

CONSTRUCTION FUNDING AGREEMENT

AGREEMENT made as of _____, 20__ between CountryPlace Mortgage, Ltd. and/or its subsidiaries (hereinafter "CountryPlace") and _____, located at _____, _____, _____ (hereinafter "Contractor") and/or _____, located at _____, _____, _____, _____ (hereinafter "Retailer").

RECITALS:

WHEREAS, CountryPlace, Contractor and/or Retailer desire to enter into this Agreement to allow for CountryPlace to pay Contractor/Retailer on behalf of Buyer(s) for Improvements completed by the Contractor/Retailer.

In consideration of the mutual promises herein, Contractor/Retailer, and CountryPlace agree as follows:

I. **Definitions:** The terms used in this Agreement shall have the following meanings:

1. "**Buyer(s)**" Obligor who have contracted with Contractor/Retailer to either (i) purchase a Home (plus options, accessories, amenities, or appurtenances) to be placed on real estate or (ii) provide materials and/or labor such as, but not limited to, the installation and the construction of the Home, installation of septic, grading, seeding and landscaping or any other site improvement.
2. "**Claim**" means any threatened, pending, or completed action, suit, or proceeding (including an alternative dispute resolution proceeding), whether instituted by the Buyer(s) or any other party, or any inquiry or investigation that CountryPlace in good faith believes might lead to the institution of any action, suit, or proceeding, whether civil (including intentional and unintentional tort Claims), criminal, administrative, or investigative, and any appeal thereof.
3. "**Contract Price**" The agreed purchase price of the Home, which is inclusive of all materials and labor to be performed.
4. "**Contractor**" Anyone requesting a draw from CountryPlace for improvements performed on the project.
5. "**Construction Loan**" A contract between Buyer(s) and CountryPlace in which Buyer(s) obtains a loan to complete Improvements and funds are advanced during the contract term to complete those Improvements.
6. "**Allonge**" shall mean the Allonge attached to the Note and signed by the Buyer(s) containing terms and conditions for converting the construction loan to a permanent loan.
7. "**Home**" A manufactured, modular, or stick built home.
8. "**Retailer**" A seller of manufactured or modular homes to Buyer(s) who may provide installation of site improvements.
9. "**Completion of Construction**" The date on which a satisfactory final inspection is completed by an applicable inspection party and a certificate of occupancy is issued, if required, by an entity with jurisdiction over issuing such certificates for completion of the improvements.
10. "**Improvements**" The delivery and installation of the manufactured/modular home on site as well as the construction and installation of all utilities, water, storm and sanitary sewer facilities, preparation

of the real property, construction, installation and placement of all buildings, fencing and other improvements included in the Plans and Specifications. .

11. “Construction Term Agreement” The document that defines the construction period and terms of a specific Improvements.
12. “Plans and Specifications” The contracts, plans, specifications and/or drawings that (i) describe the Improvements and (ii) are initialed and/or signed by the Borrower, Seller and/or Contractor in charge of Improvements. The term also includes modifications of any of those contracts, plans, specifications or drawings as may be amended by a written change order.
13. “Change Order” A written agreement, approved by CountryPlace that is initialed and/or signed by the Buyer(s) and Contractor/Retailer detailing work that is added or deleted from the original contract.

II. Responsibilities of Contractor/Retailer:

1. Contractor’s/Retailer’s Improvements shall be completed in strict accordance with applicable codes and ordinances and to the full satisfaction and acceptance of Buyer(s).
2. The Contractor/Retailer shall be duly licensed, properly insured and certified in the state in which the Improvements are to be installed.
3. The Contractor/Retailer shall provide and pay for all labor, materials, equipment, tools, machinery, transportation, facilities and services necessary for the proper completion of the Improvements.
4. The Contractor/Retailer shall correct any defects in workmanship and/or materials performed or supplied by the Contractor/Retailer for the Improvements.
5. The Contractor/ Retailer agrees to complete the Improvements free of any liens for the Buyer(s) and CountryPlace. Any payment made by CountryPlace prior to the total completion of construction will not be construed as evidence of acceptance of any part of the improvements nor a waiver of any Claim by the Buyer(s) and/or CountryPlace arising out of faulty workmanship or materials or for failure of the Contractor/Retailer to comply strictly with the Plans and Specifications.
6. The Contractor/Retailer shall carefully study all Plans and Specifications and shall immediately report, to CountryPlace, any error, inconsistency or omission the Contractor/Retailer may discover. The Contractor/Retailer shall do no work without final underwriter approval from CountryPlace. CountryPlace may, but is in no way obligated to, review work, Plans, Specifications or Change Orders.
7. The Contractor/Retailer shall supervise and direct the work using the most professional skill and attention and be solely responsible for all construction methods, techniques, sequences and procedures for completing all improvements. The Contractor/Retailer will coordinate subcontractors and suppliers to be in harmony with one another and conform to project schedule. Contractor/Retailer shall furnish to CountryPlace, upon request, written waivers of lien from any subcontractors and other persons furnishing labor and/or materials and Contractor/Retailer shall, to the extent permitted by law, require all subcontractors and other persons furnishing labor and/or materials, in connection with the work, written waivers of their rights to mechanics liens.
8. All materials and products furnished for the Improvements will be new and free from faults, defects and conform to the Plans and Specifications. The Contractor/Retailer will cause any improvements to conform strictly to the Plans and Specifications.
9. The Contractor/Retailer shall pay all sales, business, consumer, use and other similar taxes as may be required by law. Contractor/Retailer is responsible for procuring any and all building permits and licensing fees, if required.

