

OREF FORMS REVISIONS FOR 2016

By
Phillip C. Querin, QUERIN LAW, LLC
Legal Counsel to Oregon Real Estate Forms Committee

The following summary addresses the major changes made to the OREF forms that will become available for 2016. Some changes were stylistic and grammatical, and will not be discussed here as they do not materially affect Realtor® practice. The primary focus of this summary is on those substantive changes that bear on Realtor® practice, the reason for the changes, and their risk management impact. This summary should not be relied upon in lieu of a thorough review of the specific forms and their revised provisions by each individual broker and managing principal broker. [Additions are in red print, and have been highlighted in yellow; deletions have a strike-through and have also been highlighted in yellow. In some instances, an entire section is highlighted, since there were many changes and so for readability, the additions and deletions are not specifically identified. There are some provisions that are not new for 2016, but received some attention during 2015, and for that reason, they are highlighted in grey and commented upon.]

1. Residential Real Estate Sale Agreement – OREF No. 001

Note: This Agreement has been entirely reformatted, with the intent that the provisions are now more chronologically arranged as the standard residential real estate transaction occurs. Also, provisions have been grouped together under discrete captions to make them more user-friendly.

FINAL AGENCY ACKNOWLEDGMENT

Both Buyer and Seller acknowledge having received the Oregon Real Estate Agency Disclosure Pamphlet, and hereby acknowledge and consent to the following agency relationships in this transaction: _____ (Name of Selling Licensee(s)*), Oregon Lic. # _____ of _____ (Name of Real Estate

Firm(s)* Selling Firm Office Address _____ Company Lic # _____
Phone _____ Fax _____ Email _____

is/are the agent of (check one): Buyer exclusively ("Buyer Agency"). Both Buyer and Seller ("Disclosed Limited Agency").

_____, (Name of Listing Licensee(s)*), Oregon Lic. # _____
of _____ (Name of Real Estate Firm(s)*)

Listing Firm Office Address _____ Company Lic # _____
Phone _____ Fax _____ E-mail _____

is/are the agent of (check one): Seller exclusively ("Seller Agency"). Both Buyer and Seller ("Disclosed Limited Agency").

***If Selling and/or Listing Licensees and/or Firms are co-selling or co-listing in this transaction, all Licensee and Firm names should be disclosed above.**

If both parties are each represented by one or more Licensees in the same Real Estate Firm, and Licensees are supervised by the same principal broker in that Real Estate Firm, Buyer and Seller acknowledge that said principal broker shall become the disclosed limited agent for both Buyer and Seller as more fully explained in the Disclosed Limited Agency Agreements that have been reviewed and signed by Buyer, Seller and Licensee(s).

Buyer shall sign this acknowledgment at the time of signing this Agreement before submission to Seller. Seller shall sign this acknowledgment at the time this Agreement is first submitted to Seller, even if this Agreement will be rejected or a counter offer will be made. Seller's signature to this Final Agency Acknowledgment shall not constitute acceptance of this Agreement or any terms therein.

COMMENT: THIS PORTION OF THE FINAL AGENCY ACKNOWLEDGMENT HAS LEFT MORE ROOM FOR THE NAME OF THE BROKERS AND FIRMS IN ORDER TO ACCOMMODATE CO-LISTING AND CO-SELLING ARRANGEMENTS. THE REASON IS DUE TO OREGON ADMINISTRATIVE RULE 863-015-0200 (12)(B), WHICH PROVIDES THAT IF A BROKER OR FIRM IS NOT IDENTIFIED IN THE SALE AGREEMENT ITSELF, A SEPARATE FINAL ACKNOWLEDGMENT FORM MUST BE USED. ALSO, NOTE THE BROKER/FIRM CONTACT INFORMATION, FORMERLY FOUND AT SECTION 45 (FORMS/LICENSEES), IS NOW INCORPORATED INTO THE FINAL AGENCY ACKNOWLEDGMENT SECTION ON PAGE ONE OF THE SALE AGREEMENT. SECTION 45 HAS BEEN ELIMINATED.

RESIDENTIAL REAL ESTATE SALE AGREEMENT

THIS AGREEMENT IS INTENDED TO BE A LEGAL AND BINDING CONTRACT. IF IT IS NOT UNDERSTOOD, SEEK COMPETENT LEGAL ADVICE BEFORE SIGNING. FOR AN EXPLANATION OF THE PRINTED TERMS AND PROVISIONS IN THIS FORM REGARDING TIMING, NOTICE, BINDING EFFECT, ETC., SELLER AND BUYER ARE ENCOURAGED TO CLOSELY REVIEW SECTION 31 (DEFINITIONS AND INSTRUCTIONS SECTION).

COMMENT: WHEN USING THIS NEW SALE AGREEMENT FORM, REALTORS® WILL IMMEDIATELY NOTICE THAT THE “DEFINITIONS/INSTRUCTIONS” SECTION HAS BEEN MOVED. FOLLOWING THE COMMITTEE’S APPROACH THAT THE FORM SHOULD BE CHRONOLOGICALLY CONSISTENT WITH HOW THE TRANSACTION ACTUALLY PROGRESSES, IT WAS DECIDED THAT THE PRICE/PROPERTY DESCRIPTION SHOULD APPEAR FIRST. HOWEVER, GIVEN THE FACT THAT DEFINITIONS/INSTRUCTIONS ARE IMPORTANT TO UNDERSTANDING THE ENTIRE FORM, WE SPECIFICALLY IDENTIFIED, AT THE TOP OF THE SALE AGREEMENT, WHERE IT NOW APPEARS.

FINANCING

5.3 BUYER REPRESENTATION REGARDING FINANCING: As of the date of signing this Agreement, Buyer makes the following representations to Seller: (1) Buyer shall submit to Buyer’s Lender or mortgage broker a completed loan application for purchase of the Property not later than ___ business days (three [3] if not filled in) following the date Buyer and Seller have signed and accepted this Agreement. A “completed loan application” shall include the following information: (i) Buyer’s name(s); (ii) Buyer’s income(s); (iii) Buyer’s social security number(s); (iv) the Property address; (v) an estimate of the value of the Property; and (vi) the loan amount sought.

(3) Buyer agrees that if Buyer intends to proceed with the loan transaction, within ten (10) business days following receipt of the Loan Estimate from Buyer’s Lender or mortgage broker, Buyer will provide said Lender or mortgage broker with written notice of such intent, in a form reasonably required by said Lender.

(4) Upon request of Seller or Seller’s Licensee, Buyer shall promptly provide the date of Buyer’s signed notice to the Lender or mortgage broker of Buyer’s written intent to proceed with the loan (see Section 5.3 [3]).

(7) Buyer authorizes Buyer’s Lender or mortgage broker to provide non-confidential information to Listing and Selling Licensees regarding Buyer’s loan application status.

COMMENT: THIS CHANGE IS AN OUTGROWTH OF THE NEW TILA/RESPA INTEGRATED DISCLOSURE RULES, WHICH SET FORTH SPECIFIC TIME FRAMES FOR LENDERS OR MORTGAGE BROKERS WHEN RESPONDING TO AN APPLICATION FOR A LOAN. THE LOAN ESTIMATE (FORMERLY KNOWN AS THE GOOD FAITH ESTIMATE) MUST BE DELIVERED OR PLACED IN THE MAIL NOT MORE THAN THREE BUSINESS DAYS AFTER RECEIPT OF A COMPLETED APPLICATION FROM THE PROSPECTIVE BORROWER. A “COMPLETED APPLICATION”, WHICH TRIGGERS THE OBLIGATION TO PROVIDE THE LOAN ESTIMATE, CONSISTS OF RECEIPT OF THE FOLLOWING SIX PIECES OF INFORMATION: 1. THE CONSUMER’S NAME; 2. THEIR INCOME; 3. THEIR SOCIAL SECURITY NUMBER (TO ORDER THE CREDIT REPORT); 4. THE PROPERTY ADDRESS; 5. AN ESTIMATE OF THE VALUE OF THE PROPERTY; AND 6. THE LOAN AMOUNT SOUGHT. THE COMMITMENT UNDER THE LOAN ESTIMATE EXPIRES IF THE PROSPECTIVE BORROWER DOES NOT INDICATE AN INTENT TO PROCEED WITH THE TRANSACTION WITHIN TEN BUSINESS DAYS AFTER IT WAS PROVIDED.

ACCORDINGLY, IN ORDER TO ENABLE A LISTING AND SELLING AGENT TO TRACK THE PROGRESS OF BUYER’S EFFORTS TO OBTAIN THE LOAN, WE CLARIFIED A BUYER’S DUTY TO APPLY FOR THE LOAN TO SAY THAT HE/SHE NEEDED TO SUBMIT A “COMPLETED APPLICATION” TO THEIR LENDER OR MORTGAGE BROKER. ALTHOUGH MANY LENDERS AND MORTGAGE BROKERS ARE UNAWARE OF THE PROVISION HIGHLIGHTED IN GREY, ABOVE, THE BUYER AUTHORIZES THEM TO DISCLOSE NON-CONFIDENTIAL INFORMATION TO INQUIRING LISTING AND SELLING AGENTS.

NOTE: 12 C.F.R. § 1026.19(e)(2)(ii) PROVIDES AS FOLLOWS: “IF A CREDITOR OR OTHER PERSON PROVIDES A CONSUMER WITH A WRITTEN ESTIMATE OF TERMS OR COSTS SPECIFIC TO THAT CONSUMER BEFORE THE CONSUMER RECEIVES THE DISCLOSURES [REQUIRED FOR THE LOAN ESTIMATE], THE CREDITOR OR SUCH PERSON SHALL CLEARLY AND CONSPICUOUSLY STATE AT THE TOP OF THE FRONT OF THE FIRST PAGE OF THE ESTIMATE IN A FONT SIZE THAT IS NO SMALLER THAN 12-POINT FONT: “YOUR ACTUAL RATE, PAYMENT, AND COSTS COULD BE HIGHER. GET AN OFFICIAL LOAN ESTIMATE BEFORE CHOOSING A LOAN.”

RESOURCES: [12 C.F.R. §1026.19\(e\)\(1\)\(iii\)](#); [12 C.F.R. §1026.2\(a\)\(3\)\(ii\)](#); [12 C.F.R. §1026.19\(e\)\(3\)\(iii\)](#); [12 C.F.R. §1026.19\(e\)\(3\)\(iv\)\(E\)](#).

7. SELLER-CARRIED FINANCING (E.G., LAND SALE CONTRACT/TRUST DEED/MORTGAGE/OPTION AGREEMENTS, RENT-TO-OWN, ETC.): Notice to Buyer and Seller: If this transaction involves a land sale contract, trust deed, mortgage, option, or lease-to-own agreement (hereinafter a “Seller Carried Transaction”), Oregon law requires that, unless exempted, individuals offering or negotiating the terms must hold a mortgage loan originator (“MLO”) license. Your real estate licensee is not qualified to provide these services or to advise you in this regard. Legal advice is strongly recommended. Oregon law exempts the following individuals from the MLO licensing law: (a) Those who offer or negotiate terms of a residential mortgage loan with or on behalf of their spouse, child, sibling, parent, grandparent, grandchild or a relative in a similar relationship created by law, marriage or adoption; (b) Those who sell their primary residence they currently or previously lived in; and (c) Individuals who sell up to three (3) non-primary residences during any 12-month period. (Note: One may not hold more than eight residential mortgage loans at one time.) If this is a Seller-Carried Transaction, and one or more of the preceding exemptions apply, Buyer and Seller should use the Seller-Carried Addendum, OREF form No.033 and related forms. **Caveat: Buyer and Seller are advised to secure competent legal advice while engaged in a Seller-Carried Transaction.**

COMMENT: *ORIGINALLY, THIS SECTION CONTAINED AN EXTENSIVE PROVISION REGARDING THE PARTIES REACHING AGREEMENT ON THE FORM(S) TO BE USED FOR SELLER-CARRIED DOCUMENTS. HOWEVER, IN 2015, OREF DEVELOPED AN ENTIRE SUITE OF SUCH FORMS, INCLUDING A PROMISSORY NOTE AND DEED OF TRUST AND A CONTRACT OF SALE WITH A MEMORANDUM OF CONTRACT.*

RESOURCES: [HTTP://Q-LAW.COM/NOTE-TRUST-DEED-VS-LAND-SALE-CONTRACT-USE-WHEN/](http://q-law.com/note-trust-deed-vs-land-sale-contract-use-when/)

CONTINGENCIES SELLER REPRESENTATIONS

14. SELLER REPRESENTATIONS

15.2 SELLER/BUYER ADVISORY: FIRPTA TAX WITHHOLDING REQUIREMENT: Seller and Buyer are advised that upon Closing, a Federal law, known as the Foreign Investment in Real Property Tax Act ("FIRPTA"), requires buyers to withhold a portion of a seller's proceeds if the real property is located within the United States and the seller is a "foreign person" who does not qualify for an exemption. A "foreign person" includes a non-resident alien individual, foreign corporation, foreign partnership, foreign trust or a foreign estate. Subject to certain exclusions, the amount deducted from a seller's sales proceeds may be up to ten percent (10%) of the gross sales price, and said amount must be delivered to the Internal Revenue Service ("IRS") within twenty (20) days of closing (hereinafter "Withholding Requirement"). The Withholding Requirement will not apply if the sale price of the property is not more than \$300,000, and it will be occupied as a residence by a buyer, who is an individual (or a member of his/her family) for at least 50% of the number of days (excluding days the property is vacant) it is used by any person during each of the first two 12-month periods following the date of closing. If FIRPTA applies, even if there is an exemption, Seller and Buyer should complete and sign the FIRPTA Addendum, OREF Form No. 092. *Seller and Buyer's Licensees are not experts in FIRPTA and will not act as a transferor or transferee agent for purposes of the Withholding Requirement. If FIRPTA may apply in this transaction, Seller and Buyer should promptly consult their own experts familiar with the law and regulations. For further information, Seller and Buyer should go to: <https://www.law.cornell.edu/uscode/text/26/1445>.*

COMMENT: *ORIGINALLY, THIS SECTION CONTAINED AN EXTENSIVE PROVISION REGARDING FIRPTA AND ITS APPLICATION. WITH THE ADDITION OF A FIRPTA ADDENDUM (OREF FORM NO. 092), THIS SECTION HAS BEEN ALTERED AND SHORTENED. WITH THE INFLUX OF FOREIGN INVESTORS FOLLOWING THE REAL ESTATE AND FINANCING CRISIS OVER THE PAST FIVE YEARS (CIRCA 2007 – 2012), WE CAN EXPECT THERE TO BE MORE SALES SUBJECT TO FIRPTA. BROKERS, ESPECIALLY THOSE REPRESENTING BUYERS, SHOULD REMAIN ALERT TO TRANSACTIONS THAT MAY INVOLVE A "FOREIGN PERSON" AS SELLER. WHY? BECAUSE THE IRS CAN ASSESS THE BUYER FOR THE FAILURE OF THE SELLER TO WITHHOLD AND TRANSMIT THE NECESSARY FUNDS.*

RESOURCES: [HTTP://WWW.IRS.GOV/INDIVIDUALS/INTERNATIONAL-TAXPAYERS/FIRPTA-WITHOLDING](http://www.irs.gov/individuals/international-taxpayers/firpta-withholding)
[HTTP://WWW.IRS.GOV/INDIVIDUALS/INTERNATIONAL-TAXPAYERS/EXCEPTIONS-FROM-FIRPTA-WITHOLDING](http://www.irs.gov/individuals/international-taxpayers/exceptions-from-firpta-withholding)

CLOSING/ESCROW

21. ESCROW

27.2 THE CLOSING DISCLOSURE: Pursuant to the federal TILA-RESPA Integrated Disclosure Rules ("TRID"), Buyer and Seller will each receive a federally-required document called a "Closing Disclosure", which, among other things, summarizes each party's closing costs. TRID requires that the Closing Disclosure must be received by a residential loan borrower at least three (3) business days prior to "consummation" of the transaction, which in most cases in Oregon will be the date on which Buyer signs the loan documents. Under certain circumstances, a change to the Closing Disclosure late in the transaction could result in a delay in Closing to comply with the three business day rule. *Such a delay beyond the Closing Deadline could result in termination of the transaction unless Seller and Buyer mutually agree to extend it.*

27.3 NOTICE REGARDING TITLE INSURANCE COSTS: The manner in which TRID requires title insurance costs to be disclosed differs from the actual costs that may be charged to the parties under Oregon law. In such instances, at Closing, Escrow may issue a separate statement showing the actual costs for an owner's policy of title insurance and, where applicable, the lender's policy of title insurance. *Seller and Buyer are encouraged to discuss this with Escrow prior to Closing.*

COMMENT: *THESE TWO PROVISIONS ARE INFORMATIONAL ONLY. THEY WERE ADDED DUE TO THE NEW FEDERAL TILA-RESPA INTEGRATED DISCLOSURE RULES THAT WENT INTO EFFECT ON OCTOBER 3, 2015. SECTION 27.2 ADDRESSES THE ISSUANCE OF THE CLOSING DISCLOSURE ("CD") SUMMARIZING THE PARTIES' CLOSING COSTS AND NOTING THAT A MINIMUM 3-BUSINESS DAY PERIOD MUST ELAPSE FROM THE DATE OF ISSUANCE OF THE*

CD AND CLOSING. IT ALSO NOTES THAT TRID HAS SUBSTITUTED THE WORD "CONSUMMATION" FOR WHAT WE REGARD IN OREGON AS "CLOSING" OR "SETTLEMENT". TRID SAYS THAT CONSUMMATION IS NOT NECESSARILY THE SAME AS CLOSING – ALTHOUGH IT COULD BE. THE CFPB DEFINES "CONSUMMATION" AS THE TIME AT WHICH THE BORROWER BECOMES CONTRACTUALLY OBLIGATED UNDER THE LOAN. [QUERY: IF "CONSUMMATION" IS NOT THE SAME AS "CLOSING", WHY DID THE CFPB CALL THE DOCUMENT FORMERLY KNOWN AS THE "HUD-1", THE "CLOSING DISCLOSURE" RATHER THAN THE "CONSUMMATION DISCLOSURE"?]

