

HF Counter Offer / Addendum to Standard Purchase Contract

SECTION I

This is a Counter Offer Addendum (“Addendum”) to the Standard Purchase Contract dated: **5/14/08** (“Agreement”) , on the “Property” known as _____, in which _____ is referred to as “ Buyer “ and _____ is referred to as “Seller”, and is hereby made a part of the Agreement.

I. **EFFECT OF AGREEMENT/ ADDENDUM:** In the event of any conflict between this Addendum and the Agreement or escrow instructions or notice or other documents attached to this agreement (such as the Standard State Purchase Agreement), the terms of this Addendum shall prevail except as otherwise provided by law.

II. TERMS AND CONDITIONS

1. **Purchase Price:** Total purchase price of \$ _____ (_____) shall be paid to Seller in certified funds at the closing.
2. **Initial Deposit:** Immediately following Seller’s acceptance of the HF Counter Offer / Addendum to the Standard Purchase Contract, escrow will be opened by both parties with an escrow agent designated by Seller. The “earnest money” deposited shall be in the amount of **\$ 1,000.00** and submitted to escrow within two (2) calendar days. **A COPY OF THE DEPOSIT CHECK MUST BE SUBMITTED WITH ADDENDUM. EARNEST MONEY DEPOSIT WILL BE MADE NON REFUNDABLE UNLESS WRITTEN DISAPPROVAL OF INSPECTION CONTINGENCY OR LOAN CONTINGENCY IS RECEIVED BY SELLER, IN WRITING, WITHIN SPECIFIED TIME.**
3. **Contingencies:** Buyer hereby affirms that the sale or refinancing of any real property owned by the buyer is **not** a contingency of this agreement.
4. **Finance Terms: (Check one)** The Purchase Contract **is** contingent upon the Buyer obtaining financing for the purchase of the Property. If the Agreement is contingent on financing, the type of financing shall be the following (check one below):

Buyer Initials _____

- a) If the Agreement is contingent upon financing, the Buyer shall present proof, satisfactory to the Seller, of the Buyer’s full credit pre approval for a mortgage loan in an amount and under terms sufficient for the Buyer to perform his obligations under the Agreement. The prequalification shall include, without limitation, a certification of prequalification (or a mortgage loan commitment) from a direct mortgage lender. The Buyer’s submission of proof of prequalification, satisfactory to the Seller, is a condition precedent to the Seller’s acceptance of the Agreement and failure of the Buyer to provide such proof prior to the Seller’s execution of the Agreement may nullify the Seller’s execution of the Agreement and render the Agreement null and void. The Buyer shall complete and submit to a mortgage lender an application for a mortgage loan containing the terms set forth in this paragraph within three (3) calendar days of mutual acceptance of this Counter Offer, and shall employ diligent efforts to obtain a mortgage loan commitment within fourteen (14) calendar days of mutual acceptance of this Counter Offer. If, despite the Buyer’s diligent efforts, the Buyer cannot obtain a mortgage loan commitment within such fourteen (14) calendar days, then either the Buyer or the Seller may terminate the Agreement by giving written notice to the other party, and this Agreement may be automatically terminated at the sole option of the Seller. In the event of the termination by Buyer, the Buyer’s notice to Seller must include a copy of the loan application, proof of the application date, and a copy of the denial letter from the prospective lender. In the event of a proper termination of the Agreement by Buyer under this paragraph, the earnest money deposit shall be returned to the Buyer and the parties shall have no further obligation to each other under the Agreement. The Buyer agrees to cooperate and comply with all requests for documents and information from the Buyer’s chosen lender during the loan application process. Failure of the Buyer to comply with such requests from the Buyer’s chosen lender that results in the denial of the mortgage loan, or failure of the Buyer to provide proper notice to Seller in the event of termination by Buyer, shall constitute a breach of the Agreement, and Seller shall be entitled to retain all earnest money deposited by Buyer.
- b) **Conventional** **FHA** **VA:** (The following terms only apply to the loan type that is checked.) Seller shall pay a maximum of \$ _____, to be applied towards Buyer’s recurring and non-recurring closing costs. Seller shall pay other fees not allowed to be paid by Buyer, not to exceed \$0. Seller shall pay the cost of Lender Required Repairs not otherwise provided for in this Agreement,

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Buyer’s Initials

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Seller’s Initials

not to exceed \$____. Seller reserves the right to approve or disapprove of any requirements of an FHA/VA appraisal. Impound accounts, if required by Buyer's Lender, shall be established per term and condition of loan and/or Lender and shall be paid by Buyer.

- c) **___ Cash Offer:** (If checked): The Agreement is not contingent upon financing. Buyer shall provide Seller proof of liquid funds on deposit in the United States sufficient to close this transaction. Such proof shall be provided prior to Seller's acceptance of this Agreement and shall be subject to Seller's approval. Subject property shall remain on the market until Seller delivers executed contract to buyer.
- d) The Buyer is aware that the price and terms of this transaction were negotiated on the basis of the type of financing selected by the Buyer. Any change as to the loan type, terms or a change in the Buyer's lender after negotiations have been completed shall constitute a breach of the Agreement and Seller shall be entitled to retain all earnest money deposited by Buyer.

