

## ADDENDUM "A"

1. **Nonrefundable Payment:** A Nonrefundable Payment in the amount of \$\_\_\_\_\_ is hereby tendered by Buyer to Seller/Builder. The Nonrefundable Payment will be applied towards the Sales Price. This contract does not have any provisions for contingencies related to the Non-Refundable Payment and it is nonrefundable in any case.
2. **Inspection/Repair/Acceptance:**
  - *Initial Inspection of Existing Structure.* If construction has already commenced, Buyer acknowledges and agrees that Buyer has inspected the residence, and accepted as satisfactory the work completed as of the date of this contract. Buyer agrees to immediately apprise the Seller/Builder in writing if any aspect of construction is not satisfactory. ***Failure by the Buyer to reasonably and timely object in writing to any part of the work or improvements shall constitute an acceptance of that phase of construction of the residence or other improvements.***
  - *Final Inspection.* A final inspection by Buyer shall be completed no later than five (5) days prior to the scheduled walkthrough (said period of time being herein called the "Inspection Period"). If Buyer elects to inspect the residence, Buyer shall provide Seller/Builder with Buyer's written inspection report ("Buyer's Report") not later than two (2) days after Buyer's inspection is conducted. Buyer is advised to PERFORM A THOROUGH INSPECTION OF THE PROPERTY BEFORE CLOSING, AS SUCH INSPECTION WILL BE BUYER'S FINAL OPPORTUNITY TO IDENTIFY CORRECTIONS. Any Buyer's Report shall include an itemized summary of Buyer's requested corrections or items for completion on the cover page of the accompanying report. If Buyer does not give Seller the itemized summary of the inspection report within the Inspection Period, Buyer will be deemed to have accepted the Property in its then current condition.
  - **Final Punch List/Warranty:** As provided above, approximately one week prior to the closing, Buyer and Seller/Builder shall meet at the Property on only **one occasion** to prepare **one** "Final Punch list" of all items within the residence to be corrected or completed. Buyer shall reasonably cooperate with Seller/Builder and be available for such meeting upon Seller's/Builder's request. If Buyer is more than one person hereunder, the attendance and decisions of any one Buyer at the meeting shall be binding upon all persons comprising Buyer.
  - The Final Punch and inspection report list shall not require Seller/Builder to perform any work not within the scope of this contract. Seller/Builder will correct and/or complete the Final Punch list items prior to the closing, subject to any delays caused by Buyer or its agents, adverse weather or unavailability of material or labor, or any cause beyond the reasonable control of Seller/Builder. At the election of Seller/Builder, the closing shall not take place until such time as Buyer has signed off on the Final Punch List and related Acceptance, in the form required by Seller/Builder.
  - After the closing, Seller/Builder shall only be responsible for valid warranty claims or any claims for construction defects made in accordance with the terms and conditions of the \_\_\_\_\_ Express Limited Warranty and Performance Standards (hereafter referred to as the "Limited Warranty"). **Except for Seller's/Builder's obligations under the Limited Warranty**, from and after the closing, Seller/Builder shall not be responsible for any future issues or claims for construction defect that Buyer may have in relation to the Property, the subdivision or community in which the Property is located or their surroundings including but not limited to: issues discovered by inspections after closing, environmental problems or concerns, nuisances, schools and their locations, parking and parking availability or locations, flooding or flood hazards, security, noise or traffic patterns. Accordingly, upon the closing, Buyer shall be deemed to have forever waived, released and discharged Seller/Builder from all claims, losses, liabilities, damages and expenses relating in any manner to the above-mentioned items as well as square foot disparity, features of the home or community, mistakes on marketing materials and environmental concerns.
  - It is Buyer's sole responsibility to inspect the Property. Buyer agrees to only enter upon and inspect the Property during daylight hours and when a representative of Seller/Builder is present.
3. **Condition of Property:** At the closing, Buyer and Seller/Builder shall agree and be deemed to have agreed as follows, and at Seller's/Builder's option, the following provisions shall be included in the deed to be delivered to Buyer at the Closing:

