



**ADDENDUM 1-AP
(PRESALE OR HOUSE UNDER CONSTRUCTION)**

THIS ADDENDUM 1-AP is dated this ___ day of _____, 20___, between BURNSTEAD CONSTRUCTION LLC, a Washington Limited Liability Corporation ("Seller") and _____ "Buyer") and shall amend that certain Residential Real Estate Purchase and Sale Agreement dated _____ ("Agreement") for the purchase of Lot #_____ in the Plat of _____ together with Model # named _____ with Elevation_____ and with a _____ car garage.

1. **Warranty:** The Seller will furnish the Buyer at closing the BURNSTEAD CONSTRUCTION LLC Limited Warranty and a Landscape Warranty both in the forms attached hereto as Exhibit C and Exhibit B-1, respectively. All warranty items shall be governed by the conditions and standards of such warranty. All workmanship and materials shall be to BURNSTEAD CONSTRUCTION LLC Limited Warranty Construction standards or to Seller's normal standards if not listed or covered by the BURNSTEAD CONSTRUCTION LLC Limited Warranty. **BURNSTEAD CONSTRUCTION LLC LIMITED WARRANTY AND LANDSCAPE WARRANTY REPRESENT THE FULL LIMIT OF THE WARRANTIES EITHER EXPRESSED OR IMPLIED AND BUYERS HEREBY RELINQUISH AND WAIVE ANY AND ALL IMPLIED WARRANTIES.**

Buyer: _____ Date: _____

Buyer: _____ Date: _____

1a. **Buyer's Warranty Acknowledgment:** Buyer has been provided a copy of the warranty documents and has read and understands the BURNSTEAD CONSTRUCTION LLC Limited Warranty ("Limited Warranty"). Buyer understands and agrees that the Limited Warranty is provided by the Seller **IN LIEU OF ALL OTHER WARRANTIES, ORAL AGREEMENTS OR REPRESENTATIONS** with the sole exception being the inclusion of a 90 day Limited Landscape Warranty as provided exclusively by BURNSTEAD CONSTRUCTION LLC.

SELLER MAKES NO WARRANTY, EXPRESSED OR IMPLIED AS TO QUALITY, HABITABILITY, THE MERCHANTABILITY OF THE GOODS DELIVERED TO THE BUYER UNDER THIS CONTRACT, THE FITNESS OF THE GOODS FOR A PARTICULAR PURPOSE, OR OTHERWISE, EXCEPT AS IS EXPRESSLY SET FORTH ON THE FACE OF THE BURNSTEAD CONSTRUCTION LLC LIMITED WARRANTY PROGRAM.

Buyer understands and agrees that the warranty of all appliances and other consumer products installed in the home are those of the manufacturer or supplier and these are assigned to Purchaser, effective on the date of closing. In any event, Seller shall not be liable for any personal injury of other consequential or secondary damages and/or losses which may arise from or out of any and all defects. The BURNSTEAD CONSTRUCTION LLC Limited Warranty includes the provision that requires **ALL DISPUTES THAT ARISE UNDER THE LIMITED WARRANTY TO BE SUBMITTED TO BINDING ARBITRATION**, as discussed in detail herein.

BUYER UNDERSTANDS AND AGREES THAT THE FOREGOING PROVISIONS – AND THE WARRANTIES AND DISCLAIMERS REFERENCED THEREIN – WERE SPECIFICALLY AND SEPARATELY NEGOTIATED, BARGAINED FOR, AND AGREED UPON BETWEEN BUYER AND SELLER, AND THAT BUYER HAD THE OPPORTUNITY AND RIGHT TO CONSULT THEIR AGENT AND ATTORNEY PRIOR TO SIGNING THIS AGREEMENT.

