

**CONSTRUCTION CONTRACT**  
**GOLDEN MAGNOLIA, INC.**

**THIS CONSTRUCTION CONTRACT**, made and executed this \_\_\_\_ day of \_\_\_\_\_, **20** between \_\_\_\_\_ (hereinafter referred to as "Owner(s)"), and Golden Magnolia, Inc.(hereinafter referred to as "Contractor"), whose Certification or Registration Number is \_\_\_\_\_ which parties for good and valuable consideration each to the other, the receipt and sufficiency of which is conclusively acknowledged, do hereby agree as follows:

**ARTICLE 1. THE CONTRACT DOCUMENTS**

The Contract Documents consist of this Construction Contract, the Plans, the Specifications, the Drawings and any Exhibits attached there to along with any Modifications agreed to by the Parties. In the event of a conflict between the Plans and the Specifications, the Plans shall control.

**ARTICLE 2 . LIEN LAW NOTIFICATION, F.S. SECTION 713.15**

**ACCORDING TO FLORIDA'S CONSTRUCTION LIEN LAW (SECTIONS 713.001 713.37, FLORIDA STATUTES), THOSE WHO WORK ON YOUR PROPERTY OR PROVIDE MATERIALS AND ARE NOT PAID-IN-FULL HAVE A RIGHT TO ENFORCE THEIR CLAIM FOR PAYMENT AGAINST YOUR PROPERTY. THIS CLAIM IS KNOWN AS A CONSTRUCTION LIEN. IF YOUR CONTRACTOR OR A SUBCONTRACTOR FAILS TO PAY SUBCONTRACTORS, SUB-SUBCONTRACTORS, OR MATERIAL SUPPLIERS OR NEGLECTS TO MAKE OTHER LEGALLY REQUIRED PAYMENTS, THE PEOPLE WHO ARE OWED MONEY MAY LOOK TO YOUR PROPERTY FOR PAYMENT, EVEN IF YOU HAVE PAID YOUR CONTRACTOR IN FULL. IF YOU FAIL TO PAY YOUR CONTRACTOR, YOUR CONTRACTOR MAY ALSO HAVE A LIEN ON YOUR PROPERTY. THIS MEANS IF A LIEN IS FILED YOUR PROPERTY COULD BE SOLD AGAINST YOUR WILL TO PAY FOR LABOR, MATERIALS, OR OTHER SERVICES THAT YOUR CONTRACTOR OR A SUBCONTRACTOR MAY HAVE FAILED TO PAY. TO PROTECT YOURSELF, YOU SHOULD STIPULATE IN THIS CONTRACT THAT BEFORE ANY PAYMENT IS MADE< YOUR CONTRACTOR IS REQUIRED TO PROVIDE YOU WITH A WRITTEN RELEASE OF LIEN FROM ANT PERSON OR COMPANY THAT HAS PROVIDED TO YOU A "NOTICE TO OWNER". FLORIDA'S CONSTRUCTION LIEN LAW IS COMPLEX AND IT IS RECOMMENDED THAT TO FULLY UNDERSTAND YOUR RIGHTS OR WHENEVER A SPECIFIC PROBLEM ARISES, YOU CONSULT AN ATTORNEY.**

### **ARTICLE 3. DESCRIPTION OF PROPERTY AND THE WORK TO BE PERFORMED**

The Contractor agrees to construct/make improvements (the “Residence”) on Owner's real property located at:

\_\_\_\_\_ Model Name, \_\_\_\_\_

County, Florida, (the “Property”) and shall fully execute the Work as described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others. The parties acknowledge that variations from the Plans may occur and are acceptable. Golden Magnolia, Inc. shall not be held responsible as to the adequacy for plans as provided by others. Any modifications of such plans as required by the building department according to its review process, or as necessitated by means of construction that prove inadequate, shall be paid for by the Owner, and the costs for any such required changes as may be required shall be the responsibility of the Owner.

### **ARTICLE 4. TITLE TO PROPERTY, SURVEY, PLACEMENT OF STRUCTURE AND BUILDING SITE**

#### **4.1 TITLE**

**4.1.1** Owner warrants and represents to Contractor that Owner has fee simple marketable title to the Property, free and clear of all liens or encumbrances, and Owner shall submit proof of same to Contractor immediately upon request. Owner further warrants that Owner has legal right of access to the Property and all rights of title, including easements necessary for the construction, use and occupancy of the Residence.

#### **4.2 BOUNDARIES & CERTIFICATES OF ELEVATION**

**4.2.1** The Contractor does have an allowance included within the Contract price ( current allowance indicated in the specification list attached to this contract ) intended to cover all required boundary, topographical, vegetation and bench mark indicated property surveys, as well as any required Certificates of Elevation as may be required by the building department or insurance company(s). If there is such a monetary allowance, it shall be considered to be an aggregate allowance for all such documentation, and for all instances of need. Any costs for surveys or certifications incurred by the Contractor that exceed the allowance shall be performed at the Owner’s expense.

#### **4.3 COVENANTS/RESTRICTIONS**

**4.3.1** Owner hereby confirms to Contractor that Owner has received the neighborhood Covenants, Deed Restrictions or other Restrictions of Record, pertaining to the Property, or as may be evidenced in the Public Records of the County or City in which it is located.

#### **4.4 RELATED LOSS, COSTS, OR DAMAGES**

**4.4.1** Any loss or damage suffered by Contractor or any third party as the result in a defect in title shall be borne solely by Owner. If Contractor purchases Builders Risk Insurance to cover any and all risks arising from the work performed, Owner shall be responsible for any premiums or deductibles.

**4.4.2** The Owner shall utilize the Surveyor approved by Contractor and the Contractor shall be responsible to verify correct boundary and structure placement location. Should any changes in location of the Residence be required by any competent municipal or other governmental authority having jurisdiction over construction practices on the Property, such changes shall be made at the Owner's expense.

