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## Business Form: Contract Clauses & Phrases Glossary

Below are common contract clauses and phrases used in real estate purchase and selling contracts.

**This is information contained herein is believed accurate but is not guaranteed or warranted in any manner by any party and is used for education demonstrative purposes only.**

### INSPECTION/REPAIR CLAUSES

#### NATURE OF IMPROVEMENTS

All improvements made to the existing property are part of this sale.

#### ZONING USE-TYPE

- A. Seller hereby warrants that the property described in this agreement is zoned (set out type of zoning such as R-1, SR-2, C-2 and so forth) as shown on the zoning map held in the office of the (name of city or authority) planning commission.
- B. Seller hereby warrants that the property described in this agreement is zoned for use as (single family residential, multi-family up to 4 units, commercial for real estate office, BE SPECIFIC!)

#### INSPECTION DATES

All inspections shall be completed on or before \_\_\_\_\_20\_\_\_\_. Any deficiencies shall be evidenced in writing and delivered to Seller within Three (3) days of above final inspection date.

#### FINAL INSPECTION DATE

Inspections must be completed no later than \_\_\_\_\_.

#### GENERAL INSPECTIONS

Prior to closing, the buyer may, at his expense, have a whole house or any other inspections buyer may deem appropriate performed. If such inspections reveal defects, Seller shall pay all cost of repairing said defects, and if repairs are not completed prior to closing, sufficient funds shall be escrowed at time of closing to effect said repairs.

#### TERMITE INSPECTIONS

Prior to closing, and at Buyer's expense, the Buyer shall have the right to have the property inspected by a licensed exterminating company to determine whether there is any active termite infestation or organisms present in the property or on any improvements on said property, or any damage from prior termite infestation or organisms to said property or improvements. If there is any such infestation or damage, the Seller shall pay all costs of the treatment and repair of the areas that are infested or have been damaged.

#### AS-IS

Purchaser takes the property in "AS-IS" condition, without recourse to Seller.

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### REPAIRS PRIOR TO CLOSING

Seller agrees to make repairs on the property described in this agreement to the (particular item(s)). In lieu thereof, at the option of the Buyer, Seller shall be charged and Buyer credited with the sum of \$\_\_\_\_\_ as full adjustment for said repairs.

### MONETARY REPAIRS

Seller agrees to pay up to \_\_\_\_\_ percent of the purchase price for repairs of damages specified in inspection reports.

### SELLER TO MAINTAIN INSURANCE UNTIL CLOSING

- A. Seller shall maintain existing insurance policies until closing.
- B. Seller to maintain extended coverage insurance on the property and grounds in a minimum amount of \$\_\_\_\_\_ for dwelling, \$\_\_\_\_\_ for out-buildings, \$\_\_\_\_\_ for liability and \$\_\_\_\_\_ for \_\_\_\_\_.

### PROCEDURE IN EVENT OF LOSS OR DESTRUCTION OF PREMISES

In the event of a casualty loss, the Seller shall have a reasonable time to repair the damage and if he fails to do so, the Buyer shall have the option of: (1) taking the property as is, together with the insurance proceeds, if any, or (2) canceling the contract, and deposits are to be forthwith returned to the Buyer and all parties shall be released of any and all obligations and liability. Between the date of the contract and the date of closing, the property shall be maintained by the Seller in the condition as it existed as of the date of contract.

### CASUALTY LOSS IF PRE-OCCUPIED

(Purchaser/Seller) shall be responsible for any casualty loss from the date of occupancy until closing.

### BUILDING ORDERS

Seller warrants that the subject property is not under any condemnation proceedings, building violations and/or zoning violations and shall indemnify Purchaser of same, including but not limited to lawyers' fees, legal fees, construction costs, interruption of rent loss, ongoing taxes, mortgages or notes and insurance costs while in non-compliance, building permits and any other costs whatsoever, to correct violations and bring property into compliance.

### TERMS FOR PHYSICAL CONDITION OF PROPERTY AT CLOSING-PROPERTY MAINTENANCE

Until the date of closing, the improvements on property described in this agreement shall be maintained in substantially the same condition as they are as of the date of this agreement, reasonable wear and tear excluded. In case of injury or damage to the premises beyond ordinary wear and tear, the Seller agrees to repair the same before title transfers to Buyer, such repairs being subject to the Buyer's approval.

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## **MORTGAGE/FINANCING CLAUSES**

### **CONSIDERATION ABOVE MORTGAGE**

Purchase price is \_\_\_\_\_ (\$ \_\_\_\_\_) above the existing mortgage balance, which presently equals \_\_\_\_\_ as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

### **OTHER CONSIDERATION**

The deposit of (Stocks, an automobile, 3 carat diamond ring, etc.) shall be placed with \_\_\_\_\_ as Escrow Agent and shall be valued in the amount of \$ \_\_\_\_\_. The balance shall be paid at closing.

### **ALLOCATION OF PURCHASE PRICE**

The purchase price is allocated in the following manner: \$ \_\_\_\_\_ for land, \$ \_\_\_\_\_ for building, and \$ \_\_\_\_\_ for personal property. (NOTE: you may want to make a separate list of personal property with values attached included in the sale for your records.)

