

BUILDER'S DEPOSIT AGREEMENT

NOTE: TANGLEWOOD HOMES ASSOCIATION ("THA") REQUIRES A BUILDER'S DEPOSIT FOR (a) THE CONSTRUCTION OF A NEW HOME, (b) CONSTRUCTION THAT EITHER RESULTS IN A CHANGE IN THE FOOTPRINT OF AN EXISTING BUILDING OR CREATES ADDITIONAL LIVING OR STORAGE AREA ABOVE AN EXISTING BUILDING AND INVOLVES A COST THAT EXCEEDS \$25,000.00 AND (c) THE CONSTRUCTION OF A SWIMMING POOL. THE EXECUTION OF THIS BUILDER'S DEPOSIT AGREEMENT ("AGREEMENT") IS A CONDITION OF THE APPROVAL OF THE PLANS FOR SUCH A PROJECT. UNDER NO CIRCUMSTANCES SHALL ANY CONSTRUCTION BE COMMENCED PRIOR TO THE APPROVAL OF THE PLANS, EXECUTION OF THIS AGREEMENT BY BUILDER ("BUILDER"), AND THE PAYMENT OF THE BUILDER'S DEPOSIT .

PROPERTY ADDRESS: _____

OWNER: _____

BUILDER: _____

Contact: _____

Address: _____

City, Zip: _____

Tel. No.: _____

Fax No.: _____

E-Mail: _____

PROJECT: New home construction []

Addition to existing building or improvement []

Swimming Pool []

New home construction with swimming pool []

PLANS FOR PROJECT: Date: _____

Architect/Designer: _____

Reference or Project Number: _____

For and in consideration of the mutual covenants set forth in this Agreement, THA and Builder hereby agree as follows:

1. THA hereby approves the plans ("Plans") and, subject to the receipt of the Deposit, as addressed in paragraph 2, below, authorizes Builder to proceed with this project ("Project").

2. Builder agrees to submit to THA, upon execution of this Agreement, a check in the amount of the applicable deposit ("Deposit"):

New home construction:	\$10,000.00
New home construction with swimming pool:	\$12,500.00
Addition to existing building or improvement:	\$5,000.00
Swimming pool:	\$5,000.00

The Deposit, less the non-refundable portion as provided in paragraph 3 below, shall be deposited into a separate account in the name of THA (i.e., in an account other than its normal operating account) to be held by THA pending completion of the Project in accordance with the Plans and this Agreement (subject to forfeitures as provided herein). No interest on the Deposit shall be paid to Builder. If, as the result of a forfeiture or forfeitures for non-compliance, and prior to the completion of the Project, the otherwise refundable portion of the Deposit decreases to an amount less than \$5,000.00 in the case of new home construction (with or without a swimming pool) or \$2,000.00 in the case of an addition or a swimming pool, Builder agrees to submit a check in an amount necessary to replenish the Deposit to the original amount (the "Additional Deposit"). Any Additional Deposit required to be made by Builder shall be submitted to THA within three (3) business days of the date of receipt of notice from THA.

3. Builder acknowledges that a portion of the Deposit is non-refundable. The non-refundable portion of the Deposit is the sum of **one thousand two hundred fifty and no/100 dollars (\$1,250.00)** for **new homes** and **three hundred fifty and no/100 dollars (\$350.00)** for construction **other than a new home** with a cost of \$25,000.00 or more and **for swimming pools**. In the case where a swimming pool is included with the Plans for a new home, the non-refundable fee shall be **one thousand six hundred and no/ 100 dollars (\$1,600.00)**. This portion of the Deposit shall be retained by THA to offset administrative costs associated with this Agreement, and costs associated with periodically monitoring the progress of this Project.

4. Builder agrees to complete this Project timely in accordance with the Plans and this Agreement. Notwithstanding the approval of the Plans, Builder also agrees to complete this Project in accordance with the Reservations, Restrictions and Covenants for Tanglewood, as amended ("Restrictions") and the Tanglewood Policy Manual ("Policy Manual"). One (1) copy of the Restrictions and the Policy Manual shall be provided to Builder at no cost. It is Builder's responsibility to notify THA promptly of any conflict between the Plans and the Restrictions or Policy Manual upon determining the existence of a conflict and to refrain from completing the Project until the conflict is resolved to the satisfaction of THA.

