

OPTION AGREEMENT

This Option Agreement should only be used in conjunction with an Oregon Real Estate Forms, LLC Real Estate Sale Agreement (the "Sale Agreement"). If not fully understood, seek competent legal advice before signing. It is strongly recommended the parties review OREF 085SUM – Advisory Regarding Lease Option before signing this or any similar Option or Lease-Option Agreement.

This Option Agreement is entered into on (*insert date*) _____ between _____ ("Grantor"), who is granting certain option rights as hereinafter defined, and _____ ("Grantee"), who is acquiring said option rights. For ease of reference, the designation "Grantor" will hereinafter be referred to as "Seller," and the designation "Grantee" will hereinafter be referred to as "Buyer."

1. SELLER REPRESENTATIONS AND WARRANTIES: Seller makes the following representations and warranties to Buyer:

- (a) Seller currently has marketable title to the Property, subject only to those easements, liens, and deed restrictions currently of record (the "Encumbrances");
- (b) All of the Encumbrances are current and free from default;
- (c) Seller has not received any notices from the holders of any of the Encumbrances they are or will be in default;
- (d) The parties agree before the execution of this Option Agreement, Seller (*select one*) will will not order a current title report (not a title insurance policy) on the Property in order to verify for Buyer the status of the title to the Property, which will be paid for by (*select one*) Buyer or Seller; and
- (e) Seller covenants and agrees Seller will not voluntarily encumber marketable title to the Property before termination of this Option Agreement or the Option Deadline (as defined below), whichever first occurs, without first securing the written consent of Buyer. The preceding sentence will not be construed to prohibit the assessment of normal property taxes which Seller will pay in the ordinary course up to the date of Closing, if applicable, nor prohibit any encumbrances not unreasonably interfering with Seller's ability to convey marketable title to Buyer in accordance with the Sale Agreement. Excepting only real

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property taxes not yet due, if the Option is exercised, all liens, assessments, or other charges against the Property attaching to the title after the date this Option Agreement has been signed by all parties, will be removed by Seller at Seller's sole cost and expense, on or before the date of Closing.

2. RENTAL/LEASE AGREEMENT: A Rental/Lease Agreement, dated (*insert date*) _____ (*select one*) is is not attached to this Option Agreement as Exhibit ___ and made a part hereof. If a Rental/Lease Agreement is to be attached, the parties are encouraged to use a form of agreement that is currently used for similar properties in their local area. When applicable, if no agreement can be reached regarding the form of the Rental/Lease Agreement by (*insert date*) _____, this Option Agreement will be null and void, and any consideration paid for it by Buyer will be promptly refunded, and this entire transaction will be terminated, excepting only those provisions, such as Section 14 (Dispute Resolution), which by their terms are intended to survive. So long as Buyer is not otherwise in default under the Rental/Lease Agreement, at the exercise of the Option and Closing of the purchase of the Property pursuant to the Sale Agreement in accordance with Sections 7 (Exercise of Option) and 8 (Purchase Price, Terms, and Closing), the Purchase Price will be reduced by the following percentage of the monthly rental or lease payments actually paid on time in accordance with the Rental/Lease Agreement: ____%.

3. GRANT OF OPTION; RECORDING: Subject to the terms and conditions contained below, Seller hereby grants to Buyer the option ("Option") to acquire the following property: (*insert street address, city, state, zip code*) _____ (the "Property").

Before checking one of the following boxes, Buyer and Seller should consult with competent legal counsel, as there may be significant legal consequences to either or both parties arising from recording – or failing to record – a Memorandum of the Option:

Is a Memorandum of the Option (the "Memorandum") to be recorded in the county records where the Property is located? Yes No

If "Yes," the recording charge will be paid as follows: (*select one*)

- (i) entirely by Buyer,
- (ii) entirely by Seller, or

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(iii) shared as follows: (*percentages must equal 100% or state the exact amount for each*) _____ Buyer / _____ Seller

If the Memorandum is to be recorded, it should be done promptly following execution of this Option Agreement. A Memorandum of Option Agreement is available for this purpose depending upon advice of the parties' legal counsel. Buyer will cooperate in good faith by executing any and all documents required by any title company of Seller's choice, to remove the recorded Memorandum if, for any reason, Buyer does not exercise the Option in accordance with this Option Agreement.

