

# WRAPAROUND FINANCING & DUE ON SALE ADDENDUM

Addendum to Contract dated \_\_\_\_\_

Property Address: \_\_\_\_\_ County \_\_\_\_\_

Seller(s) \_\_\_\_\_ Tel \_\_\_\_\_

Buyer(s) \_\_\_\_\_ Tel \_\_\_\_\_

**1. PURCHASE PRICE.** The total purchase price to be paid by the buyer(s) will be \$ \_\_\_\_\_, which will be paid by a cash down payment at closing of \$ \_\_\_\_\_ and by executing a Wraparound Warranty Deed and Deed of Trust as follows (check one):

**AMORTIZATION.** Payments amortized over \_\_\_\_\_ years in the principal amount of \$ \_\_\_\_\_ bearing an interest rate of \_\_\_\_\_% per annum and requiring monthly payments of principal and interest in the amount of \$ \_\_\_\_\_ per month commencing \_\_\_\_\_, 20\_\_\_\_ and due on or before \_\_\_\_\_, 20\_\_\_\_. Late payments beyond the \_\_\_\_ day of the month shall bear a penalty of \_\_\_\_\_ and default interest shall be at \_\_\_\_\_%.

**"DEED OF TRUST TO SECURE THE ASSUMPTION."** The principal balance, amortization, interest rate, monthly principal and interest payments, prepayment penalties and balloon payments shall be identical to those found in the underlying loan on the property, a copy of which is annexed hereto and incorporated by reference. First payment shall be on \_\_\_\_\_, 20\_\_\_\_. Balloon date (if any) shall be on \_\_\_\_\_ 20\_\_\_\_. Copy of Seller's underlying mortgage notes are attached hereto and incorporated herein by reference. Buyer shall \_\_\_\_\_ days to review and approve the terms of said notes.

**2. CLOSING.** Closing of this transaction shall be completed on or before \_\_\_\_\_, 20\_\_\_\_ by seller executing a warranty deed excepting the following existing liens or Deed of Trusts (Loans) on the property:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**3. DOCUMENTS.** Buyer shall execute a wraparound note and deed of trust to be prepared by Attorney for  Seller  Buyer per the terms of paragraph 1 hereof.

**4. TAXES/INSURANCE.** Buyer shall pay property taxes, insurance and homeowner's association dues as they become due via the servicing option chosen in paragraph 6 below, unless the seller's underlying loan(s) contains and escrow for taxes and/or insurance, in which case that Buyer shall pay a monthly mirror of the Seller's impounded taxes and insurance. If the underlying loan does contain an escrow impound account for property taxes, then property taxes shall NOT be prorated at closing, but Seller shall assign all proceeds to the lender's escrow impound account to Buyer.

**5. PAYMENT SERVICING** (Choose one):

Buyer to pay monthly payments for principal, interest, as well as monthly escrows for property taxes, and hazard insurance (if applicable) to Seller.

Seller and Buyer choose the following servicing agent to collect from Buyer monthly principal and interest payments, as well as monthly escrows for property taxes, and hazard insurance (if applicable): \_\_\_\_\_.

Buyer will pay monthly principal and interest payments, as well and monthly escrows for property taxes and hazard insurance (if applicable) directly to Seller's lender(s) by either direct deposit through said lender(s)' website or by check each month.

**6. UNDERLYING LOAN.** Seller and Buyer understand that there is an underlying loan(s) and accompanying security instrument(s) encumbering the property. If said loan contains a "due-on-sale" restriction, seller and buyer agree and understand that the above-referenced transfer may trigger said clause and give lender the right to demand complete payoff of the underlying loan(s), and if not paid may be foreclosed by said lender. Choose One:

Both Seller and Buyer execute this agreement with full knowledge of the risks involved in proceeding with such a transaction without the lender's approval. Seller \_\_\_\_\_ Buyer \_\_\_\_\_



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## **ADDITIONAL TERMS, CONDITIONS AND EXPLANATIONS (This is Not intended as legal, tax or financial advice)**

**WRAPAROUND.** A wraparound, also known as “wrap” and “All-inclusive trust deed (AITD),” is an owner-carry sale wherein the buyer makes monthly payments on an installment basis to the seller or through an escrow agent. The seller (or escrow agent) then makes payments on his existing mortgage(s). The buyer is the titled owner to the property, having the right to live in the property and treat it as his own. The buyer cannot use the property as collateral for a second mortgage or line of credit until the underlying mortgages and wrap mortgage are paid in full (which can be done simultaneously with a refinance of the existing debt).

