

**COUNTER OFFER
TO
RESIDENTIAL RESALE REAL ESTATE PURCHASE CONTRACT**

THIS COUNTER OFFER is made to that certain Residential Resale Real Estate Purchase Contract dated _____ (“Offer”)[, together with _____ Addendum dated _____ (“_____Addendum”)], made by _____ (“Buyer”), to _____ (“Seller”), relating to the real property, together with improvements thereon, located at _____, Tucson, Pima County, Arizona. Acceptance of the Offer by Seller is contingent upon agreement to the following modified or additional terms and conditions:

- A. All definitions set forth in the Offer will be considered incorporated in this Counter Offer as though fully set forth herein.
- B. Section 1a of the Offer is hereby amended to provide that the names of Buyer and Seller are as set forth in the introductory paragraph of this Counter Offer.
- C. All references in the Offer to a certain number of days “after Offer (or Contract) acceptance” are hereby amended to state “after Opening of Escrow.” (The term “Opening of Escrow” is defined in Paragraph ____ below.)
- D. Section 1c of the Offer is hereby deleted in its entirety and the following substituted therefor:

\$ _____	Full Purchase Price, paid as outlined below
_____	Earnest money
_____	Additional down payment
_____	Total Financed

- E. A new provision is hereby added to Section 3a of the Offer as follows:

“Opening of Escrow” will be defined as the date a fully executed copy of this Contract and any Counter Offer hereto and the \$ _____ Earnest money are delivered to Escrow Agent; provided, however, this Contract and any Counter Offer hereto and the Earnest money will be delivered to the Escrow Agent no later than one (1) business day after full execution of this Contract and any Counter Offer hereto by Seller and Buyer. Escrow Agent will (i) promptly provide both Seller and Buyer with a fully executed copy of this Offer; and (ii) issue Seller a Closing Protection Letter. Escrow Agent will notify Buyer and Seller in writing of the date of Opening of Escrow and the Escrow Number. Failure of Buyer to timely deliver the Earnest money to Escrow Agent will cause this Contract and any Counter Offer hereto to be terminated and of no further force or effect without the necessity of a written demand for such termination by Seller.

OR

F. Lines 115 through 119 of Section 3a of the Offer are hereby deleted in its entirety and the following substituted therefor:

1. The Escrow Company will be _____, Tucson, Arizona, and _____ will be the escrow agent (“Escrow Agent”).

OR

1. The Escrow Company will be Pioneer Title Agency, Inc., 1660 E. River Road, Suite 150, Tucson, Arizona, 85718, and Desha Jackson will be the escrow agent (“Escrow Agent”).
2. “Opening of Escrow” will be defined as the date a fully executed copy of this Contract and any Counter Offer hereto and the \$_____ Earnest money are delivered to Escrow Agent; provided, however, this Contract and any Counter Offer hereto and the Earnest money will be delivered to the Escrow Agent no later than one (1) business day after full execution of this Contract and any Counter Offer hereto by Seller and Buyer. Escrow Agent will (a) promptly provide both Seller and Buyer with a fully executed copy of this Offer; and (b) issue Seller a Closing Protection Letter. Escrow Agent will notify Buyer and Seller in writing of the date of Opening of Escrow and the Escrow Number. Failure of Buyer to timely deliver the Earnest money to Escrow Agent will cause this Contract and any Counter Offer hereto to be terminated and of no further force or effect without the necessity of a written demand for such termination by Seller.

G. Line 128 of Section 3c of the Offer is hereby amended to provide that Seller will convey title by Special Warranty Deed.

H. Section 4a of the Offer is hereby deleted in its entirety.

I. Section 4b of the Offer is hereby deleted in its entirety (See Section 6e of the Offer).

J. Section 5b of the Offer is hereby amended by the deletion of the first sentence thereto.

K. Section 5b is further amended by the addition the following provision thereto:

In connection with the phrase “to the best of Seller’s knowledge,” as used in Lines 205 and 206 hereof, Buyer acknowledges and agrees that such knowledge will be deemed to require “actual” knowledge of Seller rather than “constructive” knowledge for all purposes and no indirect or imputed knowledge, such as public records, will be applicable to such definitions. Further, Seller has not made an independent investigation or inquiry of the matters set forth in any such representation or warranty beyond such Seller’s own records, nor has Seller caused any such investigation to be conducted.

OR

In connection with the phrases “known to Seller,” and “to the best of Seller’s knowledge,” as used in Lines 201 and 205/206 hereof, Buyer acknowledges and agrees that such knowledge will be deemed to require “actual” knowledge of Seller rather than “constructive” knowledge for all purposes and no indirect or imputed knowledge, such as public records, will be applicable to such definitions. Further, Seller has not made an independent investigation or inquiry of the matters set forth in any such representation or warranty beyond such Seller’s own records, nor has Seller caused any such investigation to be conducted.

L. Section 6k of the Offer is hereby deleted in its entirety.

OR

M. Section 6k of the Offer is hereby amended to provide that the Home Warranty Plan will be ordered by Seller and to be issued by _____, which includes the \$70.00 option for coverage during the listing period, at a cost to Seller not to exceed \$_____.00.

