

## FROSTWOOD CONSTRUCTION DEPOSIT AGREEMENT

NOTE: THE FROSTWOOD COMMUNITY IMPROVEMENT ASSOCIATION (THE "**ASSOCIATION**") REQUIRES EXECUTION AND DELIVERY OF THIS CONSTRUCTION DEPOSIT AGREEMENT AND PAYMENT OF A DEPOSIT IN CONNECTION WITH CERTAIN BUILDING PROJECTS (AS DEFINED IN THE CONSTRUCTION RULES AND GUIDELINES). SUCH BUILDING PROJECTS INCLUDE (I) THE DEMOLITION OF AN EXISTING RESIDENTIAL DWELLING AND THE CONSTRUCTION OF A NEW RESIDENTIAL DWELLING, (II) A MAJOR INTERIOR AND/OR EXTERIOR IMPROVEMENT PROJECT AT AN EXISTING RESIDENTIAL DWELLING, AND (III) A MAJOR NON-STRUCTURAL INTERIOR IMPROVEMENT AT AN EXISTING RESIDENTIAL DWELLING.

EXECUTION AND DELIVERY OF THIS CONSTRUCTION DEPOSIT AGREEMENT AND PAYMENT OF THE DEPOSIT ARE REQUIRED IN ORDER TO RECEIVE FINAL APPROVAL OF THE ACC APPLICATION (INCLUDING THE PLANS (THE "**PLANS**")) FOR THE BUILDING PROJECT. **UNDER NO CIRCUMSTANCES SHALL ANY DEMOLITION OR CONSTRUCTION BE COMMENCED PRIOR TO RECEIVING ACTUAL APPROVAL OF THE APPLICATION, EXECUTION OF THIS DEPOSIT AGREEMENT BY BUILDER ("**BUILDER**"), AND PAYMENT OF THE DEPOSIT.**

PROPERTY ADDRESS (THE "**LOT**"): \_\_\_\_\_

OWNER: \_\_\_\_\_

BUILDER: \_\_\_\_\_

Contact: \_\_\_\_\_

Address: \_\_\_\_\_

City, Zip: \_\_\_\_\_

Tel. No.: \_\_\_\_\_ Fax. No.: \_\_\_\_\_

E-Mail: \_\_\_\_\_

### **PROJECT:**

- (i) Demolition of an Existing Residential Dwelling and Construction of a New Residential Dwelling: [ ]
- (ii) Major Interior and/or Exterior Improvement Project at an Existing Residential Dwelling: [ ]
- (iii) Major Non-Structural Interior Improvement at an Existing Residential Dwelling: [ ]

PLANS FOR PROJECT: Date: \_\_\_\_\_

Architect/Designer: \_\_\_\_\_

Reference or Project Number: \_\_\_\_\_

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

1. **Plan Approval and Authorization.** The Association has approved the ACC Application (including the Plans) and, subject to the receipt of the Deposit, as addressed in paragraph 2, below, Builder may proceed with (i) the demolition of an existing Residential Dwelling, (ii) the construction of a new Residential Dwelling, and/or (iii) the major improvement project at an existing Residential Dwelling (the "**Project**").

2. **Construction Deposit.** Builder agrees to submit to the Association, upon execution of this Agreement, a check in the amount of the applicable deposit (the “**Deposit**”):

- (i) Demolition of an Existing Residential Dwelling and Construction of a New Residential Dwelling: \$ 7,500
- (ii) Major Interior and/or Exterior Improvement Project at an Existing Residential Dwelling: \$ 7,500
- (iii) Major Non-Structural Interior Improvement at an Existing Residential Dwelling: \$ 2,000

The Deposit shall be deposited into an account in the name of the Association, to be held by the Association 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.

In the event the balance of the Deposit falls below \$2,500 (in the case of a deposit for (i) the demolition of an existing Residential Dwelling and construction of a new Residential Dwelling, or (ii) a major interior and/or exterior improvement project at an existing Residential Dwelling) or \$500 (in the case of a deposit for major non-structural interior improvement at an existing Residential Dwelling), the Builder agrees to submit to the Association additional funds in order to increase the balance of the Deposit back to \$7,500 or \$2,000 (as applicable). The additional funds from the Builder must be received by the Association within five (5) business days after the Association sends notice to the Builder that the Deposit has fallen below \$2,500 or \$500, as applicable.

