

## AGREEMENT TO OCCUPY BEFORE CLOSING

Buyer(s) _____
Seller(s) _____
Property Address or Tax ID # _____ (the "Property")

Buyer and Seller have executed a Real Estate Sale Agreement ("Sale Agreement") for the above-described Property. Buyer desires to occupy the Property before Closing.

This Agreement to Occupy Before Closing ("Agreement") is not subject to the Oregon Residential Landlord Tenant Act, see [ORS 90.110\(2\)](#). Seller's right to evict Buyer first requires issuance of a twenty-four (24) hour written notice, see [ORS 91.130](#).

**1. OCCUPANCY:** Seller grants to Buyer the right to occupy the Property before Closing during the Term described in Section 2. However, during that Term, Seller will have exclusive use of the following portion(s) of the Property: (*describe*)

\_\_\_\_\_  
\_\_\_\_\_.

**2. TERM:** This Agreement will commence not more than ninety (90) Calendar Days before the Closing Deadline. Buyer's right to occupy will begin on (*insert date*) \_\_\_\_\_ and continue until: (*select one*)

(a)  the date of Closing; or

(b)  (*specify*) \_\_\_\_\_

(the "Term"). Buyer's failure to occupy the Property does not relieve Buyer of Buyer's responsibilities under this Agreement. The Parties must Sign and Deliver any agreement to extend the Term, and the Term (including any extension) must not exceed ninety (90) Calendar Days to qualify for the exclusion in [ORS 90.110\(2\)](#). If the transaction fails to close, then: (i) within \_\_\_ Calendar Days (fifteen [15] if not filled in) following written demand by Seller, Buyer will vacate the Property and return all keys to Seller; (ii) Seller will promptly refund any deposits, fees, and pre-paid sums to which Buyer is entitled under this Agreement; and (iii) this Agreement will thereafter terminate.

**3. COMPENSATION:** (*select one*)  At the time of signing this Agreement, or  on (*insert date*) \_\_\_\_\_, Buyer will pay rent in the amount of \$ \_\_\_\_\_

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per day during the Term. If the Term will continue for more than thirty (30) Calendar Days, Buyer will pay rent as follows: *(describe)* \_\_\_\_\_.

Buyer will pay rent to Seller at the following address: *(insert street address, city, state, zip code)* \_\_\_\_\_

If any rent is unpaid for four (4) Calendar Days after the due date, then in addition to any other remedies available to Seller, Buyer will pay a late charge of \$\_\_\_\_\_ (\$50.00 if not filled in) per day, commencing on the fifth (5<sup>th</sup>) Calendar Day, until all rent and late charges are fully paid. If any rent or late fees are not paid within seven (7) Calendar Days after the due date, then this Agreement will terminate, and Seller may take possession of the Property seventy-two (72) hours after Seller posts a written Notice on the front door of the Property. That Notice will state: (a) that this Agreement will terminate, and Seller will be entitled to possession of the Property if the unpaid sums are not paid within seventy-two (72) hours; and (b) the time and date of posting.

**4. PURPOSE:** Buyer will use the Property exclusively as a private residence and will not allow more than *(insert number)* \_\_\_\_\_ persons to occupy the Property without the prior written consent of Seller.

**5. REPAIRS, SERVICES, AND MAINTENANCE:** Buyer has inspected the Property and accepts the Property on an "AS-IS" basis with the exception of the following repairs: *(specify and select who will order and pay)*

Repair:

Ordered and Paid By:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

<input type="checkbox"/> Buyer	<input type="checkbox"/> Seller
<input type="checkbox"/> Buyer	<input type="checkbox"/> Seller
<input type="checkbox"/> Buyer	<input type="checkbox"/> Seller
<input type="checkbox"/> Buyer	<input type="checkbox"/> Seller
<input type="checkbox"/> Buyer	<input type="checkbox"/> Seller
<input type="checkbox"/> Buyer	<input type="checkbox"/> Seller

