

ADDENDUM TO CONTRACT FOR PURCHASE AND SALE OF REAL ESTATE

1. **Manufacturer=s Warranties:** Any manufacturers= warranties on fixtures, equipment, appliances or other property located or installed on the Property shall be deemed assigned by Seller to Buyer with the execution of the Certificate of Substantial Completion. All warranties, documentation and instruction booklets shall be presented to Buyer upon final payment, per 2.2, above.
2. **No other agreements/interpretation.** This Addendum and the Contract for Purchase and Sale of Real Estate contain the complete agreement of the parties hereto and cannot be modified or amended except in writing and signed by both the Seller and the Buyer. This Addendum amends, modifies and supersedes the Contract for Purchase and Sale of Real Estate, any other written agreement, addendum or amendment that predates this Addendum, and any provisions contained therein that would be contrary to any of the provisions contained in this Addendum, regardless as to whether the terms are in print, typeface or handwritten. If there are any terms or provisions in this Addendum that conflict with or contradict, in any way, any term or provision of the Contract for Purchase and Sale of Real Estate, any other written agreement, addendum or amendment between the Parties that predates this Addendum, then the Parties hereto specifically understand and agree that the terms and provisions of this Addendum shall survive, take precedence, have priority over, prevail over and govern the agreement amongst and between the Parties, and any such conflict and contradiction shall be construed in favor of this Addendum.
3. **Nonwaiver.** No waiver by a party of any provision of this Agreement shall be deemed to have been made unless in writing and signed by such party.
4. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Mississippi.
5. **Time is of the Essence.** Time is of the essence with respect to all time requirements set out in this Agreement.
6. **Successor Obligation.** The rights and obligations under this Agreement shall be binding on the parties, their successors, heirs and assigns, to the extent permitted under the terms of this Agreement.
7. **Notice:** Any notice required or permitted under the terms of this Agreement shall be addressed to Seller or Buyer, as the case may be, at the address stated below, and when deposited in the United States mail, postage prepaid, certified mail, return receipt requested, delivery shall be deemed to have been made. Any notice to the Seller shall also be delivered by United States mail to Clyde X. Copeland, III, Esq., P.O. Box 3380, Ridgeland, Mississippi 39158-3380.
8. **Warranty.**

8.1 The Seller's sole warranty obligation, and the exclusive remedy for the breach of said warranty obligation, shall be as set forth in the Mississippi New Home Warranty Act (hereinafter the "Act"), West's A.M.C. § 83-58-1, *et seq.*, a copy of which is attached as **Exhibit "A"**.

8.2 The Seller does not warrant any products, materials or supplies used in the Work of the Project, not fabricated by the Seller. Nor does the Seller agree to fulfill product warranties provided under paragraph 1, above.

8.3 Except for the foregoing contained in paragraph 8.1, the Seller shall not have any other warranty obligations, express or implied, to the Buyer or its assigns, successors or those in privity with it, whatsoever. Further the Seller shall not have any other warranty obligations, express or implied, as to the fitness, quality and /or merchantability of the Work or of the Property.

8.4 It is understood that Contractor does not warrant the work or product of any non-employee contractors who may have provided work or labor towards the construction of the Project beyond what is required of the Contractor under the Mississippi New Home Warranty Act, West's A.M.C. ' ' 83-58-1, *et. seq.*, and any amendments thereto.

9. **Hold Harmless and Indemnification.** Buyer agrees to indemnify, save harmless, and defend Seller (including its officers, directors, employees and agents) from and against any and all liabilities, claims, penalties, forfeitures, suits and any costs and expenses incident thereto (including costs of defense, settlement, and reasonable attorney's fees), which Seller may hereafter incur, become responsible for, or pay as a result of allegations of death or personal or bodily injuries to any person, destruction of or damage to any property (including the person or property of indemnitor, its employees and/or agents), contamination of or adverse effects on the environment or any violation of governmental laws, regulations, or orders to the extent caused by or resulting from (i) Buyer's breach of any term or provision of this agreement; (ii) any negligent or willful acts and/or omissions of Buyer and/or its employees and/or agents (iii) the work of others to which the Seller has no privity or control; (iv) work of others that was initiated prior to the date of this Agreement, hereof; whether meritorious or not.

10. **Severability.** The invalidity or unenforceability of any provision in this Agreement shall not affect the validity or enforceability of any other provisions of this Agreement and each provision shall be enforced to the maximum extent permitted by applicable law.

