

Online Auction Contract Clauses

LIMITATION OF SELLER'S LIABILITY AND BUYER'S WAIVER OF IMPORTANT RIGHTS:

BUYER (AS DEFINED IN *SECTION 1* OF THIS AGREEMENT) UNDERSTANDS AND ACKNOWLEDGES THAT (i) SELLER (AS DEFINED IN *SECTION 1* OF THIS AGREEMENT) HAS OR MAY HAVE ACQUIRED THE PROPERTY (AS DEFINED IN *SECTION 1* OF THIS AGREEMENT) THROUGH FORECLOSURE, DEED-IN-LIEU OF FORECLOSURE, OR SIMILAR PROCESS, (ii) SELLER HAS NEVER OCCUPIED THE PROPERTY, AND (iii) SELLER HAS LITTLE OR NO DIRECT KNOWLEDGE ABOUT THE CONDITION OF THE PROPERTY. BUYER FURTHER UNDERSTANDS AND ACKNOWLEDGES THAT SELLER MAY BE SELLING THE PROPERTY AS LAND ONLY, IN ITS PRESENT AND EXISTING PHYSICAL CONDITION AND MAKES NO REPRESENTATIONS OR

BUYER AGREES THAT BUYER IS BUYING THE PROPERTY "AS IS, WHERE IS, WITH ALL FAULTS AND LIMITATIONS" (AS MORE FULLY SET FORTH IN *SECTION 9* OF THIS AGREEMENT).

NOTWITHSTANDING ANY PROVISION TO THE CONTRARY IN THIS AGREEMENT, SELLER'S LIABILITY AND BUYER'S SOLE AND EXCLUSIVE REMEDY IN ALL CIRCUMSTANCES AND FOR ALL CLAIMS (AS THE TERM IS DEFINED IN *SECTION 9* OF THIS AGREEMENT, AND ALL REFERENCES IN THIS AGREEMENT TO "CLAIMS," "CLAIM," "Claims," or "Claim" SHALL HAVE SUCH MEANING) ARISING OUT OF OR RELATING IN ANY WAY TO THIS AGREEMENT OR THE SALE OF THE PROPERTY TO BUYER INCLUDING, BUT NOT LIMITED TO, SELLER'S BREACH OR TERMINATION OF THIS AGREEMENT, ANY DEFECTS (LATENT OR APPARENT), THE CONDITION OF THE PROPERTY, SELLER'S TITLE TO THE PROPERTY, THE OCCUPANCY STATUS OF THE PROPERTY, THE SIZE, SQUARE FOOTAGE, BOUNDARIES, OR LOCATION OF THE PROPERTY, ANY COST OR EXPENSE INCURRED BY BUYER IN SELLING A CURRENT OR PRIOR RESIDENCE OR TERMINATING A LEASE ON A CURRENT OR PRIOR RESIDENCE, OBTAINING OTHER LIVING ACCOMMODATIONS, MOVING, STORAGE OR RELOCATION EXPENSES, OR ANY OTHER COSTS OR EXPENSES INCURRED BY BUYER IN CONNECTION WITH THIS AGREEMENT SHALL BE LIMITED TO NO MORE THAN:

(A) A RETURN OF BUYER'S EARNEST MONEY DEPOSIT (AS HEREINAFTER DEFINED) IF THE SALE TO BUYER DOES NOT CLOSE AS FURTHER SET FORTH HEREIN; AND

(8) THE LESSER OF BUYER'S ACTUAL DAMAGES OR \$5,000.00 IF THE SALE TO BUYER CLOSES.

BUYER SHALL NOT BE ENTITLED TO A RETURN OF BUYER'S EARNEST MONEY DEPOSIT IF BUYER MATERIALLY BREACHES THIS AGREEMENT OR AS OTHERWISE SET FORTH IN THIS AGREEMENT.

BUYER AGREES THAT SELLER SHALL NOT BE LIABLE TO BUYER UNDER ANY CIRCUMSTANCES FOR ANY SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES WHATSOEVER, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR ANY OTHER LEGAL OR EQUITABLE PRINCIPLE, THEORY, OR CAUSE OF ACTION ARISING OUT OF OR RELATED IN ANY WAY TO ANY CLAIM, INCLUDING, BUT NOT LIMITED TO, THE AFOREMENTIONED CLAIMS.

ANY REFERENCE TO A RETURN OF BUYER'S EARNEST MONEY DEPOSIT CONTAINED IN THIS AGREEMENT SHALL MEAN A RETURN OF THE EARNEST MONEY DEPOSIT, LESS ANY ESCROW CANCELLATION FEES APPLICABLE TO BUYER UNDER THIS AGREEMENT AND LESS FEES AND COSTS PAYABLE FOR SERVICES AND PRODUCTS PROVIDED DURING ESCROW AT BUYER'S REQUEST. TO THE FULLEST EXTENT PERMISSIBLE BY APPLICABLE LAW, BUYER WAIVES ANY CLAIMS THAT THE PROPERTY IS UNIQUE AND BUYER ACKNOWLEDGES THAT A RETURN OF ITS EARNEST MONEY DEPOSIT CAN ADEQUATELY AND FAIRLY COMPENSATE BUYER FOR ALL CLAIMS. UPON RETURN OF THE EARNEST MONEY DEPOSIT TO BUYER, THIS AGREEMENT SHALL BE TERMINATED, AND BUYER AND SELLER SHALL HAVE NO FURTHER LIABILITY,

OBLIGATION, OR RESPONSIBILITY TO EACH OTHER IN CONNECTION WITH THIS AGREEMENT. IF THE SALE TO BUYER CLOSES AND SELLER COMPENSATES BUYER AS PROVIDED ABOVE FOR BUYER'S ACTUAL DAMAGES, IF ANY, THEN BUYER AND SELLER SHALL HAVE NO FURTHER LIABILITY, OBLIGATION, OR RESPONSIBILITY TO EACH OTHER IN CONNECTION WITH THIS AGREEMENT.

