

## OREF FORMS REVISIONS FOR 2018

By  
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THE FOLLOWING SUMMARY ADDRESSES THE MAJOR CHANGES MADE TO THE OREF FORMS THAT WILL BECOME AVAILABLE FOR 2018. 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 (OR OCCASIONALLY BLUE COURTESY OF THE "TRACK CHANGES" GODS), AND HAVE BEEN HIGHLIGHTED IN YELLOW; DELETIONS HAVE A STRIKE-THROUGH AND ARE ALSO IN RED AND HAVE 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 SEPARATELY IDENTIFIED.

### CHANGES TO RESIDENTIAL SALE AGREEMENT

NOTE: IN MOST CASES, CHANGES TO THE RESIDENTIAL SALE AGREEMENT WERE ALSO MADE IN ALL OTHER SALE AGREEMENTS.

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

*NOTE: In the 2017 Sale Agreement and in other OREF forms, provisions for notification or delivery from one party to the other often included the "Buyer's Agent" or "Seller's Agent". Pursuant to the Section 31 Definitions/Instructions, Subsection (3), "...all written notices or documents, required or permitted under this Agreement to be delivered to Buyer or Seller may be delivered to their respective Agent with the same effect as if delivered to that Buyer or Seller." Accordingly, the Forms Committee decided to delete these references as redundant and unnecessary.*

**SECTION 2. FIXTURES/CONTROLS/KEYS:** All fixtures ~~(including remote controls and essential related equipment)~~ and essential related equipment (e.g. remote controls, and all keys related to Property including mailbox, outbuilding(s), etc.) are to be left upon the Property. Fixtures shall include but not be limited to: built-in appliances; attached floor coverings; drapery rods and curtain rods; window and door screens; storm doors and windows; system fixtures (irrigation, plumbing, ventilating, cooling and heating); water heaters; attached electric light and bathroom fixtures; light bulbs; fluorescent lamps; window blinds; awnings; fences; all planted shrubs, plants and trees; EXCEPT:

*COMMENT: Subscriber suggestion; just a prompt reminding sellers and seller agents to leave keys with the house.*

**SECTION 4. B.**  Balance of Purchase Price to be financed through one of the following Loan Programs (Select only one):  Conventional;  FHA;  Federal VA (Seller  Shall  Shall not agree to pay Buyer's non-allowable VA fees);

**SECTION 5.1 FINANCING CONTINGENCIES.** \*\*\* **Except as otherwise provided, all All** Financing Contingencies are solely for Buyer's benefit and may be waived by Buyer in writing at any time.

*COMMENT: This change was inserted at the 11<sup>th</sup> hour out of an abundance of caution. Typically, all Buyer contingencies may be waived by Buyer, but in the Contingent Right to Sell, that is not always the case.*



**8. ADDITIONAL FINANCING PROVISIONS (e.g. Closing Costs):**

*COMMENT: The OREF Forms Committee received several requests to make it clearer where to include provisions for Seller-paid Buyer closing costs. The above parenthetical in the Additional Financing Provisions section is intended to serve as a "prompt" for where agents should include such provisions.*



**SECTION 11. LEAD-BASED PAINT CONTINGENCY PERIOD:** If the Property was constructed before 1978, on or promptly after the date the parties have signed and accepted this Agreement, Seller shall deliver to Buyer OREF 021, the Lead-Based Paint Disclosure Addendum ("the Disclosure Addendum"), together with the EPA Pamphlet entitled "Protect Your Family From Lead in Your Home" (the "Date of Delivery"). Unless waived by Buyer in writing in the Disclosure Addendum, Buyer shall have \_\_\_\_\_ calendar days (ten [10] or other mutually agreed upon period) commencing on the day following the Date of Delivery, within which to conduct a lead-based paint assessment or inspection (the "LBP Contingency Period"). If lead-based paint and/or lead-based paint hazards are identified in the Property by a certified inspector at any time before expiration of the LBP Contingency Period, Buyer may unconditionally cancel this transaction by written notice to Seller ("Notice of Cancellation"). In such case, Buyer shall deliver a copy of any written reports or evaluations (collectively "Reports") to Seller, *together with* the Notice of Cancellation, and thereafter receive a prompt refund of all earnest money deposits. **Buyer understands that the failure to deliver the Notice of Cancellation to Seller together with the Reports, on or before Midnight of the last day of the LBP Contingency Period shall constitute acceptance of the condition of the Property as it relates to the presence of lead-based paint or lead-based paint hazards, and the LBP Contingency Period shall automatically expire.**

[ ] OREF-021 Lead-Based Paint Disclosure Addendum is attached to this Agreement.

*COMMENT: There were several changes to this Section 11, so a complete re-write was done. The reasons included:*

- *The 2017 version of this provision set the 10-day period as a minimum time. However, even though the federal regulations refer to this amount of time to conduct an inspection, it is clear upon further reading of the regulations that the 10-day period is not a mandatory minimum, and the parties can agree upon a shorter or longer period of time;*
- *Due to the belief by some Buyers that they could cancel without an inspection, there were reports of Buyers getting their Disclosure Addendum late in the transaction, and then trying to cancel within the 10-day period.*

*The revised Section 11 now clarifies that the right of cancellation only goes to those prospective Buyers that (a) Actually have a LBP assessment or inspection within the applicable period; and, (b) Provide the Seller with a copy of the report. Thus, a Buyer cannot "lie in the weeds" not get the LBP Addendum timely delivered, and somehow preserve a right of cancellation without ever having the assessment or inspection. Note: This does not mean that delayed delivery is a harmless error; until a Buyer gets the Addendum and related paperwork, the 10-day period does not start, and if a Buyer wanted to have an assessment or inspection late in the transaction, due to belated delivery of the documents, they would have an absolute right to cancel if done so in a timely manner.*

**PRACTICE TIP:** Both Buyer and Seller agents must be vigilant here. According to the EPA ([here](#)) real estate agents must:

➤ Inform the seller of his or her obligations under the Real Estate Notification and Disclosure Rule. In addition, the agent is responsible if the seller or lessor fails to comply; unless the failure involves specific lead-based paint or lead-based paint hazard information that the seller or lessor did not disclose to the agent. Read the regulations that includes these requirements.

➤ Provide, as part of the contract process, an EPA-approved information pamphlet on identifying and controlling lead-based paint hazards titled Protect Your Family From Lead In Your Home (PDF). Attach to contract, or insert language in the contract, a "Lead Warning Statement" and confirmation that you have complied with all notification requirements. Sample Seller's Disclosure of Information English (PDF) and in Spanish (PDF)

➤ Provide a 10-day period to conduct a paint inspection or risk assessment for lead-based paint or lead-based paint hazards. Parties may mutually agree, in writing, to lengthen or shorten the time period for inspection. Homebuyers may waive this inspection opportunity.



**SECTION 12.2 SEPTIC/ONSITE SEWAGE SYSTEM:** Does the Property include a septic onsite sewage system?   
Yes  No  If the Property contains a septic onsite sewage system, the OREF 081 **Septic/Onsite Sewage System Addendum** will be attached to this Sale Agreement.

**COMMENT:** *Small change, but clarifies that a septic system is only one type of sewage system.*



**SECTION 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 ("Withholding Requirement"). A "foreign person" includes a non-resident alien individual, foreign corporation, foreign partnership, foreign trust or a foreign estate. Generally, the following rules apply under FIRPTA:

(a) There is no Withholding Requirement, even if the seller is a "foreign person", if: (i) The purchase price of the property is not more than \$300,000; and (ii) The property will be occupied as a residence by a buyer who is an individual (or a member of his/her family) (iii) for at least 50% of the number of days (excluding days the property is vacant) it is used by such person during each of the first two 12-month periods following the date of closing;

(b) The Withholding Requirement will be ten percent (10%) of the purchase price when the seller is a “foreign person” and the purchase price is over \$300,000, but less than \$1,000,000, and (a)(ii) and (iii) above apply; and

(c) The Withholding Requirement will be a fifteen percent (15%) of the purchase price when the seller is a “foreign person” and the purchase price is over \$1,000,000, regardless of the purchase price is \$1,000,000 or less and Seller does not qualify for any of use of the property, the exemptions in (a) or (b) above.

**If FIRPTA applies, (i.e. Seller is a foreign person), even if there is an exemption, Seller and Buyer ~~should~~must complete and sign the OREF 093 FIRPTA Addendum, OREF-093. If FIRPTA does *not* apply (i.e. seller is *not* a foreign person), then Seller shall, upon Buyer’s request, complete, sign, and deliver to Buyer a FIRPTA Certification of Non Foreign Status (“the Certificate”) prior to Closing. If Seller fails or refuses to complete, sign, or deliver the Certificate to Buyer prior to Closing, Seller understands and agrees that the Withholding Requirement shall apply to this transaction. Seller’s and Buyer’s Agents 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: <http://www.realtor.org/articles/firpta> ~~holding rate increasing to 15.~~ <https://www.irs.gov/individuals/international-taxpayers/firpta-withholding>**

**COMMENT:** *In some MLSs such as RMLS™, there is a representation on the public listing to the effect that Seller is not a “foreign person” as defined by FIRPTA. In the Seller representation section of the OREF Sale Agreements, there is also a statement that Seller is not a foreign person. However, regardless of these statements, they are insufficient to insulate a Buyer from their withholding obligation to the IRS if, in fact, the seller is a foreign person. The only sure protection is for the Seller to sign a Certificate of Non Foreign Status (aka a “FIRPTA Affidavit”). Under this new provision, in those cases in which there is question about the Seller’s exemption from FIRPTA, the buyer may request that the Seller sign the FIRPTA affidavit.*

**PRACTICE TIP:** *Admittedly, imposing the withholding obligation on Buyers is a draconian measure. But in reality, in most cases, the FIRPTA issue comes to the surface through escrow, since it must obtain the Seller’s taxpayer identification number (“TIN”) for purposes of filing a 1099-S with the IRS. If the Seller does not have a TIN, the first to know would likely be escrow. At that point, the issue of whether the seller is a foreign person subject to FIRPTA gets vetted pretty quickly. So stay in touch with escrow on this issue – but don’t expect them to give your client FIRPTA advice. If in doubt, get your client to an attorney, CPA, or other expert familiar with these issues.*



**SECTION 17. TOWNHOME/PLANNED COMMUNITY/HOMEOWNER’S ASSOCIATION:** Is the property a townhome, in a planned community, or have a Homeowner’s Association?  Yes  No  Unknown

If yes, **OREF 024 Townhome/Planned Community/Homeowner’s Association Addendum** will be attached to this Sale Agreement.