5. Prior to commencement of construction, Builder must give written notice to all property owners adjacent to the lot (i.e., the owners of property adjacent to the lot and the owner of property directly across the street) of (a) the date construction will commence and (b) emergency telephone number(s) of the Builder and/or the Builder's superintendent in charge of construction at the site. Builder shall attest in the notification letter that a drainage plan will be implemented that will not result in the drainage being altered in a manner that will impact an adjoining property owner in an adverse way. For corner lots, the owners across both the main and side street must be notified. Builder must provide THA with copies of the notification letters to each applicable property owner prior to commencing construction. Builder should obtain from THA the names and addresses of all owners to be notified.

6. Prior to commencement of any construction, Builder shall post one sign in front of the Project with the following information on the sign:

In Case of Emergency
Please Call
(000) 111-2222

The sign shall be white with black lettering, measuring eleven inches (11") by eight and one-half inches (8½"). No other information, including company or individual names, logos, etc., may be shown on the sign. In addition, Builder must post in a location readily accessible by all employees and/or sub-contractors the rules and regulations included in the approved Plans and/or Policy Manual, written in both English and Spanish, including without limitation the starting and ending times and the parking regulations.

7. Prior to commencement of any construction, Builder shall provide THA with a topographic survey of the lot from a licensed professional land surveyor documenting the natural ground level for the lot.

8. If the Project involves new home construction or a major renovation (i.e., any construction which increases the foundation area of the dwelling by 20% or more), the Builder must submit a Tree Survey and Disposition Plan ("Tree Survey") in accordance with the Tree Preservation Policy included in the Third Supplement to the Tanglewood Policy Manual to THA for review and approval prior to the commencement of any construction (unless a Tree Survey was previously submitted to and approved by THA prior to the demolition of the previously existing home on the lot). The failure to submit a Tree Survey prior to the commencement of construction will subject the Builder to a forfeiture of a portion of the Deposit per Schedule A, Section 1, of this Agreement. Under no circumstances may a Protected Tree, as defined in the Tree Preservation Policy, be removed from the lot without first obtaining the written approval of THA or, in the case of a Protected Tree in the ROW, without first obtaining a permit from the COH Parks Department and submitting the permit to THA. The removal of a Protected Tree without first obtaining the written approval of THA will subject the Builder to a forfeiture of all or any portion of the Deposit per Schedule A, Section 1, of this Agreement (which will be in an amount equal to the "mitigation fee" established in the Tree Preservation Policy).

9. Prior to the commencement of any construction, Builder is required to erect a Tree Protection Fence around each Protected Tree and post Signage on each Tree Protection Fence, all as defined and described in the Tree Preservation Policy. All Tree Protection Fences and Signage must be maintained on the lot until construction on the lot is completed. The failure to erect or maintain a Tree Protection Fence around a Protected Tree and/or post Signage will subject the Builder to a forfeiture of a portion of the Deposit per Schedule A, Section 1, of this Agreement.

10. Builder shall provide THA with a form survey from a licensed professional land surveyor showing the location of the improvements to be constructed for this project prior to proceeding with pouring the foundation/slab, unless THA otherwise agrees in writing to waive the requirement of a form survey. **No opening in any of the forms is permitted.** THA shall have three (3) business days from the date of receipt of a form survey to object to the location of an improvement. Any objection shall be in writing and shall set forth the basis of the objection. Builder shall not proceed with this project until the objection has been resolved to the satisfaction of THA. THA shall notify Builder in writing within two days that the form survey has been approved.