11. **Arbitration Attorney's Fees Claims.**

11.1 ALL DISPUTES, CONTROVERSIES OR CLAIMS, OF WHATEVER KIND OR CHARACTER, ARISING OUT OF, RELATED TO THE SUBJECT MATTER OF OR IN CONNECTION WITH THIS AGREEMENT, SHALL BE SETTLED AND DETERMINED BY BINDING ARBITRATION IN ACCORDANCE

WITH WEST'S A.M.C. '11-15-101, *ET SEQ.*, AS AMENDED. FURTHERMORE, ALL DISPUTES, CONTROVERSIES OR CLAIMS ARBITRATED HEREUNDER RELATED TO THE WORK OR THE PROJECT SHALL BE EXCLUSIVELY GOVERNED BY THE WARRANTIES, REMEDIES, LIMITATIONS AND EXCLUSIONS CONTAINED IN THE MISSISSIPPI NEW HOME WARRANTY ACT. SAID ARBITRATION SHALL BE CONDUCTED BY ONE (1) ARBITRATOR UNLESS THE PARTIES MUTUALLY AGREE THAT THE NATURE OF THE DISPUTE REQUIRES MORE THAN ONE (1) ARBITRATOR. THE ARBITRATION SHALL BE GOVERNED BY MISSISSIPPI LAW AND SHALL BE CARRIED OUT IN THE CITY OF MADISON, MISSISSIPPI OR SUCH OTHER LOCATION AS THE PARTIES MAY AGREE. CONTRACTOR AND OWNER SHALL SHARE EQUALLY ALL ADMINISTRATIVE FEES AND EXPENSES RELATED TO THE ARBITRATION, INCLUDING ANY ARBITRATOR'S FEES. THE AWARD OF THE ARBITRATOR(S) SHALL BE ENFORCEABLE IN A COURT OF COMPETENT JURISDICTION, SHALL BE FINAL, BINDING AND NOT APPEALABLE. THIS PROVISION SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THE AGREEMENT AND SHALL SURVIVE THE SUBSTANTIAL COMPLETION OF THE WORK. IF A CLAIM RELATES TO OR IS THE SUBJECT OF A MECHANIC'S OR CONSTRUCTION LIEN, THE PARTY ASSERTING SUCH CLAIM MAY PROCEED IN ACCORDANCE WITH APPLICABLE LAW TO COMPLY WITH THE LIEN NOTICE OR FILING DEADLINES PRIOR TO THE INSTITUTION OF A CLAIM UNDER THIS PARAGRAPH, AND DOING SO WILL NOT BE CONSTRUED AS A WAIVER OF ANY PARTY'S RIGHTS TO INVOKE THIS PROVISION. FOR THE PURPOSE OF THIS ARBITRATION PROVISION, THE "PARTIES" SHALL INCLUDE NOT ONLY THE CONTRACTOR, BUT ALSO THE CONTRACTOR'S INDIVIDUAL SHAREHOLDERS, DIRECTORS, OFFICERS, MEMBERS, MANAGERS, PRINCIPALS AND/OR AGENTS.

11.2 If the Owner and the Contractor litigate or arbitrate any claim arising under or related to this Agreement, the losing party in such proceedings shall pay the prevailing party's reasonable attorneys' fees (but not contingent fees), including expert or other litigation expenses. If less than the full amount of the monetary claim is awarded to the prevailing party, the claimant shall recover reasonable attorneys' fees (but not contingent fees), including expert or other litigation expenses, equal to the proportion of the amount awarded, to the amount demanded, and the complaining party shall pay the responding party's reasonable attorneys' fees (but not contingent fees), including expert or other litigation expenses, equal to the proportion of the amount denied, to the amount demanded.

11.3 The rights, duties, responsibilities and remedies, as between the Owner and Contractor, as to notice and right to cure, as set forth and provided by The Mississippi New Home Warranty Act, West's A.M.C. '83-58-7, as amended, are incorporated herein by reference, which are specifically attached hereto as **Exhibit AB**, and are made apart of this Agreement.

11.4 The parties agree that with regard to any claims made by Owner against Contractor, or *vice versa*, all claims, rights or remedies for incidental or consequential damages are hereby waived.

11.5 ALL DISPUTES, CONTROVERSIES OR CLAIMS, OF WHATEVER KIND OR CHARACTER, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE PROJECT OR THE WORK, SHALL BE EXCLUSIVELY GOVERNED BY AND SUBJECT TO THE WARRANTIES, LIMITATIONS AND REMEDIES CONTAINED IN THE MISSISSIPPI NEW HOME WARRANTY ACT, WEST'S A.M.C. '83-58-7, AS AMENDED.

Mississippi law requires that the Contractor inform you as to whether the Contractor carries general liability insurance insuring the Contractor's work under this contract. The Contractor DOES carry general liability insurance. By your signature below, you signify your understanding and acknowledgment of this fact.

OR

Mississippi law requires that the Contractor inform you as to whether I carry general liability insurance insuring my work under this contract. The Contractor DOES NOT carry general liability insurance. By your signature below, you signify your understanding and acknowledgement of this fact and that as a consequence, you are hiring an uninsured contractor. Without insurance, there is no insurance coverage insuring the Contractor's activities and the work performed during construction or afterward. This means further that there is no insurance coverage for damage to your home caused by the Contractor, its agents or employees or for injuries sustained by others while the Contractor is working on your property or subsequent to completion of the Contractor's work.

WITNESS OUR SIGNATURES, this the _____ day of _____, 200____.

Contractor:

Owner:

BY:_____

Contractor=s Address & Phone #.:

Owner=s Address & Phone #:

(601) -----

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