**COMMENT:** *These changes are self-evident. The reason was merely to remind users that in townhome developments and planned communities, there is an HOA, which means that the Addendum should be included with the offer.*

**PRACTICE TIP:** *All condominium developments, townhomes and planned communities have common areas. Some are more extensive than others. But in all cases, where there are common areas, there must be an association to manage it, pay taxes, where appropriate, and make sure the areas are maintained. In virtually all cases, this means there is a resulting cost*

that must be passed on to homeowners or unit owners in the form of periodic assessments. For this reason it is recommended that where applicable, seller and buyer agents familiarize themselves and their clients with the appropriate addendum. In the case of condos, it is the Residential Condominium Sale Agreement (No. 011) and for townhome developments and planned communities, it is the Townhome/Planned Community/Homeowner Association Addendum (No. 024).



**SECTION 24. EARNEST MONEY DEPOSIT(S) AND BUYER INSTRUCTIONS:** When this Sale Agreement is signed and accepted by Buyer and Seller, the following instructions shall immediately apply to the handling of Buyer's earnest money deposit in the sum of \$ \_\_\_\_\_ ("the Deposit") .

**24.1** The Deposit shall be payable by electronic funds transfer or check drawn on collected funds, and deposited within \_\_\_\_\_ (three [3] if not filled in) business days (the "Deposit Deadline") as follows (*check all that apply*):

- Directly with Escrow;
- Directly into Buyer's Agent's Firm's client trust account and remain there until disbursement at Closing; and/or
- Directly into Buyer's Agent's Firm's client trust account and thereafter deposit with Escrow/Title Company prior to Closing;
- As follows: \_\_\_\_\_

Caution: The Deposit, payable by whatever method selected by Buyer above, shall be placed with Escrow or Buyer's Agent's Firm's Client Trust account no later than 5:00 pm on the last day of the Deposit Deadline. The failure to do so may result in a breach of the Sale Agreement under **EARNEST MONEY PAYMENT/REFUND** section, below.

**24.2** If an additional Deposit ("Additional Deposit") is to be paid, it shall be handled in accordance with the above-selected instructions, \_\_\_\_\_ or \_\_\_\_\_ (Describe): \_\_\_\_\_

**24.3** Once the Deposit, and Additional Deposit, if any, is/are placed with Escrow, Seller's and Buyer's Agents and Firms shall have no further responsibility to Buyer or Seller regarding said funds.

**COMMENT:** *The reason for this change is due to the fact that after decades of use, the Promissory Note is being retired as vestigial, much like the human appendix, which may have had a purpose sometime in our evolution, but has none today. There are many states that do not use notes for earnest money. As we gradually become paperless, the need for a physical piece of paper can become a burden, and losing it a risk. The Real Estate Agency rules require that if a note is used, it must be returned when paid, and evidence of payment must be recorded in the file. Years ago, it was not unusual for brokers to simply paperclip the note in the file and forgot about it. However, during the auditing process, the Agency could sanction brokers who forgot to return the note to the payor marked "Paid in Full".*

*Accordingly, references to the promissory note have been removed from the above provision. Instead, we have replaced the act of redeeming the promissory note by a certain deadline with the act of depositing the EM at a certain place by a certain deadline. Then, in the Section of the Sale Agreement (discussed immediately following) we've removed the failure to redeem the note as a breach, and substituted the failure to deposit funds as the breach.*

***PRACTICE TIP:** This is not to say that a Buyer and Seller could not agree to write up a promissory note as earnest money in the transaction. However, Seller's agent should be sure to include in the note or an addendum stating that "Buyer's failure to timely redeem the Promissory Note shall constitute a default under this Sale Agreement", or words to that effect.*



**26.2 EARNEST MONEY PAYMENT TO SELLER:** If Seller signs and accepts this Agreement and title is marketable; and (1) Buyer has materially misrepresented Buyer's financial status; or (2) Buyer's bank does not pay, when presented, any check given as earnest money or fails to timely make an electronic funds transfer for Buyer's earnest money; or (3) Buyer fails to complete this transaction in accordance with the material terms of this Agreement, then all earnest money paid or agreed to be paid shall be paid to Seller as liquidated damages. The parties expressly agree that Seller's economic and non-economic damages arising from Buyer's failure to close this transaction in accordance with the terms of this Agreement would be difficult or impossible to ascertain with any certainty, and that said earnest money deposit(s) identified herein shall represent a binding liquidated sum, and that it is a fair, reasonable and appropriate pre-estimate of Seller's damages, and is not a penalty. It is the intention of the parties that Seller's sole remedy against Buyer for Buyer's failure to close this transaction in accordance with the material terms of this Agreement shall be limited to the amount of earnest money paid or agreed to be paid herein. Seller's right to recover from Buyer any unpaid earnest money agreed to be paid herein shall be in accordance with the Dispute Resolution provisions of Sections 36 – 38.3 below.

***COMMENT:** The initial reason for changing this Section was merely to remove a declaration of default for a Buyer's failure to redeem the promissory note, and replace it with the failure to deposit earnest money. But once the Section was opened, we added a "liquidated damages" recital to justify the Buyer's forfeiture of earnest money for a breach of the Sale Agreement if it results in a failure of the transaction. Typically, it is impossible for a Seller to quantify in damages the missed marking time while the home was in a Pending status, and what potential sales had been missed. Hence, the forfeiture of buyer's earnest money. The liquidated damage clause explains this, and serves as insulation against a buyer claim that the amount was a "penalty".*



**SECTION 32. UTILITIES:** Seller shall pay all utility bills accrued to date Buyer is entitled to possession. Buyer shall pay Seller for heating fuel/propane on premises, at Seller's supplier's rate on the possession date. Payment shall be handled between Buyer and Seller outside of Escrow. Seller shall not terminate or disconnect electric, gas, heating fuel/propane, or water utilities prior to Closing unless parties agreed otherwise in writing.

***COMMENT:** The purpose of this change is self-explanatory.*



**SECTION 36. FILING OF CLAIMS:** All claims, controversies and disputes between Seller, Buyer, Agents, and/or Firms, relating to the enforcement or interpretation of this Sale Agreement (including those for rescission), as well as those relating to the validity or scope of the Sale Agreement, and all matters concerning the jurisdiction of the

arbitrator(s) and/or Arbitration Service of Portland, to hear and decide questions of arbitrability (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 CLAIMS TRIED BY A JUDGE OR JURY IN STATE OR FEDERAL COURT, INCLUDING ALL ISSUES RELATING TO THE ARBITRABILITY OF SAID CLAIMS.

**COMMENT:** *Despite the best efforts of the Forms Committee, some Oregon judges seem to believe they should be the sole decision-makers of the arbitrability of a dispute arising under an arms-length contract. For example, ORS 36.100 provides that "It is the policy and purpose of ORS 36.100 to 36.238 that, when two or more persons cannot settle a dispute directly between themselves, it is preferable that the disputants be encouraged and assisted to resolve their dispute with the assistance of a trusted and competent third party mediator, whenever possible, rather than the dispute remaining unresolved or resulting in litigation.*

- *The OREF Sale Agreements all require that in a dispute, the matter must be first mediated prior to, or promptly after, filing for arbitration. The penalty for failing to do so, and going straight to arbitration is that the prevailing party will not be awarded attorney fees.*
- *ORS 36.450 (4) defines an "Arbitration agreement" to mean "...an agreement by the parties to submit to arbitration all or certain disputes which may arise between them in respect to a defined legal relationship, whether contractual or not. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement." With limited exceptions that do not apply to private disputes arising during real estate transaction, arbitration by one or more neutrals, is a permissible and fully enforceable method of dispute resolution in Oregon.*
- *ORS 36.456 provides that subject to limited exceptions, where a provision of the Oregon arbitration statutes leaves the parties free to determine a certain issue, such freedom includes the right of the parties to authorize a third party \*\*\* to make that determination" including "...any arbitration or conciliation rules referred to in that agreement."*
- *And lastly, ORS 36.462 provides that in matters governed by the arbitration statutes"...**no court shall intervene** except where so provided in ORS 36.450 to 36.558 or in applicable federal law. (Emphasis added.) This law has remained in effect, unmodified, since 1991.*

*Nevertheless, some courts appear to believe that the method of dispute resolution is what they decide, rather than was the parties contractually agreed upon pursuant to Oregon law. As a result, and in an effort to make the intent of arbitration clause inviolate, the Forms Committee agreed to include the "issue of arbitrability" in an effort to make the arbitrator, who is familiar with real estate disputes, the person or persons to designate whether a dispute should remain in private arbitration or may be heard and decided in court by a single judge.*



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 41-2. This offer may be accepted by Seller only in writing.

Buyer \_\_\_\_\_ Date \_\_\_\_\_, \_\_\_\_\_ a.m. \_\_\_\_\_ p.m. ←

Buyer \_\_\_\_\_ Date \_\_\_\_\_, \_\_\_\_\_ a.m. \_\_\_\_\_ p.m. ←

Address \_\_\_\_\_ Zip \_\_\_\_\_

Phone Home \_\_\_\_\_ Work \_\_\_\_\_ E-mail \_\_\_\_\_ Fax \_\_\_\_\_

This offer was delivered/transmitted/submitted to Seller for signature on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ at \_\_\_\_\_ a.m. \_\_\_\_\_ p.m.

bBy \_\_\_\_\_ (Agent(s) presenting offer).

**40. 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 Agent(s) that are not expressly contained in this Agreement. Seller instructs that all earnest money distributable to Seller pursuant to Section 25(26) shall be disbursed as follows after deduction of any title insurance and Escrow cancellation charges: (check one)  First to Seller's Agent's 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 \_\_\_\_\_

**CHANGE A Note:** If delivery/transmission occurs after the Offer Deadline identified at Offer to Purchase Section, above, it will not become binding upon Seller and Buyer unless the parties agree to extend said Deadline by an Addendum, Counteroffer, or other writing, jointly signed by the parties. The parties' failure to do so shall be treated as a rejection under Seller's Rejection Section, below, and this transaction shall be automatically terminated.

