

# OCWEN FEDERAL BANK FSB

## ADDENDUM "A" FIRST ADDENDUM TO CONTRACT

OCWEN ASSET NUMBER: \_\_\_\_\_ Buyer(s) \_\_\_\_\_

Street Address \_\_\_\_\_ City/State \_\_\_\_\_

In the event any provision of this First Addendum To Contract dated \_\_\_\_\_ ("First Addendum") conflicts in whole or in part with any of the terms of the contract between Buyer and Seller, as identified therein, ("the Contract"), the provisions of this First Addendum will control. Buyer shall neither assign its rights nor delegate its obligations hereunder without obtaining Seller's prior written consent, which may be withheld in Seller's sole discretion. In no event shall any assignment relieve Buyer from its obligations under this Contract. Any other purported or attempted assignment or delegation without obtaining Seller's prior written consent shall be void and of no effect.

### **BUYER AND SELLER AGREE AS FOLLOWS:**

#### **(A) NO REPRESENTATIONS OR WARRANTIES: PROPERTY SOLD "AS IS"**

Buyer acknowledges and understands that the Property (Property is herein defined to be the property and improvements, if any, which are the subject of the Contract) is being sold as-is, where-is, and with all faults. Buyer further acknowledges and understands that the Property was acquired by the Seller through foreclosure action, therefore, the Seller was not an owner-occupant and its information concerning the Property and its condition is limited. Buyer is hereby informed that Seller is unaware of any latent defects in the Property or any appurtenant systems, including but not limited to plumbing, heating, air conditioning and electrical systems, fixtures, appliances, roof, sewers, septic, soil conditions, foundation, structural integrity, environmental condition, pool or related equipment. Seller makes no representations or warranties as to any of the above, the condition of the Property, the Property's systems, the serviceability or fitness for a particular use of the Property, or any component of the Property. Buyer agrees that in contracting to buy the Property, Buyer has not relied upon any representation or warranty made by the Seller, any parent, subsidiary or affiliate thereof, or any of its officers, directors, employees, agents or representatives.

#### **(B) PURCHASE PRICE**

Sale Price to be \$ \_\_\_\_\_, Earnest Money Deposit to be \$ \_\_\_\_\_ at the signing of contract and an additional deposit of \$ \_\_\_\_\_ upon the removal of all inspection contingencies at which time all deposit monies are considered to be "hard money" and non-refundable with the exception of the financing contingency. Time is of the essence only with reference to the payment(s) of all escrow deposits. Balance of the purchase price in the amount of \$ \_\_\_\_\_ to be paid by wire transfer at closing.

#### **(C) FINANCING CONTINGENCY**

##### **( )/( ) (1) Sale Contingent on Mortgage Financing**

(a) This Contract is subject to the condition that on or before \_\_\_\_\_. Buyer shall secure, or there shall be made available to Buyer, a written commitment for a loan to be secured by a mortgage or deed of trust on the property in the amount of \$ \_\_\_\_\_, or such lesser sum as Buyer accepts.

(b) If, after the Buyer has submitted a true loan application and otherwise made every reasonable effort to procure a loan commitment from any source made available to Buyer and the Buyer has been unable to do so, and after serving written notice thereof upon Seller within one (1) business day of the time specified herein for securing such commitment, this Contract shall become null and void, and all moneys paid by Buyer hereunder shall be refunded. In the event buyer does not serve notice of failure to procure said loan commitment upon seller as herein provided, then this contract shall continue in full force and effect without any loan contingencies.

(c) Buyer shall, at Buyer's expense, execute all documents necessary to procure a mortgage loan from any source. Any delays caused by Buyer's Lender shall not constitute a default by Seller.

(d) Mortgage interest rates and discount points vary with financial institutions and the marketplace on a daily basis. The buyer has the right to select the lender and the right to negotiate the financial terms and conditions of the loan. This may be subject to Seller's approval and/or lender's requirements.

##### **( )/( ) (2) All Cash Transaction**

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This is an all-cash sale and purchase, and is NOT contingent upon Buyer's obtaining financing for the purchase of the Property regardless of any mortgage loan application made by the Buyer to any lending institution. Buyer understands and agrees that neither delivery of a commitment for a mortgage loan from any lending institution nor the Buyer's acceptance of such a commitment will in any way be a condition of Buyer's obligation under this Contract. Buyer represents to Seller that Buyer has sufficient readily available funds to complete the purchase of the Property.

## **(D) CLOSING COSTS**

Buyer agrees to pay all allowable closing costs on behalf of the Buyer, including the cost of a lenders title insurance policy if applicable. Buyer understands that they may also have to pay certain prepayable expenses, including, but not limited to, adjustments for short term interest, taxes, water and sewer charges, insurance, MIP or PMI. Buyer understands that if they obtain an FHA or PMI mortgage, the MIP or PMI premium will be added to the mortgage amount and increase their monthly payment.