- Seller/Builder has not made, does not make, and specifically disclaims any and all representations, promises, covenants, agreements, guarantees or warranties of any kind or character whatsoever, whether express or implied, oral or written, past, present, or future, of, as to, concerning or with respect to the condition of the Property, the presence or absence of hazardous or toxic substances or materials, the condition of or activities on adjacent or nearby properties, or any other matter relating to the Property, and Buyer hereby waives any such representations, warranties, promises, covenants, agreements, or guarantees, and by its execution of this contract releases Seller/Builder from any liability with respect to any of the matters disclaimed by Seller/Builder in this contract,
  - Buyer understands the nature of environmental concerns in an urban area and will perform their own due diligence concerning any environmental issues. Buyer has obtained from Seller the applicable environmental disclosure, if any.
4. **Real Estate Commission:** Buyer represents and warrants to Seller/Builder that Buyer has not contracted with any real estate broker or other party that may claim a commission or other form of compensation in connection with the purchase of this Property other than the party listed on page 9 of said New Home Contract, if any.
5. **Change Orders/No Verbal Agreements:**
- This contract may only be modified by written Change Orders executed by Seller/Builder and Buyer. No verbal agreements or course of conduct between Buyer and Seller/Builder shall change the terms of this contract. All Change Orders are subject to management approval. A \$500 fee will be assessed for each post-insulation Change Order.
  - Prior to closing, Buyer is not allowed to perform any extra work without an approved, written agreement with Seller/Builder.
  - Buyer hereby acknowledges and agrees that **the cash amount paid for each Change Order prior to closing is nonrefundable under any and all circumstances.** No work shall begin pursuant to any Change Order request until Buyer and Seller/Builder have executed the written Change Order and the Change Order amount is paid in full. The real estate commission, the title insurance policy amount and any other sum calculated upon the Sales Price shall be based upon the original Sales Price stated in the New Home Contract.
  - Seller/Builder reserves the right to deny any Change Order request. **In the event an item is partially or totally deleted, no credit or refund will be given to Buyer.**
  - **Upgrades/Change Orders may have a negative impact on appraisal, resulting in a decrease of appraisal value.**
6. **Disclaimer of Damages:** To the extent allowed by applicable law, Seller/Builder shall not be responsible or liable for any consequential, special or incidental damages including, without limitation, loss or damage or loss of use to any real or personal property owned by Buyer.
7. **Adjacent or Nearby Property:**
- Buyer acknowledges that he/she is buying only the real property and improvements described in this New Home Contract.
  - Buyer has inspected the neighborhood and is familiar with the uses of surrounding properties and has found them to be acceptable. Seller/Builder is not responsible for the uses of other properties in the neighborhood and thus cannot make any representations or assurances regarding access through other properties, fences or encroachments and noises, smells or other potential nuisances caused by neighbors or other third parties.
  - To the extent that Buyer's decision to purchase the real property and improvements described in this New Home Contract is based in any way upon the present condition or appearance of adjacent or nearby property (whether owned by Seller/Builder or not) or by any statement or item distributed by a representative of Seller/Builder (including advertisements, maps, plats or depictions) as to the past, present or future condition or appearance of such adjacent or nearby property or any activities conducted thereon, then Buyer acknowledges it has not relied on such conditions, appearances, and/or statements and releases Seller/Builder from any responsibility for same.
  - In certain instances, the Property may be located in a project or development that provides community amenities and services to those who reside there. Buyer acknowledges that Buyer has inspected, evaluated and approved of these amenities and services. Buyer recognizes that a community association comprised of those owning property in the development, and not Seller/Builder,

is responsible for the continuing maintenance of these amenities and the provision of these services, and agrees that **Buyer shall have no claim of any kind against Seller/Builder for such amenities or services.**

