

BRAELYNN HOMES NEW CONSTRUCTION ADDENDUM



Property: _____

Seller: _____

Buyer: _____

This Addendum is attached to and made a part of the Offer to Purchase and Contract ("Contract") between Seller and Buyer for the Property.

CHANGE ORDERS.

Buyer, without invalidating this Contract may request changes in the construction of the House within the general scope of the Plans and Specifications, consisting of additions, deletions or other revisions, and the Contract Price and Completion Date shall be adjusted accordingly. All requests must be reviewed and approved by Seller, who shall have the final authority on the approval of the requested change order. All such changes shall be made only by written change order signed or initialed by both Seller and Buyer and incorporated herein in this reference. Seller will provide Buyer with change order forms to present and Seller will not begin work on change order until payment for the change order has been received by Seller AND written change order form is signed and delivered to Seller. **NO REAL ESTATE COMMISSIONS ARE PAID ON CHANGE ORDERS.**

COORDINATION OF WORK AND SUBSTITUTION OF MATERIALS.

Seller shall personally supervise and direct the construction of the House. Seller shall be solely responsible for all construction methods, techniques, sequences and procedures and for coordinating the construction of the House. If materials or products of a certain type or name brand are called for in the Plans and Specifications, allowances or otherwise and are not available locally when needed by Seller, Seller may substitute similar materials and name brands of equal grade without notice to Buyer. Buyer shall not engage, hire, or permit any vendor or supplier to perform any work on the property without prior written consent from Seller. Upon violation of this, Buyer agrees to be responsible and held liable for any resulting damage, cost incurred to reverse unauthorized work, or delay.

APPRAISAL AGREEMENT.

In the event the appraised value of the Property comes in below Purchase Price, Buyer agrees to pay the full and total difference between the appraised value and purchase price. Any such cash differential shall be due in cash at closing.

Buyer's initials _____ Seller's initials _____

BRAELYNN HOMES NEW CONSTRUCTION ADDENDUM

ESCALATION ADJUSTMENT.

If during the course of the Project a Potentially Price-Impacted Building Material item (as determined by Seller) experiences an increase in its price, after execution of contract, for use in this residential construction project, the Buyer agrees to pay that cost increase to the Seller. Any claim by the Seller for payment of a cost increase, as provided above, shall require written notice delivered by the Seller to the Buyer stating the building material in question and the increased cost.

A Potentially Price-Impacted Building Material shall refer to any material, fixture, item, or source of labor that experiences an increase in cost during the course of constructing the home. Buyer and Seller acknowledge and agree that Seller shall be the sole authority in determining what constitutes a Potentially Price-Impacted Building Material. Buyer and Seller acknowledge and agree that Seller shall have sole authority in determining what materials, fixtures, suppliers of material, and labor sources are appropriate substitutions in the event that a Potentially Price-Impacted Building Material is encountered during construction of the home.

Buyer's initials _____

a. **RIGHT OF TERMINATION.** Should there be an increase in the cost of any building material or materials, exclusive of any other price changes, the Seller shall, before making any additional purchases of specified material or materials, provide to the Buyer a written statement expressing the increase of the contract price, the building material or materials in question, and the dollar amount of the price increase to be incurred. The Buyer may then, at their option, terminate the contract by providing within THREE (3) business days written notice of termination to the Seller. Should Buyer fail to deliver to Seller notice of termination within THREE (3) business days, as provided herein, the Seller shall have the option to terminate the contract, or to proceed with the contract and purchase the specified building materials at the increased price. If termination is elected, the Seller shall provide to the Buyer a written notice of termination, the Seller shall be entitled to retain any Building Deposit paid by Buyer, and **THE BUYER SHALL BE REQUIRED TO PAY THE SELLER FOR ANY COSTS EXPENDED FOR ANY CHANGES OR ITEMS SPECIFIED BY BUYER UP TO THE POINT OF TERMINATION.** If Seller or Buyer elect to proceed with the contract, Seller may then purchase the specified material or materials at the increased price, and the Buyer shall be required to pay the increased cost incurred. Seller will provide Buyer with change order forms for the increase and Seller will not begin work on change order until payment for the change order has been received by Seller AND written change order form is signed and delivered to Seller. **NO REAL ESTATE COMMISSIONS ARE PAID ON ANY INCREASES OR CHANGE ORDERS.**

