

CONTRACT FOR SALE OF REAL ESTATE

This is a CONTRACT between _____

(hereinafter Seller or Sellers) and _____
(hereinafter Buyer or Buyers), dated this _____ day of _____, ____.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED ABOVE IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES.

Be it known to all that in consideration of the mutual covenants and agreements contained in this Contract as written and no other documents, the Seller agrees to sell to Buyer(s) and Buyer(s) agree to purchase from the Seller(s) all the lands and premises situated in _____ County, State of _____, described in the following section:

(continue description on reverse of this sheet, if necessary)

for the sum of \$ _____, _____ (Dollars), known as the Purchase Price.

Towards that Purchase Price, \$ _____, _____ (Dollars) has paid on the execution of this Contract and the receipt of which is hereby acknowledged by Sellers, and the remained of the Purchase Price is to be paid to the order of the seller at the times and in the amounts as described in the following section:

Remainder of Purchase Price payable as follows: _____

All of the purchase price may be paid at any time, but all of the deferred payments shall bear interest at the rate of _____ percent per annum from _____ until paid; such interest shall be paid and [*Choose one by striking out inapplicable language*]: is [*included*] [*in addition to*] the above described required payments. Taxes on the premises for the current tax ear shall be prorated between the Buyers and Sellers as of _____.
(date)

Buyer(s)'s Right to Possession

The Buyer(s) shall be entitled to possession of the lands on _____, _____, and may retain such possession so long as Buyer(s) is not in default under the terms of this Contract.

Buyer(s) Duty to prevent waste, prevent encumbrances.

Buyer(s) agree that at all times Buyer(s) will keep the premises and buildings (now or hereafter erected) in good condition and repair and will not permit any waste or strip of the land or premises, that the Buyer will keep the premises free from construction and all other liens and same the Seller(s) harmless from such liens and reimburse Seller(s) all cost and attorney's fees incurred by Seller(s) in defending against such liens; that Buyer(s) will pay all taxes hereafter levied against the property, as well as all water service rents, public charges and municipal liens which hereafter lawfully may be imposed upon the premises, all promptly before the same or any party thereof become past due and delinquent.

Seller(s)'s rights to cure defects without waiver of breach of contract.

If the Buyer(s) fail to pay any liens, costs, water rents, taxes or charges, the Seller(s) may do so and any payment so made shall be added to and become part of the debt secured by the Contract and shall bear interest at the above stated rate per annum, without waiver, however, on any right arising to the Seller(s) for Buyer(s)'s breach of contract.

Seller(s)'s Obligation to Provide Marketable Title

The Seller(s) agrees to furnish within _____ days of the date of the Contract, at Seller(s)'s expense a title insurance policies insuring in an amount equal to the purchase price, marketable title in and to the promises in the Seller(s) on or subsequent to the date of this Contract and further, save and except the usual printed exceptions and the building or other restrictions and easements now of record, if any. Seller(s) also agrees that when the purchase price is fully paid and upon request and upon surrender to this Contract, Seller(s) will deliver a good and sufficient deed conveying the premises in fee simple until the Buyer(s), Buyer(s)'s heirs, assigns, free and clear of encumbrances as of the date herein identified and free and clear of all encumbrances that date placed, permitted or arising by, through or under the Sellers(s), except the easements, restrictions and the taxes, municipal liens, water rents and public charges as assumed by the Buyer(s) and further excepting all liens and encumbrances created by the Buyer(s) or Buyer(s)'s assigns.

Time is of the essence

It is further understood and agreed between the parties that time is of the essence in this Contract, and should the Buyer(s) fail to make the payments as required, or any of them, punctually within 20 days of the time limited there for, or failure to keep any of its obligations under this Contract, then the Seller(s) shall have the following rights and options:

- (1) to declare the contract cancelled for default and thus null and void and to declare the Buyer(s)'s rights forfeited and the debt extinguished, and to retain sums previously paid under this Contract, subject to the Seller(s) complying with all applicable law pertaining to the exercise of this remedy, including ORS 93.905, et seq., or successor statutes;
- (2) to declare the whole unpaid principal balance of the purchase price with the interest thereon at once due and payable; and/or
- (3) to foreclose this Contract by suit in equity.

In any of such case, all rights and interest created or then existing in favor of the Buyer(s) as against the Seller(s) shall utterly cease and the right to possession of the premises described above and all other rights acquired by the Buyer(s) under this Contract revert to and revest in the Seller(s) without an act of re-entry, or any other act of the seller to be performed and without any right of the Buyer(s) to return, reclaim or seek compensation of monies paid on the account of the purchase on the property as absolutely, fully and completely as if this contract and such payments had never been made, and in case of such default all payments previously made on this contract are to be retained by and belong to the seller as the agreed and reasonable rent of the premises up to the time of such default and the Seller(s) in case of such default, shall have right immediately, or at any time thereafter, to enter upon the land, without process of law, and take immediate possession thereof, together with all the improvements and appurtenances thereto on thereto belonging.

