

STANDARD CLAUSES – April 2007

On November 12, 1998, the Board of Directors of the Greater Tulsa Association of REALTORS® approved the following standard clauses to be used when applicable in the approved Contract of Sale of Real Estate forms. The purpose of these clauses is to standardize the language of inserted clauses, particularly in co-brokerage transactions. These clauses are to be used with discretion. Before being used, they should be checked to be sure they are in keeping with the intent of all parties. Any questions about their use should be handled with advice of legal counsel.

**1. Assignment of Escrow Account (No Prorations) - Assumption Form Only** In lieu of proration of insurance, taxes and interest as described in Paragraph 11, Seller agrees to transfer the escrow account and assign the existing hazard insurance policy to Buyer at no additional expense to Buyer. At Closing, the escrow account shall be in an amount deemed sufficient by the lending institution, and, if not, Seller shall be responsible for the shortages in such account. In the event escrow account has an overage as shown by the lending institution, the Buyer shall reimburse Seller for said overage at time of Closing.

**In the event the existing hazard insurance policy cannot be assigned, Buyer and Seller agree to the following: Seller agrees to transfer all existing insurance escrow deposits to the Buyer and Buyer, at Buyer's expense, agrees to supply an appropriate hazard insurance policy at Closing.**

Note: Brokers and Sales Associates should cross out Paragraph 11 on the Contract.

**2. Flood Insurance** The Buyer and Seller understand that the Property is located in a designated flood zone, which may require Flood Insurance as a condition of financing. If required to do so as a condition of financing this purchase, Buyer agrees to obtain any requisite flood insurance coverage.

**3. Real Estate Broker or Sales Associate Acquiring or Conveying Interest** The Buyer (Seller) acknowledges that the Seller (Buyer) has disclosed he/she is presently a licensed real estate sales associate (broker).

**4. Disclosure Clause Member of Family Buying or Selling Property** The Buyer (Seller) hereby acknowledges that the Seller (Buyer) is related to or associated with the real estate sales associate (broker) in the following manner

\_\_\_\_\_.

**5. Inspection of Septic and Water Supply** Within days after the date set forth in the paragraph entitled "*Time Periods Specified in Contract*" of this Contract, Buyer shall have the right to have septic system and well pump, inclusive of quality and purity of water, inspected by a local health authority. If Buyer has any objection to the conditions based on the report of the health authority, Buyer shall have the right to cancel and terminate this Contract by delivering notice in writing, including a copy of health authority report, to Seller, in care of the Listing Broker, not later than twenty-four (24) hours after expiration of the time specified in this paragraph, in which event earnest money shall be returned to Buyer and the abstract returned to the Seller. If Buyer fails to have health authority inspection made or to deliver such notice in the manner specified, Buyer agrees to accept the septic system and well on the Property in the condition which existed at the expiration of the above stated time period.

**6. Review by an Attorney** The Buyer (Seller) reserves the right to seek advice from an attorney regarding the terms of this Contract and to cancel and terminate this Contract by notice in writing, delivered to the Listing Broker, within \_\_\_\_\_ days of the date set forth in the paragraph entitled "*Time Periods Specified in Contract*" of the Contract. In the event the Contract is not canceled then all terms shall exist as described in the Contract.

**7. Early Abstracting and Other Authorization From Buyer** Seller shall have abstract certified to date immediately and both Seller and Buyer shall proceed toward Closing as specified in this Contract.

Should this Contract **not** consummate because of denial of loan approval, if specified in the Contract, and/or non-removal of contingencies, Buyer agrees to have paid from the earnest money deposit: abstracting expense not to exceed \$\_\_\_\_\_; termite certificate expense, excluding repairs, not to exceed \$\_\_\_\_\_; survey expense if required by lender and Buyer's title opinion expense. Any abstracting expense (and termite certificate expense) in excess of \$ \_\_\_\_\_ and \$ \_\_\_\_\_ respectively, shall be paid by Seller. Should Buyer's loan be approved and/or all contingencies be removed, then Seller

shall pay for all abstracting expense and Buyer shall pay the termite certificate expense (except in a VA-financed transaction, in which case the Seller shall pay the termite certificate expense) and Buyer shall pay for Buyer's title opinion expense and loan costs, if any, as provided for in the Contract.

