

## FINANCING ADDENDUM FOR F.H.A. INSURED MORTGAGE

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(Use only with "Minnesota Standard Residential Purchase Agreement", Minnesota State Bar Association)

This Addendum is a continuation of the PRICE AND TERMS contained in Paragraph 5 of the Purchase Agreement dated \_\_\_\_\_ by and between \_\_\_\_\_, as Seller, and \_\_\_\_\_, as Buyer, for property located at or legally described as:

### A. FINANCING CONTINGENCY.

**Notice to Buyer and Seller.** F.H.A. financing is governed primarily by federal regulations and not by state law. There are no federal regulations determining the form and content of a "loan commitment" for F.H.A. financing. For the purposes of this Purchase Agreement, Buyer and Seller agree that the provisions of Minn. Stat. Sections 47.20 and 47.206 (governing conventional home loans) are applicable to Buyer's F.H.A. mortgage financing as to the definitions, form, and content of a loan commitment. Notwithstanding this provision, the penalties described in Minn. Stat. Section 47.206, Subd. 7, are inapplicable against an F.H.A. lender: Buyer has only civil remedies against an F.H.A. lender for breach of contract.

Buyer's mortgage financing is usually the most significant contingency in a Purchase Agreement. Of the three choices below, 1., and 2., are legally uncertain since Buyer is not required to present a "Borrower's Loan Commitment" (as defined by Minn. Stat. Section 47.20, Subd. 2(8) and delivered by lender to Buyer in the form and with the content required by Minn. Stat. Section 47.206).

Pursuant to Minn. Stat. Section 47.206, Subd. 3, the "loan approval" or "loan qualification letter" discussed in 2., below, is not enforceable against the lender by the Buyer (as "borrower" under that statute). Such written statements from a lender may be withdrawn or may have their terms altered by the lender prior to closing.

Choice 3., below, has more certainty, but it might also present Buyer with an unforeseen expense. Some lenders charge a fee for obtaining a loan commitment. Choice 3., below, might also present Buyer with a limited number of lenders: some lenders (typically mortgage brokers) will not offer loan commitments.

*[Portions of the statutes cited in this Notice are reprinted at the end of this form.]*

**Buyer's performance of Buyer's obligations under this Purchase Agreement is contingent upon Buyer securing the financing referred to in paragraph B. below. [Choose one of the following three choices:]**

1. **Contingency Open Until Date of Closing.** This contingency is effective until the Date of Closing as stated in the Purchase Agreement. If Buyer is unable to secure the financing on or before the Date of Closing, this Purchase Agreement is canceled and the earnest money shall be refunded to Buyer. "Securing financing" under this paragraph 1., means obtaining mortgage financing that is delivered at closing. Buyer may waive this financing contingency prior to the Date of Closing.

2. **Informal, Unenforceable "Loan Approval."** This contingency is effective until *[state date (allowing Buyer approximately 3 weeks or more to secure financing)]* \_\_\_\_\_ [the "Loan Approval Date"]. "Securing financing" under this paragraph 2., means obtaining a "loan approval letter," a "loan qualification letter," or some other form of nonbinding written statement from a lender indicating a willingness to make a loan. If, on or before the Loan Approval Date,

- Buyer has not delivered to Seller evidence that Buyer has secured the financing, or,
- Buyer has delivered such evidence to Seller and Seller has indicated in writing to Buyer that Buyer's evidence is not satisfactory to Seller,

then *[select either a., or b.]*

- a. this Purchase Agreement is canceled and the earnest money shall be refunded to Buyer.
- b. Seller may cancel this Purchase Agreement pursuant to Minn. Stat. Section 559.217, Subd. 3 (allowing Buyer a 15 day right to cure).

Buyer may waive this financing contingency on or before the Loan Approval Date.

3. **Formal, Enforceable Loan Commitment.** This contingency is effective until *[state date (allowing Buyer approximately 3 weeks or more to secure financing)]* \_\_\_\_\_ [the "Commitment Date"]. "Securing financing" under this paragraph 3., means obtaining a loan commitment or loan agreement as defined in Minnesota Statutes section 47.20. If, on or before the Commitment Date, Buyer has not delivered a copy of the loan commitment to Seller, then *[select either a., or b.]*

- a. this Purchase Agreement is canceled and the earnest money shall be refunded to Buyer.
- b. Seller may cancel this Purchase Agreement pursuant to Minn. Stat. Section 559.217, Subd. 3 (allowing Buyer a 15 day right to cure).

Buyer may waive this financing contingency on or before the Commitment Date.

**B. F.H.A. MORTGAGE TERMS.**

Buyer will apply for and attempt to secure, at Buyer's expense, an F.H.A. INSURED mortgage ("Mortgage") in the amount stated in the Purchase Agreement, amortized monthly over a period of not more than \_\_\_\_\_ years with a fixed interest rate not to exceed \_\_\_\_\_ % per annum or an adjustable rate with an initial interest rate of no more than \_\_\_\_\_ % per annum and a maximum interest rate of no more than \_\_\_\_\_ % per annum ("Rate"), and with other terms not less favorable to Buyer than those set forth in this Addendum.