**4.4.3** In the event any governmental regulations or private restrictions or covenants, or the results of any soil or subsurface tests require modifications to the Residence or to the subsurface of the Property, the cost of such modifications shall be added to the Contract Price and are payable in the same manner as if originally included in the Contract Price, or at Contractor's option, due and payable at the time the costs of such modifications are incurred.

**4.4.4** Owner shall be solely liable for any costs associated with Gopher Tortoise relocation if required by government regulation, authority or order. Same shall apply to relocation of any animal protected under local, state or federal law.

#### **ARTICLE 5. DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

**5.1** The Date of Commencement shall be the date the last of the following occurs:

- 1) The finance loan closing has occurred, and/or the first start up draw has been received.
- 2) All required plan development as needed for permitting has been finalized.
- 3) Any Architectural review Board that has jurisdiction over the Property has issued its Approval and any required review fees or construction deposits have been paid by Owner.
- 4) The building permit has been received and all utility connection fees as well as impact fees have been paid by Owner.

**5.2** The term of Contract ("Contract Time") shall be measured from the Date of Receiving the construction permit.

**5.3** The Contractor shall achieve Substantial Completion of the entire Work not later than 730 calendar days from the Date of Approved permit subject to adjustments of this Contract Time as provided in the Contract Documents. "Substantial Completion" is reached upon the issuance of the Certificate of Occupancy.

**5.4 Time is of the Essence.** Contractor shall diligently pursue and substantially complete all work to be performed under the Contract within the time specified in 5.3 above, taking into consideration delays that are beyond the control of the Contractor, including, but not limited to,

weather conditions, delays in selection or delivery of materials, change orders requested by Owner and delays in obtaining the certificate of occupancy. Contractor shall not be liable to Owner for any losses, costs or damages resulting from or arising out of a delay or inability to perform the Contract as described herein or caused by any event beyond the control of the Contractor.

**ARTICLE 6. CONTRACT PRICE (Fixed Price)**

**6.1** Owner agrees to pay Contractor the Contract Price (Article 6.2) in current U.S. funds for the Contractor's performance of the Contract. The Contract price as stated in Article 6.2 covers the cost of the Work as defined in Article 3 of this contract. The Contract Price will be adjusted for signed Change Orders (Article 8), and other cost increases as described in Article 23. Owner acknowledges that the Contract Price does not include any lot cost, lot commission, lot closing costs, or any financing costs, associated with the purchase of the Property.

**6.2** The fixed price (hereinafter referred to as "Contract Price") of \$ \_\_\_\_\_ shall be paid to contractor. If the commencement of construction is delayed by owner for more than sixty (60) calendar days from the date of execution of the Contract, Contractor shall have the right to terminate the Contract by providing written Notice to Owner along with a return of the deposit, less any costs incurred by Contractor, together with profit lost by Contractor due to Owner's delay. All fixed price contracts are based upon a 10 sq foot to 10,000 square foot lot unless otherwise stated.

Owner agrees to pay Contractor the Contract Price, any options not included in the contract price, and any costs for modification of the Work as follows:

PAYMENT AMOUNT	PAYABLE
\$ _____ .00	Total Contract Price
\$ _____ .00	Less Initial Deposit,
\$ _____ .00	Less balance of 10% deposit paid to Contractor (at
lender	Commitment)
\$ _____ .00	Balance Owed to Contractor per Draw Schedule attached as Addendum A.

**6.3.1** Upon the execution of the Contract, Owner shall pay Contractor the deposit as shown above in the amount of \$ \_\_\_\_\_. The deposit funds shall be earned by the Contractor upon payment not subject to escrow and refundable.

**6.3.2 Deposit.** Owner agrees that the above deposit serves two purposes: (a) to provide evidence of Owner's good faith; and (b) to allow Contractor to fund pre-construction costs until such time as the first disbursement is made to Contractor under the Draw Schedule. The entire deposit is non-refundable to Owner should Owner fail to commence construction for any reason.

**6.3.3 Accounting for Deposit.** Owner authorizes Contractor to place the deposit and all other payments made pursuant to this Contract in Contractor's General Operating Account for purposes of funding the construction costs of the Work and funding the operating costs of Contractor's company. Owner understands that Contractor may use said funds for the construction of the Residence along with other building-related expenses such as insurance premiums, payroll, taxes, vehicle expenses, and all other such expenses deemed necessary by Contractor.

## **ARTICLE 7. PAYMENTS AND FINANCING**

**7.1.1 Bank Financing** Owner agrees to pay Contractor the Contract Price in accordance with the draw schedule identified in Addendum A attached hereto or in accordance with the lender's required draw schedule, if any, provided the lender's draw schedule is approved by the Contractor. At such times as Contractor completes each of the items set forth in the Draw Schedule, Contractor shall submit a written draw request to Owner or Owner's Lender for an amount equal to the percentage of the Contract Price applicable to each item of construction then completed, less the percentage previously requested and paid. Draw requests are due and payable within seven (7) calendar days of the date submitted. Requests are deemed submitted as of the date the request is sent via facsimile, email, hand delivered or signed for if sent by courier or overnight delivery. If the request is sent via the U.S. mail, the request is deemed submitted two (2) business days after the date of mailing.

**7.1.2 Payment.** All draws shall be paid directly and only to Contractor. Owner agrees to execute such written directions to Owner's Lender, if any, no later than the construction loan closing, as may be required to accomplish payments directly and only to Contractor.

## **7.2 FINAL PAYMENT**

Final payment, constituting the entire unpaid balance of the Contract Price, shall be made by the Owner to the Contractor upon the last to occur of the following:

a) The Contractor has Substantially Completed the Work; b) Contractor has delivered a Contractor's Final Affidavit; c) Contractor has delivered access keys and Operation and Maintenance Manuals to the Owner d) No Certificate of Occupancy shall be applied-for nor received by Contractor prior to receipt of Final Payment..