INSPECTIONS.

a. **Procedure.** Prior to Closing, Seller shall have the right to deny access to the Property to any person at any time, as Seller determines in its sole discretion. However, Buyer or a professional home inspector contracted by Buyer shall have the right to enter upon the Property at reasonable times during normal business hours for the purpose of inspecting, examining, testing and surveying the Property, solely at Buyer's expense, provided that any such inspection must meet the following requirements and conditions (collectively, "Inspections"):

BRAELYNN HOMES NEW CONSTRUCTION ADDENDUM

(1) Inspections by Buyer:

(a) All Inspections by Buyer must be scheduled through Seller. These Inspections must be scheduled at least seven (7) days in advance, must take place during normal working hours (Mon. – Fri. 8:00AM to 4:00PM) and must be in accordance with Seller's production schedule.

(b) Seller or its appointed representative shall have the right to accompany Buyer during the Inspections.

(2) Inspections by an independent professional home inspector:

(a) All Inspections by a professional home inspector must be scheduled through Seller at least seven (7) days in advance and must take place during normal working hours (Mon. – Fri. 8:00AM to 4:00PM). All requests for appointments to conduct an Inspection shall be subject to the Seller's production schedule. **NO INSPECTIONS WILL BE ALLOWED THAT HAVE NOT BEEN SCHEDULED WITH SELLER AT LEAST SEVEN (7) DAYS IN ADVANCE. SELLER WILL NOT DELAY CONSTRUCTION OR CLOSING TO ACCOMMODATE INSPECTIONS.**

(b) Seller or its appointed representative shall have the right to accompany the home inspector during the Inspection.

(c) The home inspector must maintain all business licenses required by state and local law and must be: (i) either a licensed professional engineer, or (ii) a full-time home inspector and a member of the American Society of Home Inspectors, Inc. Furthermore, if the home **inspector** intends to use a drone at any time on or around the Property, the home inspector must be licensed by the Federal Aviation Administration to operate the drone. The home inspector must provide Seller with proof of all licenses and certifications required by this subsection (c) prior to, and as a requirement for, making an appointment for the Inspection.

(d) The home inspector must furnish Seller with proof that the home inspector has: (i) worker's compensation insurance in accordance with applicable law; (ii) errors and omissions insurance with coverage of no less than \$300,000 per occurrence; (iii) general liability insurance with coverage of no less than \$300,000.00 per occurrence; and (iv) if the home inspector intends to use a drone at any time on or around the Property, aviation liability insurance with coverage of no less than \$1,000,000.00 per occurrence. The home inspector must provide Seller with proof of all insurance coverages required by this subsection (d) prior to, and as a requirement for, making an appointment for the Inspection.

Failure by Buyer to follow the procedures set forth in this subsection shall constitute a material breach of this Agreement. Unauthorized entry onto the Property or unauthorized activities upon the Property by Buyer, its agents or contractors shall constitute a material breach of this Agreement by Buyer. Buyer specifically acknowledges that Buyer may not, under any circumstances, install or construct any equipment, fixtures, structures or other improvements upon the Property, or modify any of the existing equipment, fixtures, structures or other improvements, at any time and any such unauthorized activities shall constitute a material breach of the Agreement by Buyer. Buyer shall not interrupt or otherwise

BRAELYNN HOMES NEW CONSTRUCTION ADDENDUM

interfere with sales or construction within the Subdivision. Upon completion of any Inspection, Buyer shall restore the Property to its condition prior to the Inspection.

THE CLOSING SHALL NOT BE DELAYED DUE TO BUYER'S FAILURE TO SCHEDULE AND CONDUCT ALL INSPECTIONS SUFFICIENTLY IN ADVANCE OF CLOSING.