5. **TIME OF THE ESSENCE; CLOSING DATE; PER DIEM:** This transaction shall close on or before_____, or within five (5) calendar days of final loan approval by Buyer's lender, whichever is earlier. **TIME IS OF THE ESSENCE.** Seller must approve any extension to the close of escrow date, requested by Buyer, in writing. The Seller may require Buyer to release a non-refundable 3% earnest money deposit directly to Seller for said extension. In addition, Buyer agrees to pay to Seller a non refundable, per-diem fee in the amount of \$100/day if closing does not occur by_____, at no fault of the Seller.

6. **CLOSING COSTS AND ADJUSTMENTS:** Buyer and Seller agree to prorate the following expenses as of the closing date: municipal water and sewer charges, utility charges, real estate taxes and assessments, common area charges, condominium or planned unit development or similar community assessments, and payments of homeowner's association special assessments, with payments not yet due and owing to be assumed by Buyer without credit towards the Purchase Price.

Seller shall not be responsible for any amounts due, paid or to be paid after the closing date. In the event Seller has paid any taxes, special assessments or other fees and there is a refund of any such taxes, assessments or fees after the closing, and Buyer as current owner of the Property receives the payment, Buyer will immediately submit the refund to Seller.

Recording fees, escrow fees and other customary closing costs with the exception of transfer taxes, shall be paid by either Seller and/or Buyer in the manner customary for residential real estate transactions in the metropolitan area or city in which the Property is located.

All other costs and expenses, including any cost, expense or transfer tax imposed by any state or local entity not otherwise addressed herein, including any tax or assessment imposed upon the Property for any period prior to the closing date due to a change in the use of the Property after the closing date, shall be paid by Buyer.

7. **DELIVERY OF FUNDS:** Regardless of local custom, requirements, or practice, upon delivery of the Deed by Seller to Buyer, Buyer shall deliver all funds due Seller from the sale in the form of certified check or wire transfer. Failure to deliver funds according to either of the aforesaid methods shall be considered breach of the Agreement.

8. **INSURABLE TITLE:**

- a) Seller shall give and Buyer shall accept such title as Seller's title insurance company shall be willing to approve and insure in accordance with its standard form of title policy approved by the governing agency for the state where the Property is located, subject only to the matters provided for in this Agreement and Addendum.
- b) Unless otherwise indicated below, Seller shall furnish Buyer, at its expense, a fee (owners) title policy issued by seller's choice of title company, with standard, base coverage in the amount of the purchase price. Buyer may, at its sole expense and election, obtain any endorsements and extended coverages it desires but Seller is under no obligation to take any action or incur any costs related to such additional endorsements and coverages.
- c) Buyer understands and agrees that Seller may have entered into an arrangement with several title/closing companies for the purpose of providing discounted title and escrow/closing services to Buyer and Seller, but that Seller assumes no liability for any actions or the failure to act by any title and/or escrow/closing company in connection with title and/or escrow/closing services provided to Buyer and/or Seller. Seller shall determine the physical location for the close of escrow.
- d) _____ **(Buyers Initial Here, if applicable) DO NOT INITIAL THIS IN A STATE WHERE THE SELLER HAS THE RIGHT TO CHOOSE THE TITLE COMPANY. IN SUCH CASE, SELLER RETAINS AND RESERVES SAID RIGHT.** I/We will obtain a fee title policy and/or title exam at my/our own expense. I/we further agree to cooperate with Seller's title/closing

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company at no extra expense to Seller. Seller agrees to deliver insurable title, and agrees to pay for the cost of the standard base Buyers' owners' policy of title insurance from seller's choice of title company (but with any endorsements or extended coverage being at Buyer's sole election and expense). However, the Buyers may choose to purchase title insurance from a different title company at their own expense.

- e) In the event Buyer chooses to obtain their own fee (owners) policy and/or title exam, they shall order the same within three (3) calendar days of Buyer executing the contract of sale, or all objections to title shall be waived.
- f) Buyer must notify Seller's title/closing company of any and all title objections at least ten (10) calendar days before closing, or all objections to title shall be waived. If Seller cannot cure said objections after a good faith effort, or to do so would delay the closing beyond the original or any extended closing date, Buyer agrees to accept a fee (owners) title policy, as stated above, at Seller's expense. Regular rates must apply. Seller agrees to pay the premium for a fee (owners) title policy only if the policy is issued by Seller's selected title agent.
- g) If a mortgagee policy is required, Buyer shall be responsible for payment of the full premium.
- h) Seller shall not be obligated to remove any exception or to bring any action or proceeding or bear any expense in order to convey title to the Property or to make the title insurable, and any attempt by Seller to remove such title exceptions shall not impose an obligation upon Seller to remove those exceptions. Buyer acknowledges that Seller's title to the Property may be subject to court approval of a foreclosure action, result of a like or similar action, i.e. deed in lieu or as part of a purchase from a prior servicer, or to a mortgagor's right of redemption.
- i) In the event Seller is not able to (a) make the title insurable or correct any problems which Seller has agreed in writing to correct or (b) obtain title insurance from a title insurance company selected by Seller, all as provided herein, either party may terminate the Agreement and Earnest Money shall be returned to Buyer, and Seller shall have no further obligation or liability to Buyer hereunder.