## **7.3 FINANCING**

It shall be the sole responsibility of Owner to obtain all financing necessary to fully fund the "Work". Owner has sole responsibility to pay all fees, charges or other costs of such financing, including inspection fees, escrow service and disbursement fees and wire transfer fees charged by any such lender or escrow agent. The nonperformance of any such lender or escrow agent, and for any dispute between the Owner and Lender, shall not affect any obligations of Owner to Contractor, provided, however, the draw schedule designated by the construction loan lender, and approved by Contractor, shall supersede and replace the draw schedule set forth herein. In the event any portion of the Contract Price is to be paid from the proceeds of a construction loan,

Owner agrees to provide Contractor with written verification of a construction loan commitment, subject only to standard conditions, as a condition precedent to Contractor beginning any Work or performing any other obligations set forth in this Contract.

## **ARTICLE 8. CHANGES IN THE WORK**

### **8.1 General.** NO CHANGES IN THE WORK AFTER PERMIT IS APPLIED FOR.

A Change Order or Modification is a written document signed by both the Contractor and the Owner stating their agreement relating to a change in the Work, the adjustment of the Contract Price and an adjustment in the time for Substantial Completion.

**8.2** Owner may request changes in the Work, plans, specifications or selection of finished materials. No change shall be made without written Contractor approval, which may be withheld in Contractor's sole discretion. All such changes to the Work must be by written Change Order executed by Owner and Contractor. Any such requests from the Owner shall be submitted directly to the Contractor or its designated representative. Each party hereto acknowledges and agrees that the Plans will not be altered without a prior written Change Order signed by Owner and Contractor.

**8.3 Payment.** Owner shall pay directly to Contractor, in full, any increase in Contract Price prior to Change Order work performed. Owner shall submit payment to Contractor within five (5) business days of executing Change Order. Change Order work will not begin until payment from owner has been received by Contractor.

**8.4 Waiver.** Waiver of any provision herein shall not be deemed a waiver of any other provision herein, nor shall waiver of any provision of this Article be construed as a continuing waiver of the same or other provisions of this Article.

**8.5 Time.** Time is of the essence. If Payment is not made or if Owner and Contractor cannot agree to cost and/or scope of the requested change within five (5) calendar days of the request by Owner for changes, the Builder will continue with the Work and the request will be deemed abandoned.

## **ARTICLE 9. FINAL INSPECTION/PUNCH LIST**

Within ten (10) business days of notification by Contractor that Work is Substantially Complete, Owner may conduct a final inspection of the improvements and prepare a Final Inspection Punch List, which shall be signed and dated by both parties. Any dispute over Punch List items shall be noted and initialed on Final Inspection Punch List. An unsigned Punch List will not be considered valid by Contractor. Contractor shall be responsible for completion of all items on the signed and dated punch list. Owner agrees that the craftsmanship/quality of installation of all items within the home will be according to Contractor's sole discretion and any dispute regarding same shall be determined by Contractor's supervisor to make a determination as to whether repairs or replacements are needed.

## **ARTICLE 10. OCCUPANCY/OWNER PRESENCE ON SITE**

Owner agrees not to occupy the Property until the earlier of fifteen (15) days after Substantial Completion or Contractor's completion of punch list items. Furthermore, Owner agrees not to enter the structure at any time without Contractor's permission and with a representative of Contractor present, during the construction period.

## **ARTICLE 11. LICENSES AND PERMITS**

Included in the Contract Price are the costs for all local building department permits only (does not include any other fees required by building department) which the Contractor will acquire. In the event that Contractor is unable to obtain the necessary licenses and permits required to commence construction of improvements within 120 calendar days from the date of this Contract, then Contractor shall have the option of terminating this Contract and returning all monies paid to Contractor by Owner, less Contractor documented direct costs incurred through the date of termination.

## **ARTICLE 12. USE OF CONTRACTOR'S EMPLOYEES. AGENTS, SUBCONTRACTORS OR MATERIAL SUPPLIERS**

**12.1** Contractor shall have full and complete responsibility for general management of construction of said dwelling and shall have full directing authority over the execution of all subcontracts. All subcontractors and material suppliers' furnishings labor and materials shall be approved by Contractor. Owner and Contractor may agree to use material suppliers chosen by Owner. Any use of such material supplier is subject to the terms and conditions of 12.5 below. Any allowance as set forth in the contract for a specific material will be subject to the terms of this Article per paragraph 12.5. Also, Owner shall not discuss or attempt to direct any construction matters with subcontractors, suppliers, materials, or laborers including attempting to add to, or change anything related to the Work. No representation by any subcontractor shall be binding upon Contractor. ALL INSPECTIONS COMPLETED ONLY BY THE LOCAL BUILDING DEPARTMENT. No third party inspectors are allowed at any time of the construction. All job sites visits must be approved by Golden Magnolia Inc. Unauthorized visits will Void this agreement at client expense. \_\_\_\_\_

**12.2** Owner may not utilize, unreasonably interfere, communicate or contract with Contractor's employees, subcontractors or material suppliers, nor perform or permit any work on the Residence or surrounding property without the prior written approval from Contractor. Contractor's approval may be withheld in the Contractor's unrestricted discretion; provided, however, that if such consent is given, then Owner shall be solely responsible for the payment, shipment, delivery, insurance, warranty, installation, cost of storage, cost of loading or unloading the materials at the job site and damages arising from or related to delay arising therefrom and safety. In no case, however, shall Owner attempt to perform work or direct work under any permit pulled under the Contractor's license.

**12.3** Owner further agrees to indemnify Contractor for any loss or damages to the Work as a result of any work performed by Owner, or at Owner's direction.

**12.4** The situation may arise where Contractor instructs Owner to contact a material supplier to choose specific items for their home. This contact is approved for the limited and narrow purpose of choosing specific items only and in no way waives the above requirement for Owner.

