Types of Real Estate Contracts

In addition to understanding the basic principles of contract law, real estate agents must be familiar with the specific types of real estate contracts. This chapter describes several types of contracts related to real estate, including listing agreements, purchase agreements, land contracts, leases, and options.

Listing Agreements

A listing agreement is a written employment contract between a property seller and a real estate broker. (A copy of the Pennsylvania Association of REALTORS residential listing agreement form is shown in Figure 8.1.) The seller hires the broker to find a buyer who is ready, willing, and able to buy the property on the seller’s terms. A listing agreement does not give the broker the authority to accept offers on behalf of the seller, or to transfer title to the seller’s property.

Even though the listing agreement form is frequently filled out and signed by a salesperson working for the listing broker, the contract is between the seller and the broker (not the salesperson). Some states require the broker to sign the contract as well.

Typically, a real estate broker is paid by commission, also called a brokerage fee. The commission is usually computed as a percentage of the sales price (the price that the property is sold for), as opposed to the listing price.

In most states, a broker cannot sue a seller to collect a commission unless there was a written listing agreement. There will be conditions set forth in the listing agreement that also must be met before the seller is obligated to pay the broker a commission.

Some states have a specific rule that listing agreements must always be in writing. In other states, an oral listing agreement can exist in theory, but it won’t be enforceable in court because of the statute of frauds. A few
states recognize oral listing agreements if they are for a period of less than one year. Note that an oral agreement between brokers to split a commission may be enforceable, even when an oral listing agreement is not.

**Earning a Commission**

A listing agreement can make payment of the broker’s commission dependent on any lawful conditions that are mutually acceptable to the broker and the seller. For example, the seller might ask to include a “no sale, no commission” provision in the agreement. This would make the broker’s commission payable only if the transaction actually closes and the seller receives full payment from the buyer. If this condition is not met due to circumstances beyond the seller’s control (for example, because the buyer couldn’t obtain financing), the commission need not be paid. On the other hand, if the condition is not met because of the seller’s bad faith or fraud, the broker is still entitled to the commission.

Unless otherwise agreed, however, certain standard rules are followed regarding payment of the broker’s commission. These include the rules concerning a ready, willing, and able buyer; and those concerning the three types of listings.

**Ready, Willing, and Able Buyer.** As a general rule, a listing agreement obligates the seller to pay the listing broker a commission only if a **ready, willing, and able** buyer is found during the listing period.

**Acceptable Offer.** A buyer is considered “ready and willing” if he makes an offer that meets the seller’s stated terms. In the listing agreement, the seller sets forth the terms on which she wants to sell the property: price, closing date, financing arrangements, etc. If a buyer makes an offer that matches those terms, the broker is usually entitled to the commission—even if the seller decides not to accept that offer after all.
**Listing Contract ( Seller Agency Contract)**

**Exclusive Right to Sell Real Estate**

This form recommended and approved for, but not restricted to use by, the members of the Pennsylvania Association of REALTORS® (PAR).

<table>
<thead>
<tr>
<th>Field</th>
<th>Information</th>
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<tbody>
<tr>
<td>Broker (Company)</td>
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<tr>
<td>Company Address</td>
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<tr>
<td>Company Phone</td>
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<td>Company Fax</td>
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<tr>
<td>Licensee(s) (Name)</td>
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<td>Direct Phone(s)</td>
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<td>Cell Phone(s)</td>
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<td>Seller's Mailing Address</td>
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<td>Phone</td>
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<td>Fax</td>
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<td>E-Mail</td>
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</tbody>
</table>

**Part One**

Seller understands that this Listing Contract is between Broker and Seller. Does Seller have a listing contract for this Property with another broker? ☐ Yes ☐ No

If yes, explain:

1. **PROPERTY**
   - Address
   - Municipality (city, borough, township)
   - County
   - School District
   - Zoning
   - Present Use
   - Identification (for example, Tax ID #: Parcel #: Lot, Block: Deed Book, Page, Recording Date)

2. **STARTING & ENDING DATES OF LISTING CONTRACT (ALSO CALLED “TERM”)**
   - (A) No Association of REALTORS® has set or recommended the terms of this contract. Broker/Licensee and Seller have discussed and agreed upon the term of this contract.
   - (B) **Starting Date:** This Contract starts when signed by Broker and Seller, unless otherwise stated here.
   - (C) **Ending Date:** This Contract ends at 11:59 PM on ______. By law, the term of a listing contract may not exceed one year. If the Ending Date written in this Contract creates a term that is longer than one year, the Ending Date is automatically 364 days from the Starting Date of this Contract.

3. **DUAL AGENCY**
   - Seller agrees that Broker and Broker’s Licensees may also represent the buyer(s) of the Property. A Broker is a Dual Agent when a Broker represents both a buyer and seller in the same transaction. A Licensee is a Dual Agent when a Licensee represents a buyer and seller in the same transaction. All of Broker’s licensees are also Dual Agents unless there are separate Designated Agents for a buyer and Seller. If the same Licensee is designated for a buyer and Seller, the Licensee is a Dual Agent. Seller understands that Broker is a Dual Agent when a buyer who is represented by Broker is viewing properties listed by Broker.

4. **DESIGNATED AGENCY**
   - Designated Agency is applicable, unless checked below. Broker designates the Licensee(s) above to exclusively represent the interests of Seller. If Licensee is also the buyer’s agent, then Licensee is a DUAL AGENT.
   - ☐ Designated Agency is not applicable.

5. **BROKER’S FEE**
   - (A) No Association of REALTORS® has set or recommended the Broker’s Fee. Broker and Seller have negotiated the fee that Seller will pay Broker.
   - (B) Broker’s Fee is _____% of the sale price OR $________, whichever is greater, AND $________.
   - 1. $________ of Broker’s Fee is earned and due (non-refundable) at signing of this Listing Contract, payable to Broker.

<table>
<thead>
<tr>
<th>Field</th>
<th>Information</th>
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<tbody>
<tr>
<td>Broker/Licensee Initials</td>
<td>XLS Page 1 of 6</td>
</tr>
<tr>
<td>Seller Initials:</td>
<td></td>
</tr>
</tbody>
</table>

**Pennsylvania Association of REALTORS®**

Reprinted with the permission of the Pennsylvania Association of REALTORS® (PAR). Use of this form does not imply endorsement by PAR.
2. Seller will pay the balance of Broker’s Fee if:

a. Property, or any ownership interest in it, is sold or exchanged during the term of this Contract by Broker, Broker’s Licensees, Seller, or by any other person or broker, at the listed price or any price acceptable to Seller, OR

b. A ready, willing, and able buyer is found, during the term of this contract, by Broker or by anyone, including Seller. A willing buyer is one who will pay the listed price or more for the Property, or one who has submitted an offer accepted by Seller, OR

c. Negotiations that are pending at the Ending Date of this Contract result in a sale, OR

d. A Seller signs an agreement of sale then refuses to sell the Property, or if a Seller is unable to Sell the Property because of failing to do all the things required of the Seller in the agreement of sale (seller default), OR

e. The Property or any part of it is taken by any government for public use (Eminent Domain), in which case Seller will pay from any money paid by the government, OR

f. A sale occurs after the Ending Date of this Contract IF:

(1) The sale occurs after the Ending Date, AND

(2) The buyer was shown or negotiated to buy the Property during the term of this contract, AND

(3) The Property is not listed under an “exclusive right to sell contract” with another broker at the time of the sale.

(C) If a sale occurs, balance of Broker’s Fee will be paid upon delivery of the deed or other evidence of transfer of title or interest. If the Property is transferred by an installment contract, balance of Broker’s Fee will be paid upon the execution of the installment contract.

6. BROKER’S FEE IF SETTLEMENT DOES NOT OCCUR

If an agreement of sale is signed and settlement does not occur, and deposit monies are released to Seller, Seller will pay Broker of from deposit monies.

7. COOPERATION WITH OTHER BROKERS

Licensee(s) has explained Broker’s company policies about cooperating with other brokers. Broker and Seller agree that Broker will pay from Broker’s Fee to a fee to another broker who procures the buyer, is a member of a Multiple Listing Service (MLS), and who:

(A) ☐ Represents Seller (SUBAGENT). Broker will pay of from the sale price.

(B) ☐ Represents the buyer (BUYER’S AGENT). Broker will pay of from the sale price.

A buyer’s Agent, even if compensated by Broker for Seller, will not represent the interests of the buyer.

(C) ☐ Does not represent either Seller or a buyer (TRANSACTION LICENSEE). Broker will pay of from the sale price.

8. DUTIES OF BROKER AND SELLER

(A) Broker is acting as a Seller Agent, as described in the Consumer Notice, to market the Property and to negotiate with potential buyers. Broker will use reasonable efforts to find a buyer for the Property.

(B) Seller will cooperate with Broker and assist in the sale of the Property as asked by Broker.

(C) All showings, negotiations and discussions about the sale of the Property, written or oral, will be communicated by Broker on Seller’s behalf. All written or oral inquiries that Seller receives or learns about regarding the Property, regardless of the source, will be referred to Broker.

(D) If the Property, or any part of it, is rented, Seller will give any leases to Broker before signing this Contract. If any leases are oral, Seller will provide a written summary of the terms, including amount of rent, ending date, and Tenant’s responsibilities.

(E) Seller will not enter into, renew, or modify any leases, or enter into any option to sell, during the term of this Contract without Broker’s written consent.

9. BROKER’S SERVICE TO BUYER

Broker may provide services to a buyer for which Broker may accept a fee. Such services may include, but are not limited to: document preparation; ordering certifications required for closing; financial services; title transfer and preparation services; ordering insurance, construction, repair, and inspection services.

10. BROKER NOT RESPONSIBLE FOR DAMAGES

Seller agrees that Broker and Broker’s Licensee(s) are not responsible for any damage to the Property or any loss or theft of personal goods from the Property unless such damage, loss or theft is solely and directly caused by Broker or Broker’s Licensee(s).

11. DEPOSIT MONEY

(A) Broker, if named in an agreement of sale, will keep all deposit monies paid by or for the buyer in an escrow account until the sale is completed. The agreement of sale is terminated, or the terms of a prior written agreement between the buyer and Seller have been met. This escrow account will be held as required by real estate licensing laws and regulations. Buyer and Seller may name a non-licensee as the escrow holder, in which case the escrow holder will be bound by the terms of the escrow agreement, if any, not by the Real Estate Licensing and Registration Act. Seller agrees that the person keeping the deposit monies may wait to deposit any uncashed check that is received as deposit money until Seller has accepted an offer.

(B) Regardless of the apparent entitlement to deposit monies, Pennsylvania law does not allow a Broker holding deposit monies to determine who is entitled to the deposit monies when settlement does not occur. Broker can only release the deposit monies:

1. If an agreement of sale is terminated prior to settlement and there is no dispute over entitlement to the deposit monies. A written agreement signed by both parties is evidence that there is no dispute regarding deposit monies.

