

Specimen – Consult with Counsel

This specimen agreement should be reviewed by your legal counsel before being used in whole or in part. This specimen agreement may not fit your specific needs or circumstances. Your legal counsel may determine that your interests are best served by use of alternative forms or a modification of this form.

**NEW HOME CONSTRUCTION ADDENDUM
TO LOUISIANA RESIDENTIAL AGREEMENT TO BUY OR SELL**

This addendum (this “Addendum”) is incorporated into and made a part of the Louisiana Residential Agreement to Buy or Sell by and between

Seller: _____; and

Buyer: _____,

who agree as follows:

1. Property Description

a. Project Documents. The Property shall include the improvements to be completed in accordance with the National Association of Home Builders, Residential Construction Performance Guidelines, Third Edition, as described in the Project Documents in effect as of the date of the Agreement, and any Change Orders that the Buyer and Seller enter into in accordance with this Agreement. The term “Project Documents” means the following documents, copies of which are attached hereto *in globo* as **Addendum Exhibit “A”**:

- i. Building Drawings and Plans;
- ii. Selections Schedule;
- iii. Pre-Contract Change Orders; and
- iv. The following additional Project Documents, if any are listed below:
 - v. _____;
 - vi. _____;
 - vii. _____;
 - viii. _____; and
 - ix. _____.

b. Change Orders. The Seller has no obligation to respond to requests for changes to the work described in the Project Documents. The Buyer may submit requests for changes to the work described in the Project Documents, to which requests, the Seller may, at the Seller’s sole discretion, accept or reject for any reason or no reason at all, or propose alternatives without regard to reasonableness. If the Buyer and the Seller agree on the cost of any changes to the work described in the Project Documents, the changes shall have no effect without a written change order signed by the Buyer and the Seller describing the changes to be made, any extra work to be

done and any changes to the contract price (each, a “Change Order”). Each Change Order shall be signed by all parties and upon execution shall become a part of this Agreement and incorporated into the Project Documents. If more than one Buyer is a party to this Agreement, each Buyer hereby agrees that any of them is authorized to negotiate and execute any Change Order and that the signature of one is binding on the other. The Buyer agrees to make requests concerning any changes, additions or alterations in the work in writing directly to the Seller’s authorized representative named in this Agreement and not to the workers, including subcontractors and subcontractors’ workers, on the job. Any Change Order requested by the Buyer and approved by the Seller shall be paid for by the Buyer as follows: All amounts for additional work shall be due and payable to the Seller in cash prior to commencement of work described in the Change Order, and such amounts shall be fully earned upon payment and shall not constitute a portion of the Deposit or the Purchase Price for the Property. Any delay in payment for a Change Order shall allow the Seller in its sole option and discretion to proceed with the Change Order and collect the amount due for the Change Order from the Buyer, or disregard and consider the Change Order cancelled by the Buyer and continue work on the Property without giving any effect to the Change Order.

c. **Buyer Selections.** If the Project Documents permit selections by the Buyer, the Buyer’s selections will conform to the Seller’s normal standards as set out in the Project Documents or will not, in the Seller’s judgment, adversely affect the marketability of the Property. The Buyer will make required selections in accordance with the Project Documents or as reasonably required by the Seller. If the Buyer does not make selections within the allotted time frames, the Seller at its sole option may make the selection for the Buyer or stop work on the Property until selections are made. The Buyer shall pay the Seller for any costs associated with the Buyer’s delay in making selections.

2. Closing - Act of Sale

Lines 37-41 of the Agreement are hereby replaced with the following words:

The closing of the purchase and sale of the Property (the “Closing”) shall be held at the offices of the settlement agent or notary public selected by the Buyer within 15 days after the later of the Final Inspection or completion of work to correct any deficiencies timely identified during a Final Inspection.

3. Inspection

Lines 121 and 122 are deleted. Lines 155-195 of the Agreement are hereby replaced with the following words:

Final Inspection. The improvements shall be deemed to be substantially completed in accordance with the Project Documents upon final inspection or issuance of a certificate of occupancy (or an equivalent document) from the applicable governmental authorities. In constructing the improvements, Seller shall employ its normal construction schedule and Buyer hereby acknowledges and accepts construction delays that result from forces outside of Seller’s direct control, including without limitation, inclement weather, inability to obtain building

