



**Ground Breaker Homes' New Home Addendum to Purchase Agreement**  
 (Addendum Used for Spec Homes with and without Buyer-Requested Modifications)

**Article 1: Basic Terms of this Addendum to Purchase Agreement:**

**A. This Addendum.** This Ground Breaker Homes' New Home Addendum to Purchase Agreement ("Addendum"), the terms and conditions of which are set forth below, is between Contractor, Ground Breaker Homes, LLC ("Contractor"), and the below-noted Buyer-Owner ("Buyer") (singularly, a "Party", or together, the "Parties") regarding the below-noted realty ("Lot" or "Realty") and house ("House") ("Project") on the Lot/Realty (the Lot/Realty and House shall be hereinafter referred to as the "Property"). This Addendum, the Purchase Agreement, and any Specifications (as defined below) shall be at times referred to together as the "Agreement."

Buyer Name(s): \_\_\_\_\_

Buyer's Current Address: \_\_\_\_\_

Buyer's Telephone Number(s): \_\_\_\_\_

Property/House Address: \_\_\_\_\_

Date of Purchase Agreement: \_\_\_\_\_

**B. Agreement to Abide by Applicable Covenants and Homeowner's Association Provisions.** Buyer acknowledges receipt and review of any and all applicable residential building covenants and/or other restrictive covenants and Homeowner's Association documents for the Property. Further, Buyer explicitly acknowledges that Buyer is obligated to comply with all requirements set forth in the aforementioned documents, including but not limited to, the payment of the applicable required monthly, annual, or other dues, which are as follows for the Property:

\_\_\_\_\_ (list amount and frequency of dues)

**C. Buyer-Requested Work and Modifications to House, if Any.** Check and initial the one that applies:

- Buyer(s)' Initials \_\_\_\_\_  (A) **Spec House being sold as constructed** and without any option for Buyer to modify the House or to otherwise request contractor-performed work, in which case this Section (C) does not apply; OR
- OR
- Buyer(s)' Initials \_\_\_\_\_  (B) **Buyer has the option to request that modifications or work be performed by Contractor on, and/or make selections for, the House prior to Closing**, in which case the below terms of this Section (C) apply and in which case Buyer's Initial Payment/Deposit and any earnest money remitted under the Purchase Agreement are non-refundable once the below condition precedent is met by the Parties or once Contractor commences Work regarding the Buyer-Requested Work or Buyer-Chosen Selections.

**(1) Condition Precedent.** (a) If option (B) above is checked and initialed--meaning that Buyer has the option to request modification of, make selections for, or otherwise request that work be performed by Contractor on, the House prior to Closing--then the Agreement shall be subject to the condition precedent of Buyer and Contractor reaching an agreement on the Buyer-requested work, including selections, upgrades, extras, and modifications ("Buyer-Requested Work"), and any updated purchase price of the Property ("Contract Price"), which shall be evidenced by the Parties executing a document setting forth such agreed-upon terms, such as a Construction Addendum RE: Buyer Selections, a Change Order Document, Pricing and Allowance Document, or other like document (collectively, a "Selections Document"), within ten

(10) days of the date of this Addendum, unless a different period is noted below or otherwise agreed upon by the Parties. This condition precedent must be satisfied within 10 days of the date of this Addendum, unless a different date is provided in the following blank or otherwise agreed upon by the Parties: \_\_\_\_\_.

(b) Further, Buyer and Contractor shall engage in a construction meeting (“Construction Meeting”) within ten (10) days of the date of this Addendum, unless a different date is noted above or otherwise agreed upon by the Parties, to discuss any Buyer-Requested Work.

(c) Once a Selections Document is executed, the condition precedent shall be deemed satisfied.

(d) If within ten (10) days of the date of this Addendum, unless a different period is noted above or otherwise agreed upon by the Parties, (A) Buyer and Contractor do not engage in the Construction Meeting through no fault of the Buyer; (B) Buyer and Contractor do not, for any reason, reach an agreement regarding all Buyer-Requested Work and/or the Contract Price; or (C) Contractor does not otherwise execute a Selections Document for any reason, then the Agreement shall be null and void and any earnest deposit made by Buyer under the Purchase Agreement shall be returned to Buyer.

(2) Construction Meeting. During the Construction Meeting, Buyer and Contractor will discuss and endeavor to agree upon all Buyer-Requested Work and Buyer-Chosen Selections (as defined below), including but not limited to, the selection of any Standard Selections, Upgrades, Extras, and Modifications (as defined below), as well as any adjusted or finalized Contract Price. If an agreement is reached, the terms regarding the Buyer-Requested Work and Buyer-Chosen Selections, as well as the adjusted Contract Price shall be set forth within one or more Selections Document executed by both Parties.

(3) Standard Selections, Upgrades, Extras, and Modifications. (a) During the Construction Meeting, Contractor may present Buyer with Contractor’s standard selections (“Standard Selections”) for various internal and/or external features of the House, which will be of no additional cost to Buyer and will result in no Adjustment (as defined below) to the Contract Price. Contractor, in its sole discretion, will determine the quantity and quality of Standard Selections presented and offered by Contractor to Buyer. If Buyer makes a selection other than a Standard Selection for a particular internal or external feature, then such non-Standard selection (termed an “Upgrade”) shall be accompanied by an upward adjustment (“Adjustment”) in the Contract Price, the amount of which Contractor will notify Buyer. During the Construction Meeting, Buyer may also request changes in the House consisting of additions/extras (“Extras”) and/or modifications (“Modifications”) to the House or any portion thereof. If Contractor agrees to any of Buyer’s requested Extras or Modifications, then all such Extras and Modifications shall be accompanied by an Adjustment in the Contract Price. Generally, a Construction Addendum, Change Order Document, and/or other Selections Document will set forth all Standard Selections, Upgrades, Extras and/or Modifications, along with the Adjustment of the Contract Price.

(b) If so requested by Contractor, in Contractor’s sole discretion, Buyer shall be required to pay all or part of the Adjustment amount at the execution of the Selections Document, and, in such event, the Adjustment amount paid upfront shall be *non-refundable*. Alternatively, and at Contractor’s sole discretion, Contractor may allow the Adjustment to be paid as part of the balance of the (increased) Contract Price, including in the situation in which the Adjustment has been approved by Buyer’s lending institution as an approved increase to the Contract Price. If Buyer refuses Contractor’s request for payment upfront and does not pay such Adjustment amount upfront, Contractor, in its sole discretion, may opt not to fulfill the Buyer-Requested Work and/or may terminate the Agreement.

(c) Buyer acknowledges that Upgrades, Extras, and Modifications may not increase the value of the House. As such, any appraisal of the House may not reflect the cost or full value of the Upgrades, Extras, and Modifications and Buyer may, therefore, be obligated to make a larger down payment at Closing.

**D. This Addendum and the Purchase Agreement.** (1) **The Parties acknowledge and agree that the specific terms, conditions, and provisions of this Addendum and any Specifications shall supersede and prevail over any conflicting, otherwise inconsistent, and/or general terms, conditions, and provisions of the Purchase Agreement.** In particular, the terms of this Addendum supersede and prevail over all conflicting or otherwise inconsistent terms in the Purchase Agreement regarding (a) procedures, terms, and conditions pertaining to closing and possession; and (b) dispute resolution and remedies, and, as such, all terms in the Purchase Agreement regarding remedies of the Parties, dispute

Buyer’s Initials: \_\_\_\_\_

resolution, forum/venue, and indemnification, are voided, and replaced by the terms of this Addendum. (2) In addition, the Agreement contains the final and entire agreement between the Parties and is intended to be an integration of all prior negotiations and understandings and, thus, overrides and supersedes any claimed prior agreement or representation; likewise, Contractor shall not be bound by any terms, statements, warranties or representations not contained herein or the Contract Documents (as defined below). (3) Finally, the Parties agree that no modifications to the Agreement shall be valid unless made pursuant to the terms of the Agreement.