Broker/Licensee Initials: ____________  XLS Page 2 of 6  Seller Initials: ____________
Part One

2. If, after Broker has received deposit monies, Broker receives a written agreement that is signed by Buyer and Seller, directing Broker how to distribute some or all of the deposit monies.

3. According to the terms of a final order of court.

4. According to the terms of a prior written agreement between Buyer and Seller that directs the Broker how to distribute the deposit monies if there is a dispute between the parties that is not resolved.

(C) Seller agrees that if Seller names Broker or Broker’s licensee(s) in litigation regarding deposit monies, the attorneys’ fees and costs of the Broker(s) and licensee(s) will be paid by Seller.

12. OTHER PROPERTIES

Seller agrees that Broker may list other properties for sale and that Broker may show and sell other properties to prospective buyers.

13. ADDITIONAL OFFERS

Unless prohibited by Seller, if Broker is asked by a buyer or another licensee(s) about the existence of other offers on the Property, Broker will reveal the existence of other offers and whether they were obtained by the Licensee(s) identified in this Contract, by another Licensee(s) working with Broker, or by a by a licensee(s) working for a different Broker. ONCE SELLER ENTERS INTO AN AGREEMENT OF SALE, BROKER IS NOT REQUIRED TO PRESENT OTHER OFFERS.

14. SELLER WILL REVEAL DEFECTS & ENVIRONMENTAL HAZARDS

(A) Seller (including Sellers exempt from the Real Estate Seller Disclosure Law) will disclose all known material defects and/or environmental hazards on a separate disclosure statement. A material defect is a problem or condition that:

1. is a possible danger to those living on the Property, or

2. has a significant, adverse effect on the value of the Property.

The fact that a structural element, system or subsystem is near, at or beyond the end of the normal useful life of such a structural element, system or subsystem is not by itself a material defect.

B. Seller will update the Seller’s Property Disclosure Statement as necessary throughout the term of this Listing Contract.

C. If Seller fails to disclose known material defects and/or environmental hazards:

1. Seller will not hold Broker or Licensee(s) responsible in any way;

2. Seller will protect Broker and Licensee(s) from any claims, lawsuits, and actions that result;

3. Seller will pay all of Broker’s and Licensee’s costs that result. This includes attorneys’ fees and court-ordered payments or settlements (money Broker or Licensee pays to end a lawsuit or claim).

15. IF PROPERTY WAS BUILT BEFORE 1978

The Residential Lead-Based Paint Hazard Reduction Act says that any seller of property built before 1978 must give the buyer an EPA pamphlet titled Protect Your Family From Lead in Your Home. The seller also must tell the buyer and the broker what the seller knows about lead-based paint and lead-based paint hazards that are on or on the property being sold. Seller must tell the buyer how the seller knows that lead-based paint and lead-based paint hazards are on the property, where the lead-based paint and lead-based paint hazards are, the condition of the painted surfaces, and any other information seller knows about lead-based paint and lead-based paint hazards on the property. Any seller of a pre-1978 structure must also give the buyer any records and reports that the seller has or can get about lead-based paint or lead-based paint hazards in or around the property being sold, the common areas, or other dwellings in multi-family housing. According to the Act, a seller must give a buyer 10 days (unless seller and the buyer agree to a different period of time) from the date an agreement of sale is signed to have a “risk assessment” or inspection for possible lead-based paint hazards done on the property. Buyers may choose not to have the risk assessment or inspection for lead paint hazards done. If the buyer chooses not to have the assessment or inspection, the buyer must inform the seller in writing of the choice. The Act does not require the seller to inspect for lead paint hazards or to correct lead paint hazards on the property. The Act does not apply to housing built in 1978 or later.

16. HOME WARRANTIES

At or before settlement, Seller may purchase a home warranty for the Property from a third-party vendor. Seller understands that a home warranty for the Property does not alter any disclosure requirements of Seller, may not cover or warrant any pre-existing defects of the Property, and will not alter, waive or extend any provisions of the Agreement respecting inspections or certifications that Buyer may elect or waive as part of the Agreement. Seller understands that Broker who recommends a home warranty may have a business relationship with the home warranty company that provides a financial benefit to Broker.

17. RECOVERY FUND

Pennsylvania has a Real Estate Recovery Fund (the Fund) to repay any person who has received a final court ruling (civil judgment) against a Pennsylvania real estate licensee because of fraud, misrepresentation, or deceit in a real estate transaction. The Fund repays persons who have not been able to collect the judgment after trying all lawful ways to do so. For complete details about the Fund, call (717) 783-3658, or (800) 822-2113 (within Pennsylvania) and (717) 783-4854 (outside Pennsylvania).

18. NOTICE TO PERSONS OFFERING TO SELL OR RENT HOUSING IN PENNSYLVANIA

Federal and state laws make it illegal for a seller, a broker, or anyone to use RACE, COLOR, RELIGION or RELIGIOUS CREED, SEX, DISABILITY (physical or mental), FAMILIAL STATUS (children under 18 years of age), AGE (40 or older), NATIONAL ORIGIN, USE OR HANDLING/TRAINING OF SUPPORT OR GUIDE ANIMALS, or the FACT OF RELATIONSHIP OR ASSOCIATION TO AN INDIVIDUAL KNOWN TO HAVE A DISABILITY as reasons for refusing to sell, show, or rent properties, loan money, or set deposit amounts, or as reasons for any decision relating to the sale of property.

Broker/Licensee Initials: __________________________  XLS Page 3 of 6  Seller Initials: __________________________
19. TRANSFER OF THIS CONTRACT
(A) Seller agrees that Broker may transfer this Contract to another broker when:
1. Broker stops doing business, OR
2. Broker forms a new real estate business, OR
3. Broker joins his business with another.
(B) Broker will notify Seller immediately in writing if Broker transfers this Contract to another broker. Seller will follow all requirements of this Contract with the new broker.

20. NO OTHER CONTRACTS
Seller will not enter into another listing contract for the property(s) identified in Paragraph 1 with another broker that begins before the Ending Date of this Contract.

21. CONFLICT OF INTEREST
It is a conflict of interest when Broker or Licensee has a financial or personal interest in the property and/or cannot put Seller’s interests before any other. If Broker, or any of Broker’s licensees, has a conflict of interest, Broker will notify Seller in a timely manner.

22. ENTIRE CONTRACT
This Contract is the entire agreement between Broker and Seller. Any verbal or written agreements that were made before are not a part of this Contract.

23. CHANGES TO THIS CONTRACT
All changes to this Contract must be in writing and signed by Broker and Seller.

24. MARKETING OF PROPERTY
(A) Where permitted, Broker, at Broker’s option, may use: for sale sign, lock box, key in office, open houses and advertising in all media, including print and electronic, photographs and videos, unless otherwise stated here:
1. □ Seller does not want the listed Property to be displayed on the Internet.
2. □ Seller does not want the address of the listed Property to be displayed on the Internet.
3. Seller understands and acknowledges that, if the listed Property is not displayed on the Internet, consumers who conduct searches for listings on the Internet will not see information about the listed property in response to their search.
(B) Seller understands and acknowledges that, if an open house is scheduled, the property address may be published on the Internet in connection to the open house.
(C) There are many ways of marketing properties electronically. Some brokers may use a virtual office website (also known as “VOW”) or Internet data exchange (also known as “IDX”) which are governed by specific rules and policies. Sellers have the right to control some elements of how their property is displayed on a VOW and/or IDX websites. Seller elects to have the following features disabled or forgotten for VOW and IDX websites (check all that apply):
   □ Comments or reviews about Seller’s listing be a hyperlink to such comments or reviews, in immediate conjunction with Seller’s listing.
   □ Automated estimates of the market value of Seller’s listing, or a hyperlink to such estimates, in immediate conjunction with Seller’s listing.
   □ Multiple Listing Services (MLS)
   □ Broker will not use a Multiple Listing Service (MLS) to advertise the Property.
   □ Broker will use a Multiple Listing Service (MLS) to advertise the Property to other real estate brokers and salespersons.
   □ Listing broker shall communicate to the MLS all of Seller’s elections made above.
   (E) Seller agrees that Broker and Licensee, and the MLS are not responsible for mistakes in the MLS or advertising of the Property.
   (F) Other

25. PUBLICATION OF SALE PRICE
Seller is aware that the Multiple Listing Service (MLS), newspapers, Web Sites, and other media may publish the final sale price of the Property.

26. COPYRIGHT
In consideration of Broker’s efforts to market Seller’s Property as stated in this Contract, Seller grants Broker a non-exclusive, world-wide license (the “License”) to use any potentially copyrightable materials (the “Materials”) which are related to the Property and provided by Seller to Broker or Broker’s representative(s). The Materials may include, but are not limited to: photographs, images, video recordings, virtual tours, drawings, written descriptions, remarks, and pricing information related to Seller’s Property. This License permits Broker to submit the Materials to one or more multiple listing services, to include the Materials in compilations of property listings, and to otherwise distribute, publicly display, reproduce, publish and produce derivative works from the Materials for any purpose that does not conflict with the express terms of this Contract. The License may not be revoked by Seller and shall survive the ending of this Contract. Seller also grants Broker the right to sublicense to others any of these rights granted to Broker by Seller. Seller represents and warrants to Broker that the License granted to Broker for the Materials does not violate or infringe upon the rights, including any copyrights, of any person or entity. Seller understands that the terms of the License do not grant Seller any legal right to any works that Broker may produce using the Materials.

Broker/Licensee Initials: ___________  XLS Page 4 of 6  Seller Initials: ___________
27. FIXTURES AND PERSONAL PROPERTY
   (A) INCLUDED in this sale are all existing items permanently installed in the Property, free of liens, and other items including plumbing; heating; radiator covers; lighting fixtures (including chandeliers and ceiling fans); pool and spa equipment (including covers and cleaning equipment); electric animal fencing systems (excluding collars); garage door openers and transmitters; television antennas; untopped shrubbery, plantings and trees; any remaining heating and cooking fuels stored on the Property at the time of settlement; smoke detectors and carbon monoxide detectors; sump pumps; storage sheds; fences; mailboxes; wall to wall carpeting; existing window screens, storm windows and screen/storm doors; window covering hardware, shades and blinds; awnings; built-in air conditioners; built-in appliances; the range/oven, unless otherwise stated; and, if owned, water treatment systems, propane tanks, satellite dishes and security systems. Also included:
   
   (B) The following items are LEASED (not owned by Seller). Contact the provider/vendor for more information (e.g., water treatment systems, propane tanks, satellite dishes and security systems):
   
   (C) EXCLUDED fixtures and items:

28. TAXES & SPECIAL ASSESSMENTS
   (A) At settlement, Seller will pay one-half of the total Real Estate Transfer Taxes, unless otherwise stated here:
   
   (B) Yearly Property Taxes $ __________ Property Assessed Value $ __________
   
   (C) Is the property preferentially assessed (including a tax abatement)? □ Yes □ No
   
   If applicable, how many years remain?