PER, SEC. 10.2, OF CFPB'S TRID'S SMALL ENTITY COMPLIANCE GUIDE: "CREDITORS AND SETTLEMENT AGENTS SHOULD VERIFY THE APPLICABLE STATE LAWS TO DETERMINE WHEN CONSUMMATION WILL OCCUR, AND MAKE SURE DELIVERY OF THE CLOSING DISCLOSURE OCCURS AT LEAST THREE BUSINESS DAYS BEFORE THIS EVENT." OREGON DOES NOT DEFINE "CONSUMMATION" – AT LEAST AS A REAL ESTATE TERM - AND UNTIL IT DOES, THE TITLE AND ESCROW INDUSTRIES WILL HAVE TO DEVELOP THEIR OWN APPROACH. IF THE OREGON LEGISLATURE CREATES A DEFINITION, IT IS HOPED THAT "CONSUMMATION" WILL BE DEFINED AS WHEN THE LOAN IS FUNDED AND RECORDED (WHICH MAY BE LATER THAN WHEN THE BUYER SIGNS THE LOAN DOCUMENTS).

LASTLY, SECTION 27.3 OF THE SALE AGREEMENT ADDRESSES THE FACT THAT UNDER TRID, DISCLOSURE OF THE TITLE INSURANCE PREMIUM(S) IN THE CLOSING DISCLOSURE WILL LIKELY BE DIFFERENT THAN THE FIGURES APPEARING ON THE ORIGINAL LOAN ESTIMATE. THIS HAS TO DO WITH REGIONAL VARIATIONS IN RESIDENTIAL TITLE PRACTICES. AS A RESULT, OREGON ESCROWS WILL LIKELY PREPARE A SEPARATE STATEMENT FOR SELLER AND BUYER, SHOWING THE ACTUAL COSTS.

RESOURCES: [HTTP://BLOG.ALTA.ORG/2014/08/IS-CONSUMMATION-THE-SAME-AS-CLOSING-OR-SETTLEMENT.HTML](http://blog.alta.org/2014/08/is-consummation-the-same-as-closing-or-settlement.html)

[HTTP://WWW.CONSUMERFINANCE.GOV/EREGULATIONS/1026-38/2013-28210#1026-38-g-4](http://www.consumerfinance.gov/eregulations/1026-38/2013-28210#1026-38-g-4)

29. POSSESSION: Seller shall remove all personal property (including trash and debris) that is not a part of this transaction, and deliver possession of the Property to Buyer (*select one*):

- (1) by 5:00 p.m. on Closing;
- (2) by _____ a.m. p.m. _____ days after Closing;
- (3) by _____ a.m. p.m. on the _____ day of _____.

If a tenant(s) is currently in possession of the Property (*check one*): Buyer will accept tenant(s) at closing; Seller shall have full responsibility for removal of tenant(s) prior to closing.

30. SELLER POSSESSION BEFORE/AFTER CLOSING: In the event that Buyer and Seller agree that Seller will deliver possession before or after Closing, OREF-053 (Agreement to Occupy Before Closing) or OREF-054 (Agreement to Occupy After Closing) will be attached to this Sale Agreement.

COMMENT: THIS NEW TEXT DIRECTS THE PARTIES TO USE THE APPROPRIATE OREF FORM FOR PRE- AND POST-CLOSING POSSESSION ARRANGEMENTS. EFFORTS BY BROKERS TO SIMPLY DRAFT THEIR OWN TERMS USING THE "ADDITIONAL PROVISIONS" SECTION OF THE SALE AGREEMENT ARE DISCOURAGED, AS THERE ARE SIGNIFICANT DETAILS (E.G. INSURANCE, POSSIBLE DEPOSITS, AND PROVISIONS FOR HOLDOVER) THAT CAN GET OVERLOOKED.

DEFINITIONS/EXPLANATIONS

31. DEFINITIONS/INSTRUCTIONS: (1) All references in this Sale Agreement to "Licensee" and "Firm" shall refer to Buyer's and Seller's real estate agents licensed in the State of Oregon and the respective real estate companies with which they are affiliated.

(2) Time is of the essence of this Agreement.

(3) Written notices required or permitted under this Agreement to be delivered to Buyer or Seller may be delivered to their respective Licensee with the same effect as if delivered to that Buyer or Seller.

(4) Licensee(s) and Firm(s) identified in the Final Agency Acknowledgment Section above are not parties to this Agreement, except as may be expressly applicable.

(5) A "business day" shall mean Monday through Friday, except recognized legal holidays as enumerated in ORS 187.010 and 187.020.

(6) Unless Seller and Buyer expressly provide otherwise, the phrase "signed and accepted" in the printed text of this Sale Agreement, or any addendum or counteroffer, however designated (collectively, "the Agreement"), shall mean the date and time that either the Seller and/or Buyer has/have: (a) Signed their acceptance of the Agreement received from the other party, or their licensees, and (b) Transmitted it to the sending party, or their licensee, either by manual delivery ("Manual Delivery"), or by facsimile or electronic mail (collectively, "Electronic Transmission").

COMMENT: THIS IS NOT NEW TEXT. IT WAS IN THE 2015 SALE AGREEMENT. ALTHOUGH THE TEXT DID NOT CHANGE BASIC CONTRACT LAW, ITS APPEARANCE CREATED SOME CONFUSION AMONG BROKERS, SO THE PROVISION BEARS ATTENTION. IT APPLIES TO OFFERS AND COUNTEROFFERS; WHEN THEY ARE DEEMED TO HAVE BEEN MADE; AND WHEN THEY ARE DEEMED TO HAVE BEEN ACCEPTED. THESE RULES FOLLOW LONG-STANDING OREGON CONTRACT LAW.

THE FOLLOWING BASIC RULES OF OFFER AND ACCEPTANCE APPLY: (1) AN OFFER OR COUNTEROFFER IS DEEMED MADE WHEN IT IS SIGNED BY THE "OFFEROR" (I.E. THE PARTY MAKING THE OFFER OR COUNTEROFFER) AND TRANSMITTED (E.G. HAND DELIVERY, SENDING BY ELECTRONIC MAIL) TO THE OTHER PARTY; (2) AN OFFER OR COUNTEROFFER IS DEEMED ACCEPTED WHEN IT IS SIGNED BY THE "OFFEREE" (I.E. THE PARTY RECEIVING THE OFFER OR COUNTEROFFER); (3) AN OFFER OR COUNTEROFFER MAY BE WITHDRAWN BY THE OFFEROR ANY TIME BEFORE ACCEPTANCE BY THE OFFEREE; AND (4) ONCE ACCEPTANCE OCCURS (I.E. BY SIGNATURE BY OFFEREE AND TRANSMISSION BACK TO THE OFFEROR) IT DESTROYS THE OFFEROR'S ABILITY TO WITHDRAW THE OFFER.

RESOURCES: <HTTPS://WWW.GOOGLE.COM/SEARCH?Q=HTTP://Q-LAW.COM/QUERIN-LAW-OFFERS-COUNTEROFFERS-REVOCATIONS/>

(7) The sending of a signed acceptance of the Agreement via Electronic Transmission from one party, or their licensee, to the other party, or their licensee, shall have the same effect as Manual Delivery of the signed original. If the parties intend to use any other method for transmitting a signed offer or acceptance of the Agreement (such as regular mail, certified mail, or overnight delivery), they should so specify at Section 20 (Additional Provisions) of this Sale Agreement.

COMMENT: WITH ELECTRONIC DELIVERY BEING USED SO FREQUENTLY, OREF FELT IT IMPORTANT TO CLARIFY THAT SUCH TRANSMISSION WOULD HAVE THE SAME EFFECT AS IF THE DOCUMENT WAS HAND DELIVERED. (I.E. HITTING "SEND" ON THE COMPUTER OR FACSIMILE MACHINE IS CONTRACTUALLY THE SAME AS MANUALLY DELIVERING THE SIGNED DOCUMENT). WE HAVE ADDED THAT IF SOMEONE DID NOT WANT TO RELY UPON DELIVERY BY ELECTRONIC MEANS, AND INTENDED TO USE THE POSTAL SYSTEM, THEY SHOULD SPECIFICALLY STATE SO AT SECTION 20 (ADDITIONAL PROVISIONS) OF THE SALE AGREEMENT.

(8) Time calculated in days after the date Buyer and Seller have signed and accepted this Agreement shall start on the first full business day after the date they have signed and accepted it.

(9) This Agreement is binding upon the heirs, personal representatives, successors and assigns of Buyer and Seller. However, Buyer's rights under this Agreement or in the Property are not assignable without prior written consent of Seller.

(10) This Agreement may be signed in multiple legible counterparts with the same legal effect as if all parties signed the same document.

(11) Excepting only the Lead-Based Paint Contingency Period identified in Section 11, unless a different time is specified in the Agreement, all deadlines for performance, however designated, that are measured in business or calendar days, shall terminate as of 5:00 p.m. on the last day of that deadline, however designated.

COMMENT: AGAIN, THIS IS NOT A NEW PROVISION. IT WAS IMPLEMENTED IN 2015, AND ELIMINATES THE NEED TO WAIT UNTIL MIDNIGHT TO FIND OUT IF AN OFFER WAS GOING TO BE ACCEPTED, REJECTED, OR COUNTERED. MOST PEOPLE LIKE IT, BUT SOME DON'T. FOR BROKERS OR THEIR CLIENTS WHO ARE NIGHT OWLS, AND PREFER THE LATER DEADLINE, IT SHOULD BE SO STATED BY AN ADDENDUM OR IN AT SECTION 20 (ADDITIONAL PROVISIONS) OF THE SALE AGREEMENT. CAUTION: WE'RE TALKING ABOUT PACIFIC TIME, SO IF NEGOTIATIONS ARE ACROSS THE COUNTRY, OR OUTSIDE THE U.S., PARTIES AND BROKERS SHOULD MAKE SURE EVERYONE IS WATCHING THE SAME CLOCK.

DISPUTE RESOLUTION

36. FILING OF CLAIMS: All claims, controversies and disputes between Seller, Buyer, Licensees, and/or Firms, arising under this Sale Agreement, including those for rescission (hereinafter collectively referred to as "Claims"), shall be exclusively resolved in accordance with the procedures set forth herein, which shall survive Closing or earlier termination of this transaction. All Claims shall be governed exclusively by Oregon law, and venue shall be placed in the county where the real property is situated. Filing a Claim for arbitration shall be treated the same as filing in court for purposes of meeting any applicable statutes of limitation or statute of ultimate repose, and for purposes of filing a *lis pendens*. BY CONSENTING TO THE PROVISIONS HEREIN, BUYER AND SELLER ACKNOWLEDGE THAT THEY ARE GIVING UP THE CONSTITUTIONAL RIGHT TO HAVE THE CLAIM TRIED BY A JUDGE OR JURY IN STATE OR FEDERAL COURT.

37.1. EXCLUSIONS: The following shall not constitute Claims: (1) Any proceeding to enforce or interpret a mortgage, trust deed, land sale contract or recorded construction lien; (2) A forcible entry and detainer action (eviction); (3) If the matter is exclusively between REALTORS® and is otherwise required to be resolved under the Professional Standards Ethics and Arbitration provisions of the National Association of REALTORS®; (4) If the matter relates to a commission or fee with a Licensee or Firm, and the written listing, service or fee agreement with Buyer or Seller contains a mandatory mediation and/or arbitration provision; and (5) Filing in court for the issuance of provisional process described under the Oregon Rules of Civil Procedure, provided, however, such filing shall not constitute a waiver of the right or duty to utilize the dispute resolution procedures described herein for the adjudication of any Claims.

37.2. SMALL CLAIMS BETWEEN BUYER AND SELLER: All Claims between Buyer and Seller that are within the jurisdiction of the Small Claims Court of the county in which the property is located, shall be brought and decided there, in lieu of mediation, arbitration or litigation in any other forum. Notwithstanding ORS 46.455(3), neither Buyer nor Seller shall have a right to request a jury trial and so remove the matter from the Small Claims Department of the Circuit Court. A judgment in Small Claims Court is final and binding and there is no right of appeal.

37.3. MEDIATION AND ARBITRATION BETWEEN BUYER AND SELLER: If Buyer and/or Seller's Licensee is a member of the National Association of REALTORS®, all Claims shall be submitted to mediation in accordance with the procedures of the Home Seller/Home Buyer Dispute Resolution System of the National Association of REALTORS® ("the System"). If a Licensee is not a member of the National Association of REALTORS®, or the System is not available through the Licensee's Realtor® organization, then all Claims shall be submitted to mediation through the program administered by Arbitration Service of Portland ("ASP"). All Claims that have not been resolved by mediation as described herein shall be submitted to final and binding arbitration in accordance the then-existing rules of ASP. The prevailing party in any arbitration between Buyer and Seller shall be entitled to recovery of all reasonable attorney fees, filing fees, costs, disbursements, and mediator and arbitrator fees. Provided, however, a prevailing party shall not be entitled to any award of attorney fees unless it is first established to the satisfaction of the arbitrator(s) (or judge, if applicable) that the prevailing party offered or agreed in writing to participate in mediation prior to, or promptly upon, the filing for arbitration.

37.4. MEDIATION AND ARBITRATION INVOLVING LICENSEES/FIRMS: All Claims that include Licensees or Firms shall be resolved through the arbitration process described in Section 37.3 above. However, participation in mediation by said Licensees or Firms shall be voluntarily and not mandatory, and no attorney fees shall be awarded to either party in arbitration. If a Licensee or Firm is also a Buyer or Seller in this transaction, the provisions of Sections 36-37 shall apply.

COMMENT: THIS REVISED TEXT DOES NOT CHANGE THE DISPUTE RESOLUTION PROCESS FROM PRIOR YEARS, BUT SIMPLY CONDENSES IT INTO A SINGLE SECTION, RATHER THAN HAVING TWO SEPARATE SECTION FOR CLAIMS BETWEEN PARTIES AND CLAIMS AGAINST BROKERS/FIRMS.

SIGNATURE INSTRUCTIONS

38. AGREEMENT TO PURCHASE: Buyer agrees to purchase the Property upon the terms and conditions set forth in this Agreement. Buyer acknowledges receipt of a completely filled in copy of this Agreement which Buyer has fully read and understands. Buyer acknowledges that Buyer has not relied upon any oral or written statements made by Seller or any Licensee that are not expressly contained in this Agreement. Neither Seller nor any Licensee(s) warrant the square footage of any structure or the size of any land being purchased. If square footage or land size is a material consideration, all structures and land should be measured by Buyer prior to signing or should be made an express contingency in this Agreement.

Deed or contract shall be prepared in the name of _____.