**C. MORTGAGE APPLICATION.**

The Mortgage application is to be made within five (5) business days after the acceptance of the Purchase Agreement. Buyer shall use best efforts to secure the financing and shall execute all documents required to secure the financing .

**D. MORTGAGE INSURANCE PREMIUMS.**

Pursuant to federal regulations, a one time mortgage insurance premium ("MIP") must be paid to F.H.A. at the time of closing of this transaction. Additional MIP payments might also be required to be paid on a periodic basis. The MIP will increase the Mortgage amount unless paid in cash at closing. This provision might not be applicable to condominium transactions.

**E. DISCOUNT POINTS.**

Mortgage discount points ("Points") shall not exceed \_\_\_\_\_ % of the Mortgage amount. Such Points shall be paid as follows:

Buyer shall pay \_\_\_\_\_ Point(s).  
Seller shall pay \_\_\_\_\_ Point(s).

**Note: Do not exceed the maximum Seller contribution allowed by HUD/FHA: See: <http://www.hud.gov>**

If the Points charged by the lender are less than the Points agreed to above: *[initial option 1, 2 or 3]*

1. \_\_\_\_\_ Buyer/ \_\_\_\_\_ Seller

The Points shall be charged first to Seller and the balance to Buyer. If the Points to be paid by Seller are less than set out above, then: *[initial option a. or b]*

a. \_\_\_\_\_ Buyer/ \_\_\_\_\_ Seller

Seller shall pay only the Points charged by lender, or

b. \_\_\_\_\_ Buyer/ \_\_\_\_\_ Seller

Seller shall pay the full amount agreed to above and the balance shall be applied to Buyer's closing costs as directed by Buyer.

2. \_\_\_\_\_ Buyer/ \_\_\_\_\_ Seller

The Points shall be charged first to Buyer and the balance to Seller.

3. \_\_\_\_\_ Buyer/ \_\_\_\_\_ Seller

The Points shall be paid proportionately by both Seller and Buyer as agreed to above.

**F. LOCKING/FLOATING OF RATE AND POINTS.**

The Rate and Points shall be ~~[strike out one]~~ **LOCKED / FLOATED** on the date of mortgage application. If the Rate and Points are floated, it shall be the sole discretion of ~~[strike out one]~~ **SELLER / BUYER** to lock in the Rate and Points. If Seller has sole discretion to lock in the Rate and Points, Buyer shall sign lender's lock-in documents promptly upon notification from Seller.

**G. F.H.A. WORK ORDERS.**

Nothing in the Purchase Agreement shall be construed as a warranty that Seller will make any repairs required by the F.H.A. However, Seller shall pay up to \_\_\_\_\_ to make repairs required by the F.H.A. If the F.H.A. requires repairs exceeding this amount, then, unless either Seller or Buyer agrees in writing, within seven (7) days after the date lender's work order is delivered to Seller, to pay the cost of such excess repairs, this Purchase Agreement is canceled and the earnest money shall be refunded to Buyer.

**H. LENDER PROCESSING FEES.**

Seller shall pay miscellaneous processing fees which the lender cannot charge to Buyer, not to exceed \$\_\_\_\_\_.

**NOTE: THE TEXT IN PARAGRAPH I., IS REQUIRED BY FEDERAL REGULATION TO BE INCLUDED IN THIS ADDENDUM.**

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**I. F.H.A. ESCAPE CLAUSE.**

"It is expressly agreed that, notwithstanding any other provisions of this contract, the purchaser shall not be obligated to complete the purchase of the property described herein or to incur any penalty by forfeiture of earnest money deposits or otherwise, unless the purchaser has been given in accordance with HUD / F.H.A. or D.V.A. requirements a written statement issued by the Federal Housing Commissioner, Department of Veteran's Affairs or a Direct Endorsement lender setting forth the appraised value of the property of not less than \_\_\_\_\_. The purchaser shall, however, have the privilege and option of proceeding with consummation of the contract without regard to the amount of the appraised valuation. THE APPRAISED VALUATION IS ARRIVED AT TO DETERMINE THE MAXIMUM MORTGAGE THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT WILL INSURE. HUD DOES NOT WARRANT THE VALUE NOR THE CONDITION OF THE PROPERTY. THE PURCHASER SHOULD SATISFY HIMSELF/HERSELF THAT THE PRICE AND CONDITION OF THE PROPERTY ARE ACCEPTABLE."