   (D) COA/HOA Name ____________________________
       COA/HOA Phone ____________________________
       COA/HOA special assessments $ __________
       Buyer’s required capital contribution $ __________
       Please explain:

   (E) Municipality Assessments $ __________
   
   (F) COA/HOA Fees $ __________ □ Quarterly □ Monthly □ Yearly

29. TITLE & POSSESSION
   (A) Seller will give possession of Property to a buyer at settlement, or on
   
   (B) At settlement, Seller will give full rights of ownership/ tenancy to a buyer except as follows:
       □ Oil □ Gas □ Mineral □ Other
       If checked, please explain:

   (C) Seller has:
       □ First mortgage with ____________________________ Amount of balance $ __________
       Address ____________________________ Phone # __________
       □ Second mortgage with ____________________________ Amount of balance $ __________
       Address ____________________________ Phone # __________
       □ Home Equity line of credit with ____________________________ Amount of balance $ __________
       Address ____________________________ Phone # __________

   (D) Seller has:
       □ Judgments $ __________ □ Past Due Municipal Assessment $ __________
       □ Past Due Property Taxes $ __________ □ Past Due COA/HOA Fees $ __________
       □ Federal Tax Liens $ __________ □ Past Due COA/HOA Assessments $ __________
       □ State Tax Liens $ __________ □ Other $ __________

   (E) If Seller, at any time on or since January 1, 1998, has been obligated to pay support under an order on record in any Pennsylvania county, list the county and the Domestic Relations Number or Docket Number:

30. BUYER FINANCING
   Seller will accept the following arrangements for buyer to pay for the Property:
       □ Cash □ Conventional mortgage □ FHA mortgage □ VA mortgage
       □ Seller’s Assist to buyer (if any) $ __________

31. SPECIAL INSTRUCTIONS
   The Office of the Attorney General has not pre-approved any special conditions or additional terms added by any parties. Any special conditions or additional terms in this Contract must comply with the Pennsylvania Plain Language Consumer Contract Act.

   Broker/Licensee Initials: __________ XLS Page 5 of 6  Seller Initials: __________
32. SPECIAL CLAUSES

(A) The following are part of this Listing Contract if checked:

☐ Property Description Addendum to Listing Contract (PAR Form XLS-A)
☐ Single Agency Addendum (PAR Form SA)
☐ Consumer Services Fee Addendum (PAR Form CSF)
☐ Vacant Land Addendum to Listing Contract (PAR Form VLA)
☐ Short Sale Addendum (PAR Form SSL)

(B) Additional Terms:

Seller has read the Consumer Notice as adopted by the State Real Estate Commission at 49 Pa. Code §35.336.

☐ Seller has received the Seller’s Property Disclosure form and agrees to complete and return to Listing Broker in a timely manner, if required.
☐ Seller has received the Lead-Based Hazards Disclosure form and agrees to complete and return to Listing Broker in a timely manner, if required.

Seller has read the entire Contract before signing. Seller must sign this Contract.

Seller gives permission for Broker to send information about this transaction to the fax number(s) and/or e-mail address(es) listed.

Return of this Agreement, and any addenda and amendments, including return by electronic transmission, bearing the signatures of all parties, constitutes acceptance by the parties.

This Contract may be executed in one or more counterparts, each of which shall be deemed to be an original and which counterparts together shall constitute one and the same Agreement of the Parties.

NOTICE BEFORE SIGNING: IF SELLER HAS LEGAL QUESTIONS, SELLER IS ADVISED TO CONSULT A PENNSYLVANIA REAL ESTATE ATTORNEY.

SELLER ___________________________ DATE ___________________________

SELLER ___________________________ DATE ___________________________

SELLER ___________________________ DATE ___________________________

BROKER (Company Name) ___________________________ DATE ___________________________

ACCEPTED ON BEHALF OF BROKER BY ___________________________ DATE ___________________________

XLS Page 6 of 6
When a buyer makes an offer on terms other than those set forth in the listing agreement, the seller can turn down the offer without becoming liable for the broker's commission. But if the seller accepts an offer, he generally is required to pay the broker's commission even if the offer did not match the terms set forth in the listing agreement.

**Able to Buy.** A ready and willing buyer is considered “able” if she has the capacity to contract and the financial ability to complete the purchase. The buyer must have enough cash to buy the property on the agreed terms, or else be eligible for the necessary financing.

**Commission Without Closing.** In most states, once a ready, willing, and able buyer has been found, the broker has earned the commission, whether or not the sale is ever completed. When failure to close is the seller’s fault, the broker is still entitled to the commission (although the broker might decide not to demand payment). For example, once the seller accepts an offer, he still owes the broker a commission if the sale fails to close for any of these reasons:

- the seller has a change of heart and decides not to sell;
- the seller does not have marketable title;
- the seller is unable to deliver possession of the property to the buyer; or
- the seller and the buyer mutually agree to terminate their contract.

Unless specifically required by the listing agreement, it may not even be necessary for the buyer and seller to execute a written purchase agreement in order for the broker to be entitled to a commission. It can be enough if the buyer and seller have reached an agreement as to the essential terms of the sale: the price, downpayment, loan term, interest rate, and amortization. If the seller backs out before the agreement is put into writing, the broker could still claim the commission.

Sometimes the seller and the broker disagree as to whether the buyer located by the broker was in fact ready, willing, and able. A court will
normally presume that the buyer was ready, willing, and able if a written purchase agreement was signed. On the other hand, if no contract has been signed and the agreement between the buyer and the seller is still at the unwritten stage when it falls through, the broker is not entitled to a commission unless he can prove that the buyer was financially able to perform the contract.

A few states follow a rule that the sale of the property must actually close before the broker is entitled to a commission.

**Types of Listing Agreements.** The circumstances under which a seller is required to pay a broker’s commission also depend on the type of listing agreement they have. The three basic types of listing agreements currently used are:

- the open listing,
- the exclusive agency listing, and
- the exclusive right to sell listing.

**Open Listing.** Under an open listing agreement, the seller is obligated to pay the broker a commission only if the broker was the *procuring cause* of the sale. The procuring cause is the person who was primarily responsible for bringing about the agreement between the parties. To be the procuring cause, a broker (or one of his salespersons) must have personally negotiated the offer from the ready, willing, and able buyer and communicated the offer to the seller.

An open listing is also called a nonexclusive listing, because a seller is free to give open listings to any number of brokers. If a seller signs two open listing agreements with two different brokers, and one of the brokers sells the property, only the broker who made the sale is entitled to a commission. The other broker is not compensated for his efforts. Or if the seller sells the property directly, without the help of either broker, then the seller does not have to pay any commission at all. The sale of the property terminates all outstanding listings.
The open listing arrangement has obvious disadvantages. If two competing brokers both negotiate with the person who ends up buying the property, there may be a dispute over which broker was the procuring cause of the sale. Also, because a broker with an open listing agreement is not assured of a commission when the property sells, he may not put as much effort into marketing the property, so it may take longer to sell. For the most part, open listing agreements are used only when a seller is unwilling to execute an exclusive listing agreement. Multiple listing services generally do not accept open listings.

**Exclusive Agency Listing.** In an exclusive agency listing, the seller agrees to list with only one broker, but retains the right to sell the property himself without being obligated to pay the broker a commission. The broker is entitled to a commission if anyone other than the seller finds a buyer for the property, but not if the seller finds the buyer without the help of an agent.

**Exclusive Right to Sell Listing.** Under an exclusive right to sell listing, the seller agrees to list with only one broker, and that broker is entitled to a commission if the property sells during the listing term, regardless of who finds the buyer. Even if the seller makes the sale directly, the broker is still entitled to the commission.

In spite of the designation “exclusive right to sell,” remember that this type of listing agreement does not actually authorize the broker to sell the property. As with the other types of listings, the broker is authorized only to submit offers to purchase to the seller.

The exclusive right to sell listing is preferred by most brokers, because it provides the most protection for the broker. It’s the type of listing that is most commonly used.

**Exclusive vs. Open Listings.** Exclusive listings have some important differences from open listings. Because an exclusive listing agreement prevents the seller from working with other brokers, it is important to know how long the agreement will last. Many states require listing agreements to
include a specific termination date. In states that do not require this, if the listing agreement does not have a termination date, the law may allow the seller to terminate the agreement at any time, or the agreement may expire after a reasonable time has passed. To avoid this uncertainty, an exclusive listing should always include a date on which the listing agreement will terminate.

There is also a distinction between open and exclusive listings concerning the broker’s contractual obligations. An open listing is considered a unilateral contract: the seller promises to pay the broker a commission if the broker finds a buyer, but the broker does not promise to make any effort to do so. If the broker does nothing at all, it is not a breach of contract.

On the other hand, an exclusive listing is considered a bilateral contract. In most exclusive listings, in exchange for the seller’s promise to pay a commission no matter who finds a buyer (or if any agent finds a buyer), the broker promises to exercise due diligence and make a reasonable effort to find a buyer.

**Buyer Representation Agreements.** On the other side of a real estate transaction, buyers are often represented by their own real estate agents. A buyer representation agreement between a broker and a prospective buyer is essentially the counterpart to a listing agreement between the seller and the seller’s broker. Unlike a listing agreement with the seller, however, the contract usually does not relate to a specific piece of property. The important elements of a buyer representation agreement primarily involve general agency law and will be discussed in Chapter 9.

**Elements of a Listing Agreement**

A listing agreement must have all of the essential elements of a valid contract that were discussed in the previous chapter, including competent parties, offer and acceptance, consideration, and a lawful purpose. Also, a listing agreement usually must be in writing and must be signed by the
seller. The broker may also sign the listing agreement (although her signature is not required in many states). The broker gives implied consent to the terms of the agreement by starting to market the property.

If there is no written listing agreement, the broker will have difficulty suing the seller for a commission, even though an oral agreement may have established an agency relationship between the broker and the seller (see Chapter 9).

At a minimum, a listing agreement should include provisions that:

- identify the property,
- set acceptable terms of sale,
- grant the broker authority, and
- determine the broker’s compensation.

As mentioned earlier, some states also require the listing agreement to include a termination date. In general, it is always a good idea to indicate when the listing will terminate.

**Property Description.** A listing agreement must identify the seller’s property. The street address is useful, but it may not be enough to identify the property with certainty. It’s a good idea to attach a legal description of the property to the listing agreement as an exhibit. Any pages attached to a contract should be dated and initialed by the parties, to show that the attachments are intended to be part of the agreement.

**Terms of Sale.** A listing agreement should specify what the seller wants in the way of an offer. This includes how much money the seller wants for the property (the listing price) and any other terms of sale that matter to the seller. Any items that the seller wants to exclude from or include in the sale that would not otherwise be excluded or included should also be noted in the listing agreement.

As we explained earlier, the seller can reject any offer that doesn’t meet the terms of sale described in the listing agreement, without becoming liable
for a commission. However, if an offer is made that does meet those terms, and the seller rejects the offer, the broker may be entitled to a commission. Thus, it is very important for all of the essential terms of sale to be set forth clearly and fully in the listing agreement.