11. Once the framing for the roof has been completed, a written height certification issued by a licensed professional land surveyor must be provided to THA verifying compliance with the applicable height limitations as follows:

House:	Thirty-eight feet (38')
Garage or outbuilding not eligible for an outbuilding setback per the Policy Manual:	Thirty-eight feet (38')
Garage or outbuilding eligible for an outbuilding setback per the Policy Manual:	Twenty feet (20')
Chimney:	Forty-two feet (42')

All measurements shall be from natural ground level, as determined by the topographic survey referenced in paragraph 5, to the highest point of the roof, garage, or chimney. If the height of a roof or chimney exceeds the applicable height limitation, THA shall notify Builder in writing and Builder agrees to modify the structure to comply with the applicable height limitation prior to proceeding with further construction. Upon completing the necessary modification, Builder shall provide to THA a new height certification issued by a licensed professional land surveyor confirming that the structure, as modified, complies with the applicable height limitation. THA shall notify Builder in writing within two days that the height certification has been approved.

12. After the home, addition, improvement, and/or swimming pool is completed, Builder shall provide THA with an as-built survey prepared by a licensed professional land surveyor showing the location of all the improvements, including, but not limited to, HVAC units, pool equipment, emergency generators, sound attenuation, fences and/or gates. The as-built survey shall specify that the height of all fences and gates do not exceed eight feet (8') in height measured from natural ground level to the highest point on the fence and/or gate.

13. The balance of Deposit, after deducting the non-refundable portion referenced in paragraph 3 above, shall be reserved to assure compliance with this Agreement, the Restrictions, and the Policy Manual. Builder acknowledges that the Restrictions and Policy Manual include rules and regulations relating to construction including, by way of example and not in limitation, employee/subcontractor vehicle parking, starting and ending times for construction work, and maintenance of the construction site. A violation of any rule or regulation set forth in either the Restrictions or the Policy Manual may result in a written notice to Builder. Any violation of the same rule or regulation after written notice is given to Builder may result in the forfeiture of a portion of the Deposit per Section 2 of Schedule A – Forfeiture Schedule attached to this Agreement.

14. All or any portion of the Deposit may be forfeited by Builder for violations of this Agreement or other violations of the Restrictions and/or Policy Manual than those addressed in paragraph 10, above. A schedule of the forfeitures for these other types of violations is set forth in Section 1 of Schedule A – Forfeiture Schedule. No prior notice is required for a forfeiture resulting from a violation set forth in Section 1 of Schedule A – Forfeiture Schedule.

15. The Deposit, less the non-refundable portion and any forfeiture(s) as provided in this Agreement, shall be refunded to Builder, as follows:

- a. In the case of new home construction, within thirty (30) days of the date of receipt by THA of a written notice by the Builder that the Project, including a swimming pool if applicable, is complete. For purposes of this sub-paragraph, the date of substantial completion of the new home shall be the date on which the new home may be used for its intended purpose. Builder should submit to THA the certificate of final completion from the City of Houston. If a swimming pool is part of the approved Plans, the swimming pool also must be completed in accordance with subparagraph (c)

below.

b. In the case of an addition to any existing building or improvement, within thirty (30) days of the date of receipt by THA of a written notice from the Builder that the addition has been substantially completed. For purposes of this sub-paragraph, the date of substantial completion of any addition shall be the date on which the addition may be used for its intended purpose. Builder should submit to THA the certificate of final completion from the City of Houston. The date THA receives written notice from the Builder shall not initiate the timetable for issuing a refund if, within thirty (30) days of the date of receipt of the written notice, THA, acting reasonably and in good faith, determines that the addition cannot be used for its intended purpose. In that event, the Builder shall be required to issue a new written notice of substantial completion.

c. In the case of a swimming pool, within thirty (30) days of the date of receipt by THA of notice from the Builder that the swimming pool and all related improvements (pool equipment, decking, fencing, etc.) have been substantially completed. For purposes of this sub-paragraph, the date of substantial completion of a swimming pool shall be the date on which the swimming pool may be used for its intended purpose; provided that, the written notice of substantial completion must also include a certification by the Builder that all improvements related to the swimming pool have been substantially completed in accordance with the Plans and all applicable City of Houston code or building requirements. Without such a certification, the swimming pool shall not be deemed to be substantially completed, regardless of its condition.

If THA determines that there are deviations from the approved Plans, the Deposit shall not be refunded until all deviations are brought into compliance with the approved Plans.