**12.5** In the event the Contractor agrees to use a material supplier as mentioned in paragraph 12.1, the Owner shall be deemed responsible for ordering said material, and be responsible to pay all associated costs for design layout, shipping and delivery costs. The Owner shall be responsible for the inspection of and unloading of all such materials. All such costs shall be considered to be part of any applicable allowance provided for in the Contract. All monetary allowance credits due to the Owner for said materials will be credited to the Owner at the closing of the Contract. The installation of all items must be provided by one of the Contractor's approved Subcontractors with extra cost added for labor. No Owner provided material shall be delivered or stored in the Residence without Contractor permission. If off site material storage is needed, then such cost shall be the sole responsibility of the Owner. Any flaw or defect that may occur with the material supplied by Owner is **not** covered by any Contractor's expressed or implied Warranty. Any defective material that must be returned shall be done so as the responsibility of the Owner, including any required removal of, return transportation for restocking fee and/or any cost of replacement or reinstallation.

### **ARTICLE 13 CUSTOMER SELECTIONS/DECISIONS**

**13.1** There are numerous Decisions and Selections that must be made by Owner prior to installation in the Residence. These Decisions and Selections are the responsibility of Owner and will be made at the date appointed by the Contractor.

**13.2** Owner agrees that in the event that an item specified in the Specifications is not available, or Contractor deems a change should be made, Contractor shall discuss with Owner the changes that are deemed necessary and Owner and Contractor shall decide on substitute materials. Any delay caused by Owner's failure to make a decision on a substitute item will automatically extend the contract completion date by an equal period.

#### **13.3 Allowances, Stipulations, and Selection of Finish Materials..**

**13.3.1** In establishing the Contract Price or estimating the costs to be incurred, Contractor has made allowances for finish materials, these allowances include the cost for installation. The Owner shall submit in writing to Contractor the selection for each such item. Contractor shall provide the selections available. If Owner desires to utilize any materials not provided by Contractor for the design and layout, Owner shall be responsible for the additional costs. In addition, the portion of the cost of any selections which exceed the allowance is the sole responsibility of Owner and is payable in the same manner as a Change Order. The Specifications are provided as a complete list of the structural and amenity component scheduled to be included in the Residence. Furthermore, if wood floors are to be installed in the home, or if Contractor deems that it is needed to acclimatize the Residence for woodwork and cabinetry protection, the air conditioning system needs to be operated 24 hours per day to accommodate moisture control. Owner will share in the cost of the increased electric bill based on the amount of increase in such bill caused by the increase in consumption of the electricity by the air conditioning system.



**13.3.2 Fill.** The total contract price listed above includes only one foot of dirt fill for compaction density test. Additionally, the price includes up to 30 loads of fill. Any additional dirt or fill will be an additional cost as determined by the amount needed.

**13.3.3 Landscaping.** As to the stipulated landscaping allowance, the Owner is hereby notified that they will be financially responsible for all water supply and lawn maintenance bills for sod watering and maintaining once the sod is laid and/or the pool (if installed) as it is filled. Landscaping shall be done according to applicable government minimum requirements. Any additional landscaping required by a community Home Owners' Association to meet its minimum requirements is not included in the stated total contract price above, but shall be an additional cost to be determined by the extent and nature of the requirements.

## **ARTICLE 14. DEFAULT AND TERMINATION**

**14.1** Contractor shall be in default under this Contract if Contractor abandons Work on the Residence or otherwise refuses to carry out its obligations under this Contract and when Owner has fully complied with its obligations under this Contract. Contractor shall be deemed to have abandoned work if Contractor fails to perform or cause any Work to be performed on the Residence for sixty (30) consecutive calendar days, unless such failure is the result of any delay caused by Owner or of any event beyond the control of the Contractor and for which Contractor is not responsible.

**14.2** Owner shall be in default under this Contract if Owner refuses to permit Contractor to complete performance, fails to pay any amounts when due, or otherwise refuses to carry out the obligations of Owner under this Contract.

**14.3** Neither Contractor nor Owner shall be considered to be in default if the other has previously defaulted and failed to timely cure pursuant to Article 14.4 below.

**14.4** In the event of a default, the defaulting party shall be entitled to receive written notice, by certified mail, return receipt requested or by hand delivery to the address shown below, which notice shall specify the event(s) of default. The defaulting party shall have ten (10) calendar days from the receipt of the notice in which to begin curing the default. Provided, however, the cure of any default in payment (the Contractor not being in default) must be completed within ten (10) calendar days from the receipt of the notice of default. If any default is timely cured, each party agrees that this Contract shall remain in full force and effect and neither party may assert any claims as the result of such cured default. If the defaulting party fails to timely cure and the non-defaulting party may terminate the Contract upon which the non-defaulting party may recover damages sustained as a result of the termination as provided in Section 14.5, below. The defaulting party shall also assume and pay all obligations, commitments and claims or invoices non-defaulting party has incurred in good faith in connection with the Work.

### **14.5 REMEDIES AFTER DEFAULT AND/OR TERMINATION:**

**14.5.1 Remedies of Owner.** Except for claims by the Owner of defective construction, which are governed by Florida Statutes, §558, in the event of default by Contractor which is not cured

within the time specified, the Owner may, at Owner's option, declare the Contract terminated and seek damages for the reasonable and necessary costs to complete construction in accordance with the original plans and specifications, as adjusted by Change Orders to the date of termination, less any balance of the adjusted Contract Price not paid to Contractor. Except as provided elsewhere in the Contract Documents, Owner shall not be able to recover any other damages whatsoever, including, but not limited to, damages for delay, incidental or consequential damages, living expenses or additional financing costs, rental costs, loss of business and reputation or loss of use of the Residence.

**14.5.2 Remedies of Contractor.** In the event of default by Owner which is not cured within the time specified, the Contractor, at Contractor's option shall either:

(1) Provide a notice of termination, terminating this Contract, upon which Contractor shall be entitled to recover all damages allowed by law including, but not limited to, the cost of all the Work performed including materials, labor, soft costs, administrative costs, supervision overhead, profit which would have been earned under the Contract, amounts due to subcontractors, laborers and materialmen and all other costs and/or damages incurred as a result of the Owner's breach. Upon termination of the Contract and contemporaneous to the Notice of Termination, Contractor will also terminate, withdraw, rescind or otherwise cancel the Building Permit. In the alternative, Contractor, at its option, may complete the Work and seek direct and consequential damages for breach of contract.