10. The Contractor/Retailer shall provide all notices to comply with all laws, ordinances, rules, regulations and orders of any public authority bearing on the performance of the work. The Contractor/Retailer will also comply with any conditions, covenants and restrictions, which may be applicable to the Improvements.
11. The Contractor/Retailer shall have a maximum number of days for Completion of Construction as set forth in each Construction Term Agreement.
12. Contractor/Retailer is responsible to obtain all necessary and required building and utility permits from County or Municipality with jurisdiction over subject property. Contractor/Retailer has obtained any required architectural approvals for the installation of Improvements.

III. Events of Default:

The occurrence of any one or more of the following events shall constitute an “Event of Default” hereunder:

1. CountryPlace, at its sole discretion, deems itself insecure or does not believe the work will be completed by the Completion of Construction date.
2. The Contractor/Retailer shall fail to make any payment of any amount due pursuant to any agreement when due and payable and the same shall remain unpaid for a period of ten (10) days following notice of such failure from CountryPlace.
3. CountryPlace determines, at its sole discretion, that Contractor/Retailer failed or neglected to perform, keep or observe any material term, provision, condition or covenant contained in this Agreement that is required to be performed, kept or observed.
4. CountryPlace determines, at its sole discretion, that any representation or warranty made or delivered by Contractor/Retailer or any of its respective officers, employees, agents or representatives shall not be true and correct in any material respect as of the date when made or reaffirmed.
5. Contractor/Retailer shall be acquired (whether by merger, consolidation and/or change of control as defined below or otherwise) by any other party after the date of execution of this Agreement without written consent of CountryPlace. For the purposes of this section “change of control” shall mean any sale, transfer or conversion of all or substantially all of the assets of an entity (whether in one or a series of transactions or an entity is merged or consolidated into another entity or the capital stock of an entity is transferred).
6. Contractor/Retailer shall (i) file a petition seeking relief pursuant to the Bankruptcy Code or any other applicable bankruptcy or other similar law; (ii) consent to the institution of proceedings pursuant thereto or to the filing of any such petition or to the appointment of/or taking possession by a custodian, receiver, liquidator, assignee, trustee or sequester (or similar official) or either party of any substantial part of its properties; (iii) fail generally to pay its debts as such debts become due; or (iv) take corporate action in furtherance of any such action.
7. A material adverse change occurs in the operations, financial conditions, business or prospects of Contractor/Retailer which CountryPlace determines, in good faith, has impaired or is reasonably likely to impair, the ongoing operation or continued viability of the Contractor/Retailer.
8. The Improvements are not constructed in accordance with the Plans and Specifications.
9. The work is abandoned or ceases for more than twenty-five (25) days for any reason.
10. The Buyer(s) fails to pay promptly by the Completion of Construction any amount owed by the Buyer(s) to CountryPlace.

11. The Buyer(s) violates, fails to comply with or defaults on any provision or any other obligation owed by the Buyer(s) to CountryPlace prior to the Completion of Construction, including without limitation, the provisions of and obligations under any loan document or any loan, extension of credit, agreement or other obligation in favor of CountryPlace.
12. A proceeding for bankruptcy or any other relief afforded to the debtors or affecting the rights of creditors under the laws of any state or under the United States Bankruptcy Code is filed by or against the Buyer(s) prior to the Completion of Construction.
13. Any representation or warranty made in any way in connection with the Construction Loan or Contract proves to be incorrect or misleading in any respect.
14. All conditions precedent for the permanent loan set forth in the Allonge are not satisfied by the Buyer(s) on or before the Completion of Construction.
15. A breach or violation of any term contained in the Construction Term Agreement.
16. CountryPlace determines, in its sole discretion, the Agreement is not economically viable.