This offer shall automatically expire on (insert date) _____, _____ at _____ a.m. p.m., (the Offer Deadline), if not accepted by that time. **Buyer may withdraw this offer before the Offer Deadline any time prior to Seller's transmission of signed acceptance. If Seller accepts this offer after the Offer Deadline, it shall not be binding upon Buyer unless accepted by Buyer in writing within _____ business days (two [2] if not filled in) after the date of Seller's acceptance by so indicating at Section 41.** This offer may be accepted by Seller only in writing.

COMMENT: THIS TEXT CAUSED SOME CONFUSION LAST YEAR, DUE LARGELY TO THE ADDITION OF NEW LANGUAGE AT SECTION 41 BELOW. THE TEXT IN GREY PERMITS THE SELLER TO SIGN AND ACCEPT AN OFFER EVEN AFTER THE OFFER DEADLINE SET BY THE BUYER HAS EXPIRED. HOWEVER, AS IS MADE CLEAR AT SECTION 41, BELOW, THE BUYER MUST EXPRESSLY AGREE TO "ACCEPT" THE SELLER'S LATE ACCEPTANCE, BY SIGNING THE SALE AGREEMENT AND TRANSMITTING IT BACK TO THE SELLER.

Buyer _____ Date _____, _____ a.m. _____ p.m. ←
Buyer _____ Date _____, _____ a.m. _____ p.m. ←
Address _____ Zip _____
Phone Home _____ Work _____ E-mail _____ Fax _____

This offer was submitted to Seller for signature on the ____ day of _____, _____, at _____ a.m. _____ p.m.
By _____ (Licensee(s) presenting offer).

39. AGREEMENT TO SELL / ACKNOWLEDGEMENTS / DISPOSITION OF EARNEST MONEY: Seller accepts Buyer's offer. Seller acknowledges receipt of a completely filled-in copy of this Agreement, which Seller has fully read and understands. Seller acknowledges that Seller has not relied upon any oral or written statements of Buyer or of any Licensee(s) that are not expressly contained in this Agreement. Seller instructs that all earnest money distributable to Seller pursuant to Section 26 shall be disbursed as follows after deduction of any title insurance and Escrow cancellation charges: (check one) First to Listing Firm to the extent of the agreed commission just as if the transaction had been Closed, with residue to Seller, or _____.

Seller _____ Date _____, _____ a.m. _____ p.m. ←
Seller _____ Date _____, _____ a.m. _____ p.m. ←
Address _____ Zip _____
Phone Home _____ Work _____ E-mail _____ Fax _____

40. REJECTION/COUNTER OFFER: SELECT ONE: Seller does not accept the above offer, but makes the attached counter offer.
 Seller rejects Buyer's offer.

Seller _____ Date _____, _____ a.m. _____ p.m. ←

Seller _____ Date _____, _____ a.m. _____ p.m. ←

Address _____ Zip _____

Phone Home _____ Work _____ E-mail _____ Fax _____

41. BUYER'S ACKNOWLEDGMENT: Buyer acknowledges receipt of a copy of Seller's written response to this Agreement. If Seller's response is an acceptance of Buyer's offer that occurred after the Offer Deadline identified at Section 38, Buyer (select only one) agrees does not agree, to be bound thereby. (The failure to check either box shall constitute rejection of Seller's acceptance after the Offer Deadline.) If Buyer checks the box agreeing to be bound by Seller's late acceptance occurring after the Offer Deadline, this Sale Agreement shall become binding on all parties only when Buyer(s) has/have signed below and transmitted it to Seller or Seller's Licensee.

Buyer _____ Date _____, _____ a.m. _____ p.m. ←

Buyer _____ Date _____, _____ a.m. _____ p.m. ←

If Buyer(s) has/have checked the box and signed where indicated in this Section 41, agreeing to be bound by Seller's late acceptance of Buyer's offer, Buyer or Buyer's Licensee must complete the information below and thereafter promptly transmit this completed Agreement to Seller or Seller's Licensee:

COMMENT: THE TEXT IN YELLOW IMMEDIATELY ABOVE AND BELOW THE BUYER SIGNATURE LINES IS INTENDED TO ADD CLARITY ABOUT WHAT MUST OCCUR BEFORE THE SELLER'S LATE ACCEPTANCE BECOMES BINDING ON THE PARTIES. THE TEXT IN GREY WAS FROM 2015, AND HOPEFULLY THE NEW TEXT FOR 2016 ABOVE, WILL MAKE THE PROCESS CLEARER FOR USERS.

Enter Date, Time, and Method of Transmission of Seller's Acceptance: _____;

Enter Identity of Sender: _____

NO CHANGES OR ALTERATIONS ARE PERMITTED TO ANY PORTION OF THE PRE-PRINTED FORMAT OR TEXT OF THIS FORM. ANY SUCH PROPOSED CHANGES OR ALTERATIONS SHOULD BE MADE ON A SEPARATE DOCUMENT. CHANGES BY SELLER OR LISTING LICENSEE TO THE TERMS OR PROVISIONS ABOVE BUYER'S SIGNATURE SHOULD ALSO BE ON A SEPARATE DOCUMENT.

2. FIRPTA Addendum - OREF No. 093

Buyer(s) _____
Seller(s) _____
Property Address _____

COMMENT: THIS IS AN ENTIRELY NEW FORM. IT ADDRESSES ALL OF THE VARIOUS SCENARIOS THAT CAN ARISE UNDER FIRPTA.

1. Seller Is A Foreign Person Exempt From FIRPTA Withholding Requirement. If Seller is a "foreign person" as defined at Section 27.2 of the Sale Agreement, but is exempt from the Withholding Requirement because: (a) The sale price of the Property is not more than \$300,000; and, (b) The Property will be occupied as a residence by Buyer who is an individual (or a member of his/her family) for at least 50% of the number of days (excluding days the property is vacant) it is used by any person during each of the first two 12-month periods following the date of Closing. In such case, upon written request of Seller, Buyer agrees to sign a declaration of such intent ("Declaration") on or before the Closing Date. **If, for any reason, following Seller's said written request to sign the Declaration, Buyer fails to do so by or before the Closing Date, Seller may terminate this transaction and retain all Deposits paid or agreed to be paid by Buyer.**

COMMENT: FIRPTA EXEMPTS FOREIGN PERSONS FROM THE WITHHOLDING REQUIREMENT IF THEY PURCHASE THE PROPERTY FOR OCCUPANCY AND THE SALE PRICE IS NOT MORE THAN \$300,000. IF APPLICABLE, BUYER AGREES TO DECLARE THIS INTENT IN WRITING SO SELLER MAY RETAIN IN FILES. THIS PROTECTS SELLER IF BUYER CHANGES USE.

2. Seller Is A Foreign Person Not Exempt From FIRPTA Withholding Requirement. If Seller is a "foreign person" as defined at Section 27.2 of the Sale Agreement, and this transaction is not exempt from the Withholding Requirement, Buyer and Seller agree to execute and deliver any instrument, affidavit, statement, or instruction, reasonably requested by the Escrow, in order that it may withhold and transmit the required funds, and to otherwise comply with applicable federal law.

COMMENT: IF SELLER IS A NON-EXEMPT FOREIGN PERSON, SELLER AGREES TO COOPERATE WITH ESCROW IN THE WITHHOLDING AND TRANSMITTING OF FUNDS TO THE IRS.

3. Seller Is Not A Foreign Person. If Seller declares that Seller is not a "foreign person" as defined at Section 27.2 of the Sale Agreement, but does not currently hold a taxpayer identification number, social security number, or employer identification number, Seller agrees to cooperate with Buyer as follows:

- a) By each Seller signing a Certificate of Non-Foreign Status ("Certificate") in a form compliant with current federal regulations; and
- b) By providing a true copy of the completed Certificate signed by each Seller, to Buyer or Buyer's licensee within ___ business days (three (3) if not filled in) after the date Seller and Buyer have signed and accepted this Agreement ("the Certification Period"); and
- c) Thereafter delivering the original Certificate to Escrow not less than ___ business days (seven (7) if not filled in) before the Closing Date ("the Delivery Period").

In the event Seller fails for any reason to deliver a true copy of the Certificate to Buyer or Buyer's licensee within the Certification Period, Buyer shall have the right within ___ business days (two (2) if not filled in) after expiration of the Certification Period, to give written notice to Seller or Seller's licensee, terminating this transaction, and obtain a refund of all Deposits paid to Escrow.

In the event Seller fails for any reason to deliver the original Certificate to Escrow before the end of the Delivery Period, Buyer shall have the right to give written notice to Seller or Seller's licensee, terminating this transaction, and obtain a refund of all Deposits paid to Escrow.

COMMENT: THIS SECTION 3 ADDRESSES THE SCENARIO WHERE SELLER CLAIMS NOT TO BE A FOREIGN PERSON, BUT DOES NOT HAVE THE CUSTOMARY DOCUMENTATION (I.E. TAXPAYER IDENTIFICATION NUMBER, SOCIAL SECURITY NUMBER, OR EMPLOYER IDENTIFICATION NUMBER). THIS PROVISION REQUIRES THE SELLER(S) TO SIGN A CERTIFICATE OF NON-FOREIGN STATUS, AND DELIVER THE ORIGINAL TO ESCROW AND A COPY TO THE BUYER WITHIN SPECIFIED TIME FRAMES. IF THE SELLER FAILS TO COMPLY, THE BUYER MAY WITHDRAW FROM THE TRANSACTION.

4. Retention of Certificate. If Seller has timely delivered a true copy of the Certificate to Buyer or Buyer's Licensee, and delivered the original thereof to Escrow, as required above, the original Certificate shall be either:

- a) Retained by Escrow, acting as a Qualified Substitute as defined by law, if permitted by its company policy, or
- b) Delivered by Escrow to Buyer, or Buyer's designee, to be retained for at least five (5) years following the Closing Date.

COMMENT: THIS PROVISION ADDRESSES WHO WILL HOLD THE ORIGINAL CERTIFICATE OF NON-FOREIGN STATUS AFTER CLOSING.

5. Seller and Buyer Acknowledgments. (a) Seller acknowledges that the Certificate requires Seller to disclose their taxpayer identification number, social security number, or employer identification number (collectively "Number") whichever is applicable; (b) Buyer acknowledges that the Number is absolutely confidential, and warrants that Buyer will not disclose it to any third parties, excepting only to Buyer's tax preparer, if necessary, and if required under subpoena or court order; and, (c) Seller and Buyer understand that their Licensees are not experts in the FIRPTA law, and are encouraged to consult with their own legal or tax counsel well in advance of Closing, regarding their rights, duties, liabilities, and obligations under said law.

COMMENT: ONE OF THE CONCERNS INVOLVING FIRPTA IS THAT OF CONFIDENTIALITY OF THE SELLER'S INFORMATION THAT MUST BE INSERTED INTO THE CERTIFICATE OF NON-FOREIGN STATUS. IT IS FOR THIS REASON THAT SOME TITLE COMPANIES DECLINE TO ACT AS THE QUALIFIED SUBSTITUTE (SEE SEC. 4(a), ABOVE). ACCORDINGLY, BUYER AGREES TO KEEP SELLER'S INFORMATION CONFIDENTIAL.

RESOURCES: [HTTPS://WWW.IRS.GOV/INDIVIDUALS/INTERNATIONAL-TAXPAYERS/FIRPTA-WITHHOLDING](https://www.irs.gov/individuals/international-taxpayers/firpta-withholding)
[HTTPS://WWW.IRS.GOV/INDIVIDUALS/INTERNATIONAL-TAXPAYERS/EXCEPTIONS-FROM-FIRPTA-WITHHOLDING](https://www.irs.gov/individuals/international-taxpayers/exceptions-from-firpta-withholding)

Buyer Signature _____	Date _____, _____	a.m.	_____	p.m.	←
Buyer Signature _____	Date _____, _____	a.m.	_____	p.m.	←
Selling Licensee _____	Selling Firm _____				

Seller Signature _____	Date _____, _____	a.m.	_____	p.m.	←
Seller Signature _____	Date _____, _____	a.m.	_____	p.m.	←
Listing Licensee _____	Listing Firm _____				

SUMMARY OF OREF SELLER-CARRIED FORMS

[Note: The forms are summarized below. They can be reviewed at <http://orefonline.com/>]

THE FOLLOWING SUMMARY ADDRESSES SIX NEW FORMS CREATED BY OREF FOR USE BY OREGON LICENSEES WHEN ENGAGED IN CERTAIN RESIDENTIAL REAL ESTATE TRANSACTIONS WHERE THE SELLER IS "CARRYING BACK PAPER" I.E. HOLDING LEGAL DOCUMENTS DESIGNED TO SECURE REPAYMENT OF THE REMAINDER OF THE SALE PRICE. IN THESE TRANSACTIONS, BUYER'S SOURCE OF FUNDING IS NOT FROM A THIRD-PARTY LENDER, SUCH AS A BANK. INSTEAD BUYER COMMITS TO REPAY THE SELLER OVER A PERIOD OF TIME. REPAYMENT OF THE INDEBTEDNESS IS SECURED BY EITHER A DEED OF TRUST (OREF No. 034) AND PROMISSORY NOTE (OREF No. 035), OR A CONTRACT OF SALE (OREF No. 036). THE DEED OF TRUST IS RECORDED IN THE COUNTY WHERE THE PROPERTY IS LOCATED, AS IS A MEMORANDUM OF CONTRACT (OREF No. 037) WHEN A CONTRACT OF SALE IS THE SECURITY DOCUMENT USED BY THE PARTIES. WHAT FOLLOWS IS A SUMMARY OF EACH OF THESE NEW FORMS.

3. ADVISORY REGARDING SELLER-CARRIED TRANSACTIONS ("ADVISORY") – OREF No. 032

This form is informational only for seller and buyer. It should be given to both parties when the transaction is first being discussed. The purpose of the document is to familiarize the parties to the nature of the transaction - so Realtors® do not have to be placed in the position of "advising" clients about the legalities of seller-carried transactions. However, if the Advisory causes a seller or buyer to have technical questions regarding finance or law, he or she should be encouraged to seek professional assistance.

COMMENT: *AS WITH ALL OF THESE FORMS, REALTORS® SHOULD BE CAREFUL ABOUT ANSWERING TECHNICAL QUESTIONS AT ANY STAGE OF THE TRANSACTION. IT IS BEST TO ENCOURAGE CLIENTS TO CONSULT AN EXPERT IF THEY HAVE QUESTIONS ABOUT THE FINANCIAL OR LEGAL NATURE OF THE TRANSACTION, OR THE MEANING OF FINANCIAL OR LEGAL TERMS. THE LAW GENERALLY HOLDS NON-EXPERTS TO THE SAME STANDARDS AS EXPERTS, WHERE THE INFORMATION IS GRATUITOUSLY PROFFERED BY A NON-EXPERT TO A CLIENT WHO RELIES UPON IT TO THEIR DETRIMENT.*

THIS IS NOT TO SAY REALTORS® CANNOT, OR SHOULD NOT, BE SOURCES FOR CERTAIN BASIC INFORMATION, SUCH AS CURRENT INTEREST RATES, AMORTIZATION TABLES, AND OTHER RELIABLE DATA THAT CAN BE EASILY SOURCED. THE FEAR OF ENGAGING IN THE "UNLAWFUL PRACTICE OF LAW" IS FREQUENTLY OVERBLOWN. ALMOST ALL INFORMATION INVOLVING REAL ESTATE TRANSACTIONS HAS A LEGAL OR FINANCIAL COMPONENT. WHAT LICENSEES NEED TO AVOID IS OFFERING OPINIONS ABOUT THE TRANSACTION, SUCH AS WHICH SECURITY DOCUMENT SHOULD BE USED, A TRUST DEED OR CONTRACT OF SALE, OR THE ADVANTAGES/DISADVANTAGES OF AN ADJUSTABLE INTEREST RATE.

ACTING AS A SCRIVENER BY INSERTING CLIENT-REQUESTED TERMS OR PROVISIONS IN THE TRANSACTIONAL DOCUMENTS THAT HAVE BEEN PROVIDED BY A SELLER OR BUYER, IS NOT THE "UNLAWFUL PRACTICE OF LAW."