Buyer: _____ Date: _____

Buyer: _____ Date: _____

Buyer: _____ Buyer: _____ Date: _____ Seller: _____ Date: _____

2. Binding Arbitration: *The parties hereby agree that if a dispute arises regarding the interpretation or enforcement of the Purchase and Sales Agreement, the Warranty, or any matter relating to the construction of the home, said dispute shall be settled by binding arbitration.* These disputes include but are not limited to: (1) any pre or post closing or construction disputes, (2) complaints; (3) unresolved warranty issues, (4) disputes as to events, representations, or omissions which predate the Purchase and Sales Agreement; (5) other action performed or to be performed by the Builder pursuant to the Purchase and Sales Agreement or the Warranty; (6) as to repairs or warranty claims arising during the term of the Warranty; and/or (7) as to the cost to repair or replace any defect covered by the Warranty (collectively, an "unresolved dispute"). Such arbitration shall be submitted to and governed by the procedures of the Commercial Rules of the American Arbitration Association and RCW 7.04 et. seq. You commence the arbitration process by giving the Builder written notice of your demand for Arbitration of an unresolved dispute. The dispute will be submitted to the American Arbitration Association, or such other independent arbitration service as is agreeable to BURNSTEAD CONSTRUCTION LLC and you (herein referred to as Arbitrator) within 20 days after BURNSTEAD CONSTRUCTION LLC has received your notice of demand for Arbitration. If you submit a demand for Arbitration, you must pay the Arbitrator's filing fee prior to the matter being referred to the Arbitrator. The Arbitrator shall have the power to award the cost of this fee to you or to split it among the parties to the Arbitration. The Arbitration shall be conducted in accordance with the Arbitrator's rules and regulations to the extent that they are not in conflict with RCW 7.04 et. seq. Notwithstanding anything to the contrary herein, the arbitration proceedings contemplated herein shall be considered a judicial proceeding, civil action or other "action" for the purposes of applying any applicable statutes of limitations or other limitation on civil actions as set forth under Washington law, including but not limited to RCW 4.16 et. seq., RCW 64.50 et. seq., 64.55 et. seq., as they may apply to the disputes covered by this Section 2 (as such applicable periods of limitation may be further modified or restricted by this Agreement).

Either party may, within one year after an arbitration award, apply to the King County Superior Court for the State of Washington, to confirm the award. The forwarding of a written demand for arbitration shall toll the running of any applicable statute of limitations for the matter to be arbitrated. THE DECISION OF THE ARBITRATOR SHALL BE FINAL AND BINDING UPON ALL PARTIES.

In as much as this Agreement provides for the mandatory arbitration of disputes, if any party commences litigation in violation of the Agreement, such party shall reimburse the other parties to the litigation for their costs and expenses including attorney's fees incurred in seeking dismissal of such litigation.

The builder shall have 60 days after receipt of the arbitration award in which to comply with the arbitrator's decision. Repairs will be commenced as soon as possible and will be completed within 60 days with the exception of any seasonal repairs or items that would reasonably take more than 60 days to complete. The Builder will complete such repairs or replacement with diligence but without the necessity of incurring overtime or weekend expenses.

BUYER UNDERSTANDS AND AGREES THAT THE FOREGOING ARBITRATION PROVISION WAS SPECIFICALLY AND SEPARATELY NEGOTIATED, BARGAINED FOR, AND AGREED UPON BETWEEN BUYER AND SELLER, AND THAT BUYER HAD THE OPPORTUNITY AND RIGHT TO CONSULT THEIR AGENT AND ATTORNEY PRIOR TO SIGNING THIS AGREEMENT.

Buyer: _____ Date: _____

Buyer: _____ Date: _____

3. Covenants, Conditions and Restrictions: The property will be subject to Covenants, Conditions and Restrictions ("C.C. & R's"). Buyer acknowledges receipt of a copy of (i) a draft or (ii) the recorded CC&R's for the plat. If only a draft is provided, a copy of the recorded CC& R's will be delivered to Buyer after recording. The CC&R's, in part, set forth certain terms and conditions relating to the rights of the Seller to construct other homes in the plat as well as the rights of other homeowners and Buyer relating to uses, maintenance and construction of changes/additions to homes in the plat. The CC&R's are recorded and become a restriction on the title to the Property. **This property is a member of a Homeowner's Association. Buyer shall be bound by all terms and conditions in the CC&R's and any subsequent addenda thereto and Buyer is advised to review them thoroughly.** Homeowner Association dues at the time of closing are _____per year. Buyer understands that homeowner dues are subject to change per the CC&R's.