**41. SELLER'S REJECTION/COUNTER OFFER (select only 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 \_\_\_\_\_

**CHANGE B** ~~42.1 BUYER'S ACKNOWLEDGMENT: Buyer acknowledges receipt of a copy of Seller's signed response to Buyer's offer. (Note: The date and time of Buyer's signed acknowledgment below is not the moment this Agreement becomes binding upon the parties. See, Section 31 (6), above.)~~

Buyer \_\_\_\_\_ Date \_\_\_\_\_, \_\_\_\_\_ a.m. \_\_\_\_\_ p.m. ←

Buyer \_\_\_\_\_ Date \_\_\_\_\_, \_\_\_\_\_ a.m. \_\_\_\_\_ p.m. ←

**CHANGE C** ~~2 SELLER'S LATE ACCEPTANCE: If Seller signed where indicated at Section 40 accepting Buyer's offer, but transmitted it to Buyer or Buyer's Agent after the Offer Deadline identified at Section 39, above, 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 Agent.~~

Buyer \_\_\_\_\_ Date \_\_\_\_\_, \_\_\_\_\_ a.m. \_\_\_\_\_ p.m. ←

Buyer \_\_\_\_\_ Date \_\_\_\_\_, \_\_\_\_\_ a.m. \_\_\_\_\_ p.m. ←

~~If Buyer checked the box and signed where indicated in this Section 42.2, agreeing to be bound by Seller's late acceptance of Buyer's offer, Buyer or Buyer's Agent must complete the information below and thereafter promptly transmit this Agreement to Seller or Seller's Agent:~~

~~Enter Date, Time, and Method of Transmission of Buyer'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 BUYER'S OR SELLER'S AGENT TO THE TERMS OR PROVISIONS ABOVE BUYER'S SIGNATURE SHOULD ALSO BE ON A SEPARATE DOCUMENT.**

*COMMENT: Striking these provisions have been an improvement that was long in coming. Both provisions relate to old Real Estate Agency rules or interpretations that were the result of living in a paper-world where documents were physically transmitted between parties and agents.*

- ***CHANGE A** is located directly under the Seller's signature block, and hopefully will not be ignored. Years ago, the Agency investigated one or two brokers who permitted a Seller to sign a Sale Agreement which, by its terms, had already expired. It is unknown if the transaction closed, but the Agency's position at the time was that once expired, there was no offer to sign, and the brokers should not have treated the offer as still viable. There would have been many simpler ways to deal with the oversight, such as an Addendum providing that the expired offer would be amended to change the Offer Deadline. Rather, OREF, perhaps overreacting, created a protocol that likely caused more confusion than help. That protocol has now been abandoned, mercifully saving time and trees.*
- *Now, the text merely tells Sellers that if they sign and deliver the Sale Agreement back to the Buyer after the Offer Deadline, there will be no binding transaction unless the parties sign a written agreement extending the Offer Deadline. The failure to reach such agreement is treated as if the Seller rejected Buyer's offer thereby terminating the transaction.*

- **CHANGE B** removes a perennial source of agent confusion. The reason it existed was because when the Agency wanted to audit a paper file, it wanted to be able to see that the Buyer's offer had made it to the Seller and back again, with a written acknowledgment that a Buyer knew the Seller had either accepted the offer, rejected it and countered, or rejected it and did not counter.
- The other problem that was created with the Buyer signing at this section was that some agents were under the mistaken belief that the Sale Agreement did not become binding on the parties until: (a) Seller had signed the offer, (b) transmitted it back to Buyer, and (c) Buyer receipted for it by signing this section where indicated. If this were the law, some Buyers could game the system by making themselves unavailable to sign until after the Offer Deadline.
- Without paper, and with DocuSign, the need to deliver the Seller's response to Buyer's offer has been taken care of electronically, thus satisfying the Agency's need to confirm that Buyer was aware of the status of their offer. The Agency has concurred with OREF's removal of this section.
- **CHANGE C** is related to the now discarded protocol discussed at CHANGE A above. Originally, that approach turned the Seller's late acceptance into a form of counteroffer that the Buyer could only accept by transmitting their consent to Seller. It became mind-numbingly confusing for OREF members and the Forms Committee itself. We have finally entered the 21<sup>st</sup> Century!

**PRACTICE TIP:** In those case where the Seller does accept Buyer's offer after the deadline, agents must note that there is no deadline for the parties to agree to extend the Offer Deadline. Acceptance after the deadline is a nullity unless Seller and Buyer agree otherwise in a subsequently signed document. Thus, it is incumbent on the Seller's agent to have a discussion with Buyer's agent immediately when the accepted offer is transmitted or presented to the Buyer's agent. Seller agents may consider preparing a written addendum at the time of transmission (assuming he/she is aware of the lateness of their client's signature) extending the Offer Deadline.

## CHANGES TO SECTION 10.2 OF VACANT LAND SALE AGREEMENT

**10.2 SELLER VACANT LAND DISCLOSURES:** Although not required by law, unless waived by Buyer in writing, Seller shall complete the Vacant Land Disclosure Addendum (OREF 019) (the "Disclosure Addendum") for delivery to all prospective buyers making offers to purchase the Property. The Disclosure Addendum addresses the current condition of the Property, and asks Seller to provide pertinent documents and information. Seller's answers are based solely upon Seller's actual knowledge of the condition of the Property, without necessarily having performed any inspections or tests. Notwithstanding receipt and review of Seller's completed Disclosure Addendum, Buyer is cautioned to exercise their own due diligence by using experts and specialists of Buyer's choice. Neither Seller's nor Buyer's Agents are experts or specialists in vacant land. As more fully described in the Disclosure Addendum, Buyer shall have a right to revoke their offer if timely given to Seller within the defined Revocation Period, which shall commence on the first business day following the date of delivery of the Disclosure Addendum to Buyer. **Unless waived by Buyer in writing, Seller's failure to deliver the Disclosure Addendum with all required documents and information to a Buyer that has made a written offer to purchase the Property, shall entitle Buyer to exercise their right of revocation up to the moment of closing. The right of revocation expires automatically upon closing.**

**Buyer(s) to check one box below:**

Buyer's offer is conditioned upon receiving Seller's Vacant Land Disclosure Addendum within three business days following the date this Agreement is signed and accepted by the parties. Buyer **does not waive** the right of revocation provided therein.

Buyer's offer is conditioned upon receiving Seller's Vacant Land Disclosure Addendum within three business days following the date this Agreement is signed and accepted by the parties. Buyer expressly **waives** the right of revocation provided therein.

Buyer expressly **waives** the right to receive the Vacant Land Disclosure Addendum and all rights arising therefrom.

*COMMENT: Although there were some slight non-substantive changes to the body of Section 10.2, the main change is the selection boxes below the text. The purpose of these boxes is to give buyers choices whether they want to receive the Seller's Vacant Land Disclosure Addendum (the "Addendum") and whether they will, or will not, waive the right of revocation. As a practical matter, most buyers can be expect to ask for the Addendum and retain the right to exercise the right of revocation. But by now adding it into the offer, the seller is apprised, up front, as to whether the Addendum will be expected to be provided. Of course, sellers are entitled to reject the offer, and counter with a refusal to complete the Addendum or provide it without a right of revocation.*

## CHANGES TO SECTION 43.3 OF NEW RESIDENTIAL CONSTRUCTION SALE AGREEMENT

**43.3. MEDIATION AND ARBITRATION BETWEEN BUYER AND SELLER:** If Buyer's and/or Seller's Agent 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 an Agent is not a member of the National Association of REALTORS®, or the System is not available through the Agent'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. **OREGON LAW CONTAINS IMPORTANT REQUIREMENTS THAT HOMEOWNERS MUST FOLLOW BEFORE FILING FOR ARBITRATION OR COURT ACTION (EXCLUDING SMALL CLAIMS COURT) AGAINST ANY CONTRACTOR, SUBCONTRACTOR, OR SUPPLIER (MATERIALS OR EQUIPMENT) FOR CONSTRUCTION DEFECTS. FAILURE TO FOLLOW THOSE PROCEDURES OR MEET THOSE DEADLINES WILL AFFECT A HOMEOWNER'S RIGHT TO COMMENCE AN ACTION. IF CONTEMPLATING A CLAIM AFTER CLOSING OF THIS TRANSACTION, BUYER SHOULD CONTACT AN ATTORNEY FOR INFORMATION ON THE PROCEDURES AND DEADLINES UNDER OREGON LAW. (SEE, ORS 701.560 – 701.600).**

*COMMENT: ORS 701.565 provides that subject to certain exceptions, a homeowner may not compel arbitration or commence a court action against a contractor, subcontractor or supplier relating to any defect in the construction, alteration or repair of a residence, or its systems or components, unless the owner has first sent them a written "notice of defect" as described therein. We have included this caveat in the dispute resolution section of the New Construction Sale Agreement, so owners are made aware that prior to initiating a claim in arbitration, they must first comply with the notice provisions of these statutes. Otherwise, an owner who filed without giving adequate statutory notice in advance would have to either dismiss or abate the arbitration until statutory compliance had occurred.*

**CHANGES TO NON-SALE AGREEMENT FORMS**

**SELLER'S COUNTER OFFER (#003)**

All remaining terms and conditions of the Sale Agreement (and other counter offer(s), where applicable), not otherwise modified, are approved and accepted by Seller. Time is of the essence. This Seller's Counter Offer shall automatically expire on \_\_\_\_\_ at \_\_\_  a.m.  p.m. ("the Counter Offer Deadline"), if not accepted within that time. ~~If Buyer accepts this Seller's Counter Offer after the Counter Offer Deadline, it shall not be binding upon Seller unless agreed to by Seller in writing within \_\_\_\_\_ business days (two [2] if not filled in) thereafter by so indicating at the Seller's Acknowledgement Section below.~~ This Seller's Counter Offer may be accepted by Buyer only in writing. However, Seller may withdraw this counter offer any time prior to Buyer's written acceptance.