**Broker’s Authority.** The listing agreement sets forth the broker’s authority to find a buyer for the property. The broker is usually also given the authority to accept and hold good faith deposits on the seller’s behalf. In the rare case where a broker is not given authority to accept deposits for the seller and the prospective buyer gives the broker a deposit, then the broker is acting as an agent for the buyer in regard to the deposit. In this case, the seller would not be liable to the buyer if the broker were to lose or misappropriate the deposit.

**Commission.** A provision stating the rate or amount of the broker’s commission is another key part of every listing agreement. The commission is usually computed as a percentage of the sales price. The commission rate or amount must be negotiable between the seller and the broker. In fact, it is a violation of state and federal antitrust laws for brokers to set uniform commission rates. Any discussion of commission rates among members of competing firms could give rise to a charge of price fixing (see Chapter 10).

Some states have additional regulations to prevent price fixing. For example, they may require that the listing agreement contain a statement informing the seller that commission rates must be negotiable. In general, the commission rate or amount should never be pre-printed on the listing agreement form. Instead, the commission should be filled in separately for each transaction.

Sometimes the amount of the broker’s commission is not based on a percentage of the sales price. Instead, the seller stipulates the net amount of money she requires from the sale of the property. The broker then tries to sell the property for more than that net amount. When the property is sold, the seller receives the required net and the broker keeps any money in
excess of that amount as the commission. This is referred to as a net listing.

**Example:** The seller insists on getting $345,000 from the sale of her property. The broker sells the property for $378,000. $378,000 less the required $345,000 net equals $33,000. Thus, the broker’s commission is $33,000. If the broker had sold the property for more, his commission would have been more. Likewise, if the broker had sold the property for less, his commission would have been less.

Net listings are illegal in many states. Even in those states where net listings are legal, they are generally frowned upon; an unscrupulous broker could easily use a net listing to take advantage of a seller. States that allow net listings may have additional restrictions on them to guard against the potential for abuse.

**Payment.** A broker’s commission is typically paid with a check (usually from the proceeds of the sale at closing), but if the seller and the broker agree, the commission payment can take other forms. For instance, it may be in the form of a promissory note, an assignment of an existing promissory note, or an assignment of funds from the buyer to the seller.

Ordinarily, the commission is the only compensation the broker receives. The broker does not present the seller with a bill for expenses incurred in selling the property, unless the seller specifically agreed to this arrangement in the listing agreement.

**Safety Clauses.** A safety clause (also called an extender clause, protection clause, or protection period clause) is found in most listing agreements. Under this type of provision, the broker is entitled to a commission if the seller sells the property after the listing term expires to any person the broker negotiated with during the listing term. This protects the broker from parties who conspire to deprive the broker of a commission by waiting until the listing has expired before they sign a purchase agreement.
The broker usually has to provide the seller with a list of the parties she negotiated with. That way, the seller will know to whom he can sell the property without becoming liable for a commission. Some states require the broker to provide this list to the seller within a certain timeframe. For example, the broker might be required to provide the list before the listing terminates, or within 72 hours after the termination date. This deadline should be included in the safety clause.

**Termination Date.** A listing agreement should include a termination date—the date on which the listing will expire and the broker’s authority to act on the seller’s behalf will end. This is especially important for an exclusive listing, because the seller is not free to work with a different broker until after the listing expires. As was mentioned earlier, the law in many states requires listing agreements to have a definite termination date. This may apply to all listing agreements, or specifically to exclusive listings. Some states also impose a maximum limit on the length of the listing period, such as 90 days.

**Distressed Property Listings.** As a result of the recent mortgage foreclosure crisis, a number of states have passed distressed property laws that are intended to protect homeowners from foreclosure scams. Under these laws, someone who participates in a transaction with a distressed property owner (the owner of a home in foreclosure or in imminent danger of foreclosure) may be required to use special forms, make certain disclosures, and follow other rules. In some states that have distressed property laws, real estate licensees are subject to these additional requirements.

**Purchase Agreements**

When a seller accepts a buyer’s offer to purchase the property, they enter into a purchase agreement. This agreement is a written contract between the buyer and seller that establishes all of the terms of the sale.

The contract between the buyer and the seller is known by different names in various parts of the country. It may be called a purchase
agreement, a contract of purchase and sale, an earnest money agreement, a deposit receipt, or an offer to purchase.

In most transactions, the buyer presents a written, signed offer to the seller along with a good faith deposit. If the seller chooses to accept the offer, he signs the form, and the form then becomes the binding contract of sale.

The statute of frauds requires an agreement to buy and sell real property to be in writing. A copy of the Arizona Association of REALTORS residential purchase agreement form is shown in Figure 8.2.

The basic provisions of a purchase agreement are fairly simple. The purchase agreement:

- identifies the parties,
- describes the property,
- sets forth the price and method of payment, and
- sets the date for closing the transaction (when title and possession are transferred).

However, most purchase agreements are quite detailed. It’s important for the purchase agreement to state all of the terms of the transaction clearly and accurately. Who is required to do what and when depends on the terms of the purchase agreement.

**Typical Provisions**

A purchase agreement form typically includes the following types of provisions.

**Identification of the Parties.** The buyer(s) and seller(s) must be properly identified in the agreement. Everyone who has an ownership interest in the property must sign the contract, and each party must have the capacity to enter into a contract. Note that if the seller is married, laws regarding
marital property may require that the seller’s spouse sign the purchase agreement for it to be enforceable. It is always best to have both spouses sign the contract, to secure the buyer’s title to the property.

**Description of the Property.** The purchase agreement must describe the property with certainty. As with the listing agreement, a full legal description of the property is not always required. Even so, it is still a good practice to include the legal description. If it is too long to fit in the blanks on the form, a copy of the legal description should be initialed by the parties and attached to the purchase agreement as an exhibit.

**Terms of Sale.** The purchase agreement should set forth as clearly as possible all of the terms of the sale, such as the total sales price, the amount of the downpayment, the method of payment, and what items are included in or excluded from the sale.

The method of payment should be set forth in detail; the purchase agreement form may include a pre-printed checklist of the most common types of financing arrangements. But regardless of the form used, all of the financing arrangements should be fully described, including the type of loan, the principal amount, the interest rate, how the loan is amortized, the term of the loan, and the monthly payments. (Types of financing programs are discussed in Chapter 12.)

**Conditions of Sale.** Most purchase agreements are conditional. For example, it is common to condition a sale on the buyer’s ability to obtain the necessary financing. If the buyer is unable to obtain the financing after making a good faith effort to do so, she does not have to go through with the purchase, and does not have to forfeit the deposit.

Any and all conditions must be clearly stated in the purchase agreement. A provision that sets forth a condition is called a *contingency clause*. A contingency clause should state exactly what must occur to fulfill the condition, and it should explain how one party is to notify the other when the condition has been fulfilled or waived. There should also be a time limit placed on the condition (for example, if the condition is not fulfilled by
January 15, the contract is void). Finally, the contingency clause should explain the parties’ rights if the condition is not met or waived.

**Condition of the Property.** A purchase agreement may include a variety of provisions concerning the condition of the property. The seller may warrant the condition of certain elements (such as the roof, plumbing, or appliances) or else may sell the property “as is.” Note that in most states, even if the property is sold “as is,” the seller is still subject to state laws that require disclosure of material facts concerning the condition of the property. Some of these disclosures may be included in the purchase agreement, or they may be part of a separate document.

**Conveyance and Title.** The purchase agreement should specify the type of deed that will be used to convey title to the buyer. Furthermore, title is required to be marketable, meaning that the property is free from undisclosed liens and encumbrances. In addition to the seller’s assurances, most buyers will want the additional protection of a title insurance policy. Which party pays for title insurance normally depends on local custom, and this should also be specified in the purchase agreement.

**Escrow and Closing.** It’s a good idea for a purchase agreement to include the arrangements for escrow and closing. At the very least, the agreement should set the closing date for the transaction. Both parties must agree to the identity of the escrow agent; one party can’t choose the escrow agent without the other’s consent.

**Date of Possession.** Possession of the property is usually transferred to the buyer on the closing date, but other arrangements can be made in the purchase agreement. If possession will be transferred either before or after closing, the parties should execute a separate rental agreement, sometimes called an **interim occupancy agreement**.

The Uniform Vendor and Purchaser Risk Act, a law that has been adopted in many states, determines who suffers the loss when property subject to a sales contract is damaged or destroyed. This law provides that until possession of the property is transferred to the buyer, the risk of loss is the
seller’s. For instance, if a house is destroyed by an earthquake the day before possession is transferred to the buyer, the seller bears the loss. Once possession is transferred to the buyer, however, the risk of loss is the buyer’s. The parties may choose to apportion the risk of loss differently by including a risk clause in the purchase agreement.

**Time is of the Essence.** Many purchase agreements contain a clause stating that “time is of the essence” (see Chapter 7). This clause indicates that failure to meet any of the deadlines set in the agreement constitutes a breach of contract.

**Good Faith Deposit.** A purchase agreement normally requires the buyer to make a good faith deposit (sometimes called an earnest money deposit) at the time of the agreement, to show that the buyer is serious about going through with the transaction. Although the deposit is not required for a valid contract (the seller’s promise to sell and the buyer’s promise to buy are sufficient consideration), a good faith deposit is almost always part of a real estate transaction. If the agent holds the good faith deposit on the seller’s behalf instead of passing the deposit directly to an escrow agent, the purchase agreement serves as the buyer’s receipt for the good faith deposit; this is why you may hear the purchase agreement also referred to as a deposit receipt.

The appropriate amount for a good faith deposit varies according to local custom; it can be any amount that both parties agree on. If the buyer goes through with the transaction, the deposit is ordinarily applied to the purchase price.

The purchase agreement should explain the circumstances in which the deposit will be refunded to the buyer or forfeited to the seller. In many cases, the deposit is treated as liquidated damages (see Chapter 7). Some states have laws establishing additional conditions that must be met before the deposit can serve as liquidated damages. For example, the parties may need to initial a liquidated damages provision in the contract, and the
amount of the deposit that can be treated as liquidated damages may be limited to a certain percentage of the purchase price.

The form of the deposit should be stated in the contract. A personal check is the most common, but another form of payment—such as a promissory note—may be used. The form of the deposit should be disclosed to the seller before he accepts the offer.

**Broker’s Compensation.** Many purchase agreements also provide for the payment of the broker’s commission. In most cases, this provision is merely a reaffirmation of the commission agreement set forth in the listing agreement. But if the broker has risked working under an oral or implied listing agreement, such a provision in the purchase agreement will qualify as a “written agreement,” in case the broker needs to sue the seller for the commission.

**Binder**

In some areas of the United States, the agent or broker does not prepare the purchase agreement. Instead, a shorter document known as a binder is used as the basis for the offer and acceptance. A **binder** states the essential terms of the agreement, such as the purchase price and the amount of the down payment. Binders are common in the northeastern United States.