COMMENCEMENT OF CONSTRUCTION AND DELAY.

Seller shall commence construction of the House immediately upon execution of Contract, and shall diligently pursue construction of the House or if applicable, the Additional Improvements, and shall schedule construction so as to complete the House within a reasonable amount of time from the date of Permit. However, if Seller is delayed at any time in the progress of construction by (1) any changes ordered in the construction, (2) material shortages or delays in delivery of materials, labor shortages or strikes, adverse weather conditions or delays in transportation which were not reasonably foreseeable at the time of execution of the Contract, (3) acts of God or other peril beyond the control of Seller, or (4) other events beyond the control of Seller, including but not limited to Buyer's failure to make timely selections or otherwise failing to comply with this Contract, then the Completion Date shall be extended for a reasonable time as a result of one of the reasons referenced herein above.

Any date offered by Seller as a "closing date," "completion date," or any other term used to indicate the same, shall be considered an estimate only. Should Seller encounter any delay in this date, Seller shall be entitled to extend this date for a reasonable period of time.

CLOSING COSTS.

Buyer shall pay for the preparation of the Deed and for the revenue Stamps/excise fees payable to the register of deeds. Buyer shall pay for all other costs, including any and all HOA certification fees, initiation fees, capital contribution fees, or other fees charged by any applicable HOA or HOA's management company.

LIMITED WARRANTY.

Seller shall provide Buyer with a written, limited warranty on the House administered by Residential Warranty Corporation (referred to herein as "RWC") which shall be effective as of the Closing Date. The terms and conditions of, and exclusions from, the limited warranty shall be as set forth in that document published by RWC entitled, "LIMITED WARRANTY, SIX YEAR WARRANTY FOR NEW HOMES," and referred to herein as the "Limited Warranty." At Closing, Seller shall deliver to Buyer the actual Limited Warranty for the House, which shall be signed by Buyer at Closing, to be validated by RWC after Closing.

Buyer acknowledges receipt of a sample copy of the limited warranty document, entitled "LIMITED WARRANTY, SIX YEAR WARRANTY FOR NEW HOMES," published by RWC, and agrees to be bound by the terms, conditions, and standards set forth in that document.

Buyer's initials _____

Buyer's initials _____ Seller's initials _____

BRAELYNN HOMES NEW CONSTRUCTION ADDENDUM

a. MANUFACTURERS' WARRANTIES. At Closing, Seller shall assign to Buyer all warranties, expressed or implied, which are given by the manufacturer of any appliance or product installed in the House.

b. DISCLAIMER AND LIMITATION ON SELLER'S LIABILITY. THE LIMITED WARRANTY GIVEN TO BUYER BY SELLER AT SELLER'S SOLE EXPENSE IS TO THE EXCLUSION OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED. BUYER HEREBY WAIVES AND SELLER HEREBY DISCLAIMS ANY AND ALL SUCH OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF HABITABILITY, WARRANTY OF WORKMANLIKE CONSTRUCTION, WARRANTY OF MERCHANTABILITY, OR WARRANTY FITNESS FOR A PARTICULAR PURPOSE. IN ADDITION, SELLER MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER REGARDING THE PAST, PRESENT OR FUTURE CONDITION OR USE OF ANY LANDS OR AREAS SURROUNDING THE PROPERTY OR IN THE VICINITY OF THE PROPERTY. AFTER CLOSING, SELLER SHALL HAVE NO LIABILITY OR OBLIGATION TO BUYER OF ANY NATURE WHATSOEVER EXCEPT AS PROVIDED IN SELLER'S DEED TO BUYER. EXCEPT AS OTHERWISE PROVIDED IN THE LIMITED WARRANTY, SELLER SHALL NOT BE LIABLE FOR ANY REASON, UNDER ANY CIRCUMSTANCES, TO BUYER OR ANYONE CLAIMING THROUGH BUYER FOR MONETARY DAMAGES OF ANY KIND, INCLUDING SECONDARY, CONSEQUENTIAL, PUNITIVE, GENERAL, SPECIAL, OR INDIRECT DAMAGES.