WHERE REALTORS® GET INTO TROUBLE, AND WHAT THEY SHOULD AVOID, IS "ADVISING" CLIENTS ABOUT WHICH TERMS TO USE OR NOT USE. IF A DECISION REQUIRES THE EXERCISE OF DISCRETION BY A SELLER OR BUYER, IT IS SOMETHING THEIR BROKER SHOULD ENCOURAGE THEM TO DO WITH THE ASSISTANCE OF EXPERTS. REALTORS® CAN AND SHOULD BE INFORMATION SOURCES FOR THEIR CLIENTS, BUT SHOULD NOT BE DECISION-MAKING SOURCES. IN SUCH INSTANCES, THE CLIENT SHOULD BE ENCOURAGED TO SECURE INDEPENDENT PROFESSIONAL HELP FROM AN EXPERT QUALIFIED IN THE AREA FOR WHICH THE DECISION IS SOUGHT.

RESOURCE: *A COPY OF THE ADVISORY CAN BE FOUND AT THE OREFONLINE LINK HERE: <http://orefonline.com/forms/form-changes/>*

4. ADDENDUM FOR SELLER-CARRIED TRANSACTIONS ("Addendum") – OREF No. 033

INSTRUCTIONS FOR USE: *THIS FORM IS LIMITED FOR USE WHERE THE SELLER IS CARRYING BACK SOME, OR ALL, OF THE FINANCING FOR THE PURCHASE OF A ONE-TO-FOUR-FAMILY DWELLING WHICH WILL BE OCCUPIED BY THE BUYER, OR AN IMMEDIATE MEMBER OF THE BUYER'S FAMILY. HOWEVER, IF THE TRANSACTION IS FOR THE ACQUISITION OF RAW LAND THAT IS PURCHASED FOR THE DEVELOPMENT OF ONE-TO-FOUR-FAMILY DWELLINGS, THE ADDENDUM SHOULD ALSO BE USED.*

SINCE THE FORM IS AN "ADDENDUM", IT SHOULD BE USED IN CONJUNCTION WITH THE SALE AGREEMENT. [SEE, SECTION 7, OF THE SALE AGREEMENT.] THE ADDENDUM ONLY FOCUSES ON THE "CARRY-BACK" NATURE OF THE TRANSACTION, I.E. THE FINANCIAL AND REPAYMENT TERMS AGREED TO BY SELLER AND BUYER. FOR THE OTHER TRANSACTIONAL TERMS, SUCH AS MARKETABLE TITLE, INSPECTION CONTINGENCY, LEAD-BASED PAINT, DATES OF CLOSING AND POSSESSION, ETC., THE SALE AGREEMENT STILL APPLIES, AND SHOULD BE COMPLETED ACCORDINGLY. THE ADDENDUM SHOULD ONLY BE USED IN THE FOLLOWING CIRCUMSTANCES:

(a) WHEN THE SELLER CERTIFIES THAT THE PROVISION OF SECTIONS 3 AND 4 (BELOW), ARE MET. [IN ALL OTHER CASES, REALTORS® SHOULD ENCOURAGE THE PARTIES TO CONTACT A LICENSED MORTGAGE LOAN ORIGINATOR (“MLO” - I.E. A MORTGAGE LENDER OR MORTGAGE BANKER), OR SOMEONE EXEMPTED FROM THE MLO LICENSING REQUIREMENTS; SEE ORS 86A.203(2)] AND

(b) WHEN THE SELLER WILL BE TAKING BACK EITHER A DEED OF TRUST (WITH A PROMISSORY NOTE) OR A CONTRACT OF SALE (WITH A MEMORANDUM OF CONTRACT), WHICH WILL BE RECORDED IN A “FIRST POSITION” ON THE PROPERTY – I.E. THE SELLER WILL HAVE A “FIRST LIEN” SECURING REPAYMENT OF THE BUYER’S INDEBTEDNESS, AND WILL NOT BE SUBORDINATE BEHIND A PREVIOUSLY RECORDED SECURITY INTEREST.¹

COMMENT: THE ADDENDUM SHOULD NOT BE USED IN THE FOLLOWING CIRCUMSTANCES: (I) THE SELLER ALREADY HAS A FIRST LIEN ON THE PROPERTY WHICH WILL NOT BE PAID OFF AT CLOSING OF THE CURRENT TRANSACTION; (II) WHEN THE BUYER WILL BE OBTAINING A THIRD-PARTY PURCHASE MONEY LOAN THAT WILL BE RECORDED AHEAD OF THE SELLER’S CARRY-BACK LIEN; OR (III) WHERE THE TERMS OF THE TRANSACTION WILL INCLUDE CERTAIN PROVISIONS THAT HAVE BEEN DEEMED “RISKY” BY REGULATORY STANDARDS, SUCH AS NEGATIVE AMORTIZATIONS AND “HIGH-COST” LOANS (THE LATTER OF WHICH IS DEFINED IN THE ADVISORY REGARDING SELLER-CARRIED TRANSACTIONS, DESCRIBED ABOVE. THE CIRCUMSTANCES DESCRIBED AT (I), (II), AND (III) ABOVE CAN BE VERY COMPLEX AND CREATE ADDITIONAL RISK TO BOTH BUYER AND SELLER. IN THESE SITUATIONS, REALTORS® SHOULD ENCOURAGE THEIR CLIENTS TO OBTAIN SEPARATE LEGAL COUNSEL.

Because the Addendum is an entirely new form and deals with a type of financing that has recently come under state and federal regulation, we have set out the text of the form below in its entirety, with notes and comments in red.

ADDENDUM FOR SELLER-CARRIED TRANSACTIONS [Annotated]

[If this will be a Seller-Carried Transaction, as defined below, this Addendum, or one agreed upon by the parties, or their attorneys, should be used as an Addendum to the OREF Real Estate Sale Agreement.]

PURPOSE: DEFINES A SELLER-CARRIED TRANSACTION.

A “Seller-Carried Transaction” is a transaction for the sale of a one-to-four family residential dwelling where the Seller at closing:

- (a) Takes back a promissory note and trust deed, or land sale contract for some or all of the purchase price;
- (b) Enters into an option or rent-to-own transaction in which the financial terms have been negotiated between Seller and Buyer; or
- (c) Enters into any similar arrangement, however designated, in which Buyer agrees to pay Seller some, or all, of the purchase price over time, and the property serves as security for repayment of that debt. Seller and Buyer confirm that this transaction is intended to become a Seller-Carried Transaction in accordance with the following terms, covenants and conditions.

PURPOSE OF SECTION 1 BELOW: RISK MANAGEMENT – PARTIES ACKNOWLEDGE THAT REALTORS® ARE NOT EXPERTS.

1. Real Estate Licensees. Seller and Buyer understand and acknowledge that:

- (a) Their respective real estate licensees are not experts in real estate finance or law;
- (b) They have not permitted, instructed, or authorized said licensees to advertise, offer or negotiate any of the financial terms of this Seller-Carried Transaction, except in their representative capacity as real estate agents acting upon the express instructions and directions of Seller and/or Buyer, as principals in this transaction;
- (c) While real estate licensees may be qualified in providing basic information regarding current interest rates and amortization terms, etc., they are not permitted to advise or recommend financial terms specific to this transaction;
- (d) Seller and Buyer are responsible for securing assistance from their own third-party professionals and/or experts regarding all legal and financial terms of this transaction; and
- (e) Acting solely as scribes, said licensees are only authorized to reduce the financial and legal terms of this transaction provided by Seller or Buyer to written or electronic form and transmit the same to the other party’s licensee, or other authorized third party.

PURPOSE OF SECTION 2 BELOW: RISK MANAGEMENT - BUYER AND SELLER CONFIRM READING THE SELLER-CARRY ADVISORY.

2. Advisory Regarding Seller Carried Transactions. Seller and Buyer acknowledge reading the Advisory Regarding Seller-Carried Transactions (“Advisory”), and confirm that they understand that unless exempted, Oregon and federal law requires that offering or negotiating financial terms in this transaction must be conducted by a licensed mortgage loan originator (“MLO”) such as a mortgage broker or mortgage banker.

PURPOSE OF SECTION 3 BELOW: TO VERIFY THAT SELLER IS EXEMPTED UNDER FEDERAL TRUTH-IN-LENDING-ACT (“TILA”) REQUIREMENTS. THIS IS VERY IMPORTANT; IF SELLER IS EXEMPT FROM THE FEDERAL TILA REQUIREMENTS, THIS MEANS THAT ONLY THE OREGON LAW WILL APPLY, WHICH CONTAIN MLO EXEMPTIONS THAT ARE MORE GENEROUS THAN THE FEDERAL RULES.

3. Seller Certifications. If this transaction involves the sale of a one-to-four family dwelling, in order to use this Addendum, all conditions enumerated at (a), (b), and (c) below must be met. If the conditions are not all met, Seller should not use this Addendum, and instead secure the assistance of a MLO, attorney, or other expert qualified under ORS 86A.203 in completing this transaction.

- (a) During the preceding calendar year, Seller did not enter into more than five (5) Seller-Carried Transactions involving the sale of a one-to-four family dwelling intended to be occupied by a buyer for residential purposes;

¹ Both the Deed of Trust and Contract of Sale prohibit any other liens on the secured property, either ahead or behind, the seller's first lien.

COMMENT: IF THE CONDITIONS ARE SATISFIED, THIS PROVISION CONFIRMS THAT THE SELLER IS NOT A "CREDITOR" UNDER TILA SINCE HE/SHE DID NOT HAVE MORE THAN FIVE (5) SUCH TRANSACTIONS IN THE PRECEDING CALENDAR YEAR. IF SELLER IS NOT A "CREDITOR", THEN ONLY THE OREGON MLO EXEMPTIONS APPLY, AND NOT THOSE CONTAINED IN THE FEDERAL TILA.

RESOURCES: <http://www.consumerfinance.gov/eregulations/1026-2/2013-07066>; SEE, ALSO FOOTNOTE #1 IN DECISION FLOW CHART AT END OF THIS SUMMARY.

(b) During the preceding 12 months, Seller did not enter into more than one (1) Seller-Carried Transaction that involved terms making it a "high-cost mortgage" as defined in the Advisory;

COMMENT: A "HIGH COST MORTGAGE" AUTOMATICALLY TRIGGERS THE FEDERAL TILA RULES; SEE SELLER CARRY ADVISORY, WHICH DEFINES A "HIGH COST MORTGAGE".

RESOURCES: <http://www.consumerfinance.gov/regulations/high-cost-mortgage-and-homeownership-counseling-amendments-to-regulation-z-and-homeownership-counseling-amendments-to-regulation-x/>

(c) During the preceding 12 months, Seller did not enter into a Seller-Carried Transaction using the services of a MLO, as defined in the Advisory.

COMMENT: IRONICALLY, HAVING USED A MLO IN THE PRECEDING 12 MONTHS REQUIRES A SELLER TO EITHER: (A) USE A MLO AGAIN; (B) USE A PERSON EXEMPTED UNDER THE LAW; OR (C) HAVE THEIR OWN MLO LICENSE.

***[Note: If Seller did not meet the above numerical standards in the preceding calendar year, they shall be applied to the current calendar year.]**

➤ Seller certifies that Seller has read and understands this Section 3, and that the statements contained in (a), (b) and (c) above, are ALL true and correct: Seller Initials: _____

COMMENT: THIS PROVISION IS FOR RISK MANAGEMENT PURPOSES.

PURPOSE OF SECTION 4 BELOW: TO VERIFY THAT SELLER IS EXEMPTED UNDER OREGON LAW, FROM STATE MLO LICENSING REQUIREMENTS.

4. Seller Exemption under ORS 86A.203. In order for Seller to use this Addendum without the assistance of a MLO, attorney, or other expert qualified under ORS 86A.203,

Seller must be a natural person, estate or trust, and

The statements contained in the selected box at (a), (b) or (c) below must be true and correct. If none of the statements at (a), (b) or (c) below apply to the Property being sold to Buyer in this transaction, Seller should secure the assistance of a MLO, attorney, or other expert qualified under ORS 86A.203 in completing this transaction. **This Addendum should not be used for this transaction if no boxes have been selected below.** Seller represents to Buyer and all licensees, that the Property **[select only one]:**

(a) Is a dwelling that is, or was at one time, Seller's primary residence; or

(b) Is a dwelling for which Seller has authorized _____ ("Authorized Party") to offer or negotiate the terms of this transaction, with Seller, or on Seller's behalf, because Seller and the Authorized Party are related as either spouse, child, sibling, parent, grandparent, grandchild, or a relative in a similar relationship that is created by law, marriage or adoption; or

(c) Is a dwelling that Seller owns as a rental, a second home, or a vacation home; **and (i)** This Seller-Carried Transaction is not more than the third (3rd) such transaction Seller has engaged in during the prior twelve (12) months; **and (ii)** The Property did not at any time serve as Seller's primary residence; **and (iii)** This Seller-Carried Transaction is not more than the eighth (8th) such transaction for which Seller is carrying the financing as a current receivable.

➤ Seller certifies that Seller has read and understands this Section 4, and that the statement(s) set forth in the above-selected box (if applicable) is/are true and correct;
Seller Initials: _____

COMMENT: THE EFFECT OF SATISFYING SECTIONS 3 AND 4, ABOVE, MEANS THAT A SELLER IS EXEMPT UNDER FEDERAL LAW FROM TILA COMPLIANCE, AND ALSO IS EXEMPT UNDER OREGON MLO LICENSING LAWS, AND MAY OFFER AND NEGOTIATE THE TERMS OF THE TRANSACTION THEMSELVES.]

PURPOSE OF SECTION 5 BELOW: CONFIRMS FOR SELLER AND REALTORS® BUYER'S INTENDED USE OF THE PROPERTY.

5. Buyer Representation. Buyer represents to Seller and all licensees, that the Property that is the subject of this transaction is being acquired for the following purpose **[select only one]**:

(a) For **occupancy as a primary residence** by Buyer or Buyer's spouse, parent or child; *[Underscore added – PCQ]*

(b) For **business/investment purposes**, e.g. as a rental property; *[Underscored added – PCQ]*

The box selected above is informational only, and Buyer's answer will not prevent the use of this Addendum for this transaction, so long as Seller has certified the accuracy of Sections 3 and 4 above. If Seller has not certified the accuracy of Sections 3 and 4 above, the parties should immediately consult a MLO, attorney, or other expert qualified under ORS 86A.203, to determine whether Seller is qualified to complete this transaction using this Addendum.

> Buyer represents that Buyer has read and understands this Section 5, and that the statement set forth in the above-selected box is true and correct: Buyers Initials: _____

PURPOSE OF SECTIONS 6, 7, 8, AND 9, BELOW: ADDRESSES THE FINANCIAL AND REPAYMENT TERMS OF THE TRANSACTION.

NOTE: THE FINANCING PROVISIONS (\$\$\$) ARE HIGHLIGHTED IN BLUE BELOW.

6. Financing Terms. Seller and Buyer agree that the Balance of the Purchase Price \$ _____ *[see, Section 2.1E of Sale Agreement]* will be repaid as follows **[select all that apply]**:

(a) *Interest Rate on the Balance of the Purchase Price shall be (select only one): Fixed rate of interest at ____% per annum; or Adjustable rate of interest *[Note: By selecting an adjustable rate of interest, Seller and Buyer agree to complete and sign a written Addendum setting forth: (i) Reasonable annual rate increases; (ii) Reasonable lifetime rate increases subject to a minimum floor and maximum ceiling, which ceiling shall not exceed the applicable "high-cost mortgage rate" – (See, Advisory); and (iii) That adjustments to the interest rate will be determined by adding the margin rate to an indexed rate published from a widely available index, such as U.S. Treasury securities or LIBOR. Seller and Buyer shall reach written mutual agreement on (i), (ii) and (iii) within ____ business days (five [5] if not filled in) after the Sale Agreement has been signed and accepted (hereinafter, "the Deadline"). If written mutual agreement is not reached by 5:00 PM on the last day of the Deadline, this transaction shall be automatically terminated and Buyer's deposit(s) will be promptly refunded.]*

(b) *The Balance of the Purchase Price shall be repaid in monthly installments of principal and interest, based upon the following **Amortized Term** (select one): 30-year amortization; 25-year amortization; 20-year amortization; Other *[specify]* _____. *(Amortized Term may not exceed 30 years)*

(c) *Buyer's monthly principal and interest payments to Seller will be \$ _____ ("Installment" or "Installments") and shall be paid on the first day of each month. *[Note: Seller and Buyer should consult an amortization table or similar resource to calculate all principal and interest payments throughout the Term, as defined in Section 8, below, and append it to their Security Agreement, as defined in Section 10, below.]*

(d) *Buyer's first installment shall be made on the first day of the second month following the Closing Date identified at Section 18 of the Sale Agreement. *[Example: If closing occurred in March, at that time Buyer shall prepay a sum equal to the per diem interest for the remaining number of days of that month. Buyer would not pay an Installment in April. Then, on May 1, Buyer would pay Seller the first full Installment of principal and interest accrued during the month of April. Thereafter, Buyer would pay an Installment on the first day of each successive month for the duration of the Term, as defined in Section 8, below.]*

(e) A late charge of 5.00% of the unpaid installment will will not be assessed for any Installment not received by Seller, or Seller's designee, by the 15th day of the month. *(If left blank, no late charge will be assessed.)*

***Where applicable, all provisions marked with an asterisk (*) must be completed for insertion in the Security Agreement selected at Section 10, below.**

NOTE: THE NON-FINANCING TERMS ARE HIGHLIGHTED IN BLUE BELOW.