The binder is designed to function as a contract between the parties for only a short time. The full purchase agreement is normally drafted by an attorney after the binder has been signed. This agreement replaces the binder as the contract for the sale of the property.

**Amendments**

After the buyer and seller have signed the purchase agreement, the terms of the contract can be modified only in writing. Oral changes are not legally binding. Sometimes, changes are just written into the original contract and signed by the parties. However, it’s much safer to use an amendment form to
make changes. All the parties who signed the original agreement must also sign the amendment, or it will be unenforceable.

Don’t confuse an amendment with an addendum. An **amendment** is a written modification that occurs after the parties have signed the purchase agreement. An addendum, on the other hand, is an attachment added to the agreement prior to signature. The addendum contains terms that are not contained in the basic purchase agreement; the agreement will refer to and incorporate the contents of the addendum at some point.

A **rider** is another term for a document that is added to a contract. Depending on how it is used, a rider may be either an amendment or an addendum. It is important to be clear as to whether the original agreement incorporates the additional document by reference, or whether the document is supposed to modify an already existing agreement.

**Escrow Agreements**

After the buyer and seller have agreed on the sale of a property, the transaction needs to close. This will usually involve an additional contract known as an **escrow agreement** or escrow instructions. The escrow agent may have separate contracts with the buyer and the seller or a single contract with both of them, depending on local custom. The escrow agreement is based on the purchase agreement; the purpose of the escrow agreement is to provide instructions so that the terms of the purchase agreement are properly carried out. Escrow and the closing process are discussed in Chapter 14.
ATTENTION BUYER!

You are entering into a legally binding agreement.

1. Read the entire contract before you sign it.
2. Review the Residential Seller’s Property Disclosure Statement (See Section 4a).
   - This information comes directly from the Seller.
   - Investigate any blank spaces, unclear answers or any other information that is important to you.
3. Review the Inspection Paragraph (see Section 6a).
   If important to you, hire a qualified:
   - Mold inspector
   - Roof inspector
   - Pest inspector
   - Pool inspector
   - Heating/cooling inspector
   Verify square footage (see Section 6b)
   Verify the property is on sewer or septic (see Section 6f)
4. Confirm your ability to obtain insurance and insurability of the property during the inspection period with your insurance agent (see Sections 6a and 6e).
5. Apply for your home loan now, if you have not done so already, and provide your lender with all requested information (see Section 2f).
   It is your responsibility to make sure that you and your lender deliver the necessary funds to escrow in sufficient time to allow escrow to close on the agreed upon date. Otherwise, the Seller may cancel the contract.
6. Read the title commitment within five days of receipt (see Section 3c).
7. Read the CC&R’s and all other governing documents within five days of receipt (see Section 3c), especially if the home is in a homeowner’s association.
8. Conduct a thorough final walkthrough (see Section 6m). If the property is unacceptable, speak up. After the closing may be too late.

You can obtain information through the Buyer’s Advisory at http://www.aaronline.com.
Remember, you are urged to consult with an attorney, inspectors, and experts of your choice in any area of interest or concern in the transaction. Be cautious about verbal representations, advertising claims, and information contained in a listing. **Verify anything important to you.**

Buyer’s Check List

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RESIDENTIAL RESALE REAL ESTATE
PURCHASE CONTRACT

1. PROPERTY

1a. 1. BUYER:

2. SELLER:

3. Buyer agrees to buy and Seller agrees to sell the real property with all improvements, fixtures, and appurtenances thereon or incidental thereto, plus the personal property described herein (collectively the “Premises”).

1b. 5. Premises Address: ____________________________ Assessor’s #: ____________________________

6. City: ____________________________ County: ____________________________ AZ, Zip Code: ____________________________

7. Legal Description:

1c. 8. $________ Full Purchase Price, paid as outlined below

9. $________ Earnest money

10. $________

11. $________

12. $________

13. $________

14. $________

1d. 15. Close of Escrow: Close of Escrow (“COE”) shall occur when the deed is recorded at the appropriate county recorder’s office. Buyer and Seller shall comply with all terms and conditions of this Contract, execute and deliver to Escrow Company all closing documents, and perform all other acts necessary in sufficient time to allow COE to occur on

16. ________ MONTH ________ DAY ________ YEAR (“COE Date”). If Escrow Company or recorder’s office is closed on COE Date,

19. COE shall occur on the next day that both are open for business.

20. Buyer shall deliver to Escrow Company a cashier’s check, wired funds or other immediately available funds to pay any down payment, additional deposits or Buyer’s closing costs, and instruct the lender, if applicable, to deliver immediately available funds to Escrow Company, in a sufficient amount and in sufficient time to allow COE to occur on COE Date.

1e. 23. Possession: Seller shall deliver possession, occupancy, existing keys and/or means to operate all locks, mailbox, security system/alarms, and all common area facilities to Buyer at COE or

25. Broker(s) recommend that the parties seek appropriate counsel from insurance, legal, tax, and accounting professionals regarding the risks of pre-possession or post-possession of the Premises.

1f. 27. Addenda Incorporated: [ ] All IS [ ] Additional Clause [ ] Assumption and Carryback [ ] Buyer Contingency [ ] Domestic Water Well

28. [ ] H.O.A. [ ] Lead-Based Paint Disclosure [ ] On-site Wastewater Treatment Facility [ ] Short Sale

29. [ ] Other:

1g. 30. Fixtures and Personal Property: Seller agrees that all existing fixtures on the Premises, and any existing personal property specified herein, shall be included in this sale, including the following:

31. [ ] free-standing range/oven

32. [ ] ceiling fans

33. [ ] attached floor coverings

34. [ ] window and door screens, sun screens

35. [ ] garage door openers and controls

36. [ ] outdoor landscaping, fountains, and lighting

37. [ ] pellet, wood-burning or gas-log stoves

38. [ ] storage sheds

39. [ ] light fixtures

40. [ ] towel, curtain and drapery rods

41. [ ] flush-mounted speakers

42. [ ] storm windows and doors

43. [ ] attached media antennas/satellite dishes

44. [ ] attached fireplace equipment

45. [ ] timers

46. [ ] draperies and other window coverings

47. [ ] shutters and awnings

48. [ ] water-heating systems

49. [ ] solar systems

50. [ ] mailbox

51. [ ] central vacuum, hose, and attachments

52. [ ] built-in appliances
Residential Resale Real Estate Purchase Contract

40. If owned by the Seller, the following items also are included in this sale:
41. * pool and spa equipment (including any mechanical or other cleaning systems)
42. * security and/or fire systems and/or alarms
43. * water softeners
44. * water purification systems
45. ** Additional existing personal property included in this sale (if checked): [] refrigerator [] washer [] dryer as described:
46. 
47. 
48. [] Other:
49. 
50. Additional existing personal property included shall not be considered part of the Premises and shall be transferred with no monetary value, and free and clear of all liens or encumbrances.
52. Fixtures and leased items NOT included:
53. IF THIS IS AN ALL CASH SALE, GO TO SECTION 3.

2. FINANCING

54. Pre-Qualification: A completed AAR Pre-Qualification Form [] is [] is not attached hereto and incorporated herein by reference.
55. Loan Contingency: Buyer's obligation to complete this sale is contingent upon Buyer obtaining loan approval for the loan described in the AAR Loan Status Update (LSU) form without Prior to Document (PTD) conditions no later than three (3) days prior to the COE Date. If Buyer is unable to obtain loan approval without PTD conditions, Buyer shall deliver a notice of the inability to obtain loan approval without PTD conditions to Seller or Escrow Company no later than three (3) days prior to the COE Date.
56. Unfulfilled Loan Contingency: This Contract shall be cancelled and Buyer shall be entitled to a return of the Earnest Money if after diligent and good faith effort, Buyer is unable to obtain loan approval without PTD conditions no later than three (3) days prior to the COE Date. Buyer acknowledges that prepaid items paid separately from earnest money are not refundable.
57. Interest Rate / Necessary Funds: Buyer agrees that (i) the inability to obtain loan approval due to the failure to lock the interest rate and "points" by separate written agreement with the lender during the Inspection Period or (ii) the failure to have the down payment or other funds due from Buyer necessary to obtain the loan approval without conditions and close this transaction is not an unfulfilled loan contingency.
58. Loan Status Update: Buyer shall deliver to Seller the LSU within a minimum of 1-40 days after Contract acceptance and instruct lender to provide an updated LSU to Broker(s) and Seller upon request.
59. Loan Application: Unless previously completed, during the Inspection Period, Buyer shall (i) complete, sign and deliver to the lender a loan application and grant lender permission to access Buyer's Trimerged Residential Credit Report; and (ii) provide the lender all initial requested signed disclosures and Initial Requested Documentation listed in the LSU on lines 32-35.
60. Loan Processing During Escrow: Buyer agrees to diligently work to obtain the loan and will promptly provide the lender with all additional documentation required. Buyer shall sign all loan documents no later than three (3) days prior to the COE Date.
61. Type of Financing: [] Conventional [] FHA [] VA [] USDA [] Assumption [] Seller Carryback []
62. (If financing is to be other than new financing, see attachment.)
63. Loan Costs: All costs of obtaining the loan shall be paid by the Buyer, unless otherwise provided for herein.
64. Seller Concessions (If Any): In addition to the other costs Seller has agreed to pay herein, Seller agrees to pay up to ___% of the Purchase Price or $ ___ as a credit for Buyer's loan costs including pre-paid, impounds and Buyer's title / escrow closing costs.
65. VA Loan Costs: In the event of a VA loan, Seller agrees to pay the escrow fee and up to $ ___ of loan costs not permitted to be paid by the Buyer, in addition to the other costs Seller has agreed to pay herein, including Seller's Concessions.
66. Changes: Buyer shall immediately notify Seller of any changes in the loan program, financing terms, or lender described in the Pre-Qualification Form if attached hereto or LSU provided within five (5) days after Contract acceptance and shall make any such changes without the prior written consent of Seller if such changes do not adversely affect Buyer's ability to obtain loan approval without PTD conditions, increase Seller's closing costs, or delay COE.
67. Appraisal Contingency: Buyer's obligation to complete this sale is contingent upon an appraisal of the Premises acceptable to lender for at least the purchase price. If the Premises fail to appraise for the purchase price in any appraisal required by lender, Buyer has five (5) days after notice of the appraised value to cancel this Contract and receive a refund of the Earnest Money or the appraisal contingency shall be waived.
68. Appraisal Fee(s): Appraisal Fee(s), when required by lender, shall be paid by [] Buyer [] Seller [] Other __________
69. Appraisal Fee(s) are [] are not included in Seller Concessions, if applicable.

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3. TITLE AND ESCROW

3a. 91. Escrow: This Contract shall be used as escrow instructions. The Escrow Company employed by the parties to carry out the terms of this Contract shall be:

3b. 96. Title and Vesting: Buyer will take title as determined before COE. Taking title may have significant legal, estate planning and tax consequences. Buyer should obtain legal and tax advice.

