M.S.B.A. **Real** **Property** **Form** **No.** **3** (2008, 2017)

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**FINANCING** **ADDENDUM** **FOR** **F.H.A.** **INSURED** **MORTGAGE** © Copyright 1994, 2008, 2017 by Minnesota State Bar Association, Minneapolis, Minnesota.

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

1 This Addendum is a continuation of the PRICE AND TERMS contained in Paragraph 5 of the Purchase Agreement dated 2 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ by and between , as Seller, 3 and , as Buyer, for property located at or legally described as:

4 5 6 7

8

9 **A.** **FINANCING** **CONTINGENCY.**

10 **Notice** **to** **Buyer** **and** **Seller.** F.H.A. financing is governed primarily by federal regulations and not by state law. There are no 11 federal regulations determining the form and content of a “loan commitment” for F.H.A. financing. For the purposes of this 12 Purchase Agreement, Buyer and Seller agree that the provisions of Minn. Stat. Sections 47.20 and 47.206 (governing conventional 13 home loans) are applicable to Buyer’s F.H.A. mortgage financing as to the definitions, form, and content of a loan commitment. 14 Notwithstanding this provision, the penalties described in Minn. Stat. Section 47.206, Subd. 7, are inapplicable against an F.H.A. 15 lender: Buyer has only civil remedies against an F.H.A. lender for breach of contract.

16 Buyer’s mortgage financing is usually the most significant contingency in a Purchase Agreement. Of the three choices below, 1., 17 and 2., are legally uncertain since Buyer is not required to present a “Borrower’s Loan Commitment” (as defined by Minn. Stat. 18 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).

19

20 Pursuant to Minn. Stat. Section 47.206, Subd. 3, the “loan approval” or “loan qualification letter” discussed in 2., below, is not 21 enforceable against the lender by the Buyer (as “borrower” under that statute). Such written statements from a lender may be 22 withdrawn or may have their terms altered by the lender prior to closing.

23 Choice 3., below, has more certainty, but it might also present Buyer with an unforeseen expense. Some lenders charge a fee 24 for obtaining a loan commitment. Choice 3., below, might also present Buyer with a limited number of lenders: some lenders 25 (typically mortgage brokers) will not offer loan commitments.

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

27

28 **Buyer's** **performance** **of** **Buyer's** **obligations** **under** **this** **Purchase** **Agreement** **is** **contingent** **upon** **Buyer** **securing** **the** 29 **financing** **referred** **to** **in** **paragraph** **B.** **below.** *[Choose* *one* *of* *the* *following* *three* *choices:]*

30

31 [\_\_] 1. **Contingency** **Open** **Until** **Date** **of** **Closing.** This contingency is effective until the Date of Closing as stated in the 32 Purchase Agreement. If Buyer is unable to secure the financing on or before the Date of Closing, this Purchase 33 Agreement is canceled and the earnest money shall be refunded to Buyer. “Securing financing” under this paragraph 34 1., means obtaining mortgage financing that is delivered at closing.

35 Buyer may waive this financing contingency prior to the Date of Closing.

36

37 [\_\_] 2. **Informal,** **Unenforceable** **“Loan** **Approval.”** This contingency is effective until *[state* *date* *(allowing* *Buyer* 38 *approximately* *3* *weeks* *or* *more* *to* *secure* *financing)]* [ the “Loan Approval 39 Date”]. “Securing financing” under this paragraph 2., means obtaining a ”loan approval letter,” a “loan qualification 40 letter,” or some other form of nonbinding written statement from a lender indicating a willingness to make a loan. If, on 41 or before the Loan Approval Date,

42 !Buyer has not delivered to Seller evidence that Buyer has secured the financing, or,

43 !Buyer has delivered such evidence to Seller and Seller has indicated in writing to Buyer that Buyer’s evidence is 44 not satisfactory to Seller,

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

46 [\_\_] a. this Purchase Agreement is canceled and the earnest money shall be refunded to Buyer.

47 [\_\_] b. Seller may cancel this Purchase Agreement pursuant to Minn. Stat. Section 559.217, Subd. 3 (allowing 48 Buyer a 15 day right to cure).

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

50

51 [\_\_] 3. **Formal,** **Enforceable** **Loan** **Commitment.** This contingency is effective until *[state* *date* *(allowing* *Buyer* *approximately* 52 *3* *weeks* *or* *more* *to* *secure* *financing)]*  [ the “Commitment Date”]. 53 “Securing financing” under this paragraph 3., means obtaining a loan commitment or loan agreement as defined in 54 Minnesota Statutes section 47.20. If, on or before the Commitment Date, Buyer has not delivered a copy of the loan 55 commitment to Seller, then *[select* *either* *a.,* *or* *b.]*

56 [\_\_] a. this Purchase Agreement is canceled and the earnest money shall be refunded to Buyer.