7. Other Important Terms. The Security Agreement selected at Section 10, below, shall include the following terms:

(a) The **entire remaining Balance** of the Purchase Price, plus accrued interest and all other charges or sums due may be **prepaid at any time** without penalty;

(b) Without Seller's express written consent, **Buyer may not sell, assign, transfer, rent, lease or sublease the Property**, or any interest therein, during the Term, as defined in Section 8, below;

(c) All Installments shall be paid by the first day of each month;

A default ("Default") shall be defined as follows: (i) Buyer's failure to pay any sums due after not less than ten (10) days' written notice from Seller, or Seller's representative, to Buyer; (ii) Buyer's failure to perform any other terms, covenants or conditions after not less than thirty (30) days' written notice from Seller, or Seller's representative (or if the Default cannot reasonably be cured within thirty (30) days, Buyer's failure to make a good faith effort to commence doing so within said thirty (30) days, and completing it within 90 days thereafter); (iii) Immediately upon violation of Section 7(b), above, with no written notice required from Seller or Seller's representative;

(d) Subject to ORS 86.705 *et seq.* (Oregon's trust deed law), and ORS 93.905. *et seq.* (Oregon's contract forfeiture law), upon Default, Seller shall have the right to accelerate the entire unpaid principal balance, plus accrued interest and other sums immediately due and payable;

(e) Subject to ORS 86.705 *et seq.* (Oregon's trust deed law), and ORS 93.905. *et seq.* (Oregon's contract forfeiture law) in the event legal action is filed to enforce or interpret the Security Agreement selected at Section 10, below, in arbitration or a court of law, the prevailing party shall be entitled to recover attorney fees, costs and disbursements from the losing party;

(f) The Security Agreement selected at Section 10, below, shall constitute a first lien on the Property, and Buyer shall be prohibited, without Seller's express written consent, from placing or permitting, voluntarily or involuntarily, another lien on the Property, excepting only unpaid property taxes or assessments not yet due;

(g) Seller and Buyer [] agree [] decline to use a collection escrow to receipt for all funds due under the Security Agreement selected at Section 10 below. If a collection escrow will be used, it shall be (identify): _____ ("Collection Escrow"), and it shall receipt for all of Buyer's Installments, payments for property taxes, casualty insurance, HOA or UOA dues, reserves, and all other sums due under the selected Security Agreement, and shall disburse payments to the agreed upon designee. If applicable, Seller and Buyer agree to sign all written instructions necessary or convenient for the Collection Escrow to perform its duties. In the event of a conflict between the terms of the Security Instrument selected at Section 10 below, and the terms of the signed instructions of the Collection Escrow, the latter shall prevail;

(h) If the parties select a Contract of Sale ("Contract") as their Security Agreement at Section 10, below, at the time of closing, Seller will, at Seller's cost, place a duly signed and notarized statutory warranty deed with a neutral escrow identified at Section 11, below (or the Collection Escrow identified at Section 7(h) above), with instructions to record the same when Buyer has made all payments and performed all other conditions required under the Contract; and

(i) Additional Provisions. [Caveat: Seller and Buyer are advised to secure the assistance of a MLO, attorney, or other expert qualified under ORS 86A.203 regarding additions or deletions to the standard pre-printed text of this Addendum, as doing so could result in unexpected legal or financial consequences. Your licensees are not qualified to render advice regarding the legal or financial consequences of such changes.]: _____

[Use

Addendum if necessary]

8. Final Payment. The period of time during which all Installments have been made under the Security Agreement selected at Section 10, below, to the date scheduled for the final payment of all sums due thereunder shall constitute "the Term" of said Security Agreement. Seller and Buyer agree that [Select only one.]:

(a) [] **Balloon Payment.** The entire unpaid principal balance, together with all accrued interest and all other sums remaining due from Buyer to Seller, shall be paid *in advance* of the fully amortized term [See, Section 6(b) above]. This means that all such sums shall be due and owing, on or before _____.

(b) [] **No Balloon Payment.** The entire unpaid principal balance, including interest, is fully amortizing [i.e. there will be no Balloon Payment]; all sums due under the Security Agreement selected at Section 10, below, shall be paid in full, on or before _____. [Note: This should be the scheduled date of payment for the final installment at the end of the fully amortized Term.]

9. Insurance; Property Taxes, Sale Agreement Provisions. For the duration of the Term (select all that apply):

(a) [] **Casualty /Flood Insurance.** Buyer shall secure and maintain a policy of fire and casualty insurance with standard extended coverage endorsements on a replacement cost basis reasonably satisfactory to Seller. Additionally, if the Property is located in a designated flood plain, Buyer shall secure a policy of flood insurance reasonably satisfactory to Seller. Said policies shall provide that coverage will not be canceled or diminished without a minimum of thirty (30) days' written notice to Seller. In the event of loss, Buyer shall give immediate notice to Seller. Seller may make proof of loss if Buyer fails to do so within fifteen days (15) of the casualty. Buyer shall provide Seller with a copy of the Declaration Page of said policy within fifteen (15) days of each renewal.

(b) [] **Property Taxes.** All real property taxes and governmental or other assessments levied against the Property for the current tax year shall be prorated between Seller and Buyer as of the Closing Date. Seller shall be responsible for all taxes and assessments through the Closing Date. Buyer shall pay when due all taxes and assessments levied against the Property after the Closing Date. Buyer may elect to pay taxes and assessments in accordance with any available

installment method, but property taxes shall be repaid no less frequently than one-third on November 15, February 15 and May 15 (or the next business day) of each fiscal year. Buyer shall provide Seller with written evidence of such payment within ten (10) days after each required payment.

(c) **HOA/UOA Dues and Assessments.** Buyer shall pay when due all dues, assessments, and other levies assessed by the Homeowners or Unit Owners Association, and provide Seller with written evidence of such payment within ten (10) days after each required payment.

(d) **Other. [If Casualty/Flood Insurance, Property Taxes, and/or Homeowner or Unit Owner's Association HOA dues and assessments will be paid differently than (a), (b), or (c) above, describe the terms here.]:** _____

COMMENT: REALTORS® SHOULD REMEMBER THE "KISS" PRINCIPLE. NOTHING FANCY! SELLERS SHOULD NOT INSIST UPON NEGATIVE AMORTIZATIONS OR HIGH INTEREST RATES, AS THAT WILL PREVENT THE USE OF THIS ADDENDUM. IF THE INTEREST RATE WILL BE ADJUSTABLE, ACCORDING TO A FEBRUARY 8, 2013 NAR PUBLICATION ([HTTP://WWW.REALTOR.ORG/TOPICS/SELLER-FINANCING/THE-SAFE-ACT](http://www.realtor.org/topics/seller-financing/the-safe-act)), "...IT MUST HAVE REASONABLE ANNUAL AND LIFETIME LIMITS ON RATE INCREASES AND PROVIDE FOR THE RATE TO BE DETERMINED BY THE ADDITION OF A MARGIN TO AN INDEX RATE BASED ON A WIDELY AVAILABLE INDEX SUCH AS INDICES FOR U.S. TREASURY SECURITIES OR LIBOR. CFPB'S OFFICIAL INTERPRETATIONS NOTE THAT AN ANNUAL RATE INCREASE OF UP TO TWO (2) PERCENTAGE POINTS IS REASONABLE. A LIFETIME CAP OF SIX (6) PERCENTAGE POINTS, SUBJECT TO A MINIMUM FLOOR AND MAXIMUM CEILING UP TO ANY APPLICABLE USURY LIMIT, IS REASONABLE. THESE "SAFE HARBORS" ARE NOT MANDATORY, BUT SELLERS WOULD BE WISE TO ADOPT THEM."

PURPOSE OF SECTION 10 BELOW: PERMITS THE PARTIES TO DECIDE WHICH TYPE OF SECURITY INSTRUMENT TO USE: EITHER (A) PROMISSORY NOTE TOGETHER WITH A DEED OF TRUST, OR (B) CONTRACT OF SALE AND MEMORANDUM FOR RECORDING.

10. Security Agreement. Seller and Buyer agree that the terms agreed upon at Sections 6, 7, 8, 9, 10, and 11, together with any other applicable terms contained in the Sale Agreement, shall be included in the following Security Agreement which will be recorded in a first lien position in the County in which the Property is located. **[Select either (a) or (b) below, together with associated boxes]:**

(a) **Promissory Note and Deed of Trust (Select only one):**

Seller and Buyer to use OREF Form Nos. 035 (Promissory Note) and 034 (Deed of Trust) **[By selecting this box, Seller and Buyer confirm that they have received and reviewed a copy of said Forms (or will do so prior to Closing), and have had an opportunity to have their respective legal counsel do so (or will do so prior to Closing). Your respective licensee may not recommend one Security Agreement over another.];**

Seller and Buyer agree that the Promissory Note and Deed of Trust will be prepared or provided by: _____
[If this box is selected, Seller and Buyer shall reach agreement on final terms of said documents within ___ business days (five [5] if not filled in) (hereinafter, "the Deadline") after the Sale Agreement has been signed and accepted. If mutual agreement is not reached on all final terms by 5:00 PM on the last day of the Deadline, this transaction shall be automatically terminated and Buyer's deposit(s) promptly refunded.];

(b) **Contract of Sale with Memorandum of Contract (Select only one);**

Seller and Buyer to use OREF Form Nos. 036 (Contract of Sale) and 037 (Memorandum of Contract) **(By selecting this box, Seller and Buyer confirm that they have received and reviewed a copy of said Forms (or will do so prior to Closing), and have had an opportunity to have their respective legal counsel do so (or will do so prior to Closing). Your respective licensee may not recommend one Security Agreement over another.];**

Seller and Buyer agree that the Contract of Sale and Memorandum of Contract will be prepared or provided by: _____
[If this box is selected, Seller and Buyer shall reach agreement on final terms of said document within ___ business days [five [5] if not filled in] (hereinafter, "the Deadline") after the Sale Agreement has been signed and accepted. If mutual agreement is not reached on all final terms by 5:00 PM on the last day of the Deadline, this transaction shall be automatically terminated and Buyer's deposit(s) promptly refunded].

COMMENT: REALTORS® SHOULD NOT RENDER OPINIONS TO CLIENTS AS TO WHICH TYPE OF SECURITY AGREEMENT IS PREFERABLE. INSTEAD, THEY SHOULD DIRECT CLIENTS TO THEIR ATTORNEYS, OR OTHER RELIABLE SOURCES.

RESOURCES: <http://q-law.com/note-trust-deed-vs-land-sale-contract-use-when/>

PURPOSE OF SECTION 11, BELOW: *ALLOWS THE PARTIES TO DETERMINE WHERE INSTALLMENT PAYMENTS (INCLUDING TAX AND INSURANCE RESERVES) WILL BE MADE. A COLLECTION ESCROW IS FREQUENTLY ADVISABLE, DUE TO THE PROFESSIONAL CALCULATION OF INTEREST, PRINCIPAL AMORTIZATION, AND TAX AND INSURANCE RESERVES.*

11. Place of Payments. [Select only one]: All sums due from Buyer to Seller under the Security Agreement selected in Section 10, above, shall be made to:

(a) Seller at: _____;

(b) Collection Escrow at: _____;

with the **set-up fee** to be paid by (*select only one*): Seller Buyer Seller and Buyer equally; **installment fee** to be paid by (*select only one*): Seller Buyer Seller and Buyer equally; and **close-out fee** to be paid by (*select only one*): Seller Buyer Seller and Buyer equally. **(If no selections are made, Buyer and Seller will share all costs equally.)**

COMMENT: *If a Contract of Sale is used, make sure the collection escrow will hold the seller's pre-signed deed (aka "Fulfillment Deed") for recording upon full payment. If no collection escrow is used, a neutral entity should hold the pre-signed Fulfillment Deed.]*

BY SIGNING BELOW, SELLER AND BUYER ACKNOWLEDGE THAT THEY HAVE READ THE ADVISORY REGARDING SELLER-CARRIED TRANSACTIONS AND UNDERSTAND THEIR RESPECTIVE REAL ESTATE LICENSEE IS NOT QUALIFIED TO RENDER ANY ADVICE OR RECOMMENDATIONS REGARDING STATE AND FEDERAL MLO LAWS, OR THE LEGAL, FINANCIAL AND CREDIT TERMS INVOLVED IN THIS TRANSACTION. WITHOUT ANY INVESTIGATION OR VERIFICATION, LICENSEES HAVE THE ABSOLUTE RIGHT TO RELY UPON SELLER'S AND BUYER'S CERTIFICATIONS AND/OR REPRESENTATIONS CONTAINED ABOVE.

Seller Signature: _____ Date: ____ a.m. ____ p.m.

Seller Signature: _____ Date: ____ a.m. ____ p.m.

Buyer Signature: _____ Date: ____ a.m. ____ p.m.

Buyer Signature: _____ Date: ____ a.m. ____ p.m.

A COPY OF THE ADDENDUM CAN BE FOUND AT THE OREF LINK HERE: <http://orefonline.com/forms/form-changes/>

5. **PROMISSORY NOTE ("NOTE") – OREF No. 035**

The Promissory Note is used to memorialize the buyer's repayment obligations, and describes the conditions upon which a default in payment or performance will occur. It is sometimes called the "debt instrument", since it deals with the debt to be repaid. This is distinguished from the Deed of Trust, which accompanies the Note, which is known as the "security instrument", since it acts as the "security" for performance under the Note. The Note is not recorded on the public record; only the Deed of Trust is recorded.

In addition to addressing the amount due, interest rate, monthly payments, right of prepayment, and maturity date, the Note also addresses what happens if the buyer (known as the "Maker" of the Note) defaults in one or more of the terms of repayment.

COMMENT: *Since this is a statewide form, as with all of the seller-carried forms, we anticipate that custom and usage may vary from region to region. For example, the Note has specific provisions regarding when and how a default in payment or performance occurs, and it permits certain "cure" periods. For sellers and buyers using their own attorneys to prepare these documents, OREF understands that these terms might be different. It is for this reason that the Addendum, discussed above, allows the parties to select either the OREF forms, or have their own attorneys prepare them.*

Although it is not something Realtors® should become involved in preparing, except as scribes, making changes to these forms, preferably by separate signed addenda, and with attorney supervision, is certainly permissible.

A COPY OF THE PROMISSORY NOTE CAN BE FOUND AT THE OREF LINK HERE: [HTTP://OREFONLINE.COM/FORMS/FORM-CHANGES/](http://orefonline.com/forms/form-changes/)

6. DEED OF TRUST (“DOT”) – OREF No. 034

Once recorded on the public record in the county where the property is located, the DOT gives notice to the world that the seller has an interest in the property as security for repayment of a certain indebtedness. This security interest acts as a “lien” against the property, meaning that if the Note is not paid according to its terms, the seller may force a public foreclosure sale of the property to satisfy the indebtedness. The proceeds from the sale, after deduction of costs and fees, goes first to the seller for repayment of the debt due under the Note.

The OREF form contemplates that the seller is in a “first position” on the public record, meaning that any subsequently recorded liens against the property are “subordinate” – i.e. at the time of foreclosure, the seller is the first to receive the next sale proceeds, before any other lien holder.

The entire seller-carried suite of forms assumes in all cases that: (a) The seller is in a first position, (b) That there are no other liens on the property at the time of sale to the buyer, and (c) The buyer will not place any other liens on the property for so long as any portion of buyer’s indebtedness remains unpaid.