3c. 98. Title Commitment and Title Insurance: Escrow Company is hereby instructed to obtain and deliver to Buyer and Seller directly, addressed pursuant to 8 or 9c or as otherwise provided, a Commitment for Title Insurance together with complete and legible copies of all documents that will remain as exceptions to Buyer's policy of Title Insurance ("Title Commitment"), including but not limited to Conditions, Covenants and Restrictions ("CCARs"); deed restrictions and easements. Buyer shall have five (5) days after receipt of the Title Commitment and after receipt of notice of any subsequent exceptions to provide notice to Seller of any items disapproved. Seller shall convey title by warranty deed, subject to existing taxes, assessments, covenants, conditions, restrictions, rights of way, easements and all other matters of record. Buyer shall be provided at Seller's expense an American Land Title Association ("ALTA") Homeowner's Title Insurance Policy, or if not available, an ALTA Residential Title Insurance Policy ("Plain Language") or, if not available, a Standard Owner's Title Insurance Policy, showing title vested in Buyer. Buyer may acquire extended coverage at Buyer's own additional expense. If applicable, Buyer shall pay the cost of obtaining the ALTA Lender's Title Insurance Policy.

3d. 108. Additional Instructions: (i) Escrow Company shall promptly furnish notice of pending sale that contains the name and address of the Buyer to any homeowner's association in which the Premises is located. (ii) If the Escrow Company is also acting as the title agency, but is not the title insurer issuing the title insurance policy, Escrow Company shall deliver to the Buyer and Seller, upon deposit of funds, a closing protection letter from the title insurer indemnifying the Buyer and Seller for any losses due to fraudulent acts or breach of escrow instructions by the Escrow Company. (iii) All documents necessary to close this transaction shall be executed promptly by Seller and Buyer in the standard form used by Escrow Company. Escrow Company shall modify such documents to the extent necessary to be consistent with this Contract. (iv) Escrow Company fees, unless otherwise stated herein, shall be allocated equally between Seller and Buyer. (v) Escrow Company shall send to all parties and Broker(s) copies of all notices and communications directed to Seller, Buyer and Broker(s). (vi) Escrow Company shall provide Broker(s) access to escrowed materials and information regarding the escrow. (vii) If an Affidavit of Disclosure is provided, Escrow Company shall record the Affidavit at COE.

3e. 118. Tax Prorations: Real property taxes payable by the Seller shall be prorated to COE based upon the latest tax information available.

3f. 119. Release of Earnest Money: In the event of a dispute between Buyer and Seller regarding any Earnest Money deposited with Escrow Company, Buyer and Seller authorize Escrow Company to release Earnest Money pursuant to the terms and conditions of this Contract in its sole and absolute discretion. Buyer and Seller agree to hold harmless and indemnify Escrow Company against any claim, action or lawsuit of any kind, and from any loss, judgment, or expense, including costs and attorney fees, arising from or relating in any way to the release of Earnest Money.

3g. 124. Prorations of Assessments and Fees: All assessments and fees that are not a lien as of the COE, including homeowner's association fees, rents, irrigation fees, and, if assumed, insurance premiums, interest on assessments, interest on encumbrances, and service contracts, shall be prorated as of COE or ☐ Other:

3h. 127. Assessment Liens: The amount of any assessment, other than homeowner's association assessments, that is a lien as of the COE, shall be ☐ paid in full by Seller ☐ prorated and assumed by Buyer. Any assessment that becomes a lien after COE is the Buyer's responsibility.

3i. 130. IRS and FIRPTA Reporting: Seller agrees to comply with IRS reporting requirements. If applicable, Seller agrees to complete, sign, and deliver to Escrow Company a certificate indicating whether Seller is a foreign person or a non-resident alien pursuant to the Foreign Investment in Real Property Tax Act ("FIRPTA"). Buyer and Seller acknowledge that if the Seller is a foreign person, the Buyer must withhold a tax equal to 10% of the purchase price, unless an exemption applies.
4. DISCLOSURE

4a. Seller Property Disclosure Statement (“SPDS”): Seller shall deliver a completed AAR Residential SPDS form to the Buyer within five (5) days after Contract acceptance. Buyer shall provide notice of any SPDS items disapproved within the Inspection Period or five (5) days after receipt of the SPDS, whichever is later.

4b. Insurance Claims History: Seller shall deliver to Buyer a written five-year insurance claims history regarding Premises (or a claims history for the length of time Seller has owned the Premises if less than five years) from Seller’s insurance company or an insurance support organization or consumer reporting agency, or if unavailable from these sources, from Seller, within five (5) days after Contract acceptance. (Buyer may obscure any reference to date of birth or social security number from the document). Buyer shall provide notice of any items disapproved within the Inspection Period or five (5) days after receipt of the claims history, whichever is later.

4c. Lead-Based Paint Disclosure: If the Premises were built prior to 1978, the Seller shall: (i) notify the Buyer of any known lead-based “LBP” or LBP hazards in the Premises; (ii) provide the Buyer with any LBP risk assessments or inspection reports related to the Premises; (iii) disclose to the Buyer the Seller’s possession; (iv) provide the Buyer with the Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards, and any report, records, pamphlets, and/or other materials referenced therein, including the pamphlet “Protect Your Family from Lead in Your Home” (collectively “LBP Information”). Buyer shall return a signed copy of the Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards to Seller prior to COE.

4d. If LBP Information was provided prior to Contract acceptance and Buyer acknowledges the opportunity to conduct LBP risk assessments or inspections during Inspection Period.

4e. Seller shall provide LBP Information within five (5) days after Contract acceptance. Buyer may within ten (10) days or ________ days after receipt of the LBP Information conduct or obtain a risk assessment or inspection of the Premises for the presence of LBP or LBP hazards (“Assessment Period”). Buyer may within five (5) days after receipt of the LBP Information or five (5) days after expiration of the Assessment Period cancel this Contract.

4f. Buyer is further advised to use certified contractors to perform renovation, repair or painting projects that disturb lead-based paint in residential properties built before 1978 and to follow specific work practices to prevent lead contamination.

5. WARRANTIES

5a. Seller Warranties: Seller warrants and shall maintain and repair the Premises so that at the earlier of possession or COE: (i) all heating, cooling, mechanical, plumbing, and electrical systems (including swimming pool and/or spa, motors, filter systems, cleaning systems, and heaters, if any), free-standing range/oven, and built-in appliances will be in working condition; (ii) all other agreed upon repairs and corrections will be completed pursuant to Section 6; (iii) the Premises, including all additional personal property included in the sale, will be in substantially the same condition as on the date of Contract acceptance; and (iv) all personal property not included in the sale and all debris will be removed from the Premises.

5b. Warranties that Survive Closing: Seller warrants that Seller has disclosed to Buyer and Buyer(s) all material latent defects and any information concerning the Premises known to Seller, excluding opinions of value, which materially and adversely affect the consideration to be paid by Buyer. Prior to the COE, Seller warrants that payment in full will have been made for all labor, professional services, materials, machinery, fixtures, or tools furnished within the 150 days immediately preceding the COE in connection with the construction, alteration, or repair of any structure on or improvement to the Premises, Seller warrants that the information regarding connection to a sewer system or on-site wastewater treatment facility (conventional septic or alternative) is correct to the best of Seller’s knowledge.

5c. Buyer Warranties: Buyer warrants that Buyer has disclosed to Seller any information that may materially and adversely affect the Buyer’s ability to close escrow or complete the obligations of this Contract. At the earlier of possession of the Premises or COE, Buyer warrants to Seller that Buyer has conducted all desired independent inspections and investigations and accepts the Premises.

5d. Buyer warrants that Buyer is not relying on any verbal representations concerning the Premises except disclosed as follows:

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LP-10 Required Reading
Part One

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6. DUE DILIGENCE

6a. Inspection Period: Buyer’s Inspection Period shall begin (10) days or _ days after Contract acceptance. During the Inspection Period Buyer, at Buyer’s expense, shall: (i) conduct all desired physical, environmental, and other types of inspections and investigations to determine the value and condition of the Premises; (ii) make inquiries and consult government agencies, lenders, insurance agents, architects, and other appropriate persons and entities concerning the suitability of the Premises and the surrounding area; (iii) investigate applicable building, zoning, fire, health, and safety codes to determine any potential hazards, violations or defects in the Premises; and (iv) verify any material multiple listing service (“MLS”) information. If the presence of sex offenders in the vicinity or the occurrence of a disease, natural death, suicide, homicide or other crime on or in the vicinity is a material matter to the Buyer, it must be investigated by the Buyer during the Inspection Period. Buyer shall keep the Premises free and clear of liens, shall indemnify and hold Seller harmless from all liability, claims, demands, damages, and costs, and shall repair all damages arising from the inspections. Buyer shall provide Seller and Broker(s) upon receipt, at no cost, copies of all inspection reports concerning the Premises obtained by Buyer. Buyer is advised to consult the Arizona Department of Real Estate Buyer Advisory provided by AAR to assist in Buyer’s due diligence inspections and investigations.

6b. Square footage: Buyer is aware that any reference to the square footage of the Premises, both the real property (land) and improvements thereon, is approximate. If square footage is a material matter to the Buyer, it must be investigated during the inspection period.

6c. Wood-Destroying Organism or Insect Inspection: If current or past wood-destroying organisms or insects (such as termites) are a material matter to the Buyer, these issues must be investigated during the inspection period. The Buyer shall order and pay for all wood-destroying organism or insect inspections performed during the inspection period. If the lender requires an updated Wood-Destroying Organism or Insect Inspection Report prior to COE, it will be performed at Buyer’s expense.

6d. Flood Hazard: Flood hazard designations or the cost of flood hazard insurance shall be determined by Buyer during the Inspection Period. If the Premises are in an area identified as having any special flood hazards by any governmental entity, the lender may require the purchase of flood hazard insurance. Special flood hazards may also affect the ability to encumber or improve the Premises.

6e. Insurance: If homeowner’s insurance is a material matter to the Buyer, Buyer shall apply for and obtain written confirmation of the availability and cost of homeowner’s insurance for the Premises from Buyer’s insurance company during the inspection period. Buyer understands that any homeowner’s, fire, casualty, or other insurance desired by Buyer or required by lender should be in place at COE.

6f. Sewer or On-site Wastewater Treatment System: The Premises are connected to: ☐ sewer system ☐ septic system ☐ alternative system

IF A SEWER CONNECTION IS A MATERIAL MATTER TO THE BUYER, IT MUST BE INVESTIGATED DURING THE INSPECTION PERIOD. If the Premises are served by a septic or alternative system, the AAR On-site Wastewater Treatment Facility Addendum is incorporated herein by reference.

(BUYER’S INITIALS REQUIRED)

5g. Swimming Pool Barrier Regulations: During the Inspection Period, Buyer agrees to investigate all applicable state, county, and municipal Swimming Pool barrier regulations and agrees to comply with and pay all costs of compliance with said regulations prior to occupying the Premises, unless otherwise agreed in writing. If the Premises contain a Swimming Pool, Buyer acknowledges receipt of the Arizona Department of Health Services approved private pool safety notice.