4. ALLOCATION OF RISK: Read carefully and secure legal counsel. Buyer's and Seller's Agents are not qualified to render advice regarding the legal effect of this provision. Buyer and Seller each acknowledge if there are one or more underlying mortgage liens currently on the Property, they may contain prohibitions against selling, leasing, or granting an option to purchase the Property without the lender(s)' consent. Both parties acknowledge as a result of this transaction, there is a risk one or more such lenders could call the loan immediately due and owing and exercise other default remedies, such as foreclosure. The parties agree: (*select one*)

(a) Buyer will have the immediate right to exercise the Option within twenty (20) Business Days following any declaration of default by a lender;

(b) Seller will undertake primary responsibility to refinance or pay off all mortgage liens and take such other steps reasonably necessary to cure the default, during which time the Rental/Lease Agreement, the Sale Agreement, and/or Option Agreement will remain in full force and effect; or

(c) Other (*describe*) _____

Buyer and Seller acknowledge they have been advised by their Buyer's or Seller's Agents to secure separate legal advice before entering into the Rental/Lease Agreement, Sale Agreement, and/or Option Agreement, and they have not been provided any legal advice by the Agents, whom they acknowledge are not experts in the law.

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5. OPTION DEADLINE: Unless exercised in accordance with the terms of this Option Agreement, the Option will fully and completely expire at: *(select one)*
 5:00 p.m. on *(insert date)* _____, or *(insert date)* _____
(the "Option Deadline"). Time is expressly declared to be of the essence as to all obligations or performance deadlines required or permitted in this Option Agreement.

6. CONSIDERATION FOR OPTION: Seller acknowledges receipt of the consideration for the Option in the sum of \$ _____, (the "Option Payment") evidenced by: *(select all that apply)*

- (a) check;
- (b) cash;
- (c) promissory note;
- (d) other *(describe)* _____.

The Option Payment, regardless of its form (for example, check, cash, note, or other such instrument or consideration) will, where applicable, be drawn or made payable to Seller and upon signing of this Option Agreement by Buyer and Seller and delivery of the Option Payment to Seller or Seller's authorized agent or representative, will be deemed fully earned by and belong exclusively to the Seller, regardless of whether or not the Option is exercised. Under no circumstances will the Option Payment be deemed to be "trust funds" as defined in Oregon law or regulations, and, accordingly, the Option Payment will not be deposited in a client trust account or neutral escrow depository. If Buyer exercises the Option in accordance with the Sale Agreement identified below, the Option Payment *(select one)* will will not be applied to the Purchase Price at Closing. If no box is checked, the Option Payment will not be applied to the purchase price of the Property at Closing. If the Option is exercised, under no circumstances will the Option Payment be designated, used, or applied as a refundable or nonrefundable earnest money deposit.

7. EXERCISE OF OPTION: So long as Buyer is not then in default under the Rental/Lease Agreement, if applicable, or this Option Agreement, Buyer may exercise the Option once before the Option Deadline, by written notification to Seller, simultaneously sent by certified mail, return receipt requested and regular first class mail, both addressed to Seller at *(insert street address, city state, zip*

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code) _____

or by manual delivery to Seller. Delivery will be deemed to have occurred as of the date of postmark of the earliest letter (if mailings are not simultaneously sent) or the date of manual delivery to Seller, whichever first occurs. For informational purposes only, Buyer will simultaneously provide a copy of the written notice to Buyer's Agent's Firm, if any. If this Option Agreement is accompanied by a Rental/Lease Agreement, unless and until the Option is exercised in accordance with this Option Agreement, Buyer's legal rights to the Property will be conclusively presumed to be limited to the rights of possession arising under the ORLTA, as defined below, and Buyer's and Seller's rights and remedies will be exclusively governed by [ORS Chapter 90](#) and [ORS 105.105 et seq.](#)

8. PURCHASE PRICE, TERMS, AND CLOSING: The parties have entered into a Sale Agreement, dated (*insert date*) _____, which is attached to this Option Agreement as Exhibit ___ and made a part hereof. If the Option is exercised, the Purchase Price and terms will be in accordance with the Sale Agreement to the extent they are not inconsistent with the terms of this Option Agreement. The Closing of the transaction will be no sooner than ___ Business Days (ten [10] if not filled in) nor later than ___ Business Days (thirty [30] if not filled in) after the date of Buyer's written notification of exercise of the Option. While the Option Payment may be applied to the Purchase Price of the Property if so provided in this Option Agreement, it will not be applied as earnest money in the Sale Agreement.