**E. Specifications and Contract Documents.** (1) As noted above, concurrently herewith and/or thereafter, the Parties shall reach an agreement upon the Buyer-Requested Work, as well as any other Buyer-requested internal and external features/options, standard selections and/or custom selections, and upgrades (collectively, “Buyer-Chosen Selections,” which includes all Buyer-Requested Work), and other specifications and pricing terms regarding the Project, and Buyer shall initial, execute, or otherwise agree upon Contractor’s documents setting forth such Buyer-Chosen Selections and other specifications, including but not limited to any Selections Document, any other pricing or allowance document, the blueprints/plans for the House (“Plans”), and other documents. All of Contractor’s specifications for the House (collectively “Specifications”) shall consist of and include the terms and information within this Agreement, the Plans, and the aforementioned documents. Buyer expressly acknowledges that the Buyer-Chosen Selections, other Specifications, and the Contract Price set forth within the Contract Documents are all subject to increase and other change as the Project continues, including by way of Change Order.

(2) “Contract Documents” is defined to mean the following documents, all of which are fully incorporated herein by this reference: (a) this Agreement; (b) any and all Construction Addenda RE: Buyer Selections, Change Order Documents, Pricing and Allowance Document, other Selections Documents, and other documents set forth above in subparagraph (1); (c) Plans for the Project; and (d) any written modifications or supplements to this Agreement that are executed by Contractor and Buyer subsequent to the Effective Date (defined below) of this Agreement. The Contract Documents shall not create a contractual relationship between: (1) any architect and Contractor; (2) between Buyer and a subcontractor; or (3) between any persons or entities other than the Buyer and Contractor.

## **Article 2: Contractor’s Obligations:**

### **A. Contractor’s Performance of the Work.**

(1) Contractor agrees to perform all Work substantially in accordance with the Contract Documents. Unless otherwise provided in the Contract Documents, or otherwise agreed to by the Parties, Contractor shall furnish all materials and labor reasonably necessary for Contractor to perform the applicable construction Work substantially in accordance and conformance with the Contract Documents. Contractor’s construction of the House will be referred to as the “Work.” Work includes all labor, materials, and equipment provided or to be provided by Contractor to fulfill its obligations.

(2) Notwithstanding the foregoing, the Parties agree that: (a) although Contractor will make good faith and reasonable efforts to adhere to the Plans and Specifications, Contractor has the right to make reasonable field decisions and reasonable variances to the Plans and Specifications from time to time; when practical, Contractor will provide Buyer with notice of such action; (b) when specific brands or sizes are specified, actual brands and sizes may vary or be changed when due to reasonable and extenuating circumstances, and in that instance, the substituted brands or sizes will be of equal or greater quality than the originally specified brands or sizes; and (c) all Plans, variations, and renderings are artist conceptions and not always intended to be an exact depiction of the finished project.

(3) Contractor shall supervise and direct the timing and sequence of all Work of its employees and its subcontractors and suppliers, unless the Contract Documents provide otherwise. This Agreement calls for the performance of services by Contractor as an independent contractor, and Contractor shall not be considered an employee of Buyer.

**B. Insurance, Building Permits and Licenses.** (1) Throughout the Project, Contractor shall maintain its normal commercial general liability insurance. (2) Unless otherwise agreed to by the Parties, Contractor shall purchase and secure Builder’s Risk Insurance for the construction of the House, with the costs of such insurance being included within the Contract Price. (3) Contractor shall pay for and secure all permits and licenses necessary for completion of the Work, with the costs of such permits and licenses being included within the Contract Price. Contractor does not guarantee the granting of any such permits or approvals. (4) Buyer shall promptly supply any information needed to complete permit and approval application documents, promptly execute any and all documents, attend required meetings, and complete any

Buyer’s Initials: \_\_\_\_\_

additional activities necessary for securing such permits and/or approvals. (5) Upon Buyer's request, Contractor shall provide proof of any of the aforementioned insurance policies, permits, and/or licenses.

**C. Commencement and Completion of the Work.** (1) At Contractor's sole discretion, Contractor may notify Buyer, including within the Agreement or a Project schedule, of the *estimated* date of the commencement of the Work and/or of an *estimated* date of completion of the House. Buyer agrees that, notwithstanding any estimated commencement or completion date provided by Contractor, Contractor makes no absolute guarantees as to the date of commencement of the Work, or of substantial or final completion of the House, due to the various uncontrollable variables that can occur in construction. (2) Buyer acknowledges and agrees that Contractor's Work may be delayed or otherwise affected by reason of weather, fire, Act of God, strike, or the like; delays relating to the actions or omissions by subcontractors and suppliers, including delays in material/deliveries; unanticipated site condition delays; Upgrades, Overages, Additional Work Authorizations, and other Change Orders; delays caused by the actions or omissions of Buyer or Buyer's agents, including delays by Buyer in selecting Allowance or other items; other delays beyond the control of Contractor; and/or other good faith or good cause delays. The Parties agree that Contractor shall have no liability to Buyer for any of the aforementioned delays and that any such delay shall not be a basis for Buyer to breach this Agreement or refuse to submit any Progress Payment. (3) If Contractor, pursuant to the terms herein, properly elects to stop its Work due to a failure by Buyer to timely make any required payment, or if there is any other delay not the direct fault of Contractor, then Buyer is responsible for all additional costs beyond the Contract Price resulting from such delay or stoppage in the Work, including but not limited to, additional labor costs, costs for winter/weather protection, and any other resulting costs, all of which will result in an upward adjustment of the Contract Price.

**D. House Plans.** (1) Contractor is the rightful owner (s) of all copyright and other rights relating to the Plans. (2) If Buyer requests changes to the Plans after execution of this Agreement, including changes resulting in additional architectural, engineering, or plan revising/redrawing time, then the Contract Price is subject to increase in the amount of all associated costs ("Plans-Related Costs"), which includes but is not limited to, drafting/redrawing charges, engineering/re-engineering charges, and costs for the copying and distribution of any revised Plans.. All Plans-Related Costs are solely the responsibility of Buyer.

**Article 3: Contract Price, Payment Terms, and Other Provisions:**

**A. Contract Price and Deposit.**

(1) Contract Price. In consideration of Contractor's Work, Buyer agrees to pay Contractor in the manner hereinafter specified, the below contract price ("Contract Price"), which Buyer agrees is reasonable compensation for Contractor's Work and which is subject to adjustment and increase, including due to Extras and Change Orders. Notwithstanding any price that may appear in the Purchase Agreement or any other separate document, the below-noted Contract Price supersedes and prevails over any price listed one of the aforementioned documents, and also supersedes and prevails over any verbal price estimate.

Contract Price:   \$ \_\_\_\_\_

(2) Deposit. Buyer shall remit the below-noted initial payment/deposit ("Deposit"), which shall generally also be set forth in the Purchase Agreement, upon execution of this Addendum.

Initial Payment/Deposit:                             \$ \_\_\_\_\_

When option (A) on page one is applicable-- meaning that the spec/inventory House is being sold as is and without any Buyer-Requested Work--then the Deposit shall act as, and constitutes, normal earnest money pursuant to the terms of the Purchase Agreement and otherwise pursuant to the terms of this Addendum. When option (B) on page one is applicable--meaning that Buyer has the option to request modifications or work by performed by Contractor to, and/or make selections, for the House prior to Closing--then the Deposit is non-refundable once the condition precedent noted on page one is met by the Parties or once Contractor commences any Work regarding the Buyer-Requested Work or Buyer-Chosen Selections.