8. **Waivers of Subrogation:** The Buyer and Seller/Builder waive all rights against each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, for damages caused by fire or other causes of loss to the extent covered by property insurance applicable to the Property and improvements thereon, except such rights as they have to proceeds of such insurance held by the other as fiduciary. This provision shall insure to benefit of and shall bind successors and assignees.
9. **Warranties and Dispute Resolution:**
- This contract incorporates by reference the Limited Warranty. **Buyer agrees and understands that by signing this contract that Buyer is waiving any claim or cause of action under any theory of implied warranty, including the theory of good workmanship and that all implied warranties are expressly replaced by the terms of the Limited Warranty, which is incorporated by reference into this contract.** Buyer acknowledges that the terms of such limited warranty are clear, specific and sufficiently detailed to establish the only standards of construction which Seller/Builder is obligated to meet.
  - All warranty requests shall be submitted through Seller's/Builder's web site.
  - All warranty work is scheduled and performed during normal business hours in accordance with the Limited Warranty.
  - The Buyer has received a copy of the Limited Warranty. Buyer further acknowledges that Buyer has been afforded the opportunity to read, review and ask questions of the Seller/Builder about the scope of the Limited Warranty. Buyer understands that the Limited Warranty will be issued and become effective upon the closing of this sale or the Buyer's occupancy of the residence, whichever is sooner. The Limited Warranty is changed occasionally and the Limited Warranty applicable to Buyer shall be that version existing at the date of closing. The Limited Warranty provides for an alternative dispute resolution procedure for any disputes that may arise between the Buyer and the Seller/Builder. The dispute process is accomplished under Section VI. Alternate Dispute Resolution of the Limited Warranty.
  - Buyer and Seller/Builder agree that any dispute, claim, controversy, or other matter in question covered by the Limited Warranty shall be resolved in conformity with the terms of the Limited Warranty, including arbitration of all disputes not otherwise resolved under the terms of the Limited Warranty. Buyer and Seller/Builder further agree that any dispute, claim, controversy, or other matter in question between Buyer and Seller/Builder arising out of or in any way related to this contract or breach thereof, Property, or Buyer's dealings or relationship with Seller/Builder not covered by the Limited Warranty, shall in all cases be resolved by binding arbitration administered by the American Arbitration Association in accordance with its Construction Arbitration Rules. One (1) arbitrator in Austin, Texas shall be selected by the Homeowner from a list of arbitrators provided by the Builder upon request of the Homeowner. In the event the Homeowner is unable to select an acceptable arbitrator from the list provided by the Builder, the arbitrator will be selected in accordance with selection rules of the American Arbitration Association for one (1) arbitrator. Any such arbitration shall be in accordance with the provisions in the Limited Warranty related to arbitration. In addition to complying with other legal requirements for claims, the arbitrator shall require that all claims, complaints, or disputes to be presented in the arbitration shall be described in detail in writing and presented to the arbitrator and the opposing party not less than 21 days prior to the hearing. In any arbitration, the award will be issued no later than 90 days after the appointment of the arbitrator. The terms and provisions of this paragraph shall survive closing, and any breach or termination of this contract.
  - Reference to this section shall be included in the deed to the Property.
  - Appliances, equipment, machinery, materials and other items located in the residence or at the property, including such items as the dishwasher, cooktop, oven, microwave, kitchen vent fan, central air conditioning coil and compressor, furnace heat exchanger, water heater and carpet (collectively, the "Equipment") may be covered by manufacturers warranties (collectively, the "Equipment Warranties"). Seller/Builder hereby assigns to Buyer, without recourse, the Equipment Warranties. Buyer agrees to look solely to the manufacturers or other warrantors under the terms and provisions of the Equipment Warranties with respect

any repairs, replacements or other matters relating to the Equipment. Seller/Builder shall have no obligation with respect to any repairs, replacements or other matters relating to the Equipment, and all such repairs and replacements.

- Notwithstanding anything to the contrary, the Buyer is responsible for any paint touch up, caulking, shrinkage cracks and any and all cosmetic items after closing; Seller/Builder has no responsibility.
- Seller/Builder may, at its sole discretion, determine to do work not required by the Limited Warranty. Any such work not required by the Warranty shall not, in any way, expand the liability of Seller/Builder.