\*\*\*\*

**(BUYER'S RESPONSE)**

Note: If delivery/transmission occurs after the Counter Offer Deadline identified above, it will not become binding upon Seller and Buyer unless the parties agree to extend said Deadline by an Addendum, Counteroffer, or other writing, jointly signed by the parties. The parties' failure to do so shall be treated as a rejection under Buyers Response, above, and this transaction shall be automatically terminated.

~~**SELLER'S ACKNOWLEDGMENT:** Seller acknowledges that Seller has not relied on any oral or written statements of Buyer or of any Agent(s) that are not expressly contained in the Sale Agreement as amended. Seller acknowledges receipt of copies of the Sale Agreement and all subsequent counter offers, including this Seller's Counter Offer, which Seller has fully read and understands.~~

Seller Signature \_\_\_\_\_ Date \_\_\_\_\_, \_\_\_\_\_ a.m. \_\_\_p.m. ←

Seller Signature \_\_\_\_\_ Date \_\_\_\_\_, \_\_\_\_\_ a.m. \_\_\_p.m. ←

~~**BUYER'S LATE ACCEPTANCE:** If Buyer's response to Seller's Counter Offer is an acceptance that has occurred after the Counter Offer Deadline identified in the Agreement to Sell Section above, Seller (*select only one*)  agrees  does not agree, to be bound thereby. **(The failure to check either box shall constitute a rejection by Seller of Buyer's late acceptance of Seller's Counter Offer after said Deadline.)** ~~If Seller checks the box agreeing to be bound by Buyer's late acceptance occurring after the Counter Offer Deadline, the Sale Agreement shall become binding on all parties only when Seller(s) has/have signed below and this Counter Offer is transmitted to Buyer or Buyer's Agent. In such case, after Seller has completed this Section, Seller's Agent should promptly complete the "Date and Time of Acceptance" below and transmit to Buyer's Agent.~~~~

Seller Signature \_\_\_\_\_ Date \_\_\_\_\_, \_\_\_\_\_ a.m. \_\_\_p.m. ←

Seller Signature \_\_\_\_\_ Date \_\_\_\_\_, \_\_\_\_\_ a.m. \_\_\_p.m. ←

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

\_\_\_\_\_  
\_\_\_\_\_:

**By Seller's Agent** \_\_\_\_\_

*COMMENT: These changes were an outgrowth of Change A, above at Section 40.*



**BUYER'S COUNTER OFFER (#004)**

All remaining terms and conditions of the Sale Agreement (and other counter offer(s), where applicable), not otherwise modified, are approved and accepted by Buyer. Time is of the essence. This Buyer's Counter Offer shall automatically expire on \_\_\_\_\_ at \_\_\_\_\_  a.m.  p.m. ("the Counter Offer Deadline"), if not accepted within that time. ~~If Seller accepts Buyer's Counter Offer after the Counter Offer Deadline, it shall not be binding upon Buyer unless agreed to by Buyer in writing within \_\_\_\_\_ business days (two [2] if not filled in) thereafter by so indicating at the Buyer's Acknowledgement Section below.~~ This Buyer's Counter Offer may be accepted by Seller only in writing. However, Buyer may withdraw this Buyer's Counter Offer any time prior to Seller's written acceptance.

\*\*\*\*

**Note:** If delivery/transmission occurs after the Counter Offer Deadline identified above, it will not become binding upon Seller and Buyer unless the parties agree to extend said Deadline by an Addendum, Counteroffer, or other writing, jointly signed by the parties. The parties' failure to do so shall be treated as a rejection under Seller's Response, above, in the Sale Agreement and this transaction shall be automatically terminated.

~~**BUYER'S ACKNOWLEDGMENT:** Buyer acknowledges that Buyer has not relied on any oral or written statements of Seller or of any Agent(s) that are not expressly contained in the Sale Agreement as amended. Buyer acknowledges receipt of copies of the Sale Agreement and all subsequent counter offers, including this Buyer's Counter Offer, which Buyer has fully read and understands.~~

Buyer Signature \_\_\_\_\_ Date \_\_\_\_\_, \_\_\_\_\_ a.m. \_\_\_ p.m. ←  
Buyer Signature \_\_\_\_\_ Date \_\_\_\_\_, \_\_\_\_\_ a.m. \_\_\_ p.m. ←

~~**SELLER'S LATE ACCEPTANCE:** If Seller's response to Buyer's Counter Offer is an acceptance of Buyer's Counter Offer that has occurred after the Counter Offer Deadline identified in the Agreement to Purchase Section above, Buyer (select only one)  agrees  does not agree, to be bound thereby. (The failure to check either box shall constitute a rejection by Buyer of Seller's late acceptance of Buyer's Counter Offer after said Deadline.) If Buyer checks the box agreeing to be bound by Seller's late acceptance occurring after the Counter Offer Deadline, the Sale Agreement shall become binding on all parties only when Buyer(s) has/have signed below and this Counter Offer is transmitted to Seller or Seller's Agent. In such case, after Buyer has completed this Section, Buyer's Agent should promptly complete the "Date and Time of Acceptance" below and transmit to Seller's Agent.~~

Buyer Signature \_\_\_\_\_ Date \_\_\_\_\_, \_\_\_\_\_ a.m. \_\_\_ p.m. ←  
Buyer Signature \_\_\_\_\_ Date \_\_\_\_\_, \_\_\_\_\_ a.m. \_\_\_ p.m. ←

Enter Date, Time, and Method of Transmission of Buyer's Acceptance:  
\_\_\_\_\_  
\_\_\_\_\_;

By Buyer's Agent: \_\_\_\_\_

Seller's Agent \_\_\_\_\_ Buyer's Agent \_\_\_\_\_

*COMMENT: These changes were an outgrowth of Change A, above at Section 40.*

VACANT LAND DISCLOSURE (#019)

INSTRUCTIONS TO THE SELLER

1 THIS IS A VACANT LAND DISCLOSURE ADDENDUM ("DISCLOSURE ADDENDUM") MADE BY THE SELLER  
2 CONCERNING THE PROPERTY LOCATED AT \_\_\_\_\_ (THE "PROPERTY").  
3 THIS IS NOT A WARRANTY OF ANY KIND BY THE SELLER OR ANY AGENT OF THE SELLER AND IS NOT A  
4 SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THAT THE BUYER MAY WISH TO OBTAIN.

5 Please complete the following form. Answer all the questions. If a question is not applicable to this Property, mark N/A.  
6 Please explain each "YES" answer in detail at Section VII below or on a separate page and attach pertinent  
7 documents and information. Please refer to the section and item of the question(s) when you provide your explanation(s).  
8 Please date and sign each page of this Disclosure Addendum and each attachment. SELLER(S) AUTHORIZE(S) ALL  
9 AGENTS TO PROVIDE A COPY OF THIS VACANT LAND DISCLOSURE ADDENDUM TO OTHER REAL ESTATE  
10 AGENTS AND PROSPECTIVE BUYERS OF THE PROPERTY.

11 NOTICE TO BUYER

12 ~~THIS IS A DISCLOSURE ADDENDUM MADE BY THE SELLER CONCERNING THE PROPERTY. IT IS NOT A~~  
13 ~~GUARANTY OR WARRANTY REGARDING THE CONDITION OF THE PROPERTY. BUYER SHOULD SECURE~~  
14 ~~SEPARATE ADVICE FROM EXPERTS OF BUYER'S CHOICE. REAL ESTATE BROKERS ARE NOT REQUIRED TO~~  
15 ~~INSPECT REAL PROPERTY, CANNOT RENDER OPINIONS ON ITS PHYSICAL CONDITION OR LEGAL STATUS,~~

16 INSTRUCTIONS TO THE SELLER NOTICE TO BUYER

AND MAKE NO WARRANTIES REGARDING THE ACCURACY OF THE INFORMATION CONTAINED HEREIN.

A. Buyers have a duty to pay diligent attention to any material defects in or about the Property that are known to them  
or can become known by utilizing diligent attention and observation, and by employing competent experts. Your real  
estate agent is not responsible to conduct your due diligence, and may not render advice about property conditions  
or legal issues.

A.B. The disclosures set forth in this Disclosure Addendum and in any amendments thereto, are made only by the Seller  
and are not the representations of any financial institution that may have made or may make a loan pertaining to the  
Property, or that may have or take a security interest in the Property, or of any real estate agent engaged by the  
Seller or Buyer. A financial institution or real estate agent is not bound by and has no liability with respect to any  
representation, misrepresentation, omission, error or inaccuracy contained in another party's disclosure statement or  
any amendments thereto.

\*\*\*\*

UNLESS PREVIOUSLY WAIVED BY BUYER IN WRITING, SELLER OR SELLER'S AGENT SHALL DELIVER A COPY OF THE COMPLETED  
VACANT LAND DISCLOSURE ADDENDUM TO ANY BUYER MAKING A WRITTEN OFFER TO PURCHASE THE PROPERTY. UPON RECEIPT BY  
BUYER OR BUYER'S AGENT, BUYER SHALL HAVE THE ABSOLUTE RIGHT TO REVOKE THEIR OFFER, FOR ANY REASON OR NO REASON,  
BY GIVING WRITTEN NOTICE TO SELLER OR SELLER'S AGENT WITHIN FIVE (5) BUSINESS DAYS FOLLOWING THE DATE OF SELLER'S  
DELIVERY OF THE DISCLOSURE ADDENDUM TO BUYER (THE "REVOCATION PERIOD"). THE REVOCATION PERIOD SHALL COMMENCE:

(A) ON THE NEXT BUSINESS DAY FOLLOWING THE DATE OF BUYER'S OR BUYER'S AGENT'S ACKNOWLEDGMENT (BELOW) OF DELIVERY OF THIS VACANT LAND DISCLOSURE ADDENDUM, OR (B) ON THE NEXT BUSINESS DAY FOLLOWING THE DATE BUYER AND SELLER HAVE SIGNED AND ACCEPTED THE SALE AGREEMENT, *WHICHEVER OCCURS LAST* ("THE DEADLINE"). UNLESS PREVIOUSLY WAIVED IN WRITING, IF BUYER'S RIGHT OF REVOCATION IS NOT TIMELY EXERCISED IN WRITING BY MIDNIGHT AT THE END OF THE LAST DAY OF THE REVOCATION PERIOD DEADLINE, IT SHALL AUTOMATICALLY EXPIRE. IN ALL EVENTS, SAID RIGHT OF REVOCATION SHALL EXPIRE UPON CLOSING OF THE TRANSACTION.