NOTE: This is used when you are trying to speed up the Closing process, usually due to the need of the Buyer. However, if the Seller is the one needing to hurry the process, then the Seller would be the one to guarantee the payment of the above items. Also, please note that it may not be necessary to guarantee all items listed above, but may be only the abstracting itself. This is sample wording designed to fit your needs.

**8. Purchase Money Mortgage Carried by Seller** The balance of the purchase price shall be paid in the following manner: At Closing, Buyer shall execute a negotiable promissory note payable to the order of Seller in the sum of \$ \_\_\_\_\_ , payable in \_\_\_\_\_ equal monthly installments of \$ \_\_\_\_\_ including principal and interest, beginning on the day of \_\_\_\_\_ and continuing on the \_\_\_\_\_ day of each month thereafter with interest at the rate of \_\_\_\_\_ percent ( \_\_\_\_\_ %) per annum on the unpaid balance. Said note shall provide the following:

- i) prepayment at any time without penalty.
- ii) acceleration of the balance due upon the transfer of the title to the Property to any third party.
- (iii) the delivery of a mortgage on the Property as security.

The remainder of the purchase price shall be paid in cash at Closing.

The note and mortgage to be furnished by Seller's attorney and delivered to Buyer not later than ten (10) days from the date set forth in the paragraph entitled "***Time Periods Specified in Contract***" of this Contract for Buyer's approval. In the event the financial terms and conditions of said note and mortgage are not acceptable to Buyer, Buyer may, at Buyer's option, cancel and terminate this Contract by notice, in writing, to the Seller, in care of the Listing Broker, delivered within seventy-two (72) hours of the date of delivery of such note and mortgage to the Buyer. If the notice described in the preceding sentence is not delivered within the prescribed time period, then the financial terms and conditions of the note and mortgage shall be deemed acceptable to the Buyer.

The expense of preparing these documents shall be paid by \_\_\_\_\_ , not to exceed a total of \$ \_\_\_\_\_ .

**9. Purchase Money Mortgage Carried by Seller (One Payment)** The balance of the purchase price shall be paid in the following manner: At Closing, Buyer shall execute a negotiable promissory note payable to the order of the Seller in the sum of \$ \_\_\_\_\_ , due and payable on \_\_\_\_\_ with interest at the rate of \_\_\_\_\_ percent ( \_\_\_\_\_ %) per annum. Said note shall provide the following:

- i) prepayment at any time without penalty.
- ii) acceleration of the balance due upon the transfer of the title to the Property to any third party.
- (iii) the delivery of a mortgage on the Property as security.

The remainder of the purchase price shall be paid in cash at Closing.

The note and mortgage to be furnished by Seller's attorney and delivered to Buyer not later than ten (10) days from the date set forth in the paragraph entitled "***Time Periods Specified in Contract***" of this Contract for Buyer's approval. In the event the financial terms and conditions of said note and mortgage are not acceptable to Buyer, Buyer may, at Buyer's option, cancel and terminate this Contract by notice, in writing, to the Seller, in care of the Listing Broker, delivered within seventy-two (72) hours of the date of delivery of such note and mortgage to the Buyer. If the notice described in the preceding sentence is not delivered within the prescribed time period, then the financial terms and conditions of the note and mortgage shall be deemed acceptable to the Buyer.

The expense of preparing these documents shall be paid by \_\_\_\_\_ , not to exceed a total of \$ \_\_\_\_\_ .

**10. Purchase Money Mortgage Carried by Seller Amortized With Balloon Payment** The balance of the purchase price shall be paid in the following manner: At Closing, Buyer shall execute a negotiable promissory note payable to the order of Seller in the sum of \$ \_\_\_\_\_ , payable in \_\_\_\_\_ monthly installments of \$ \_\_\_\_\_ including principal and interest, beginning on the \_\_\_\_\_ day of \_\_\_\_\_ and continuing on the \_\_\_\_\_ day of each month thereafter

with an interest rate of \_\_\_\_\_ percent ( \_\_\_\_\_ %) per annum on the unpaid balance. Said note shall be amortized over \_\_\_\_\_ years with the entire unpaid principal balance (Balloon payment) to be paid in full as the \_\_\_\_\_ payment. Said note shall provide the following:

- i. prepayment at any time without penalty.
- ii. acceleration of the balance due upon the transfer of the title to the Property to any third party.
- iii. the delivery of a mortgage on the Property as security.

The remainder of the purchase price shall be paid in cash at Closing.