materials, and problems with labor and sub-contractors. After Seller provides notice of substantial completion of the improvements Buyer shall have 10 days to conduct a complete inspection of the Property on a date that Buyer schedules with the Seller (the “Final Inspection”). Utilities for Final Inspection shall be provided by the Seller. Buyer’s failure to participate in the Final Inspection, after receiving reasonable notice thereof from Seller, shall constitute acceptance of the Property as it exists on the date of the proposed Final Inspection. Any inspector who conducts the Final Inspection shall be proficient in the home component being inspected and qualified as a licensed home inspector by the Louisiana Home Inspectors Board, a registered professional engineer licensed by the Louisiana Professional Engineering and Land Surveying Board, or a third-party provider registered with the Louisiana State Uniform Construction Code Council. The standard for completion of the Final Inspection shall be the most recent edition or version of the Residential Construction Performance Guidelines and the Louisiana State Uniform Construction Code. Any deficiency discovered that is beyond an inspector’s scope of certification must be verified at the Buyer’s sole cost and expense by the appropriate engineer or licensed professional certified in that field. Within 48 hours of the Final Inspection, Buyer shall prepare a written list of any deficiencies requiring corrective action or completion, which items shall be corrected or completed prior to the Closing. The date scheduled for the Closing shall be extended to allow sufficient time to correct any deficiencies identified during the Final Inspection. A certificate of occupancy issued by the governing authority shall constitute compliance with Louisiana State Uniform Construction Code.

4. Waiver of Warranties and New Home Warranty Act.

Lines 218-233 are hereby replaced with the following words:

Except as otherwise provided in the New Home Warranty Act, La. Rev. Stat. § 9:3141-3150, the Buyer hereby waives any and all warranties, and acknowledges that the Seller has provided ample opportunity for the Buyer to inspect and investigate the Property, and understands that at Closing, the Buyer shall accept the Property on an as-is, where-is basis, and accordingly the Buyer and Seller shall incorporate the paragraph on **Addendum Exhibit “C”** into the act of sale at Closing. The Buyer hereby acknowledges that the Seller has made no guarantees, warranties, understandings, or representations that are not included in this Agreement.

5. Default

Lines 253-272 of the Agreement are hereby replaced with the following words:

Default. If the Buyer fails to comply with this Agreement, the Buyer will be in default, and the Seller may either (a) enforce specific performance, and seek all such other relief as may be provided by law, or (b) terminate this Agreement and

retain the entire Deposit above as liquidated damages, thereby releasing both parties from any further obligation under this Agreement. If the Seller fails to comply with this contract for any other reason, the Seller will be in default and the Buyer may, as the Buyer's sole and exclusive remedy, terminate this contract and receive the Deposit less any amounts owed for Change Orders, as agreed liquidated damages, thereby releasing both parties from this Agreement. The prevailing party to any dispute resulting in litigation or arbitration shall be entitled to an award of reasonable attorney's fees and costs.

6. Arbitration Agreement

The Seller and Buyer hereby incorporate the Arbitration Agreement attached hereto as **Addendum Exhibit "C"** as part of this Agreement.

This instrument has been executed by Buyer in the City of _____, State of _____, on this _____ day of _____, 20__.

BUYER:

This instrument has been executed by Seller in the City of _____, State of _____, on this _____ day of _____, 20__.

SELLER:

ADDENDUM EXHIBIT “A”
(Insert Project Documents)

Building Drawings and Plans

Schedule of Selections

Pre-Contract Change Orders

ADDENDUM EXHIBIT “B”

Except as otherwise provided in the New Home Warranty Act, La. Rev. Stat. § 9:3141-3150, the sale and conveyance of the Property pursuant hereto is made and accepted on an “AS IS, WHERE IS” basis, without any representations or warranties, express or implied, whatsoever, as to its physical conditions, including without limitation, as to (a) workmanship, structure, stability and quality of the improvements, (b) the water tightness of the improvements, including without limitation roofs, walls, doors, and windows, (c) the status, stability and quality of soil conditions, equipment, stairways, appliances, fixtures and furniture, (d) any defects, termite infestation or damage and any other condition whether latent or discoverable by reasonable inspection, (e) merchantability or fitness for any particular purpose, (f) the presence of or damage related to any form or type of mold, mushroom or mildew or any other funguses or such the reproductive body or other spores produced by or arising out of any such funguses, or any substance, vapor or gas produced by or arising out of any funguses or spores, or any material, product, building component, building or structure that contains, harbors, nurtures or acts as a medium for any such funguses or spores, and (g) the existence of any violation of any applicable laws relating to the environment, including without limitation those pertaining to the generation, use, handling, storage, treatment or disposal of hazardous waste or hazardous substances, Buyer expressly waives the warranty of fitness and the warranty against redhibitory vices and defects as to title, and physical condition, whether apparent or latent, imposed by applicable state or federal law, and the jurisprudence thereunder. Buyer also waives any rights it may have in redhibition or to a reduction of the Purchase Price pursuant to Louisiana Civil Code Articles 2520 through 2548, inclusive, in connection with the Property. All implied warranties with respect to the Property, including those related to fitness for a particular purpose, will be, and are hereby disclaimed by Seller in any controversy, claim, demand, or litigation arising from or in connection with the Property. Buyer hereby accepts the Property in its existing environmental condition and waives, discharges, and releases Seller from any and all claims and/or causes of action which Buyer or its assigns or transferees may have or hereafter be otherwise entitled to, whether affecting person and/or property, for any environmental liabilities arising from the Property, including any claims, demands, causes of action (both public and private), judgments, attorneys’ fees, costs, expenses, penalties and fines, imposed or assessed under any federal, state or local environmental law, rule or regulation. It is specifically agreed and understood that Seller makes no warranty as to the condition of the soil. By its signature, Buyer expressly acknowledges all such waivers and its exercise of the right to waive warranty pursuant to Louisiana Civil Code Article 2503.