**ACKNOWLEDGMENT**

THE UNDERSIGNED HEREBY ACKNOWLEDGE THE DUTY TO SIGN, DATE, AND RETURN A COPY OF THIS PAGE OF THE ADDENDUM TO SELLER OR SELLER'S AGENT PROMPTLY UPON RECEIPT FROM SELLER OR SELLER'S AGENT. A BAD FAITH REFUSAL TO DO SO COULD JEOPARDIZE BUYER'S ABILITY TO EFFECTIVELY EXERCISE THEIR RIGHT OF REVOCATION.

Buyer's Signature \_\_\_\_\_ Date \_\_\_\_\_, \_\_\_\_\_ a.m. \_\_\_\_\_ p.m. ←

Buyer's Signature \_\_\_\_\_ Date \_\_\_\_\_, \_\_\_\_\_ a.m. \_\_\_\_\_ p.m. ←

Buyer's Agent Signature \_\_\_\_\_ Date \_\_\_\_\_, \_\_\_\_\_ a.m. \_\_\_\_\_ p.m. ←

*COMMENT: The above text is largely from the statutory Seller's Property Disclosure Statement. The idea here is to replicate the protocol used for that form. Some subscribers have not been pleased with the introduction of this form for the reason that it arguably "raises the standard of care" even though the legislature never mandated this form. However, it is the belief of the OREF Forms Committee that this form is (a) good for consumers, as it asks questions that a buyer might not think to ask, and (b) good for real estate licensees (some of whom may not be familiar with the sale or purchase of vacant land), since it raises issues they might not otherwise raise. The fact that the Oregon Legislature did not undertake the task of writing such a form does not mean it is not something the industry should be doing on its own. Full disclosure has never created risk to consumers or their brokers; the absence of such disclosure has.*

*NOTE: There were a number of changes and amplifications to many of the questions in this form. Although they are too numerous to individually address here, they address such things as timber contracts, timber rights, survey numbers, conservation easements and agreements, FEMA Map Nos., abandoned tanks, man-made ponds, septic/onsite sewage systems, etc. All brokers are encouraged to familiarize themselves with the questions in the form before using it. Additionally, the Forms Committee added to this form the infamous question at the end of the Seller Property Disclosure Statement ("Are there any other material defects affecting this property or its value that a prospective buyer should know about?")*

*ADDITIONAL NOTE: Again following the statutory protocol for the Seller's Property Disclosure Statement, the right of revocation period now commences from Seller delivery rather than Buyer receipt.*



**BUYER'S REPAIR ADDENDUM (#022A)**

**COMPLETION DATE FOR REPAIRS/CORRECTIVE ACTION:**

The Repairs/Corrective Action shall be completed on or before \_\_\_\_\_ ("the Completion Date"). Seller shall give Buyer ~~or Buyer's Agent~~ written notice of completion of the Repairs/Corrective Action and provide all receipts for labor and materials with proof of payment in full (unless being paid out of Escrow). Buyer may, with Buyer's inspector, within \_\_\_\_\_ **business days** (two [2] if not filled in) following receipt of such notice, re-inspect the Property to confirm that the Repairs/Corrective Action have/has been completed.

**COMMENT:** The above text is self-explanatory.

**PRACTICE TIP:** Seller's agent should advise Seller in advance of the need to retain these documents.



**TOWNHOME/PLANNED COMMUNITY/HOMEOWNERS ASSOCIATION ADDENDUM (#024A)**

**General Information:**

(A) Parking space/garage # \_\_\_\_\_  owned  leased  N/A The lease is \$ \_\_\_\_\_ /  month  year.

(B) Storage space # \_\_\_\_\_  owned  leased  N/A The lease is \$ \_\_\_\_\_ /  month  year.

(C) Current HOA dues: \$ \_\_\_\_\_ per  month  year  other \_\_\_\_\_.

**(D) HOA contact information:**

(Name of HOA) \_\_\_\_\_

(Name of Management Company, if any) \_\_\_\_\_

(Contact Person) \_\_\_\_\_

(Address) \_\_\_\_\_

(Phone) \_\_\_\_\_

HOA Website: \_\_\_\_\_

HOA Email Address: \_\_\_\_\_

**If the information in (A) through (D) is blank, is incorrect, or is not current, Seller shall promptly notify Buyer and Escrow with the current information based upon Seller's actual knowledge through the date of Closing.**

**COMMENT:** The parties are prompted to use this Addendum in the Residential Sale Agreement. It puts the burden on Seller to provide Buyer with updated information.

**PRACTICE TIP:** All condominium developments, townhomes and planned communities have common areas. Some are more extensive than others. But in all cases, where there are common areas, there must be an association to manage it, pay taxes, where appropriate, and make sure the areas are maintained. In virtually all cases, this means there is a resulting cost that must be passed on to the homeowners or unit owners in the form of periodic assessments. For this reason it is recommended that where applicable, seller and buyer agents familiarize themselves and their clients with the appropriate addendum. In the case of condos, it is the Residential Condominium Sale Agreement (No. 011) and for townhome developments and planned communities, it is the Townhome/Planned Community/Homeowner Association Addendum (No. 024).



**WOODSTOVE/WOOD BURNING FIREPLACE INSERT ADDENDUM (No. 046)**

**5. Responsibility.** Seller is primarily responsible for removal and destruction of an Uncertified Device located on the Property unless Buyer accepts written responsibility for removal and destruction. (To accept this responsibility, Buyer must initial below.)

\_\_\_\_\_/\_\_\_\_\_. By initialing here, Buyer expressly accepts responsibility and acknowledges that the Uncertified Device must be both removed and destroyed by Buyer within 30 days following the Closing Date. **Buyer should verify with lender, if applicable, that Buyer can accept this responsibility.**

**COMMENT:** This addition was a subscriber suggestion and is self-explanatory.

**PRACTICE TIP:** Licensees may want to be somewhat circumspect about a Buyer agreeing to undertake a duty statutorily imposed on their Seller. Will the woodstove or wood burning fireplace actually be removed, or will it remain in the residence and continue in use?

## AGREEMENT TO OCCUPY AFTER CLOSING (No. 054)

*There were many additions and deletions to this form. Several were stylistic and don't require explanations as they did not substantively alter the terms of the arrangement when seller's retain possession after closing. However, there are several amended and updated provisions of import. Here are the major ones:*

**NOTE:** This Agreement to Occupy After Closing ("Agreement") is not subject to the Oregon Residential Landlord Tenant Act. See ORS 90.110(2). Buyer's rights of eviction against Seller first requires issuance of a 24-hour written notice. See ORS 91.130."

### 2. **TERM:** \*\*\*

- Buyer agrees to verify with Buyer's lender (if applicable) that the agreed-upon term provided herein, is permitted by its underwriting department \*\*\*

### 3. **COMPENSATION:**

- Seller shall pay rent at the rate of (check only one):  \$\_\_\_\_\_ per day;  \$\_\_\_\_\_ per week;  \$\_\_\_\_\_ per month. The total amount of rent for the entire 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  After Closing, and in periodic installments directly to Buyer throughout the Term in the rental amounts and on the due dates as follows: \_\_\_\_\_
- If rent or late fees, if any, are not paid within seven (7) days following the due date, Buyer may deliver, or send by electronic mail, to Seller (collectively "Transmittal"), a written notice ("Notice") setting forth the date and time of Transmittal, together with the rents and late charges, if applicable, then due, and stating that if they are not paid within seventy-two (72) hours following the time of Transmittal ("Compliance") Seller's right of possession of the Property shall be automatically terminated. Buyer may send the Notice by regular first class mail (not certified), in which event Seller's Compliance must occur within three (3) business days from the date of the post mark, or Buyer's certificate of mailing, if earlier.

### 5. **SELLER'S OBLIGATIONS:**

- Seller shall:
  - (a) Comply with all applicable laws, ordinances, regulations, public/private covenants, easements, and permitted uses, affecting the Property;

(b) Not engage in any unlawful, improper or offensive activities (including the manufacture, distribution, sale or use of any federally controlled substance), in or about the Property, or permit or cause a nuisance or environmental hazardous condition therein;

(c) Keep the Property, including the interior and exterior of all structures, the grounds, trees, shrubbery, and all landscaping, in a clean, neat, safe, and orderly appearance and condition consistent with its appearance and condition at the time of Closing (which Buyer shall have the right of inspection to confirm prior to Closing); and

(d) Not use or store any combustible materials on the Property, so as to cause Buyer's fire insurance rates to increase.

## **6. MAINTENANCE, REPAIR, REPLACEMENT RESPONSIBILITIES OF PARTIES.**

- Seller accepts the Property in its "AS-IS" condition as of the date of Closing. Subject to any Exceptions/Additions or Additional Provisions noted below, during the Term hereof, the parties agree as follows:

6.1 Seller's Responsibilities: In addition to Seller's Obligations at Section 5, above, Seller shall, at Seller's sole expense: Keep and maintain: (a) All heating, cooling, electrical, water, plumbing and irrigation systems (including wells and septic if applicable) and all appliances, in good working order; (b) Perform any repairs to the Property necessitated by the negligent, reckless or willful misconduct of Seller, or Seller's guests, invitees or pets.

6.2 Buyer's Responsibilities: In the event that any of the systems or appliances in the Property fail and cannot, in the opinion of a qualified inspector, vendor, or other expert selected by Buyer, who has inspected the same, be repaired so as to continue operating in a safe, efficient, and cost-effective manner for the remainder of the Term, it shall be promptly replaced by Buyer at Buyer's sole cost. Seller shall cooperate with Buyer to provide access at all reasonable times for such inspection, and, if applicable, replacement. In all other respects, the cost of all maintenance and repair to said systems and appliances shall be borne by Seller, as described above.