(BUYER’S INITIALS REQUIRED)

6h. Buyer Acknowledgment: Buyer recognizes, acknowledges, and agrees that Broker(s) are not qualified, nor licensed, to conduct due diligence with respect to the Premises or the surrounding area. Buyer is instructed to consult with qualified licensed professionals to assist in Buyer’s due diligence efforts. Because conducting due diligence with respect to the Premises and the surrounding area is beyond the scope of the Broker’s expertise and licensing, Buyer expressly releases and holds harmless Broker(s) from liability for any defects or conditions that could have been discovered by inspection or investigation.

(BUYER’S INITIALS REQUIRED)

6i. Inspection Period Notice: Prior to expiration of the Inspection Period, Buyer shall deliver to Seller a signed notice of any items disapproved. AAR’s Buyer’s Inspection Notice and Seller’s Response form is available for this purpose. Buyer shall conduct all desired inspections and investigations prior to delivering such notice to Seller and all Inspection Period items disapproved shall be provided in a single notice.

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6. Buyer Disapproval: If Buyer, in Buyer's sole discretion, disapproves of items as allowed herein, Buyer shall deliver to Seller notice of the items disapproved and state in the notice that Buyer elects to either:

236. (1) Immediately cancel this Contract and all Earnest Money shall be released to Buyer, or
237. (2) provide the Seller an opportunity to correct the items disapproved, in which case:

240. (a) Seller shall respond in writing within five (5) days or ________________ days after delivery to Seller of Buyer's notice of items disapproved. Seller's failure to respond to Buyer in writing within the specified time period shall conclusively be deemed Seller's refusal to correct any of the items disapproved.
241. (b) If Seller agrees in writing to correct items disapproved, Seller shall correct the items, complete any repairs in a workmanlike manner and deliver any paid receipts evidencing the corrections and repairs to Buyer three (3) days or ________________ days prior to COE Date.
242. (c) If Seller is unwilling or unable to correct any of the items disapproved, Buyer may cancel this Contract within five (5) days after delivery of Seller's response or after expiration of the time for Seller's response, whichever occurs first, and all Earnest Money shall be released to Buyer. If Buyer does not cancel this Contract within the five (5) days as provided, Buyer shall close escrow without correction of those items that Seller has not agreed in writing to correct.

250. VERBAL DISCUSSIONS WILL NOT EXTEND THESE TIME PERIODS. Only a written agreement signed by both parties will extend 251. or cancellation rights.

252. BUYER'S FAILURE TO GIVE NOTICE OF DISAPPROVAL OF ITEMS OR CANCELLATION OF THIS CONTRACT WITHIN THE SPECIFIED TIME PERIOD SHALL CONCLUSIVELY BE DEEMED BUYER'S ELECTION TO PROCEED WITH THE TRANSACTION WITHOUT CORRECTION OF ANY DISAPPROVED ITEMS.

6. Notice of Non-Working Warranted Items: Buyer shall provide Seller with notice of any non-working warranted item(s) of which Buyer becomes aware during the Inspection Period or the Seller warranty for that item(s) shall be waived. Delivery of such notice 256. shall not affect Seller's obligation to maintain or repair the warranted item(s).

6. Home Warranty Plan: Buyer and Seller are advised to investigate the various home warranty plans available for purchase. The parties acknowledge that different home warranty plans have different coverage options, exclusions, limitations, service fees and 268. most plans exclude pre-existing conditions.

6. A Home Warranty Plan will be ordered by Buyer or Seller with the following optional coverage

6. to exceed $ ________________ to be paid for by Buyer or Seller


6. Walkthrough(s): Seller grants Buyer and Buyer's inspector(s) reasonable access to conduct walkthrough(s) of the Premises for the purpose of satisfying Buyer that any corrections or repairs agreed to by the Seller have been completed, warranted items are in working condition and that the Premises is substantially the same condition as the date of Contract acceptance. If Buyer does not conduct such walkthrough(s), Buyer releases Seller and Broker(s) from liability for any defects that could have been discovered.

6. Seller's Responsibility Regarding Inspections and Walkthrough(s): Seller shall make the Premises available for all inspections 270. and walkthrough(s) upon reasonable notice by Buyer. Seller shall, at Seller's expense, have all utilities on, including any propane, 271. until COE to enable Buyer to conduct these inspections and walkthrough(s).

7. Remedies

7a. Cure Period: A party shall have an opportunity to cure a potential breach of this Contract. If a party fails to comply with any provision of this Contract, the other party shall deliver a notice to the non-complying party specifying the non-compliance. If the non-compliance is not cured within three (3) days after delivery of such notice ("Cure Period"), the failure to comply shall become a breach of Contract.

7b. Breach: In the event of a breach of Contract, the non-breaching party may cancel this Contract and/or proceed against the breaching party in any claim or remedy that the non-breaching party may have in law or equity, subject to the Alternative Dispute Resolution obligations set forth herein. In the case of the Seller, because it would be difficult to fix actual damages in the event of Buyer's breach, the Earnest Money may be deemed a reasonable estimate of damages and Seller may, at Seller's option, accept the Earnest Money as Seller's sole right to damages; and in the event of Buyer's breach arising from Buyer's failure to deliver the notice required by Section 2b, or Buyer's inability to obtain loan approval due to the waiver of the appraisal contingency pursuant to Section 281. 2m, Seller shall exercise this option and accept the Earnest Money as Seller's sole right to damages. An unfulfilled contingency is not a breach of Contract. The parties expressly agree that the failure of any party to comply with the terms and conditions of Section 10 284. to allow COE to occur on the COE Date, if not cured after a cure notice is delivered pursuant to Section 7a, will constitute a material breach of this Contract, rendering the Contract subject to cancellation.
Residential Resale Real Estate Purchase Contract

7c. Alternative Dispute Resolution ("ADR"): Buyer and Seller agree to mediate any dispute or claim arising out of or relating to this Contract in accordance with the REALTORS® Dispute Resolution System, or as otherwise agreed. All mediation costs shall be paid equally by the parties. In the event that mediation does not resolve all disputes or claims, the unresolved disputes or claims shall be submitted for binding arbitration. In such event, the parties shall agree upon an arbitrator and cooperate in the scheduling of an arbitration hearing. If the parties are unable to agree on an arbitrator, the dispute shall be submitted to the American Arbitration Association ("AAA") in accordance with the AAA Arbitration Rules for the Real Estate Industry. The decision of the arbitrator shall be final and nonappealable. Judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction.

293. Notwithstanding the foregoing, either party may opt out of binding arbitration within thirty (30) days after the conclusion of the mediation conference by notice to the other and in such event either party shall have the right to resort to court action.

7d. Exclusions from ADR: The following matters are excluded from the requirement for ADR hereunder: (i) any action brought in the Small Claims Division of an Arizona Justice Court (up to $2,500) so long as the matter is not thereafter transferred or removed from the small claims division; (ii) judicial or nonjudicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage, or agreement for sale; (iii) an unlawful entry or detainer action; (iv) the filing or enforcement of a mechanic’s lien; or (v) any matter that is within the jurisdiction of a probate court. Further, the filing of a judicial action to enable the recording of a notice of pending action (" lis pendens"), or order of attachment, receivership, injunction, or other provisional remedies shall not constitute a waiver of the obligation to submit the claim to ADR, nor shall such action constitute a breach of the duty to mediate or arbitrate.

8. ADDITIONAL TERMS AND CONDITIONS

305. Buyer and Seller shall be responsible for all costs and expenses incurred in connection with the sale, including attorney’s fees, title insurance, and other applicable fees.

306. Buyer and Seller shall ensure that all closing conditions are satisfied and the property is delivered in good condition.

307. Buyer and Seller shall provide all necessary documents and certifications required by law or by the other party.

308. Buyer and Seller shall indemnify, defend, and hold harmless the other party from any claims, losses, or expenses arising out of or related to the sale.

309. Buyer and Seller shall cooperate in the execution of any necessary documents and agreements.

310. Buyer and Seller shall comply with all applicable laws and regulations.

311. Buyer and Seller shall provide all necessary repairs and warranties as agreed.

312. Buyer and Seller shall ensure the property is free and clear of any liens or encumbrances.

313. Buyer and Seller shall comply with all applicable disclosure requirements.

314. Buyer and Seller shall not interfere with the other party’s possession of the property.

315. Buyer and Seller shall not breach any contract or agreement related to the sale.

316. Buyer and Seller shall not bring any claims against the other party for any breach of contract.

317. Buyer and Seller shall not bring any claims against the other party for any violation of law.

318. Buyer and Seller shall not bring any claims against the other party for any violation of the terms of the sale.

319. Buyer and Seller shall not bring any claims against the other party for any breach of warranty.

320. Buyer and Seller shall not bring any claims against the other party for any breach of covenant.

321. Buyer and Seller shall not bring any claims against the other party for any breach of agreement.

322. Buyer and Seller shall not bring any claims against the other party for any breach of contract.

323. Buyer and Seller shall not bring any claims against the other party for any breach of warranty.

324. Buyer and Seller shall not bring any claims against the other party for any breach of covenant.

325. Buyer and Seller shall not bring any claims against the other party for any breach of agreement.

326. Buyer and Seller shall not bring any claims against the other party for any breach of contract.

327. Buyer and Seller shall not bring any claims against the other party for any breach of warranty.

328. Buyer and Seller shall not bring any claims against the other party for any breach of covenant.

329. Buyer and Seller shall not bring any claims against the other party for any breach of agreement.

330. Buyer and Seller shall not bring any claims against the other party for any breach of contract.

331. Buyer and Seller shall not bring any claims against the other party for any breach of warranty.

332. Buyer and Seller shall not bring any claims against the other party for any breach of covenant.

333. Buyer and Seller shall not bring any claims against the other party for any breach of agreement.

334. Buyer and Seller shall not bring any claims against the other party for any breach of contract.
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8b. Risk of Loss: If there is any loss or damage to the Premises between the date of Contract acceptance and COE or possession, whichever is earlier, by reason of fire, vandalism, flood, earthquake, or act of God, the risk of loss shall be on the Seller, provided, however, that if the cost of repairing such loss or damage would exceed ten percent (10%) of the purchase price, either Seller or Buyer may elect to cancel the Contract.

8c. Permission: Buyer and Seller grant Broker(s) permission to advise the public of this Contract.

8d. Arizona Law: This Contract shall be governed by Arizona law and jurisdiction is exclusively conferred on the State of Arizona.

8e. Time of the Essence: The parties acknowledge that time is of the essence in the performance of the obligations described herein.

8f. Compensation: Seller and Buyer acknowledge that Broker(s) shall be compensated for services rendered as previously agreed by separate written agreement(s), which shall be delivered by Broker(s) to Escrow Company for payment at COE, if not previously paid. If Buyer is obligated to pay Broker(s), payment shall be collected from Buyer as a condition of COE. COMMISSIONS PAYABLE FOR THE SALE, LEASING, OR MANAGEMENT OF PROPERTY ARE NOT SET BY ANY BOARD OR ASSOCIATION OF REALTORS® OR MULTIPLE LISTING SERVICE, OR IN ANY MANNER OTHER THAN BETWEEN THE BROKER AND CLIENT.