9. SURVEY: Buyer shall pay the cost of any survey. No survey shall be provided by Seller.

10. FORM OF DEED: The deed to be delivered at closing shall be a deed that covenants that grantor grants only that title which grantor may have and that grantor will only defend title against persons claiming by, through, or under the grantor, but not otherwise (which deed may be known as a Special Warranty, Limited Warranty, Quit Claim or Bargain and Sale Deed).

11. DELIVERY OF POSSESSION OF PROPERTY:

- a) Seller shall deliver possession of the Property to Buyers at closing and funding of the sale. Pursuant to Section 11 of this Addendum, the delivery of possession shall be subject to the rights of any tenants or parties in possession. If Buyer alters the Property or causes the Property to be altered in any way and/or occupies the Property or allows any other person to occupy the Property prior to closing and funding without the prior consent of Seller, such event shall constitute a breach by Buyer under the Agreement and Seller may terminate the Agreement
- b) Seller to provide only those keys in Seller's possession. Buyer is hereby informed the Property is on a master key system. It is Buyer's responsibility to re-key the Property at close of escrow. Garage door transmitters, security gate keys and/or cards, and mailbox key are not included in purchase price.

12. OCCUPANCY AND STATUS OF PROPERTY: Seller, its representatives, agents and assigns shall not be responsible for evicting or relocating any tenants or occupants or personal property at the Property prior to or subsequent to the closing unless otherwise specifically agreed to in writing by Seller.

Seller has no knowledge of security deposits and thus none will be transferred to Buyer at closing. Buyer is solely responsible to any occupants of the Property for the return of any security deposits.

Buyer further agrees to assume all responsibility and liability for the refund of such security deposits to the tenants pursuant to the provisions of applicable laws and regulations and shall indemnify, defend and hold Seller harmless for any claims, litigation, costs, damages or expenses related to any dispute in connection with any security deposit after the closing date. All rent due and payable and collected from tenants for the month in which the closing date occurs will be prorated according to the provisions of Section 5 of this Addendum.

Buyer acknowledges and agrees that the Property may be subject to the provisions of local rent control ordinances and regulations. Buyer agrees that as of the closing date all eviction proceedings and other duties and responsibilities of a property owner and landlord, including but not limited to those proceedings required for compliance with such local rent control ordinances and regulations, shall be Buyer's sole responsibility and at Buyer's sole cost.

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Buyer will not use or occupy or cause or permit others to use or occupy the Property prior to closing.

13. **SELLER DISCLOSURE; BUYER PURCHASING THE PROPERTY "AS IS":** Seller acquired the Property as a result of a foreclosure action, result of a like or similar action, i.e. deed in lieu or as part of a purchase from a prior servicer, and the total price set forth in the Agreement may reflect deferred maintenance. Accordingly, Seller has not conducted inspections nor does Seller have any personal knowledge of the condition of the property other than as may be disclosed in the Inspection Report (as hereinafter defined), if any, that has been prepared for the Property. Buyer acknowledges that there has been no representation(s) by Seller, or any other person acting as Seller's representative regarding the condition of the Property, any of the appliances or structural components that may be contained therein, its fitness for general or specific use, or any other matter affecting the Property. If an inspection report has been obtained by or on behalf of Seller or Seller's representative (the "Inspection Report"), such Inspection Report shall be provided to Buyer for Buyer's information only. If the Inspection Report has been provided to Buyer, no representation of warranty is made as to the accuracy and completeness or such report.

Neither Seller nor any person acting as Seller's representative has occupied the Property and neither warrants or represents that the Property or any alterations or additions which may have been made to the Property conform to local building codes, zoning requirements or any other applicable laws, rules or regulations.

Buyer acknowledges that Buyer has the opportunity to inspect, examine and make a complete review of the Property prior to the close of escrow. Buyer will rely solely on Buyer's inspection and review to evaluate the condition of the Property. Buyer acknowledges that it is Buyer's sole responsibility to obtain inspection reports by qualified professionals on the appliances, structural components, and alterations or additions to the Property (if any), and to determine the presence of any toxic or hazardous substances on the Property, including but not limited to mold, radon, asbestos and lead paint, that would make it uninhabitable or dangerous to the health of the occupants or otherwise not in compliance with law, or any other factors regarding the condition of the Property about which Buyer may be concerned.