3. **Adherence to the Relevant Frostwood Construction Related Documents.** Builder agrees to complete the Project in a timely manner and in accordance with the Plans and this Agreement. Notwithstanding the approval of the Plans, Builder also agrees to complete the Project in accordance with the Amended, Restated and Consolidated Restrictions for Frostwood (the “**Deed Restrictions**”), the Guidelines and Procedures for Submitting New Home or Major Addition or Renovation Construction Plans (the “**Guidelines and Procedures**”), and the Construction Rules and Guidelines (the “**Construction Rules**”; together with the Deed Restrictions and the Guidelines and Procedures, the “**Relevant Frostwood Construction Related Documents**”).

One (1) copy of each of the Relevant Frostwood Construction Related Documents shall be provided to Builder and Owner by the Association at no cost (which may be electronic copies). It is Builder’s responsibility to notify the Association promptly of any conflict between the Plans and any of the Relevant Frostwood Construction Related Documents upon determining the existence of a conflict and to refrain from completing the Project until the conflict is resolved to the satisfaction of the Association.

4. **Written Notices Required to Neighbors.** Prior to commencement of any Project, Builder or Owner must give written notice to all property owners whose homes are:

- a. on either side of the Lot;
- b. immediately behind the Lot and on either side of any homes that are immediately behind the Lot;

- c. directly across the street from the Lot and any homes that are on either side of any home directly across the street from the Lot (or, in the case of corner lots, across the main and side streets);

in each case detailing (i) the earliest date any demolition is expected commence, (ii) the earliest date construction is expected to commence, and (iii) the emergency telephone number(s) of Builder and/or Builder's superintendent in charge of construction at the Project. Builder or Owner shall provide the Association with copies of the notification letters sent to each applicable property owner prior to commencing any demolition, construction, or major improvement. Builder or Owner should obtain from the Association the names and addresses of all owners to be notified. Builder or Owner may rely on the name and address information provided by the Association and shall not be required to make an independent investigation of Deed Records or other information as to the actual owners of such neighboring lots.

5. **Steps Required Prior to the Start of Demolition or Construction.** Prior to or promptly upon the commencement of any Project, Builder shall do each of the following.

- a. **Emergency Contact Information.** Post one sign in front of the Project with the following information on the sign:

In Case of Emergency  
Please Call [ insert name ]  
[(000) 111-2222]

The sign shall measure no more than sixteen inches (16") by twenty-four inches (24"). The name of Builder may also be shown on the sign, but the name of the Project Supervisor **must** be listed. In addition, Builder must post in a location readily accessible by all employees and/or subcontractors the rules and regulations included in the Relevant Frostwood Construction Related Documents, written in both English and Spanish, including without limitation the earliest daily starting and latest daily ending times for work on the Project, and the parking regulations.

- b. **Construction Fencing and Skirting Required.** In the case of any (i) demolition of an existing Residential Dwelling and construction of a new Residential Dwelling, or (ii) major interior and/or exterior improvement project at an existing Residential Dwelling, all sides of the Lot that are not otherwise enclosed by an existing fence that otherwise complies with the Relevant Frostwood Construction Related Documents must be completely enclosed with a chain link fence before the start of demolition. The chain link fence shall (i) be of a galvanized steel construction, at a height of at least six (6) feet, and be securely installed with temporary in-ground posts pounded at least two (2) feet into the ground, (ii) include only one machinery and equipment swing gate entrance, (iii) have silt fence skirting that is not less than 2' in height around the outside of the chain-link fence to lessen the environmental impact and neighboring property disturbance from dirt and debris being swept into the street and sewers, (iv) have full width and height windscreen (also known as scrim or privacy screen) attached to the fence to shield the construction activities and prevent debris from being windblown onto another Lot or into the street, and (v) be securely locked by chain and padlock at the end of each working day. No advertising is permitted on either side of the windscreen.
- c. **Placement of Refuse Dumpster or Container.** One (1) dumpster or container is required to be placed on a Lot for any In the case of any (i) demolition of an existing Residential

Dwelling and construction of a new Residential Dwelling, or (ii) major interior and/or exterior improvement project at an existing Residential Dwelling. The dumpster or container is required to be placed behind the construction fencing, and is permitted to remain only during the period of demolition and construction, or the major improvement project. No dumpster or container shall be placed on a Lot until demolition, construction, or improvement work commences and it shall be removed from the Lot as soon as practicable, but in no event later than the date of substantial completion of the new Residential Dwelling or other major addition or renovation, unless otherwise requested by the Builder and agreed to by the Association.

