



## **BUILDER'S ADDENDUM A**

Version: 8/14/08

**THIS ADDENDUM "A"** is to be made a part of and further supplements and revises that certain Earnest Money Agreement and/or Purchase and Sale Agreement, hereinafter "the Agreement" dated \_\_\_\_\_ 2009 between Prominent Homes , a Washington Limit Liability Corporation, as "Seller" or "Builder" and \_\_\_\_\_, collectively known as "Purchaser" and/or "Buyer" with regard to that certain real property commonly known as:

**LEGAL DESCRIPTION OF PROPERTY:** Lot \_\_\_\_, Rhodes Hollow as per plat thereof recorded under Recording No. 200806195001, records of Pierce County, Washington.

**COVENANTS, CONDITIONS & RESTRICTIONS FOR Rhodes Hollow:** Buyers are directed to review the terms of the Covenants, Conditions and Restrictions ("CC&R's") for Rhodes Hollow which control certain aspects of owning and maintaining your new home at Rhodes Hollow. These CC&R's are recorded under Recording No. 200806190080, records of Pierce County, Washington and are incorporated herein by this reference. Purchaser has reviewed, understands and accepts the recorded plat covenants.

This addendum has been introduced to clarify several points in the purchase of a new home as well as provide you, the Buyer, with a thorough understanding of the process of construction and sales procedures. We hope you will consider this a sincere effort to share expectations and establish a clear working relationship. As with any document of this nature, either party may seek legal counsel to clarify their legal rights or positions.

If any provisions contained within this Addendum A are in conflict with any of the provisions included within the Real Estate Purchase and Sales Agreement ("the Agreement"), as amended, or are in conflict with any other addenda, the terms and conditions of this Addendum shall prevail. If the home is already completed as of the date of execution of this Addendum, those portions of the Agreement that refer to a home to be built or under construction shall not apply.

1. **Home Style Selection/Elevation:** Seller ("Seller") agrees to build Plan Style \_\_\_\_\_ Elevation \_\_\_\_\_ on the above lot.

If the home has not been sided or colors not ordered yet, the buyer may request the vinyl/paint colors and stone/brick selections stated below from the builder's standard colors and which are within builder's prescribed monetary allowances for the same in this new home community:

**EXTERIOR COLOR (base):** \_\_\_\_\_

**EXTERIOR COLOR (2<sup>nd</sup> color):** \_\_\_\_\_

**STONE/BRICK:** \_\_\_\_\_

2. **Lot Availability:** If this Offer is a presale on a lot **not** currently owned by the Seller, or on a lot in which the Seller is **not** engaged in purchasing, then this offer is subject to Seller acquiring the lot within Seller's lot allowance. If, at Seller's sole discretion, Seller is unable to acquire the lot within Seller's lot allowance the earnest money will be refunded to Buyer and this agreement will be null and void. If the offer is for the purchase of a lot currently owned by Seller, this offer shall be subject to prior selection and the current availability of the lot.
3. **Contingent Sales:** If closing of this Agreement is contingent upon the Buyer's sale of other property, Seller has no obligation to perform any work until that contingency is waived in writing by the Buyer. If the Seller nonetheless performs any work, at the Buyer's request, prior to the contingency being waived, the Seller shall be entitled to the full and complete release of the earnest money to the Seller. Buyer shall designate the selling agent and/or designated real estate company and/or closing agent to release the entire earnest money deposit directly to Seller. The earnest money shall be deemed applied to payment for the work so performed, and no part of the earnest money shall be refunded to Buyer in the event this Agreement does not close for any reason. If the Seller has commenced construction of the new home described in the Agreement and in this Addendum OR if such new home is fully completed, the Seller agrees to refund the earnest money if the transaction is bumped by another non-contingent offer acceptable to Seller. In the event the contingent buyer described herein fails to close on the home pursuant to the terms of the Agreement, including this Addendum A and the transaction has not been bumped by another non-contingent offer accepted, the Seller has the right to retain all earnest money and upgrade monies paid by Buyer to Seller as Seller's liquidated damages. If the Purchase and Sale Agreement expires on a contingent buyer due to their failure or inability to sell their current home, the Seller will refund the earnest money.