COMMENT: TYPICALLY, IN STANDARD COMMERCIAL LOAN TRANSACTIONS, ONLY THE BORROWER SIGNS THE DEED OF TRUST. HOWEVER, THIS IS NOT A “STANDARD” COMMERCIAL LOAN TRANSACTION, BUT IS PRESUMED TO BE BETWEEN RELATIVELY UNSOPHISTICATED PARTIES. FOR THAT REASON, OREF HAS OPTED TO HAVE ALL PARTIES SIGN, AND TO CREATE RIGHTS AND REMEDIES THAT ARE PERHAPS MORE GENEROUS THAN MIGHT BE FOUND IN BANK LENDING DOCUMENTS. OREF’S GOAL IS FOR SELLER AND BUYER TO BE ON A LEVEL PLAYING FIELD.

A COPY OF THE DEED OF TRUST CAN BE FOUND AT THE OREF LINK HERE: <http://orefonline.com/forms/form-changes/>

7. CONTRACT OF SALE (“COS”) – OREF No. 036

The Contract of Sale is a “debt instrument” and “security instrument” combined, and serves the same purpose as the Promissory Note and Deed of Trust. As with the DOT, the COS is recorded on the public records of the county where the property is located, thus assuring seller’s lien priority over any subsequently filed liens against the buyer or property. Under the COS, title to the property remains seller until the COS is paid off.

COMMENT: THERE IS A TECHNICAL DIFFERENCE BETWEEN THE DOT AND THE COS, WHICH CAUSES SOME SELLERS AND LAWYERS TO PREFER ONE OVER THE OTHER. WHEN THE DOT IS USED, AT THE TIME OF CLOSING, THE SELLER TRANSFERS FULL LEGAL TITLE TO THE BUYER. IF THE COS IS USED, THE SELLER RETAINS TITLE. HOW DOES THIS DISTINCTION AFFECT A BUYER’S INTEREST IN THE PROPERTY? IS THE BUYER WHO HAS TAKEN TITLE SECURED BY THE DOT IN A BETTER LEGAL POSITION, WITH A RECORDED DEED OF OWNERSHIP, THAN A BUYER WHO HAS ONLY A RECORDED INTEREST UNDER A COS – WITH THE DEED TO BE DELIVERED ONLY UPON FULL PAYMENT? IS THE SELLER WHO RETAINS TITLE TO THE PROPERTY AND SELLS ON A COS IN A STRONGER LEGAL POSITION THAN THE SELLER WHO TRANSFERS TITLE TO THE BUYER AT CLOSING AND TAKES BACK A DOT TO SECURE PAYMENT OF THE PROMISSORY NOTE?

ALTHOUGH SOME MAY DISAGREE, THE ANSWERS TO THESE QUESTIONS ARE MOSTLY ACADEMIC. THE LAW CHARACTERIZES A BUYER’S INTEREST UNDER A COS AS “EQUITABLE TITLE” AS OPPOSED TO THE “LEGAL TITLE” A BUYER ACQUIRES WHEN THE SELLER CONVEYS A DEED AT THE TIME OF CLOSING AND TAKES BACK A PROMISSORY NOTE AND DOT. AS A PRACTICAL MATTER, A BUYER’S INTEREST UNDER ONE FORM OF SECURITY INTEREST IS NOT MATERIALLY DIFFERENT THAN THE OTHER. SOME MAY DISAGREE.

ALTHOUGH A SELLER’S LEGAL REMEDIES UPON BUYER DEFAULT ARE DIFFERENT BASED UPON WHETHER A DOT OR COS IS USED AS THE SECURITY INSTRUMENT, BOTH HAVE METHODS OF FORECLOSURE THAT CAN BE FILED EITHER IN COURT, OR “NON-JUDICIALLY” THROUGH THE RECORDING OF CERTAIN NOTICES PLACED ON THE PUBLIC RECORD.

THE DECISION FOR BUYERS AND SELLERS TO USE A PROMISSORY NOTE AND DOT VERSUS A COS SHOULD BE LEFT TO THE PARTIES AND/OR THE PARTIES’ ATTORNEYS, AND NOT THEIR REALTORS®. FOR A DISCUSSION OF THE DIFFERENCES, LOCAL LAWYERS SHOULD BE CONSULTED.

A COPY OF THE CONTRACT OF SALE CAN BE FOUND AT THE OREF LINK HERE: [HTTP://OREFONLINE.COM/FORMS/FORM-CHANGES/](http://orefonline.com/forms/form-changes/)

8. MEMORANDUM OF CONTRACT (“MEMORANDUM”) – OREF No. 037

When a Contract of Sale is used, at the time of closing, a Memorandum of Contract is recorded on the public record. (The *entire* COS could be recorded, but the recording fees are significantly higher due to the number of pages. Plus, most parties prefer the minimal amount of information made public by recording the Memorandum, which is normally limited to the names of the parties, a legal description of the property, the purchase price and date of payoff.)

Like the DOT, the recording of the Memorandum serves as notice of the seller’s “lien” against the property that continues for so long as the purchase price remains unpaid. The recording of the Memorandum assures the seller’s priority over any liens or judgments filed against the property after the date of recording, and protects the buyer’s interest in the event of liens filed against the seller.

When the COS is paid off the seller, or collection escrow, will convey a “Fulfillment Deed” to the buyer, which then turns his/her interest from “equitable title” to “legal title.”

***COMMENT:** While a COS is legally effective when both parties have signed the document, recording is essential to protect the buyer’s interest. Rather than recording the entire contract, a Memorandum of Contract is often used; it discloses the identity of the parties, the property, and the consideration paid. Once recorded, the law holds that “constructive notice” has been given that the buyer has a legal interest in the property by virtue of the COS. (“Constructive notice” means notice is given to the world by virtue of recording the COS or Memorandum of Contract – even though they did not check the public records - since they could have.) Recording means several things, including: (a) If the seller attempted to sell the property again, the second buyer’s interest would inferior to the first buyer who recorded; and (b) if a lien (voluntary or involuntary) was recorded against the seller’s property after the COS or Memorandum of Contract was recorded, the lienholder’s interest would be subordinate to the buyer’s right to have clear title upon full payment of the COS. Thus, when it comes time for the seller to convey clear title to the buyer, it will occur free of any liens recorded on the public record after the buyer’s COS or Memorandum of Contract was recorded.*

A COPY OF THE MEMORANDUM OF CONTRACT CAN BE FOUND AT THE OREF LINK HERE: <http://orefonline.com/forms/form-changes/>

9. DECISION TREE

This is not a “form” but a helpful tool for brokers when representing sellers who are taking back a Note and Trust Deed or Contract. The main issue for sellers in this situation is to be exempt from the MLO licensing laws. If exempt, the seller can offer and negotiate the terms of the “loan” to the buyer, without running afoul of federal or state laws. *A COPY OF THE DECISION TREE CAN BE FOUND AT THE OREF LINK HERE: <http://orefonline.com/forms/form-changes/>*

10. NOTICE PURSUANT TO SHORT SALE ADDENDUM - OREF No. 27A

This Notice shall become a part of the Sale Agreement between _____, Buyer, and _____, Seller, dated _____, for the Property located at _____, Oregon (“Seller’s Property”).
--

1. THE CONTINGENCY. In accordance with Section 1 of the Short Sale Addendum between Buyer and Seller, this transaction has been made contingent upon Seller obtaining written consent(s) from the creditor(s) holding one or more recorded liens against the Property, to reduce the amount due, sufficient to permit a closing of this transaction so that Seller can convey marketable title to Buyer (“the Contingency”). The Contingency shall be deemed satisfied if written consent from the creditor(s) is/are obtained prior to the scheduled closing date, on such terms as Buyer and Seller agree upon in writing.

2. NOTICE OF LENDER(S) CONSENT. Seller hereby gives notice to Buyer that Seller has obtained the necessary consent(s), attached hereto.

3. MUTUAL SATISFACTION OF CONTINGENCY. BY THEIR SIGNATURES BELOW, BUYER AND SELLER AGREE: (A) TO THE TERMS OF THE WRITTEN CONSENT(S) ATTACHED HERETO; (B) THAT THE CONTINGENCY HAS BEEN SATISFIED; AND (C) TO PROCEED WITH THE CLOSING OF THIS TRANSACTION IN ACCORDANCE WITH THIS NOTICE, THE REMAINING TERMS OF THE SALE AGREEMENT, AND ALL ADDENDA THERETO, IF ANY.

4. Additional Provisions. _____

Buyer _____ Date _____ ← Seller _____ Date _____ ←
 Buyer _____ Date _____ ← Seller _____ Date _____ ←
 Selling Licensee _____ Listing Licensee _____
 Selling Firm _____ Listing Firm _____

COMMENT: This is a new document. To date, there was no written acknowledgment of events when lender consent was obtained. This form (a) notifies the Buyer that seller has obtained lender consent to the short sale, and (b) (i) confirms that Seller and Buyer agree to the terms of the lender consent, (ii) that the short sale contingency has been satisfied, and (iii) all parties agree to proceed to close.

11. CONTINGENT RIGHT TO PURCHASE - OREF No. 083

This Contingent Right to Purchase shall become a part of the Real Estate Sale Agreement (hereinafter referred to as the "Sale Agreement") between _____, Buyer and _____, Seller, dated _____, for the Real Property located at _____, Oregon ("Seller's Property").

This Sale Agreement is contingent upon the sale and closing of Buyer's real property ("the Contingency") located at: _____ ("Buyer's Property"), on [] a.m. [] p.m. on the ____ day of _____, 20__ ("the Deadline").

The Contingency is solely for the benefit of Buyer and may be waived, in whole or in part, in writing at any time only by Buyer. In the event Buyer wishes to waive the Contingency for any reason, including the fact that Buyer's Property has been sold, though not closed, Buyer shall execute and deliver to Seller or Seller's Licensee, OREF Form No. 83A (Buyer's Notice of Waiver/Removal of Contingency). Upon mutual execution of said form, if Buyer agrees to waive the entire Contingency (i.e. sale and closing of Buyer's Property), Seller's Property shall thereafter show as "pending" (or words to that effect) on the applicable multiple listing service.

If Buyer waives the entire Contingency (i.e. sale and closing of Buyer's Property), the provisions of **Alternative Two**, described below, shall apply. If Buyer partially waives the Contingency (i.e. sale but not closing of Buyer's Property), the provisions of **Alternative Three**, described below, shall apply. If neither **Alternative Two** nor **Alternative Three** occur in writing by the Deadline, the Sale Agreement may be terminated by either party, in which case all earnest money shall be promptly refunded to Buyer.

Buyer understands that Seller's Property may remain on the market for sale. If, prior to the Deadline or Buyer's written waiver of the Contingency, Seller receives another written offer acceptable to Seller, Seller shall give written notice to Buyer to select **Alternative One, Alternative Two, or Alternative Three** described below. (See, OREF Form #084 entitled "Seller's Notice to Buyer of Receipt of an Acceptable Offer".) **Upon delivery of such Notice, Buyer shall have ____ hours (twenty-four [24] if not filled in) thereafter (hereinafter referred to as the "Contingency Period"), within which to deliver to Seller written notice of Buyer's selection.**

ALTERNATIVE ONE: This transaction is terminated. Buyer and Seller hereby release all parties, including Real Estate Firms, Real Estate Licensees and Escrow from any and all liability in connection with this transaction. Buyer and Seller agree to cooperate in good faith with Escrow and the Real Estate Firms in signing all additional documents and instructions for termination of this transaction and return of all earnest money to Buyer.

ALTERNATIVE TWO: Buyer hereby:

1. Removes all conditions and contingencies in this Sale Agreement relating to the sale and closing of Buyer's Property;
2. Removes all conditions and contingencies in this Sale Agreement relating to the Buyer qualifying for financing;
3. Represents to Seller that Buyer [] has [] has not, been pre-approved by Buyer's lender for the purchase of Seller's Property without closing the pending sale of Buyer's Property;
4. Agrees to promptly provide Seller with written evidence, from Buyer's lender, reasonably satisfactory to Seller, that Buyer can obtain the financing necessary to complete the purchase of Seller's Property in accordance with this Sale Agreement;
5. Agrees to close this transaction in accordance with the remaining terms of this Sale Agreement;

6. Agrees to pay an additional earnest money deposit in the amount of \$ _____ (zero [0] if not filled in) within _____ calendar days (two [2] if not filled in) of selecting this Alternative Two; and, if applicable,

7. Other (specify) _____

ALTERNATIVE THREE: Buyer hereby:

1. Buyer has accepted an offer on Buyer's property and removes all conditions and contingencies in this Sale Agreement relating to the sale of Buyer's Property – except that closing of the sale of Buyer's Property shall remain a contingency in this transaction;

2. Buyer agrees to close this transaction in accordance with the remaining terms of this Sale Agreement;

3. Agrees to pay an additional earnest money deposit in the amount of \$ _____ (zero [0] if not filled in) within _____ calendar days (two [2] if not filled in) of selecting this Alternative Three; and, if applicable,

4. Other (specify) _____

APPLICABLE TIME PERIODS: Buyer and Seller agree that Buyer shall promptly submit a completed loan application in accordance with the terms of the Sale Agreement. If Buyer selects Alternative Two or Alternative Three, the time periods for possession, closing and all other agreed-upon contingencies (e.g. financing, title insurance, and inspection, etc.) in the Sale Agreement shall be handled as follows (select one):

- Closing, possession and all agreed-upon time frames for contingencies shall remain the same; or
- Closing, possession and all agreed-upon time frames for contingencies (except financing) shall be adjusted as follows:

1. Closing shall be _____ calendar days after the day Buyer gives written notification of selection of Alternative Two or Alternative Three. Possession shall be _____ calendar days after closing.

2. All other agreed upon time frames for contingencies (e.g., title insurance and inspection, etc.) shall commence on the day after Buyer gives written notification of selection of Alternative Two or Alternative Three, except _____.

In the event Buyer fails to give timely written notice of Buyer's selection of either Alternative One, Alternative Two, or Alternative Three, within the Contingency Period, Alternative One shall be deemed to have been selected.

ADDITIONAL PROVISIONS: _____

DELIVERY OF NOTICES: Time is of the essence. The date and time of actual delivery of all written notices required herein is essential. Buyer and Seller shall exercise their best efforts to use the most prompt and reliable means for timely delivery of all such written notices. Written notices may be given and received by Buyer, Seller, or their respective Real Estate Licensees. If a notice required to be given herein is not manually delivered to the recipient, the sender shall, contemporaneous with the transmission (e.g. electronic mail or facsimile), make a good faith effort to personally inform the recipient by telephone that the written notice has been transmitted. Written notices shall be manually delivered, sent or transmitted to Buyer, Seller, or their respective Real Estate Licensees, at any one of the following addresses, email addresses, or facsimile numbers:

If to Buyer: Address of Buyer: _____ Fax _____
 Buyer's Real Estate Licensee's firm's address: _____ Fax _____

If to Seller: Address of Seller: _____ Fax _____
 Seller's Real Estate Licensee's firm's address: _____ Fax _____

Buyer _____ Date _____ ← Seller _____ Date _____ ←
 Buyer _____ Date _____ ← Seller _____ Date _____ ←
 Selling Licensee _____ Listing Licensee _____
 Selling Firm _____ Listing Firm _____

COMMENT: The highlighted sections above contain portions of text that are new. The entire section titled "Alternative Three" is new. Its purpose is to deal with those situations in which Seller agrees that Buyer may remove only that portion of the contingency dealing with the "sale" of buyer's home, but leaving in place, the contingency that closing must occur. There is a place for the parties to agree to additional earnest money, or to additional provisions should they want. In today's market, it seems unlikely that many sellers would agree to Alternative Three, but from time to time, it has occurred, and accordingly, OREF felt that it would be preferable to have that as an available choice, rather than leaving the parties and their brokers to draft a provision dealing with this situation. Note that the contingency makes the buyer's purchase subject to the sale and closing of buyer's home.

This form is solely for situations where the buyer has made an offer subject to the sale of his/her home (i.e. buyer has accepted an offer of purchase) and closing (i.e. it has closed in escrow). As long as the contingency remains open, seller may continue to market their property and it appears on the MLS as having a "bumpable buyer", or words to that effect.