9. FAILURE TO EXERCISE OPTION: If Buyer fails for any reason (other than Seller's default under this Option Agreement) to timely and properly exercise the Option before the Option Deadline, the Option Payment will be retained by Seller, and Buyer will have no further rights under the Option Agreement or Sale Agreement. If the Option is properly exercised, but the transaction fails to close, Buyer's and Seller's rights to any earnest money deposit will be determined by the terms of the Sale Agreement, but in no event will the Option Payment be refunded to Buyer. If Buyer fails, or refuses, to timely exercise the Option Agreement or fails to close in accordance with the Sale Agreement or otherwise is in breach of the Sale Agreement, the Rental/Lease Agreement: (*select only one*)

(a) will continue for the balance of the lease or rental term;

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(b) will be deemed automatically terminated with no further written notice from either party on the ___ Business Day (ten [10] if not filled in) following failure to timely exercise the Option or close in accordance with the Sale Agreement; or

(c) other: (*describe*) _____.

10. BREACH OF RENTAL/LEASE AGREEMENT: If the Property is rented or leased to Buyer under a Rental/Lease Agreement, and, before the Option Deadline, Buyer is in default under the Rental/Lease Agreement or abandons the Property, or a judgment of eviction is entered against Buyer, this Option Agreement and the Sale Agreement will automatically terminate with no further action of Seller. A “default under the Rental/Lease Agreement” will be defined to mean any matter for which Seller would have the right to institute eviction proceedings against Buyer under the Oregon Residential Landlord Tenant Act (“ORLTA”), [ORS Chapter 90](#), and [ORS 105.105 et seq](#) (Oregon’s eviction laws). In such case, the Option Payment will be retained by Seller, and this Option Agreement and the Sale Agreement will be of no further binding effect except to the extent that Buyer’s and Seller’s rights to any earnest money deposit will be determined by the terms of the Sale Agreement.

11. NO TRANSFER: Buyer will not, without Seller’s express written consent, sublease, assign, transfer, or convey any right, title, or interest in this Option Agreement, the Sale Agreement, the Rental/Lease Agreement, or the Property itself, to any third party before Closing. Any unauthorized transfer by Buyer will be void and of no effect, and this Option Agreement will be deemed to be automatically null and void, in which case, Seller will retain the Option Money, and the Sale Agreement will be of no further binding effect except to the extent Buyer’s and Seller’s rights to any earnest money deposit will be determined by the terms of the Sale Agreement.

12. AMENDMENT: This Option Agreement may not be modified or amended except by written agreement, signed by Buyer and Seller.

13. PROPERTY DISCLOSURE/WAIVER OF RIGHT OF REVOCATION: The Property (*select one*) is is not subject to Seller’s Property Disclosure under [ORS 105.462 - 105.490](#). If Seller’s Property Disclosure applies, a completed and signed Seller’s Property Disclosure Statement: (*select one*) is attached to this Option Agreement; or will be provided to Buyer within ___ Business Days

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(five [5] if not filled in) of the date Buyer and Seller sign and accept this Option Agreement. In consideration of Seller providing the Seller's Property Disclosure Statement in the manner provided above before exercise of the Option, Buyer expressly waives the right of revocation under [ORS 105.475](#) if the Option is exercised. However, if the Property is subject to Seller's Property Disclosure, and no Seller's Property Disclosure Statement is provided to Buyer pursuant to this section, it will be provided to Buyer promptly upon Buyer's Notice of exercise of the Option pursuant to Section 7 (Exercise of Option), and Buyer will thereafter retain all rights of revocation as allowed by law. Notwithstanding anything to the contrary contained herein, any exercise of Buyer's right of revocation under [ORS 105.462 - 105.490](#) will not entitle Buyer to any right of refund of the Option Payment or rents paid pursuant to a Rental/Lease Agreement. List any exceptions to the preceding: *(describe)* _____

14. DISPUTE RESOLUTION: Subject only to the following sentence, if any dispute regarding any matters arising directly or indirectly out of this Option Agreement, including interpretation of the documents and exhibits made a part hereof, the entire dispute resolution provisions contained in the Sale Agreement, including but not limited to the mandatory mediation and arbitration provisions thereof, will apply. However, if Buyer is in default under a fully executed Rental/Lease Agreement, Seller will have the right to initiate court action for eviction pursuant to [ORS 105.105 et seq.](#) Any dispute regarding Buyer's right of possession under the Rental/Lease Agreement will be heard and decided exclusively in eviction court, and any remaining rights relating to ownership of the Property will be heard and decided exclusively in accordance with the dispute resolution provisions of the Sale Agreement. This section will survive termination, cancellation, or expiration of this Option Agreement.