#### **ARTICLE 15. NOTICES**

All notices shall be to the respective addresses of the parties as follows or as otherwise set forth in written notice to the other party

(a) As to Contractor: GOLDEN MAGNOLIA INC.  
c/o Maxim Tarannik  
1 Rockefeller Drive  
Palm Coast, Florida 32164

(b) As to Owner(s):

#### **ARTICLE 16. LAW, JURISDICTION, ATTORNEY FEES AND WAIVER OF JURY TRIAL**

This Contract shall be governed by the laws of the State of Florida. Venue of any claim, complaint or action shall be in Flagler County, Florida. THE PARTIES HEREBY WAIVE THEIR RIGHT TO A TRIAL BY JURY IN ANY AND ALL DISPUTES OR CLAIMS ARISING OUT OF OR IN RELATION TO THIS CONTRACT. The prevailing party in any action shall be entitled to recover all costs and expenses, including attorney fees, professional fees, expert witness fees and consultant fees, arising before, during, or after mediation, arbitration, trial or any other method of dispute resolution, including any and all appeals.

## **ARTICLE 17. ASSIGNMENT AND RECORDING**

This Contract may not be assigned without the written permission of both parties. This Contract may not be recorded except as needed to enforce Article 10.

## **ARTICLE 18. INTERPRETATION OF THIS AGREEMENT**

The terms of this Contract are contractual and are the result of negotiation between the parties hereto. Accordingly, any rule of construction of contracts that ambiguities are to be construed against the drafting party will not be employed in the interpretation of this Agreement.

## **ARTICLE 19. INTEGRATION CLAUSE**

The Contract, which includes all attachments thereto, represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. This contract may not be modified except in writing signed by all parties hereto.

## **ARTICLE 20. HEADINGS**

The headings and captions used in this Contract are for convenience only and shall not control, limit, or affect the meaning or interpretation of the provisions of this Contract.

## **ARTICLE 21. WAIVER**

The failure by one party to require performance of any provision shall not affect that's party's right to require performance at any time thereafter, nor shall a waiver of any breach or default of the contract constitute a waiver of any subsequent breach or default or a waiver of the provisions itself.

## **ARTICLE 22. ADDITIONAL COSTS ASSESSED AGAINST OWNER**

**22.1 Force Majeure Clause.** The Contractor will not be liable for any loss incurred as a result of delay or failure to meet any obligation under this Contract due to an event of Force Majeure. Such occurrence being any cause or circumstance beyond the Contractor's control and for which the Contractor is not responsible, including, but not limited to, any failure or delay in performance caused by any strikes, tock-outs, labor disputes, fires acts of God or public enemy, extreme weather, including but not limited to, hail, wind, hurricanes, tornadoes, and flooding, malicious or accidental damage, delays in transport, or restrictions or prohibitions by any Government authorities. During the continuance of an event of Force Majeure affecting the Contractor, its obligations hereunder will be suspended and will resume as soon as possible after the cause or circumstance has ceased to have effect.

**22.2 General Specifications and Clarifications.** Any general specifications and

clarifications attached to this Contract at the time of signing and agreed upon are included in the Contract Price. Materials, colors and equipment later selected or requested by Owner that exceeds the cost of the items identified in the Contract Documents shall be added to the Contract Price in accordance with Article 8.

### **ARTICLE 23. INSURANCE AND WARRANTY**

**23.1 Waiver of Subrogation.** Owner and Contractor waive all rights of recovery against each other for property damages to the extent the damage is covered by insurance.

**23.2 Warranty by Contractor. Contractor makes no express or Implied Warranties, except as stated herein. All stated warranties are in lieu of all other warranties, express or implied.**

(a) Except as provided in Section (b) below, Contractor warrants ONLY the materials supplied by Contractor and used in performing this contract will be free of defects for a period of one (1) years from the date of the Certificate of Occupancy; provided, however, that any warranty regarding wood destroying organisms is waived by Owner except for such warranties given by a licensed pest control operator and this Warranty, is limited to one (1) year from date of treatment; renewable at the sole option and expense of the Owner.

Owner is responsible for any labor cost

(b) EXCLUSIONS: The Contractor does not warrant any electric appliances.

The Owner agrees to rely solely on the warranty of the respective supply vendors and/or the manufacturers of such equipment unless an electric appliance defect is caused by the installation of such appliances or equipment in which case the Contractor shall be deemed responsible.

### **ARTICLE 24. SETTLEMENT OF CONCRETE/FOUNDATION**

**Owner fully understands that settlement cracks are common in Florida and minor concrete settlement cracks are possible, particularly in or alongside expansion joints. These cracks are small, narrow and normal in a newly-constructed building. They are not an indication of structural defects. Contractor are not responsible to any Driveway cracks, tile damages/cracks caused by settlement of the concrete/ foundation and any future interior or exterior tile cracks**

**CONTRACT AGREEMENT SIGNATURES:**

The following parties sign and agree to all preceding conditions, and to all applicable addendums attached.

**OWNER(S):**

**PRINT AND DATE**

1. \_\_\_\_\_

\_\_\_\_\_

2. \_\_\_\_\_

\_\_\_\_\_

**CONTRACTOR**

**GOLDEN MAGNOLIA, INC.**

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

**Maxim Tarannik, Vice President**

**or**

**Marianna Gorshelev President**

**ADDENDUM A**

**CONTRACT DRAW SCHEDULE**

TOTAL CONTRACT PRICE: \$ \_\_\_\_\_

DRAWS FOR CONSTRUCTION SHALL BE DISBURSED IN THE FOLLOWING MANNER:

- \$ \_\_\_\_\_ ( 1 ) Initial contract intent / design deposit - \$20,000
- \$ \_\_\_\_\_ ( 2 ) Permits ready to apply, (25%)
- \$ \_\_\_\_\_ ( 3 ) Slab poured ( 25%)
- \$ \_\_\_\_\_ ( 4 ) Trusses installed, interior framing complete (25%)
- \$ \_\_\_\_\_ ( 5 ) All rough installed, Drywall done ( 15%)
- \$ \_\_\_\_\_ ( 5 ) Interior complete, CO recived ( 10%)
- \$ \_\_\_\_\_ TOTAL (100%)

THE CONTRACTOR WILL NOTIFY OWNER AS TO WHEN EACH STAGE IS COMPLETED. PAYMENT IS DUE WITHIN 7 DAYS AFTER NOTIFICATION BY CONTRACTOR. IT IS AGREED BY BOTH PARTIES THAT IF PAYMENTS ARE NOT RECEIVED BY THE SPECIFIED TIME, ALL WORK SHALL BE TERMINATED UNTIL FURTHER PAYMENTS ARE RECEIVED.