SELLER'S LIMITATION OF LIABILITY AND BUYER'S WAIVERS PROVIDED IN THIS AGREEMENT ARE A MATERIAL PART OF THE CONSIDERATION TO BE RECEIVED BY SELLER UNDER THIS AGREEMENT AS NEGOTIATED AND AGREED TO BY BUYER AND SELLER.

BUYER FURTHER WAIVES THE FOLLOWING, TO THE FULLEST EXTENT PERMISSIBLE BY APPLICABLE LAW:

- (A) ALL RIGHTS TO FILE AND MAINTAIN AN ACTION AGAINST SELLER FOR SPECIFIC PERFORMANCE;
- (B) RIGHT TO RECORD A LIS PENDENS AGAINST THE PROPERTY OR TO RECORD THIS AGREEMENT OR A MEMORANDUM THEREOF IN THE REAL PROPERTY RECORDS;
- (C) RIGHT TO INVOKE ANY EQUITABLE REMEDY THAT WOULD PREVENT OR DELAY SELLER FROM CONVEYING THE PROPERTY TO A THIRD PARTY BUYER;
- (D) ANY CLAIMS ARISING FROM THE ADJUSTMENTS OR PRORATIONS OR ERRORS IN CALCULATING THE ADJUSTMENTS OR PRORATIONS THAT ARE OR MAY BE DISCOVERED AFTER CLOSING, UNLESS SUCH CLAIMS ARE MATERIAL AND BUYER NOTIFIES SELLER IN WRITING OF SUCH CLAIMS WITHIN THIRTY (30) DAYS OF THE CLOSING DATE (AS HEREINAFTER DEFINED);
- (E) ANY REMEDY OF ANY KIND THAT BUYER MIGHT OTHERWISE BE ENTITLED TO AT LAW OR EQUITY (INCLUDING, BUT NOT LIMITED TO, RESCISSION OF THIS AGREEMENT), EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT;
- (F) ANY RIGHT TO A TRIAL BY JURY IN ANY LITIGATION ARISING FROM OR RELATED IN ANY WAY TO THIS AGREEMENT;
- (G) ANY RIGHT TO VOID THE SALE OF THE PROPERTY, REDUCE THE PURCHASE PRICE (AS HEREINAFTER DEFINED), OR HOLD SELLER LIABLE FOR ANY CLAIMS ARISING OUT OF OR RELATED IN ANY WAY TO SELLER'S FAILURE TO DISCLOSE (1) ANY INFORMATION REQUIRED TO BE DISCLOSED BY APPLICABLE LAW, (2) THE CONDITION, CONSTRUCTION, REPAIR, OR TREATMENT OF THE PROPERTY, OR (3) ANY DEFECTS, APPARENT OR LATENT, THAT MAY NOW OR HEREAFTER EXIST WITH RESPECT TO THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, ANY CLAIMS RELATING TO ANY ORDINANCES AND ANY REPAIR COSTS REQUIRED THEREUNDER;
- (H) ANY CLAIMS ARISING OUT OF OR RELATING IN ANY WAY TO ENCROACHMENTS, EASEMENTS, BOUNDARIES, SHORTAGES IN AREA, FLOOD ZONES OR ANY OTHER MATTER THAT WOULD BE DISCLOSED OR REVEALED BY A SURVEY, INSPECTION OF THE PROPERTY OR SEARCH OF PUBLIC RECORDS;
- (I) ANY CLAIMS ARISING OUT OF OR RELATING IN ANY WAY TO THE SQUARE FOOTAGE, SIZE, OR LOCATION OF THE PROPERTY, OR ANY INFORMATION PROVIDED ON THE MULTIPLE LISTING SERVICE, OR BROCHURES OR WEB SITES OF SELLER OR SELLER'S AGENT(S), AUCTIONEER(S) OR BROKER(S), OR ANY STATEMENTS, ACTIONS OR CONDUCT OF SELLER'S AUCTIONEER(S), AGENT(S) OR BROKER(S); AND
- (J) ANY CLAIMS ARISING OUT OF OR RELATING IN ANY WAY TO TENANTS OR OCCUPANTS OF THE PROPERTY, OR ENVIRONMENTAL MATTERS (AS HEREINAFTER DEFINED).

THE ABOVE PROVISIONS SHALL SURVIVE THE CLOSING OF THE TRANSACTION CONTEMPLATED HEREBY, OR THE EARLIER TERMINATION OF THE AGREEMENT.