Buyer: _____ Date: _____

Buyer: _____ Date: _____

Buyer:_____ Buyer:_____ Date:_____ Seller:_____ Date:_____

4. **Insulation:** Insulation installed in the Property shall be as follows:
- a. R-49 Blown Rockwool, Fiberglass or equal at flat trussed ceilings.
 - b. R-30 Fiberglass batts or equal at cathedral trussed ceilings.
 - c. R-21 Fiberglass batts or equal at exterior house walls. Garage to house wall included. Unheated garage walls excluded.
 - d. R-30 Fiberglass batts or equal in underfloor crawlspace areas.

5. **Buyer is responsible for the following charges:** Buyer credit report, lender's title report and appraisal. Buyer hereby directs and authorizes the Closing Agent or Buyer's Mortgage Company to deliver a copy of the Loan Commitment with a copy of any conditions for final approval requirements to Seller immediately upon the issuance of such Loan Commitment.

6. **Financing:** Loan Application: This Agreement is contingent on Buyer obtaining a _____ (type of loan). Buyer agrees to pay \$_____ down, in addition to the loans and to make written application for the Loans to pay the balance of the Purchase Price and pay the application fee, if required, for the subject property within 3 days after mutual acceptance of this Agreement.

Unless otherwise agreed, this financing contingency will be deemed automatically satisfied 20 days after mutual acceptance, and earnest money deposit will be released to Seller as a non-refundable deposit.

Buyer: _____ Date: _____

Buyer: _____ Date: _____

PREQUALIFICATION OF BUYER/BUYER LENDER REQUIREMENTS

- a. **Prequalification of Buyer:** If the Purchase Agreement is subject to Buyer's securing financing for purchase of the Property, prior to Seller signing Purchase Agreement, Buyer shall contact one of the Seller's Preferred Lenders (sales agent to provide buyer with the list) to ascertain whether the Buyer will pre-qualify for financing. **If Buyer selects one of Seller's Preferred Lenders to provide financing, the Preferred Lender shall offer the buyer a credit for the amount of the appraisal cost.**
- b. **Lender Selection:** If Buyer secures financing from a lender other than one of Seller's Preferred Lenders, in the approval letter, the lender must include the following:

They have reviewed the credit, income documents, asset documents and both the borrower and the property are approved.

Buyer shall deliver to Seller the approval letter within ten (10) days of mutual acceptance of the Purchase Agreement. If Buyer is using the services of a mortgage broker to secure financing then the approval letter must be from the underlying lender, as a letter from the broker will not be accepted.

Buyer agrees that if they select a lender other than one of the Seller's Preferred Lenders and fail to close the loan on time through no fault of the Builder, the Buyer shall pay Builder a daily extension fee of \$350.00 for each day of delay past the scheduled closing date.

IF SELLER INCENTIVES APPLY

Incentives: Seller may offer Buyer certain incentives conditioned upon Buyer's use of a loan from Seller's Preferred Lenders. In consideration of Buyer's acceptance of Seller incentives, Buyer shall timely apply exclusively to one of Seller's Preferred Lenders to secure financing, and if qualified, shall use the loan to close on the purchase of the Property. The incentives which Seller hereby offers to Buyer (if any) on this transaction are as follows:

Buyer: _____ Buyer: _____ Date: _____ Seller: _____ Date: _____

- a. Seller shall include in the home the following purchase incentives:

_____ and/or credit buyer at Closing an amount of up to \$_____ which shall be used for any combination of closing costs, interest rate buydowns or upgrades to the home. Such credits and upgrades shall be agreed to by Buyer and Seller in accordance with Section 14 below and any unused amount shall be forfeited by Buyer.

BUYER AGREES THAT SELLER'S OFFER OF INCENTIVES AND/OR CONCESSIONS IS CONDITIONED ON BUYER'S USE OF ONE OF SELLER'S PREFERRED LENDERS TO FINANCE THE PURCHASE OF THE PROPERTY.

Buyer: _____ Date: _____

Buyer: _____ Date: _____

7. **House Sale Contingency:** Buyer represents that Buyer has available sufficient funds to close this sale in accordance with this agreement, and is not relying upon any contingent source of funds unless otherwise expressly set forth herein.