Buyer(s) further agrees that Seller(s)'s failure to at any time require performance by Buyer(s) of any provision shall in no way affect the Seller(s)'s right to enforce the same, nor shall any waiver by the Seller(s) of any breach of any provision by a waiver or any succeeding breach of any such provision, or a waiver of the provision itself.

Seller(s), Seller(s)'s agents, and the holder of any existing encumbrance to which the lands and premises are subject may enter upon the lands and premises at reasonable times, upon reasonable prior notice, for the purpose in inspecting the property.

In case suit or action is instituted to foreclose this CONTRACT or to enforce any provision thereof, the losing party in any suit or action shall pay the reasonable attorney's fees to be fixed by the trial court in favor of the prevailing party, and if any appeal is taken from the decision of the trial court, such further sum as may be fixed by the appellate court as the prevailing party's reasonable attorney's fees and costs in the appellate court.

This Contract shall bind and inure to the benefit of, as the circumstances, may require, not only the immediate parties hereto, but also their respective heirs, assigns, executors, administrators, personal representatives and successors in interest as well.

In witness whereof, the Buyer(s) and Seller(s) have executed this instrument in duplicate this _____ day of _____, year _____, and if any of the undersigned is a corporation, it has caused its name to be signed by an officer or other person duly authorized to do so by action of the board of directors.

Contingency release clause

If you have not specified a deadline for your contingencies, such as 5 or 10 days for a professional inspection, or 30 days for mortgage approval, you can expect a well-advised home seller to set a time limit on your contingencies. Or, if you make your home purchase contract contingent on the sale of your current residence (which few home sellers will accept), expect the

seller to counteroffer, giving you 24 or 48 hours after an acceptable second purchase offer is received from a second buyer to remove your contingency clause for sale of your old home. This is reasonable and fair to both buyer and seller.

An "As Is" clause

Some home sellers insist on selling their homes "as is." That means the seller and realty agents make no representations or warranties and won't pay for any repairs. However, the seller and realty agents must still disclose any known home defects to the buyer. Avoid agreeing to an "as is" clause if you want the seller to pay for repairs of known serious defects.

When describing the purchase terms, don't specify "All cash to seller" if you require a new mortgage to provide that cash. Be sure your offer contains a clause making your offer contingent on approval of the mortgage. Even if you got preapproved for a mortgage, the lender can avoid making the loan by low-balling the appraisal.

The mortgage you want to obtain should be specified with detail, such as a new 30-year fixed interest rate mortgage of at least \$100,000 with interest not exceeding 8 percent, a loan fee of not more than 2 percent, and a monthly payment not exceeding \$733.76. If you want the seller to help finance the sale, by carrying back either a first or second mortgage, here is where you specify the terms you want.

Personal property

If you want any personal property included in the home sale, such as the kitchen appliances, be sure to specifically itemize them in your purchase offer. For example, specify the "General Electric side-by-side refrigerator with electronic monitor now on the premises." This stops the seller from substituting inferior replacement personal property at the last minute.

Time for acceptance of your purchase offer

Your purchase offer should contain a short time for the seller's acceptance. Twenty-four hours is usually sufficient unless the seller is out of town. Don't make your offer valid for a long time period because then it will be "shopped" by the realty agent to see if a better offer from another buyer can be obtained.

A professional inspection

The buyer should pay for the professional inspection because it's for the buyer's benefit. Accompany the professional inspector. When a defect discovered is serious, such as a cracked chimney, expect the seller to pay for the repair. If the seller refuses to pay for major necessary repairs, disapprove the report and get your good faith deposit refunded.

Seller's disclosure of known defects

Many states, led by California and Maine, now require home sellers and their realty agents to disclose in writing any known defects in the residence. If your state requires seller disclosure of defects, your purchase offer should be contingent upon your approval of the seller's disclosure.

Liquidated damages clause

This clause specifies maximum damages a defaulting buyer must pay to the home seller if the buyer doesn't complete the purchase as agreed. Some state laws set maximum liquidated

damages. As a buyer, you may want to agree to liquidated damages so you can't be held liable for more than the specified sum if you default.

Arbitration of disputes clause

Most printed real estate purchase contracts now contain an optional clause whereby the buyer and seller agree to arbitrate disputes. Misguided real estate agents, blindly following recommendations from their real estate trade groups, often suggest signing the arbitration clause. I strongly disagree. Too many uncontrollable things can go wrong with arbitration of disputes. My recommendation is don't agree to arbitration. If a dispute arises later, at that time you can decide if you prefer to go to arbitration or mediation rather than become involved in a lawsuit.