N. Section 7c of the Offer is hereby deleted in its entirety and the following substituted therefor:

Buyer and Seller agree to first mediate any dispute or claim arising out of or relating to the Offer and/or this Counter Offer in accordance with the REALTORS® Dispute Resolution System, or as otherwise agreed by all parties to the dispute. All mediation costs will be paid equally by the parties. In the event that mediation does not resolve all disputes or claims, the unresolved issues will be submitted for arbitration, if agreed by all parties, or litigation. Either party may initiate arbitration by giving notice of the dispute stating with particularity that party’s position or may file a lawsuit. If the parties agree to arbitrate the matter, they will cooperate in the expeditious appointment of an arbitrator and either party may apply to the relevant County Superior Court for appointment of an arbitrator pursuant to A.R.S. §12-1501 et seq. The arbitrator’s award will be final and binding and not subject to appeal.

O. Subsection (v) in Section 7d of the Offer is hereby deleted in its entirety and the following substituted therefor:

(v) any matter that is within the jurisdiction of a probate court, which includes Seller.

P. Section 7e of the Offer is hereby deleted in their entirety and the following substituted therefor:

In any proceeding, including arbitration, for damages, or to enforce any of the provisions of this Agreement, the substantially prevailing party will be entitled to recover from the other party its reasonable attorneys’ fees and related expenses including, but not limited to, expert witness fees, fees paid to investigators, and fees

and costs for arbitration or litigation, whether or not taxable. The arbitrator or judge will determine which of the parties is the substantially prevailing party.

- Q. Lines _____ of Section 8a of the Offer are hereby deleted in their entirety.
- R. Section 8b of the Offer is hereby amended by changing the words “ten (10%) percent” to read “one (1%) percent.”
- S. Section 8f of the Offer is hereby amended by adding the following language thereto:

Anything contained in this Contract or any Counter Offer hereto to the contrary notwithstanding, a commission will be payable only upon COE and, therefore, in the event this transaction fails to Close, for any reason whatsoever, no commission will be due or paid. In that regard, except for Seller’s obligation to _____, and Buyer’s obligation to _____, Seller and Buyer each warrant to the other that they have not employed any other real estate salesmen or brokers regarding this transaction. Seller will indemnify, defend and hold Buyer harmless from any commission claimed to be owing due to the acts of Seller, and Buyer will indemnify, defend and hold Seller harmless from any commission claimed to be owing due to the acts of Buyer. Anything contained in this Contract or any Counter Offer hereto to the contrary notwithstanding, Seller will not, under any circumstances, be responsible for the payment of any administrative brokerage fee/commission to either broker resulting from this transaction.

- T. Section 8m of the Offer is hereby deleted in its entirety and the following substituted therefor:

All notices required or permitted to be given hereunder will be in writing and may be given in person or by United States mail, by local or nationwide delivery/courier service or by electronic transmission (for instance, email to the email addresses indicated below). Such notices and other communications will be deemed to be given and received as follows: (i) upon actual receipt, if delivered personally; (ii) upon the day of transmission if transmitted by email on a business day before 5:00 p.m. (Arizona time); (iii) upon the next business day following transmission if transmitted by email on a day which is not a business day or if transmitted after 5:00 p.m. (Arizona time) on a business day; (iv) the next business day, if delivered by overnight courier; or (v) three (3) days following deposit in the mail, if delivered by mail postage prepaid, addressed to that party at his/her/their/its designated address. The designated address of a party will be the address of that party shown below or such other address within the United States of America that any party from time to time may specify by written notice to the other parties at least fifteen (15) days prior to the effective date of such change, but no such notice of change will be effective unless and until received by the other parties. Rejection or refusal to accept, or inability to deliver because of changed address or because no notice

of changed address is given, will be deemed to be receipt of any such notice. Any notice to an entity will hall be deemed to be given on the date specified in this Paragraph without regard to when such notice is delivered by the entity to the individual to whose attention it is directed and without regard to the fact that proper delivery may be refused by someone other than the individual to whose attention it is directed. If a notice is received by an entity, the fact that the individual to whose attention it is directed is no longer at such address or associated with such entity will not affect the effectiveness of such notice.

To Seller:

Attn:
[Address
[Tucson, Arizona 857__
Phone No:
Email:

with a copy to Seller's Attorney:

_____, Esq.
Jenning Haug Keleher M^cLeod Waterfall LLP
5210 East Williams Circle, Suite 800
Tucson, Arizona 85711
Phone No: (520) 745-____
Email: ____@jkwlawyers.com

To Buyer:

Attn:
[Address
[Tucson, Arizona 857__
Phone No:
Email:

To Escrow Agent:

Attn:
[Address
[Tucson, Arizona 857__
Phone No:
Email:

To Escrow Agent:

Desha Jackson
Pioneer Title Agency, Inc.
1660 E. River Road, Suite 150
Tucson, Arizona 85718