## **ADDENDUM B**

### **RADON**

Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department.

## **ADDENDUM C**

Insulation Disclosure (for new home sales)

RE: CONTRACT DATED

As required by Federal Trade Commission Regulations, the information relating to the insulation installed or to be installed in the home being purchased under the contract is as follows:

A. Exterior masonry walls of improved living areas: Are or shall be insulated with Polyisocyanurate insulation to a thickness of  $\frac{3}{4}$ " inches which yields an R-Value of R-5.

Walls in other areas of the home: Are or shall be insulated with fiberglass batt insulation to a thickness of 3.5" inches which yields an R-Value of R-11.

Ceilings in improved living areas: are or shall be insulated with \_\_\_\_\_ insulation to a thickness of 5.25 inches which yields an R-Value of R-\_\_\_\_\_.

All stated R-Values are based on information provided by the manufacturer of the insulation.



## **ADDENDUM D**

### Notice of Claim/Right to Cure (Florida Statutes §558)

CHAPTER 558, FLORIDA STATUTES CONTAINS IMPORTANT REQUIREMENTS YOU MUST FOLLOW BEFORE YOU MAY BRING ANY LEGAL ACTION FOR AN ALLEGED CONSTRUCTION DEFECT IN YOUR HOME. SIXTY DAYS BEFORE YOU BRING ANY LEGAL ACTION, YOU MUST DELIVER TO THE OTHER PARTY TO THIS CONTRACT A WRITTEN NOTICE REFERRING TO CHAPTER 558 OF ANY CONSTRUCTION CONDITIONS YOU ALLEGE ARE DEFECTIVE AND PROVIDE SUCH PERSON THE OPPORTUNITY TO PAY. FOR THE ALLEGED CONSTRUCTION DEFECTS YOU ARE NOT OBLIGATED TO ACCEPT ANY OFFER WHICH MAY BE MADE. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER THIS FLORIDA LAW WHICH MUST BE MET AND FOLLOWED TO PROTECT YOUR INTERESTS.

**ADDENDUM E**

**NOTICE AND WAIVER OF RIGHT TO HAVE DEPOSIT FUNDS PLACED IN ESCROW**

Pursuant to Florida Statutes, § 501.1375(2), Builder notifies Owner of the following:

THE Owner OF A ONE-FAMILY OR TWO-FAMILY RESIDENTIAL DWELUNG UNIT HAS THE RIGHT TO HAVE ALL DEPOSIT FUNDS (UP TO 10 PERCENT OF THE PURCHASE PRICE) DEPOSITED IN AN ESCROW ACCOUNT. THIS RIGHT MAY BE WAIVED, IN WRITING, BY THE BUYER.

By signing below, Owner hereby waives the right to have deposit funds placed in an escrow account.

Owner(s): (All title owners must sign this Addendum)

## **ADDENDUM F**

### **FLORIDA HOMEOWNERS' CONSTRUCTION RECOVERY FUND**

PAYMENT, UP TO A LIMITED AMOUNT, MAY BE AVAILABLE FROM THE FLORIDA HOMEOWNERS' CONSTRUCTION RECOVERY FUND IF YOU LOSE MONEY ON A PROJECT PERFORMED UNDER CONTRACT, WHERE THE LOSS RESULTS FROM SPECIFIED VIOLATIONS OF FLORIDA LAW BY A LICENSED CONTRACTOR. FOR INFORMATION ABOUT THE RECOVERY FUND AND FILING A CLAIM, CONTACT THE FLORIDA CONSTRUCTION INDUSTRY LICENSING BOARD AT THE FOLLOWING TELEPHONE NUMBER AND ADDRESS:

Florida Construction Industry Licensing Board 1940 N. Monroe Street  
Tallahassee, Florida, 32399-0784  
Telephone: 850-487-1395

## **ADDENDUM G**

### Notification of Energy Efficiency

(for use when Builder is selling real property where the building is ready for occupancy)

Pursuant to Florida Statutes § 553.996, Owner hereby acknowledges notification of the option for an energy-efficiency rating for the building. Such a rating may qualify Owner for an energy-efficient mortgage from lending institutions. Owner further acknowledges the receipt of the brochure from the Department of Community Affairs containing information relating to such a rating.

## ADDENDUM H

### RIDER TO CONSTRUCTION CONTRACT MOLD NOTICE, DISCLOSURE and DISCLAIMER

#### **What Homeowners Should Know about Mold**

**Mold.** Mold is a type of fungus. It occurs naturally in the environment, and it is necessary for the natural decomposition of plant and other organic material. It spreads by means of microscopic spores borne on the wind, and is found everywhere life can be supported. If the growing conditions are right, mold can grow in your home. Most homeowners are familiar with mold growth in some form or another. Examples of mold are bread mold, and mold that may grow on bathroom tile.

In order to grow, mold requires a food source. This may be supplied by items found in the home, such as fabric, carpet or even wallpaper, or by building materials, such as drywall, wood and insulation, to name a few. Mold also requires a temperate climate. The best growth has been determined to occur between 40 and 100 degrees F. Finally, mold growth requires moisture which is the only mold growth factor that can be controlled in a residential setting. A homeowner can minimize or reduce mold growth by minimizing moisture.

Common sources of home moisture include spills, leaks, overflows, condensation, and high humidity. As Florida is prone to extremely high humidity, good housekeeping and home maintenance practices are essential to prevent and eliminate mold growth. If moisture is allowed to remain, mold can develop within 24 to 48 hours.

