

SIMULTANEOUS CLOSING ADDENDUM TO REAL ESTATE PURCHASE CONTRACT (Buyer #1 DOES NOT Own the Property)



THIS IS AN [] ADDENDUM [] COUNTEROFFER to that REAL ESTATE PURCHASE CONTRACT (the "2nd REPC") with an Offer Reference Date of _____, including all prior addenda and counteroffers, between _____, as Seller, and _____, as Buyer, regarding the Property located at: _____ (the "Property"). The following terms are hereby incorporated as part of the 2nd REPC:

1. ADDITIONAL SELLER DISCLOSURES. The above-referenced Seller (referred to below as Buyer #1) makes the following disclosures to the above-referenced Buyer (referred to below as Buyer #2):

1.1 Buyer #1 DOES NOT Own the Property. Buyer #1 advises Buyer #2 that Buyer #1 **DOES NOT** own the Property. Although Buyer #1 **DOES NOT** own the Property, Buyer #1 represents that Buyer #1 has entered into a separate Real Estate Purchase Contract (the 1st REPC) to purchase the Property from the current owner/developer of the Property (the "Owner/Developer"). Buyer #1 agrees to provide to Buyer #2 a copy of the 1st REPC as provided in Section 1.2(b) below.

1.2 Delivery of Additional Disclosure Documents. No later than the Seller Disclosure Deadline referenced in Section 24(a) of the 2nd REPC, Buyer #1 shall provide to Buyer #2 the following additional "Seller Disclosures": (a) a copy of all documents that have previously been provided to Buyer #1 as "Seller Disclosures" under Section 7 of the 1st REPC; (b) a copy of the 1st REPC (including all counteroffers, addenda and exhibits); (c) a copy of the Plans & Specifications for the Property (if this is new construction and construction has not started or is in progress); (d) a copy of all Change Orders, if any; (e) copies of any inspection reports, surveys, and studies regarding the Property that are in Buyer #1's possession; and (f) copies of all correspondence between Buyer #1 and the Owner/Developer relating to the Property.

2. SETTLEMENT DEADLINE. No later than three (3) days after Buyer #1 receives from the Owner/Developer written notice to close the transaction with the Owner/Developer ("Notice to Close"), Buyer #1 shall provide to Buyer #2 a copy of the Notice to Close. Except as provided in this Section 2 below, Buyer #2 agrees that the Settlement Deadline in the 2nd REPC shall be the later of the following dates: (a) the closing date required in the Notice to Close, or (b) fifteen (15) days after Buyer #2's receipt of the Notice to Close. In the event the closing of the transaction between Buyer #1 and the Owner/Developer is extended based on mutual written agreement of Buyer #1 and Buyer #2 as provided in Section 5.1 below, Buyer #1 and Buyer #2 agree that the Settlement Deadline referenced above, shall be extended to correspond with any extensions agreed to under the terms of the 1st REPC.

3. REPRESENTATIONS & WARRANTIES.

3.1 Subject to Acquiring the Property. Buyer #2 acknowledges that Buyer #1's obligations under the 2nd REPC are conditioned upon Buyer #1 and the Owner/Developer completing the purchase and sale of the Property as required under the terms of the 1st REPC. Buyer #1 acknowledges and agrees that Buyer #1 may not use any funds from the proposed transaction with Buyer #2 to fund the Closing between Buyer #1 and the Owner/Developer. Buyer #2 acknowledges and agrees that Buyer #1 makes no representations or warranties regarding the willingness or ability of the Owner/Developer to meet the Owner/Developer's obligations under the 1st REPC. The failure of the Owner/Developer to perform under the 1st REPC shall not give to Buyer #2 any rights against Buyer #1 for breach of contract, damages, or any other legal or equitable claims. Buyer #2's sole remedy for the Owner/Developer's failure to perform shall be to receive a refund of the Earnest Money Deposit.

3.2 Title to the Property. Subject to the terms of Section 3.1 above, Buyer #1 agrees to convey good and marketable title to Buyer #2 at Closing. Buyer #2 agrees to be responsible for: (a) any transfer fees due as a result of completion of this transaction; (b) property taxes, assessments, and homeowner's association dues levied against the Property from and after the date of Closing; and (c) utility and other services provided to the Property from and after the date of Closing.

3.3 No Warranties Regarding Physical Condition of Property. Buyer #2 acknowledges and agrees that Buyer #1 makes no representations or warranties of any kind or nature regarding the physical condition of the Property. To the extent any warranties available to Buyer #1 under the terms of the 1st REPC are assignable, Buyer #1 agrees to assign such warranties to Buyer #2 at Closing.