- At any time prior to the stipulated deadline agreed upon by seller and buyer, buyer may decide to withdraw from the transaction and obtain a full refund of the earnest money. This is described in Alternative One of the form.
- Buyer may at any time before the deadline, waive the contingency (i.e. sale and closing, or just sale):
 - If both the sale and closing contingencies are waived, the provisions described in Alternative Two will apply (and the transaction with Seller will now show as “pending”, or words to that effect, in the applicable multiple listing service);
 - If only the sale contingency is waived, the provisions described in Alternative Three will apply (and the transaction with Seller will show as “pending”);
 - In either case, buyer is to execute and deliver to seller or seller’s Licensee, OREF Form No. 83A (Buyer’s Notice of Waiver/Removal of Contingency, which discloses whether buyer is making a full or partial waiver of the contingency);
- If seller has received an acceptable offer, seller gives buyer written notice using OREF Form #084 (“Seller’s Notice to Buyer of Receipt of an Acceptable Offer”):
 - Buyer must then decide whether to select Alternative One (i.e. termination), Alternative Two (i.e. waiver of both sale and closing), or Alternative Three (i.e. waiver of sale, but not closing) within an agreed-upon hourly period (default period is 24 hours if not filled in).
 - Note: If buyer voluntarily waives the contingency either before or after receiving the written notice that seller has received an acceptable offer, Alternative Two requires that buyer do the following:
 - Remove all contingencies relating to the sale and closing of buyer’s Property;
 - Remove all contingencies relating to buyer qualifying for financing;
 - Disclose whether buyer has been pre-approved by buyer’s lender for the purchase of seller’s property without closing the pending sale of buyer’s property;
 - Agree to provide seller with proof of lenders’ loan approval without the need to close the buyer’s pending sale (if applicable); and
 - Pay additional earnest money as agreed upon with seller.

12. BUYER’S NOTICE OF WAIVER/REMOVAL OF CONTINGENCY - OREF No. 083A

This Notice shall become a part of the Sale Agreement between _____, Buyer, and _____, Seller, dated _____, for the Property located at _____, Oregon (“Seller’s Property”).

1. THE CONTINGENCY. Pursuant to the Contingent Right to Purchase, OREF Form No. 083 (“the Form”), this transaction is contingent upon the sale and closing of Buyer’s real property (“the Contingency”) located at _____, Oregon, by [] a.m. [] p.m. on the _____ day of _____, 20____ (“the Deadline”). The Contingency is solely for the benefit of Buyer and may be waived, in whole or in part, in writing at any time only by Buyer. If, prior to the Deadline, Buyer waives the entire Contingency (i.e. sale and closing of Buyer’s Property), the provisions of **Alternative Two** in the Form shall apply. If, prior to the Deadline, Buyer has accepted an offer on Buyer’s Property and waives that portion of the Contingency relating to the sale (but not closing) of Buyer’s Property, the provisions of **Alternative Three** in the Form shall apply.

2. NOTICE OF WAIVER/REMOVAL OF THE CONTINGENCY. By Buyer’s signature(s) below, Buyer gives notice to Seller that [] the entire Contingency is expressly waived (i.e. sale and closing) [] the Contingency is partially waived (i.e. sale but not closing of Buyer’s Property), and this transaction shall proceed in accordance with the remaining terms of the Form, the Sale Agreement, and all addenda related thereto, if any.

3. SELLER ACKNOWLEDGMENT. By Seller’s signature(s) below, Seller acknowledges receipt and review of Buyer’s Notice, and agrees to complete this transaction in accordance with the remaining terms of the Form, the Sale Agreement, and all addenda related thereto, if any.

4. ADDITIONAL PROVISIONS. _____

Buyer _____ Date _____ ← Seller _____ Date _____ ←
 Buyer _____ Date _____ ← Seller _____ Date _____ ←
 Selling Licensee _____ Listing Licensee _____
 Selling Firm _____ Listing Firm _____

COMMENT: This is an entirely new form, and intended to be used in conjunction with the Contingent Right To Purchase, OREF Form 083. Previously, there had been no form for a buyer to notify seller that one of the contingencies had been fully or partially waived. The purpose of the form is to make sure there is a paper trail between buyer and seller confirming the waiver of the contingency and which waiver will apply, full or partial.

CAUTION: Note that there are additional conditions to the complete waiver in Alternative Two confirming that buyer's lender's pre-approval does not depend upon closing the sale of buyer's property.

13. _____ HOUR CONTINGENCY AGREEMENT OREF No. 052

(Caution: If the contingency is the sale and closing of Buyer's Property, the Contingent Right To Purchase form (OREF #083) should be used.)

This Hourly Contingency Addendum shall become a part of the Real Estate Sale Agreement (hereinafter referred to as the "Sale Agreement")
Between _____, Buyer and Seller, dated _____, for the Real
Property located at _____, Oregon ("Seller's Property").

This Sale Agreement is contingent upon the following: _____
_____ ("the Contingency"). The
Contingency shall commence when the Sale Agreement has been signed and accepted by Buyer and Seller, and shall automatically terminate on [] a.m. []
p.m. on the ____ day of _____, 20__ ("the Deadline").

1. **Benefit.** The Contingency is solely for the benefit of Buyer and may be waived in writing at any time only by Buyer.
2. **Waiver of Contingency.** If Buyer waives the Contingency, the provisions of **Alternative Two**, below, shall apply.
3. **Non-waiver.** If the contingency is not waived in writing by the Deadline, the Sale Agreement may be terminated by either party, in which case all earnest money shall be promptly refunded to Buyer.
4. **Property Remains on Market; Seller Notice of Acceptable Offer.** For so long as the Contingency remains in effect, Buyer understands that Seller's Property may remain on the market for sale. If, prior to the Deadline, or prior to Buyer's written waiver of the Contingency, Seller receives another written offer acceptable to Seller, Seller shall give written notice to Buyer to select Alternative One or Alternative Two described below. (See, OREF Form #084 entitled "Seller's Notice to Buyer of Receipt of an Acceptable Offer".) Upon delivery of such notice, Buyer shall have _____ hours (twenty-four [24] if not filled in), hereinafter referred to as the "Contingency Period", within which to deliver to Seller written notice of election of Alternative One or Alternative Two below. Buyer's failure to timely deliver such written notice to Seller within the Contingency Period shall constitute an election under Alternative One, below.
5. **Applicable Time Periods.** All time periods for closing and possession, together with those applicable to all agreed-upon contingencies (e.g., financing, title insurance, inspection, etc.) in the Sale Agreement, shall remain the same, except: _____ (None if left blank).

ALTERNATIVE ONE: This transaction is terminated. Buyer and Seller agree to cooperate in good faith with Escrow and Real Estate Licensees and Firms in signing all documents and instructions necessary to terminate this transaction and return all earnest money to Buyer.

ALTERNATIVE TWO: Buyer hereby:

1. Removes the Contingency;
2. Agrees that if the Contingency directly or indirectly relates to Buyer's continued ability to perform in accordance with the terms of the Sale Agreement (e.g., obtaining a gift letter, securing an employment opportunity, liquidating stock or other funds, etc.) and Buyer waives the Contingency in writing before the Deadline, Buyer shall also demonstrate to Seller's reasonable satisfaction that Buyer is able to close the transaction in accordance with the Sale Agreement without the occurrence of the Contingency ("Verification"). Upon Buyer's failure, refusal, or inability to provide Seller with Verification within _____ hours (twenty-four [24] if not filled in) following written notice of said waiver, this transaction shall be automatically terminated and the provisions of Alternative One, above, shall apply.
3. Agrees to close this transaction in accordance with the remaining terms of the Sale Agreement;
4. Agrees to pay an additional earnest money deposit in the amount of \$ _____ (zero [0] if not filled in) within _____ calendar days (two [2] if not filled in) of selecting this Alternative Two; and, if applicable,
5. Other (specify): _____

DELIVERY OF NOTICES: Time is of the essence. The date and time of actual delivery of all written notices required herein is essential. Buyer and Seller shall exercise their best efforts to use the most prompt and reliable means for timely delivery of all such written notices. **Written notices may be given and received by Buyer, Seller, or their respective Real Estate Licensees.** If a notice required to be given herein is not manually delivered to the recipient, the sender shall, contemporaneous with the transmission (e.g., electronic mail or facsimile), make a good faith effort to personally inform the recipient by telephone that the written notice has been transmitted. Written notices shall be manually delivered, sent or transmitted to Buyer, Seller, or their respective Real Estate Licensees, at any one of the following addresses, email addresses, or facsimile numbers:

If to Buyer: Address of Buyer: _____ Email: _____ Fax _____
 Buyer's Licensee's firm's address: _____ Email: _____ Fax _____
 If to Seller: Address of Seller: _____ Email: _____ Fax _____
 Seller's Licensee's firm's address: _____ Email: _____ Fax _____

Buyer _____ Date _____ ← Seller _____ Date _____ ←
 Buyer _____ Date _____ ← Seller _____ Date _____ ←
 Selling Licensee _____ Listing Licensee _____
 Selling Firm _____ Listing Licensee Firm _____

COMMENT: This form has existed for some time, although has been extensively changed; first to follow the approach used in OREF 083 containing Alternative One and Alternative Two, and secondly, to clarify that it is NOT to be used when a buyer is making an offer subject to the sale and closing of their own home. Set forth below is a summary of the contingency protocol:

- Identify the contingency;
- The contingency begins immediately when the buyer and seller have signed and accepted the Sale Agreement, and ends when a termination date (called "the Deadline") is identified;
- Unless an exception is identified, all time periods for closing, possession, and commencement of other contingencies (e.g. financing, title, professional inspection), remain the same;
- The property remains on the market during the contingency period;
- Property does not show as "pending" on MLS;
- Buyer may terminate the transaction in one of three ways, which will result in a refund of all earnest money:
 - Voluntarily by giving written notice to Seller at any time before the Deadline;
 - Fail to waive the contingency by the Deadline (in which case either party may – but isn't required to – terminate); or
 - Having received OREF Form 084 (Seller's Notice to Buyer of Receipt of an Acceptable), buyer declines to waive the contingency

Note: All three events trigger Alternative One;

- Waiver may occur in one of two ways:
 - Voluntarily by giving written notice to seller at any time before the Deadline; or
 - Voluntarily following receipt of OREF Form #084 (Seller's Notice to Buyer of Receipt of an Acceptable Offer).

Note: Both of these events trigger Alternative Two, which provides that if the contingency being waived relates to buyer's ability to perform under the Sale Agreement, buyer must verify his/her ability to perform without the occurrence of the contingency (e.g. if the contingency relates to buyer's ability to secure down payment funds through a gift from parents, buyer will have to establish to seller's satisfaction the existence of an unconditional source of down payment). If buyer cannot provide this verification within an agreed-upon period (default is 24 hours) the transaction is automatically terminated and earnest money refunded.

- The form includes a place for the parties to agree to the deposit of additional earnest money.

14. **AGREEMENT TO OCCUPY AFTER CLOSING - OREF FORM No. 054**

Buyer(s) _____ Seller(s) _____ Property Address _____

Buyer and Seller have executed a **REAL ESTATE SALE AGREEMENT** # _____ ("Sale Agreement") dated _____ for the property at _____

("Premises"). **Seller desires to occupy the Premises after closing.**

1. OCCUPANCY: Buyer grants to Seller the right to occupy the Premises for residential use. Buyer retains use of the following portion(s) of the Premises:

2. TERM: The term of this Agreement shall not exceed ninety (90) days. The right to occupy shall begin on the date of closing (as that term is defined in the Sale Agreement) and continue until:

_____ (Date) or;
 _____ by a.m. p.m. _____ days after Closing.

after which time Seller shall have no legal right to occupy the Premises. If the transaction fails to close according to the terms of the Sale Agreement, this Agreement to Occupy After Closing shall become automatically void and of no effect.

3. COMPENSATION: Seller shall pay rent in the amount of \$ _____ per day for the Term. The total amount of daily rent for the Term is \$ _____ ("Total Rent"). The Total Rent shall be paid In a lump sum to Escrow at the time of closing and disbursed to Buyer; or Directly to Buyer in the rental amounts and on the due dates as follows:

If any rental payment remains unpaid for four (4) days after the due date, in addition to any other remedies allowed by law or this Agreement, Seller shall pay a late charge of \$ _____ (\$50.00 if not filled in) per day, commencing on the 5th day from the due date of the unpaid rental payment, until it and the late charges are fully paid in full.

If rent or late fees, if any, are not paid within seven (7) days including the due date, then Buyer may post a written notice on the front door of the Premises that if the unpaid sums are not paid within seventy-two (72) hours of the time and date of posting (to be noted on said notice) this Agreement to Occupy will automatically terminate and the Buyer may take immediate possession of the Premises.

4. PURPOSE: The Premises shall be used by Seller exclusively as a private residence and shall be occupied by no more than _____ persons without the prior written consent of Buyer.

5. SERVICES, MAINTENANCE AND RISK OF LOSS: Seller has inspected the Premises and accepts the Premises on an "AS-IS" basis with the exception of the following repairs to be made:

Repair:	Party Responsible for Payment:
_____	_____
_____	_____
_____	_____

Seller shall, at Seller's sole expense, maintain heating, cooling, sewer, water, plumbing, and electrical systems and any built-in appliances and equipment in normal working order and shall keep the roof water-tight and maintain the grounds, beginning on the commencement date specified in Section 2, above. Seller shall make no structural alterations to the interior or exterior of the Premises without Buyer's prior written consent. Seller shall pay all utility bills accrued to date

Buyer is entitled to possession. Exceptions: _____

FOR THE PURPOSE OF DETERMINING WHICH PARTY SHALL BEAR ANY RISK OF LOSS OR THE EXPENSE OF REPAIRING UNKNOWN DEFECTS OR DAMAGES THAT OCCUR OR APPEAR AFTER CLOSING AND DURING THE TERM OF SELLER'S POSSESSION, THE FOLLOWING RULES APPLY:

(A) Buyer shall assume all risk of loss as of the date of closing (as that term is defined in the Sale Agreement) subject only such obligations assumed by Seller in the Sale Agreement that were intended to survive closing. This provision shall not be construed as a limitation on Buyer's remedies for Seller's failure to disclose any known defects prior to closing. (B) The following shall apply to damages or expenses of maintenance:

(1) Seller shall be responsible for the cost of any replacements or repairs due to any damage to interior or exterior of the Premises after the commencement date specified in Section 2, caused by Seller's intentional reckless or negligent conduct.

(2) Buyer shall reimburse Seller for any expense of maintenance, repair or replacement resulting from Seller's reasonable, non-negligent use of the Premises, providing Buyer has consented to such maintenance, repair and replacement.

(3) Buyer shall not be required to submit, any claims, losses, damages, and expenses to Buyer's insurance company resulting from Seller's negligent, reckless or intentional acts. In the event that a claim is submitted any proceeds received shall be applied toward the cost of repair or replacement as well as reimbursement to Buyer for any sums advanced. If insurance proceeds are insufficient, Seller shall pay any additional costs for negligent, reckless or intentional acts causing damage to the Property.

Seller shall cooperate with Buyer and Buyer's insurance company in submitting any claims to Buyer's insurance company.

If the Premises has oil heat, the oil shall be measured and Seller shall purchase such portion as would be used for the term of occupancy provided in Section 2, above. Seller shall properly maintain all lawns, shrubbery, grounds and other landscaping.

6. SECURITY DEPOSIT/CONDITION OF PREMISES AT END OF TERM: Unless the following box is checked, Seller shall not be required to pay a security deposit as a part of this Agreement. Seller shall pay a security deposit ("Deposit") in the amount of \$ _____ (\$500 if not filled in) at or before closing Directly to Buyer; Directly to Escrow for prompt disbursement to Buyer. The Deposit does not need to be held in a segregated account or a trust account, and no interest shall accrue thereon. The Deposit may be applied by Buyer toward any damages or defaults caused by Seller under this Agreement. Provided, however, Buyer may not apply any portion of the Deposit toward the expenditure of Buyer's own time related to any damage or default of Seller.

At the end of the Term ("the Deadline"), it is agreed that Seller shall have fully vacated the Property and removed all of Seller's furniture, furnishings, and personal property not otherwise sold/transferred to Buyer as a part of this transaction, and shall have removed all accumulated trash and debris in or around the Property. It is the intent of the parties that by or before the Deadline, Seller shall have delivered possession of the Property to Buyer, together with all

systems therein, including the lawns, shrubbery, grounds and other landscaping, in substantially the same condition as it was when they entered into the Sale Agreement.