An all-inclusive weasel clause

Although the professional inspection contingency clause is sufficient, you might want to also include an all-inclusive weasel clause such as "This purchase offer is contingent upon buyer's attorney satisfactory inspection and approval of the purchase contract within 10 business days." This gives you a "free look" while your attorney, CPA or other trusted business advisor reviews the agreement.

Article 3. Purchaser's Mortgage Contingency

3.01 Application. If an amount is specified at item VIII, Purchaser will (promptly after this Contract is signed) use best efforts to obtain a first mortgage on the Premises in that amount and on the terms specified in section D-3.

3.02 Alternate Financing. If Purchaser is unable to obtain such commitment and gives notice thereof to Seller by the time specified in or determined pursuant to section D-3-j, Seller may within 21 days after the effective date of such notice by Purchaser (a) procure for Purchaser a firm commitment from an institutional lender for a first mortgage loan meeting such terms or (b) accept a Purchase Money Mortgage on such terms. If Seller does so within such additional 21-day time period, item VIII and section D-3 will no longer apply; otherwise this Contract will terminate and section 1 7.03 will apply.

3.03 A lender that makes any such loan is referred to herein as "Purchaser's Lender."

Article 4. Title Insurance and Condition of Title

4.01 Title Commitment. Promptly after the Execution Date Purchaser will apply (directly or through Purchaser's Lender) for issuance by Title Insurer of a commitment for an owner's title insurance policy.

a. The commitment is (i) to be in the amount of the Purchase Price, (ii) to include a zoning endorsement that insures Purchaser that the existing structures on, and the present use of, the Real Estate do not violate any zoning laws, regulations and ordinances, (iii) to include extended coverage over general exceptions, and (iv) to cover title to the Real Estate on or after the Date of Execution.

b. On receipt of the commitment Purchaser will promptly cause a copy of the commitment to be delivered to Seller's attorney. Seller will use best efforts to cause the commitment to conform to the condition of title specified in Section 4.02 by the earlier of (i) 63 days after Seller receives a copy of the commitment and (ii) the expiration date of any written loan commitment of Purchaser's Lender that was delivered to Purchaser prior to the scheduled date of Closing.

c. Seller will pay for the title insurance commitment and the resulting owner's title policy.

4.02 Condition of Title. Seller will use best efforts to convey, and Purchaser will accept if tendered, fee simple title to the Real Estate in accordance with the terms of this Contract, subject only to (a) the matters set forth in Schedule B ("Permitted Exceptions"), (b) matters that are insured against pursuant to section 15.04-b, and (c) any other matters as to which both (i) Title Insurer is willing, without additional premium, to insure by endorsement and (ii) Purchaser's Lender, if any, will accept, except that if such acceptance by Purchaser's Lender is unreasonably withheld or delayed, the acceptance will be deemed to have been given.

Article 5. Inspection, Due Diligence and Termination

5.01 Information Regarding the Premises. Within ten days from the Date of Execution Seller will make available to Purchaser for inspection and copying (a) the documents that fix all the terms of any Leases and of any Tenancies, (b) the documents that are referred to in sections 8.04, 8.06, 8.07 and 8.08, and (c) such building plans and specifications, and such operating statements and balance sheets for the current fiscal year and for the immediately preceding fiscal year, as are in the possession or control of Seller and relate to the Premises.

5.02 Inspection of the Premises. Within 35 days after the Date of Execution Purchaser may inspect the Premises and obtain soil tests and an environmental audit of the Premises, all subject to the rights of any tenants. Seller will use best efforts to obtain any necessary consents from tenants.

5.03 Purchaser's Election to Terminate. Purchaser may elect to terminate this Contract by notice to Seller at any time prior to five days after expiration of the time period that is provided for by section 5.02 if in Purchaser's absolute discretion, which is not subject to question or review for any reason, (a) the material that is described in section 5.01 has not been made available to Purchaser as called for by that section, (b) Purchaser has not been able to inspect the Premises and obtain soil tests and an environmental audit of the Premises, or (c) Purchaser is dissatisfied with any matters disclosed by such documents, inspection or tests. If Purchaser so elects to terminate this Contract, section 17.03 will apply.

5.04 Acceptance of the Premises. If Purchaser does not elect to terminate this Contract pursuant to section 5.03 and Purchaser is otherwise required to proceed hereunder, Seller will deliver (and Purchaser will accept) the Premises in substantially the same condition at closing as on the Date of Execution, except for ordinary wear and tear, and matters described in Article 11, but Purchaser will have the benefit of any representations and warranties by Seller relating to the Premises.