If subject Purchase and Sale Agreement is contingent upon sale of Buyer's house the provisions of NWMLS Form No. 22B relating to contingent sale of Buyer's house, shall apply as modified herein (agent must attach the NWMLS Form No. 22B before execution of Agreement). Said NWMLS Form No. 22B is modified as follows:

- a. Buyer's house shall be listed with a real estate firm acceptable to Seller, according to terms and conditions acceptable to Seller.
b. All references therein to five (5) days notice are changed to two (2) days notice. Said notice to expire at midnight on the second day following the date on which notice is delivered, or following the third (3rd) day after it is deposited in the mail, whether or not the date in which notice is given or the date when notice expires falls on any day including Saturday, Sunday or any holiday.
c. In event Buyer waives or removes the contingency relating to the sale of Buyer's house, then in such event, NWMLS Form No. 22B, or the equivalent form and the provisions thereof shall be held for naught.

8. **Nonrefundable Earnest Money:** If this Agreement includes any contingencies (Financing or Home Sale), Buyer's earnest money deposit shall automatically become nonrefundable upon the satisfaction or waiver of all such contingencies. Release of the earnest money shall be automatic, no additional authorization or signatures shall be required to release the funds to the seller. Buyer instructs the holder of the earnest money deposit to immediately transfer the deposit to the Seller. The earnest money deposit shall be applied towards the purchase price at closing. If this transaction should fail to close the earnest money deposit shall be forfeited to the Seller. Buyer is aware at Seller's sole discretion home may not be started until all contingencies have been removed.

Buyer: _____ Date: _____

Buyer: _____ Date: _____

Buyer: _____ Buyer: _____ Date: _____

Seller: _____ Date: _____

9. **Escrow Fees:** The Seller requests that all Buyer's use one of the following escrow companies in connection with this transaction:

Chicago Escrow	Renton	425- 277-8681-Patti Dettling
First American Escrow	Bellevue	425 -732-4806-Renee Villalobos

The Buyer acknowledges that the Seller will receive a discount on the escrow fee based on volume of business and accordingly the Buyer and the Seller may pay different fees, irrespective of what is stated on the Real Estate Purchase and Sale Agreement. In the event that the Buyer elects to use another escrow company, the Seller's escrow fee shall not exceed \$100.00 plus applicable sales tax. Escrow Company also agrees to deliver to Seller's office for signature all closing papers and final closing check, with no courier fees paid by seller.

10. **Title Insurance Policy:** Notwithstanding the "Title Insurance" clause in the Purchase and Sale Agreement, seller authorizes Buyer's lender or Closing agent, at Seller's expense, to apply for a standard form Owner's Policy of Title Insurance (ALTA 1992 or equivalent), together with homeowner's additional protection and inflation protection endorsements if available at no additional cost, from the Title Insurance Company rather than the Homeowner's Policy of Title Insurance.

Title must be ordered through: Chicago Title Insurance Company

11. **Appraised Value of Changes:** Buyer is advised that not all upgrades and/or changes will increase the appraised value of the home. Any appraisal less than the amended sales price will not void this agreement, or cause any reduction in the amended sales price. Buyer agrees to pay any difference between the amended sales price and the appraised value in the event of an appraisal lower than the amended purchase price.

12. **Closing Extension:** If closing of this transaction is delayed for any reason other than lender delay (see paragraph 6) beyond the control of either Buyer or Seller, the closing date may be extended for up to five (5) days at the request of and without cost to either party. After this five (5) day period, any additional extension of the closing date requested by Buyer may be agreed to by Seller at Seller's sole discretion. In the event Seller agrees to an additional extension of the closing date, Buyer shall pay \$250.00 per day for that additional extension ("Extension Payment"). The Extension Payment shall be due upon the closing of this transaction.

13. **Metro Utilities Charge:** All new customers who connect to sewers in Metro's service area are required to pay a capacity charge.

The Metro Council established this capacity charge to help offset the cost of providing wastewater treatment and conveyance capacity for all new customers. Development of Metro's capacity charge program followed 10 years of study and deliberations by committees of elected and appointed officials in the metropolitan area. Capacity charge bills are sent to affected customers about six months after sewer service begins. New customers are then billed directly by Metro every six months for 15 years. At any time during this period, the balance of the remaining payments can be paid at a discount rate per year.