Buyer hereby acknowledges that (depending on state) Seller may not be providing Buyer with a Real Estate Transfer Disclosure Statement and/or a Certificate of Occupancy with respect to the Property. Buyer hereby waives any requirement that Seller furnish Buyer with any such disclosure statement and/or a Certificate of Occupancy and hereby releases Seller from any and all liability resulting from the non-delivery of such disclosure statement and/or a Certificate of Occupancy where applicable.

Mold, mildew, spores and/or other microscopic organisms and/or allergens (collectively referred to in this Agreement as "Mold") are environmental conditions that are common in residential properties and may affect the Property. Mold in some forms has been reported to be toxic and to cause serious physical injuries, including but not limited to allergic and/or respiratory reactions or other problems, particularly in persons with immune system problems, young children and/or elderly persons. Mold has also been reported to cause extensive damage to personal and real property. Mold may have been removed, remediated or covered in the course of any cleaning or repairing of the Property. The Buyer acknowledges that, if Seller, or any of Seller's employees, contractors, or agents cleaned or repaired the Property or remediated mold contamination, Seller does not in any way warrant the cleaning, repairs or remediation. Buyer accepts full responsibility for all hazards that may result from the presence of mold in or around the Property. The Buyer is satisfied with the condition of the Property, notwithstanding the past or present existence of mold in or around the Property, and Buyer has not in any way relied upon any representations of Seller, Seller's employees, officers, directors, contractors, or agents concerning the past or present existence of mold in or around the Property.

Buyer acknowledges that Buyer will have independently and personally inspected the Property and that Buyer has entered into this Agreement based upon its ability to make such examination and inspection. The Property is to be sold to and accepted by Buyer at closing in its then present condition, "**AS IS, WITH ALL FAULTS, AND WITHOUT ANY WARRANTY WHATSOEVER, EXPRESS OR IMPLIED.**" Notwithstanding anything contained herein to the contrary, it is understood and agreed that Seller and Seller's agents or employees have not made and are not now making, and they specifically disclaim (except as specifically set forth herein), any warranties, representations or guaranties of any kind or character, express or implied, oral or written, past, present or future, with respect to the Property, including, but not limited to, warranties, representations or guaranties as to (i) matters of title (other than Seller's warranty of title set forth in the Deed to be delivered at closing); (ii) environmental matters of

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any kind relating to the Property or any portion thereof (including the condition of the soil or groundwater beneath the Property); (iii) geological conditions, including, without limitation, subsidence, subsurface conditions, water table, underground water reservoirs, limitations regarding the withdrawal of water and earthquake faults and the resulting damage of past and/or future earthquakes; (iv) whether, and to the extent to which the Property or any portion thereof is affected by any stream (surface or underground), body of water, flood prone area, flood plain, floodway or special flood hazard; (v) drainage; (vi) soil conditions, including the existence of instability, past soil repairs, soil additions or conditions of soil fill, or susceptibility to landslides, or the sufficiency of any under shoring; (vii) zoning to which the Property or any portion thereof may be subject; (viii) the availability of any utilities to the Property or any portion thereof including, without limitation, water, sewage, gas and electric; (ix) usages of adjoining property; (x) access to the Property or any portion thereof, (xi) the value, compliance with the plans and specifications, size, location, age, use, design, quality, description, suitability, structural integrity, operation, title to, or physical or financial condition of the Property or any portion thereof, or any income, expenses, charges, liens, encumbrances, rights or claims on or affecting or pertaining to the Property or any part thereof; (xii) the presence of "hazardous substances" in or on, under or in the vicinity of the Property; (xiii) the condition or use of the Property or compliance of the Property with any or all past, present or future federal, state or local ordinances, rules, regulations or laws, building, fire or zoning ordinances, codes or other similar laws; (xiv) the existence or non-existence of underground storage tanks; (xv) any other matter affecting the stability or integrity of the Property; (xvi) the potential for further development of the Property; (xvii) the existence of vested land use, zoning or building entitlements affecting the Property; (xviii) the merchantability of the Property or fitness of the Property for any particular purpose (Buyer affirming that Buyer has not relied on Seller's or Seller's agents' or employees' skill or judgment to select or furnish the Property for any particular purpose, and that Seller makes no warranty that the Property is fit for any particular-purpose); or (xix) tax consequences. **SELLER MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND TO BUYER, INCLUDING, WITHOUT LIMITATION, THE PHYSICAL CONDITION OF THE PROPERTY AND ANY IMPROVEMENTS LOCATED THEREON, OR THEIR SUITABILITY FOR ANY PARTICULAR PURPOSE OR OF MERCHANTABILITY. BUYER SHALL RELY ON ITS INVESTIGATIONS OF THE PROPERTY IN DETERMINING WHETHER TO ACQUIRE IT. THE PROVISIONS OF THIS PARAGRAPH ARE A MATERIAL PART OF THE CONSIDERATION FOR SELLER'S ENTERING INTO THIS AGREEMENT, AND SHALL SURVIVE CLOSING.**