(3) Material Price Escalation Clause: In recent years, building materials have been subject to unforeseeable, drastic market-wide price increases, including but not limited to, lumber, steel, drywall, siding, appliances, roofing materials,

pipng, iron and copper-based materials, and many more types of materials. The Contract Price is based upon the assumption and agreement between the Parties that there will be no significant market-wide price increases, through no fault of the Contractor, after the Agreement is executed for any particular material used on the House (“Market-Wide Material Cost Increase”). A Market-Wide Material Cost Increase only occurs when (a) the price of a material increases by *ten percent (10%)* or more between the date of execution of the Agreement and date of the ordering or purchase of the material at issue by Contractor and (b) Contractor, after reasonable efforts, is unable to locate an appropriate substitute brand or type of such material of the same or greater quality for a lesser price. In the event there is a Market-Wide Material Cost Increase, the Contract Price shall be increased in the amount of eighty percent (80%) of the increase in cost—that is, 80% of the differential between the price for the particular material on the date of execution of the Agreement versus the increased price of the material to be paid by Contractor as of the date of the ordering or purchase by Contractor on the Project. Contractor shall absorb the other twenty percent (20%) of the increase in cost. In the event of a Market-Wide Material Cost Increase, Contractor will notify Buyer in writing of the aforementioned increase in the Contract Price, for which Buyer is solely responsible; such notification can come at any point of time and may come as part of Contractor’s calculation of the final Contract Price of the House in advance of the closing. Contractor, in its discretion, may choose, but is not required, to document such increase in Contract Price via a Change Order and/or may require Buyer to pay all or part of the increased amount upfront.

**B. Changes in the Work and Other Pricing Terms.**

(1) Changes to the Work and Upgrades. Buyer, without invalidating the Agreement and including after execution of the Agreement, may request changes or modifications in the House or Work, may request additional Work to be performed, and/or may request a change regarding a previously selected brand or type of material, or regarding any other internal or external feature of the House, including a change to a more expensive selection or feature beyond Contractor’s standard selections (“Upgrade”). Collectively, any Buyer-requested upgrade, change, modification, or additional work regarding the House or Work shall be referred to as a “Change Order.” If Contractor agrees to any such Buyer-requested Change Order, then there shall be an upward adjustment (“Adjustment”) in the Contract Price, the amount of which Contractor shall decide in its sole discretion; in no event shall a written or Buyer-signed Change Order Document be required or necessary in order for Buyer to be responsible for payment of the Change Order and Adjustment in the Contract Price.

(2) Change Order Document. (a) If Contractor agrees to any such Buyer-requested Change Order, then a written change order document or additional work authorization document may be prepared by Contractor and agreed to by Buyer, and/or Contractor may otherwise provide to Buyer an email or other written document setting forth the requested Change Order. (Collectively, a written change order or additional work authorization document, or other email or document reflecting a Change Order, shall be referred to as a “Change Order Document”). The Change Order Document shall set forth the Buyer-requested change, modification, upgrade, or other change, along with the Adjustment of the Contract Price and shall thereby amend the terms of the Agreement. (b) Each Change Order Document or other upward Adjustment in the Contract Price made after the initial Construction Meeting and execution of the initial Selections Document (i.e., a Construction Addendum or initial Change Order Document), and excluding any and all Overage adjustment amounts relating to an Allowance item, may include a \$100 administrative/management fee, which shall be included and applied in the sole discretion of Contractor. Buyer acknowledges and agrees that the amount of all Adjustments will be decided in Contractor’s sole discretion. (c) Also, an Buyer-requested Change Order shall not be binding upon Contractor and will not amend the terms of the Agreement unless and until a Change Order Document is executed by Buyer, and the payment set forth therein is timely paid by Buyer as set forth below. (d) Notwithstanding the foregoing, the Parties acknowledge that written Change Order Documents are not always prepared and signed, and that if Contractor chooses to complete a Buyer-requested Change Order per Buyer’s verbal direction, and without a Change Order Document, Buyer shall still be liable for all costs associated with Contractor’s completion of Buyer’s verbally requested change. (e) Buyer’s digital signature, e-signature, or acceptance via email, regarding a Change Order Document has the same legal effect as a handwritten signature and is deemed to be Buyer’s acceptance and approval of the Change Order Document and/or the terms set forth in Contractor’s email or other document.

(3) Allowances, Overages, and Credits. (a) Certain items or categories of Work performed by Contractor regarding the construction of the House may be priced by Contractor based upon “allowances” (“Allowances”), which are prices that Contractor has established (either by unit or by flat rate) for the item or category of Work. The Allowance amounts are good faith estimates made by Contractor for each item or category of Work, but are not guaranteed ceiling or actual amounts for each such item or category of Work. Buyer expressly acknowledges that Buyer has had the opportunity to

Buyer’s Initials: \_\_\_\_\_

independently investigate the prices and costs of all Allowance amounts. (b) If the actual cost or price of any category of Work exceeds the Allowance amount, Buyer shall pay Contractor, as an increase and overage (“Overage”) to the Contract Price, the amount by which the actual cost/price exceeds the Allowance amount; any such Overage will generally, but not always, be set forth in a Change Order Document. (c) If Buyer does not spend up to the Allowance amount, Contractor will issue a credit/reduction in the Contract Price, which will be applied against the Final Payment.

(4) Payment of Change Orders, Overages, and Other Adjustments. (a) If requested by Contractor, and in Contractor’s sole discretion, Buyer shall be required to pay all or part of any Adjustment amount, including any Adjustments arising from a Change Order or Overage, upfront and at the execution of the Change Order Document, at the time of the next periodic Invoice, or immediately upon any subsequent demand by Contractor, or alternatively, Contractor may allow the Change Order, Overage, or Other Adjustment amount to be paid as part of the balance of the (increased) Contract Price, including in the situation in which the Adjustment has been approved by Buyer’s lender as an approved increase to the Contract Price. (b) *All Change Order, Overage, and Adjustment amounts are entirely non-refundable.* (c) In the event Contractor demands that the Change Order, Overage, or other Adjustment amount be immediately paid by Buyer and Buyer refuses, Contractor, in its sole discretion, may immediately stop its Work until such payment is remitted and/or may choose not to fulfill the Change Order, Overage, or other Adjustment item. (d) Buyer acknowledges that Change Orders, Overages, as well as any changes in the Plans, may delay the progress of the Work and that Contractor is not liable for any costs, expenses, or damages alleged by Buyer associated with any aforementioned delay or stoppage of Work. (e) In addition, Change Order and Overage amounts do not include or account for any realtor commission percentage or amount, and Contractor reserves the right, in its sole discretion, to increase all past, current, and future Change Order and Overage amounts on the Project by the amount of the applicable realtor commission.

### **C. Closing and Final Payment Terms.**

(1) Pre-Closing Walk Through and Punch List. (a) At or near Substantial Completion (as defined below) of any Work, or otherwise at Contractor’s discretion and request, Buyer shall engage in a “Pre-Closing Walk Through” with Contractor’s Warranty Administrator. Owner shall communicate solely and directly with Contractor’s Warranty Administrator in regard to the Pre-Closing Walk Through and any Punch List work. The Parties will, in the exercise of good faith and reasonableness, mutually prepare a “Punch List” of Work and items that are incomplete or deficient. Thereafter, Contractor will, weather conditions and labor/materials permitting, use reasonable efforts to complete and remedy all items noted on the Punch List. Notwithstanding the foregoing, Contractor has no obligation to complete or remedy items on the Punch List that Contractor disputes. (b) No portion of the Contract Price shall be held back to secure completion of any or all items set forth on the Punch List. If Buyer holds back or attempts to hold back any part of the Contract Price based upon remaining Punch List items, Buyer will be in material breach of the Agreement and Contractor will cease all Work unless and until Buyer’s breach is cured. (c) Contractor, in its sole discretion, may agree in writing that a portion of the Final Payment may be escrowed with Contractor’s escrow agent until the Punch List is fully completed, with such portion not exceeding 100% of Contractor’s estimated value of such remaining Punch List work, however, Buyer expressly acknowledges and agrees that Contractor is under no obligation to agree to any amounts being escrowed due to Punch List work.