4. NON-ASSIGNABILITY. The 2nd REPC may not be assigned by Buyer #2 without the prior written consent of Buyer #1, which consent Buyer #1 may withhold in Buyer #1's sole discretion.

5. CHANGES DURING TRANSACTION & FURTHER CHANGE ORDERS.

5.1 No Changes Prior to Due Diligence Deadline. Buyer #1 agrees that from the date of Acceptance of the 2nd REPC until expiration of the Due Diligence Deadline, no changes to the 1st REPC shall be made, and no changes to the Plans & Specifications ("Change Orders") shall be requested or agreed to by Buyer #1, without the prior written consent of Buyer #2.

5.2 Changes After Due Diligence Deadline. If Buyer #2 does not cancel the 2nd REPC as provided in Section 8 of the 2nd REPC, then Buyer #1 and Buyer #2 agree that after the Due Diligence Deadline: (a) any changes to the 1st REPC shall require the mutual written consent of Buyer #1 and Buyer #2; (b) Buyer #2 shall not communicate, or attempt to communicate, directly with the Owner/Developer or with any construction personnel associated with the Property; (c) all Change Orders of any kind requested by Buyer #2 shall be coordinated only through Buyer #1 (who shall be the exclusive point of contact with the Owner/Developer and/or all construction personnel); (d) all Change Orders must be mutually agreed to in writing by Buyer #1 and Buyer #2; (e) all Change Orders shall be paid for by Buyer #2 at the time the Owner/Developer and/or construction personnel agree in writing to the Change Order; and (f) all payments for Change Orders made by Buyer #2 shall be absolutely non-refundable to Buyer #2 for any reason.

6. WALK-THROUGH INSPECTION. Before Settlement, Buyer #2 (or Buyer #2's representative) may, upon reasonable notice to Buyer #1, join Buyer #1 in conducting a "walk-through" inspection of the Property as permitted under the terms of the 1st REPC. Buyer #1 and Buyer #2 agree to cooperate with each other in good faith in coordinating the walk-through inspection. Buyer #2 acknowledges that only Buyer #1 has the right to submit to the Owner/Developer a list of requested repairs, corrections or replacements for the Property ("Punchlist"). Buyer #1 and Buyer #2 agree to cooperatively work with each other to prepare the Punchlist. Except as otherwise agreed in writing, Buyer #2 agrees that Buyer #2 shall have no right to submit an independent Punchlist to the Owner/Developer; nor shall Buyer #1 be responsible to Buyer #2 for completion of the Punchlist. The failure of Buyer #2 to conduct a walk-through inspection with Buyer #1 (or Buyer #1's representative) shall constitute a waiver by Buyer #2 of the right to participate with Buyer #1 in creation of the Punchlist.

7. AGREEMENT TO PAY BROKERAGE FEES. The Brokerage Fees due as a result of the closing of the purchase of the Property between Buyer #1 and Buyer #2 shall be equal to: \$ _____ or _____% of the Purchase Price. Change Orders Are Are Not, included in calculation of the Brokerage Fees. Buyer #1 shall be responsible for payment of the Brokerage Fees. The escrow/closing office is authorized and directed to pay the Brokerage Fees at completion of the Closing. Unless otherwise agreed in writing by the Broker for Buyer #1 and the Broker for Buyer #2, the Brokerage Fees shall be shared equally between the Brokers.

TO THE EXTENT any terms of this ADDENDUM modify or conflict with any provisions of the 2nd REPC, including all prior addenda and counteroffers, these terms shall control. All other terms of the 2nd REPC, including all prior addenda and counteroffers, not modified by this ADDENDUM shall remain the same. Seller Buyer shall have until AM PM Mountain Time on _____ (Date), to accept the terms of this ADDENDUM in accordance with the provisions of Section 23 of the 2nd REPC. Unless so accepted, the offer as set forth in this ADDENDUM shall lapse.

 Buyer Seller Signature (Date) (Time) Buyer Seller Signature (Date) (Time)

ACCEPTANCE/COUNTEROFFER/REJECTION

CHECK ONE:

- ACCEPTANCE:** Seller Buyer hereby accepts the terms of this ADDENDUM.
- COUNTEROFFER:** Seller Buyer presents as a counteroffer the terms of attached ADDENDUM NO. ____.
- REJECTION:** Seller Buyer rejects the foregoing ADDENDUM.

 (Signature) (Date) (Time) (Signature) (Date) (Time)

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