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**J. CERTIFICATION OF BUYER AND SELLER AND REAL ESTATE AGENT.**

I/we, the undersigned Seller(s) and Buyer(s), hereby certify that the terms of the sales contract dated \_\_\_\_\_ are true to my/our best knowledge and belief and that there are no other agreements entered into between any of us or the brokers and agents except those attached to the sales contract. I/we certify that I/we have no knowledge of any loans that have been or will be made to the Buyer or of loans that have been or will be assumed by the Buyer for purposes of financing this transaction, other than those described in the sales contract (including addenda). I/we certify that the Buyer has not been and will not be paid or reimbursed by me/us for any of the cash down payment. I/we certify that the Buyer has not and will not receive any payment or reimbursement by me/us for any closing costs which have not been previously disclosed in the sales contract (including amendments).

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**K. U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT FEDERAL HOUSING ADMINISTRATION.  
F.H.A. DOES NOT WARRANT THE VALUE OR THE CONDITION OF A HOME!**

While F.H.A. requires the lender to have an appraiser determine the value of the property, it is an estimate only and is used to determine the amount of mortgage F.H.A. will insure and if the condition of the property makes it eligible for F.H.A. mortgage insurance. It is not, however, a guarantee that the property is free of defects.

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As the Purchaser, YOU should carefully examine the property or have it inspected by a qualified home inspection company to make sure that the condition is acceptable to you. You should do this before you sign the sales contract contingent on the inspection. If repairs are needed, you may negotiate with the owner about having the faults corrected.

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There is no requirement that you hire an inspector. If you choose to, the cost of the inspection up to \$200 may be included in your mortgage loan. Names of home inspection companies can be found in the yellow pages of your telephone directory under the heading "Home Inspection Services".

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I/We have carefully read this notice and fully understand that F.H.A. will not perform a home inspection nor guarantee the price or condition of the property we are purchasing.

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\_\_\_\_\_ I/We choose to have a home inspection performed.

\_\_\_\_\_ I/We do not choose to have a home inspection performed.

_____	_____	_____	_____
Borrower	Date	Co-Borrower	Date

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SELLER:

BUYER:

\_\_\_\_\_ Date

\_\_\_\_\_ Date

\_\_\_\_\_ Date

\_\_\_\_\_ Date

LISTING AGENT:

SELLING AGENT:

\_\_\_\_\_ Date

\_\_\_\_\_ Date

**WARNING: It is a crime to knowingly make false statements to the United States on this or any other similar form. Penalties upon conviction can include a fine and imprisonment. For details see Title 18 U.S.C.S. Section 1001 and Section 1010. This form is required by HUD Handbook 4155.1 REV-4 for Sales Agreements intended to be financed by an F.H.A.-INSURED Mortgage.**

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CITED STATUTES [2007]:

**Minn. Stat. Section 47.20, Subd. 2(8).** "Borrower's loan commitment" means a binding commitment made by a lender to a borrower wherein the lender agrees to make a conventional or cooperative apartment loan pursuant to the provisions, including the interest rate, of the commitment, provided that the commitment rate of interest does not exceed the maximum lawful rate of interest effective as of the date the commitment is issued and the commitment when issued and agreed to shall constitute a legally binding obligation on the part of the mortgagee or lender to make a conventional or cooperative apartment loan within a specified time period in the future at a rate of interest not exceeding the maximum lawful rate of interest effective as of the date the commitment is issued by the lender to the borrower; provided that a lender who issues a borrower's loan commitment pursuant to the provisions of a forward commitment is authorized to issue the borrower's loan commitment at a rate of interest not to exceed the maximum lawful rate of interest effective as of the date the forward commitment is issued by the lender.

**Subd. 4a(d).** \*\*[text omitted] A borrower's interest rate commitment or a borrower's loan commitment is deemed to be issued on the date the commitment is hand delivered by the lender to, or mailed to the borrower. [text omitted]\*\*

Minn. Stat. Section 47.206, Subd. 1(d). "Interest rate or discount point agreement" or "agreement" means a contract between a lender and a borrower under which the lender agrees, subject to the lender's underwriting and approval requirements, to make a loan at a specified interest rate or number of discount points, or both, and the borrower agrees to make a loan on those terms. The term also includes an offer by a lender that is accepted by a borrower under which the lender promises to guarantee or lock in an interest rate or number of discount points, or both, for a specific period of time.

**Subd. 2.** A lender offering borrowers the opportunity to enter into an agreement in advance of closing shall disclose, in writing, to the borrowers at the time the offer is made: (1) a definite expiration date or term of the agreement, which may not be less than the reasonably anticipated closing date or time required to process, approve, and close the loan; (2) the circumstances, if any, under which the borrower will be permitted to close at a lower rate of interest or points than expressed in the agreement; (3) the steps required to process, approve, and close the loan, including the actions required of the borrower and lender; (4) that the agreement is enforceable by the borrower; and (5) the consideration required for the agreement.

**Subd. 3.** A borrower or lender may not maintain an action on an agreement unless the agreement is in writing or is permitted by subdivision 4, expresses consideration, sets forth the relevant terms and conditions, and is signed by the borrower and the lender.