8g. Copies and Counterparts: A fully executed facsimile or electronic copy of the Contract shall be treated as an original Contract. This Contract and any other documents required by this Contract may be executed by facsimile or other electronic means and in any number of counterparts, which shall become effective upon delivery as provided for herein, except that the Lead-Based Paint Disclosure Statement may not be signed in counterpart. All counterparts shall be deemed to constitute one instrument, and each counterpart shall be deemed an original.

8h. Days: All references to days in this Contract shall be construed as calendar days and a day shall begin at 12:00 a.m. and end at 11:59 p.m.

8i. Calculating Time Periods: In computing any time period prescribed or allowed by this Contract, the day of the act or event from which the time period begins to run is not included and the last day of the time period is included. Contract acceptance occurs on the date that the signed Contract (and any incorporated counter offer) is delivered to and received by the appropriate Broker. Acts that must be performed three days prior to the COE Date must be performed three full days prior (i.e., if COE Date is Friday the act must be performed by 11:59 p.m. on Monday).

8j. Entire Agreement: This Contract, and any addenda and attachments, shall constitute the entire agreement between Seller and Buyer, and supersede any other written or oral agreements between Seller and Buyer and can be modified only by a writing signed by Seller and Buyer. The failure to initial any page of this Contract shall not affect the validity or terms of this Contract.

8k. Subsequent Offers: Buyer acknowledges that Seller has the right to accept subsequent offers until COE. Seller understands that any subsequent offer accepted by the Seller must be a backup offer contingent on the cancellation of this Contract.

8l. Cancellation: A party who wishes to exercise the right of cancellation as allowed herein may cancel this Contract by delivering a notice stating the reason for cancellation to the other party or to the Escrow Company. Cancellation shall become effective immediately upon delivery of the cancellation notice.

8m. Notice: Unless otherwise provided, delivery of all notices and documentation required or permitted hereunder shall be in writing and delivered and received when: (i) hand-delivered; (ii) sent via facsimile transmission; (iii) sent via electronic mail, if email addresses are provided herein; or (iv) sent by recognized overnight courier service, and addressed to Buyer as indicated in Section 8r, to Seller as indicated in Section 8a and to the Escrow Company indicated in Section 3a.

8n. Earnest Money: Earnest Money is in the form of: □ Personal Check □ Other

8o. If applicable, Earnest Money has been received by Broker named in Section 8r and upon acceptance of this offer will be deposited with: □ Escrow Company □ Broker's Trust Account. Buyer acknowledges that failure to pay the required closing funds by the scheduled COE, if not cured after a cure notice is delivered pursuant to Section 7a, shall be construed as a material breach of this contract and all earnest money shall be subject to forfeiture.

8p. Release of Broker(s): Seller and Buyer hereby expressly release, hold harmless and indemnify Broker(s) in this transaction from any and all liability and responsibility regarding financing, the condition, square footage, lot lines, boundaries, value, rent rolls, environmental problems, sanitation systems, roof, wood infusion, building codes, governmental regulations, insurance, price and terms of sale, return on investment or any other matter relating to the value or condition of the Premises. The parties understand and agree that the Broker(s) do not provide advice on property as an investment and are not qualified to provide financial, legal, or tax advice regarding this real estate transaction.

(BUYER’S INITIALS REQUIRED)

(SELLER’S INITIALS REQUIRED)

8q. Terms of Acceptance: This offer will become a binding Contract when acceptance is signed by Seller and a signed copy delivered in person, by mail, facsimile or electronically, and received by Broker named in Section 8r by _____________________________, _____________________________ at ___________ a.m./p.m., Mountain Standard Time. Buyer may withdraw this offer at any time prior to receipt of Seller’s signed acceptance. If no signed acceptance is received by this date and time, this offer shall be deemed withdrawn and the Buyer’s Earnest Money shall be returned.

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8a. 389. THIS CONTRACT CONTAINS NINE PAGES EXCLUSIVE OF ANY ADDENDA AND ATTACHMENTS. PLEASE ENSURE THAT 390. YOU HAVE RECEIVED AND READ ALL NINE PAGES OF THIS OFFER AS WELL AS ANY ADDENDA AND ATTACHMENTS.

8b. 391. Broker on behalf of Buyer:

8c. 392. PRINT SALESPERSON’S NAME

8d. 393. AGENT CODE

8e. 394. PRINT FIRM NAME

8f. 395. FIRM CODE

8g. 396. FIRM ADDRESS

8h. 397. STATE

8i. 398. ZIP CODE

8j. 399. PREFERRED TELEPHONE

8k. 400. FAX

8l. 401. EMAIL

8m. 402. Agency Confirmation: The Broker named in Section 8a above is the agent of (check one):

8n. 403. ☐ the Buyer;

8o. 404. ☐ the Seller;

8p. 405. ☐ both the Buyer and Seller

9a. 406. The undersigned agree to purchase the Premises on the terms and conditions herein stated and acknowledge receipt of a copy hereof including the Buyer Attachment.

9b. 407. ☐ Buyer’s Signature

9c. 408. ☐ Buyer’s Signature

9d. 409. ♢ Buyer’s Signature

9e. 410. ☐ Address

9f. 411. ☐ Address

9g. 412. ☐ City, State, ZIP Code

9h. 413. ☐ City, State, ZIP Code

9i. 414. ☐ Seller’s Acceptance

9j. 415. ☐ Seller’s Acceptance

9k. 416. ☐ Offer Rejected by Seller:

For Broker Use Only:

Brokerage Firm/Log No., Manager’s Initials, Broker’s Initials, Date.

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What we’ll refer to as a **land contract** is also known by a number of other names: real estate contract, real property sales contract, conditional sales contract, installment sales contract, or contract for deed. Under a land contract, a buyer purchases property on an installment basis, rather than paying the seller the full purchase price all at once. The buyer takes possession of the property immediately, but the seller does not convey title to the buyer until the full price has been paid.

The parties to a land contract are usually referred to as the **vendor** (seller) and the **vendee** (buyer). The following example illustrates how a land contract works.

**Example:** Bender agrees to buy Jones’s farm for $500,000, to be paid at the rate of $50,000 per year, plus 9% interest, for ten years. Jones (the vendor) allows Bender (the vendee) to take possession of the farm, and she promises to convey title to Bender when he has paid the full purchase price. Bender and Jones have entered into a land contract.

During the period in which the vendee is making payments on the contract, the vendor retains **legal title** to the property. The vendor does not deliver the deed to the vendee until the full purchase price has been paid. In the meantime, the vendee is said to have **equitable title** to the property. Equitable title is essentially the right to possess and enjoy the property while paying off the purchase price.

**Rights and Responsibilities of the Parties**

Both the vendor and the vendee have various rights and responsibilities under a land contract. The vendor retains legal title to the property and has the right to transfer or encumber the property without the vendee’s consent. If legal title is transferred, the new owner takes title subject to the rights of the vendee under the land contract.
If the vendor allows liens to be placed on the property, the vendee may end up paying the full contract price only to find that the property is totally encumbered. Usually, the vendee avoids this problem by having the contract recorded, which places prospective lienholders on notice of the land contract. In many states, this will protect the vendee’s interest in the property against future encumbrances. The vendee could also insist on a provision in the contract that requires the vendor to maintain marketable title to the property.

The vendee is entitled to possession and use of the property; his main responsibility is to make the required installment payments to the vendor. The vendee is generally also responsible for keeping the property insured and paying the property taxes.

Like the vendor, the vendee has the ability to encumber the property, but few lenders are willing to make loans with a vendee’s equitable interest as the only security. The vendee may sell her interest in the property by assigning the right to receive the deed when the contract price has been paid in full. (However, the vendee will remain responsible for making the contract payments unless the vendor releases the vendee from liability.) The vendee also has the right to devise (will) her interest.

Historically, land contracts tended to favor the vendor, and often had provisions restricting the vendee’s rights. For example, the contract might prohibit the vendee from recording the contract, or assigning his interest in the property. These provisions are usually discouraged today; many states do not allow the contract to prohibit recording, and some actually require that land contracts be recorded. State laws may also impose other restrictions on land contracts for the protection of the vendee.

**Remedies for Default**

If the vendee pays the purchase price in full, but the vendor fails to transfer legal title to the property, the vendee can sue for specific performance of the contract (see Chapter 7).
If the vendee defaults (for example, by failing to make the installment payments), the vendor can terminate the contract. The consequences of termination depend on the terms of the contract, as well as on state laws. Traditionally, land contracts contained a forfeiture clause that allowed the vendor to retake possession of the property. The vendor was also allowed to keep any money the vendee had already paid on the contract. Today, however, most states have imposed restrictions on forfeiture as a remedy for default. For example, the vendor may be allowed to retake possession of the property, but would be required to reimburse the vendee for the amount paid to the vendor under the contract. The vendee’s reimbursement could be reduced by any damages that the vendor incurred, and by the fair market rental value of the property for the period the vendee was in possession.

**Example:** Under a land contract, Porter paid Rollins $12,800 over a ten-month period. The rental value of the property for that period was $1,100 per month, or $11,000. Porter stops making installment payments after the tenth month, and Rollins reclaims the property under a forfeiture clause. State law requires Rollins to reimburse the amount paid under the contract, minus the rental value of the property. Porter would be entitled to a reimbursement of only $1,800. ($12,800 – $11,000 = $1,800).

Some states do not allow the vendor to demand forfeiture immediately upon the vendee’s default. Instead, the vendor is required to give notice of default to the vendee. The vendee then has a specified period of time in which to cure the default and reinstate the contract. Furthermore, courts in some jurisdictions have held that once the vendee has paid a substantial portion of the contract price, she gains a right of redemption (the right to keep the property by paying off the entire amount of the debt). The right of redemption is a concept normally applied to mortgages, and will be explained in more detail in that context (see Chapter 11).

If the vendee does not cure the default or redeem the property, then the vendor is entitled to retake possession. However, a recorded land contract is a cloud on the property’s title; the vendor may need to obtain a quitclaim
deed from the vendee or file a quiet title action to make the title marketable again.

A few states do not allow forfeiture as a remedy for default on a land contract at all. Instead, the vendor is required to foreclose on the property like any other lienholder.

**Reasons for Using a Land Contract**

A land contract is a security instrument that is sometimes used in conjunction with seller financing. The seller extends credit to the buyer and holds title to the property as security for the repayment of the debt. (See Chapter 11 for a detailed discussion of security instruments.) However, because of the vendee's rights of reinstatement, reimbursement, and redemption under a land contract, most people prefer to use mortgages or deeds of trust in seller-financed transactions (see Chapter 11).

(Rockwell, 168-196)

**Cited Material:**