In the event Seller elects to terminate the Agreement pursuant to this subsection 3, Seller may return Buyer's Earnest Money Deposit and the parties shall have no further rights or obligation under the Agreement, except as to any provision that survives termination of this Agreement.

- H. ADDITIONAL ESCROW INSTRUCTIONS. Seller and Buyer have read and agreed to all of the additional escrow instructions, if any, which are attached hereto as Exhibit C and incorporated in this Agreement. In the event of a conflict between any escrow instructions set forth in Exhibit C (or any escrow instructions set forth in a separate document) and this Agreement, including all exhibits and addenda hereto, the terms of this Agreement and the exhibits and addenda attached hereto shall control.

7. BUYER'S INSPECTION.

- A. REPRESENTATIONS AND WARRANTIES. Buyer represents and warrants to Seller that: (1) prior to the execution of this Agreement, Buyer has had adequate time and access to the Property to (i) conduct a complete and thorough inspection of the Property, (ii) examine all title matters and other matters concerning the Property and (iii) review all agreements relating to the Property, including, but not limited to, the disclosures and reports required by any law, rule or ordinance, (2) prior to the execution of this Agreement, Buyer has conducted and completed such inspections, or has freely and voluntarily waived the right to conduct any such inspections, (3) Buyer is purchasing the Property based solely upon Buyer's own inspection and investigation of the Property, (4) prior to the execution of this Agreement, Buyer has satisfied himself/herself/itself in all respects as to the Property and the condition thereof, including, without limitation, the value of the Property, its location, its insurability, its physical condition, its environmental condition, the structural or environmental integrity of any and all improvements on the Property, all title matters concerning the Property, all applicable common interest community, condominium community and unit owner's or homeowner's association documents, rules and regulations concerning the Property, and all other matters with respect to the Property, and (5) Buyer is aware of all laws, rules, ordinances and requirements affecting the use, condition and ownership of the Property, including, without limitation, all applicable zoning and land use regulations and local ordinances. Seller and its agents make no representation or warranty, and Buyer has investigated to Buyer's satisfaction, regarding whether the location of the Property is in an earthquake fault zone, seismic hazard zone, flood hazard zone, state responsibility area (fire hazard area), very high fire hazard severity zone, or area of potential flooding, or whether the Property is subject to any flood disaster or other insurance requirements, or whether the Property contains wetlands or other environmental constraints. Buyer acknowledges and agrees that Seller, and Seller Released Parties shall not have liability for any Claims (as defined in Section 9) that Buyer or Buyer's successors or assigns may incur as a result of construction or other defects that may now or hereafter exist with respect to the Property.

Buyer will not occupy, or cause or permit others to occupy, the Property prior to Closing and payment of the Purchase price in full, and unless and until any necessary certificate of occupancy has been obtained from the appropriate governmental entity, Buyer will not occupy or cause or permit others to occupy the Property until after Closing

Buyer further understands and acknowledges that Seller may be selling the Property as LAND ONLY, in its present and existing physical condition. Buyer acknowledges and agrees that prior to entering into this Agreement, Buyer had the opportunity to conduct his/her/its own due diligence, such due diligence and investigation having included investigations of the entire Property in order to determine its present condition and value since Seller may not be aware of all the defects affecting the Property or other factors that Buyer considered important in making his/her/its/their decision to purchase the Property. Neither Seller, nor any of Seller's brokers, agents or auctioneers make any representations or warranties regarding suitability to build or inhabit, the value of the Property, lot size, property lines, legal or physical access, boundaries, including features of the Property shared in common with adjoining landowners such as walls, fences, roads and driveways, whose use or responsibility for maintenance may have an effect on the Property, or any encroachments, easements or similar matters that may affect the Property. Fences, hedges, walls and other natural or constructed barriers or markers do not necessarily identify true Property boundaries.

- B.

BUYER INDEMNITY AND SELLER PROTECTION FOR ENTRY UPON PROPERTY.

In

connection with any due diligence, inspection, test, study, survey, visit and/or investigation of the Property ("*Buyer's Inspection*") by Buyer or any person/entity on Buyer's behalf, Buyer shall (1)

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keep the Property free and clear of liens, (2) repair all damage arising from Buyer's Inspection, and (3) indemnify, defend and hold Seller and its agents harmless from all liability, claims, demands, damages and/or costs directly or indirectly arising therefrom. Buyer shall carry, or require anyone acting on Buyer's behalf to carry, policies of liability, workers' compensation and other applicable insurance, defending and protecting Seller from liability for any injuries to persons or property occurring during any Buyer Inspection prior to Closing. Notwithstanding any other provision of this Agreement to the contrary, the obligations and agreements of Buyer under this *Section 7B* shall survive the Closing of the transaction contemplated by this Agreement or the earlier termination of this Agreement.