**Acceptable Price Opinion:** If this Purchase and Sale Agreement is contingent upon the successful sale and closing of Purchaser's current residence, then Seller's acceptance herein is subject to Seller or Seller's agent acceptance of Purchaser's Broker's price opinion. Purchaser or Purchaser's Agent will provide said

Broker's price opinion within 3 days of mutual acceptance. Seller or Seller's Agent will have 3 days with which to review Broker's price opinion and if Seller or Seller's Agent has not disapproved in writing, then Broker's price opinion is deemed acceptable. If Seller disapproves Broker's price opinion and Buyer chooses not to accept Seller or the Seller's Agent recommended price opinion and or repair/modification, then Seller may elect to unilaterally terminate Purchase and Sales Agreement and refund Buyer all deposits made. No mutually agreed upon signed and rescission agreement will be required.

**Construction Starts After Removal of Contingencies:** Prominent Homes is not obligated to obtain building permits until they receive confirmation that the Home Sale Contingency is removed. Additional costs may accrue if construction is delayed.

4. **Selections, Upgrades and Changes:** When the Agreement is executed for the purchase of a home on which construction has already begun, it is important for the Buyer to realize that construction is underway and will not stop with the execution of the Agreement; since construction is underway and materials have been ordered in advance, changes will be limited as follows:
- a. If foundation is started, no framing changes will be allowed.
  - b. If framing is started, no changes will be allowed in windows, doors or room configurations. Any framing changes must be approved a minimum of one week prior to start of framing.
  - c. Once framing is completed, no plumbing, electrical, heating or cabinet changes will be allowed.
  - d. If electrical has been started, no changes will be allowed in doors, or millwork.
  - e. If sheetrock is started, the only changes allowed will be carpet, vinyl, tile or Formica and lights providing they are chosen from readily available supplies and provided that none of these materials have been ordered, and further provided that any changes do not result in a construction delay.

Purchaser shall have the right to choose exterior paint, floor coverings, countertop surfaces, light fixtures (if applicable) from the builder's standard selections and within builder's allowances. All selections shall be made within five (5) days from the date of mutual acceptance or builder shall have the right to make its own selections (Note: Selections available only if made prior to wall insulation being installed).

5. **Construction Discrepancies:** During the construction of the home the Buyer may notice what Buyers consider to be minor problems with construction. Such problems are not uncommon during the course of construction and most of these problems are brought to the Seller's attention and are corrected as construction progresses. If the Buyer feels there is a major problem he or she should contact their selling real estate agent and request that they discuss any such problems with the Seller's designated listing real estate agent so that the problem will be addressed and corrected as necessary.

6. **Purchaser's Access During Construction:** Purchaser acknowledges that the property being purchased pursuant to the Agreement is and shall continue to belong to the Seller until the closing date of this Agreement. Purchaser agrees that they shall not enter onto the property during construction unless accompanied by Seller's representative or agent. Purchaser further acknowledges notice that only Seller and Seller's employees and authorized subcontractors are authorized to enter and do work on the property, and Purchaser is expressly denied permission to do any work on the property prior to closing for any reason whatsoever without the prior written agreement and consent of Seller. **Interruption of Workmen:** The Buyer is requested not to interrupt the workmen on site. Employees and subcontractors are scheduled and must meet stringent deadlines and are consequently instructed not to discuss construction with prospective buyers as such practices may lead to misunderstandings and construction delays. Please contact the Seller's office directly if questions arise. We, at Prominent Homes, are eager to help Buyers in most circumstances.
7. **House Placement:** The home will be placed on the site observing yard sizes, setback requirements and utility hookup locations, unless otherwise agreed to in writing between Buyer and Seller.
8. **Yard Grading and Water Runoff:** Seller will complete yard grading in compliance with building codes and local municipality requirements. Changing of the finished grade by the Buyer or Buyer's directions that may result in the required installation of retaining walls or other means of protection from runoff for adjoining sites will be the responsibility of the Buyer.
9. **Decks and Rockeries:** Decks and rockeries are not included in the purchase price except as cost extras. Some homes may require decks and/or rockeries due to site topography.
10. **Irreconcilable Differences:** Should the working relationship between the Buyer and Seller deteriorate to a level unacceptable to the Seller, the Seller may, at his sole discretion, void the Real Estate Purchase and Sales Agreement. **IN THE EVENT OF ANY DISPUTE OF ANY KIND REGARDING THIS AGREEMENT PRIOR TO THE CLOSING DATE, THE PURCHASER'S SOLE AND EXCLUSIVE LEGAL AND EQUITABLE REMEDY SHALL BE THE RESCISSION OF THIS AGREEMENT AND THE RELEASE BY SELLER OF ANY CLAIM OR INTEREST IN THE EARNEST MONEY DEPOSIT PAID BY PURCHASER. ANY SUMS PAID BY PURCHASER TO SELLER FOR UPGRADES AND/OR OPTIONS ARE CONSIDERED NON-REFUNDABLE AND FULLY EARNED BY SELLER WHEN PAID.**