The note and mortgage to be furnished by Seller's attorney and delivered to Buyer not later than ten (10) days from the date set forth in the paragraph entitled "***Time Periods Specified in Contract***" of this Contract for Buyer's approval. In the event the financial terms and conditions of said note and mortgage are not acceptable to Buyer, Buyer may, at Buyer's option, cancel and terminate this Contract by notice, in writing, to the Seller, in care of the Listing Broker, delivered within seventy-two (72) hours of the date of delivery of such note and mortgage to the Buyer. If the notice described in the preceding sentence is not delivered within the prescribed time period, then the financial terms and conditions of the note and mortgage shall be deemed acceptable to the Buyer.

The expense of preparing these documents shall be paid by \_\_\_\_\_, not to exceed a total of \$\_\_\_\_\_.

**11. Court Approval of Probate Sale** This Contract is expressly contingent upon the confirmation of this sale by the Probate Division of the District Court for \_\_\_\_\_ County, Oklahoma. In the event that this Contract has not been confirmed by said Court within \_\_\_\_\_ days of the date set forth in the paragraph entitled "***Time Periods Specified in Contract***" of this Contract by Seller or such longer period as the parties shall agree upon in writing, then this Contract shall be automatically null and void. In such event the abstract shall be returned to Seller and the earnest money shall be returned to Buyer.

**12. "As Is" Clause - Specified Items (Where space under "Additional Provisions" Paragraph of Contract form permits)** Seller has disclosed to Buyer the existence of certain defects or problems (the "Defects") relating to the Property as listed below: \_\_\_\_\_ Notwithstanding any other provision of this Contract, neither Seller, Seller's agents, Broker(s) and their sales associates shall bear any expense or have any liability for the Defects or any damage or cost resulting there from.

**13. "As Is" Clause - Specified Items (Where there are too many items for space under "Additional Provisions" Paragraph of Contract form)** Seller has disclosed to Buyer on Exhibit "A" attached hereto the existence of certain defects or problems (the "Defects") relating to the Property. Notwithstanding any other provision of this Contract, Seller, Seller's agents, Broker(s) and their sales associates shall not bear any expense or have any liability for the Defects or any damage or cost resulting there from.

**14. "As Is" – With Inspection** Buyer acknowledges that Seller, Seller's agents, Broker(s) and their sales associates are making no representation or warranty concerning the past or present condition of the Property or any improvements, components, fixtures, equipment or appliances in or on the Property. **Notwithstanding the issues and known defects discovered by Buyer pursuant to paragraph 7 "Investigations, Inspections and Reviews"** is purchasing the Property in its present condition subject to any latent and patent, known or unknown defects. Buyer acknowledges that the absence of any such representation or warranty, the condition of the Property and the risks assumed by Buyer relating to latent and patent, known or unknown defects have been taken into account by Buyer, in Buyer's decision not to exercise Buyer's right to cancel the contract and in determining the purchase price Buyer is willing to pay for the Property.

**15. "As Is" – No Inspection** Buyer acknowledges that Seller, Seller's agents, Broker(s) and their sales associates are making no representation or warranty concerning the past or present condition of the Property or any improvements, components, fixtures, equipment or appliances in or on the Property. **In lieu of the provisions of the Contract which have been stricken**, Buyer is purchasing the Property in its present condition subject to any latent and patent, known or unknown defects. Buyer acknowledges that the absence of any such representation or warranty, the condition of the Property and the risks assumed by Buyer relating to latent and patent, known or unknown defects have been taken into account by Buyer in determining the purchase price Buyer is willing to pay for the Property.

**16. Contract Conditioned on Buyer's House Selling and Closing (Presently Not Under Contract).** This Contract is expressly conditioned upon the sale and closing of the Buyer's property described as \_\_\_\_\_, which is presently listed for sale. A copy of such listing is attached to this Contract. If, within \_\_\_\_\_ days of the date set forth in the paragraph entitled "*Time Periods Specified in Contract*" of this Contract, or such longer period as Seller shall grant in writing, Buyer has not sold and closed the property described in this paragraph ("Buyer's Property"), then this Contract shall become automatically null and void. In such case, the abstract shall be returned to Seller and the earnest money shall be returned to Buyer; provided that Buyer shall nevertheless have the option to proceed with the Closing of the Contract, regardless of the closing of the sale of the Buyer's Property, by notice, in writing, delivered to the Seller, in care of the Listing Broker, twenty-four (24) hours before the expiration of the time period specified in this paragraph.

