

Pending Approval by the Risk Management Committee on May 18, 2023
RECOMMENDATION TO THE EXECUTIVE COMMITTEE

FROM:

Risk Management Committee

RECOMMENDATION:

Approval of the revised Additional Clause Addendum (ACA)

BACKGROUND:

In September 2022, a new law became effective which required wholesalers to disclose their wholesaler status in writing prior to entering into a binding agreement. The proposed verbiage added to the ACA enables both Wholesale Buyers and Wholesale Sellers to properly make this disclosure in compliance with Arizona law.

Additional changes inserted appropriate references to corresponding sections of the Residential Purchase Contract and changed the name of the “Waiver of Appraisal” provision to “Appraisal Contingency Waiver” as the new name better describes the intent of the provision.

On May 18, 2023, the RMC voted to approve the revised Additional Clause Addendum for release on or about July 1, 2023.

BUDGET IMPACT:

None

MOTION:

TO APPROVE FOR RELEASE ON OR ABOUT JULY 1, 2023, THE ATTACHED REVISED ADDITIONAL CLAUSE ADDENDUM.

FOR MORE INFORMATION CONTACT:

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ADDITIONAL CLAUSE ADDENDUM

Document updated:
June July 20223



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1. Buyer: _____
2. Seller: _____
3. Premises Address: _____
4. Date: _____

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5. The following additional terms and conditions are hereby included as a part of the Contract between Seller and Buyer
 6. for the above referenced Premises if marked by an "X" and initialed by Buyer and Seller. All terms and conditions
 7. of the Contract are hereby included herein and delivery of all notices and documentation shall be deemed delivered
 8. and received when sent as required by Section 8m of the Contract. In the event of a conflict between the terms and
 9. conditions of the Contract and this Additional Clause Addendum, the terms and conditions of this Additional Clause
 10. Addendum shall prevail.

11. **BACK-UP CONTRACT — CONTINGENT UPON CANCELLATION OF PRIOR CONTRACT:** Buyer
 12. acknowledges that Seller is currently obligated by a prior contract to sell the Premises to another buyer. This is
 13. a backup Contract contingent upon cancellation of the prior contract. Seller retains the right to amend, extend,
 14. or modify the prior contract. Upon cancellation of the prior contract, Seller shall promptly deliver written notice to
 15. Buyer. Upon Buyer's receipt of written notice of cancellation of the prior contract, Buyer shall open escrow and
 16. Buyer shall deposit any required earnest money. The date of Seller's written notice to Buyer shall be deemed
 17. the date of Contract acceptance for purposes of all applicable Contract time periods. Buyer may cancel this
 18. backup Contract any time prior to receipt of Seller's notice of cancellation of prior contract.

19. (BUYER'S AND SELLER'S INITIALS REQUIRED) _____ / _____ / _____ / _____
 BUYER BUYER SELLER SELLER

20. **SIGNATURE OF ABSENT BUYER SPOUSE OR CO-BUYER:** Signing Buyer shall within five (5) days or _____
 21. days of acceptance of this Contract obtain the signature of the absent buyer spouse or co-buyer on
 22. this Contract or deliver a disclaimer deed to Escrow Company that eliminates the need for the absent signature.

23. (BUYER'S AND SELLER'S INITIALS REQUIRED) _____ / _____ / _____ / _____
 BUYER BUYER SELLER SELLER

24. **CORPORATE RELOCATION APPROVAL:** Seller is in the process of a corporate relocation and this Contract
 25. is contingent upon corporate approval. Buyer agrees to cooperate with Seller in providing additional disclosures
 26. or executing additional addenda required by corporation, provided that Buyer incurs no additional costs or liability.

27. (BUYER'S AND SELLER'S INITIALS REQUIRED) _____ / _____ / _____ / _____
 BUYER BUYER SELLER SELLER

28. **NON-REFUNDABLE EARNEST MONEY:** Buyer's earnest money shall be non-refundable unless Buyer elects
 29. to cancel pursuant to ~~the Due Diligence Section 6~~ of the Contract, the Contract is cancelled pursuant to the Risk
 30. of Loss provision or escrow fails to close due to Seller's breach of contract. Buyer acknowledges that Buyer's
 31. earnest money shall be non-refundable even if the Premises fail to appraise for the sales price or the loan
 32. contingency is unfulfilled, unless otherwise prohibited by federal law.

33. (BUYER'S AND SELLER'S INITIALS REQUIRED) _____ / _____ / _____ / _____
 BUYER BUYER SELLER SELLER

34. ~~WAIVER OF APPRAISAL~~ **APPRAISAL CONTINGENCY WAIVER:** Buyer agrees to waive the appraisal
 35. contingency pursuant to the ~~Financing~~ **Section 2** of the Contract. In the event that the Premises fail to appraise for
 36. at least the sales price, Buyer agrees that Buyer's down payment shall be increased in an amount equal to the
 37. difference between the appraised value and the purchase price., **unless otherwise prohibited by federal law.**

38. **(BUYER'S AND SELLER'S INITIALS REQUIRED)** _____ / _____ / _____ / _____
 BUYER BUYER SELLER SELLER

39. **APPRAISAL SHORTFALL:** In the event the Premises fail to appraise for at least the purchase price in any
 40. appraisal required by lender, Buyer agrees that Buyer shall submit additional funds via U.S. currency or financing in
 41. an amount equal to the difference between the appraised value and the purchase price, provided that the difference
 42. does not exceed \$_____. Buyer and Seller agree that if the difference between the appraised value and the
 43. purchase price exceeds the amount of money set forth on line 42, Seller is not obligated to lower the purchase price
 44. and Buyer has five (5) days after notice of the appraised value to cancel this Contract and receive a return of the
 45. Earnest Money or the appraisal contingency shall be waived, unless otherwise prohibited by federal law.