10. **Additional Default Provision:** In the event of any dispute, disagreement or concern between Seller/Builder and Buyer prior to or at the closing, regardless of the cause or nature of the dispute or disagreement, Seller/Builder may, in its sole discretion, terminate this contract, whereupon Seller/Builder and Buyer shall have no further obligations under this contract except for such obligations, if any, which survive any termination of this contract under the express terms of this contract. Upon any such termination, Seller/Builder shall be free to sell the Property to a third party. In the event of any such termination, as Buyer's sole and exclusive remedy and provided Buyer is not then in default under this contract, Seller/Builder shall pay to Buyer an amount ("Termination Amount") equal to (a) the Earnest Money paid by Buyer to Seller/Builder, (b) the amount of any Nonrefundable Payment paid by Buyer to Seller/Builder, and (c) the aggregate Change Order amounts paid by Buyer to Seller/Builder, and in addition, Seller/Builder shall pay Buyer a termination fee in the amount of \$350.00. Seller/Builder shall have no responsibility for payment, refund or reimbursement to Buyer of any amounts other than the amounts payable to Buyer under the immediately preceding sentence (if any), including without limitation any amounts paid to any person or entity other than Seller/Builder. Except for payment of any Termination Amount payable to Buyer under the terms of this Paragraph, **Buyer waives any cause of action or right to sue Seller/Builder on account of or relating to Seller's/Builder's termination under this Paragraph.** Seller/Builder and Buyer agree that the terms and provisions of this Paragraph are a material inducement to Seller/Builder to enter into this contract, and but for the terms and provisions of this Paragraph, Seller/Builder would not be willing to enter into this contract with Buyer. Buyer agrees that upon Seller's/Builder's request, Buyer shall take such actions and execute and acknowledge such documents as Seller/Builder may request to further evidence any termination of the contract pursuant to this Paragraph and/or any terms and provisions of this Paragraph, and shall give Seller/Builder further assurances satisfactory to Seller/Builder regarding such termination, and/or such terms and provisions. In the event Seller/Builder tenders the Termination Amount to Buyer but Buyer refuses the tender or does not cash the check, this contract shall nonetheless be terminated effective upon the date of Seller's/Builder's tender of the Termination Amount.

11. **Reservation of Right to Buy-Back the House:** The Limited Warranty contains a reservation to the Seller of a right to repurchase the home. Buyer understands this provision and agrees to be bound by it.

12. **Floodplain Acknowledgement:** Buyer is aware that the property being acquired may lie within the FEMA floodplain. The plans for the home and the development have been done in accordance with City standards and have been reviewed and approved by the City. Per City requirements, any detention and mitigation required have been designed within the limits of the property in the streets and open spaces, including under the raised homes. The detention basin will hold water for a specified amount of time before draining to the public storm system. The living area of the home is above the base flood elevation (BFE), though portions of the property, including the garage may be below that level. Any portion of the property below BFE, including the garage, is designed per City standards to allow water encroachment during storm events, including those less than a 100-yr event. Drainage away from the property is by the Austin storm water system, the maintenance of which lies with the City. Flood insurance may be required by lenders and may be appropriate in any event. Buyer will perform their own due diligence on these issues.

13. **Waiver of Consumer Rights:** I waive my rights under the Texas Deceptive Trade Practices Consumer Protection Act, Section 17.41 ET SEQ., Business and Commerce Code, a law that gives consumer special rights and protections.

After Consultation with an attorney of my own selection, I consent to this waiver.

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14. **Miscellaneous:**

Once signed, including by electronic signature, by the parties, this addendum to the New Home Contract between Buyer(s) and Seller/Builder shall become a part of said New Home Contract for all purposes and all of the terms and provisions of this addendum shall survive the closing. In the event of any conflict between the terms and provisions of this addendum and the terms and provisions of the New Home contract or other contract documents, the terms and provisions of this addendum shall CONTROL and GOVERN. The term "Property" includes the real property and residence or other improvements constructed

by Seller/Builder as described in the New Home Contract.