- 11. Earnest Money Deposit:** Purchaser shall deposit a minimum of \$2,500.00 as a construction deposit for any homes either under construction or prior to construction. Earnest Money shall be paid to Fidelity Title and Escrow. Earnest Money shall be considered non-refundable construction deposit 30 days after Mutual Acceptance of this agreement or after removal of Financing Contingency, whichever is first. All deposits will be credited to Purchaser at closing, unless otherwise stated in writing.
- 12. Completion Date Is an Estimate:** The completion date stated in writing is an estimate only and is not a guarantee as to the exact date when Buyer's new home will be completed. Should construction be delayed due to circumstances beyond Seller's control, both parties agree that the closing date will be extended for a period of thirty (30) days automatically. Purchaser shall be entitled to possession upon closing. "Closing" is defined as that date on which all documents are recorded and the sale proceeds are available to Seller. Seller is not responsible for the expiration of Purchaser's loan commitment, penalties, loan or other fees or losses due to the estimated completion date not being met. Purchaser is advised to ensure that their lender and any other interested parties are made aware of this agreement.
- 13. Closing of the Agreement:** This transaction shall be closed according to the Agreement or within (5) five days after the date of delivery to Escrow of the final inspection and occupancy approval to occupy the property from the governing authority and as described on page 1 of the Agreement. Readiness to close shall be evidenced by delivery of final inspection/occupancy certificate to the Escrow Company. Closing date cannot be delayed due to items needing minor repair, adjustment or replacement, as noted on final walkthrough. All builder-approved items noted on walkthrough will be completed within (30) days after the closing date.
- 14. Conflict With Laws & Regulations:** It is understood and agreed that any agreements made between Purchaser and Seller will become null and void should they be contrary to the laws, rules and regulations of any authorities governing the construction of the home (i.e., FHA, VA, County Building, and Health Department). Said disputed agreement will not void the entire Purchase and Sales Agreement, only terminate the disputed item.
- 15. Buyer Inquiries Prior To Closing:** Any inquiries or requests, collection of moneys and earnest money deposits are to be handled by the Selling Agent and **MUST BE IN WRITING** and directed to Seller's designated listing agent.

**16. Warranty:** The Seller will correct and repair all bona fide defects in Buyer's home to a standard equivalent to warranty standards or the Sellers own building standards, whichever is more stringent, for a period of one year from the date of closing. Buyer's remedy shall be limited to repair of the defects. No consequential damages will be allowed. Seller is hereby providing purchaser with the warranty contained in the most recent edition of the HBW 2-10 Asset Protection Booklet, as of the date of the execution of this agreement. That Booklet has been made available to Purchaser, and is incorporated by reference, and made a part of this purchase agreement. The APP warranty is the sole warranty provided to purchaser. Any other warranty or warranties, whether express or implied, are disclaimed by seller and waived by purchaser, unless otherwise prohibited by particular state law.

Prior to the Closing date of this Agreement, Seller's customer service representative will schedule a new home orientation with the Purchaser to explain the new home warranty program, required Purchaser maintenance and the operating procedures of the home's appliances, heating and plumbing systems and other miscellaneous features.

**17. Buyer Pre-qualification:** Buyer agrees that within five days of mutual acceptance of Real Estate Purchase and Sales Agreement, a written application for financing (including making credit report and appraisal deposits) will be made with an approved lender or lending agency as identified below:

**Legacy Group            Ben Leske            Puyallup            (253) 202-3355**

Buyer authorizes lender to make available to the Seller any reasonable information needed for the Seller to determine that the Buyer can complete this transaction per its terms and conditions. Buyer must be pre-qualified by an approved lender within ten (10) calendar days of mutual acceptance of purchase and sale agreement, and if Buyer is not pre-qualified to Seller's satisfaction within ten (10) calendar days, this Real Estate Purchase and Sales Agreement may be terminated at Seller's option. Purchaser acknowledges that Seller will be supplied a prequalification or pre-approval letter from the lender.

