

**NEW CONSTRUCTION ADDENDUM
(PRESALE WITH SECURITY PROVISION FOR BUYER)**

The following is part of the Purchase and Sale Agreement ("Agreement") dated _____ between _____ ("Buyer") and _____ ("Seller") concerning _____ ("the Property").

1. **Basic Price and Adjustment.** The parties agree and acknowledge that the Purchase Price stated in the Agreement includes the price to be paid for the Lot, plus the basic floor plan for Seller's plan designated as: _____. The purchase price is subject to adjustment based on Buyer selections of finishes, alternates, allowances and modifications.
2. The Agreement is contingent upon Buyer and Seller agreeing in writing prior to closing on home building plans; which plans shall include such building elevations, site plan documentation, and construction agreements as the parties deem necessary to provide for construction of the house to be built on the Property. The construction agreements will specify the payment terms during the course of construction, amounts for any items which Buyer has the right to select on an allowance basis, any warranty provisions offered by Seller, and a construction schedule. Buyer and Seller must reach written agreement on all such items, and provide written notice of such agreement to the listing and selling brokers and their firms, on or before _____, or this contingency will not be deemed satisfied and the Agreement shall terminate.
3. Items which Buyer has the right to choose on an allowance basis are (check those that apply): [] floor coverings, [] counter tops, [] tile, [] light fixtures, [] plumbing fixtures, [] wall paper, [] cabinets, [] appliances, [] landscaping, [] irrigation, [] colors, [] other (specify): _____

The details and amounts of all such allowances shall be specified in the construction agreement referred to in Section 2. Seller reserves the right to substitute materials, fixtures and appliances of comparable quality for any which may be designated in the construction plans, it being understood that references to brand names or specific materials are intended to establish the grade or quality rather than the specific item(s) to be used.

4. Buyer agrees that Seller is to be paid the sum of _____ which amount is due on _____ (immediately upon execution of this Addendum if not filled in) ("Deposit"). Buyer acknowledges the Deposit is being paid for: (a) Seller taking the Property off of the market; (b) Seller's agreement to allow Buyer to make customized selections of allowance items; and _____ (no further items if not filled in).

If this transaction closes, the Deposit shall, shall not apply toward the purchase price (shall apply if not filled in). It is agreed that purposes for the Deposit represent lost marketing time for Seller if the transaction fails to close, as well as the granting to Buyer of the right to select unique, special and/or upgraded items or features that are for the specific benefit of Buyer and which would not be incorporated in the Property in the absence of Buyer's specific request. Further, Buyer understands Seller will devote time and attention to Buyer's requests and development of the agreements referred to in Section 2 of this Addendum. Buyer understands that these items and Seller's efforts may not add value to the Property equal to their cost for purposes of marketing the Property. For the above reasons, the Deposit under this Section 4 is to be paid directly to Seller and independently of any contingency regarding this Agreement. The Deposit charged under this Section 4 is considered earned by Seller as of the date paid by Buyer and independently of the remainder of this Agreement. Should this transaction fail to close for any reason, including failure to satisfy any contingency or requirement for closing, the Deposit will not be refunded to Buyer. Rather, the Deposit shall be retained by Seller.

Initials: BUYER: _____ DATE: _____ SELLER: _____ DATE: _____
BUYER: _____ DATE: _____ SELLER: _____ DATE: _____

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5. The parties acknowledge as follows:
 - A. Any overages in the contract due to changes in the Construction Agreement or Buyer's selection of items which exceed the contract allowances shall be agreed upon in writing and paid in cash to the Builder when changes or selections are made. Unless otherwise agreed in the construction documents, overages will be charged at Seller's total out-of-pocket cost (including charges for labor, materials, equipment, fees and the like), plus _____% of that total cost for overhead and profit.
 - B. Buyer acknowledges that it is Buyer's responsibility to obtain and become familiar with any covenants, conditions, restrictions, or other requirements which may affect the Property and/or the home to be built. Buyer understands that recorded documents affecting the Property may, among other things, affect construction and/or use rights on the Property or create a homeowners association with the right to collect assessments.
6. Except as provided for payment of funds in Section 4, the parties agree that prior to disbursing any further funds to Seller in connection with the construction contract or the Agreement, the following events shall occur:
 - a. The Purchase and Sale Agreement, together with all addenda, shall be submitted to the closing agent, or an Attorney of Buyer's choosing;
 - b. The closing agent (or Buyer's attorney) shall obtain a preliminary title commitment showing that title to the property is vested in Seller's name and free of all monetary encumbrances;
 - c. The closing agent (or Buyer's attorney) shall draft a deed of trust equal to the additional amounts to be advanced by Buyer in connection with improvements to be completed at the Property prior to closing, securing the payments to be made by Buyer pursuant to the Agreement, which deed of trust shall cover the subject property as a first-lien security interest, shall designate _____ Title Insurance Company as trustee, and shall be prepared on LPB Form 22;
 - d. The deed of trust shall be executed by Seller and shall be recorded prior to any payments being made by Buyer to Seller under the Agreement;
 - e. Contemporaneously with the execution of the deed of trust, Buyer shall execute a request for reconveyance, to be held by the closing agent as escrow agent on behalf of both parties, with the agreement that the closing agent shall be entitled to deliver the original deed of trust and request for reconveyance to the title insurance company serving as trustee in order to reconvey title to the subject property in the event: (a) this agreement terminates without closing and all funds advanced by Buyer are returned to Buyer, or (b) closing of the subject property occurs under this Agreement.
 - f. Costs incurred in connection with the provisions in this Section 6, including preparation costs, execution and review costs, recording and reconveyance fees and charges, any escrow charges, and similar items, being for the Buyer's benefit, shall be paid by Buyer.
7. In the event of any conflict between the provisions of this Addendum and the provisions in the Agreement, the provisions of this Addendum shall control.
8. Buyer is advised that this Agreement affects Buyer's legal rights and that Buyer has the right to, and is advised to, seek the advice of legal counsel in the event Buyer has any questions regarding the legal effect of this Agreement.

Initials: BUYER: _____ DATE: _____ SELLER: _____ DATE: _____
BUYER: _____ DATE: _____ SELLER: _____ DATE: _____