

**NEW CONSTRUCTION CONTRACT ADDENDUM TO PURCHASE
AND SALE OF PROPERTY
GEMSTONE HOMES LLC**

Builder: GEMSTONE HOMES, LLC

Buyer: _____

Property: _____

THIS NEW CONSTRUCTION ADDENDUM TO PURCHASE AND SALE OF PROPERTY between GEMSTONE HOMES, LLC, as Builder, and _____, as Buyer, is made and entered into contemporaneously with the Contract for the purchase and sale of the Property. **NOTWITHSTANDING ANY OTHER PROVISIONS TO THE CONTRARY IN THE CONTRACT,** the following additional provisions are made a part of the contract and shall control:

1) **BUILDER DEPOSIT:** All Builder Deposits, Additional Deposits and Payments Towards Upgrades or Options, if any, and any subsequent deposits made, shall be payable to Gemstone Homes, LLC, and will be used by Builder in the construction and applied to the purchase price at closing **AND ARE NON-REFUNDABLE.** **In addition, Builder Deposits, Additional Deposits and Payments Towards Upgrades or Options if any, are NOT REFUNDABLE if Buyer is unable to obtain the Loan or cannot sell an existing home and Buyer terminates the Contract pursuant to the contract.**

2) **BUYER ACKNOWLEDGEMENTS:**

a) ***Specifications & Building Materials:*** Buyer Acknowledges that Builder reserves the right to change plans, specifications, pricing promotions, incentives, features, elevations, floor plans,

designs, materials, amenities and dimensions without notice in its sole discretion. Square footage and dimensions are approximate, subject to change without prior notice or obligation and may vary in actual construction. All renderings, color schemes, floor plans, maps and displays are artists' conceptions and are not intended to be an actual depiction of the home or its surroundings. Buyer Acknowledges that Homes are built with many natural materials and are crafted by human hands, that products such as, wood, granite, quartz, stone, cultured marble (just to name a few) are ALL irregular and imperfect, that small samples cannot represent the characteristics of larger sections of the product, that all trim materials, framing lumber and plan dimensions are nominal and are in accordance with approved industry standards.

- b) ***Substitution & Delay of Materials:*** Buyer Acknowledges that on occasion manufacturers will backorder or discontinue products that may have been selected for your home. In the event that the Builder is unable to procure or purchase the materials called for in the building plans or as contained in the Selections Addendum, due to; shortages, work stoppage, manufacturer's delays and other like causes, Builder may substitute other and different materials in the place thereof and Buyer hereby expressly agrees to accept such substitution provided that said substitution is acceptable to the local municipality and further, that the said substitutions are reasonable and of comparable quality. Buyer acknowledges that due to the current market conditions, the delivery and installation of building materials and appliances including but not limited to refrigerators, washers and dryers, ranges, stoves, and microwave ovens, may be delayed. If a certificate of occupancy has been issued on the Property, failure of the Builder to install any building material or appliance or other related system in the Property **SHALL NOT** delay the closing. Builder agrees to add such items to the punch list and install such missing item(s) as soon as reasonably possible after closing.
- c) Buyer may not provide any materials, fixtures, or equipment without prior written approval from Builder. If Builder allows Buyer to provide materials fixtures or equipment Builder is not responsible for warranty, installation, or compatibility of Owner-furnished items. Builder is not responsible for any materials, fixtures or equipment that Buyer leaves on property prior to closing.

- 3) SEPTIC, WELL, GRADING, ROCKS AND UNSUITABLE SOILS:** If Builder discovers soils unsuitable for footings specified by the project engineer, including rock, existing underground storage tanks, septic tanks or fields, Buyer will pay the cost of removal of such materials or structures and replacement with suitable materials. IF APPLICABLE Builder has allocated \$15,000 for individual septic field install. Additionally, IF APPLICABLE, Builder has allocated \$15,000 for drilling individual Well with installation of 1HP pump. The Builder will cover up this budgeted amount and anything above that will be collected from the Buyer via a Change Order. Builder will construct the home using the natural topography of the land on which the home is to be built. If the natural topography is to be manipulated at the request of Buyer, Builder MAY require a Change Order for grading, retaining walls, engineered fill, etc.
- 4) HOA AND/OR ARCHITECTURAL REVIEW:** If property is being constructed in a community with an HOA and/or has Architectural Review Guidelines Builder MAY at the sole discretion of the Builder pass on any HOA/ARB review fees or required changes via a Change Order to the Buyer IF there are applicable review fees or changes. Builder does not set the HOA dues/fees and Buyer acknowledges they may change at any time prior to closing on the property.
- 5) CHANGE ORDERS:**
- a) Any alteration or deviations from the plans and specifications will be effective only with a written change order approved by both parties detailing all changes to the scope of the work. However, any change orders provided by Builder to Buyer shall be deemed approved unless a written objection is received within 10 days of submission. At the option of Builder if there is no change order signed by both parties, then specifications remain unchanged.
 - b) Builder may require an additional deposit and/or extend the time to complete work for any change order.
 - c) Builder reserves the right, at their sole discretion, to charge a \$500 administration fee for any and all Change Orders if Builder so chooses.