14. CONDITION OF PROPERTY: Buyers acknowledges and understands that Seller acquired the property either as a result of a foreclosure action, result of a like or similar action, i.e. deed in lieu or as part of a purchase from a prior servicer, and Seller consequently has little or no direct knowledge concerning the condition of the property. As a material part of the consideration to be received by Seller under this agreement as negotiated and agreed to by Buyer and Seller, Buyer acknowledges and agrees to accept the property in "as-is," "where-is" condition at the time of closing, including, without limitation, zoning, land use or building code requirements or compliance with any law, rules, ordinances or regulations of any governmental authority; any hidden defects, environmental conditions affecting the property, or the existence of mold, whether known or unknown, whether such defects or conditions were discoverable through inspection or not.

If there is an enforcement proceeding arising from allegations of such violations before an enforcement board, special master, court of competent jurisdiction or similar enforcement body, and neither Buyer nor Seller terminate the Agreement, Buyer agrees to (a) to accept the Property subject to the violations, (b) to be responsible for compliance with the applicable code or regulation and with orders issued in any code enforcement proceeding, and (c) to resolve the deficiencies as soon as possible after the closing. Buyer further agrees to indemnify Seller from any and all claims or liability arising from Buyer's breach of this section.

15. Inspection:

a) On or before the date that falls FIVE (5) calendar days after the Seller delivers executed contract to Buyer. Buyer shall have the right to inspect the Property or obtain for its own use, benefit and reliance, inspections and/or reports on the condition of the Property; otherwise, Buyer shall be deemed to have waived such inspection and any objections to the condition of the Property and to have accepted the condition of the Property for all purposes. Buyer shall hold Seller harmless from all liability claims, demands, damages, and costs related to Buyer's inspection. **IF BUYER DOES NOT EXERCISE THESE RIGHTS, BUYER IS ACTING AGAINST THE RECOMMENDATION OF SELLER. BUYER UNDERSTANDS THAT ALTHOUGH CONDITIONS AND DEFECTS ARE OFTEN DIFFICULT TO LOCATE AND DISCOVER, ALL REAL PROPERTY AND IMPROVEMENTS MAY CONTAIN DEFECTS AND**

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CONDITIONS WHICH ARE NOT READILY APPARENT AND WHICH MAY AFFECT THE VALUE OR DESIRABILITY OF THE PROPERTY. BUYER AND SELLER ARE AWARE THAT SELLER AND BROKERS DO NOT GUARANTEE AND IN NO WAY ASSUME RESPONSIBILITY FOR THE CONDITION OF THE PROPERTY. BUYER IS ALSO AWARE THAT BUYER SHOULD EXERCISE REASONABLE CARE TO PROTECT AGAINST FACTS KNOWN TO, OR WITHIN THE DILIGENT ATTENTION AND OBSERVATION OF, THE BUYER.