57 [\_\_] b. Seller may cancel this Purchase Agreement pursuant to Minn. Stat. Section 559.217, Subd. 3 (allowing 58 Buyer a 15 day right to cure).

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59 Buyer may waive this financing contingency on or before the Commitment Date. 60

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

62 Buyer will apply for and attempt to secure, at Buyer's expense, an F.H.A. INSURED mortgage ("Mortgage") in the amount stated 63 in the Purchase Agreement, amortized monthly over a period of not more than \_\_\_\_\_\_\_\_ years with a fixed interest rate not to 64 exceed \_\_\_\_\_\_\_ % per annum or an adjustable rate with an initial interest rate of no more than \_\_\_\_\_\_ % per annum and a 65 maximum interest rate of no more than \_\_\_\_\_\_\_\_ % per annum ("Rate"), and with other terms not less favorable to Buyer than 66 those set forth in this Addendum.

67

68 **C.** **MORTGAGE** **APPLICATION.**

69 The Mortgage application is to be made within five(5) business days after the acceptance of the Purchase Agreement. Buyer shall 70 use best efforts to secure the financing and shall execute all documents required to secure the financing .

71

72 **D.** **MORTGAGE** **INSURANCE** **PREMIUMS.**

73 Pursuant to federal regulations, a one time mortgage insurance premium ("MIP") must be paid to F.H.A. at the time of closing of 74 this transaction. Additional MIP payments might also be required to be paid on a periodic basis. The MIP will increase the 75 Mortgage amount unless paid in cash at closing. This provision might not be applicable to condominium transactions.

76

77 **E.** **DISCOUNT** **POINTS.**

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

79

80

81 Buyer shall pay \_\_\_\_\_\_\_\_ Point(s). 82 Seller shall pay \_\_\_\_\_\_\_\_ Point(s).

83

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

84

85 If the Points charged by the lender are less than the Points agreed to above: *[initial* *option* *1,* *2* *or* *3]* 86

87 l. \_\_\_\_\_\_\_\_\_ Buyer/ \_\_\_\_\_\_\_\_ Seller

88 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 89 above, then: *[initial* *option* *a.* *or* *b]*

90

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

92 Seller shall pay only the Points charged by lender, or

93

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

95 Seller shall pay the full amount agreed to above and the balance shall be applied to Buyer's closing costs as directed by 96 Buyer.

97

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

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

100

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

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

103

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

105 The Rate and Points shall be ***[strike*** out one] **LOCKED** **/** **FLOATED** on the date of mortgage application. If the Rate and

106 Points are floated, it shall be the sole discretion of *[strike* *out* *one]* **SELLER** **/** **BUYER** to lock in the Rate and Points. If Seller 107 has sole discretion to lock in the Rate and Points, Buyer shall sign lender's lock-in documents promptly upon notification from 108 Seller.

109

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

111 Nothing in the Purchase Agreement shall be construed as a warranty that Seller will make any repairs required by the F.H.A. 112 However, Seller shall pay up to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ to make repairs required by the F.H.A. If the F.H.A. requires repairs 113 exceeding this amount, then, unless either Seller or Buyer agrees in writing, within seven (7) days after the date lender’s work 114 order is delivered to Seller, to pay the cost of such excess repairs, this Purchase Agreement is canceled and the earnest

115 money shall be refunded to Buyer.

116

117 **H.** **LENDER** **PROCESSING** **FEES.**

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

119

120 **NOTE:** **THE** **TEXT** **IN** **PARAGRAPH** **I.,** **IS** **REQUIRED** **BY** **FEDERAL** **REGULATION** **TO** **BE** **INCLUDED** **IN** **THIS** 121 **ADDENDUM.**

122

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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." |

**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).

**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.

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.

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".

|  |  |
| --- | --- |
| I/We have carefully read this notice and fully understand that F.H.A or condition of the property we are purchasing.\_\_\_\_\_\_\_ I/We choose to have a home inspection performed.\_\_\_\_\_\_\_ I/We do not choose to have a home inspection performed\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Borrower Date | . will not perform a home inspection nor guarantee the price. |
| Co-Borrower Date |

\*\*\*\*\*

SELLER: BUYER:

Date Date

Date

Date LISTING AGENT: SELLING AGENT:

Date Date

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**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.**

\*\*\*\*\*

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 numberof 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.

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