8. DISCLAIMER AND DISCLOSURES.

A. DISCLAIMER.

Buyer acknowledges that Seller has or may have acquired title to the Property as a result of a sale conducted pursuant to a foreclosure action under Oregon state laws, trustee's sale pursuant to a power of sale under a deed of trust, or deed in lieu thereof, as described in Oregon Revised Statute §§88.010-88.740. Therefore, to the fullest extent permissible by applicable law, Seller is exempt from any Oregon state law requirements regarding the making of certain disclosures, including, without limitation, disclosures under the Seller's Property Disclosure Statement (see Oregon Revised Statute §105.470(2)). Furthermore, to the fullest extent permissible by applicable law, Buyer expressly waives the right to receive such seller disclosure statement. As a result, any rights Buyer may have in connection with such disclosure statements under Oregon law shall not be available including, without limitation, any right to revoke Buyer's offer or otherwise terminate this Agreement under Oregon Revised Statute §105.475, et.seq. Further, regardless of how Seller obtained title, Seller is not familiar with the condition of the Property, other than as may be disclosed in any inspection reports obtained by or on behalf of Seller, Seller's auctioneers, representatives, brokers, or agents, or that Seller may have received otherwise. Any such reports furnished by Seller, Seller's auctioneers, representatives, brokers or agents in connection herewith shall be for informational purposes only, are not made part of this Agreement, and Seller make no representations, warranties, promises, covenants, agreements or guarantees, express or implied, oral or written, about their accuracy or completeness or the condition of the Property. Buyer acknowledges that in consideration of Seller's execution of this Agreement, Buyer, on behalf of itself and all other parties having any Claims (as defined in *Section 9* of this Agreement), covenants that, to the fullest extent permissible by applicable law, neither Buyer nor any such other party will sue, commence, prosecute or in any way participate in any judicial, administrative, or other regulatory proceedings for breach of contract based on any disclosures relating to any alleged breach or violation of any state law, rule or regulation by Seller, or any other party engaged on Seller's behalf, including, without limitation, any auctioneer, real estate broker or agent representing Seller.

B. OTHER DISCLOSURES.

- (1) **ASSESSMENTS.** If the Property is subject to a special assessment lien imposed by a public body payable in installments which continue beyond Closing, Buyer shall be responsible for and pay any and all amounts which become due after Closing.
- (2) **RADON.** Radon is a naturally occurring radioactive gas that, when accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines may have been found in buildings in Oregon. Additional information regarding radon and radon testing may be obtained from your county or state health unit. Buyer represents and warrants that he/she/it has not relied on the accuracy or completeness of any representations that have been made by Seller and/or any of Seller's broker(s), agent(s) or auctioneer(s) as to the presence of radon and that Buyer has not relied on Seller's and/or any of Seller's broker(s), agent(s) or auctioneer(s) failure to provide information regarding the presence or effects of any radon found on the Property. Real estate brokers and agents are not generally qualified to advise buyers on radon treatment or its health and safety risks.
- (3) **MOLD.** Mold is naturally occurring and may cause health risks or damage to property. If Buyer is concerned or desires additional information regarding mold, Buyer should contact

- (3) Any real estate brokerage relationship disclosures, such disclosures made available and provided to Buyer during the registration process, prior to bidding at auction and prior to entering into this Agreement for the purchase and sale of the Property; and
- (4) The disclosures attached to, or listed on any exhibits attached to, this Agreement, which disclosures and exhibits are incorporated into this Agreement by reference herein.

Buyer understands and acknowledges that any information provided by or on behalf of Seller with respect to the Property, including, without limitation, all information in the Disclosures and the Brochure, as defined in *Section 8D* below, was obtained from a variety of sources and that Seller and Seller's broker(s), agent(s) and auctioneer(s) have not made any independent investigation or verification of such information and make no representation or warranty as to the accuracy or completeness of such information. Buyer shall not have the right to terminate this Agreement by reason of any information, facts, condition or other aspect of the Property discovered by Buyer subsequent to Buyer's execution of this Agreement. Buyer further waives the right under 42 U.S.C. § 4852d and any other applicable law to conduct a risk assessment or inspection for the presence of lead-based paint hazards.