Exceptions/Additions: \_\_\_\_\_

## **7. SECURITY DEPOSIT/CONDITION OF PROPERTY AT END OF TERM: \*\*\***

- The Deposit may be applied by Buyer toward the actual cost of repair or replacement of any portion of the Property which was not paid or agreed to be paid by an insurance carrier resulting from any default by Seller under this Agreement.

## **13. INSURANCE; DESTRUCTION:**

- On or before Closing, Buyer shall secure a policy of casualty insurance on the Property for its full insurable value, and Seller shall secure a policy of liability insurance listing Buyer as an additional insured in an amount of not less than \$1,000,000. Nothing contained herein shall be construed as limiting either party from securing such additional insurance as they deem prudent for their own purposes. In the event that during the Term hereof, fire or other casualty causes material damage to the Property, such that Buyer determines, in Buyer's reasonable discretion, that Seller's continued occupancy hereunder would be impractical or difficult in light of the need to commence repairs, Buyer shall have the right to terminate this Agreement upon giving not less than 72 hours written notice to Seller. Each party covenants and agrees to cooperate with the other in the filing of any insurance claims one or both of them may have. Prior to signing this Agreement, Seller and Buyer should discuss with their respective insurance agents, brokers, or experts, whether each will have adequate coverage for all of their real and personal property under this Agreement, and whether any additional coverages or policies are recommended. The parties' Real Estate

Agents are not experts on these issues, and are not qualified to render an opinion on the adequacy or extent of insurance that is appropriate.

**14. DAMAGE/INJURY TO PROPERTY OR PERSON:**

- Seller is responsible for any negligent or willful act or omission upon the Property during the Term hereof, and agrees to indemnify and hold Buyer and all Real Estate Firms, their 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 use and occupancy of the Property.

**15. SELLER'S FAILURE TO VACATE BY END OF TERM; 24-HOURS'S WRITTEN NOTICE; DAMAGES:**

- If Seller remains in possession of the Property beyond the Term provided herein, Buyer may deliver (manually or electronically) to Seller a written notice to vacate within 24-hours pursuant to ORS 91.130. If Seller has not fully vacated the Property following delivery or transmission of said 24-hour notice, Buyer may thereafter file for eviction pursuant to ORS 105.105 et seq. In addition, upon Seller's failure to vacate the Property within said 24-hours, Buyer shall be entitled to recover from Seller, or the Security Deposit, or both, the following sum (select one):

- A liquidated damage sum of \$\_\_\_\_\_ (Zero [0] if not filled in);
- An amount equal to two (2) months' rent due under this Agreement, or twice the actual damages sustained by Buyer, whichever is greater;
- An amount equal to the daily principal, interest, taxes and insurance accruing under Buyer's note(s) and trust deed(s) for each day following the date that Buyer is entitled to possession of the Property.
- Other: \_\_\_\_\_

*COMMENT: Several of the above changes related to monetary items such as deposits, damages, and casualty loss. We also added a prohibition on the use of federally controlled substances on property. This would include cannabis-related products, which despite Oregon's libertarian position, is still illegal under federal law.*



**PROFESSIONAL INSPECTION ADDENDUM (No. 058)**

**TIME REQUIREMENTS**

1. Buyer understands that Buyer is responsible for the restoration of the Property following any inspections(s)/test(s) performed by Buyer or on Buyer's behalf.

*COMMENT: This text was added as it also appears in the Licensed Professional Inspection portion of the Sale Agreements*



**INVESTMENT PROPERTY ADDENDUM (No. 070)**

*This Addendum is primarily designed for the sale of investment property consisting of one-to-four family dwelling units. If this transaction involves more than four dwelling units, a more detailed list of due diligence items may be appropriate.*

*COMMENT: This text under the caption of the form was added as a reminder to those agents who believe one size fits all when it comes to forms. There is a difference in issues and skills when selling 1-4 family dwellings and apartment buildings.*

For those venturing into apartment transactions, this form may not be appropriate. In any event, agents engaging in these larger transactions should only be doing so with prior experience, with the assistance of a more experienced broker, or with the direct help of the supervising principal broker.

This Addendum does not contain a complete list of all inspections, tests, information, feasibility studies, and reports (collectively "Due Diligence Items") that may be available or appropriate for this transaction. ~~The Others may be added in the Additional Due Diligence Items at Section 5 below.~~ parties may add other Due Diligence Items in the Additional Provisions Section below.

The Real Estate Sale Agreement is contingent upon: **(a) Buyer's satisfaction with the documents, information and information** obtained from review of the Due Diligence Items selected below; **and (b) Buyer reaching written agreement with Seller for resolution of any repairs, corrections, or other remedial action, by 5:00 p.m. of the final day of the Document Review Period at Section 8 below, before the Deadline identified in the Time Requirements Section below.** *Note: Not all documents and information may be readily available to Seller. Buyer and Seller should promptly determine what documents and information are necessary and can be reasonably provided within the Document Review Period. If obtaining any documents and information may be delayed, it is suggested that Buyer and Seller reach written agreement for an extension of time before expiration of the Document Review Period.*

**COMMENT:** This provision was added for two reasons: (a) To clarify that satisfaction with the due diligence items must include a review of what was provided, but also to reach agreement on repairs, etc. (This is the same approach used in the Licensed Professional Inspection section of the Sale Agreement, i.e. the inspection(s) must be completed and agreement reached before the deadline in the contingency period.) (b) The new text cautions brokers to determine what can and can't be delivered within the Document Review Period, and obtain extensions where necessary.

## **DUE DILIGENCE ITEMS**

### **SELLER TO PROVIDE (Basic Information):**

- Current rent roll with addresses, tenant names, rental rates, security deposits paid, and delinquencies.
- Delinquency Reports for last three years.
- Accounting of all (i) prepaid rents; (ii) security, key, pet, & other deposits (refundable and nonrefundable)
- All utility, maintenance, and operating bills that will remain unpaid on closing
- All leases, rental agreements and tenant files for the past three (3) years
- All profit and loss statements for the past three (3) years
- All balance sheets for the past three (3) years
- All capital expenditures for the past three (3) years

### **SELLER TO PROVIDE FOLLOWING ADDITIONAL DOCUMENTS/INFORMATION:**

#### **1. Financial Information**

\*\*\*\*

#### **2. Property Information**

\*\*\*

#### **3. Miscellaneous Information**

\*\*\*

#### **4. Additional Due Diligence Items**

\*\*\*

*COMMENT: Although there were a few new due diligence items added (especially in Financial Information), the main purpose of this change was to arrange them topically for ease of use.*

## **TIME REQUIREMENTS**

6. **TIME IS OF THE ESSENCE**—DOCUMENT DELIVERY PERIOD. **TIME IS OF THE ESSENCE**. Seller shall have \_\_\_\_\_ business days (five [5] if not filled in), after the date Buyer and Seller have signed **and accepted** this Agreement in which to provide Buyer with all documents and information selected above (hereinafter the “Document Delivery Period”). **If additional time is needed, Seller and Buyer should obtain a written extension.**

*PRACTICE TIP: Brokers should always be proactive when it comes to anticipating the need for more time.*

7. **SELLER TO PROMPTLY IDENTIFY UNAVAILABLE ITEMS.** In the event Seller is unable or unwilling to provide any requested documents or information to Buyer during the Document Delivery Period, Seller shall notify Buyer in writing within \_\_\_\_\_ business days (two [2] if not filled in) following the date of Seller’s signature below, and specify the documents or information at issue. In such case, Buyer shall have \_\_\_\_\_ business days (two [2] if not filled in) following the date of receipt of Seller’s written notice (the “Withdrawal Period”) within which to notify Seller, in writing, of Buyer’s withdrawal from this transaction. If Buyer withdraws during the Withdrawal Period, this transaction shall be terminated and Buyer shall have the right to a prompt refund of all earnest money deposits paid. If Buyer fails to give such written notification to Seller within the Withdrawal Period, Buyer shall be deemed to have waived the right to receive the documents or information specified by Seller, but shall not waive any other rights under this Addendum, unless expressly done so in writing.

*COMMENT: This provision requires Seller to promptly notify Buyer of what requested due diligence items cannot or will not be provided. At that point, Buyer can decide whether to remain in the transaction or not.*

8. **DOCUMENT REVIEW PERIOD.** Upon receipt of **all requested ALL said** documents and information **provided by Seller within the Document Delivery Period, or extended Document Delivery Period, if applicable.**, Buyer shall have \_\_\_\_\_ business days (ten [10] if not filled in) thereafter to complete all inspections **and** negotiations with Seller regarding **resolution of** any issues, questions, or concerns raised by the documents and information provided (hereinafter, the “Document Review Period”). **However, During** the Document Review Period, Seller shall not be required to modify any terms of this Agreement already reached with Buyer.

*COMMENT: The Document Review Period includes not only receipt and review of the due diligence items, but also resolution of any outstanding issues.*

**SELLER TO PROMPTLY IDENTIFY UNAVAILABLE ITEMS.** In the event Seller is unable or unwilling to provide any requested documents or information to Buyer during the Document Delivery Period, promptly following receipt of this offer, he/she shall notify Buyer, or Buyer’s Agent, regarding the specific documents or information at issue.

**INABILITY TO REACH AGREEMENT; NONWAIVER.** If the parties are unable to reach written agreement over Seller’s production of any outstanding documents or information within \_\_\_\_\_ business days (three [3] if not filled in) following expiration of the Document Delivery Period, this transaction shall be automatically terminated and all earnest money deposits shall be promptly refunded to Buyer. Buyer’s exercise of any due diligence efforts based upon Seller’s provided documents and information shall not constitute a waiver of the right of unconditional disapproval, described below.

**8.9. FAILURE TO GIVE TIMELY NOTICE OF UNCONDITIONAL DISAPPROVAL.** If Buyer fails to provide Seller or Seller's Agent with written unconditional disapproval of any documents or information provided by 5:00 p.m. of the final day of the Document Review Period, Inspection Period Buyer shall be deemed to have approved all documents and information provided by Seller. Note, that if prior to expiration of the Inspection Period Document Review Period, written agreement is reached with Seller regarding all ALL Buyer's requested repairs or concessions, the Inspection Period Document Review Period shall automatically terminate, and this contingency shall be deemed to have been automatically waived by Buyer of all purposes, unless the parties agree otherwise agree in writing, otherwise in writing.

