

# 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 "2<sup>nd</sup> 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 2<sup>nd</sup> 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 1<sup>st</sup> 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 1<sup>st</sup> 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 2<sup>nd</sup> 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 1<sup>st</sup> REPC; (b) a copy of the 1<sup>st</sup> 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 2<sup>nd</sup> 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 1<sup>st</sup> REPC.

### 3. REPRESENTATIONS & WARRANTIES.

**3.1 Subject to Acquiring the Property.** Buyer #2 acknowledges that Buyer #1's obligations under the 2<sup>nd</sup> 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 1<sup>st</sup> 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 1<sup>st</sup> REPC. The failure of the Owner/Developer to perform under the 1<sup>st</sup> 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 1<sup>st</sup> REPC are assignable, Buyer #1 agrees to assign such warranties to Buyer #2 at Closing.

**4. NON-ASSIGNABILITY.** The 2<sup>nd</sup> 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 2<sup>nd</sup> REPC until expiration of the Due Diligence Deadline, no changes to the 1<sup>st</sup> 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 2<sup>nd</sup> REPC as provided in Section 8 of the 2<sup>nd</sup> REPC, then Buyer #1 and Buyer #2 agree that after the Due Diligence Deadline: (a) any changes to the 1<sup>st</sup> 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 1<sup>st</sup> 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 2<sup>nd</sup> REPC, including all prior addenda and counteroffers, these terms shall control. All other terms of the 2<sup>nd</sup> 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 2<sup>nd</sup> 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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 (Signature) (Date) (Time) (Signature) (Date) (Time)

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