## **(E) INSPECTIONS**

Buyer, at Buyer's sole cost and expense, and after Seller's written acceptance of this offer, shall have the opportunity to inspect the Property including, but not limited to, environmental, asbestos, radon gas, lead paint, physical defects including structural defects, roof, basement, mechanical systems such as heating and air conditioning, electrical systems, sewage and septic systems, plumbing, exterior site drainage, termite and other types of pest and insect infestation or damage caused by such infestation, and boundary surveys. If Buyer does not give to Seller written notice of cancellation, for any reason Buyer deems appropriate, within seven (7) calendar days of acceptance of this offer as outlined in paragraph (R), Buyer shall conclusively be deemed to have: (i) completed all inspections, investigations, review of applicable documents and disclosures and removed all contingencies; (ii) elected to proceed with the transaction; and (iii) assumed all liability, responsibility, and expense for repairs or corrections other than for items which Seller has otherwise agreed in writing to repair or correct. If Buyer objects to the condition of the Property within the specified time period, Buyer, as their sole option, may terminate this contract and neither party shall have any further obligations hereto. As a condition to termination under the inspection period, Buyer agrees to submit any and all written reports as to such inspections within three (3) calendar days following the expiration of the inspection period, after which time Seller will immediately refund the earnest money deposit.

## **(F) REPAIRS**

Any repairs to the Property identified by Buyer or which may be required by any lending institution to which Buyer may have applied ("Repairs") are the responsibility of the Buyer. The Seller will be under no obligation whatsoever to make any Repairs to the Property. Buyer agrees not to enter the Property prior to Closing for the purpose of making any repairs or alterations without Sellers express written consent.

## **(G) LIQUIDATED DAMAGES-DEPOSIT**

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, IF BUYER HAS NOT TERMINATED THIS AGREEMENT AND IF THE SALE OF THE PROPERTY TO BUYER HAS NOT BEEN CONSUMMATED FOR ANY REASON OTHER THAN SELLER'S DEFAULT UNDER THE AGREEMENT, SELLER SHALL BE ENTITLED TO RETAIN THE DEPOSIT AS SELLER'S LIQUIDATED DAMAGES. THE PARTIES AGREE THAT IT WOULD BE IMPRACTICABLE AND EXTREMELY DIFFICULT TO ASCERTAIN THE ACTUAL DAMAGES SUFFERED BY SELLER AS A RESULT OF BUYER'S FAILURE TO COMPLETE THE PURCHASE OF THE PROPERTY PURSUANT TO THIS AGREEMENT, AND THAT UNDER THE CIRCUMSTANCES EXISTING AS OF THE DATE OF THIS AGREEMENT, THE LIQUIDATED DAMAGES PROVIDED FOR IN THIS SECTION REPRESENTS A REASONABLE ESTIMATE OF THE DAMAGES WHICH SELLER WILL INCUR AS A RESULT OF SUCH FAILURE, PROVIDED, HOWEVER, THAT THIS PROVISION SHALL NOT LIMIT SELLER'S RIGHT TO RECEIVE REIMBURSEMENT FOR ATTORNEYS' FEES, NOR WAIVE OR AFFECT SELLER'S RIGHT AND BUYER'S INDEMNITY OBLIGATIONS UNDER OTHER SECTIONS OF THIS AGREEMENT. THE PARTIES ACKNOWLEDGE THAT THE PAYMENT OF SUCH LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER. NOTWITHSTANDING THE FOREGOING, IF BUYER INTERFERES WITH OR MAKES ANY ATTEMPT TO INTERFERE WITH SELLER RECEIVING OR RETAINING, AS THE CASE MAY BE, THE LIQUIDATED DAMAGES PROVIDED FOR IN THIS SECTION, INCLUDING WITHOUT LIMITATION, GIVING ANY NOTICE OR INSTRUCTIONS TO ESCROW HOLDER NOT TO DELIVER THE DEPOSIT TO SELLER, SELLER SHALL HAVE THE RIGHT TO ELECT TO RECOVER THE GREATER OF

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ITS ACTUAL DAMAGES OR THE LIQUIDATED DAMAGES BY GIVING WRITTEN NOTICE TO BUYER AND SELLER SHALL HAVE ALL OTHER RIGHTS AND REMEDIES AGAINST BUYER PROVIDED AT LAW AND IN EQUITY, AND SELLER SHALL HAVE THE RIGHT TO REQUIRE THAT BUYER SPECIFICALLY PERFORM BUYER'S OBLIGATIONS UNDER THIS AGREEMENT. THE PARTIES HAVE SET FORTH THEIR INITIALS BELOW TO INDICATE THEIR AGREEMENT WITH THE LIQUIDATED DAMAGES PROVISION CONTAINED IN THIS SECTION.