**9.10. NOTICE OF UNCONDITIONAL DISAPPROVAL.** At any time during the Document Review Period, Buyer may notify Seller or Seller's Agent, in writing, of Buyer's unconditional disapproval of the Property based on any of the documents or information provided by Seller, in which case, all earnest money deposits shall be promptly refunded, and this transaction shall be automatically terminated.

**40.11. CONFIDENTIALITY.** Unless the parties agree otherwise, all documents and written information provided from Seller to Buyer shall be deemed to be confidential for all purposes, and shall be promptly returned to Seller upon termination, expiration, or consummation, of this transaction. This The preceding confidentiality provision shall survive such termination, expiration, or consummation of this transaction.

**44.12. MATERIAL EVENTS OCCURRING BEFORE CLOSING.** Seller covenants and agrees that all material events affecting the Property or its value occurring after this Agreement is signed and accepted by all parties and before Closing, will be promptly disclosed to Buyer, including delivery of all relevant documents and information, upon their occurrence. This includes any actual or potential increase or decrease in tenancies, actual or potential evictions, notices of claims, losses or liabilities, insurance claims, changes to vendor or supplier contracts, or any other similar material event affecting the Property or its value, regardless of whether actual financial damage could occur ("Material Events"). Seller further covenants and agrees to promptly provide Buyer with written notice of Material Events, including all relevant documentation. If any Material Events involves the extension or termination of any vendor or supplier contracts, accepting/terminating tenants, undertaking capital improvements, or any like matter, the effect of which could foreseeably survive the closing of this transaction, Seller will first consult with Buyer before taking such action.

*COMMENT: These changes are largely stylistic, made to tighten up the text without changing the import.*

**SEPTIC/ONSITE SEWAGE ADDENDUM (No. 081)**

*NOTE: Name of this form has changed so that it will be easier to locate in the alphabetically arranged forms library.*

### CONTINGENT RIGHT TO PURCHASE (083)

Buyer(s)	
Seller(s)	
Property	Address
("Seller's Property")	

#### 1. **The Contingency**

This transaction is contingent upon the sale and closing of Buyer's real property ("the Contingency") located at:

\_\_\_\_\_ ("Buyer's Property").

#### 2. **Status of Listing of Buyer's Property. Select one:**

- Buyer's Property is currently listed for sale with a licensed real estate agent where said Property is located;
- Buyer's Property will be listed for sale with a licensed real estate agent where said Property is located, within \_\_\_\_\_ business days (three [3] if not filled in) after the parties have signed and accepted the Sale Agreement.

Buyer agrees to keep Buyer's Property continuously listed until the transaction is closed, or terminated, whichever first occurs, and Buyer will promptly provide Seller, upon request, with reasonable written evidence thereof. Unless the parties otherwise agree in writing, Buyer's failure to comply with any of the above representations shall result in the automatic termination of the transaction, and Buyer's earnest money deposit shall thereupon be promptly refunded, and Seller may thereupon commence marketing the Property for sale through the applicable MLS.

**3. Acknowledgement of Related Forms and Additional Terms.** OREF-083A ("Notice to Seller") and OREF-083B ("Notice to Buyer") contain certain additional terms under which this transaction will continue. Those new terms are set forth in "Alternative One" and "Alternative Two" in both Notices. By their signatures below, Buyer and Seller acknowledge that they have reviewed and understand them. If not fully understood, the parties should first obtain clarification through their respective Agents.

**4. No Buyer Waiver of Contingency.** Except as provided in both Notices, or as otherwise agreed in writing by the parties, the Contingency may not be waived by Buyer.

**5. Bumpable Status.** Prior to Buyer's delivery of the Notice to Seller on or before the Contingency Deadline, as defined at Section 6, below, or Seller's delivery of the Notice to Buyer pursuant to Section 7, below, Seller's Property may remain on the market in a "Bumpable", or "active/contingent" status, or words to that effect, on the applicable multiple listing service.

**6. Buyer Delivery of Notice to Seller by Contingency Deadline.** Unless Seller has received another offer to purchase Seller's Property that is acceptable to Seller, as described at Section 7 below, Buyer shall deliver the Notice to Seller on or before **5:00 p.m. on** \_\_\_\_\_, \_\_\_\_\_ ("Contingency Deadline"), stating whether or not Buyer has an accepted written offer on Buyer's Property, in which case Seller's Property shall thereafter show as "Pending" (or words to that effect) on the applicable multiple listing service. However, Buyer's failure to timely deliver said Notice on or before the Contingency Deadline shall result in the automatic termination of this transaction, and Buyer's earnest money deposit shall thereupon be promptly refunded.

**7. Seller Receives Another Written Offer Acceptable To Seller.** If, prior to the Contingency Deadline and Buyer's delivery of the Notice to Seller, if applicable, Seller receives another written offer to purchase Seller's Property acceptable to Seller, Seller shall promptly deliver the Notice to Buyer. Buyer shall have until 5:00 p.m. \_\_\_\_\_ business days (one [1] if not filled in) following the date of delivery of said Notice ("Buyer's Response Deadline"), within which to sign and return said Notice informing Seller of Buyer's selection of Alternative One, Alternative Two, or Termination. If Buyer timely responds to Seller's Notice to Buyer by selecting Alternative One or Two on or before 5:00 PM on the last day of Buyer's Response Deadline, this transaction shall remain in full force and effect, and Seller's Property shall thereafter show as "Pending" (or words to that effect) on the applicable multiple listing service. Buyer's failure to timely respond to Seller's Notice to Buyer on or before 5:00 PM on the last business day of Buyer's Response Deadline, shall be treated as if Buyer selected Termination.

**8. Contingencies and Other Timelines.** The timelines set forth in the Financing section of the Sale Agreement shall continue unchanged. Except as otherwise provided herein, the agreed-upon timelines for contingencies (e.g., review of documents of record, professional inspection, lead-based paint, etc.) and non-contingent timelines, except Closing (e.g., time to deposit earnest money, or to transfer funds, etc.) in the Sale Agreement shall **(select one)**:

- As provided in the Sale Agreement;
- Commence on the next business day following the date Buyer delivers to Seller the Notice to Seller, by the Contingency Deadline. (Note, this Section 8 shall not apply if Seller has received another offer, and has complied with Section 7, above.)

**9. Timeline for Closing.** Closing of this transaction shall be **(Select one)**:

- As provided in the Sale Agreement;
- \_\_\_\_\_ calendar days after the date Buyer delivers the Notice to Seller;
- Other: \_\_\_\_\_.

**10. Delivery of Notices.** Time is of the essence in the delivery of all written notices required or permitted herein. Buyer, Seller, and their respective Agents, shall exercise their best efforts to use the most prompt and reliable means for timely delivery of all such notices.

**11. Good Faith Cooperation with Escrow.** Buyer and Seller agree to cooperate in good faith by promptly signing all documents reasonably requested by Escrow, including those for the refund of Buyer's earnest money deposit when authorized by the above provisions, or the Sale Agreement and related Addenda.

**12. Additional Provisions.** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Buyer Signature \_\_\_\_\_ Date \_\_\_\_\_, \_\_\_\_\_ a.m. \_\_\_ p.m. ←

Buyer Signature \_\_\_\_\_ Date \_\_\_\_\_, \_\_\_\_\_ a.m. \_\_\_ p.m. ←

Seller Signature \_\_\_\_\_ Date \_\_\_\_\_, \_\_\_\_\_ a.m. \_\_\_ p.m. ←

Seller Signature \_\_\_\_\_ Date \_\_\_\_\_, \_\_\_\_\_ a.m. \_\_\_ p.m. ←

Buyer's Agent \_\_\_\_\_ Seller's Agent \_\_\_\_\_

Buyer's Agent's Firm \_\_\_\_\_ Seller's Agent's Firm \_\_\_\_\_

**COMMENT:** This form has gone through several iterations. They have been tolerated by some, but generally not well received. This revision is a collaborative attempt by the Forms Committee to develop a more user friendly document. The protocol is similar to the past, i.e. Buyer includes it with a completed Sale Agreement and provides the following information:

- Whether the Buyer's property is already listed for sale; if not, when the listing will occur;
- Identifying the Contingency Deadline, informing Seller whether Buyer has accepted an offer, in which case the transaction goes Pending – the failure to deliver the notice to Seller automatically terminates the offer;
  - This notice from Buyer is subject to the condition that Seller has not already sent Buyer a notice that they have received an offer they intend to consider.

- *If Seller does notify Buyer of the receipt of an offer they intend to consider, Buyer selects a period within which they have to notify Seller of whether Buyer has selected Alternative One or Alternative Two as set forth in Seller's Notice.*
- *When the contingencies and other deadlines in the Sale Agreement (except Closing) will commence, i.e. as per the Sale Agreement, or \_\_\_\_ calendar days after Buyer has sent their notice to Seller of receipt of an offer to purchase Buyer's property.*
- *When Closing shall occur, i.e. per the Sale agreement, or \_\_\_\_ calendar days after Buyer has sent their notice to Seller of receipt of an offer to purchase Buyer's property.*

**CONTINGENT RIGHT TO PURCHASE – NOTICE TO SELLER (No. 83A)**  
(To be used in conjunction with OREF form 083 - Contingent Right To Purchase)

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

**THE CONTINGENCY.** Pursuant to OREF 083 the Contingent Right To Purchase, OREF 083 ("the FORM") this is notice to Seller that Buyer has selected (*check one below*):

**Alternative One:** Buyer has accepted an offer on Buyer's Property and hereby: (1) Agrees to keep Seller timely informed of all material developments of that transaction relating to Buyer's ability to meet the this Contingency as defined in the Contingent Right To Purchase; (2) Removes all contingencies 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; (3) Agrees that if # Buyer's accepted offer on Buyer's Property terminates prior to its scheduled closing date, Buyer shall promptly notify Seller in writing ("Buyer's Notification of Termination"), where upon Buyer and Seller shall either: (a) Terminate this transaction and all earnest money shall be promptly refunded to Buyer; or (b) Attempt to reach Reach a written ~~mutual~~ agreement on how this transaction will proceed by 5:00 PM on the second within two (2)-business days following the date of Buyer's Notification of Termination ~~on how the transaction will proceed;~~ (4) Agrees that if no If no written mutual agreement is timely reached with Seller following Buyer's Notification of Termination, this transaction shall be automatically terminated and all earnest money shall by promptly refunded to Buyer, Section 3 (a) above, shall apply; (5) Where applicable, agrees to close this transaction in accordance with the remaining terms of this Sale Agreement.