IV. Default Remedies:

If any Event of Default is not cured within ten (10) days, CountryPlace shall have the right to terminate this Agreement without notice.. If CountryPlace decides to terminate this Agreement, CountryPlace may exercise one or more of the following options:

1. Contractor/Retailer shall promptly pay upon the demand and election of CountryPlace one or more of the following amounts:
 - a. the unpaid balance (including, but not limited to, accrued interest, fees, taxes or any advance that has been paid by CountryPlace) of any and all Buyer(s)'s liabilities affected by the Event of Default, regardless of whether that Buyer(s) is actually in default under the Construction Loan Agreement and calculated as if the Buyer(s) had prepaid the Construction Loan in full accordance with its terms as of the date of Contractor's/Retailer's payment.
 - b. All losses, damages and expenses incurred by CountryPlace as a result of such breach, untruth or failure to perform.
 - c. Expenses paid or incurred by CountryPlace in connection with the affected Construction Loan with the collection of any amount due under any such Construction Loan Agreement or Contractors'/Retailer's purchase Construction Loan from CountryPlace, including sales, use or other taxes, attorney's fees and costs of litigation or administrative proceedings, whether by or against CountryPlace and expenses with respect to foreclosing and selling the Home.
 - d. The market price differential of the Construction Loan.
2. Any proceeds withheld by CountryPlace of the Construction Loan may be used to offset anything owed by Contractor to CountryPlace for breach of any terms contained in this agreement or any obligation owed by Contractor to CountryPlace.

V. Payment Schedule

1. Progress draws may be taken for any portion of the Improvements that have been completed. Verification of the completion of Improvements will be determined by CountryPlace and may include inspection by third party inspectors.
2. CountryPlace will withhold 10% of the Construction Loan proceeds until completion of construction or to offset any amount owed by Contractor to CountryPlace.

3. Final payment by CountryPlace will not constitute a waiver of any Claims by CountryPlace including Claims for unsettled liens, faulty or defective work, failure of the work to comply with the requirements of the Plans and Specifications, any guarantee or warranty required by the work.

VI. Termination

If an Event of Default occurs, CountryPlace may, at any time subsequent to default, immediately terminate this Agreement without notice. The rights and obligations of the parties set forth in Sections IV, VIII, XI and XIV and any right or obligation of the parties in this agreement which, by its express terms or nature and context is intended to survive termination or expiration of this agreement, will survive any such termination or expiration.

VII. Independent Contractor

This Agreement does not and shall not be construed to establish a partnership, joint venture, agency relationship or other form of business association between CountryPlace and the Contractor/Retailer.

VIII. Indemnification

1. The Contractor/Retailer shall indemnify, defend (at Contractor's/Retailer's sole expense) and hold harmless CountryPlace and CountryPlace's agents and employees from all Claims, damages, losses and expenses, including loss of use and lawyer's fees, relating to the performance of the work, provided that any such Claim, damage, loss or expense is attributable to a negligent or willful act or relating to the performance of the work of the Contractor/Retailer, a subcontractor or supplier, or anyone employed by them.
2. With regard to a final inspection and Certificate of Occupancy, the Contractor/Retailer agrees to indemnify and hold harmless CountryPlace against any and all mechanics' or material men's liens attaching to the property filed by a supplier and/or subcontractor. If any liens attaching to the property have been recorded, then CountryPlace may use any or the entire amount of the final payment to remove such liens. Nothing in this subparagraph will limit the Contractor's/Retailer's liability in this Agreement.
3. In all Claims against CountryPlace or any of CountryPlace's agents or employees, any employee of the Contractor/Retailer, any subcontractor or suppliers, or anyone employed by them, or anyone for whose acts any of them may be liable, the indemnification obligation will not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor/Retailer, any subcontractor or supplier under Worker's Compensation Act, Disability Benefits Act, or any other employment benefit act.
4. All damage or loss to any property in whole or in part by the Contractor/Retailer, any subcontractor or supplier, or anyone employed by any of them, or by anyone, for whose acts any of them may be liable, will be remedied by the Contractor.

IX. Insurance:

The Contractor/Retailer will procure and provide evidence of annual renewal, during the effective dates of this agreement, the following insurance policies:

1. Worker's Compensation Insurance as required by the applicable state laws with Employer's Liability coverage at required statutory limits;
2. General Liability, including products and completed operations in an amount not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate with a \$5,000 deductible or self-insured retention or less;

3. Commercial Automobile Liability Insurance covering all owned, hired and non-owned automobiles with minimum limits of liability of \$1,000,000 Bodily Injury and Property Damage Combined;
4. Builder's Risk Insurance, including Improvements, which covers full replacement cost coverage for damage caused by fire and other perils, including but not limited to, flood.
5. The General Liability, Automobile Liability and Builders Risk coverage shall be with an insurance company with a Best Rating of A- or better.

The General Liability and Commercial Automobile Liability Insurance shall name CountryPlace as an Additional Insured. The Builder's Risk Insurance shall name CountryPlace as Loss Payee. The Contractor/Retailer waives all rights against CountryPlace for damages caused by fire, flood or other perils to the extent covered by insurance. The Contractor/Retailer will require similar waivers by subcontractors and suppliers.