### **SKIP, STUTTER MORTGAGE CLAUSE**

At mortgagors option, mortgagors may skip one monthly payment each year. The mortgage shall be extended one month for each skipped payment.

### **EXCULPATORY CLAUSE**

The holder of this note and mortgage is limited to recovery of the debt evidenced hereby by foreclosure and sale of the property affected by the mortgage securing same. The makers/payors shall not be personally liable for any deficiency resulting from any sale and/or foreclosure hereunder.

### **PROVISION FOR RELEASE OF LOTS OR ACREAGE**

\_\_\_\_\_ acres/lots shall be released from the subject mortgage upon the payment of \$ \_\_\_\_\_. A credit shall be given for all previous principal prepayments toward the release provision stated herein.

### **TRANSFER FEES**

All stamps on mortgage and note as well as the recording of the mortgage and deed shall be paid by (seller, buyer, both parties equally)

### **LATE CHARGES**

There are no late charges or other penalties on this note or mortgage until there has been a default for fifteen (15) days.

### **SUBORDINATION**

Seller agrees to subordinate his mortgage to a new mortgage of \$ \_\_\_\_\_ or \_\_\_\_\_ percent of the appraised value, whichever is greater.

### **PREPAYMENT WITH DISCOUNT**

Mortgagor may prepay this note and mortgage in whole or in part at any time without penalty. If this note is prepaid prior to \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, then mortgagor shall receive a discount of \_\_\_\_\_ percent (\_\_\_\_%) of the remaining balance due.

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**FIRST RIGHT OF REFUSAL**

Mortgagor shall have the right of first refusal to buy this mortgage under the same terms and conditions that mortgagee herein has agreed to sell this mortgage.

**NOT DUE ON SALE**

The subject mortgage is fully assumable upon sale, transfer, or conveyance of the subject property.

**SUBSTITUTION OF COLLATERAL**

At purchaser's option another piece of real property may be substituted for the collateral of the mortgage herein.

**ESCROW/CLOSING INSTRUCTIONS****CLOSING**

Closing shall be on or before \_\_\_\_\_ at time and place specified by Buyer days in advance to Seller .

**DATE OF CLOSING. (sufficient time)**

This contract shall be closed and the deed and possession shall be delivered on or about \_\_\_\_\_ days after this contract has been executed by both the Buyer and Seller.

**DEED**

- A. Seller to provide insurable title by Deed of General Warranty.
- B. Seller to provide insured title by Deed of General Warranty to the limit of the purchase price in the name of the Buyer.
- C. Seller to provide insured title by Deed of General Warranty in the amount of \_\_\_\_\_ (\$\_\_\_\_\_) to Buyer as policy owner at (Seller, buyer's) expense, paid at closing.

**DEED ESCROWED**

Seller to place executed Deed of General Warranty in escrow with Seller's/Buyer's Attorney and closing instructions and appropriate Power of Attorney at signing of this contract. In addition Seller shall execute Power of Attorney for corrective instruments at signing of contract.

**DEED IN ESCROW**

Seller to place in escrow with Seller's attorney executed Deed of General Warranty and complete closing instructions including Power of Attorney for all matters relating to this as reviewed and approved by Buyer's attorney or agent.

**TAX AND INSURANCE ESCROW**

- A. All escrow accounts for taxes, insurance, and/or fees shall be credited to seller at the time of closing and transferred to purchaser at closing.
- B. All escrow accounts for taxes, insurance, condo or association, or any other fees shall be transferred to purchaser at closing.

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### **ESCROW TRANSFER -NO CREDIT TO SELLER**

In the event there is an escrow account for taxes, insurance, waste fees, association fees, or any other impounds or escrow, said funds shall be transferred to purchaser without adjustment and if there is an escrow shortage same shall be charged to seller at closing.

### **TERMS AND CONDITIONS OF CONTRACT SHALL SURVIVE THE RECORDING OF THE DEED**

The covenants in this contract shall survive delivery of deed and possession. The seller covenants and warrants (1) that there is ingress and egress to said property over public roads, and (2) that there are no parties in possession other than the seller.

### **TERMS SURVIVE CLOSING**

The terms and conditions of this contract shall survive and extend beyond the closing of this transaction.

### **INSTRUMENTS OF SALE**

Seller's attorney shall prepare warranty deed, mechanic's lien affidavit, bill of sale, and any corrective instruments that may be required in connection with perfecting the title, subject to the Buyer's approval.

## **TENANT CLAUSES**

### **CLOSING SUBJECT TO PURCHASER LOCATING A SUITABLE TENANT**

Closing shall be subject to purchaser locating a suitable tenant. Closing shall occur no later than 30 days after the obtaining of the suitable tenant subject to any other terms and conditions of this contract.

### **ALL RENT COLLECTIONS BY SELLER DURING THE MONTH OF CLOSING SHALL BE PRORATED AT TIME OF CLOSING**

Rents, as shown on the rental statement furnished by Seller, and approved by Buyer, are to be prorated to a specific date or the closing date for this agreement. Seller will collect all rents which fall due prior to the closing of the agreement. There shall be no adjustments against the Buyer on uncollected rents.