16. Builder acknowledges that the Deposit, less the non-refundable portion referenced in paragraph 3 above, is required to be paid in an effort to assure compliance with the provisions of this Agreement, the Restrictions and the Policy Manual, but that the forfeiture of all or any portion of the Deposit shall be in addition to, not in lieu of, all other remedies available to THA for violations of this Agreement, the Restrictions and/or the Policy Manual. THA expressly reserves all remedies for non-compliance with the provisions of this Agreement, the Restrictions, and/or the Policy Manual, whether or not all or any portion of the Deposit is forfeited.

17. The parties agree that all disputes, claims or controversies arising out of or relating to this Agreement shall first be mediated by a mediator domiciled in Harris County, Texas who is a member of the Association of Attorney-Mediators. Notwithstanding the foregoing, the provisions of this paragraph shall not be applicable to a suit for injunctive relief initiated by THA based upon the contention that the construction of an improvement is proceeding in violation of this Agreement, the Restrictions as amended, and/or the Policy Manual.

EXECUTED on the date(s) set forth below, to be effective when executed by both parties.

TANGLEWOOD HOMES ASSOCIATION, INC.

Date: _____

By: _____

Print Name: _____

Title: _____

BUILDER

Date: _____

By: _____

Print Name: _____

Title: _____

FOR THE ASSOCIATION'S USE ONLY

Builder's Deposit:

Received on _____ by _____

Cash ___ Money Order ___ Check ___ (Check no. _____)

Amount: _____

Refund:

Amount: _____

Check No. _____

Delivered to _____ on _____

or

Mailed to _____ on _____

or

Picked up by _____ on _____

**Schedule A
Forfeiture Schedule**

Section 1

Failure to obtain approval and/or deviating from approved plans

Failure to submit topographic survey prior to commencing construction	\$1,000
Failure to submit form survey prior to pouring slab	\$1,000
Failure to submit Tree Survey and Disposition Plan prior to commencing construction	\$1,000
Removal of Protected Tree without obtaining a Tree Removal Permit approval from THA	\$1,000 per diameter inch of tree removed
Construct improvements in location different from what was approved or construct improvements not previously approved	
No encroachment	\$1,000 each occurrence
Encroachment (including height violation)	\$2,500 each occurrence
Failure to submit height certification survey	\$1,000
Failure to submit as built survey (homes and pools)	\$1,000
Commencement of construction prior to tendering builder's deposit	\$1,000
Failure to complete construction within eighteen month period unless approval is granted in writing to extend construction period	\$400 for each additional month
Failure to submit plans for fencing	
No encroachment	\$250
Encroachment	\$500
Height violation	\$500

Failure to erect Tree Protection Fence and required Signage	\$500
Failure to construct fences/gates at the approved height and/or approved location	\$500
Failure to locate HVAC, generators, and/or pool equipment in approved location, failure to notify THA of a change in location, or adding equipment not approved	\$500
Failure to provide sound certification or failure to construct required sound attenuation	\$250
Failure to notify all adjoining property owners as stipulated in paragraph 5	\$500

Section 2

Failure to follow rules and regulations

One written warning will be given for failure to observe each of the following rules and regulations. **After** the first warning is received, builder will forfeit an amount equal to \$100 for the second violation, \$200 for the third violation, \$300 for the fourth violation, increasing by \$100 for each subsequent violation for each written notice received for failure to observe any of the rules and regulations listed below.

- Failure to observe starting and ending times for construction work.
- Failure to observe stipulated parking requirement for employees and/or subcontractors.
- Failure to maintain clean work site, which includes keeping grass and weeds cut.
- Failure to keep streets clean from mud and debris from construction site.
- Failure to service portable toilet facility and to locate it in a prescribed location.
- Failure to screen portable toilet facility.
- Failure to display in an unobstructed location at the front of the property a “in case of emergency” sign in the standardized format or the improper posting of more than one sign.
- Failure to post the rules and regulations stipulated in the approval letter, in both English and Spanish, in a place that every employee/sub-contractor will see, including, but not limited to, the prescribed starting and ending times for construction activity and the requirement to park on one side of the street.
- Failure to maintain Tree Protection Fence and required signage