- d) Builder makes no guarantee that Change Orders will appraise. Buyer is obligated to pay the final sales price on the home with or without change orders irregardless if the home appraises for the final sales price.

e) NO REAL ESTATE COMMISSIONS ARE PAID ON CHANGE ORDERS. ALL CHANGE ORDERS ARE PAID 100% AT TIME OF EXECUTION.

6) WARRANTY:

- a) Unless otherwise provided for herein, Builder hereby warrants that, for a period of one (1) year from the date of closing or the date Buyer occupies the Property, whichever first occurs, Builder will make all necessary repairs and corrections to the Property, either interior or exterior, structural, or nonstructural, that shall become necessary by reason of faulty construction, labor or materials. At Builder's sole option, Builder may either (a) make such repairs or corrections, (b) replace any faulty or nonconforming item or condition, or (c) pay the Buyer the reasonable and actual costs or required to make such repair, corrections, or replacement. This limited warranty is for the benefit of Buyer only and may not be assigned nor shall it inure to the benefit of any successor to Buyer or any other person or entity; it shall survive closing and the delivery of the deed; and it is in lieu of all other warranties, oral or written, express or implied, including without limitation all warranties of habitability, merchantability, or fitness for a particular purpose. The limited warranty provided by Builder does not cover and expressly excludes normal wear and tear, and damage caused by Buyer or any third party. Homeowners are advised to review the residential construction performance guidelines prior to submitting any warranty items to confirm what is and is not a warrantable item.
- b) Warranty service hours are 9am-4pm, Monday-Friday. Emergency calls outside these hours may result in additional charges.
- c) Builder may elect to charge Buyer a Service Call Fee of up to \$350 if warranty item(s) are deemed caused by normal wear and tear, damage caused by Buyer or any third party, and/or a non warrantable item.

- d) Builder may elect to handle all non-emergency matters at one time approximately Eleven (11) months after closing as part of Builder's standard warranty program.
- e) Builder shall assign and deliver to Buyer at closing all manufacturer's guaranties and warranties of components in the Property to the extent the same are assignable, and Buyer shall be responsible for compliance for any notice and claim procedure set forth therein.
- f) **Please refer to the Gemstone New Construction Warranty Addendum attached for further information.**

7) INSPECTIONS AND PUNCH: Buyer understands New Construction Home Contract is not contingent on inspections. Buyer is encouraged to do any/all inspections at their own expense upon notification of substantial completion of home by Builder. Builder agrees to remedy all reasonable punch list items requested by the buyer. Should Builder and buyer not agree on what is reasonable, brokers involved in the transaction shall select a mutually agreeable General Contractor to determine such. Buyer must be available between 8am - 4pm, Monday - Friday for any Builder Requested Walk-Throughs. If Buyer cannot make a Builder Requested Walk-Through then Buyer waives right to the requested Walk-Through.

8) ACCESS TO PROPERTY: Builders liability does not allow Buyers to enter property unattended or during hours when subcontractors are on site. Prior notice to enter property is required and Buyers shall not enter property without their broker or a Builder Representative. Builder MUST approve all appointments prior to Buyer accessing property.

9) PHOTOGRAPHY AND MARKETING: Builder reserves the right to photograph the home for future marketing purposes. Builder reserves the right to show property to prospective buyers of other properties during construction period until closing date. Buyer may not post photos, videos, or details of project on social media, websites, or public forums without Builder's prior written consent.

10) UTILITIES AND INSURANCE: Builder will disconnect all utilities to the home after home closing has occurred. Buyer is responsible for final hook up and change of existing utility accounts over to

buyers name as of the closing date. Including but not limited to, electricity, telephone, cable, heat fuel or other source, homeowners insurance, and water/sewer.

- a) **Propane Exclusion:** Buyer acknowledges that if propane is required for any home utilities or appliances to function properly that Builder will supply a propane tank and begin service with a local propane service provider. However, the Buyer is responsible for delivery and installation of any future propane tanks and/or service AFTER closing on the home. Additional fees will apply if the buyer wants a propane tank buried.

11) SETTLEMENT AND CLOSING: Closing shall be defined as the date and time of recording of the deed. All parties agree to execute any and all documents and papers necessary in connection with the Closing and transfer of title on or before the Closing Date at a time and place designated by Buyer in a reasonable proximity of the Property.