(2) Closing and Final Payment. (a) The entire balance (“Balance”) of the Contract Price (including all unpaid Overages, Extras, and Change Orders), after deducting the previously paid Deposit and after deducting any Change Orders that were paid up front, shall be paid by Buyer to Contractor, as the Final Payment, at the closing (“Closing”), which shall occur at Contractor’s request and discretion after Substantial Completion of the Work; for any Balance not paid upon Contractor’s request, Contractor, at its sole discretion, may opt to charge interest for each overdue payment at the rate of one and one half percent (1.5%) per month starting on the requested Closing Date or other due date.

(b) At the Closing, Contractor, as seller, and Buyer, as buyer, shall execute a Deed, Ground Water Hazard Statement, Declaration of Value and Closing Statement, and any other customary and necessary documents to effectuate Contractor’s sale of, and transfer of title to, the Property and the House to Buyer.

(c) At Closing, all existing utilities, including but not limited to water, gas and electricity, shall be transferred and otherwise put into Buyer’s name, and thereafter Buyer shall be solely responsible for all utility costs, provided however that if the originally scheduled Closing is delayed at the request of or otherwise due to Buyer, then Buyer is liable for all utility costs from the date of the originally scheduled Closing to the date of the actual Closing, and the Contract Price will

Buyer’s Initials: \_\_\_\_\_

be increased by such utility costs. Buyer is responsible for the transfer of utilities in Buyer's name, and Contractor shall have no responsibility for damages as a result of Buyer's failure to transfer utilities in Buyer's name. In addition, Buyer shall be responsible to order any additional utility services, such as telephone, garbage, television or internet. Contractor reserves the right to refuse to schedule a Pre-Closing Walk Through or Closing unless and until it confirms the utility transfer has been or is being arranged.

(d) The making of the Final Payment shall constitute acceptance of the Work as in compliance with the Contract Documents and a waiver of all claims by Buyer, except claims arising from items that are set forth in the Punch List and claims arising from the terms of Contractor's Limited Warranty set forth later herein. Buyer expressly acknowledge and agrees that Buyer has the absolute contractual obligation to timely submit, when requested by Contractor, the Final Payment once Substantial Completion of the Work has occurred and regardless of any Punch List work that remains. "Substantial Completion" means that all Work has been completed except for any Punch List items, that the Work is sufficiently complete and in accordance with the Contract Documents such that Buyer can occupy and utilize the House for all normal purposes, and/or that a certificate of occupancy has been issued for the House.

(3) No Early Occupancy. Buyer shall not, under any circumstances, move any property into the House or partially or fully occupy the House, unless and until final completion of the House has occurred, Buyer has submitted the Final Payment to Contractor, and Contractor has informed Buyer that Buyer now has Contractor's permission to occupy the House.

**D. Meetings with Contractor, Walk-Throughs, and Related Terms.**

(1) Meetings and Walk-Throughs. (a) Contractor shall, in its sole discretion, determine the number and timing of all sit-down meetings, and walk-throughs of the House, involving Buyer and Contractor (and/or Contractor's agents) that are reasonable and necessary on the Project. Each Buyer shall make himself or herself available for all Contractor-scheduled meetings and walk-throughs so as to not delay the progress of the Work.

(b) The general timing of meetings and walk-throughs is as follows: Prior to execution of this Agreement, Buyer and Contractor (and/or Contractor's agent) shall engage in at least one meeting (sometimes referred to as a "plan and spec meeting" or "construction meeting") to discuss and determine the agreed-upon Plan and Specifications for the House, with the number of such meetings determined by Contractor in Contractor's sole discretion. Sometime after the execution of this Agreement, Buyer and Contractor (and/or Contractor's agent) shall engage in a meeting (sometimes referred to as a "selections meeting") to discuss and determine the selection of various internal and external features and options for the House. Thereafter, and prior to the installation of drywall in the House, Buyer and Contractor (and/or Contractor's agent) shall engage in a walk-through of the House (sometimes referred to as a "pre-dry wall walk-through") to discuss various features and items within and regarding the House. Finally, immediately prior to Closing, Buyer and Contractor (and/or Contractor's agent) shall engage in a walk-through of the House (sometimes referred to as a "pre-closing walk-through") including for the purpose of the creation of any necessary Punch List.

(c) It is within Contractor's sole discretion to determine the number and timing of any Buyer walk-throughs of and visits to the House that are in addition to the ones listed above. While Contractor shall attempt to be accommodating to Buyer's requests to visit and walk through the House, Contractor has the discretion to determine the number of all such visits and walk-throughs based upon the fact that too frequent of Buyer visits often slows down or delays the progress of the Work.

(2) Consultation and Design Services. Unless otherwise specifically set forth in the below lines, after the execution of this Addendum: (A) Contractor and its agents shall provide up to five (5) hours of consultation and design services at no additional charge, and (B) Contractor will notify Buyer when the five (5) hours has been reached, and any additional time spent thereafter by Contractor with Buyer engaging in consultation, design, or like services will be billed at \$150 per hour. The Parties also agree to the below terms, if any, regarding Contractor's consultation and design services:

\_\_\_\_\_

\_\_\_\_\_

**E. Contractor's Right to Show House.** (1) Contractor reserves the right to show the House until Closing, unless another date has been agreed to in writing by Contractor and Buyer. (2) If, and only if, the below box is checked and Buyer has initialed in the below space, then Contractor reserves the right to show the House for a period of three years after Closing

Buyer's Initials: \_\_\_\_\_

to Contractor's potential clients, assuming Contractor provides Buyer with reasonable notice, which shall be no less than twenty-four (24) hours prior notice. In such event that Contractor shows Buyer's House after Closing, Buyer shall be entitled to a \$50 courtesy payment from Contractor for such use of the House.

Buyer (s)' Initials \_\_\_\_\_  Buyer grants Contractor the right to show the House after Closing.

#### **Article 4: Buyer's Obligations and Other Provisions:**

**A. No Buyer-Performed or Buyer-Directed Work.** Once Buyer signs this Agreement and throughout the entire period of time in which Contractor is performing Work and otherwise prior to Closing, Buyer is not permitted to perform any work, or permitted to hire or direct any agent, any subcontractor of Contractor, or any other party to perform work or modify its work, relating to the Property, unless Contractor pre-approves, in writing, the aforementioned Buyer-performed work or Buyer-directed work. By way of example, Buyer is not permitted to directly hire any subcontractor (e.g., landscaper, painter, etc.) to perform any work relating to Property, and, likewise, Buyer, himself or herself, is not permitted to perform any work on the Property (e.g. painting; landscaping work; installation of any electric, AV, lighting, telephone, cable, internet, or other equipment; installation of irrigation systems; etc.), unless prior, written approval is obtained from Contractor. If Buyer breaches this provision, then (1) Buyer is *solely* responsible, and liable to Contractor, for any loss, damages, and expenses incurred by Buyer, or by Contractor, relating to such Buyer-performed or Buyer-directed work, and (2) the applicable warranty, including as set forth in the Limited Warranty (as defined below), is voided and cancelled. The aforementioned provision is based upon several factors, including safety reasons, delay, or other effect upon Contractor's Work. In the event Contractor pre-approves, in writing, any Buyer-performed work or Buyer-directed work, a separate Addendum must be signed by Buyer.