Throughout the Term, Buyer will, at Buyer's sole expense, maintain all utility and services, heating, cooling, sewer, water, plumbing, electrical systems, and any built-in appliances and equipment in normal working order, keep the roof watertight and maintain the grounds. Buyer will make no alterations to the interior or

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exterior of the Property without Seller's prior written consent. Exceptions:  
(describe) \_\_\_\_\_

**6. FUEL:** If any heating oil, propane, or other fuel is on the Property on the date Buyer is entitled to occupancy: (select one)

- (a)  on the date of Buyer's occupancy, Buyer will pay Seller for the fuel outside of Escrow at the rate paid by Seller; or
- (b)  the fuel is included with the Property at no stated value.

The previous sentence supersedes the Agreement for payment for fuel on the Property contained in the Utilities Section of the Sale Agreement. Buyer will properly maintain all lawns, shrubbery, grounds, and other landscaping.

**7. RISK OF LOSS:** With respect to the risk of loss and costs of repairing unknown defects or damages that occur or appear after Buyer takes possession:

(a) If the transaction closes, Buyer will assume all risk of loss from and after the beginning of the Term, just as if the transaction had closed on that date.

(b) If the transaction fails to close:

(i) Seller will retain all risk of loss for defects; provided, however, that Buyer will repair or replace, if necessary, any part of the Property damaged by Buyer's intentional, reckless or negligent conduct.

(ii) Seller will reimburse Buyer for any maintenance, repair, or replacement expense resulting from Buyer's reasonable, non-negligent use of the Property if Seller has consented to such maintenance, repair, or replacement.

(iii) The Sale Agreement is hereby modified to provide that Seller has sole discretion to apply the Deposits identified in the Sale Agreement against any claims, losses, damages, and expenses arising from Buyer's negligent, reckless, or intentional acts at the Property. Seller will not be required to submit any such claim to Seller's insurance company. If Seller submits a claim to Seller's insurance company, Seller will apply any proceeds received toward the cost of repair or replacement and then to reimbursement to Seller for any sums advanced. If the Deposits and insurance proceeds are insufficient to

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cover Seller's expenses, Buyer will pay the balance. Buyer will cooperate with Seller and Seller's insurance company in submitting any claims to Seller's insurance company.

**8. CLEANING FEE:** Buyer will pay a fee of \$ \_\_\_\_\_ (\$500 if not filled in), which Seller will use to clean and restore the Property if the transaction fails to close, and any unused portion will be refunded to Buyer. If the transaction closes, Escrow will credit this amount to Buyer.

**9. PETS:** Buyer (*select one*)  is  is not permitted to keep pets on the Property. If permitted, pets will be limited to: (*describe*) \_\_\_\_\_

Buyer will promptly repair any damage caused by Buyer's pets if this transaction fails to close in accordance with the Sale Agreement.

**10. ACCESS AND REPAIR:** Until Closing, Buyer will admit Seller or Seller's authorized agent at reasonable times to inspect the Property or for any other purpose reasonably related to the terms of this Agreement.

**11. ASSIGNMENT:** Buyer will not transfer or assign all or any portion of Buyer's interest in this Agreement, nor rent, sublease, or assign all or any portion of the Property without Seller's prior written consent, which consent Seller may withhold in Seller's sole discretion.

**12. ENCUMBRANCES:** During the Term, Buyer will keep the Property free of all liens and encumbrances and will hold Seller harmless therefrom.

**13. COMPLIANCE WITH LAW:** Buyer will comply with all laws, orders, regulations, rules, ordinances, restrictive covenants, and other restrictions and conditions related to the use, care, and control of the Property.

**14. INSURANCE:** Seller will maintain property and casualty insurance on the Property. Buyer will bear the risk of loss to Buyer's personal property on the Property. At least five (5) Business Days before the Term starts, Buyer will (a) obtain and maintain a renters insurance policy 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 (b) Deliver a certificate of insurance listing Seller as an additional interest on the policy to Seller at the address in Section 3 (Compensation).