- D. **BROCHURE**. Buyer represents and warrants that Buyer has obtained, reviewed and accepts the terms and conditions pertaining to the purchase and sale of the Property which are made available in an auction brochure (the "*Brochure*"), if any, advertising, or on the auction website, www.homesearch.com, which terms and conditions are incorporated herein by reference. In the event of any conflict or inconsistency between the terms and conditions of this Agreement and the terms and conditions of the auction, the terms and conditions of this Agreement shall control and prevail in all respects. Buyer acknowledges that neither Seller, nor its broker(s), agent(s) or auctioneer(s) make any representation or warranty whatsoever in connection with any terms, conditions, warranties and/or representations contained in the Brochure, any advertising or on the auction website.
- E. **NO REPAIRS**. Buyer acknowledges and agrees that Seller is selling the Property AS IS, WHERE IS, WITH ALL FAULTS AND LIMITATIONS and Seller shall have no liability for or any obligation to make any repairs or improvements of any kind to the Property including, but not limited to, required repairs or improvements that result from the inability of Buyer to obtain a certificate of occupancy, certificate of use or municipal code compliance certificate, if required, for the Property. Neither Buyer, nor its representatives, shall enter upon the Property to make any repairs and/or treatments prior to Closing without the prior written consent of Seller. Buyer acknowledges that all repairs and treatments are done for the benefit of Seller and not for the benefit of Buyer unless and until the Closing Date has occurred in accordance with the Agreement. Seller shall comply with laws and ordinances regarding the presence of smoke detector(s), carbon monoxide detectors and/or fire extinguishers required at the Property, if any, or any other similar law or ordinance that requires Seller's compliance. Notwithstanding the foregoing, Buyer acknowledges that Seller cannot guaranty compliance with the aforementioned if the Property is occupied and Seller or its brokers and agents cannot reasonably gain access to the Property. In such event, to the fullest extent permissible by applicable law, Buyer agrees that any and all additional smoke detector(s), carbon monoxide detectors and/or fire extinguishers required by any applicable ordinance shall be installed by Buyer at Buyer's sole cost and expense prior to the Closing Date. In some municipalities, a certificate of occupancy, certificate of use or municipal code compliance certificate may be required in order to transfer and/or occupy the Property. If a certificate of occupancy, certificate of use or municipal code compliance certificate is required to be obtained in order for the Property to be transferred to or occupied by Buyer, Buyer shall obtain such certificate of occupancy, certificate of use or municipal code compliance certificate at Buyer's sole cost and expense. If any violations at the Property shall be required to be corrected by the municipality or other work performed at the Property to obtain a certificate of occupancy, certificate of use or municipal code compliance certificate, Buyer shall correct and/or perform same at Buyer's sole cost and expense. Seller makes no representation or warranty as to whether a certificate of occupancy, certificate of use or municipal code compliance certificate is required or whether the Property may be occupied by Buyer. Buyer shall indemnify, defend and hold Seller harmless from and against all fines, penalties, costs, expenses, claims and liabilities arising out of or relating to Buyer or Buyer's representatives making repairs to the Property prior to the Closing Date, or obtaining, or its failure to obtain, a certificate of occupancy, certificate of use or municipal code compliance certificate, if such is required. This indemnification shall survive the Closing Date and shall not be deemed to have merged into any of the documents executed or delivered at Closing. Seller makes no

A SPECIAL FLOOD HAZARD ZONE OR FLOOD PLAIN, OR IN THE PRESENCE OF WETLANDS OR SHORELAND.

BUYER ACKNOWLEDGES THAT THE PROPERTY MAY NOT BE IN COMPLIANCE WITH APPLICABLE ZONING, BUILDING, HEALTH OR OTHER LAW, ORDINANCES, STATUTES OR CODES, AND NEITHER SELLER NOR ANY PERSON ACTING AS SELLER'S REPRESENTATIVE OR AGENT HAS OCCUPIED THE PROPERTY AND, THEREFORE, THE PROPERTY MAY NOT BE IN HABITABLE CONDITION.


BUYER FURTHER ACKNOWLEDGES AND AGREES THAT SELLER HAS NOT MADE, DOES NOT MAKE, AND SPECIFICALLY DISCLAIMS, TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW, ANY REPRESENTATIONS REGARDING THE VALUE OF THE PROPERTY, COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT, WITH ANY ENVIRONMENTAL MATTER OR WITH ANY ENVIRONMENTAL PROTECTION, POLLUTION OR LAND USE LAWS, RULES, REGULATIONS, ORDERS OR REQUIREMENTS, AS DEFINED BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY REGULATIONS AND ANY OTHER STATE, FEDERAL OR LOCAL ENVIRONMENTAL LAWS AND REGULATIONS APPLICABLE TO THE PROPERTY, OR THE DISPOSAL OR EXISTENCE, IN OR ON THE PROPERTY OR ANY ADJACENT OR NEARBY PROPERTY, OF ANY HAZARDOUS SUBSTANCE, AS DEFINED BY THE COMPREHENSIVE ENVIRONMENTAL RESPONSE COMPENSATION AND LIABILITY ACT OF 1980, AS AMENDED, AND REGULATIONS PROMULGATED THEREUNDER AND ANY OTHER STATE, FEDERAL OR LOCAL ENVIRONMENTAL LAWS AND REGULATIONS APPLICABLE TO THE PROPERTY.

UPON CLOSING, BUYER ACKNOWLEDGES AND AGREES THAT, EXCEPT AS PROVIDED ELSEWHERE IN THIS AGREEMENT, SELLER, AND EACH OF THEIR REPRESENTATIVES, BROKERS, AGENTS, AUCTIONEERS, SUCCESSORS AND ASSIGNS HAVE NO FURTHER RESPONSIBILITY, OBLIGATION OR LIABILITY TO BUYER. BUYER AGREES THAT SELLER, AND EACH OF THEIR REPRESENTATIVES, BROKERS, AGENTS, AUCTIONEERS, SUCCESSORS AND ASSIGNS SHALL HAVE NO LIABILITY FOR ANY CLAIM OR LOSSES BUYER OR BUYER'S HEIRS, SUCCESSORS AND ASSIGNS MAY INCUR AS A RESULT OF DEFECTS THAT MAY NOW, OR MAY HEREAFTER, EXIST WITH RESPECT TO THE PROPERTY, AND BUYER SHALL HOLD HARMLESS, INDEMNIFY AND DEFEND SELLER, AND EACH OF THEIR EMPLOYEES, OFFICERS, DIRECTORS, REPRESENTATIVES, ATTORNEYS, AUCTIONEERS, BROKERS, AGENTS SUCCESSORS AND ASSIGNS FROM ANY SUCH CLAIM. THE OBLIGATIONS AND AGREEMENTS OF BUYER UNDER THIS SECTION SHALL SURVIVE THE CLOSING OF THE TRANSACTION CONTEMPLATED BY THIS AGREEMENT OR THE EARLIER TERMINATION OF THIS AGREEMENT.