**B. Buyer's Election to Provide Appliances or Other Materials.** (1) Notwithstanding the above section (A), Buyer may elect to directly purchase an appliance, fixture, or other material (collectively, "Directly Purchased Materials") if, and only if, Contractor provides Buyer with its prior, written consent to such Directly Purchased Materials. (2) With regard to approved Directly Purchased Materials, Contractor may, in its sole discretion, *decline* to install such Directly Purchased Materials, in which case Buyer is solely responsible for, and Contractor has no responsibility or liability for: (a) the Directly Purchased Materials, even after delivery to the House and including if theft or damage should occur; (b) the coordination of, and payment of costs for, the purchase, connection, installation and repair of the Directly Purchased Materials, any related components/parts (e.g., wiring), any related missing parts and pieces, and any special installation requirements for the Directly Purchased Materials; (c) any damage to the House or Property relating to the Directly Purchased Materials (e.g., floor scratches or cabinet damage caused by the installation of such Materials, or any other damages); and (d) the costs to remediate all such damage. Alternatively, Contractor may agree to undertake such remediation work, at its sole discretion, with such costs resulting in an upward Adjustment in the Contract Price, for which Buyer is solely liable. (3) Buyer explicitly agrees that, with regard to approved Directly Purchased Materials, Contractor has absolutely no liability or responsibility (including express or implied warranty liability/obligations) for Directly Purchased Materials themselves, any materials installed by someone other than Contractor related to such Materials (e.g., mirrors, fixtures, wiring), or installation of and labor furnished relating to such Materials.

**C. Buyer's Ability to Pay, Buyer Financing, and Related Terms.** The Parties expressly agree as follows: (1) Buyer has all necessary funds on hand, or a legally binding commitment for all financing necessary to enable Buyer, to pay the Contract Price and, further, agrees that this Agreement is not contingent upon Buyer obtaining financing, unless a separate Financing Contingency Addendum has been fully executed; (2) it is Buyer's sole responsibility to handle all aspects of Buyer's financing of the Project; (3) Buyer shall be responsible for all financing and loan costs for Buyer's construction financing, and acknowledges Contractor has not included in the Contract Price, and has not otherwise considered in entering into this Agreement, any of Buyer's loan costs or buy-down points regarding any construction loan; (4) at any point in the Project, Contractor may request, and Buyer must provide Contractor with, reasonable and sufficient proof, as solely determined by Contractor, and including but not limited to a lender approval or pre-approval letter, demonstrating that Buyer has secured the necessary financing for the Project; (5) Buyer is in material breach of this Agreement if Buyer fails to provide Contractor with such proof; (6) Buyer hereby gives Contractor permission and authority to correspond with Buyer's lender regarding the financing of the Project, payments under this Agreement, inspections of the House, and any related issues; (7) Contractor is not responsible to pay any fees required by Buyer or Buyer's lender for inspections or re-inspections related to the House, as Buyer is solely responsible for any such fees; and (8) Buyer is solely responsible

Buyer's Initials: \_\_\_\_\_



for tasks relating to tax abatements and tax credits, including any contacts with the appropriate municipality to make any necessary applications and/or to determine the status and/or term of any such tax abatement or credit.

**D. Appraisal.** Buyer acknowledges that Upgrades, Change Orders, other modifications, and Buyer-Chosen Selections may not always increase the appraised value of the House. As such, any appraisal of the Property may not reflect the full cost or value of such Change Orders and other items, and Buyer may, therefore, not obtain all expected financing by its lender. Contractor makes no guarantees that the Property will appraise for the same amount as the Contract Price, and Buyer acknowledges that Buyer has an absolute obligation to fully and timely pay the full Contract Price regardless of the appraised value of the Property or factors relating to Buyer's financing of the Work.

**E. Access to the Property.** (1) Once Buyer signs this Agreement and throughout the entire Project, and until all Work (including Punch List work) is entirely completed and Contractor has explicitly informed Buyer that Buyer now has Contractor's permission to occupy the House, (a) Contractor shall have full and unfettered access to the Property and House for the purpose of performing the Work, (b) Buyer shall not be in the House or otherwise on the Property while Contractor and/or its subcontractors/subconsultants are performing their Work unless Contractor and Buyer are meeting at the House for a Contractor-requested site visit/meeting/walk-through or Contractor has otherwise given Buyer permission to do so, and (c) Contractor is the Party who determines the number, time, and content of all on-site and off-site meetings, so long as such determinations are reasonable, and Buyer must be generally and reasonably available for all meetings and phone calls. (2) Buyer and Contractor shall cooperate with each other in scheduling and facilitating the performance of the Work, including so as to avoid conflicts or interference with the progress of the Work. Buyer shall be responsible for clearing snow and ice on private driveways, sidewalks, and paths necessary for Contractor to access the Property, unless Contractor otherwise agrees. (3) Buyer is solely responsible for, and Contractor and its subcontractors/subconsultants shall have no liability or responsibility for, the supervision, security and safety of Buyer and Buyer's dependents, guests, pets, or other invitees who are at the Property at any point during the Project. (4) Contractor will furnish Buyer with two sets of keys at, but not prior to, Closing.

**F. Other Provisions.**

**(1) Radon.** Contractor has not installed an active radon system. If Buyer desires for Contractor to install an active radon system, test for radon, mitigate radon, review any radon test results, otherwise address any radon concerns, or engage in any radon-related task or work other than installation of a passive radon system, then Buyer is obligated to discuss such desire with Contractor prior to signing the Agreement, including to discuss the associated increase in the Contract Price if Contractor agrees to engage in any such radon-related task other than installation of a passive radon system, but Contractor is under no obligation to agree to any such request.

**(2) Covenants.** (a) If any association restrictive covenant or other covenant, local zoning ordinance (including but not limited to, ordinances regarding setbacks), or other restriction (collectively, "Covenant(s)") affects or may affect the Work, Buyer must affirmatively inform Contractor in writing of, and must supply to Contractor, all such Covenants, except in the event the Realty/Lot is in a development/subdivision owned by Contractor. (b) The Parties acknowledge and agree that Contractor has undertaken no review of any such Covenants and that Buyer is solely responsible for all costs relating to compliance with all Covenants, including all additional costs that may become apparent only after execution of the Agreement in order to comply with any Covenant; Buyer agrees that such additional costs will increase the Contract Price. (c) Buyer otherwise expressly agrees that Buyer is solely responsible for all Covenants and shall accept all obligations, responsibilities, and rights set forth within the Covenants. By way of example only, Contractor shall not be held responsible for satisfying any requirements under any Covenants relating to landscaping, fencing, mailbox restrictions, exterior restrictions, and other requirements, and it is Buyer's sole responsibility to ensure that the Specifications contain the necessary items to satisfy all requirements under any Covenants.

**(3) Placement of House on the Lot.** (a) Contractor shall, in its sole discretion, determine the final placement and configuration of the House upon the Lot's including but not limited to, placement of the garage in relation to the House (i.e., left or right, etc.) and final elevation/height of the foundation and House, except when expressly agreed upon and set forth within the Specifications. Notwithstanding the foregoing, Contractor absolutely reserves the right to change the placement of the garage in relation to the House (i) if required by the Lot's elevation or topography or any Covenant or (ii) if the originally intended placement of the garage in relation to the House will necessitate additional dirt work costs and/or other site condition costs in which event Buyer shall immediately pay such additional costs (which will be an

Buyer's Initials: \_\_\_\_\_

upward adjustment to the Contract Price) or otherwise Contractor has the right to change such garage placement to avoid such costs. (b) Contractor shall, in its sole discretion, determine the final elevation of the foundation (i.e., how far out the foundation sits) and final elevation/height of the House. Such determination is often made, in part, to ensure that there is positive drainage away from the House and/or to allow the House to have daylight windows and/or to allow the lower level of the House to be a partial or full walk-out. Buyer also acknowledges and agrees that the final elevation of the foundation, as solely determined by Contractor, as well as the slope/grade of the Lot and other various issues, will ultimately determine and affect the slope/steepness of the driveway, the number of steps to the House and, further, acknowledges and agrees that the need for positive drainage supersedes any desires regarding the slope, steepness or flatness of a driveway; number of steps; any retaining walls; any landscaping; and any other aspect of the House or Property that would be affected by the placement of the House.