- Buyer acknowledges and agrees that ad valorem taxes for the property are prorated as of the closing according to paragraph 13 of the new home contract, and Buyer is solely responsible for the payment of all taxes assessed against the property for the year the closing occurs and all subsequent years without regard to whether Buyer receives actual notice.
- If Buyer makes any changes or additions to the home prior to closing, Seller shall have no responsibility whatsoever to reimburse Buyer if the home does not close.
- Buyer acknowledges that Seller/Builder's source of material and supplies are the only resource from which Buyer can select.

**15. Title Policy and Survey:**

**Buyer understands that the use of Craig Levin of Regions Mortgage, Michelle Young of Top One Mortgage or George Zamarripa of Bank of America to obtain financing will result in lender paying the cost of the owner's title policy.**

**Buyer understands that the cost of the owner's title policy is not the only closing or settlement costs which will be involved in this transaction and Buyer has performed an analysis of closing costs offered by Regions Mortgage, Top One Mortgage or Bank of America and other lender (or has knowingly elected not to do so).**

- **Regions Mortgage – Craig Levin**  
**Phone: 713-244-8040**  
**E-mail: craig.levin@regions.com**
- **Top One Mortgage – Michelle Young**  
**Phone: 713-364-7788**  
**E-mail: michelle@toponemortgage.net**
- **Bank of America – George Zamarripa**  
**Phone: 281-908-3508**  
**E-mail: george.zamarripa@bankofamerica.com**

- **Buyer is responsible for all costs associated with the survey and elevation certification for the Property, performed by Seller's approved surveyor. Such costs shall be paid by Buyer to Seller upon demand, or if demand is not sooner made, at closing.**
- **At the option of the Seller, the deed in this transaction shall be substantially in the form attached as Exhibit B.**
- **Buyer understands that the deed will not convey, and Seller reserves, fee simple title to airspace from 60 feet above the highest point of grade to 500 feet above the highest point of grade, as further described in Exhibit B.**
- **Buyer will be subject to delay fees of \_\_\_\_\_ hundred dollars (\$\_\_\_\_\_) per day if a delay in construction, closing or funding is caused by Buyer, Buyer's lender or any separate contractor(s) engaged by Buyer.**
- **Seller/Builder cannot guarantee the completion of the residence on any specific date and any move-in dates given to Buyer from time to time are based only on Seller's estimate, and those estimates may change without prior notice. Seller/Builder has the right to extend closing daily without prior notice. Notwithstanding anything to the contrary, closing shall be 3 days after Seller's/Builder's notice to Buyer.**
- **Signed documents transmitted by facsimile shall be treated in all manner and respects as an original document.**
- **A signature, including but not limited to an electronic signature, of any party on any document, including but not limited to addendums, contracts, agreements and change orders, shall be considered for these purposes as an original signature.**
- **Seller/Builder and Title Company may require that Buyer sign additional documents at the closing including but not limited to a "Service Survey" and Closing Acknowledgement. Buyer agrees to sign any such additional documents necessary to close the sale of the Property.**

**16. The Buyer is allowed to make selections of certain items of the home prior to certain stages of the homes construction only with**

the written request of the Seller and only if made within 5 days of agreement. Some items may be preordered in advance and, therefore, are not available for the Buyer to change.

- 17. THIS CONTRACT IS CONTINGENT UPON THE APPROVAL OF SELLER'S/BUILDER'S MANAGEMENT.THE SELLER'S/BUILDER'S SALES AGENT DOES NOT HAVE AUTHORITY TO BIND OR OTHERWISE ENTER INTO ENFORCEABLE AGREEMENTS ON BEHALF OF THE SELLER/BUILDER. THIS CONTRACT IS SUBJECT TO SELLER/BUILDER RECEIVING APPROVAL FROM THE APPROPRIATE AUTHORITIES.**

**Addendum "A" is hereby executed the day of \_\_\_\_\_.**

\_\_\_\_\_  
Buyer

\_\_\_\_\_  
Authorized Agent for the Seller -  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Buyer