15. UNDERLYING ENCUMBRANCES/SELLER REPRESENTATIONS/DEFAULT: Buyer is advised to verify the condition of title to the Property before entering into this Option Agreement. If there are financial encumbrances, such as voluntary or involuntary liens, recorded against the Property, Seller will provide Buyer with copies of one or more statements disclosing the following:

- (a) The total current monthly installments of principal, interest, taxes, and insurance (regardless of whether they are paid directly or to the lender);

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(b) Proof of insurance on all structures, together with the amount of the premiums; and

(c) A copy of the promissory note(s), if any, disclosing the term and nature of the financing (for example, fixed, adjusting, interest only, etc.).

15.1. Payment of Encumbrances. Seller will at all times pay all sums due under all financial encumbrances. It is understood, and agreed Seller will, if requested by Buyer, provide Buyer with evidence of payment of all sums made to the holder of the Encumbrances: (*select only one*)

(a) monthly,

(b) quarterly,

(c) annually, or

(d) other (*describe*) _____.

15.2. Representations Regarding Defaults. Seller represents and warrants:

(a) Seller is not in default of any payments required to be made under any financial encumbrances as of the date of this Option Agreement; and

(b) Seller will promptly inform Buyer of any notices of default received from the holders or servicers of any financial encumbrances. If Seller receives a notice of default under any financial encumbrance arising on account of the failure to make any payments (excepting only an acceleration of the entire indebtedness on account of this transaction), Buyer will have the immediate right to terminate this Option Agreement and receive a refund of the entire Option Payment, together with interest at the rate of nine percent (9.00%) per annum. Provided, however, receipt of such refund will not limit or prevent Buyer from pursuing any other legal remedies against Seller, including, but not limited to, specific performance of the Sale Agreement. Seller will have the right to cure any such default within ten (10) days of receipt of such notice, or the time set forth in the notice of default, whichever first occurs, and avoid Buyer's right to immediately terminate this Option Agreement.

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16. ADDITIONAL PROVISIONS: (describe) _____

Grantee (Buyer) _____ Date _____ a.m. p.m. ←
Print Name _____

Grantee (Buyer) _____ Date _____ a.m. p.m. ←
Print Name _____

Grantor (Seller) _____ Date _____ a.m. p.m. ←
Print Name _____

Grantor (Seller) _____ Date _____ a.m. p.m. ←
Print Name _____

Buyer's Agent(s) _____ Seller's Agent(s) _____

RESIDENTIAL

AFTER RECORDING RETURN TO:

TAX STATEMENT TO:

MEMORANDUM OF OPTION AGREEMENT

By Option Agreement dated _____, _____ as Grantor and _____ as Grantee, Grantor agreed to grant an Option to Grantee for certain real property located in _____ County, Oregon which is described as follows:

See the Attached Exhibit A

The terms and conditions of the Option are fully set forth in said Option Agreement and reference is made hereby. The true and actual consideration for this conveyance is (*insert written dollar amount*) _____ (\$_____).

The term of the Option expires on (*insert same date and time as stated in the Agreement*) _____ at _____ a.m. p.m., if not sooner exercised, waived, or terminated. If this Option is not exercised, or is waived, expires or is terminated, Grantee agrees to cooperate with Grantor to record such document(s) as reasonably necessary to remove or release this Memorandum from the public record.

"BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER [ORS 195.300](#), [195.301](#) AND [195.305 TO 195.336](#) AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE

RESIDENTIAL

LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN [ORS 92.010](#) OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN [ORS 30.930](#), AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER [ORS 195.300](#), [195.301](#) AND [195.305 TO 195.336](#) AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010"

The Grantor(s) has/have executed this Memorandum of Option Agreement on the _____ day of _____, 20__.

GRANTOR(S): *(include all names of Grantors in Option Agreement)*

_____, Grantor _____, Grantor

STATE OF OREGON)
County of _____) ss: _____

Personally appeared before me the above-named _____ and _____, Grantor(s) and acknowledged the foregoing instrument to be their voluntary act and deed.

Notary Public for _____
My commission expires: _____