- b) Buyer shall not directly or indirectly cause any inspection to be made by any government building or zoning inspector or government employee without the prior written consent of Seller, law requires such inspection is required by law.
- c) If the Property is located in a jurisdiction that requires a certificate of occupancy, smoke detector certification, septic certification, energy retrofit, or any similar certification or permit or any form of improvement or repair to the Property (collectively, "Permits and Repairs"), Buyer acknowledges and agrees that Buyer shall be responsible for obtaining any and all of the Permits and Repairs at Buyer's sole cost and expense. Buyer shall make application for all Permits and Repairs within ten (10) calendar days of Seller's acceptance.
- d) Buyer to verify sewer/septic connection. Seller makes no representation regarding sewer/septic connection.
- e) Within three (3) calendar days of receipt of any inspection report prepared by or for Buyer, but not later than five (5) calendar days from Seller's acceptance, whichever first occurs, Buyer will provide written notice to Seller of any disapproved items. Buyer's failure to provide written notice shall be deemed as acceptance of the condition of the Property.
- f) Upon request by Seller, Buyer shall provide complete copies of all inspection reports upon which Buyer's disapproval of the condition of the Property is based. In no event shall Seller be obligated to make any repairs or replacements that may be indicated in Buyer's inspection reports. If Seller elects not to repair the Property, Buyer may cancel the Agreement not later than ten (10) days from Seller's acceptance, and the Earnest Money shall be returned to Buyer. If Seller elects to make any such repairs to the Property, Seller shall notify Buyer after completion of the repairs and Buyer shall have three (3) calendar days from the date of notice to inspect the repairs and notify the Seller of any disapproved items. Buyer's failure to disapprove in writing such repairs shall be deemed as Buyer's acceptance thereof.
- g) Seller will not pay for Pest Inspection Report. If Seller has agreed in writing to pay for treatment of wood infesting organisms, Seller shall treat only active infestation (Section I Clearance). All treatments for wood infesting organisms and other repairs will be completed by a vendor approved by Seller. In such event, Seller agrees to pay up to and not exceeding \$0 for said treatment.
- h) Any repairs or treatments made or caused to be made by Seller shall be completed prior to the closing date. Under no circumstances shall Seller be required to make any repairs or treatments after the closing date.
- i) Buyer acknowledges that the closing of this transaction shall be deemed Buyer's reaffirmation that Buyer is satisfied with the condition of the Property for all purposes and satisfied with all repairs and treatments to the Property, and waives all claims related to such condition and to the quality of the repairs or treatments to the Property.
- j) Notwithstanding the foregoing, neither Buyer nor its representatives shall enter upon the Property to make any repairs or treatments prior to the closing without the prior written consent of Seller. To the extent that Buyer or its representatives make repairs and/or treatments to the Property prior to the closing, Buyer hereby agrees to release and indemnify Seller from and against any and all claims related in any way to the repairs and/or treatments.
- k) Buyer agrees to indemnify Seller and Seller's representatives and fully protect, defend and hold Seller and Seller's representatives harmless from and against any and all claims, liens, losses, damages, liabilities, costs, injuries, attorney's fees and expenses of every kind and nature that may be made against Seller or the Property for any liens on the Property, any damage to the Property and/or injury to Buyer or any other persons that may arise from inspections, repairs, replacements related to the Property and Buyer's actions and rights under this Addendum and Agreement. Buyer shall indemnify and fully protect, defend and hold Seller its servicers, representatives, agents, attorneys and employees harmless from any and all claims, costs, liens loss, damages, attorney's fees and expenses of every kind and nature, resulting from or arising out of any inspection, repairs, replacements or any other work performed in or upon the Property by Buyer or its agents, employees, contractors or assigns. In the event any repairs are made at the Property, or any work or material are added to the premises, or the value of the premises is enhanced in any way, then in the event this transaction does not close, all material added to the premises shall become the sole and exclusive property of the Seller, and Seller shall have no liability to Buyer or any third party for any such material or work completed. All such indemnity obligations of Buyer described in this paragraph shall survive the closing or termination of this Addendum and the Agreement.

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16. PERSONAL PROPERTY: Buyer agrees that any items of personal property, now or hereafter located on the Property (collectively, "Personal Property") shall not be included in the sale of the Property or the Purchase Price unless each item of Personal Property is specifically described and referenced in this Addendum. Buyer assumes full responsibility for any Personal Property remaining on the Property at the time of closing. Any Personal Property sold by Seller shall be accepted by Buyer on an "as is, where is" basis without representation or warranty of any kind or nature, and specifically excluding any warranties of merchantability or fitness for any particular purpose.

17. CONDOMINIUM/PUD/HOMEOWNERS ASSOCIATION: If the Property is a condominium, planned unit development, subject to a homeowner's association or co-operative, unless otherwise required by law, Buyer, at Buyer's own expense, is responsible for obtaining and reviewing the covenants, conditions, restrictions and/or bylaws of the relevant entity within seven (7) calendar days of Seller's delivery of executed contract to Buyer. Seller agrees to employ reasonable efforts to assist Buyer in obtaining a copy of said documents. Buyer will be deemed to have accepted the covenants, conditions, restrictions and/or bylaws if Buyer does not notify Seller in writing, within ten (10) days of Seller's acceptance, or Buyer's objection to the same.

18. HOME WARRANTY: Seller will **NOT** purchase a Home Protection Plan on the Property.

19. REAL ESTATE COMMISSION: Seller shall pay a real estate commission pursuant to the listing agreement between Seller and Seller's listing broker. No other commissions will be paid by Seller. Commission to be paid on \$ _____ in accordance with the listing agreement between Seller and Seller's listing broker and such commission shall only be deemed earned upon the closing of the purchase contemplated by the Agreement. Commissions will be paid on sales price less any concessions given to the Buyer other than FHA/VA non-allowables or special offers made by the Seller in the MLS. This includes any and all future amendments/negotiations that affect the net sales proceeds to seller.

			
Listing Broker	Date	Selling Broker	Date

20. WAIVERS: As a material part of the consideration to be received by Seller under the Agreement as negotiated and agreed to by Buyer and Seller, Buyer waives the following:

- a) All rights to file and maintain an action against Seller for specific performance and any right to record a lis pendens against the property or to record or file the contract, this Addendum or any memorandum thereof in the official real property records;
- b) Any and all claims arising from the adjustments or prorations or errors in calculating the same that are or may be discovered after closing;
- c) Any remedy of any kind, other than as expressly provided in this Addendum, to which Buyer might otherwise be entitled at law or in equity, whether based on mutual mistake of fact or law or otherwise;
- d) Any right to trial by jury, except as waiver thereof is prohibited by law, in any litigation arising from, or connected with or related to the Agreement;
- e) Any claim for loss or damage, including, without limitation, indirect, special or consequential loss or damage arising from, based upon, due to or otherwise related to:
 - i. Environmental conditions affecting the property, including but not limited to mold, lead paint, fuel oil, allergens or other toxic substances of any kind;
 - ii. Encroachments, easements, shortages in area or any other matter which would be disclosed or revealed by a survey or inspection of the property or search of public records.