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Nothing in this Agreement prevents either Party from securing any additional insurance. If the Property is materially damaged during the Term, and Seller reasonably determines that Buyer's continued occupancy would be difficult in light of the need to commence repairs, Seller may terminate this Agreement by giving at least seventy-two (72) hours' written Notice to Buyer. Each Party will cooperate with the other in filing any insurance claims one or both may have. Before signing this Agreement, Seller and Buyer should discuss with their insurance agents whether they will have adequate coverage for all of their real and personal property under this Agreement and whether their insurance agents recommend any additional coverages or policies. The Parties' real estate agents are not qualified to render opinions on the adequacy or type of insurance that is appropriate.

**15. INJURY TO PROPERTY OR PERSON:** Buyer is responsible for any negligent or willful act or omission upon the Property during the Term. Buyer will indemnify and hold Seller and all real estate firms, their agents, employees, and representatives, harmless from all claims, losses, liabilities, damages, or expenses, including attorney fees, directly or indirectly arising from Buyer's use and occupancy of the Property.

**16. BUYER HOLDOVER:** If Buyer fails to close the transaction according to the terms of the Sale Agreement and remains in possession of the Property beyond the Term, Seller may bring an action for possession as provided by law. In addition, Seller will be entitled to recover from Buyer: *(select one)*

(a)  a liquidated damage sum of \$ \_\_\_\_\_ (zero [0] if not filled in);  
or

(b)  an amount equal to two (2) months' rent or twice the actual damage sustained by Seller, whichever is greater. The Parties must Sign and Deliver any agreement to extend Buyer's occupancy beyond the Term. Unless otherwise agreed in writing, the extended occupancy will be on the same terms as this Agreement.

**17. DELIVERY OF KEYS FROM SELLER TO BUYER:** Seller will deliver to Buyer: *(select one)*

(a)  one (1) complete set of keys before the first day of the Term and the remaining keys at Closing;

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(b)  all keys before the first day of the Term; or

(c)  other: *(describe)* \_\_\_\_\_  
\_\_\_\_\_.

Seller will handle delivery of the keys before the beginning of the Term as follows:  
*(describe)* \_\_\_\_\_  
\_\_\_\_\_

**18. DISPUTE RESOLUTION; ATTORNEY FEES AND COSTS:** Subject to the following sentence, any dispute between the Parties directly or indirectly relating to this Agreement will be resolved in accordance with the mediation and arbitration provisions of the Sale Agreement. But if Seller seeks to obtain possession of the Property as a result of Buyer's default under this Agreement, Seller will have the right to file an eviction proceeding in court under [ORS 105.105 et seq.](#) If any suit, action, or arbitration is filed to enforce or interpret the rights of the Parties under this Agreement, the prevailing Party will be entitled to recover their reasonable attorney's fee and costs in the proceeding and any appeal therefrom.

**19. BINDING EFFECT:** This Agreement is binding upon and inures to the benefit of the Parties' heirs, successors, and permitted assigns.

**20. NO WAIVER:** Failure by Seller to require strict performance of any term of this Agreement will not affect Seller's rights. No waiver of a default will be a waiver of a later default or a waiver of this clause.

**21. INTEGRATION AND AMENDMENT:** This Agreement constitutes all of the terms, conditions, and agreements of the Parties relating to Buyer's right of occupancy of the Property 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 terms of this Agreement will prevail.

**22. GOVERNING LAW:** This Agreement will be enforced according to Oregon Law and venue and will be placed in the county where the Property is located.

**23. ADDITIONAL PROVISIONS:** *(describe)* \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Buyer \_\_\_\_\_ Date \_\_\_\_\_  a.m.  p.m. ←  
Print Name \_\_\_\_\_

Buyer \_\_\_\_\_ Date \_\_\_\_\_  a.m.  p.m. ←  
Print Name \_\_\_\_\_

Seller \_\_\_\_\_ Date \_\_\_\_\_  a.m.  p.m. ←  
Print Name \_\_\_\_\_

Seller \_\_\_\_\_ Date \_\_\_\_\_  a.m.  p.m. ←  
Print Name \_\_\_\_\_