(4) Third-Party Requirements. (a) Except as expressly set forth within the Agreement or Contract Documents, the Parties have not discussed or agreed that Contractor will be performing any work, or providing any warranty or guaranty, required by (i) Buyer's lender or lender's inspector; (ii) the United States Department of Housing and Urban Development ("HUD"), Department of Veterans Affairs ("VA"), or the Federal Housing Administration ("FHA") because Buyer's loan/mortgage will be insured, backed, or guaranteed by such governmental entity; and/or (iii) any other third-party inspector, that goes *beyond* the scope of Contractor's work as set forth in the Contract Documents or otherwise *beyond* the applicable standard of care (collectively, "Lender/HUD/VA/Inspector-Required Work"), including but not limited to, performing or providing any termite-related work or warranty, or other items of work required by a third party that go beyond the terms of the Contract Documents or the standard of care. (b) If Buyer desires for Contractor to provide or perform Lender/HUD/VA/Inspector-Required Work, or Buyer's loan/mortgage will be obtained through or insured, backed, or guaranteed by HUD, the VA, or the FHA, then Buyer is obligated to discuss as such with Contractor prior to the execution of the Agreement, including to discuss if Contractor is able and willing to provide or perform any Lender/HUD/VA/Inspector-Required Work and any associated increase in the Contract Price. (c) Accordingly, Contractor has no obligation to provide or perform any Lender/HUD/VA/Inspector-Required Work unless it is expressly set forth in the Agreement or the Contract Documents.

(5) Other Miscellaneous Items.

(a) Mailboxes: Contractor is not responsible for any deposits or keys for any development junction mailbox or the installation of a private mailbox unless such mailbox installation is set forth as an included item within the Specifications. Otherwise, Buyer or Buyer's homeowner's association is responsible for such items.

(b) Lot Lines/Lot Pins, and Fences: (i) Contractor is not responsible for the locating of Property lines or corner pins (including for the purpose of fence installation), unless specifically set forth within the Specifications. (ii) Contractor is not responsible for the installation of a fence and does not have any responsibility for any future fence, unless specifically set forth within the Specifications.

(c) Gas Lines: Contractor is not responsible for installation of any gas lines, unless specifically set forth within the Specifications.

(d) Grading: Buyer acknowledges that (i) the final grading of a Lot (including any detention or retention areas) is based upon various factors, including existing drainage patterns, adjacent property elevations, storm water outlets, overall municipal grading plans, and municipal review and approval, and is determined and completed in Contractor's sole discretion; and (ii) Buyer (and/or Buyer's homeowner's association), and not Contractor, has an ongoing responsibility to maintain the final grading of the Lot after Closing.

(e) Post-Closing Sod/Seed Installation: In the event sod or seed is not yet installed at the time of Closing, Contractor may, in its sole discretion, escrow funds for such sod/seed, in a reasonable amount determined in Contractor's sole discretion, if and only if, Buyer and Buyer's lender or other agent execute the Contractor-provided Escrow Agreement, which is available upon request.

**Article 5. General Condition of the Agreement:**

**A. Purchase Agreement.** (1) As previously set forth herein, the Parties acknowledge and agree that the specific terms, conditions, and provisions of this Addendum and the Project Specifications shall supersede and prevail over any conflicting, otherwise inconsistent, and/or general terms, conditions, and provisions of the Purchase Agreement.

(2) The following is a non-exhaustive list of the aforementioned instances in which the terms of this Addendum shall supersede over the conflicting, otherwise inconsistent, and/or general terms, conditions, and provisions of the Purchase Agreement:

(a) Contingencies: Any and all financing, subject-to-sale, appraisal, and other contingencies set forth in the Purchase Agreement are hereby voided and cancelled, and the only contingencies that apply to the Agreement are those set forth within a separately executed contingency addendum or that are expressly set forth within this Addendum.

(b) Radon: Any and all terms within the Purchase Agreement regarding radon are voided, cancelled, and replaced by the language in this Addendum regarding radon.

(c) Deposit / Earnest Money: When option (A) on page one is applicable-- meaning that the spec/inventory House is being sold as is and without any Buyer-Requested Work--then the Deposit shall act as, and constitutes, normal earnest money pursuant to the terms of the Purchase Agreement and otherwise pursuant to the terms of this Addendum. When option (B) on page one is applicable--meaning that Buyer has the option to request Buyer-Requested Work and/or make Buyer-Chosen Selections for the House--then Buyer's Deposit and any earnest money submitted under the Purchase Agreement are *non-refundable* once the condition precedent noted on page one is met by the Parties or once Contractor commences any Work regarding the Buyer-Requested Work or Buyer-Chosen Selections, and, in such event, any language within the Purchase Agreement characterizing the Deposit and any initially submitted payment(s) by Buyer as earnest money or as otherwise refundable is hereby voided and cancelled.

(d) Closing: The terms of this Addendum supersede and prevail over all conflicting or otherwise inconsistent terms in the Purchase Agreement regarding procedures, terms, and conditions pertaining to Closing and possession, with such conflicting and inconsistent terms being hereby voided and cancelled.

(e) Fixtures: The fixtures included with the Property are only the fixtures expressly set forth in this Addendum and incorporated Specifications, and any conflicting or inconsistent terms in the Purchase Agreement regarding fixtures are hereby voided and cancelled.

(f) Inspections / Walk-Throughs: The Pre-Closing Walk-Through is Buyer's opportunity to inspect the Property and request that incomplete or deficient items be remedied by Contractor, and all terms within the Purchase Agreement regarding Buyer's right to inspect, property inspections, pest inspections, and the condition of the Property are hereby voided, cancelled, and replaced by the terms and conditions of this Addendum regarding the Pre-Closing Walk-Through.

(g) Remedies and Dispute Resolution: The Parties expressly agree to all dispute resolution and remedy provisions set forth in this Addendum and, as such, all terms in the Purchase Agreement regarding remedies of the Parties, dispute resolution, forum/venue, indemnification, mutual mistake, and the like are hereby voided, cancelled, and replaced by the terms of this Addendum regarding remedies of the Parties, dispute resolution, forum/venue, indemnification, and the like.

(h) Seller Disclosures: Buyer acknowledges the receipt of Real Estate Seller Disclosures pursuant to Iowa Code Chapter 558A; that the disclosures are informational in nature only and shall not constitute any type of warranty as to the items included in the disclosures; that all applicable warranties are set forth in this Addendum and incorporated Contract Documents; and that the disclosures shall not constitute a Contract Document.

## **B. Provisions Regarding Warranties.**

(1) Contractor's Warranty. Contractor is providing to Buyer an express limited warranty ("Limited Warranty" or "Warranty") for its Work on the House, the terms of which are set forth in a separate document. Contractor will provide the written Warranty to Buyer prior to, at, or after completion of the Project, and/or, if so desired, Buyer shall otherwise request a copy of the written Warranty, which will be made available upon request. The Warranty specifically sets forth the items included and covered by, and excluded from, the Warranty, and Buyer should, therefore, consult the Warranty regarding any coverage questions pertaining to such express builder warranty. The Limited Warranty is the only express or implied warranty being provided by Contractor; is the only warranty covering the Property and the Work; and is hereby incorporated as if fully set forth herein. By signing this Agreement, and even in the event that Buyer refuses to sign or otherwise does not sign the Limited Warranty, Buyer hereby agrees to and is bound by the Limited Warranty and, further, acknowledges that he/she has read and understands the provisions within this Article and the terms of the Limited Warranty or has had an opportunity to inquire as to the meaning or significance of such provisions.