X. Prevention of Loss:

The Contractor/Retailer agrees to pay, when due, all Claims for labor and/or materials furnished for Improvements, and to prevent the filing of any liens by mechanics or material men, or attachments, garnishments or suits involving the title of the property on which the Work is performed. The Contractor/Retailer agrees, within ten (10) days after written demand is mailed to the Contractor/Retailer, at the address stated in this Agreement by United States mail, to cause the effect of any such suit or lien to be removed from the premises. In the event the Contractor/Retailer has a dispute with a subcontractor, supplier, or person supplying labor or materials to the Improvements, the Contractor/Retailer will bond CountryPlace against any loss from any such Claim of liens and then have the right to prosecute the Claim of lien to a completion at the Contractor's/Retailer's sole cost and expense.

XI. Work Safety:

1. The Contractor/Retailer will be responsible for establishing, supervising, and maintaining all safety precautions and programs in connection with work performed on the Improvements.
2. The Contractor/Retailer will comply with all federal, state, and local laws and regulations applicable to the Improvements.
3. The Contractor/Retailer will take all reasonable steps to prevent damages, injury, or loss to:
 - a. All employees performing the work and all other persons who may be affected;
 - b. All of the work and materials, equipment, or products to be used on the Improvements, whether in storage or on or off the site, and in the care, custody or control of the Contractor/Retailer, or any subcontractor or supplier;
 - c. All property on the site or adjacent to the site including trees, shrubs, lawns, lots, pavements, roadways, utilities, and structures not designated for removal, relocation, or replacement.

XII. Assignment:

This Agreement shall not be assigned without CountryPlace's written consent. Any attempted assignment without such consent shall be void and of no effect. Subject to CountryPlace's written consent, the provision of this Agreement shall be binding upon, inure to the benefit of and be enforceable by each of the parties hereto and their respective assigns.

XIII. Prior Agreements:

This Agreement supersedes and replaces any and all previous Construction Funding Agreements executed prior to the date of this agreement.

XIV. Guarantees:

Contractor/Retailer guarantees CountryPlace, and CountryPlace's successors in interest, against any loss or damage arising from any defect in materials furnished or workmanship performed under this Agreement for a period of one (1) years from the date of Certificate of Occupancy.

Nothing in this Agreement will derogate the Contractor's/Retailer's liability for patent or latent defects under applicable law.

XV. Miscellaneous:

1. **Severability.** If any provision of this Agreement shall be prohibited or invalid under applicable law, such provision shall be ineffective but only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.
2. **Headings; Definitions.** The headings contained in this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement. All references herein to Buyer, Contractor, Retailer, guarantor, person, document or other nouns of reference mean both the singular and plural form, as the case may be, and the term "person" shall mean any individual, person or entity.
3. **Construction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas without regard to the conflicts of laws principles thereof. The parties acknowledge and agree that the language, terms and conditions in this Agreement are not to be construed in any way against or in favor of any party hereto by reason of the responsibilities of the parties in connection with the preparation of this Agreement.
4. **Jurisdiction; Venue.** Venue for any litigation, legal action or other proceeding brought for the enforcement of this Agreement, or because of an alleged dispute, breach or default in connection with any provision of this Agreement, shall lie solely in the state and federal courts of the State of Texas located in Dallas County, Texas; and the parties (i) consent to personal jurisdiction and venue in such courts, (ii) agree that such courts shall have exclusive jurisdiction over any matters arising out of or related to this Agreement, (iii) acknowledge and agree that they will accept service of process by registered or certified mail or the equivalent directed to the address of such party set forth in Section 17 hereof or by whatever other means are permitted by such courts and (iv) waive any and all claims to the effect that any of the aforementioned courts constitutes an inconvenient forum.
5. **Survival.** The provisions of this Section shall survive termination of this Agreement and any other documents relating to or executed in connection herewith.
6. **Time is of the Essence.** In all matters pertaining to this Agreement, time is of the essence.
7. **Entire Agreement; Amendment.** This Agreement sets forth the entire understanding of the parties with respect to the subject matter hereof and supersedes any prior agreements or understandings, oral or written, between the parties with respect to the subject matter hereof. This Agreement may not be amended, modified or supplemented in any respect, except by a subsequent written agreement executed by the parties hereto.

8. **Prior Course of Dealings.** No course of dealing, course of performance, or usage of trade shall be considered in the interpretation or enforcement of this Agreement.

“Contractor”

(Contractor Name)

By: _____

(Printed Name)

Its: _____
(Title)

“CountryPlace”

CountryPlace Mortgage, Ltd. or its subsidiary

By: _____

(Printed Name)

Its: _____
(Title)

“Retailer”

(Retailer Name)

By: _____

(Printed Name)

Its: _____
(Title)