\_\_\_\_\_  
SELLER'S INITIALS

\_\_\_\_\_  
BUYER'S INITIALS

**G.1 No Specific Performance.** As material consideration to Seller's entering into this Agreement with Buyer, Buyer expressly waives the (a) remedy of specific performance on account of Seller's default under this Agreement, and (b) any right otherwise to record or file a lis pendens or a notice of pendency of action or similar notice against all or any portion of this Property.

**G.2 No Contesting Liquidating Damages** As material consideration to each party's agreement to the liquidated damages provisions stated above, each party hereby agrees to waive any and all rights, whatsoever to contest the validity of the liquidated damage provisions for any reason whatsoever, including, but not limited to, that such provision was unreasonable under circumstances existing at the time this Agreement was made.

**(H) SELLERS CLOSING COSTS AND BROKERAGE COMMISSION**

If necessary to complete a transaction, Seller will contribute up to:

- (i) \$ \_\_\_\_\_ towards Buyer's non-recurring closing costs, discount points, and, if applicable, Buyer's Non-allowable FHA/VA costs;
- (ii) \$ \_\_\_\_\_ as a credit to Buyer at closing for Buyer to purchase a Home Protection Plan; and
- (iii) \$ \_\_\_\_\_ towards a termite report.

Seller will pay a brokerage commission in accordance with the sales commission rate chart attached to the Sub-Broker agreement between the listing broker (Residential Real Estate Solutions, Inc.) and the sub-broker. The selling broker, if any, is recognized below. Seller hereby instructs the closing agent to pay the brokerage commission at closing via separate checks made out to the following companies, in the following amounts:

Listing Broker Fee: Payable to: Residential Real Estate Solutions, Inc.	Amount: \$ _____
Sub-Broker Fee: Payable to: _____	Amount: \$ _____
Selling Broker Fee: Payable to: _____	Amount: \$ _____

**(I) TRANSFER OF TITLE**

Seller will transfer title by means of a special or limited warranty deed, or an equivalent thereof (the "Deed"), which will warrant against acts of the grantor only. The acceptance of the Deed by the Buyer will be deemed to constitute full compliance by the Seller with all of the terms and conditions of the Contract and this First Addendum. None of the provisions of the Contract or the First Addendum will survive the delivery of the Deed.

**(J) INSURANCE POLICIES**

Seller's insurance policies are not transferable, and will not be prorated at Closing.

**(K) TITLE DEFECTS**

Seller shall have a minimum of thirty (30) days from the earlier of the closing date or the date upon which Seller receives a copy of a title insurance commitment or a title report within which to resolve and title exceptions or defects or other title issues which in any way impede or impair Seller's ability to convey title as required herein. If, within such thirty (30) day period, Seller determines that it is unable or unwilling, at its sole discretion, to resolve such matters then the buyer (i) may take title in its then state, thereby waiving any title objections, or (ii) terminate the contract and receive a refund of any deposit as buyer's sole and exclusive remedy. Seller's exercise of its right hereunder shall not require further notice thereof to the Buyer. In the event Seller fails to resolve such issues within the aforesaid thirty (30) day period, it shall be presumed that Seller has determined that is unable or unwilling to resolve such issues.

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## **(L) ( )/( ) LEAD-BASED PAINT CONTINGENCY**

Buyer's obligation to close this transaction is contingent upon Buyer conducting a risk assessment or inspection of the Property for the presence of lead-based paint and/or lead-based paint hazards, at the Buyer's sole cost and expense, on or before 5pm eastern time on that date ten (10) days from the Execution or Effective Date (the "LBP Test Period"). Intact lead-based paint that is in good condition is not necessarily a hazard (see the EPA pamphlet "Protect Your Family From Lead in Your Home" for more information). This contingency will terminate at the expiration of the LBP Test Period unless Buyer delivers to Seller written notice listing the specific existing deficiencies and corrections needed, together with a copy of the inspection and/or risk assessment report. Seller may, at Seller's sole discretion, within ten(10)days after delivery of the notice, elect in writing whether to correct the condition(s) prior to settlement. If Seller elects to correct the condition, Seller shall, upon completion of the correction(s), furnish to Buyer certification from a risk assessor or inspector demonstrating that the condition has been remedied. If Seller does not elect to make the repairs, or if Seller counter-offers, Buyer shall have five (5) days to respond to the counter-offer or remove this contingency and take the Property in "as is" condition or this Agreement shall become void. Buyer may remove this contingency at any time without cause.

