION OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE. ACCORDINGLY, ALL SUCH WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTY OF MERCHANTABILITY, THE IMPLIED WARRANTY OF HABITABILITY, AND THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO SAID HOUSE AND WITH RESPECT TO ALL FIXTURES THEREIN ARE HEREBY DISCLAIMED BY BUILDER, IN FULL.**
4. Owner understands that in exchange for the Warranty and the other provisions of the Contract, Owner will have no right to recover or receive the compensation for any incidental, consequential, secondary, punitive, or special damages, nor any damages for aggravation, pain and suffering, mental anguish, or emotional distress, nor any



costs or attorney's fees. This provision shall be enforceable to the extent allowed by law.

5. Owner and Builder agree that the claim procedures described in the Warranty and the arbitration procedures described in the Contract shall apply to any claims made by Owner or Builder, and the binding arbitration provisions of the Contract shall be the sole available remedy for any unresolved dispute relating to the construction of the House.

6. Owner acknowledges satisfaction with the manner, in which the sales transaction was closed, including all financial calculations and adjustments. Owner further acknowledges receipt of all completion documents to which Owner is entitled from Builder.

7. Each provision of this Certificate is separate and severable from every other provision. If any single provision is declared invalid or unenforceable, Owner and Builder understand that all the other provisions will still be valid and enforceable. Owner and Builder agree that every provision of this Certificate will survive the closing of the sales transaction and will not be merged with the deed.

\_\_\_\_\_

( Owner's Signature )

Date \_\_\_\_\_

\_\_\_\_\_

( Builder's Signature )

Date \_\_\_\_\_