**18. Closing Cost Assistance:** If the Buyer's utilize one of the Seller's approved lenders as designated in this Addendum A, Seller agrees to provide Buyer with a credit of up to \$3000.00 at the closing of this Agreement which may be used towards Buyer's legally allowable closing costs. Should lender not allow the borrower to utilize the full credit granted by Seller, the Seller credit will be reduced to the amount acceptable to lender with no other credit or allowance to be made by seller.

- 19. VA Financing:** Prominent Homes shall not pay any fee on behalf of Purchaser except those agreed to in the purchase and sale agreement. All mandatory seller paid VA or FHA closing costs, including escrow fees on a VA transaction shall come out of sellers contribution to Purchaser (from Buyer credit). Seller will not pay any fee of any nature to Purchaser's lender unless expressly agreed to in the Purchase and Sale Agreement.
- 20. Escrow/Closing Agent:** The Agreement shall be closed at First American Title and Escrow located in Puyallup, WA. The telephone number is (253) 770-1234 and the fax telephone number is (253) \_\_\_\_\_. The Buyer acknowledges that the Seller will receive a discount on the escrow fee based on volume of business and subsequently the Buyer and Seller may pay different escrow fees. Seller acknowledges the obligation under RCW 60.80.010 to satisfy, upon closing, any lien or charge provided for by RCW 35.21.290, 35.67.200, 36.36.045, 36.89.090, 36.94.150, 56.16.100, 57.08.080, or 87.03.445. Seller agrees to satisfy any such liens or charges outside of closing and Seller and Purchaser hereby waive the right to have escrow closing agent administer the payment of such liens or charges as provided under RCW 60.80. Closing agent shall not be held liable or responsible in connection with the same now or hereafter the close of escrow.
- 21. Title Insurance:** Title insurance policy shall be provided from First American Title and Escrow (253) 770-1234.
- 22. Utilities:** Buyer agrees to notify all pertinent utility companies of the change in ownership, changing account billing information and supplying any credit information required on the closing date of this Agreement. Charges for utilities are the responsibility of the Buyer from the date of occupancy. By taking occupancy Buyer is giving notice to Seller that Buyer has transferred utilities as outlined above and is accepting full responsibility for any charges from date of occupancy.
- 23. Appraisal:** Should the appraised price not be equivalent to the agreed sales price reflected in the Agreement as a result of the changes/upgrades that the Purchaser has selected that are not normally offered by the builder, Purchaser agrees to pay the difference between the sales price and appraised price in cash directly to Builder at or prior to the closing date set forth in the Agreement.
- 24. Changes to Home:** Any changes/additions to the home must be in writing on an addendum and submitted to Prominent Homes, LLC. through the Listing Office prior to start of construction. Any changes/additions received from Buyer five (5) days after the date of mutual acceptance of the Agreement shall result in an additional charge of \$500.00 to Buyer which shall be in addition to the cost of any changes/additions requested. All changes/additions and fees are to be paid in full prior to work being started and shall be considered non-refundable when paid. There will be no exception to this rule. Purchaser understands that

changes will slow down the construction process. It is natural during the course of construction for the Purchaser to have questions regarding the new home; however, all questions shall be presented to Seller or its designated listing real estate agent in writing. **Purchaser understands and agrees that sales agents, field superintendents and subcontractors are not authorized to make any representations to modify the Agreement as written and that the full understanding shall be limited to the Agreement as written together with any clarifications made by Seller in writing only.**

**25. Plan Ownership & Variations:** Plans, drawings, specifications and design materials shall remain the sole property of the Seller and will not be made available to the Purchaser. In the Builder's continuing effort to provide the finest new home value to its purchasers, the Builder reserves the right to modify floor plans, exteriors, specifications, features and product types without prior notice or obligation to Buyer. Seller shall construct model/plan as specified in writing pursuant to Seller's then existing basic plans and specifications. Buyer understands and agrees that all materials, fixtures and appliances are subject to their reasonable availability. It is not uncommon to have minor differences in the dimensions or style of concrete, landscaping, framing, wiring, cabinets, etc. All homes are built with the same quality materials, but the above mentioned items can and do vary from home to home. These variations are not considered defects and will not be changed. Buyer understands and agrees that standard features and/or builder specifications vary from subdivision to subdivision. It is the responsibility of the Buyer to be knowledgeable of any variances for the subdivision in which their new home is being constructed. Seller reserves the right to substitute items of comparable quality or to make changes or modifications, as needed, to meet County, City, FHA, VA or Lender guidelines or codes, without prior notice to Purchaser.