- d. Protection of all Trees and Damage to Soil. All trees, as well as all trees on any adjacent Lot that may be affected by construction work, that are one (1) foot or more in diameter (measured twelve (12) inches above ground), must be protected from damage by the erection of temporary wooden fencing or other appropriate barricades around each such tree. Builder shall use all reasonable efforts to eliminate or reduce the risk of (i) compaction of soil within the critical root zone of such trees, (ii) suffocating roots by adding soil or fill, (iii) damaging trunks or limbs with equipment, (iv) contaminating roots with fuels or solvents, and (v) otherwise damaging roots.
- e. Daily Clean-up of Surrounding Areas Required. No later than the end of each day when any demolition or construction activity takes place on the Lot, sweep the street in front of the Lot (and, in the case of a corner lot, on the side of the Lot) to remove all debris from the demolition or construction. During demolition this requires daily magnetic sweeping to locate and remove any and all metal objects such as nails, clips and straps that can damage vehicles traveling on such streets.

6. **Delivery of Survey.** In connection with any demolition of an existing Residential Dwelling and construction of a new Residential Dwelling, Builder shall provide the Association with a slab form survey executed by a licensed professional land surveyor showing the location of the improvements to be constructed for the Project prior to proceeding with pouring the foundation or slab. The Association shall have ten (10) business days from the date of receipt of a slab form survey to object to the location or height of the foundation above Base Elevation (as defined in the Deed Restrictions).

7. **Delivery of Height Certification.** Once the framing for the roof on any demolition and construction Project has been completed, and before proceeding with any further construction, a written certification of the height above Baseline Elevation, issued by a licensed professional land surveyor, architect, or engineer must be provided to the Association verifying compliance with the applicable height limitations as follows:

House	Thirty-Five (35) Feet above Baseline Elevation
Detached Garage	Thirty (30) Feet above Baseline Elevation

All measurements shall be from the Baseline Elevation as required by the Deed Restrictions and which were set forth in the Plans submitted to the ACC. If the height of a roof exceeds the applicable height limitation, Builder agrees to modify the structure to comply with the applicable height limitation prior to proceeding with further construction. If such modification is required, after completing the necessary modification Builder shall provide to the Association a new certification of height above Baseline Elevation confirming that the structure, as modified, complies with the applicable height above Baseline Elevation limitation.

8. **Permanent Fencing Requirements.** Any fence or wall to be constructed on a Lot must comply with the requirements set forth in Section 5.2.1 of the Deed Restrictions. Prior to commencement of any removal or construction of any fence on the Lot, Builder must give written notice to all property owners whose homes are (a) on either side of the Lot, (b) immediately behind the Lot and (c) on either side of any homes that are immediately behind the Lot, in each case detailing (i) the exact location and height of the new or replacement fence, (ii) the earliest date construction of the new or replacement fence is expected to commence, and (iii) the materials to be used to construct the new or replacement fence.

If a new or replacement fence is to be constructed on a property line that is shared with an adjacent property owner, or the construction of the new or replacement fence requires the removal of a fence that lies between the Project and any other property owner, the Builder must meet with each affected property owner before construction of the new or replacement fence begins and mutually agree with those property owners with respect to the nature, design and construction of such fence, it being agreed that the reconstruction of the same style and height of fence, using the same type of fence materials and placed in the same location of the removed fence shall be permitted.

If any existing fence is removed, it will be the sole obligation of the Builder to pay for and construct the entirety of any new or replacement fence. The Builder shall also be solely responsible for protecting all landscaping on the Lot of any adjacent property owner that is or may be affected by the construction of the new or replacement fence. The Builder shall give not less than five (5) days prior notice to each affected property owner of the date of any fence removal to enable them to keep pets and children away from the fence construction activities, and shall also promptly advise the adjacent Owners when construction of the new or replacement fence is complete. The failure of Builder to comply with this Section 8 (x) will result in Builder being liable in trespass for being on any adjacent property during construction of any new or replacement fence, and (y) may result in Builder being liable for damages to adjoining property owners for removal of any existing fence on such adjoining property.

9. **Deposit Terms.** The Deposit shall be held by the Association to assure compliance with this Agreement and the Relevant Frostwood Construction Related Documents. Builder acknowledges that this Agreement and the Relevant Frostwood Construction Related Documents include rules and regulations relating to construction including, without limitation, employee/subcontractor vehicle parking, earliest starting and latest ending times for construction work, and maintenance of the construction site. A violation of any rule or regulation set forth in any of this Agreement or the Relevant Frostwood Construction Related Documents may result in a written notice to Builder. Any failure to correct such violation in the timeframe required, or any further violation of the same rule or regulation, this Agreement or the Relevant Frostwood Construction Related Documents after the first written notice is sent to Builder will result in the automatic forfeiture of a portion of the Deposit per Section 1 of Schedule A - Forfeiture Schedule attached to this Agreement. The Deposit will also be debited for the costs of weekly Worksite Inspections.