Want more information?

If you have questions or want more information about capacity charge, visit <http://www.kingcounty.gov/environment/wastewater/capacitycharge.aspx> or call Metro communications, Water Pollution Control Department, at (206) 296-1450.

14. **Plans and Specifications:** Seller shall construct the home in accordance with the general layout depicted in the drawings and per Specifications which are attached hereto as Addendum ("Specifications"). Seller reserves the right to modify the material specifications provided that the material modifications must be of a quality equal to or better than the materials provided for in the original Plans. Seller reserves the right to change subcontractor without prior notice to Buyer.

Buyer:_____ Buyer:_____ Date:_____ Seller:_____ Date:_____

15. **Buyer's Selections and Upgrades:** On or before _____, 20___. Buyer shall select certain items from among Seller's standard stock or materials. If Buyer elects to upgrade the selections by making selections not included in the Seller's standard stock or materials, Buyer must pay for the upgrades in cash upon selection. Such payments shall be nonrefundable to Buyer and are not additional earnest money. If Buyer has not waived all contingencies contained in the Agreement, any upgrades made by Buyer are subject to Seller's prior approval, at Seller's sole discretion.

16. **Additional Work Authorization:** Buyer shall pay for any additional work upon execution of the "Additional Work Authorization" order. Such payments shall be nonrefundable to the Buyer and are not additional earnest money. All such items are subject to Washington State Sales Tax. If additional work authorizations are to be included in the sales price in order to add them into the Buyer's mortgage an additional charge of 3% will be added to the additional work authorization price. Sales commission is based upon the home price not including any upgrades. The Seller will document payments received from the purchaser for additional work authorizations or Buyer product upgrades for the Buyer's use in their financing arrangements.

17. **Construction Delays:** In the event of construction delays due to conditions beyond Seller's control including but not limited to: work stoppage due to labor disputes, strikes, governmental agency delays, natural physical events, floods, wind damage, snow, earthquakes or acts of God, Seller, at its option, may extend the closing date as specified in the Purchase and Sale Agreement, by (30) days. Further, if construction is not completed by the adjusted closing date, Buyer's sole option other than waiving timely performance and closing on completion is cancellation of the Purchase and Sale Agreement and return of earnest money deposit.

18. **Right to Enter Property and Possession:** Buyer or Buyer's authorized agents shall have the right to enter upon the Property and make any agreed upon inspections, tests and surveys. Such access shall be at reasonable times and with at least one (1) day's notice to Seller. Buyer agrees to release, indemnify and hold Seller harmless from any damages, claims or liability, including attorney's fees, arising from such entry onto the property.

Seller shall deliver possession of the property to Buyer at or before 5:00 P.M. on the date Buyer is entitled to possession.

19. **Closing Cost Disclosures [Between Buyer and Seller]:** The parties shall provide to Escrow the following at least forty-five (45) days prior to Closing:

19.1 All upgrades agreed to after the date of mutual acceptance that will be added to the sales price must be itemized and agreed to in a mutually executed addendum.

19.2 Any credits provided by Seller must be itemized and set forth in a mutually executed addendum.

20. **Closing Cost Disclosures [Between Buyer and Agent]:** Any credits provided by selling and/or listing agent must be a part of the Agreement when originally written or as soon as the credit is known, but in no event later than 45 days prior to closing.

21. **Conflict:** If any term or condition in this Agreement conflicts with any term or condition in the Residential Real Estate Purchase and Sale Agreement or any other Addendum or Agreement, the terms and conditions herein shall control.

22. **Entire Agreement:** This Agreement including the Purchase and Sale Agreement (and attached Exhibits) contain the entire agreement and understanding of the parties with respect to the purchase and sale of any and all real or personal property which is the subject matter hereof. There are no representations, inducements, promises or agreements, oral or otherwise, not included herein. Any and all prior discussions, negotiations, commitments and understandings not expressly included in this Agreement are null, void and unenforceable. There are no conditions precedent to the effectiveness of this Agreement other than as stated herein, and there are no related collateral agreements existing between the parties that are not referenced herein.