(2) Manufacturer Warranties on Materials. As also set forth in the Warranty, all express manufacturer warranties are hereby assigned to Buyer, and Contractor does not assume any obligation under those manufacturer's warranties. Upon request, Contractor will assist Buyer in submitting a warranty claim to the manufacturer. The Parties expressly agree that any appliance, item of equipment, or other item upon the Property that is a consumer product for the purposes of the Magnuson-Moss Act or that is otherwise covered by a manufacturer warranty, is entirely excluded from the coverage of

Buyer's Initials: \_\_\_\_\_

this Warranty, and thus, any defect in, or claimed issue with, such appliances or equipment is excluded from this Warranty. The following are examples of such consumer products: refrigerator, stove/range, dishwasher, garbage disposal, microwave, air conditioner, furnace, hot water heater, clothes dryer and washer, thermostat, and automatic garage doors and openers. Buyer is responsible for obtaining and understanding any warranties from such manufacturer/installer.

(3) Excluded Damages under the Warranty and this Agreement. CONTRACTOR'S TOTAL LIABILITY UNDER THE WARRANTY AND AGREEMENT IS THE REASONABLE COST OF REPAIRING OR REMEDYING THE WARRANTED ITEM OF WORK. Further, under this Agreement and under the Warranty, Contractor is not liable for any consequential or incidental damages whatsoever, and the following damages are expressly excluded from the Agreement and Warranty: loss of use, loss of opportunity, loss of rental value, and loss of or low market value of the Property; cost of shelter, transportation, food, moving, storage, or other expenses related to inconvenience or relocation; all other consequential, incidental, or secondary damages; loss caused by Buyer's failure to mitigate damages; and bodily/personal injury of any kind, and any associated medical or other incidental expenses, due to damage or loss to the Property.

(4) Waiver and Disclaimer of Certain Warranties. The Limited Warranty is the only warranty covering the House and Work and is the only warranty being provided by Contractor. THE LIMITED WARRANTY IS PROVIDED IN LIEU OF ALL OTHER EXPRESS OR IMPLIED WARRANTIES. TO THE EXTENT PERMITTED BY LAW, THE BUYER OF THE HOUSE AND ALL SUBSEQUENT OWNERS AND PURCHASERS OF THE HOUSE HEREBY WAIVE ALL OTHER EXPRESS AND IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTY OF HABITABILITY, IMPLIED WARRANTY OF GOOD AND WORKMANLIKE CONSTRUCTION, IMPLIED WARRANTY OF MERCHANTABILITY, AND IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE. THOSE WARRANTIES HAVE BEEN REPLACED BY THE EXPRESS LIMITED WARRANTY. This provision shall not merge with but shall survive any closing or completion of the Work.

### **C. Breach by Contractor and Buyer's Remedies.**

(1) Buyer's Requirement Regarding Notice and Opportunity to Inspect and Cure. In the event Buyer believes Contractor has not fulfilled the terms of, or otherwise breached, any part of the Agreement, then Buyer shall immediately *and prior to the commencement of any legal action*: (i) provide Contractor with written notice of each and every claimed breach/default, with such written notice describing with specificity each breach/default and the requested repair/remedy for each breach/default; and (ii) provide Contractor with thirty (30) days to inspect the House and cure any such claimed breach/default.

(2) Once the Deposit is treated as a non-refundable Deposit pursuant to the terms of this Addendum, then the following terms apply: In all instances, and notwithstanding any asserted or proven claim by Buyer that Contractor has breached the Agreement or any actual or attempted termination of the Agreement by Buyer, (i) any non-refundable Deposit and all other amounts previously paid by Buyer to Contractor shall be kept by Contractor; and (ii) Buyer shall immediately remit any necessary additional payment to Contractor for all Work competently performed on, and materials ordered for, the House at the point of any termination; such payment is in addition to all other remedies Contractor has against Buyer.

### **D. Breach by Buyer and Contractor's Remedies.** Contractor's remedies herein are in addition to all other legal remedies.

(1) Breach by Buyer. Contractor may terminate the Agreement and cease all applicable Work if any of the following occur: (a) Buyer fails to timely make any payment under the Agreement; (b) Buyer materially breaches any other term of the Agreement; (c) Buyer is adjudged bankrupt, is insolvent, or has a receiver appointed on account of insolvency; or (iv) there is a genuine dispute between Buyer and Contractor during the Work and such dispute is not resolved within five days of the dispute arising. If Buyer breaches the Agreement, and/or if Contractor terminates the Agreement under one of the bases noted above, Contractor shall be entitled to, and shall receive from Buyer, payment for all Work already performed and materials already ordered for the Work as of the date of Contractor's termination of the Agreement and all other damages permitted under Iowa law, including but not limited to, lost profits.

(2) Once the Deposit is treated as a non-refundable Deposit pursuant to the terms of this Addendum, then the following terms apply: The Deposit is a non-refundable Deposit that shall always be retained by Contractor, either under Contractor's election to (a) recover from Buyer Contractor's actual damages, with such damages being first partially compensated through the Deposit, or (b) retain the Deposit as liquidated damages. Contractor has the right to elect to

Buyer's Initials: \_\_\_\_\_

recover actual damages or liquidated damages as further described herein: (i) Actual Damages: Contractor is entitled to, and may recover from Buyer, all of Contractor's costs, including the above-noted costs, and all other damages for which Buyer is liable under the Agreement or the law. Contractor's actual damages shall first be compensated and reimbursed to Contractor through Contractor's retention of the Deposit with the Deposit being applied as a partial offset against its actual damages, and Buyer shall be liable to Contractor for all remaining costs and damages not compensated and reimbursed to Contractor through retention of the Deposit; in such event, Contractor may commence legal proceedings against Buyer for, and otherwise has the right to recover from Buyer, all remaining costs and damages. (ii) Liquidated Damages: Certain damages may be impractical and/or impossible to compute in the event of Buyer's breaches of the Agreement, and, thus, the Parties agree that Contractor may elect for the Deposit to be treated and retained by Contractor as reasonable liquidated damages for Contractor's damages that may be impractical and/or impossible to exactly compute, and not as a penalty; in such event, Contractor has the right to retain the entire Deposit, regardless of the amount of its actual damages.

**E. Other Provisions Regarding Remedies.**

(1) Mediation and Mandatory Arbitration Clause. (i) If a dispute arises regarding this Agreement or the Property, a Party must participate in a non-binding mediation prior to the commencement of any legal proceeding, if and only if requested, in writing, by the other Party within thirty (30) days of the existence or notice, whichever is sooner, of the dispute. (ii) All claims and disputes relating to the Warranty, Agreement or Property, except for any action by Contractor against Buyer for foreclosure of a mechanic's lien or breach of contract (and any other action joined by Contractor in such action), shall be submitted to arbitration in the location of the Property. Unless the Parties agree otherwise, the arbitration shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules. The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in any court having jurisdiction thereof. (iii) The Parties waive all right to a trial by jury in any action relating to the Warranty, Agreement or Property; this waiver is knowingly, willingly, and voluntarily given.

(2) Indemnification. Buyer shall indemnify, protect, defend, and hold harmless Contractor and its officers, employees, subcontractors, suppliers, and agents ("Indemnified Parties"), from and against all claims, losses, causes of actions, judgments, attorneys' fees, costs, compensatory and punitive damages, and other damages regarding any personal injury, death, or property damage (collectively, "Claims"), to the extent the Claims arise from, or are related to, in whole or in part, any negligent or intentional/willful act, misconduct or omission; any breach of this Agreement; any breach of any duty or obligation; or any other violation of law by Buyer and/or by any other contractor, person, or other agent retained or employed by Buyer and to the extent the Claims are not the sole result of the negligence of Contractor.