10. **Forfeiture of Deposit.** All or any portion of the Deposit may be forfeited by Builder for violations of this Agreement, or violations of the Relevant Frostwood Construction Related Documents, in addition to those addressed in paragraph 8 above, including without limitation, for failing to complete demolition within 14-days, complete construction of a new Residential Dwelling within 270-days, or complete any other Project within 210-days. A schedule of the forfeitures for some 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.

**11. Refund of Deposit.** The Deposit shall be refunded to Builder as follows:

- a. In the case of the construction of a new Residential Dwelling or a major improvement at an existing Residential Dwelling, within thirty (30) days of the date of receipt by the Association of a written notice by Builder that the Project is complete (including a copy of any certificate of occupancy issued by the City of Houston). For purposes of this subparagraph, the date of substantial completion of a new Residential Dwelling or a major improvement at an existing Residential Dwelling shall be the date on which the Residential Dwelling may be occupied.
- b. In the case of other improvements to an existing Residential Dwelling, within thirty (30) days of the date of receipt, by the Association of a written notice from Builder that the improvements have been substantially completed. For purposes of this subparagraph the date of substantial completion of any such improvements shall be the date on which the improvements may be used for their intended purpose.
- c. The date the Association receives written notice from Builder shall not initiate the timetable for issuing a refund if, within thirty (30) days of the date of receipt of the written notice, the Association, acting reasonably and in good faith, determines that the new Residential Dwelling or a major improvement at an existing Residential Dwelling, as the case may be, cannot be occupied or used for its intended purpose. In that event, Builder shall be required to issue a new written notice of substantial completion.

If the Association 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.

**12. Worksite Inspection.** In order to ensure that the worksite is kept in a clean and orderly condition at all times, each new Residential Dwelling or a major improvement at an existing Residential Dwelling will be subject to weekly inspection ("**Worksite Inspection**") by the Association (or its representative). The monthly fees for such inspections are as follows, and will be deducted from the Deposit:

- a. in the case of construction of a new Residential Dwelling, \$200 per month; and
- b. in the case of a major improvement at an existing Residential Dwelling, where the residence in unoccupied during the majority of the project, \$100 per month.

There is no inspection fee for an improvement at an existing Residential Dwelling where the residence remains occupied during the entirety of the project, it being believed that the resident Owner will ensure that the worksite is kept in a clean and orderly condition at all times.

**13. Purpose of Deposit.** Builder acknowledges that the Deposit is required to be paid in an effort to assure compliance with the provisions of this Agreement and the Relevant Frostwood Construction Related Documents, and the payment of the Worksite Inspections, 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 the Association for violations of this Agreement and/or the Relevant Frostwood Construction Related Documents. The Association expressly reserves all remedies for non-compliance with the provisions of this Agreement and/or the Relevant Frostwood Construction Related Documents, whether or not all or any portion of the Deposit is forfeited or refunded.

- 14. Resolution of Disputes.** The parties agree that all disputes, claims or controversies arising out of or relating to this Agreement shall first be mediated by a mediator 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 the Association based upon the contention that the construction of an improvement on the Lot is proceeding in violation of this Agreement and/or the Relevant Frostwood Construction Related Documents.
- 15. Review of Rules and Regulations and Restrictions and Guidelines; Fines.** The parties, by virtue of their signatures below, acknowledge that (i) they have reviewed all of the rules and regulations contained in this Agreement, (ii) they have received and reviewed the Relevant Frostwood Construction Related Documents, (iii) they have received a copy of the Quick-Reference Guidelines for Builders, Contractors and Owners, and (iv) they have reviewed and understand the relevant fines for violation of this Agreement and the Relevant Frostwood Construction Related Documents, and the process for assessing such fines against the Deposit by the Association.

[SIGNATURE PAGE FOLLOWS]

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

**FROSTWOOD COMMUNITY IMPROVEMENT ASSOCIATION**

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

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

**BUILDER**

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

Print Name: \_\_\_\_\_

**OWNER**

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

Print Name: \_\_\_\_\_

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**FOR THE ASSOCIATION’S USE ONLY**

**Deposit:**

Received on \_\_\_\_\_ by \_\_\_\_\_

Received from (Name and, if applicable, company name) \_\_\_\_\_

Cash \_\_\_\_\_ Money Order \_\_\_\_\_ Check \_\_\_\_\_ (Check No.)