TO THE FULLEST EXTENT PERMISSIBLE BY APPLICABLE LAW, BUYER AND ANYONE CLAIMING BY, THROUGH OR UNDER THE SAME HEREBY FULLY AND IRREVOCABLY RELEASE SELLER AND EACH OF THEIR EMPLOYEES, OFFICERS, DIRECTORS, REPRESENTATIVES, ATTORNEYS, AUCTIONEERS, BROKERS, AGENTS, SUCCESSORS AND ASSIGNS ("SELLER RELEASED PARTIES") FROM ANY AND ALL CLAIMS, THAT HE/SHE/IT OR THEY MAY NOW HAVE OR HEREAFTER ACQUIRE AGAINST SELLER AND EACH OF THEIR EMPLOYEES, OFFICERS, DIRECTORS, REPRESENTATIVES, ATTORNEYS, AUCTIONEERS, BROKERS, AGENTS, SUCCESSORS AND ASSIGNS FROM ANY AND ALL CLAIMS, CAUSES OF ACTION, WHETHER ADMINISTRATIVE OR JUDICIAL, LOSSES, COSTS (INCLUDING ANY AND ALL REASONABLE ATTORNEYS' FEES, COURT COSTS, AND REASONABLE COSTS OF INVESTIGATION, LITIGATION, AND SETTLEMENT), EXPENSES, SANCTIONS, CURTAILMENTS, INTEREST, LIABILITIES, PENALTIES, FINES, DEMANDS, EXPENSES, LIENS, JUDGMENTS, COMPENSATION, FEES, LOSS OF PROFITS, INJURIES, DEATH, AND/OR DAMAGES, OF ANY KIND WHATSOEVER, WHETHER KNOWN OR UNKNOWN, FIXED OR CONTINGENT, JOINT OR SEVERAL, CRIMINAL OR CIVIL, OR IN LAW OR IN EQUITY ("*CLAIMS*") ARISING FROM OR RELATING TO THE PROPERTY, BUYER'S BREACH OF OR FAILURE TO COMPLY FULLY WITH ANY PROVISION IN THIS AGREEMENT, INSPECTIONS OR REPAIRS MADE BY BUYER OR HIS/HER/ITS AGENTS, REPRESENTATIVES, BROKERS, EMPLOYEES, CONTRACTORS, SUCCESSORS OR ASSIGNS, THE IMPOSITION OF ANY FINE OR PENALTY IMPOSED BY ANY GOVERNMENTAL ENTITY RESULTING FROM BUYER'S FAILURE TO TIMELY OBTAIN ANY CERTIFICATE OF OCCUPANCY OR ANY OTHER REQUIRED CERTIFICATE OR PERMIT, OR TO COMPLY WITH EQUIVALENT LAWS AND REGULATIONS, CONSTRUCTION DEFECTS, ERRORS, OMISSIONS OR OTHER CONDITIONS, INCLUDING, WITHOUT LIMITATION, THE VALUE OF THE PROPERTY, ENVIRONMENTAL MATTERS AFFECTING THE PROPERTY, OR ANY PORTION THEREOF, OR THE USE, RELEASE OR DISPOSAL ON, IN OR UNDER THE PROPERTY OF ANY HAZARDOUS SUBSTANCE AND THE ENVIRONMENTAL CONDITION OF THE PROPERTY. THIS PROVISION SHALL SURVIVE CLOSING. THIS RELEASE INCLUDES CLAIMS OF WHICH BUYER IS PRESENTLY UNAWARE OR DOES NOT PRESENTLY SUSPECT TO EXIST IN HIS/HER/ITS FAVOR WHICH, IF KNOWN BY BUYER, WOULD MATERIALLY AFFECT BUYER'S RELEASE OF SELLER. TO THE FULLEST EXTENT PERMISSIBLE BY APPLICABLE LAW, BUYER SPECIFICALLY WAIVES ANY PROVISIONS OR RULE OF OREGON LAW THAT WOULD OTHERWISE LIMIT A RELEASE TO ONLY THOSE CLAIMS KNOWN OR SUSPECTED BY THE RELEASING PARTY AT THE TIME HE/SHE/IT EXECUTED THE RELEASE.

premiums will not be prorated. Seller cannot endorse or assign existing insurance policies (if any) to Buyer, and Seller may cancel any existing insurance on the Property as of the date of the Close of Escrow. If the Property is heated by, or has storage tanks for fuel oil, liquefied petroleum gases, or similar fuels, Buyer will buy the fuel in the tank at Closing at the current price as calculated by the supplier. In the event Seller has paid any taxes, special assessments, or other fees and there is a refund of any such taxes, assessments, or fees after Closing, Buyer, as the then current owner of the Property, or the closing agent, in the event of a holdback for payment of such items, shall immediately remit the refund to Seller.