Buyer's initials _____

MANDATORY BINDING ARBITRATION.

BUYER AND SELLER SHALL SUBMIT TO BINDING ARBITRATION ANY AND ALL DISPUTES WHICH MAY ARISE BETWEEN THEM REGARDING THIS AGREEMENT AND/OR THE PROPERTY, INCLUDING BUT NOT LIMITED TO ANY DISPUTES REGARDING: (A) SELLER'S CONSTRUCTION AND DELIVERY OF THE HOME; (B) SELLER'S PERFORMANCE UNDER ANY PUNCH LIST OR INSPECTION AGREEMENT; AND (C) THE LIMITED WARRANTY. THE ARBITRATION SHALL TAKE PLACE IN THE COUNTY IN WHICH THE PROPERTY IS LOCATED. THE PROCEEDING SHALL BE CONDUCTED PURSUANT TO THE RULES OF THE AMERICAN ARBITRATION ASSOCIATION, AND TO THE EXTENT POSSIBLE, UNDER RULES WHICH PROVIDE FOR AN EXPEDITED HEARING. THE FILING FEE FOR THE ARBITRATION SHALL BE PAID BY THE PARTY FILING THE ARBITRATION DEMAND, BUT THE ARBITRATOR SHALL HAVE THE RIGHT TO ASSESS OR ALLOCATE THE FILING FEES AND ANY OTHER COSTS OF THE ARBITRATION AS A PART OF THE ARBITRATOR'S FINAL ORDER. THE ARBITRATION SHALL BE BINDING AND FINAL, AND EITHER PARTY SHALL HAVE THE RIGHT TO SEEK JUDICIAL ENFORCEMENT OF THE ARBITRATION AWARD. NOTWITHSTANDING ANY OTHER PROVISION HEREIN, ANY DISPUTES ARISING UNDER THE LIMITED WARRANTY SHALL BE MEDIATED, ARBITRATED AND/OR JUDICIALLY RESOLVED PURSUANT TO THE TERMS, CONDITIONS, PROCEDURES AND RULES OF THAT WARRANTY PROGRAM. NOTWITHSTANDING THE FOREGOING, SELLER SHALL HAVE THE RIGHT TO INTERPLEAD ALL OR ANY PART OF THE EARNEST MONEY INTO A COURT OF COMPETENT JURISDICTION.

BRAELYNN HOMES NEW CONSTRUCTION ADDENDUM

DEFAULT; REMEDIES.

The remedies specified below shall be the sole and exclusive remedies available to the parties in the event of breach of this Agreement prior to Closing or termination of this Contract, and shall be to the exclusion of all other remedies at law or in equity.

a. BUYER'S DEFAULT. If Buyer defaults on any of its obligations hereunder prior to Closing or termination of this Contract, Seller's sole and exclusive remedy shall be to terminate this Agreement by written notice to Buyer; whereupon, Seller shall retain all Earnest Money, Building Deposit, and Option Money (if any) paid by Buyer to Seller as liquidated damages. Thereafter, neither party shall have any further liability or obligation to the other hereunder.

b. SELLER'S DEFAULT. If Seller defaults on any of its obligations hereunder prior to Closing or termination of this Contract, Buyer's sole and exclusive remedy shall be either: (a) to terminate this Agreement by written notice to Seller, whereupon Buyer shall be entitled to recover all Earnest Money and Option Money (if any) paid to Seller, or (b) to seek specific performance of this Agreement by serving written notice of default on Seller and by instituting mandatory binding arbitration of Buyer's claim of default and demand for specific performance in accordance with Arbitration Section above.

SATISFACTION OF SELLER OBLIGATIONS

Seller shall be deemed to have satisfied all obligations imposed upon Seller by the Offer to Purchase and Contract, and all addenda thereof, upon successfully obtaining a "Certificate of Occupancy" from the applicable governing agency.