Phone No: (520) 529-0700
Email: desha.jackson@ptaaz.com

- U. In addition to the provisions set forth in Section 5 of the Offer, as amended by this Counter Offer, Buyer acknowledges, represents, warrants and agrees: (i) that Buyer is purchasing the Premises in an “AS IS, WHERE IS, WITH ALL FAULTS” condition with no representation of warranty or any type or nature being made by Seller; (ii) that Buyer has made, or will make, prior to COE Buyer’s own inspection and investigation of the Premises, pool, heating, cooling, mechanical, plumbing and electrical systems, environmental, property lines, utilities, square footage, roof, structural, lead-based paint assessment, and other conditions and requirements, and all zoning and regulatory matters pertinent to the Premises; (iii) that Buyer is entering into the Offer and this Counter Offer and purchasing the Premises based upon Buyer’s own inspection and investigation and not in reliance on any statement, representation, inducement or agreement of Seller, express or implied; and (iv) that any data, reports, or other information that Seller or any other party may have delivered to Buyer is furnished without any representation or warranty whatsoever and that Seller will have no responsibility, liability or obligation respecting the Premises subsequent to COE.
- V. Anything contained in the Offer or this Counter Offer to the contrary notwithstanding, Buyer and Broker[s] acknowledge[s] that the Premises were occupied by _____, now [both] deceased. _____ has never lived in the Premises and, other than retaining services for the general maintenance and upkeep of the Premises since the death of _____, has no knowledge, either personally or in his/her capacity as the Successor Trustee of _____ Trust/Personal Representative of the Estate of _____, of any pertinent information nor documentation relevant to the Premises and the condition thereof, including, without limitation, the pool, heating, cooling, mechanical, plumbing and electrical systems, environmental, property lines, utilities, square footage, roof, structural, lead-based paint assessment, wood infestation or flood plains, and makes no warranties or representations, express or implied, regarding the Premises.
- W. Buyer acknowledges that if the Premises are located within a planned community as defined in Arizona Revised Statutes, §33-1801, et seq. (the “Statutes”), anything set forth in the Statutes to the contrary notwithstanding, Buyer will be responsible for investigating and obtaining any and all information and/or documentation Buyer deems necessary and proper during Buyer’s Inspection Period.
- X. The Offer and this Counter Offer may be executed in two (2) or more counterparts, each of which will be deemed an original, and it will not be necessary in making proof of the Offer or Counter Offer to produce or account for more than one such counterpart. Documents executed, scanned and transmitted electronically and electronic signatures, including DocuSign, will be deemed original signatures for purposes of the Offer and this Counter Offer, and all matters related thereto, with such scanned and electronic signatures

having the same legal effect as original signatures. The Offer and this Counter Offer may be accepted, executed or agreed to through the use of an electronic signature, including DocuSign, in accordance with the Electronic Signatures in Global and National Commerce Act (“E-Sign Act”), Title 15, United States Code, Sections 7001 et seq., the Uniform Electronic Transaction Act (“UETA”) and any applicable state law including, specifically, the Arizona Electronic Transactions Act, A.R.S. § 44-7031. Any document accepted, executed or agreed to in conformity with such laws will be binding on each Party as if it were physically executed.

- Y. The parties hereto will be entitled, in their sole discretion, to image or make copies of the Offer and this Counter Offer and the Parties may destroy or archive the paper originals. Each party hereto (i) waives any right to insist or require that the other party produce paper originals, (ii) agrees that such images will be accorded the same force and effect as the paper originals, (iii) agrees that the other party hereto is entitled to use such images in lieu of destroyed or archived originals for any purpose, including as admissible evidence in any demand, presentment or other proceedings, and (iv) further agrees that any executed scanned, or other imaged copy of the Offer and/or this Counter Offer will be deemed to be of the same force and effect as the original manually executed document.

Except as specifically amended by this Counter Offer, the terms and conditions of the Offer will remain as written and in full force and effect. Further, in the event of a conflict between the terms and conditions of this Counter Offer and the Offer, the terms and conditions of this Counter Offer will control.

This Counter Offer has been signed by Seller and a signed copy delivered in person, by mail or email to Buyer. Unless this Counter Offer has been fully executed, Buyer and Seller understand that either party may withdraw (revoke) this Counter Offer. In the event Buyer does not sign and does not deliver a fully executed copy of this Counter Offer to Seller within three (3) business days after the date of Seller’s signature, this Counter Offer will be considered withdrawn and the Offer and this Counter Offer will be of no further force or effect. When this Counter Offer is fully executed, a copy of the Offer and this Counter Offer will forthwith be delivered to the Escrow Agent, and all time periods set forth herein will commence.

IN WITNESS WHEREOF, this Counter Offer has been executed by Buyer and Seller as of the day, month and year set forth beneath or next to their signatures below, and the date of the last signature will be the date of this Counter Offer for reference purposes.

SELLER:

BUYER:

Date: _____

Date: _____

THE UNDERSIGNED REAL ESTATE BROKERS ACKNOWLEDGE THE PROVISIONS OF PARAGRAPHS ____ AND ____ ABOVE AND AGREE TO BE BOUND THEREBY:

SELLER'S BROKER:

By: _____

Its: _____

Date: _____

BUYER'S BROKER:

By: _____

Its: _____

Date: _____

Sample