- B. SELLER'S EXPENSES. Seller shall pay Seller's share of prorations under *Section 11A* above and any other fees or taxes that may be imposed upon Seller and that Seller is required to pay pursuant to Oregon law. To the extent Buyer agrees to accept the services of the escrow/closing agent and title insurance company recommended by Seller as set forth in *Section 5* hereof, Seller shall pay the premium for the Owner's Policy, as well a title search fee. If Buyer does not agree to accept the services of such escrow/closing agent and/or title insurance company, Buyer acknowledges and agrees that Buyer is responsible for such expenses. Except as provided herein, Seller shall not be responsible for any amounts due, paid or to be paid after Closing. In the event Seller has paid any taxes, special assessments or other fees at or prior to Closing and there is a refund of any such taxes, assessments or fees after Closing, and Buyer, as current owner of the Property, receives the payment, Buyer will immediately submit the refund to Seller. The Escrow/Closing Agent is hereby authorized to pay from Seller's proceeds Seller's expenses set forth in this *Section*.
- C. BUYER'S EXPENSES. To the fullest extent permissible by applicable law, Buyer shall pay, notwithstanding state or local custom, all costs of credit reports, the premium for the Loan Policy (if applicable), as well as any fees and additional costs and expenses associated with extended coverage and/or title endorsements associated with the Owner's Policy and the Loan Policy, any Oregon documentary stamp taxes or other documentary transfer tax or deed tax that may be imposed upon sellers and/or buyers of Oregon real property pursuant to Oregon law, loan fees, loan points and other costs of Buyer's lender in connection with Buyer's Loan Documents and Buyer's loan (if applicable), tax service fees, recordation fees for the Deed and Buyer's Loan Documents, Buyer's share of prorations under *Section 11A* above, and first month's condominium/homeowner's association membership fees and assessments, if any, all escrow fees and charges, unless otherwise required by law or agreed to in writing by Seller, and other closing costs of Buyer. To the fullest extent permissible by applicable law, all other costs and expenses, including any cost, expense or transfer tax imposed by any state or local entity not otherwise addressed herein, shall be paid by Buyer. Any and all termite clearances and reports and any inspections required by any lender, and/or repairs recommended or required by any termite and/or property inspection report including, but not limited to, any roof certifications, shall all be at the sole cost and expense of Buyer. Buyer authorizes the Escrow/Closing Agent to debit Buyer's account in the amount of twenty dollars (\$20.00) at Closing in the event Buyer fails to deposit with the Escrow/Closing Agent a change of ownership statement, if and to the extent any such statement is required. The foregoing costs and expenses shall be paid by the Escrow/Closing Agent on Buyer's behalf from funds deposited into Escrow by Buyer.
- D. PRE-CLOSING EXPENSES. Buyer and Seller are aware that the Escrow/Closing Agent may incur certain expenses during the course of processing this transaction which must be paid prior to Closing. Such costs may include, but are not limited to, demand request fees, homeowner association document fees, courier fees, overnight mail service and building and/or inspection reports, if applicable. Escrow/Closing Agent is authorized and instructed to release funds for payment of such costs prior to Closing from funds deposited into Escrow by Buyer. The parties acknowledge that the funds are not refundable and the Escrow/Closing Agent is specifically released from all responsibility and/or liability for payment of any funds pre-released through Escrow. At Closing, the Escrow/Closing Agent is authorized to charge the appropriate party for costs incurred, or to credit party, if necessary.



E. POST-CLOSING AND SUBSEQUENT NOTICE OF COSTS, LIENS, OR ASSESSMENTS. The acceptance of the Deed by Buyer will be deemed to constitute full compliance by Seller with all of the terms and conditions of this Agreement. To the fullest extent permissible by applicable law, Seller shall NOT be responsible for any unpaid real estate taxes and/or assessments, levies, fees, fines, penalties, homeowner association fees, dues and charges, utility charges or any other charges not readily obtainable from a title search prior to Closing. IF AT ANY TIME AFTER CLOSING, BUYER OR HIS/HERIITS ASSIGNS OBTAINS ACTUAL OR CONSTRUCTIVE

NOTICE OF ANY COSTS, LIENS, ASSESSMENTS, OR JUDGMENTS ASSOCIATED WITH THE PROPERTY THAT WERE NOT OF RECORD AT THE TIME OF CLOSING, INCLUDING, WITHOUT LIMITATION, CODE VIOLATIONS, TAXES, FEES, CHARGES, UTILITY LIENS, OR HOMEOWNER ASSOCIATION OR CONDOMINIUM ASSESSMENTS, BUYER SHALL SOLELY BE RESPONSIBLE FOR THEIR PAYMENT AND SATISFACTION AND TO THE FULLEST EXTENT PERMISSIBLE BY APPLICABLE LAW, BUYER HEREBY RELEASES SELLER, ITS EMPLOYEES, OFFICERS, DIRECTORS, AUCTIONEERS, BROKERS AGENTS, SUCCESSORS AND ASSIGNS OF ANY AND ALL LIABILITY IN CONNECTION THERETO, REGARDLESS OF WHETHER SELLER OWNED THE PROPERTY AT THE TIME SUCH COSTS WERE ASSESSED OR INCURRED OR SELLER HAD ACTUAL OR CONSTRUCTIVE NOTICE OF THE EXISTENCE OF SUCH COSTS, LIENS, ASSESSMENTS, OR JUDGMENTS. Buyer is responsible for verifying any possible liens, judgments, or assessments that may not be of record and hereby releases Seller from any and all liability related to any such liens, judgments or assessments. Notwithstanding anything to the contrary in this Agreement, any provision which contemplates performance or observance subsequent to any termination or expiration of this Agreement, including paragraphs A, B, C and D under this *Section* 11, shall survive Closing, funding and the delivery of the Deed, or termination of this Agreement by any party, and continue in full force and effect.