CLOSING

The Parties agree that the Closing date referenced in the Offer to Purchase and Contract is an estimate only, and is subject to any delays encountered by Seller as described hereinabove. Parties agree that Seller may extend Closing for a reasonable time with no penalty assessed to Seller for a reasonable delay.

In any event, Closing shall occur within seven days of Seller delivering certificate of occupancy to Buyer, **WITH TIME BEING OF THE ESSENCE** with respect to Closing. Should Buyer fail to complete Closing within seven days of delivery of certificate of occupancy, Seller shall have the right to terminate the contract and shall be entitled to retain Buyers building deposit, due diligence fee, earnest money, and any other monies paid to Seller by Buyer.

Buyer's initials _____

Seller shall provide to buyer at the time of closing a form entitled "Braelynn Homes New Home Acceptance Agreement." Buyer hereby acknowledges receipt of a sample copy of this form. Buyer acknowledges and agrees that ownership of the Property will not transfer until this form has been signed by all Parties.

Buyer's initials _____

Buyer's initials _____ Seller's initials _____

BRAELYNN HOMES NEW CONSTRUCTION ADDENDUM

PARTIES

This Addendum shall be binding upon and shall inure to the benefit of Buyer and Seller and their respective heirs, successors and assigns. As used herein, terms used in the singular include the plural, and the plural includes the singular. The terms "Seller," "Owner," "Builder," and/or "Contractor" (unless specifically defined as a third-party vendor or sub-contractor) may all refer to the Seller party, and are used interchangeably herein. The terms "Purchaser," "Client," and/or "Buyer" may all refer to the Buyer party, and are used interchangeably herein. The terms "Home," "House," "Project," and/or "Property" may all refer to the Property, and are used interchangeably herein. Any use of gender pronouns in this Addendum, whether "he," "she," "him," "her," or words or phrases to similar effect, shall have no significance in the interpretation and application of the terms, provisions and conditions of this Addendum, such use being solely for the sake of convenience.

AGREEMENT

Buyer and Seller acknowledge and agree that this New Construction Addendum, the Offer to Purchase and Contract, together with the exhibits and schedules thereto, contain the entire understanding of the parties with respect to the subject matter hereof and supersede all prior agreements and understandings, verbal or written, with respect to such matters. Buyer and Seller acknowledge and agree that it is their intent to specifically disclaim any and all prior agreements between the Parties. Buyer and Seller acknowledge and agree that the Offer to Purchase and Contract, this New Construction Addendum, and the exhibits and schedules thereto shall be binding and are to be the sole agreement between the Parties.

Buyer's initials _____

Should any portion of this Agreement require judicial interpretation, it is agreed that the Court or Tribunal construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against any one party by reason of the rule of construction that a document is to be more strictly construed against the party who prepared the document. Any attorney fees incurred in connection with construing, interpreting and enforcing this Agreement shall be awarded to the prevailing Party in addition to the amount of any damages awarded to the prevailing Party.

Buyer's initials _____

ALL TERMS AND CONDITIONS OF THE CONTRACT NOT SPECIFICALLY AMENDED HEREIN SHALL REMAIN IN FULL FORCE AND EFFECT. TERMS USED IN THIS ADDENDUM, UNLESS OTHERWISE DEFINED, SHALL HAVE THE SAME MEANING AS DEFINED IN THE CONTRACT. IN THE EVENT OF A CONFLICT BETWEEN THIS ADDENDUM AND THE CONTRACT, THIS ADDENDUM SHALL CONTROL.

Buyer's initials _____ Seller's initials _____

BRAELYNN HOMES NEW CONSTRUCTION ADDENDUM

Date: _____

Buyer: _____

Date: _____

Buyer: _____

Entity Buyer:

(Name of LLC/Corporation/Partnership/Trust/etc.)

By: _____

Name: _____

Title: _____

Date: _____

Date: _____

Seller: _____

Date: _____

Seller: _____

Entity Seller:

BRAELYNN HOMES, LLC

By: _____

Name: Michael Keith, Authorized Signer

Date: _____

Buyer's initials _____ Seller's initials _____