46. **(BUYER'S AND SELLER'S INITIALS REQUIRED)** _____ / _____ / _____ / _____
 BUYER BUYER SELLER SELLER

47. **ALL CASH SALE APPRAISAL CONTINGENCY:** Buyer's obligation to complete this all cash sale is contingent
 48. upon an appraisal of the Premises for at least the purchase price. If the Premises fail to appraise for the
 49. purchase price, Buyer has five (5) days after notice of the appraised value, or twenty (20) days after Contract
 50. acceptance, whichever occurs first, to cancel this Contract and receive a return of the Earnest Money or the
 51. appraisal contingency shall be waived. In all cases, this appraisal contingency shall expire twenty (20) days after
 52. Contract acceptance, regardless of whether an appraisal has been ordered or received. Appraisal fee shall be
 53. paid by Buyer Seller Other:_____

54. **(BUYER'S AND SELLER'S INITIALS REQUIRED)** _____ / _____ / _____ / _____
 BUYER BUYER SELLER SELLER

55. **WHOLESALE STATUS DISCLOSURE:** Arizona law requires that wholesalers disclose in writing their
 56. wholesale status ~~in writing~~ prior to entering into a binding agreement. Wholesaler is disclosing their status as
 57. follows:
 58. Wholesale Buyer: Seller is aware that Buyer is a wholesale buyer who may assign the
 59. contract to another person or entity.
 60. Wholesale Seller: Buyer is aware that Seller is a wholesale seller who holds an equitable interest in
 the property and may not be able to convey title to the property.

61. **(BUYER'S AND SELLER'S INITIALS REQUIRED)** _____ / _____ / _____ / _____
 BUYER BUYER SELLER SELLER

62. **TAX-DEFERRED EXCHANGE:** Seller Buyer intend to enter into a tax-deferred exchange pursuant to
 63. I.R.C. §1031 or otherwise. All additional costs in connection with any such tax-deferred exchange shall be
 64. borne by the party requesting the exchange. The non-requesting party agrees to cooperate in the tax-deferred
 65. exchange provided that the non-requesting party incurs no additional costs and COE is not delayed. The
 66. parties are advised to consult a professional tax advisor regarding the advisability of any such exchange. The
 67. requesting party and Broker(s) shall be indemnified and held harmless from any liability that may arise from
 68. non-participation in the tax-deferred exchange.

69. **(BUYER'S AND SELLER'S INITIALS REQUIRED)** _____ / _____ / _____ / _____
 BUYER BUYER SELLER SELLER >

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- 70. **SURVEY:** A survey shall be performed by a licensed surveyor within _____ days after Contract acceptance.
- 71. Cost of the survey shall be paid by Buyer Seller Other: _____.
- 72. The survey shall be performed in accordance with the Arizona State Board of Technical Registration's "Arizona
- 73. Land Boundary Survey Minimum Standards."
- 74. Survey instructions are: A boundary survey and survey plat showing the corners either verified or monumentation.
- 75. A survey certified by a licensed surveyor, acceptable to Buyer and the Title
- 76. Company, in sufficient detail for an American Land Title Association ("ALTA")
- 77. Owner's Policy of Title Insurance with boundary, encroachment or survey
- 78. exceptions and showing all improvements, utility lines and easements on the
- 79. Property or within five (5) feet thereof.
- 80. Other survey terms: _____
- 81. _____
- 82. Buyer shall have five (5) days after receipt of results of survey or map to provide notice of disapproval to Seller.

83. **(BUYER'S AND SELLER'S INITIALS REQUIRED)** _____ / _____ / _____ / _____
BUYER BUYER SELLER SELLER

- 84. **WATER:** Arizona is undertaking General Stream Adjudications of both the Gila River and Little Colorado River
- 85. systems, which are court proceedings to determine water rights. If the Premises/Property is affected by an
- 86. Adjudication, the parties shall execute and file an Assignment of Statement of Claimant form and Buyer shall
- 87. pay any associated filing fees. The Arizona Department of Water Resources and the *Arizona Department of*
- 88. *Real Estate Buyer Advisory* provide sources of information on the court proceedings and other water availability
- 89. or water quality issues. If water rights, availability or quality are a material matter to Buyer, these issues must be
- 90. investigated during the Inspection Period.

91. **(BUYER'S AND SELLER'S INITIALS REQUIRED)** _____ / _____ / _____ / _____
BUYER BUYER SELLER SELLER

- 92. The undersigned agrees to the modified or additional terms and conditions contained herein and acknowledges a
- 93. copy hereof.

94. ^ BUYER'S SIGNATURE _____ MO/DA/YR ^ BUYER'S SIGNATURE _____ MO/DA/YR
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95. ^ SELLER'S SIGNATURE _____ MO/DA/YR ^ SELLER'S SIGNATURE _____ MO/DA/YR

For Broker Use Only:
 Brokerage File/Log No. _____ Manager's Initials _____ Broker's Initials _____ Date _____
MO/DA/YR