12. DEFAULT AND REMEDIES. By initialing below, Buyer and Seller elect for this entire *Section* to apply:

- A. BUYER DEFAULT. BUYER AND SELLER AGREE THAT IF BUYER FAILS TO PURCHASE THE PROPERTY FROM SELLER BY REASON OF ANY DEFAULT OF BUYER, AS DETERMINED BY SELLER IN ITS SOLE DISCRETION: (1) SELLER SHALL BE RELEASED FROM ANY OBLIGATION TO SELL THE PROPERTY TO BUYER AND SELLER SHALL NOT BE LIABLE TO BUYER FOR ANY CLAIMS ARISING OUT OF OR RELATING IN ANY WAY TO SELLER'S FAILURE TO SELL AND CONVEY THE PROPERTY TO BUYER, AND (2) BUYER AND SELLER EXPRESSLY AGREE THAT IT WOULD BE EXTREMELY DIFFICULT TO DETERMINE SELLER'S ACTUAL DAMAGES AS A RESULT OF SUCH A DEFAULT BY BUYER AND, THEREFORE, THE PARTIES AGREE THAT SELLER SHALL RETAIN AS LIQUIDATED DAMAGES AND NOT AS A PENALTY, AND AS A REASONABLE PRE-ESTIMATE OF SELLER'S ACTUAL DAMAGES FOR BUYER'S BREACH OF THIS AGREEMENT, AN AMOUNT EQUAL TO THE EARNEST MONEY DEPOSIT, (PROVIDED, HOWEVER, THE AMOUNT RETAINED SHALL BE NO MORE THAN FIVE PERCENT (5) OF THE PURCHASE PRICE; ANY AMOUNT IN EXCESS OF FIVE PERCENT (5) SHALL BE PROMPTLY RETURNED TO BUYER), AND INVOKE ANY OTHER REMEDY EXPRESSLY SET OUT IN THE AGREEMENT OR AVAILABLE UNDER APPLICABLE LAW. NOTWITHSTANDING ALL OF THE FOREGOING, SELLER RETAINS THE RIGHT TO PROCEED AGAINST BUYER FOR ENFORCEMENT OF BUYER'S INDEMNIFICATION, DEFENSE AND HOLD HARMLESS OBLIGATIONS UNDER THIS AGREEMENT. IN NO EVENT SHALL BUYER HAVE THE RIGHT TO SEEK OR OBTAIN SPECIFIC ENFORCEMENT OF THIS AGREEMENT.
- B. SELLER DEFAULT. BUYER AND SELLER AGREE THAT IF SELLER IS UNABLE TO PERFORM AS REQUIRED BY THIS AGREEMENT, THEN THIS AGREEMENT MAY BE TERMINATED UPON SELLER'S WRITTEN NOTICE TO BUYER. IN SUCH EVENT, BUYER'S EARNEST MONEY DEPOSIT SHALL BE RETURNED TO BUYER; SUCH RETURN OF BUYER'S EARNEST MONEY DEPOSIT SHALL BE BUYER'S SOLE AND EXCLUSIVE REMEDY IN SUCH EVENT. IN NO EVENT SHALL BUYER HAVE THE RIGHT TO SEEK OR OBTAIN SPECIFIC ENFORCEMENT OF THIS AGREEMENT.
- C. PERFORMANCE REMEDY. WAIVER OF SPECIFIC
AS A MATERIAL PART OF THE
CONSIDERATION TO BE PAID OR RECEIVED BY SELLER OR BUYER UNDER THIS AGREEMENT, BUYER WAIVES ALL RIGHTS TO FILE AND MAINTAIN AN ACTION AGAINST SELLER FOR SPECIFIC PERFORMANCE AND TO RECORD A LIS PENDENS OR NOTICE OF PENDENCY OF ACTION AGAINST THE PROPERTY IF A DISPUTE ARISES CONCERNING THIS AGREEMENT. BUYER AGREES THAT THE PROPERTY IS NOT UNIQUE AND THAT IN THE EVENT OF SELLER'S DEFAULT OR MATERIAL BREACH OF THIS AGREEMENT, BUYER CAN BE ADEQUATELY AND FAIRLY COMPENSATED SOLELY BY RECEIVING A RETURN OF THE EARNEST MONEY DEPOSIT. UPON RETURN OF THE EARNEST MONEY DEPOSIT, THIS AGREEMENT SHALL BE TERMINATED, AND BUYER AND SELLER HEREBY IRREVOCABLY INSTRUCT THE ESCROW/CLOSING AGENT TO RETURN ALL FUNDS AND DOCUMENTS TO THE PARTY THAT DEPOSITED SAME WITHOUT FURTHER DIRECTION. IN