(3) Waiver of Subrogation. To the extent damages are covered by any Builder's Risk policy, property insurance, or other insurance during or after the Project, Buyer shall waive all subrogation and other rights against Contractor and its subcontractors and agents for such damages, except such rights as they may have to the proceeds of such insurance.

(4) Recoverability of Attorney's Fees and Costs. The Parties agree that Contractor shall be entitled to recover from Buyer all of its attorney's fees and costs, including but not limited to all court costs and expert/consultant costs, resulting from (a) Buyer's breach of this Warranty or the Agreement, (b) Contractor enforcing and/or defending its rights under this Warranty or the Agreement regardless of whether any legal proceeding is commenced, or (c) Contractor being the prevailing party in defense of any suit, arbitration claim, or proceeding brought by Buyer against Contractor arising from this Warranty, Agreement, or the Property.

**F. Obligation to Keep Contractor-Provided Information Confidential.** All of Contractor's documentation regarding the Project, as well as all other information regarding pricing, bid information, plans, drawings, specifications, invoicing, bills, costs, expenses, and work regarding the Project constitute "Confidential Documents and Information." Buyer expressly agrees that, during the Project and at all times thereafter, Buyer (1) shall maintain the strict confidentiality of all Confidential Documents and Information; and (2) shall not directly or indirectly copy, use, show, give, disclose verbally or otherwise, or otherwise communicate regarding any and all Confidential Documents and Information to any person or entity for any purpose. Provided however, that Buyer may use, disclose and otherwise communicate regarding Confidential Documents and Information with Buyer's own lender, real estate agent, and attorney if, and only if, such use and disclosure is necessary and solely for the purposes of the Project and such lender, real estate agent, and attorney agree to keep all Confidential Information and Documents strictly confidential in accordance with the terms of this paragraph.

Buyer's Initials: \_\_\_\_\_

In the event Buyer's real estate agent has signed, received from Buyer, or otherwise reviewed this document, such real estate agent expressly agrees to abide by the terms of this paragraph regarding confidentiality.

### **G. Miscellaneous Provisions.**

(1) Owner Notice. Pursuant to Iowa Code Chapter 572, Buyer is hereby advised as follows:

**Persons or companies furnishing labor or materials for the improvement of real property may enforce a lien upon the improved property if they are not paid for their contributions, even if the parties have no direct contractual relationship with the Buyer. The state construction registry provides a listing of all persons or companies furnishing labor or materials who have posted a lien or who may post a lien upon the improved property. The state construction registry, called the Mechanic's Notice and Lien Registry, can be found at [www.sos.iowa.gov/mnlr](http://www.sos.iowa.gov/mnlr), and the toll-free telephone number for this state construction registry is 888-767-8683.**

(2) Disclosure of Affiliated Businesses and Other Disclosures: Ground Breaker Homes, LLC is the contractor-seller under this Agreement. Ground Breakers Homes, LLC is affiliated with other entities, including but not limited to, affiliation through common ownership, in whole or part, among and between such entities, and affiliation through common personnel among and between such entities. These entities include the real estate development company of Diligent Development Group, LLC (12119 Stratford Drive, Suite B, Clive, IA 50325) and the realty company of People's Company of Indianola (12119 Stratford Drive, Suite B, Clive, IA 50325), a licensed real estate broker, as well as affiliated companies to the aforementioned two entities. Buyer is not required to use the aforementioned companies as a condition of the purchase or Closing of the Property and acknowledges that other entities that provide similar services. By signing this Agreement, Buyer acknowledges the foregoing affiliation between the entities and that the aforementioned entities may receive a financial benefit as a result of the sale of the Property. Also, Buyer acknowledges that the principal of Ground Breaker Homes, LLC is a licensed realtor in the State of Iowa. Finally, in the event that People's Company of Indianola or a related People's Company entity represents a party to this transaction, a separate written disclosure of such representation shall be provided to Buyer in accordance with the Iowa Real Estate Commission rules.

(3) Miscellaneous Provisions. (a) Each Party agrees that it is represented by counsel and/or have had the opportunity to retain counsel; that it has entered into the Agreement knowingly and voluntarily after having been fully advised of its rights in this matter and of the scope and effect of the Agreement and/or after having had the opportunity to be fully advised; that all Parties played a substantive role in drafting the Agreement and/or had an equal opportunity to review and/or modify the provisions set forth in the Agreement. Accordingly, in the event of any misunderstanding, ambiguity, or dispute concerning the Agreement's provisions, or interpretation, the Parties agree that no rule of construction shall be applied that would result in having the Agreement interpreted against any Party. (b) Nothing contained in the Agreement shall create a contractual relationship with, create a cause of action in favor of, or otherwise benefit, any third party. Contractor's subcontractors, suppliers, and other contractors are not third-party beneficiaries under the Agreement. Instead, Contractor's Work is being performed solely for the Buyer's benefit, and, therefore, no other entity shall have any claim against Contractor because of the Agreement. (c) Buyer acknowledges that one or more principals and/or employees of Contractor are licensed real estate brokers and/or agents in the State of Iowa and that such individuals may receive a financial benefit as a result of the sale of the Property. (d) The Agreement shall be governed and interpreted according to Iowa law. (e) Should any provision of the Agreement be declared illegal or unenforceable by any court of competent jurisdiction and cannot be modified to be enforceable, such provision shall immediately become null and void, leaving the remainder of the Agreement in full force and effect. (f) Buyer, in executing the Agreement, did not and shall not rely upon any statement or information provided, directly or indirectly, verbally or in writing, by Contractor or any other party, except for the statements and information provided within the Agreement when fully executed. (g) The Agreement may not be assigned by either Party. (h) Contractor affirmatively states, and Buyer agrees with Contractor, that under this Agreement Contractor is not a creditor extending credit as those terms are defined under the Federal Consumer Credit Code, as this Agreement merely provides that the Buyer shall make payments to Contractor as the work progresses and in accordance with the progress payment schedule noted within this Agreement. Buyer shall have no right to defer payments as those payments come due in the progress payment schedule. (i) The Agreement is not enforceable and effective until such time as it has been executed and delivered by both Parties (such time/date shall be the "Effective Date").

**H. Other Attachments and Other Terms.** The Parties additionally agree to the following terms set forth below:

Ground Breaker Homes' One-Year Builder Warranty (06/2021 version)

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Buyer's Initials: \_\_\_\_\_

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Ground Breaker Homes, 12119 Stratford Drive, Suite B, Clive, Iowa 50325

READ BEFORE SIGNING: This is a legally binding and enforceable document. The terms of this Agreement should be read carefully because only those terms in writing are enforceable. No other terms or oral promises not contained in this Agreement may be legally enforced. You may change the terms of this Agreement only by another written agreement. You are encouraged to consult with legal counsel to discuss the impact of this Agreement before signing.

**Contractor: Ground Breaker Homes, LLC** \_\_\_\_\_

**Buyer:** *(All Buyers must sign)*

By (Sign): \_\_\_\_\_

Sign: \_\_\_\_\_

Name/Title: \_\_\_\_\_

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

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

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

Sign: \_\_\_\_\_

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

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

**Acknowledgement of, and Agreement to, Limited Warranty:**

Buyer acknowledges receipt and review of the separate document entitled Ground Breaker Homes' One-Year Builder Warranty (06/2021 version) ("Limited Warranty"), which is hereby incorporated as if fully set forth herein. By signing below, Buyer hereby agrees to, and is bound by, the Limited Warranty and, further, acknowledges that he/she has read and understands the terms of the Limited Warranty or has had an opportunity to inquire as to the meaning or significance of such terms with counsel.

**Buyer:** \_\_\_\_\_

**Buyer:** \_\_\_\_\_

Sign: \_\_\_\_\_

Sign: \_\_\_\_\_

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

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

Buyer's Initials: \_\_\_\_\_