### **UNDERLYING LOAN(S)**

The buyer is NOT assuming the seller’s existing mortgage loans, and they are still primarily the seller’s obligation and will continue to appear on seller’s credit report. If the underlying loan(s) contain a “due on sale” clause, this transaction may give said lender(s) the right to call the underlying loans due on 30 days’ notice, which, if not satisfied, gives said lender(s) the right to foreclose the property, wiping out the Buyer’s interest. If the parties are not asking the underlying lender(s)’ permission for this transaction, the parties understand that there is a risk of loss if the said lender(s) discover that title has been transferred and the parties are encouraged to seek legal counsel as to the consequences of such a scenario. Seller and buyer agree to hold all brokers, attorneys, and closing agents harmless for any loss that may occur if the underlying lender chooses to accelerate the underlying loans.

**TEMPORARY FINANCING.** The buyer must be aware that if there is a “balloon” in the agreement, the buyer must obtain permanent financing from another source, such as a conventional lending institution before the balloon date. If the indebtedness is not paid in full by such date, the seller has the right to commence legal proceedings to regain possession of the property and the buyer may lose all rights he has to the property and will forfeit all payments made. The buyer should understand that there is no guarantee that the property will increase in value or that institutional financing will be available for the buyer when he is ready to refinance. It is in the buyer’s best interest to make immediate arrangements to review his credit report and income qualifications with a mortgage broker or lending institution to determine his eligibility for future financing.

**YOUR EARNEST MONEY IS NON-REFUNDABLE.** The earnest money paid by the buyer binds this sales agreement, and thus prevents the seller from offering it for sale to other potential buyers. Thus, if the buyer does not complete the transaction, the seller has the legal right to keep the buyer’s earnest money.

**CLOSING.** A traditional closing of a real estate transaction involves the seller passing title to the buyer by warranty deed, free clear of all liens, so that the Buyer can use the property as collateral for a new loan. In this transaction, the deed will be transferred to Buyer with seller’s existing mortgage loan(s) in place. The Buyer will sign a note and “wraparound deed of trust” to the seller for a portion of the purchase price, which is recorded against the property as a lien behind the existing mortgage(s). Buyer will make payments to the seller or to an escrow agent, if the parties have chosen to do so. The seller (or escrow agent) then makes payments on the existing mortgage(s). Once the debt to the seller has been paid, will seller will pay off the underlying mortgages in full and release the Wraparound Deed of Trust, leaving the Buyer with free and clear

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title, which will allow the Buyer to sell or completely refinance the Property. In the interim, Buyer cannot get a second mortgage or home equity line of credit using the property as collateral.

**TITLE INSURANCE.** Title insurance is customarily purchased when title passes to the buyer at a regular closing, which insures that the Property is free and clear of all liens. However, since title is being transferred with Seller's existing mortgage(s), title insurance will not guarantee free and clear title, since there will be existing liens. If the parties agree that title insurance will be purchased, it will "except" (carve out) the existing liens that are still on the Property to secure the underlying loans.

**SALE OF PROPERTY.** Seller is transferring ownership of the Property and must report the transaction as a sale for federal income tax purposes. Even though the seller may still receive a form 1098 (mortgage interest statement) from the underlying lenders, he cannot deduct the mortgage interest as if he were the owner, and Seller understands that he has obligations to report interest collected from buyer to the IRS and account for these payments to Buyer upon request. Seller understands and acknowledges that he should seek professional tax advice on how to handle the sale and collection of interest for reporting purposes. The buyer may resell the property at any time, so long as he pays the full balance to Seller due under the all-inclusive promissory note.

**TAXES AND INSURANCE.** The Buyer will be responsible for the payment of property taxes, insurance, assessments and HOA fees or assessments on the Property. If the seller's underlying loan(s) have a monthly escrow for taxes and/ or insurance, the Buyer will pay to Seller (or escrow agent, if applicable) this amount on a monthly basis, and property taxes will NOT be prorated at closing.

**LEGAL REPRESENTATION.** Although the seller or buyer may pay for the legal fees for an attorney to prepare the documents, this does not necessarily mean that attorney represents that party. It is often customary for seller and buyer to split the attorney's fees, but the attorney can only represent ONE party (seller or buyer) in the transaction. Make certain you understand whom the attorney you paid is representing in the transaction. If that party is not you, it is recommended you seek legal counsel to represent your interests and review the forms. This form is intended to enhance the seller's and buyer's understanding of the transaction, but is not intended as legal, tax or financial advice for any party.

**DODD-FRANK and SAFE ACT COMPLIANCE.** If the Buyer is purchasing the property to live in as his primary residence and the seller has previously sold a property in the last 12 months with owner financing (or seller is not a natural person, trust or estate), then the seller must seek counsel for compliance with Dodd-Frank and the SAFE Act. Seller acknowledges and agrees that neither the brokers, nor closing agent can advise the seller or buyer as to how to comply with said regulations.