If Seller has fully vacated the Property in accordance with the terms of this Agreement, and there are no damages or defaults thereunder, Buyer shall refund the entire Deposit within three (3) business days following the date Seller notifies Buyer that the Property has been fully vacated. If there are damages or defaults under this Agreement, Buyer shall provide Seller with the following Required Information: (a) A written explanation of them (including any supporting evidence); (b) A reasonable accounting of how the Deposit was applied; and (c) An itemization of the actual costs expended. If Buyer paid a third-party for labor or materials to help remedy or cure any damages or defaults caused by Seller, the Required Information shall include copies of all receipts from said provider(s). If Buyer has not actually paid any third parties, but has good faith arms-length written bids for doing so, Buyer shall include them in lieu of receipts, together with a representation that Buyer will employ the maker of the bid(s) to perform the work. All Required Information shall be provided to Seller within ten (10) business days following the date Seller notifies Buyer that the Property has been fully vacated. If any of the Deposit remains after deducting the costs incurred, or to be incurred, to remedy or cure the defaults or damages under this Agreement, it shall be refunded to Seller together with the Required Information.

~~If Seller fails or refuses to vacate the Property by the Deadline, in addition to any other sums provided above, or remedies sought to recover possession, Buyer may withhold from the Deposit a sum equal to the per diem charge payable to Buyer's lender for principal, interest, property taxes and insurance for every day, or portion of a day, that Seller retained possession beyond the Deadline. If there is no lender, Buyer may withhold a sum equal to the per diem fair rental value of the Property for said period. Nothing herein shall be construed to prevent Buyer from pursuing further remedies for damages or defaults exceeding the Deposit.~~

7. **PETS:** Seller is is not permitted to keep pets on the Premises. If permitted, pet(s) shall be limited to: _____
Seller is responsible for damage caused by Seller's pets.

8. **ACCESS AND REPAIR:** Seller agrees to admit Buyer or Buyer's authorized agent at reasonable times for the purpose of inspecting the Premises or for any other purpose reasonably related to the terms of this Agreement.

Buyer Initials _____ / _____ Date _____ Seller Initials _____ / _____ Date _____
_____ assign all or any portion of Seller's interest in this Agreement, nor rent, sublease or assign all or any portion of the Premises without Buyer's prior written consent.

10. **LIENS AND ENCUMBRANCES:** Seller shall keep the Premises free of all liens and encumbrances and shall hold Buyer harmless therefrom.

11. **COMPLIANCE WITH LAW:** Seller shall comply with all laws, orders, regulations, rules, ordinances, restrictive covenants and other restrictions and conditions with respect to the use, care and control of the Premises.

~~12. **INSURANCE:** Buyer to maintain property and casualty insurance on the Premises. Seller shall bear the risk of loss to Seller's personal property on the Premises. Seller shall obtain a Tenants Coverage Policy with an insurance company authorized by the State of Oregon with a single limit of liability coverage not less than _____ (\$500,000 if left blank) and shall, upon request, provide Buyer with a Certificate of Coverage. Buyer shall be listed as an additional insured on the policy.~~

~~Buyer shall maintain property and casualty insurance on the Premises. Seller shall bear the risk of loss to Seller's personal property on the Premises. Seller shall maintain personal liability damage insurance with an insurance company authorized by the State of Oregon with a single limit of liability coverage not less than \$ _____ (\$500,000 if not filled in) and shall, upon request, provide Buyer with proof thereof. Buyer shall be named as an additional insured on the policy.~~

13. **INJURY TO PROPERTY OR PERSON:** Seller is responsible for any neglect or willful act or omission upon the Premises during the term of possession identified in Section 2, above. Seller shall indemnify and hold Buyer and all Real Estate Firms, their licensed agents, employees and representatives harmless from any and all claims, losses, liabilities, damages or expenses, including attorney fees, directly or indirectly arising from Seller's negligent, reckless or intentional conduct.

~~14. **SELLER HOLDOVER:** If Seller fails or refuses to vacate the Property by the Deadline, in addition to any other sums provided above, or remedies sought to recover possession, Buyer may withhold from the Deposit a sum equal to the per diem charge payable to Buyer's lender for principal, interest, property taxes and insurance for every day, or portion of a day, that Seller retained possession beyond the Deadline. If there is no lender, Buyer may withhold a sum equal to the per diem fair rental value of the Property for said period. Nothing herein shall be construed to prevent Buyer from pursuing further remedies for damages or defaults exceeding the Deposit.~~

~~If Seller remains in possession of the Premises beyond the Term, as defined in Section 2, above, or such other time as the parties have agreed upon in writing, Buyer may bring an action for possession pursuant to ORS 105.105.~~

~~If Seller remains in possession of the Premises beyond the term provided herein, Buyer may bring an action for possession as provided by law. In addition, Buyer shall be entitled to recover from Seller (select one):~~

- A liquidated damage sum of \$ _____ (Zero [0] if not filled in);
- An amount equal to two (2) months rent or twice the actual damage sustained by Buyer, whichever is greater. Any agreement to extend Seller's occupancy beyond the term provided herein shall be in writing and signed by the parties. Unless otherwise agreed in writing, the continued tenancy shall be on the same terms as this Agreement. In no event shall Seller's total occupancy of the Premises exceed ninety (90) days from closing.

15. **DELIVERY OF KEYS FROM SELLER TO BUYER (Check one):**

- One complete set of keys on day of closing with remainder of keys at end of possession period.
- All keys at end of possession period.
- Other: _____

Delivery of keys at end of possession period to be handled as follows:

15. DISPUTE RESOLUTION; ATTORNEY FEES AND COSTS: Subject to the following sentence, any dispute between the parties directly or indirectly relating to this Agreement shall be resolved in accordance with the mediation and arbitration provisions of the Sale Agreement. Provided, however, in the event Buyer seeks to obtain possession of the Premises arising as a result of Seller's default under this Agreement, Buyer shall have the right to file an eviction proceeding in court pursuant to ORS 105.105 et seq. and the prevailing party shall be entitled to recover their reasonable attorney's fees and costs in the proceeding and any appeal therefrom.

16. BINDING EFFECT: This Agreement shall be binding upon and inure to the benefit of the heirs, successors and permitted assigns of the parties.

Buyer Initials ____ / ____ Date ____ Seller Initials ____ / ____ Date ____
The strict performance of any term of this Agreement shall not affect a waiver of a later default or a waiver of this clause.

18. INTEGRATION AND AMENDMENT: This Agreement constitutes all of the terms, conditions and agreements of the parties relating to Seller's right of occupancy of the Premises and may not be modified or amended except in writing signed by the party against whom enforcement is sought. IF THERE IS ANY CONFLICT BETWEEN THE TERMS OF THIS AGREEMENT AND THE TERMS OF THE SALE AGREEMENT, THE SALE AGREEMENT SHALL PREVAIL.

19. COMPLIANCE WITH OREGON LAW: This Agreement shall be enforced according to Oregon Law and venue and shall be placed in the county where the Premises are located. Under ORS 90.110(2), this Agreement does not create a landlord-tenant relationship.

20. ADDITIONAL PROVISIONS: _____

COMMENT: The per diem charge for PITI has been moved from the Security Deposit section (6) to the Seller Holdover section (14), and the previous liquidated damage text was removed. The Insurance section (12) was changed to conform to what casualty insurance carriers provide for a non-owner occupant of a property.

CAUTION: Although there were no changes to the OREF Form 053 (Agreement To Occupy Before Closing), it deserves attention here. Permitting a buyer, prior to closing, to occupy the seller's residence, can be problematic if, for some reason, the buyer decides not to close. In such cases, (a) the seller has kept the property off the market, and (b) upon sale-fail, will have to reacquire possession, and again prepare it for sale.

APRIL 2016 CHANGES

COMMENT: OREF has made a few changes to the recent set of forms changes that were rolled out at the start of the year. Most, but not all changes were necessitated by developments that occurred at the end of 2015, after the forms had already been published. Below are the changes and a short explanation.

15. CHANGE TO FINAL AGENCY ACKNOWLEDGMENT SECTION OF ALL OREF SALE AGREEMENTS

Both Buyer and Seller acknowledge having received the Oregon Real Estate Agency Disclosure Pamphlet, and hereby acknowledge and consent to the following agency relationships in this transaction: _____ (Name of Selling Licensee(s)*), Oregon Lic. # _____ of _____ (Name of Real Estate Firm(s)*) Selling Firm Office Address _____ Company Lic # _____
Phone _____ Fax _____ Email _____

is/are the agent of (check one): Buyer exclusively ("Buyer Agency"). Both Buyer and Seller ("Disclosed Limited Agency").

(Name of Listing Licensee(s)*), Oregon Lic. # _____

of _____ (Name of Real Estate Firm(s)*)
Listing Firm Office Address _____ Company Lic # _____
Phone _____ Fax _____ E-mail _____

is/are the agent of (check one): Seller exclusively ("Seller Agency"). Both Buyer and Seller ("Disclosed Limited Agency").

***If Selling and/or Listing Licensees and/or Firms are co-selling or co-listing in this transaction, all Licensee and Firm names should be disclosed above. For directions on how to look up license numbers, go to: _____**

If both parties are each represented by one or more Licensees in the same Real Estate Firm, and Licensees are supervised by the same principal broker in that Real Estate Firm, Buyer and Seller acknowledge that said principal broker shall become the disclosed limited agent for both Buyer and Seller as more fully explained in the Disclosed Limited Agency Agreements that have been reviewed and signed by Buyer, Seller and Licensee(s).

Buyer shall sign this acknowledgment at the time of signing this Agreement before submission to Seller. Seller shall sign this acknowledgment at the time this Agreement is first submitted to Seller, even if this Agreement will be rejected or a counter offer will be made. Seller's signature to this Final Agency Acknowledgment shall not constitute acceptance of this Agreement or any terms therein.

COMMENT: The TILA/RESPA Integrated Disclosure law (“TRID”) was enacted late last year. For record-keeping purposes, escrow now needs each broker’s license number and the registration number of their affiliated company. When OREF added a place for brokers to insert their license number along with the number for their affiliated company in the Final Agency Acknowledgment section of the Sale Agreement, the Real Estate Agency was apparently deluged with broker calls asking how to locate the company license number. (To be clear, this number is not actually “issued” by the Agency – it is the number assigned by the Secretary of State to the business when it becomes registered.) The Agency uses that business number to identify each licensee’s affiliated company on its site. Accordingly, the Real Estate Commissioner requested that the Final Agency Acknowledgment section of all Sale Agreements include the Agency’s URL to assist brokers in locating the necessary license number information.

16. CHANGE TO FIRPTA TAX WITHHOLDING REQUIREMENT IN ALL OREF SALE AGREEMENTS

Generally, the following rules apply under FIRPTA if the seller is a “foreign person”: (a) There is no Withholding Requirement if the purchase price of the property is not more than \$300,000 and it will be occupied as a residence by a buyer who is an individual, or by a member of the buyer’s family; (b) When the purchase price of the property is over \$300,000, but does not exceed \$1,000,000, the Withholding Requirement will be ten percent (10%) of the purchase price if it will be occupied as a residence by a buyer who is an individual, or a member of the buyer’s family; and (c) The Withholding Requirement will be fifteen percent (15%) of the purchase price when the purchase price is over \$1,000,000, regardless of use of the property. Subject to certain exclusions, the amount deducted from a seller’s sales proceeds may be up to ten percent (10%) of the gross sales price, and said amount must be delivered to the Internal Revenue Service (“IRS”) within twenty (20) days of closing (hereinafter “Withholding Requirement”). The Withholding Requirement will not apply if the sale price of the property is not more than \$300,000, and it will be occupied as a residence by a buyer, who is an individual (or a member of his/her family) for at least 50% of the number of days (excluding days the property is vacant) it is used by any person during each of the first two 12-month periods following the date of closing. **If FIRPTA applies, even if there is an exemption, Seller and Buyer should complete and sign the FIRPTA Addendum, OREF Form No. 093. Seller and Buyer’s Licensees are not experts in FIRPTA and will not act as a transferor or transferee agent for purposes of the Withholding Requirement. If FIRPTA may apply in this transaction, Seller and Buyer should promptly consult their own experts familiar with the law and regulations. For further information, Seller and Buyer should go to: <https://www.law.cornell.edu/uscode/text/26/1445> <http://www.realtor.org/articles/firpta-withholding-rate-increasing-to-15>.**

COMMENT: On December 18, 2015, Congress passed H.R.2029, the Consolidated Appropriations Act, which included changes to the withholding requirements for foreign persons. By then, OREF had already gone to press with the Sale Agreements which included the then-current FIRPTA law. The above changes are now in line with the FIRPTA law today.

17. CHANGE TO “BUSINESS DAY” DEFINITION AT SECTION 31(5) IN ALL OREF SALE AGREEMENTS

(5) A “business day” shall mean Monday through Friday, except recognized **state and federal** legal holidays as enumerated in ORS 187.010 and 187.020.

COMMENT: When the TILA/RESPA Integrated Disclosure law (“TRID”) was enacted late last year, it followed the federal definition of holidays. Federal law recognizes Columbus Day as a holiday; Oregon law does not. Federal law pre-empts state law where federal law is more restrictive. Since the OREF Sale Agreement has adopted the TRID rules as they relate to financing, it was felt that we needed to include both the state and federal definition of holidays, since much of the timing in the Sale Agreement is measured by “business days” (i.e. those days that are not recognized holidays). Oregon and federal law are in sync on all other listed holidays. Accordingly, this change means that for purposes of counting business days in Oregon real estate transactions using OREF forms, Columbus Day will be deemed to be a holiday.

18. CHANGE TO BUYER’S NOTICE OF WAIVER/REMOVAL OF CONTINGENCY - OREF No. 083A

1. THE CONTINGENCY. Pursuant to the Contingent Right to Purchase, OREF Form No. 083 (“the Form”), this transaction is contingent upon the sale and closing of Buyer’s real property (“the Contingency”) located at: _____, _____, Oregon, by [] a.m. [] p.m. on the _____ day of _____, 20__ (“the Deadline”). The Contingency is solely for the benefit of Buyer and may be waived, in whole or in part, in writing at any time only by Buyer. If, prior to the Deadline, Buyer waives the entire Contingency (i.e. sale *and* closing of Buyer’s Property), the provisions of **Alternative Two** in the Form shall apply. If, prior to the Deadline, Buyer waives that portion of the Contingency relating to the sale (but *not* closing) of Buyer’s Property, the provisions of **Alternative Three** in the Form shall apply. **Seller and Buyer acknowledge that upon Buyer’s selection of either Alternative Two or Alternative Three, Seller’s Property shall thereafter show as “pending” (or words to that effect) on the applicable multiple listing service.**

COMMENT: The RMLS™ rules (and likely other MLSs in the state) provide that when the buyer contingency is removed from a transaction, it automatically goes “Pending” and is no longer actively marketed by the Seller. This is addressed in the COMMENT at Section 11, above.

However, there appears to have been disagreement lately about whether these two forms nevertheless permit a transaction to remain "Active" if Buyer selects Alternative Three (i.e. waiving the sale, but not the closing). This is incorrect. In an effort to avoid further confusion, OREF decided to make some changes in the Buyer's Notice of Waiver/Removal of Contingency (#083A) above, and the Contingent Right to Purchase (#083B) below. Thus, in both forms, it should now be very clear to the parties and their brokers that the "Pending" designation shall apply if either Alternative Two or Alternative Three is selected by Buyer.

19. CHANGE TO CONTINGENT RIGHT TO PURCHASE (OREF – 083B)

The Contingency is solely for the benefit of Buyer and may be waived, in whole or in part, in writing at any time only by Buyer. In the event Buyer wishes to waive the Contingency for any reason, including the fact that Buyer's Property has been sold, though not closed, Buyer shall execute and deliver to Seller or Seller's Licensee, OREF Form No.083 A (Buyer's Notice of Waiver/Removal of Contingency). Upon mutual execution of said form, if Buyer agrees to waive the entire Contingency (i.e., sale and closing of Buyer's Property), Seller's Property shall thereafter show as "pending" (or words to that effect) on the applicable multiple listing service.

If Buyer waives the entire Contingency (i.e., *sale and closing* of Buyer's Property), the provisions of **Alternative Two**, described below, shall apply. If Buyer has accepted an offer on Buyer's Property and partially waives the Contingency (i.e., *sale but not closing* of Buyer's Property), the provisions of **Alternative Three**, described below, shall apply. Note: If Buyer selects either Alternative Two or Alternative Three, Seller's Property shall thereafter show as "pending" (or words to that effect) on the applicable multiple listing service. If neither Alternative Two nor Alternative Three occur in writing by the Deadline, the Sale Agreement may be terminated by either party, in which case all earnest money shall be promptly refunded to Buyer.