In the event Buyer breaches any of the provisions described or contemplated under this Section, and a court finds that Buyers legal action is without merit, Buyer shall pay all reasonable attorneys' fees and costs incurred by Seller in defending such action, which amount shall be in addition to any liquidated damages held or recovered pursuant to Section 21 of this Addendum. The provisions of this Section shall survive the closing or termination of this Addendum of the Agreement.

21. CONDITIONS TO SELLER'S PERFORMANCE: Seller shall have the right, at Seller's sole discretion, to extend the closing date or to terminate the Agreement if:

- a) Seller determines that it is unable to convey insurable title to the Property through a title insurance company selected by Seller at regular rates;

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- b) Any third party, whether tenant, homeowner's association, mortgage insurance company or otherwise, exercises rights under a right of first refusal, option or similar right to purchase the Property;
- c) Seller has transferred and conveyed the Property to a third party; or;
- d) The Purchase Price is insufficient to pay the sum of the closing costs, taxes, commissions, and any liens on or obligations secured by the Property that Seller has agreed to pay hereunder;
- e) A court of law overturns a foreclosure, trustees sale, sheriff's sale or the like, or deed in lieu transaction, that results in Seller or its predecessor, successor or assign, taking title to the Property;
- f) The Property is affected by an environmental hazard, as determined by Seller; or
- g) Seller has received official notice that the Property is in violation of building codes or similar laws or regulations.

In the event Seller elects to terminate the Agreement as a result of any of the foregoing, the Earnest Money shall be returned to Buyer and the parties shall have no further obligations under the Agreement.

22. REMEDIES FOR DEFAULT: In the event of Buyer's default, material breach or misrepresentation of any fact under the terms of the Agreement, Seller, at its option, may terminate the Agreement and retain the Earnest Money and any other funds paid by Buyer as liquidated damages and/or invoke any other remedy expressly set forth in the Agreement (or allowed by law) and Seller is automatically released from the obligation to sell the Property to Buyer, and neither Seller nor its representatives, agents, attorneys, successors or assigns shall be liable to Buyer for any damages of any kind as a result of Seller's failure to sell and convey the Property. Buyer acknowledges and agrees that by signing this addendum, Seller shall have the right to retain or seek the release of the earnest money under this section, without any further action, consent or document from Buyer.

Buyer acknowledges that in the event of termination of the Agreement except for (Buyer's breach), return of Buyer's Earnest Money will adequately and fairly compensate Buyer. Upon return of the Earnest Money to Buyer, the Agreement shall be terminated, and Buyer and Seller shall have no further liability, obligation, or responsibility to each other.

Seller shall only be in default under the Agreement if Buyer delivers written notice to Seller detailing the default and Seller fails to cure such default within 20 days of receipt of such written notice (or such longer period of time as may be necessary, provided that Seller diligently pursues such cure). If Seller is in default hereunder or if Seller terminates the Agreement as provided under the provisions thereof, Buyer shall be entitled to the return of the Earnest Money as Buyer's sole and exclusive remedy at law or in equity. Buyer agrees that Seller shall not be liable to Buyer for any special, consequential or punitive damages whatsoever, whether in contract, tort (including negligence and strict liability) or any other legal or equitable principle.

23. INDEMNIFICATION: Buyer agrees to indemnify and fully protect, defend and hold Seller, its officers, directors, employees, shareholders, servicers, representatives, agents, attorneys, tenants, brokers, successors and assigns harmless from and against any and all claims, costs, liens, loss, damages, attorneys' fees and expenses of every kind and nature that may be sustained by or made against Seller, its officers, directors, employees, shareholders, servicers, representatives, agents, attorneys, tenants, brokers, successors or assigns, resulting from or arising out of:

- a) Inspections or repairs made by Buyer or its agents, employees, contractors, successors or assigns;
- b) The imposition of any fine or penalty imposed by any governmental entity resulting from Buyer's failure to timely obtain any permits, approvals, repairs or inspections or to comply with all applicable laws, rules, ordinances and regulations;
- c) Claims for amounts due and owing by Seller for taxes, homeowner's association dues or assessment, or any other terms prorated at closing under Section 15 of this Addendum; and
- d) Buyer or Buyer's tenants, agents or representative's use or occupancy of the Property prior to closing and funding.

and all indemnities described in this Addendum (including this Section 22) shall survive the closing or termination of the Agreement and this Addendum.

24. RISK OF LOSS: Regardless of local custom or practice, Buyer assumes all risk of loss related to damage to the Property. In the event of fire, destruction or other casualty loss to the Property after Seller's acceptance of the Agreement and prior to closing and funding, Seller may, at its sole discretion, repair or restore the Property, or Seller may terminate the Agreement. If Seller elects to repair or restore the Property, then Seller may, at its sole discretion, limit the amount to be expended. If Seller elects to repair or restore the Property, Buyer's sole and exclusive remedy shall be either to acquire the Property in its then current condition at the Purchase Price with no reduction thereof by reason of such loss, or terminate the Agreement and receive a refund of any Earnest Money.