**26. Architectural Control Committee:** If the construction of the home is subject to the approval of the Architectural Control Committee (ACC), Purchaser agrees to abide by any ACC ruling.

**27. Commissions:** Real estate commissions are paid only on the original listing price as reflected in the Listing Agreement. Any price increases which the parties hereto may agree on will not be considered as to the commission amounts to be paid.

**28. Insulation:** In accordance with Washington State Energy Code and requirements at the time of building permit and pursuant to Federal Trade Commission Regulations requirements, the following information shall be filled in by Seller:

Wall Insulation:	Type: Batt	Thickness: 5 ½"	R-Value: R-21
Ceiling Insulation:	Type: Batt/Blown	Thickness: 15 ½"	R-Value: R-38
Flooring Insulation:	Type: Installed	Thickness: 9 ½"	R-Value: R-30

**29. Waiver of Real Property Disclosure Statement:** Buyer has received a blank Form 17 Real Property Disclosure Statement, attached hereto, for information purposes only and understands that due to the fact that this home is a pre-sale or currently under construction, the Seller shall not provide Buyer with a completed Form 17. Buyer has been advised of Buyer's right to receive a completed Real Property Transfer Disclosure Statement. Buyer waives that right.

**30. Post-Closing Disputes:** It is hereby agreed that all claims, disputes and controversies between purchaser and builder arising from or related to the subject home and the Agreement and this addendum, which occurs after the close of escrow, including but not limited to, any claimed defect in the home or on the subject property, claim for personal injury, any claim for breach of contract, and negligent or intentional misrepresentation, shall be submitted to binding arbitration by Construction Arbitration Services ("CAS"), and governed by the Federal Arbitration Act, in strict compliance with the procedures and manner set forth in the most recent edition of the 2-10 HBW APP Warranty booklet. In this regard, this booklet is incorporated herein by reference, and made a part of this purchase agreement, and this booklet is available for review by purchaser.

**Waiver of Subrogation: Subcontractor hereby waives all rights of subrogation against Contractor and Owner with respect to losses, claims or costs arising out of or in connection with the work.**

**31. Agency:** Both Seller and Purchaser acknowledge that the selling real estate agent represents Purchaser exclusively and not the Seller and that the listing agent Ryan Ricks, represents the Seller exclusively and not the Purchaser. If the selling agent and listing agent are different licensees affiliated with the same real estate broker, then both Seller and Purchaser consent to said broker acting as a dual agent. Both Seller and Purchaser acknowledge receipt of a copy of the pamphlet entitled "The Law of Real Estate Agency."

**32. New Home Orientation:** Prior to the closing date of this Agreement, a representative of Seller will schedule a new home orientation with the Purchaser to explain the new home warranty program, required Purchaser maintenance and the operational procedures of the homes' appliances, heating and plumbing systems. Due to the number of new homes constructed by Seller and the importance of this limited time available, **all new home orientations will be scheduled by the Customer Service Department between 8:00 a.m. and 3:00 p.m., Monday through Friday and will be limited in attendance to Purchasers and Builder's Representative ONLY.** No other family members, representatives or real estate agents are permitted to attend this orientation session. In the event Purchaser elects to have a home inspection conducted of the property prior to closing, such inspection will waive the typical orientation offered by Seller and in such event, Purchaser and Seller's representative will conduct, prior to closing, a limited orientation.

**33. Homeowner's Association & Dues:** It is understood that all owners of lots within Rhodes Hollow will become members of the Rhodes Hollow Homeowner's Association, a non-profit corporation organized and existing under the laws of the State of Washington. This Association will provide for the assessment and collection of a one-time initiation fee of \$300.00 from each Purchaser collected at closing, which will be paid directly to the Seller to partially reimburse it for expenses associated with certain improvements installed by Seller. The Association will also assess annual dues at each member to maintain and improve common areas. The annual dues of the Association for 2009 are in the amount of approximately \$300.00 and will be prorated at closing.

**DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2009.**

**SELLER/BUILDER:**  
**Prominent Homes, LLC**

**BUYER/PURCHASER**

**By:** \_\_\_\_\_

**By:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**By:** \_\_\_\_\_