Buyer: _____ Buyer: _____ Date: _____ Seller: _____ Date: _____

23. **Representations:** Buyer, (in the purchase of their lot and model) has not relied on any representation by the Seller, their representatives, or any person whomsoever, concerning the placement, style, color, building materials or location of homes on other lots in the neighborhood. The excavation of this lot, or adjacent lots, for installation of foundation, rockery, retaining walls and/or lot drainage may change existing grade elevations. Buyer understands that the finished grade and slope of any lot can change.

23.1 Renderings of elevations and floor plans are for illustrative purposes to help Buyer visualize the home and are not warranted to be exact.

23.2 Interior decorations, upgrades and furnishings in model homes are displayed for illustrative purposes only and are not included in this Purchase Agreement unless otherwise set forth in the Purchase & Sale Agreement.

23.3 Buyer acknowledges and agrees that there are no representations or conditions to this sales transaction which are not specifically set forth in writing in the Addendum and the Purchase Agreement and that oral statements and/or representations by Seller's employees, representatives and/or agents are not binding on the Seller and are not part of the Purchase Agreement terms and conditions. If Buyer believes that there has been any material oral statements and/or representations upon which Buyer has relied, Buyer must request in writing that the same be made in writing and incorporated into the terms of the Purchase Agreement before the full execution of the Addendum. Seller is not obligated to accept or incorporate into the Purchase Agreement as a part of this sales transaction oral statement and/or representations which are not agreed to in writing by Seller. Under no circumstances shall Seller be bound by any oral statements or representations made after full execution of the Purchase Agreement and this Addendum.

23.4 Notwithstanding the foregoing, Buyer agrees and acknowledges that Seller retains the exclusive right to (a) designate placement of any home on any lot within the plat so long as Seller has obtained a building permit for such home in the designated location; (b) change the models and colors of homes within the plat; (c) control the grading, terracing, excavation, foundation and drainage for each lot in the plat; and (d) alter and/or modify view and view corridors from the Buyer's home and property may change, become restricted or blocked as additional homes are constructed in the plat. The terms and conditions of the listing agreement and any "camera cards" or written materials prepared to market the home do not become part of the Purchase Agreement and are fully superseded and supplanted by the Purchase Agreement and this Addendum.

Buyer: _____ Date: _____

Buyer: _____ Date: _____

24. **Inspections:** Buyer may, at Buyer's expense, have the home inspected by an independent licensed building inspector prior to Closing. Buyer shall notify Seller of the date of the inspection, which shall be prior to the homeowner's orientation and in any event completed prior to the Closing Date. Those conditions described in the inspection report that do not meet local building codes, shall be corrected by the Seller, before or after Closing, at Seller's election. Non building code items may be noted in the inspection report (each an "Additional Item") and Seller may review the Additional Item(s) and determine whether Seller, in Seller's sole discretion will agree to address any or all of the Additional Item(s). However, the Purchase and Sale Agreement and Buyer's obligation to purchase the home are not contingent on the inspection or the Seller's agreement to address the Additional Items, and Seller will have no obligation to make any repairs other than the items that do not meet local building codes.

25. **Facsimile and Email Transmission:** Facsimile transmission of any signed or initiated original document or notice, and retransmission of any signed or initiated facsimile transmission, shall be the same as delivery of an original. Email transmission of any signed or initiated document or notice shall be the same as delivery of an original. At the request of either party, or the closing Agent, the parties will confirm facsimile or email transmitted signatures by signing an original document.

Buyer: _____ Buyer: _____ Date: _____ Seller: _____ Date: _____

26. **No changes or Revisions to this Addendum:** No changes and or revisions to this Addendum (other than checking boxes or inserting dates or names in places identified in this form) are permitted or enforceable unless the changeand or /revisions are made as a part of a separate addendum (such as NWMLS Form 34). Changes/revisions made on this addendum (whether handwritten or typed) are unenforceable and not binding on the Seller.

27. **Closing Date:** Once a closing date has been given to buyer by seller, buyer must agree to close within 5 days of that date or paragraph 12 will be enforced.

BUYER:

Date: _____

SELLER:

BURNSTEAD CONSTRUCTION LLC
a Washington Limited Liability Corporation

By: _____

Its: _____

Date: _____