

2.7 FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT (FIRPTA) ADDENDUM

1 **1. Property Address or Description:** _____

2 **2. Names of Parties to this Agreement:**

3 **Buyer** _____ **Seller** _____

4 **Buyer** _____ **Seller** _____

5 **Buyer** _____ **Seller** _____

6 **Buyer** _____ **Seller** _____

7 **3. Definitions.**

8 **"Amount Realized"** as defined in 26 U.S.C. § 1001(b).

"Applicable Wash Sale" as defined in 26 U.S.C. § 897(h)(5)(B)(i).

9 **"Foreign Person"** as defined in 26 U.S.C. § 1445(f)(3).

"Qualified Substitute" as defined in 26 U.S.C. § 1445(f)(6).

10 **"Residence"** means a property intended for use by the Buyer or Buyer's family, for at least 50% of each year for 2 years after Closing.

11 Corporations cannot own Residences. 26 U.S.C. § 1.1445.2(d)(1).

12 **"TIN"** is a Taxpayer Identification Number, including Social Security Number, Employer Identification Number, and Individual Taxpayer Identification Number.

14 **4. Qualified Substitute.** If the Parties are using Escrow services, Escrow shall act as the Qualified Substitute and provide the below affidavits. If Escrow does not agree to be the Qualified Substitute, the parties may terminate services with Escrow and select an Escrow service that will agree to act as Qualified Substitute. Parties will equally share the cost of terminating Escrow, if any.

17 **5. IRS and Foreign Investment in Real Property Tax Act, 26 U.S. Code § 1445 (FIRPTA) Reporting.** Subject to regulations promulgated by the Secretary of the Treasury ("Secretary"), under 26 U.S.C. § 1445(a), the transferee ("Buyer") of any real property in the United States must deduct and withhold a tax equal to either 10% or 15% of the Amount Realized by a Foreign Person transferor ("Seller"). If Seller is a disregarded entity [LLC, Trust, etc.], the entity's owner shall be treated as the transferor. If Seller is exempt under FIRPTA, Buyer does not need to deduct and withhold any amount.

22 Buyer is to deduct or withhold funds as though Seller is not exempt if (i) Buyer, or a Qualified Substitute under FIRPTA, receives notice or has actual knowledge of false statements in any affidavits or statements by Seller, or (ii) Seller fails to furnish a copy of affidavits or statements of Seller to the Buyer, or a Qualified Substitute, by Closing, as required by the Secretary. Buyer shall ensure the IRS receives withheld funds at most **20 Calendar Days** after Closing. Seller agrees to indemnify Buyer for any claims or causes of action arising from Seller's misrepresentations or falsehoods on this FIRPTA Addendum. Buyer agrees to keep Seller's TIN and Foreign Person status confidential and, excepting Buyer's tax preparer, will not disclose it to any third party unless required by law or court order.

28 **Check any of the below boxes that apply in this Sale:**

29 **6. Affidavit: Seller is not a Foreign Person.** Seller swears under penalty of perjury, that Seller is not a Foreign Person. Seller shall complete an Affidavit of Non-Foreign Status on a form provided by Escrow as the Qualified Substitute, attesting to this statement.

31 **7. Affidavit: Seller is Exempt Domestic Corporation.** Seller swears under penalty of perjury, that Seller complies with 26 U.S.C. 1445(b)(3). Seller shall complete an Affidavit of Exempt Corporation Status on a form provided by Escrow as the Qualified Substitute, attesting to this statement.

34 **8. Seller is Otherwise Exempt.** Seller has received a "qualifying statement" from the Secretary as described in 26 U.S.C. § 1445(b)(4); the Amount Realized is less than \$300,000 and Buyer is acquiring the property as an exempt Residence; the sale was related to an Applicable Wash Sale; or any other reason described in 26 U.S.C. § 1445(b). Seller shall complete an Affidavit on a form provided by Escrow as the Qualified Substitute, attesting to this statement.

38 **9. If no box is checked above or if Buyer has not received the above required Affidavit:** If Property is Residence and Amount Realized is between \$300,000 and \$1,000,000, Buyer shall withhold 10% of the Amount Realized; **otherwise** Buyer shall withhold 15% of the Amount Realized. Alternate withholding rules apply to certain domestic and foreign partnerships, trusts, estates, corporations, regulated investment companies and trusts under 26 U.S.C. 1445(e).

42 Amounts withheld cannot be greater than the Seller's maximum tax liability as determined or reduced by the Secretary at the request of Buyer or Seller. Seller may seek a refund for amounts withheld in excess of Seller's maximum tax liability from the Secretary.

44 **10. Signatures.**

45 **By signing below, the Parties agree to the terms of this addendum and make it part of the above referenced Sale Agreement:**

46 Buyer: _____ Dated: _____ Seller: _____ Dated: _____

47 Buyer: _____ Dated: _____ Seller: _____ Dated: _____

48 Buyer: _____ Dated: _____ Seller: _____ Dated: _____

49 Buyer: _____ Dated: _____ Seller: _____ Dated: _____

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