Buyer and Seller acknowledge receipt of a copy of this page, which constitutes Page 8 of 10 pages.

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- 25. EMINENT DOMAIN:** In the event that Seller's interest in the Property, or any part thereof, shall have been taken by eminent domain or shall be in the process of being taken on or before the closing date, either party may terminate the Agreement and the Earnest Money shall be returned to Buyer and neither party shall have any further rights or liabilities hereunder.
- 26. SURVIVAL:** Delivery of the Deed to the Property to Buyer by Seller shall be deemed to be full performance and discharge of all Seller's obligations under the Agreement
- 27. SEVERABILITY:** The invalidity, illegality or enforceability of any provision of the Agreement shall not affect the validity or enforceability of any other provision of the Agreement, all of which shall remain in full force and effect.
- 28. ASSIGNMENT OF AGREEMENT:** Buyer shall not assign the Agreement without the express written consent of Seller. Seller at its sole discretion may assign the Agreement without prior notice to, or consent of, Buyer.
- 29. ENTIRE AGREEMENT:** The Agreement, including the disclosure of information, or other disclosure forms or notices required by law or local custom, constitutes the entire agreement between Buyer and Seller concerning the subject matter hereof and supersedes all previous communications, understandings, representations, warranties, covenants and agreements, whether written or oral, and there are no oral or other written agreements between Buyer and Seller. No oral promises, representations (express or implied) warranties or agreements made by Seller or broker or any person acting on behalf of Seller shall be deemed valid or binding upon Seller unless expressly included in this Agreement. All negotiations are merged into the Agreement. Seller shall not be obligated by any other written or verbal statements made by Seller, Seller's representatives or any real estate licensee.
- 30. MODIFICATION:** No provision, term or clause of the Agreement shall be revised, modified, amended or waived except by an instrument in writing signed by Buyer and Seller.
- 31. COUNTERPARTS:** This Addendum may be executed in any number of counterparts, and each such counterpart shall be deemed to be an original, but all of which, when taken together, shall constitute one agreement. This Addendum may be delivered by facsimile or electronic mail, which will have the same effect as the original.
- 32. GENDER:** Unless the context otherwise requires, singular nouns and pronouns, when used herein, shall be deemed to include the plural of such nouns or pronouns, and pronouns of one gender shall be deemed to include the equivalent pronoun of the other gender.
- 33. FORCE MAJEURE:** No party shall be responsible for delays or failure of performance resulting from acts of God, riots, acts of war, epidemics, power failures, acts of terrorism, earthquakes or other disasters, providing such delay or failure of performance could not have been prevented by reasonable precautions and cannot reasonably be circumvented by such party through use of alternate sources, workaround plans or other means.
- 34. NOTICES:** Any notices required to be given under the Agreement shall be deemed to have been delivered when actually received in the case of hand or overnight delivery, or five (5) days after mailing by first class mail, postage paid, or by fax with confirmation of transmission.
- 35. ATTORNEY REVIEW:** Buyer acknowledges that Buyer has had the opportunity to consult with its legal counsel regarding the Agreement and Addendum. Accordingly, the terms of the Agreement are not to be construed against any party because that party drafted the Agreement and Addendum or construed in favor of any party because that party failed to understand the legal effect of the provisions of the Agreement and Addendum.
- 36. ADDITIONAL TERMS OR CONDITIONS:**
- a) This contract is subject to mortgage insurance approval and investor approval.
 - b) Subject property will remain on the market for back-up offers until transaction is closed.
 - c) This Counter Offer/Addendum to Purchase Contract is subject to Seller's receipt of Buyer's fully executed Standard State Purchase Contract.
 - d) Buyer is hereby advised that Seller may be responding to multiple offers at once. Seller reserves the right to accept or reject each offer. Only a complete Standard Purchase Contract and Counter Offer/Addendum to Purchase Contract, fully signed by the Buyer **and** the Seller, will convey Seller's acceptance.

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III. EXPIRATION: Unless Buyer's written acceptance of this HF Counter Offer/Addendum to Purchase Contract is received by the Seller via fax or by mail, within 48 hours of _____, this HF Counter Offer/Addendum to Purchase Contract and original Purchase Contract referenced above, shall be deemed revoked and earnest money deposit shall be returned to the Buyer.

Buyer and Seller acknowledge receipt and acceptance of all of the terms above by signature below.

Buyer _____ Date _____
Print Name (or name of Company) _____

Buyer _____ Date _____
Print Name (or name of Company) _____

Attorney Information (if applicable)

Name / Contact _____

Address _____

Phone Number _____ Facsimile _____

Seller _____ Date _____

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