## **(M) ( )/( ) WAIVER OF LEAD-BASED PAINT INSPECTION PERIOD; SELLER'S REPRESENTATION'S**

Buyer acknowledges that it has had the opportunity to undertake studies, inspections or investigations of the Property as Buyer deemed necessary to evaluate the presence of lead-based paint and/or lead-based paint hazards on the Property. To the extent that Buyer has waived or otherwise declined the opportunity to undertake such inspections and investigations as a condition to the completion of the Closing under the terms of this Agreement, Buyer has knowingly and voluntarily done so. Buyer understands and acknowledges that the Property may have been built prior to 1978 and lead-based paint and/or lead-based paint hazards may be present on the Property. In accordance with the Section 1018 of Title X, the Residential Lead-Based Paint Hazard Reduction Act of 1992, attached to this Agreement as Exhibit "H" and made part hereof, Seller attaches the Disclosure of Information on Lead Based Paint and/or Lead-Based Paint Hazards Lead Warning Statement. Seller shall have no responsibility or liability with respect to any such occurrence of lead-based paint. It is understood by the parties that Seller does not make any representation or warranty, express or implied, as to the accuracy or completeness of any information contained in Seller's files or in the documents produced by Seller or its agents, including, without limitation, any environmental audit or report. Buyer acknowledges that Seller and Seller's affiliates shall have no responsibility for the contents and accuracy of such disclosures, and Buyer agrees that the obligations of Seller in connection with the purchase of the Property shall be governed by this Agreement irrespective of the contents of any such disclosures or the timing or delivery thereof.

## **(N) CLOSING DATE / TIME OF THE ESSENCE**

It is agreed that time is of the essence with respect to all dates specified in the Contract and any addenda, riders or amendments thereto. This means that all deadlines are intended to be strict and absolute. In the event Buyer fails to close on the scheduled closing date through no fault of the Seller, Seller may, in its discretion, agree to extend the closing date for up to 10 days. In the event seller agrees to extend the closing date, buyer shall pay, in addition to the Sale Price, a (1) \$300.00 fee for the extension, and (2) a per diem penalty of \$100.00 (\$150.00 per diem if this is a cash offer) for each day that the closing day is extended to the maximum of 10 days. In addition, there shall be a per diem penalty of \$20.00 deducted from the selling broker's commission for each day that the closing is extended beyond the scheduled closing date.

Buyer assumes all liability in providing all necessary information to their lender. Furthermore, Buyer shall instruct their lender and attorney to work in conjunction with the brokers to ensure a timely close of escrow. The Broker and Co-Broker if applicable, shall assume all responsibility for follow-up with the Buyer, any lender or mortgage representative involved in financing this transaction, and either party's attorney and/or title company to ensure that there is no delay in closing. Purchaser will not be given possession, or may not occupy the premises prior to closing and disbursement of sale proceeds. Purchaser shall be considered in default of the Contract of Sale in the event Purchaser occupies or alters the property or permits it to be altered unless provided for in the Contract for Sale.

## **(O) TERMINATION OF CONTRACT**

In the event the Contract is terminated by Seller pursuant to any provision of the Contract, this First Addendum, any other addendum, or in the event Seller is otherwise unable to perform this contract, Seller's sole liability to Buyer will be to return Buyer's deposit, at which time the Contract shall cease and terminate and Seller and Buyer shall have no further obligations, liabilities or responsibilities to one another.

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**(P)            REVIEW PERIOD**

Buyer and Seller agree that Seller shall require a forty-eight (48) hour review period for all closing documents, which shall commence upon Seller's receipt of same.

**(Q)            SEVERABILITY**

If any provisions of this Addendum shall be prohibited by or invalid under applicable law, such provisions shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of this Addendum or the Sales Contract.

**(R)            ACCEPTANCE OF OFFER**

Buyer is aware of the following: (i) Seller has reserved the right to make multiple counter-offers on this property; (ii) Seller reserves the right to continue to offer the Property for sale until this offer has been formally accepted in writing; (iii) acceptance of this offer or any counter-offers hereto is subject to Ocwen Federal Bank FSB's Executive Committee's approval; (iv) This offer shall expire on \_\_\_\_\_ at 5:00 PM EST. Any decision as to Buyer's acceptance of this offer shall be approved by Ocwen Federal Bank FSB's Executive Committee on or before \_\_\_\_\_ at 5:00PM EST. Seller's acceptance of another offer prior to Buyer's acceptance and communication of acceptance of this offer to Seller, or Seller's agent shall revoke this counter-offer. Communication of acceptance of this counter-offer must be received by Seller in writing prior to the expiration of the time frame specified above and may be in the form of a facsimile, e-mail, or hard copy via mail so long as receipt of delivery can be confirmed.

Seller:

OCWEN FEDERAL BANK FSB

\_\_\_\_\_  
Buyer

\_\_\_\_\_  
Date

By: \_\_\_\_\_

Date

\_\_\_\_\_  
Buyer

\_\_\_\_\_  
Date

Selling Broker: \_\_\_\_\_

By: \_\_\_\_\_

Date