**Consequences of mold.** Although not all mold is harmful, certain strains have been shown to have adverse health effects in susceptible persons. The most common effects are allergic reactions, including skin irritation, watery eyes, running nose, coughing, sneezing, congestion, sore throat and headache. Individuals with suppressed immune systems may risk infections. Some experts disagree about the level of mold exposure that may cause health problems, and about the exact nature and extent of the health problems that may be caused by mold. The Center for Disease Control states that a casual link between the presence of toxic mold and serious health conditions has not been proven.

**What Homeowners can do.** The homeowner can take positive steps to reduce or eliminate the occurrence of mold growth in the home, and thereby minimize any possible adverse effects that may be caused by mold. These steps include the following:

1. Before bringing items in to the home, check for signs of mold. Potted plants (roots and soil), furnishings or stored clothing and bedding material, as well as many other household goods, could already contain mold and growth.
2. Regular vacuuming and cleaning will help reduce mold levels. Mild bleach solutions and most tile cleaners are effective in eliminating or preventing mold growth.
3. Keep the humidity in the home low. Vent clothes dryers to the outdoors. Ventilate kitchen and bathrooms by opening the windows, by using exhaust fans, or by running the air conditioner to remove excess moisture in the air, and to facilitate evaporation of water from the wet surface.
4. Promptly clean up spills, condensation and other sources of moisture. Thoroughly dry any wet surfaces or material. Do not let water pool or stand in your home. Promptly replace any materials that cannot be thoroughly dried, such as drywall or insulation.
5. Inspect for leaks on a regular basis. Look for discoloration or wet spots. Repair any leaks promptly. Inspect condensation pans (refrigerators and air conditioners) for mold growth. Take notice of musty odors, and any visible signs of mold.

6. Should mold develop, thoroughly clean the affected area with a mild solution of bleach. First, test to see if the affected material or surface is color safe. Porous materials, such as fabric, upholstery or carpet should be discarded. Should the mold growth be severe, call on the services of a qualified professional cleaner.
7. Electronic air filters that may assist in effective air filtration and dehumidifiers to maintain humidity levels are available at additional cost from numerous vendors.

#### **Disclaimer and Waiver**

Whether or not you as a homeowner experience mold growth depends largely on how you manage and maintain your home. Every home contains products, materials and industrial chemicals that are used in constructing the home which may cause allergic or other bodily reactions in some individuals. You should consult your physician to determine the chemicals that may adversely affect you or members of your family. Our responsibility as a Contractor must be limited to things that we can control. As explained in our written warranty, provided by this instrument, we will repair or replace defects in your construction (defects defined as a failure to comply with reasonable standards of residential construction) for a period of one (1) year. The Contractor will not be responsible for any damages caused by mold or by some other agent not associated with defects in our construction, to include, but not limited to, property damage, personal injury, loss of income, emotional distress, death, loss of use, loss of value, and adverse health effects, or any other effects. Any implied warranties, including an implied warranty of workmanlike construction, an implied warranty of habitability, or an implied warranty of fitness for a particular use, are hereby waived and disclaimed. **THE OWNER UNDERSTANDS AND AGREES THAT THE CONTRACTOR IS NOT RESPONSIBLE, AND HEREBY DISCLAIMS ANY LIABILITY FOR, ANY DAMAGES, ILLNESS OR ALLERGIC REACTIONS WHICH THE OWNER, OR THE OWNER'S FAMILY MEMBERS MAY EXPERIENCE AS A RESULT OF MOLD, MILDEW, FUNGUS, SPORES OR CHEMICALS, TO INCLUDE, EMOTIONAL DISTRESS, DEATH, LOSS OF USE, LOSS OF VALUE, AND ADVERSE HEALTH EFFECTS, OR ANY OTHER EFFECTS. THE CONTRACTOR UNDERSTANDS AND AGREES THAT THIS RIDER DOES NOT LIMIT CONTRACTORS RESPONSIBILITY FROM WORK DEFECTS.**

#### **There are no warranties which extend beyond the description on the face hereof.**

This Notice, Disclaimer and Waiver Agreement is hereby made a part of the Purchase Agreement between Owner and the Contractor. The consideration for this agreement shall be the same consideration as stated in the Contract Agreement. Should any term or provision of this agreement be ruled invalid or unenforceable by a court of competent jurisdiction, the remainder of this agreement shall nonetheless stand in full force and effect.

I (we) acknowledge receipt of this Notice, Disclaimer and Waiver agreement. I (we) have carefully read and reviewed its terms, understand same and agree to its provisions.

Signed as to Owner: \_\_\_\_\_ Signed as to Contractor: \_\_\_\_\_

**ADDENDUM I**

**IMPORTANT NOTICE**

**Marrianna Gorshelev has an active real-estate License and has personal interest in the company**

Signature: \_\_\_\_\_  
Owner

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_  
Golden Magnolia Representative

Date: \_\_\_\_\_

## Standard features included in the base price



### Construction/exterior features/lot development

Lot clearing 10 sq foot to 10000 sq feet

Soil Test - One soil test per project

Allowance included within the Contract price intended to cover all required boundary, topographical, vegetation and bench mark indicated property surveys -\$1500

Compaction Test- one compaction test per project

Steel and Fiber Reinforced 3000 PSI Monolithic Slab with Vapor Barrier

Concrete Block Construction with Textured Stucco Finish

Exterior Paint: Satin Finish 100% Acrylic ( white color paint for exterior is not included )

30 Year Architectural Shingles

20' x 30' Concrete Driveway, Walkway Included ( Plan Specific )

8' garage doors - 7' for Duplexes

3/4" Rigid Foam Exterior Wall Insulation

R-21 Spray Foam Insulation in Rafters In Living Areas - Single Family Only

R-30 Loose Fill For Duplexes or Multi family

Engineered Truss System - 130 Mph Wind Load

Double Pane Low-E Vinyl Windows - White Color, NO Grids

Fiberglass Exterior Doors with Frame Saver Jambs

Aluminum Double Pane Low-E Insulated Sliding door

Interior Sound-Wall insulation - Single family only

Choice Of Exterior Color For - Body, Trim And Front Door

30 Loads Of Fill Per Lot

12' High Ceilings, Tray Ceiling Up To 13' ( Plan Specific )