### **SELLER SHALL BE RESPONSIBLE FOR ALL RENTS NOT COLLECTED AT TIME OF CLOSING, SAME SHALL BE CREDITED TO THE PURCHASER**

It is agreed that Seller shall be responsible for all rents not collected at the time of closing, and in addition thereto, the Purchaser shall receive a credit for all rents not collected. If Purchaser received double payment for the rent then he shall reimburse the Seller for the double payment of rent paid.

### **AT CLOSING, SELLER SHALL TRANSFER ALL TENANT FUNDS (SECURITY/LAST MONTH RENT) TO THE PURCHASER**

At closing Seller agrees to transfer all security deposits as well as the last months rent and any other tenant funds to the purchaser.

### **RENT COLLECTION**

Seller to escrow rental income for month following date of closing, if closing is after the 15th of the month.

### **BUYER TO HAVE RIGHT OF APPROVING NEW LEASE**

During the pendency of this transaction the Seller agrees that no changes in the existing leases shall be made,

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nor new leases entered into, without the written consent of the Buyer, which consent will not be unreasonably withheld.

### **PROSPECTIVE TENANTS/PROSPECTIVE PURCHASERS**

Buyer has the right to show this property to prospective tenants, contractors, or others from date of acceptance of this offer until date of closing.

## **MISC. CLAUSES**

### **POSSESSION AT CLOSING AND/OR FUNDING**

Possession shall occur at (closing/funding, acceptance of contract).

### **ADDITIONAL DOWN PAYMENT TO EXTEND THE CLOSING DATE**

The Purchaser shall have the option to extend the closing date extended for up to \_\_\_\_\_ days upon receipt by the Seller of an amount of \_\_\_\_\_ (\$ \_\_\_\_\_), to be applied to the down payment on the property.

### **SURVEY**

- A. Seller to provide current (6 month or less), physical, field staked survey acceptable to buyer. Seller to provide current (6 month or less), physical, field staked survey.
- B. Any encroachments on said property or improvements thereto intended to be located on the subject property that in fact encroach on the lands of others, or violate any of the covenants herein, shall be treated as a title defect.

### **UTILITIES**

All utilities shall be on and paid for by the Seller \_\_\_\_\_ days before closing. Any non-working mechanical shall be deemed to be normal maintenance and shall be repaired to proper working order at least \_\_\_\_\_ days prior to closing. These repairs shall not be assessed as repairs to be paid as a basis of inspections but as a basis of normal maintenance whether determined by inspections or other.

### **UTILITY DEPOSITS**

All deposits and escrow for any utility or pending assessments shall be transferred to buyer at closing.

### **ATTORNEY'S FEES**

Should any litigation including appellate proceedings be brought by any party to this contract against any other party of this contract, the prevailing party shall be entitled to recover reasonable attorney's fees and costs.

### **EXTENDED WARRANTIES**

Due to the time and season of closing the Seller hereby warrants the following mechanical items to be in good working order until the date specified: water heater \_\_\_\_; furnace \_\_\_\_, central air \_\_\_\_, refrigerator \_\_\_\_, range \_\_\_\_, built-in oven \_\_\_\_, window air \_\_\_\_, electrical fixtures \_\_\_\_, sump pump \_\_\_\_, ceiling fans \_\_\_\_, plumbing fixtures/faucets \_\_\_\_, water pump \_\_\_\_, septic system \_\_\_\_, microwave \_\_\_\_, ice maker \_\_\_\_, disposal \_\_\_\_, other \_\_\_\_, other \_\_\_\_, other \_\_\_\_, other \_\_\_\_. The Seller shall immediately reimburse Buyer for repairs or replacements upon receipt of invoice detailing expenditure.

### **TIME IS OF THE ESSENCE**

Time is of the essence in the performance of the Seller/Buyer obligations hereunder.

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**SUBJECT TO**

This contract is subject to: (Appraisal acceptable to buyer; whole house inspection to buyer's approval; financing acceptable to buyer; survey to buyer's approval; buyer's attorney's approval; buyer's tax consultant's approval; buyer's financial advisor's approval; the approval of Santa Claus (or other fictitious character).)

**ENFORCEMENT**

This contract shall be interpreted, construed and enforced according to the laws of the (Commonwealth of Kentucky, State of Florida, wherever you live).

**PERSONAL PROPERTY**

The following items of personal property are included in the sale: (all ceiling fans, all window air conditioners, stove, refrigerator, washer, dryer, oven, gas grill, water softener, alarm/security system, satellite dish, any converters or appurtenances for video or audio, garage door openers and remotes, unattached freestanding cabinets, lawn mower, lawn maintenance equipment.)

**CONTRACT ASSIGNMENT**

This contract is fully assignable by the purchaser but no such assignment shall be binding upon seller until an executed copy of it is delivered to seller. Upon delivery of copy to seller, the assignor shall be relieved of all liabilities under this contract.

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