- a) **Closing Documents:** Builder shall deliver at closing a Special or Limited Warranty Deed subject to the exceptions permitted under the contract, an owner's affidavit and indemnification agreement in form reasonably satisfactory to Buyer's title insurance company enabling Buyer's title insurance company to issue Buyer's title insurance policy free of any mechanic's or materialmen's lien exception, a non-foreign affidavit, a counterpart to the closing statement and such other documentation as may be reasonably necessary to close the transaction contemplated herein.
- b) **Closing Expenses:** Builder shall pay for the preparation of the deed only. Buyer shall pay for recording the deed, the excise tax/revenue stamps paid to the appropriate Register of Deeds, and any and all other closing costs, including any and all HOA and HOA management certification fees, delivery fees or other fees charged or levied by the HOA or the HOA management company.

i) REAL ESTATE COMMISSIONS ARE PAID ON THE BASE PRICE OF THE HOME ONLY AS FOUND ON THE GEMSTONE DESIGN & SELECTIONS SHEET ADDENDUM SIGNATURE PAGE. NO REAL ESTATE COMMISSIONS ARE PAID ON PRESALE UPGRADES, LOT PREMIUMS, BUILDER FINANCING or CHANGE ORDERS.

c) **(SELECT ONE)**

_____ **Completed construction:**

Closing shall be on or before _____(the "Closing Date").

If Buyer is unable to Close by the Closing Date, then provided that Buyer is acting in good faith and with reasonable diligence to proceed to Closing, Buyer shall be entitled to reasonable delay of the Closing Date and shall give as much notice as possible to Builder and Closing agent. In such an event, however, Buyer shall have a maximum of ten (10) days from the Closing Date, or any extension of the Closing Date agreed-upon in writing, in which to close without payment of interest. Following expiration of the ten-day period, Buyer shall be responsible for paying to the Builder interest on the purchase price at the rate of twelve percent (12%) per annum accruing from the end of the ten-day period until Closing occurs or the Contract is terminated. Should the delay in Closing continue for more than fourteen (14) days from the Closing Date or the last agreed-upon written extension of the Closing Date, then Builder shall have the unilateral right to terminate the Agreement and receive the Earnest Money, but the right to such receipt shall not affect any other remedies available to the Builder for such breach.

_____ **Construction NOT complete at time of agreement:**

The anticipated completion date is on or about _____ ("Anticipated Completion Date").

It is understood and agreed that this is an estimated date only. Closing shall be within fourteen (14) days after written notice from Builder to Buyer of Substantial Completion as defined herein ("Closing Date"). Provided, however, the Closing Date will not be any earlier than the Anticipated Completion Date unless the parties agree in writing. Buyer and Builder will agree upon the exact Closing Date in accordance with the above, but failing any agreement being reached, the Closing Date shall be the first business day occurring 30 days after the written notice from Builder of Substantial Completion. Buyer must complete inspections and provide a written Punch List to Builder no more than 10 days following the Notice of Substantial Completion. Builder will endeavor

to complete the Punch List work prior to Closing. However, Closing may precede completion of the Punch List work as set out above.

- d) **“Substantial Completion”:** shall mean the completion of the construction of the Dwelling in accordance with the Plans and Specifications and any other special provisions that may be part of the Contract to the degree that: (i) it is habitable and broom-clean, (ii) a certificate of occupancy has been issued by the appropriate governmental authority having jurisdiction over the construction of the Dwelling and delivered to Buyer, and (iii) only Punch List items remain to be corrected.
- e) **Delayed Closing:** In the event Buyer is unable, in good faith, to complete Closing on Closing Date, then Builder may delay Closing and Buyer shall pay to Builder at Closing interest on the Purchase Price at the rate of 12% per annum accruing from the Closing Date until Closing occurs or the Agreement is terminated. In the event Buyer fails to complete Closing on or before fourteen (14) days after the Closing Date, Builder may terminate this Agreement by written notice to Buyer and all sums paid to Builder shall belong to Builder and all Earnest Money shall be paid to Builder.
- f) **Computation of Days:** For purposes of this Contract, the term “days” shall mean consecutive calendar days, including Saturdays, Sundays and holidays, whether federal, state, local or religious. For the purposes of calculating days, the count of “days” shall begin on the day following the day upon which any act or notice as provided in this Contract was required to be performed or made.
- g) **Tax Prorations at Closing:** Notwithstanding anything herein to the contrary, all ad valorem taxes for the property shall be prorated between Builder and Buyer based on the lower of the builder exemption value or the lot value of the property on January 1 of the year the closing occurs.
- h) **Pre-Closing Occupancy:** Buyer may not occupy the home at any time PRIOR to home closing, funds received, and final deeds recorded.