**Alternative Two:** Buyer has listed Buyer's Property for sale but has not accepted an offer on it, and hereby: (1) Removes all contingencies relating to the sale **and** closing of Buyer's Property; (2) Removes all contingencies relating to the Buyer qualifying for financing under this Sale Agreement; (3) 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 the terms of the this Sale Agreement, and without the sale and closing of Buyer's Property; (4) Agrees to close this transaction in accordance with the remaining terms of this Sale Agreement.

**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.

Buyer Signature \_\_\_\_\_ Date \_\_\_\_\_, \_\_\_\_\_ a.m. \_\_\_\_ p.m. ←  
 Buyer Signature \_\_\_\_\_ Date \_\_\_\_\_, \_\_\_\_\_ a.m. \_\_\_\_ p.m. ←  
 Delivered by \_\_\_\_\_ Method \_\_\_\_\_ Date \_\_\_\_\_, \_\_\_\_\_ a.m. \_\_\_\_\_  
 \_\_\_\_\_ p.m.

**DELIVERY OF NOTICES/SELLER ACKNOWLEDGMENT**

**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 Agents.

**SELLER ACKNOWLEDGMENT.** by Seller's signature(s) below, Seller acknowledges receipt and review of this 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.

Seller Signature \_\_\_\_\_ Date \_\_\_\_\_, \_\_\_\_\_ a.m. \_\_\_ p.m. ←

Seller Signature \_\_\_\_\_ Date \_\_\_\_\_, \_\_\_\_\_ a.m. \_\_\_ p.m. ←

Buyer's Agent \_\_\_\_\_ Seller's Agent \_\_\_\_\_

Buyer's Agent's Firm \_\_\_\_\_ Seller's Agent's Firm \_\_\_\_\_

**COMMENT:** This is the revised Notice wherein Buyer informs Seller as to whether they have selected Alternative One or Two. If Alternative One is selected, Buyer agrees:

(1) To keep Seller timely informed of all material developments of that transaction relating to Buyer's ability to meet the Contingency as defined in the Contingent Right To Purchase;

(2) To remove all contingencies 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;

(3) That if Buyer's accepted offer on Buyer's Property terminates prior to its scheduled closing date, Buyer shall promptly notify Seller in writing, whereupon Buyer and Seller shall either:

(a) Terminate the transaction and all earnest money will be refunded; or

(b) Attempt to reach a written agreement with Seller on how the transaction will proceed by 5:00 PM on the second business day following the date of Buyer's notification of termination;

(4) That if no written mutual agreement is timely reached with Seller following Buyer's notification of termination, the transaction is terminated and all earnest money will be refunded to Buyer;

(5) Where applicable, to close this transaction in accordance with the remaining terms of this Sale Agreement.

If Alternative Two is selected, Buyer agrees:

(1) To remove all contingencies relating to the sale and closing of Buyer's Property;

(2) To remove all contingencies relating to the Buyer qualifying for financing;

(3) 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 the Sale Agreement, and without the sale and closing of Buyer's Property;

(4) Agrees to close the transaction in accordance with the remaining terms of this Sale Agreement.



**CONTINGENT RIGHT TO PURCHASE – NOTICE TO BUYER (Form No. 83B)**

(To be used in conjunction with OREF form 083 - Contingent Right To Purchase)

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

**THE CONTINGENCY.** Pursuant to OREF 083 the Contingent Right to Purchase, OREF 083 (“the FORM”), this is notice to Buyer that Seller has received another offer that is acceptable to Seller. Buyer shall have the amount of time identified as the “Notice Period” “Buyer’s Response Deadline” at Section 7 of said Contingent Right to Purchase in the FORM within which to notify Seller of Buyer’s selection of Alternative One or Alternative Two below, in which case Seller’s Property shall thereafter show as “Pending” (or words to that effect) on the applicable multiple listing service. If Buyer decided not to select Alternative One or Alternative Two prior to end of the Notice Period, then Buyer should check the box below marked “Termination” meaning that this transaction is automatically terminated. The failure to timely select any of the boxes below by the end of the Notice Period shall be treated as Buyer’s election to terminate this transaction. Upon termination, Buyer and Seller shall timely cooperate in good faith in signing any additional documents and instructions reasonably required by Escrow and the Real Estate Firms, and all earnest money shall thereupon by returned returned to Buyer.

Seller Signature \_\_\_\_\_ Date \_\_\_\_\_, \_\_\_\_\_ a.m. \_\_\_p.m. ←

Seller Signature \_\_\_\_\_ Date \_\_\_\_\_, \_\_\_\_\_ a.m. \_\_\_p.m. ←

Delivered by \_\_\_\_\_ Method \_\_\_\_\_ Date \_\_\_\_\_, \_\_\_\_\_ a.m. \_\_\_\_\_ p.m.

Buyer is to select Alternative One, Alternative Two, or terminate with terms below within the times set forth in the FORM.

**~~DELIVERY OF NOTICES~~**

~~**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 Agents.~~

**BUYER’S RESPONSE TO SELLER**

In response to Seller's notice of receipt of another offer that is acceptable to Seller, Buyer chooses one of the following:

- Alternative One:** Buyer has accepted an offer on Buyer’s Property and hereby: (1) Agrees to keep Seller timely informed of all material developments of that transaction relating to Buyer’s ability to meet the Contingency as defined in the Contingent Right To Purchase; (2) Removes all contingencies 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; (3) Agrees that if Buyer’s accepted offer on Buyer’s Property terminates prior to its scheduled closing date, Buyer shall promptly notify Seller in writing (“Buyer’s Notification of Termination”), whereupon Buyer and Seller shall either: (a) Terminate this transaction and all earnest money shall be promptly refunded to Buyer; or (b) Attempt to reach a written agreement on how this transaction will proceed by 5:00 PM on the second business day following the date of Buyer’s Notification of Termination; (4) Agrees that if no written

agreement is timely reached with Seller following Buyer's Notification of Termination, this transaction shall be automatically terminated and all earnest money shall be promptly refunded to Buyer; (5) Where applicable, agrees to close this transaction in accordance with the remaining terms of this Sale Agreement.

Buyer has accepted an offer on Buyer's Property and hereby removes all contingencies relating to the sale of Buyer's Property. However, closing of the sale of Buyer's Property shall remain a contingency in this transaction. The terms of Alternative One in the FORM shall apply.

**Alternative Two:** Buyer has listed Buyer's Property for sale but has not accepted an offer on it, and hereby: (1) Removes all contingencies relating to the sale and closing of Buyer's Property; (2) Removes all contingencies relating to the Buyer qualifying for financing under this Sale Agreement; (3) 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 the terms of the Sale Agreement, and without the sale and closing of Buyer's Property; (4) Agrees to close this transaction in accordance with the remaining terms of this Sale Agreement.

Buyer has not accepted an offer on Buyer's Property and hereby removes all contingencies relating to the sale and closing of Buyer's Property. Buyer represents that Buyer can complete the purchase of Seller's Property without the sale and closing of Buyer's Property. The terms of Alternative Two in the FORM shall apply.

**Termination:** Buyer hereby terminates this transaction, and instructs Escrow/Selling Buyer's Agent's Firm to promptly refund all earnest money to Buyer/release all earnest money to Buyer.

**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 Agents.

Buyer Signature \_\_\_\_\_ Date \_\_\_\_\_, \_\_\_\_\_ a.m. \_\_\_p.m. ←

Buyer Signature \_\_\_\_\_ Date \_\_\_\_\_, \_\_\_\_\_ a.m. \_\_\_p.m. ←

Buyer's Agent \_\_\_\_\_ Seller's Agent \_\_\_\_\_

Buyer's Agent's Firm \_\_\_\_\_ Seller's Agent's Firm \_\_\_\_\_

**Comment:** This is the Notice Seller gives Buyer if they have received an offer they intend to consider. It gives Buyer the right to select one of two alternatives. If Alternative One is selected, Buyer agrees to the following:

Buyer states that they have accepted an offer on their property and:

- (1) Agrees to keep Seller timely informed of all material developments of that transaction relating to Buyer's ability to meet this contingent right of sale;
- (2) Removes all contingencies 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;
- (3) Agrees that if Buyer's accepted offer on Buyer's Property terminates prior to its scheduled closing date, Buyer shall promptly notify Seller in writing, whereupon Buyer and Seller shall either:
  - a. Terminate this transaction and all earnest money shall be promptly refunded; or
  - b. Attempt to reach a written agreement on how this transaction will proceed by 5:00 PM on the second business day following the date of Buyer's notification of termination;

- (4) Agrees that if no written agreement is timely reached with Seller following Buyer's notification, the transaction is automatically terminated and all earnest money shall be promptly refunded; and
- (5) Agrees (where applicable) to close the transaction in accordance with the remaining terms of this Sale Agreement.

If Alternative Two is selected, Buyer agrees to the following:

Buyer states that they have their property listed but has no accepted offer, and:

- (1) Removes all contingencies relating to the sale and closing of Buyer's property;
- (2) Removes all contingencies relating to the Buyer qualifying for financing under the Sale Agreement;
- (3) 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 the terms of the Sale Agreement, and without the sale and closing of Buyer's property;
- (4) Agrees to close this transaction in accordance with the remaining terms of this Sale Agreement.

**FIRPTA TAX WITHHOLDING OBLIGATION – SELLER/BUYER ADVISORY (No. 092)**  
**AND**  
**FIRPTA ADDENDUM (No. 093)**

**Comment:** These forms went through several textual changes, but it did not change the import of the documents. However, there is a new form from last year; in the event that Buyer requests Seller to sign the "FIRPTA Affidavit" (i.e. the IRS document in which a Seller certifies that they are not a "foreign person", but Seller refuses, as the designated collection agent of the IRS in certain real estate sales by foreign persons, the Buyer may have the required sum withheld from Seller's gross proceeds and sent to it the IRS.