Aluminum Fascia And Vinyl Soffit ( White or Bronze )

Termite Treatment - one at the foundation stage and one final when grass is installed

Water/Sewer Connection Up To \$5,000 Permit fees-\$6000

### Energy Efficient Air Conditioning Features

A/C Unit – 15 Seer ( Single Family) - 14 ( Seer for Multi Family )

Programmable Thermostat

Fully Ducted Returns in Bedrooms ( Plan Specific )

Insulated A/C Duct System

Whole house air filtration system by TRANE in Single Family Homes only (per written request only)

### Flooring

Tile Or Laminate ( 8-12 mm ) Flooring Throughout The House

Allowance for flooring: \$1.00 for laminate flooring and .40¢ per tile

Tile Flooring In All Bathrooms

Epoxy Garage Floor Coating



## Interior Construction Features

Brushed Nickel Lock Set With Dead Bolt On All Exterior Doors  
Knob or Access Lever Hardware On All Hinged Interior Doors  
8' Interior Doors ( Single Family)- ( 6' for Multi Family )  
5 1/4" Baseboards  
Upgraded Casing  
Flat Paint On All Interior Walls  
Vinyl-Clad, Ventilated Shelving In All Closets  
Split Vanity Mirrors In All Baths  
Tiled Shower Walls All The Way To The Ceiling  
Kitchen Duct Vented Outside  
Under-mount Sink In The Kitchen  
2-Way Shower Valve In Master Bath (Single Family)- ( 1-Way In Multi Family )  
Knock Down Ceilings & Orange Peel Wall Texture  
One Color Ceiling, One Color Walls, White Color Doors And Trim  
Pull Down Stairs For Easy Attic Access  
2 Minimum Exterior Hose Bibbs (Plan Specific)  
Brushed Nickel Plumbing Fixtures  
Water Heater 50 Gal ( Single Family) - (40 Gal For Multi Family)

## Electrical Features

Decora Silent Rocker Switches  
Exhaust Fan In Baths Vented To Exterior  
Exterior Weather-Proof Outlets ( Plan Specific )  
Hardwired Smoke Detectors  
GFCI Outlets ( Plan Specific )  
Recessed Lighting ( Plan Specific )  
Pre-Wired For Ceiling Fans In All Bedrooms, Great Room, And Lanai Up to 3  
Cable Locations ( Plan Specific )  
Light Fixtures or \$1,000 ( Single Family ) \$2000 ( Multi Family) Allowance

## Appliances

Electric Smooth-top Range With Oven

Dishwasher

1/2 HP Waste Disposal

Over - Range Microwave Or Vent - Vented Outside

\$1,200 Appliance Allowance For Purchase For Single Family Home

( \$2,200 For Multi Family )

Icemaker Water-Line Provided

## Cabinets and Counter tops

42" Wood Cabinets

1 1/4" Granite Counter tops In Kitchen And Baths

Granite Shelf In Pantry ( Plan Specific ) Not Included in Multi Family

Outlets in Pantry For Small Appliances ( Plan Specific )

( Not Included In Multi Family )

## Landscaping

Starter Landscape Package Per Code- Not Included HOA Requirements

Required Shade Trees Up To 15" In Diameter In Total

( Not To Exceed 5 Trees In Total )

Bahia Sod Covering Up To 7,000 Sq Feet



## COMMUNITY DEVELOPMENT DEPARTMENT

Building (386) 986-3780 ♦ Code Enforcement (386) 986-3764 ♦ Planning (386) 986-3736

### Gopher Tortoise Protection Requirements

This memorandum is to provide notification that the property that you are seeking development approvals has a high potential to support gopher tortoise (*Gopherus Polyphemus*), a State of Florida Threatened species, and may require subsequent permitting with the Florida Fish and Wildlife Conservation Commission (FWC).

#### *What is a gopher tortoise?*

The gopher tortoise (GT) is a medium size land turtle with a rounded, oblong carapace reaching lengths of up to 12 inches. The gopher tortoise exhibits a fossorial lifestyle and is an adept burrower. It uses its front feet to excavate burrows, sometimes measuring up to 30 feet long with a depth of 18 feet. Because of overall depth of the burrow, a microenvironment often forms which maintains a moderately high ambient humidity and guards against extremes in temperature. The microhabitat formed by the burrow is utilized by numerous commensal species including gopher frog, eastern indigo snake, and Florida mouse.

#### *Permitting Information ~*

The gopher tortoise was elevated to a Threatened species on September 12, 2007 with approval of the species management plan by FWC Commissioners. With the adoption of the management plan, permitting procedures have also changed. Permitting and other educational pamphlets have been attached for your reference and use.

- Relocation is the only option for lands slated for development that can not maintain a 25-foot setback from a burrow entrance.
- Encroachment on a gopher tortoise burrow is an enforceable violation of Rule 68A-27.004.
- Take of a gopher tortoise or associated burrow is a second degree misdemeanor and may carry fines up to \$500.00 per violation and possible jail time of up to one (1) year.
- Per Section 10.04.04, Unified Land Development Code, "should gopher tortoises be present on the subject property, all necessary permits shall be submitted to the City prior to the commencement of construction activities."

We trust that the information provided here assists your determination if FWC permits should be sought in addition to City approvals. Please feel free to contact the City's Environmental Planner, Denise Bevan, at 386-986-2458 if you have questions or wish to discuss these matters in more detail.

**ALL RELOCATION FEES ASSOCIATED WITH GOPHER TORTOISE RELOCATION IS A SOLE RESPONSIBILITY OF THE CLIENT/LOT OWNER.**

Client Name \_\_\_\_\_ Signature \_\_\_\_\_

Job Address \_\_\_\_\_

July 1, 2009