It is understood and agreed that the Property will remain on the market for sale and that the Property will be reported to MLS Technology, Inc. (MLS Tech) as a pending contingent listing until such time as Buyer's Property is placed under a Contract of Sale. If a subsequent offer is secured which is acceptable to the Seller, the Seller shall notify the Buyer, in writing, in care of the Selling Broker, within forty-eight (48) hours. Upon said notification the Buyer shall have \_\_\_\_\_ hours (to include at least one full working day) to either (a) release completely their interest in said Property under this agreement and their earnest money shall be returned or (b) remove the condition of the sale and/or closing on the Property including any condition within the financing requirements of Buyer's lender and proceed toward closing of this transaction.

Notwithstanding the above condition, Buyer shall immediately apply for financing as set out in the attached Financing Supplemental Agreement, if any. In addition, Buyer shall immediately, exercise Buyer's right of inspections set out under the "*Investigations, Inspections and Reviews*" paragraph of the Contract. In the event Buyer fails to exercise such right within ten (10) days of the date stipulated under "*Time Periods Specified in Contract*," Buyer understands and agrees that Buyer's right of inspections shall be deemed waived. Further, Buyer's right to cancel the Contract as provided in the Contract must be exercised within ten (10) days of the date stipulated under "*Time Periods Specified in Contract*," of the Contract or Buyer's right to cancel shall be deemed waived.

**17. Contract Conditioned on Closing Sale of Buyer's House (Presently Under Contract).** This Contract is expressly conditioned upon the closing of the sale of the Buyer's Property described as \_\_\_\_\_, which is presently under contract for sale. A copy of such contract is attached to this Contract. If Buyer has not closed the sale of the property described in this paragraph on or before \_\_\_\_\_, or such longer period as Seller shall grant in writing, then this Contract shall become automatically null and void. In such case, the abstract shall be returned to Seller and the earnest money shall be returned to Buyer; provided that Buyer shall nevertheless have the option to proceed with the Closing of the Contract, regardless of the closing of the sale of the Buyer's Property, by notice, in writing, delivered to the Seller, in care of the Listing Broker, twenty-four (24) hours before the expiration of the date specified in this paragraph.

Notwithstanding the above condition, Buyer shall immediately apply for financing as set out in the attached Financing Supplemental Agreement, if any. In addition, Buyer shall immediately, exercise Buyer's right of inspections set out under the "*Investigations, Inspections and Reviews*" paragraph of the Contract. In the event Buyer fails to exercise such right within ten (10) days of the date stipulated under "*Time Periods Specified in Contract*," Buyer understands and agrees that Buyer's right of inspections shall be deemed waived. Further, Buyer's right to cancel the Contract as provided in the Contract must be exercised within ten (10) days of the date stipulated under "*Time Periods Specified in Contract*," of the Contract or Buyer's right to cancel shall be deemed waived.

**18. Cancellation or Release of Prior Sale; back-up contract.** Buyer understands that Seller has entered into a Contract(s) to sell the Property to another Buyer(s). This Contract is in a back-up position number \_\_\_\_\_ and is **conditioned upon written Cancellation or release** of the prior Contract(s). If Seller is unable to provide such written cancellation to Buyer, signed by Seller and the other Buyer(s), by \_\_\_\_\_, then either Buyer or Seller may cancel this Contract in writing.

**A. Buyer's Earnest Money Check Shall Be:** (Check **ONLY** 1 or 2; do **NOT** check both)

(1) **HELD UNCASHED** until copies of the written Cancellation and release signed by all parties to the prior Contract(s) are provided to Buyer, **OR**

(2) **DEPOSITED** in the Listing Broker's trust or escrow account as provided in Paragraph 2 of the Contract.

**B. Time Periods in the Contract for Investigations, Inspections, Reviews, Conditions, Cancellation, Loan Application, Loan Approval, Delivery of Abstract** and other obligations, shall begin: (Check

ONLY 1 or 2; do NOT check both)

(1) On the *Time Reference* date of the Contract; OR

(2) On the day after Seller provides to Buyer copies of signed cancellation(s) of prior contract(s).