Amount: \_\_\_\_\_

**Refund:**

Amount: \_\_\_\_\_

Check No.: \_\_\_\_\_

Delivered to \_\_\_\_\_ on \_\_\_\_\_

or

Mailed to \_\_\_\_\_ on \_\_\_\_\_



## SCHEDULE A

### Section 1 – Forfeiture Schedule Failure to obtain approval and/or deviating from approved plans

Construct improvements in a location different from what was approved, or construct improvements not previously approved:	
(a) Deviation or failure without any encroachment	\$1,000 each occurrence
(b) Deviation or failure with encroachment (including a height violation)	\$2,500 each occurrence
Failure to provide Baseline Elevation prior to commencing construction	\$1,000
Failure to submit Slab Survey prior to pouring foundation	\$2,000
Failure to submit Height Survey	\$2,000
Failure to post sign with emergency supervisor and other contact information and workplace rules and regulations (in Spanish and English)	\$200, plus \$100 for each day after notice is given
Commencement of demolition or construction prior to tendering Builder's Deposit and receiving ACC approval	\$2,000
Failure to complete demolition within 14-days from commencement of demolition <sup>1</sup>	\$250 for each week demolition continues after the 14th day
Failure to complete construction of a new Residential Dwelling within 270-days after completion of demolition	\$750 for each month construction continues after the 270th day
Failure to complete construction of any other Building Project within 210-days after the start of construction	\$500 for each month construction continues after the 210st day
Failure to erect proper construction fencing and skirting before the start of demolition as required in Paragraph 5(b) of the Agreement.	\$500, plus \$100 for each day after notice is given
Failure to place a dumpster on the property for collection of refuse from interior or exterior demolition materials.	\$500, plus \$100 for each day after notice is given
Failure to notify all relevant property owners as stipulated in Paragraph 4 of the Agreement.	\$500
Failure to notify all relevant property owners as stipulated in Paragraph 8 of the Agreement.	\$500

<sup>1</sup> NOTE: If bricks are being removed and donated to charity (e.g., to Habitat for Humanity), the 14-day time period will begin once the bricks have been substantially removed. No more than ninety (90) days may elapse between the end of demolition and the start of construction without the written consent of the Association, including if submission of a new Application is required.

## Section 2

### **Failure to follow rules and regulations**

One written notice (a “**Violation Notice**”) will be given for failure to observe each of the following rules and regulations, the Agreement, or any provisions in the Relevant Frostwood Construction Related Documents from and after commencing demolition and/or construction. The Violation Notice will include a deadline for bringing the Project into compliance (as determined by the Association in its sole discretion). If Builder/Owner fails to bring the Project into compliance within the proscribed deadline(s), Builder/Owner will forfeit an amount up to \$300. Builder/Owner will forfeit an amount up to \$400 for the second Violation Notice, up to \$500 for the third Violation Notice, with the forfeiture increasing by up to \$100 for each subsequent Violation Notice sent for failure to observe any of the rules and regulations listed below or any provision in the Restrictions or Guidelines.

- Failure to observe earliest starting and/or latest 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 on the Lot as required in the Restrictions.
- Failure to protect trees as required by the Relevant Frostwood Construction Related Documents and the Agreement.
- Failure to keep streets clean from mud and debris from the construction site, including failure to sweep surrounding streets daily during demolition and construction.
- Failure to regularly service the portable toilet facility, to keep it properly screened facing the rear of the Lot, and/or to locate it in other designated areas.
- Failure to empty the portable dumpster within two (2) days after it is full of construction and other work site debris, such dumpster being deemed “full of debris” once the debris reaches the top of the sides of the dumpster.
- Failure to maintain the chain link fence required to enclose the Lot during construction, including having proper screening (without advertising) and skirting attached at all times.
- Failure to display in an unobstructed location at the front of the property an “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 keep the Lot free from any infestation of pests, rodents, insects or other vermin, or an accumulation of construction related trash, debris or other waste, or (in the case of a Lot with a swimming pool, spa or fountain that is not being removed) maintain water that is left in any pool, spa or fountain in a clean and sanitary condition.
- Where applicable, failure to diligently pursue the demolition of an existing structure to completion, it being understood that demolition shall be deemed to have commenced on the first date that (a) any built-in fixtures or appliances are removed from the interior of an existing structure or (b) any brick, windows, siding or doors are removed from the exterior of an existing structure.
- Failure to observe and comply with any other Relevant Frostwood Construction Related Documents, including without limitation Article V (*Architectural Restrictions*) and Article VI (*Use Restrictions; Maintenance of Lots and Buildings*) of the Deed Restrictions.