ADDENDUM EXHIBIT “C”

Arbitration Agreement

This Arbitration Agreement is entered into on this ____ day of _____, 20__, by and between _____

_____ (“Buyer”) and _____ (“Seller”) (together, the “Parties”), who hereby agree that any controversy or claim or matters in question between the Parties including, but not limited to, any matter arising out of or relating to (a) the Louisiana Residential Agreement to Buy or Sell, by and between Buyer and Seller, dated on even date herewith (the “Purchase Agreement”), and any amendments thereto, (b) any breach thereof, (c) the design or construction of the property described in the Purchase Agreement (the “Property”), (d) any alleged fraud, misrepresentations or breach of warranties, express or implied, (e) claims for defective design or construction of the Property, (f) intentional and/or negligent infliction of emotional distress, (g) violations of Louisiana law, and/or (h) any other cause of action relating to or arising out of the construction and/or sale of the Property (herein referred to collectively as a “Dispute”), shall be submitted to binding arbitration pursuant to Title 9 of the United States Code, which the parties hereto acknowledge and agree applies to the transaction involved herein, and in accordance with the Construction Industry Arbitration Rules of the AAA or such other rules as the AAA may deem applicable. If Title 9 of the United States Code is inapplicable to any such claim, dispute or controversy for any reason, such arbitration shall be conducted by the AAA pursuant to the Louisiana Binding Arbitration Law and in accordance with the Construction Industry Arbitration Rules of the AAA or such other rules as the AAA may deem applicable. In any such arbitration proceeding: (i) all federal and state law and all statutes of limitations and prescriptive and peremptive periods which would otherwise be applicable shall apply; and (ii) the proceeding shall be conducted by a single arbitrator. The arbitrator shall be selected by the process of appointment from a panel pursuant to the applicable procedures of the AAA. Any award rendered in any such arbitration proceeding shall be final and binding, and judgment upon any such award may be entered in any court having jurisdiction.

This Arbitration Agreement shall inure to the benefit of, and be enforceable by, the Seller’s subcontractors, agents, vendors, suppliers, design professionals, insurers, and any other person alleged to be responsible for the Buyer’s claims pertaining to the Property. The prevailing party shall be entitled to recover reasonable attorney’s fees and costs incurred in enforcing this Arbitration Agreement. Any disputes concerning the interpretation or the enforceability of this Arbitration Agreement, including without limitation, its revocability or voidability for any cause, the scope of arbitrable issues, and any defense based upon waiver, estoppel or laches, shall be decided by the arbitrator.

The initiation of or participation by any party in any judicial proceeding concerning this Arbitration Agreement or any matter arbitrable hereunder shall not be deemed a waiver of the right to enforce this Arbitration Agreement, and notwithstanding any provision of law to the contrary, shall not be asserted or accepted as a reason to delay, to refuse to participate in, or to refuse to enforce this Arbitration Agreement.

Addendum Exhibit “C” – Arbitration Agreement
New Home Construction Addendum
Home under Construction on Builder’s Lot

The arbitrator shall possess sufficient knowledge in the residential construction industry as determined by the arbitration service. The arbitration hearing shall occur whenever possible in the home which is the subject of the arbitration.

All administrative fees of the arbitration service and fees of the arbitrator shall be borne equally by the parties to the arbitration, subject to the discretion of the arbitrator to reallocate such fees in the interest of justice.

The Seller shall have the right, in advance of the arbitration proceeding, to reinspect the Property.

The parties expressly agree that the warranty and this Arbitration Agreement involve and concern interstate commerce and are governed by the provisions of the Federal Arbitration Act, 9 U.S.C. § 1, *et seq.*, now in effect and as the same may from time to time be amended, to the exclusion of any different or inconsistent state or local law, ordinance or judicial rule; and to the extent that any state or local law, ordinance or judicial rule shall be inconsistent with any provision of the rules of the arbitration service under which the arbitration proceeding shall be conducted, the latter rules shall govern the conduct of the proceeding.

If any provision of this Arbitration Agreement shall be determined by the arbitrator or by any court to be unenforceable or to have been waived, the remaining provisions shall be deemed to be severable therefrom and enforceable according to their terms.

This instrument has been executed by Buyer in the City of _____, State of _____, on this _____ day of _____, 20__.

BUYER:

This instrument has been executed by Seller in the City of _____, State of _____, on this _____ day of _____, 20__.

SELLER:

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