**18. Contract Conditioned on Buyer Securing a Bridge Loan or Second Mortgage** This Contract is conditioned upon the Buyer being able to obtain acceptable financing in the amount of \$ \_\_\_\_\_, within \_\_\_ days of the date set forth in the paragraph entitled "*Time Periods Specified in Contract*" of the Contract. It is understood that Buyer will apply for financing within forty-eight (48) hours of the date set forth in paragraph "*Time Periods Specified in Contract*" of the Contract and will proceed diligently to obtain financing.

**19. Mandatory Homeowners Association** Buyer is aware that the Property is located in an area that has a mandatory Homeowner's Association and dues.

**20. Seller Hold Earnest Money** Seller and Buyer do hereby release and discharge the undersigned Broker(s), its (their) respective sales associates and employees of and from any and all responsibility and/or liability of any nature whatsoever relating directly, or indirectly, to the Earnest Money deposited with Seller as hereinabove set forth.

**21. Spouse Executing Loan Documents** If the Buyer's spouse is required to execute any loan documents in conjunction with the loan contemplated under the terms of the Financing Supplemental Agreement attached hereto and shall fail or refuse to do so the same shall constitute a breach of this Contract by Buyer.

**22. Net Equity Purchase** This is a Net Equity Purchase in the amount of \$ \_\_\_\_\_. Sales price may vary at Closing, but equity shall remain constant. All provisions contained in the attached Financial Supplemental Agreement shall prevail.

**23. VA Assumption/Release of Liability and Restoration of Entitlement for Seller** The Buyer represents Buyer to be a veteran with VA loan entitlement sufficient to assume the existing VA loan on the Property and agrees to substitute such entitlement for those of the Seller and to cooperate fully with the Seller and the Veteran's Administration to obtain a release of VA loan liability and restoration of VA loan entitlement for the Seller. The Buyer agrees to promptly provide all information, complete all forms and perform any other acts which may be necessary to accomplish said release and restoration. This commitment shall survive the Closing of this transaction and is the responsibility of the Buyer, Seller and the Veteran's Administration.

**24. Removal of Personal Condition By Buyer** Buyer shall have \_\_\_ days from the date set forth in the paragraph entitled "*Time Periods Specified in Contract*" of the Contract to \_\_\_\_\_ should \_\_\_\_\_ not be satisfactory to Buyer, Buyer may terminate this Contract by notifying the Seller, in writing, in care of the Listing Broker, within twenty-four (24) hours of the time periods specified in this paragraph. If Buyer does not notify Seller prior to said time, then this Contract shall remain in full force and effect.

**25. Mortgage Rate Lock-in** Buyer will secure a commitment of interest rate and discount points, within \_\_\_\_\_ days of the date set forth in the paragraph entitled "*Time Periods Specified in Contract*" of this Contract, which commitment shall be guaranteed to be available at Closing by the lender ("locked in") for a period of \_\_\_\_\_ days for a fee of \_\_\_ % of the loan amount (if applicable), paid by the Buyer.

If "lock in" rate is not obtained by Buyer or the "lock in" fee is not paid by Buyer, and a commitment of interest rate and discount points is not secured by Buyer, then Buyer agrees that Buyer will close at the prevailing market rates ("float") at the time of Closing or be subject to the breach and failure to close provisions of Paragraph \_\_\_\_\_.

## 26. Tax-Deferred Exchange 1031

**Relinquished Property.** It is the intention of seller to effect a tax-deferred exchange in conformance with Section 1031 of the Internal Revenue Code. Seller may assign his rights in this contract to a Qualified Intermediary for the purpose of effecting such exchange. Buyer agrees to cooperate and execute necessary documents to allow seller to effect such exchange at no additional cost or liability to Buyer. However, any warranties that may be expressed in this contract shall remain and be enforceable between the parties executing this document.

***Replacement Property.*** It is the intention of buyer to effect a tax-deferred exchange in conformance with Section 1031 of the Internal Revenue Code. Buyer may assign his rights in this contract to a Qualified Intermediary for the purpose of effecting such exchange. Seller agrees to cooperate and execute necessary documents to allow Buyer to effect such exchange at no additional cost or liability to Seller. However, any warranties that may be expressed in this contract shall remain and be enforceable between the parties executing this document.

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The following is not a clause for use on Contracts. It is a disclaimer than can be used on marketing materials:

**Disclaimer (To Be Used On Marketing Materials)**

Although the information contained herein has been furnished by sources deemed reliable, none of such information has been verified and no representation, either express or implied, is made as to the accuracy thereof. All information contained herein is further subject to correction, modification or withdrawal without further notice.