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Preparation and Review of a Real Estate Contract

Objectives

After reading this chapter, you should be able to:

• Review a real estate contract for the sale and purchase of a home and understand its contents
• Prepare a real estate contract for the sale and purchase of a home
• Review a real estate contract for the sale and purchase of commercial real property and understand its contents
• Prepare a real estate contract for the sale and purchase of commercial real property

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XIV. Acknowledgment
Paralegals prepare real estate contracts for an attorney’s final review or assist the attorney in a review of contracts prepared by other counsel or by real estate brokers. During the process of preparing or reviewing a contract, one should remember that the contract is the primary controlling document in a real estate sale transaction. It follows the negotiations of the parties and, it is hoped, captures their agreements in writing. It dictates the rights and responsibilities of the parties, and in most instances, its effect goes well beyond the consummation of the transaction it contemplates. Because of its vital importance to the transaction, a paralegal must pay close attention to the contents of the real estate contract.

SYDNEY’S REAL ESTATE CONTRACT

It is Friday afternoon. The attorney you work for, Susan Barrister, has just received a call from Sydney Brownstreet, one of the firm’s real estate developer clients. Susan has asked that you sit in on a telephone conversation with Sydney because she wants you to assist her in preparing whatever legal documents Sydney requires. When you enter her office, you hear Sydney’s voice on the telephone speakerphone. “Listen, Susan, I need your help over the weekend. I’ve got a chance to buy a nice piece of property out on Delk Road that will be ideal for this new shopping center concept of mine. I need you to prepare a contract so that I will have it on Monday to present to the owner. The owner’s name is Delk Road Development, Inc., and I want to offer $750,000 for the property. I can fax over to you a copy of the legal description. I also would like to close the deal by April 1. Is there anything else you need to know, Susan?”

Susan looks at you with a slight roll of her eyes toward the ceiling and then asks Sydney the following questions.

“Sydney, do you intend to buy the property in your name or in the name of your corporation, Brownstreet Shopping Centers, Inc.? Or are you going to form a new limited liability company to take title? Is the property vacant? Are there any easements that are necessary for your development of the property?

“How do you intend to pay for the property? Are you going to pay all cash at closing, or are the sellers going to take back a note? Do you need to line up financing for the purchase, and if so, should this be a condition to closing?

“Is there any debt existing on the property? If so, do you want to try to assume that debt?

“Are you satisfied with insurable title for the property? Do you want us to do a title examination? Do you want the seller to pay for it?

“Do you want to take possession of the property at closing? Before closing? Are taxes and all other expenses to be prorated as to the date of closing? Do you have any conditions that you want satisfied before closing? Are you satisfied with the zoning? Do you think that you can get a curb cut onto Delk Road? Do you need to do any soil tests to see if the soil will support your shopping center concept? Have you had the property examined for hazardous wastes? Are there sanitary sewer and other utilities to the property?

“Do you want a survey? Do you want the seller to pay for the survey? How much earnest money are you going to put down? Do you want to make it part of the purchase price? Are you willing to forfeit the earnest money if you do not go ahead and buy the property? Do you want the seller to hold the earnest money? Is there a real estate broker involved? Do you want the broker to hold the earnest money? Do you want to be able to assign the contract to some partnership that you are going to form in the future?”

As the conversation continues, it is easy to see that the preparation of a real estate contract requires the answers to more questions than just the identity of the seller and the
purchaser, a description of the real property to be bought and sold, a purchase price, and a time for performance.

ELEMENTS IN A REAL ESTATE CONTRACT

The Parties

Obviously, the contract will have a seller and a purchaser. Other parties may join in the execution of the contract, such as a real estate broker for the purpose of enforcing commission rights or an escrow agent to acknowledge receipt of funds. All parties signing the contract should be clearly and distinctly identified by name and capacity (i.e., seller, buyer, and agent). In addition, it is helpful to put the parties’ addresses, telephone and facsimile numbers, and e-mail addresses on the contract. In the event that a party to a contract, such as a corporation, partnership or limited liability company, is not a natural person, the authority of the representative who signs on its behalf should be revealed in the contract. For example, in a corporate contract, the corporation should be made a party to the contract, but the officer signing on behalf of the corporation should be identified, as well as the office he or she holds with the corporation.

A seller should be identified in the contract exactly the way the seller holds title to the real property. Purchasers should be identified the way in which they desire to take title. The name of each person signing the contract should be typed underneath the signature line (Examples 7–1 and 7–20).

Example 7–1

THIS AGREEMENT OF PURCHASE AND SALE (the “Agreement”) is made and entered into as of the Effective Date, as hereinafter defined, by and between JOANNE SELLER, ALICE SELLER LONGWORTH, AND WARREN SELLER (hereinafter collectively “Seller”); and PURCHASER, INC., a Colorado corporation (hereinafter “Purchaser”) and AMERICAN REALTY COMPANY, a Colorado corporation (hereinafter “Broker”).

Consideration

A contract must state the consideration flowing from one party to the other or from each to both (Example 7–2). Consideration may be money or something of value. In many states, a recital of the agreement of the parties to buy and sell is sufficient.

Example 7–2

That for and in consideration of the mutual promises and covenants herein contained and the mutual advantages accruing to Seller and Purchaser hereunder and the sum of $10.00 and other good and valuable consideration paid by Purchaser to Seller, receipt of which is hereby acknowledged by Seller, it is mutually covenanted and agreed by the parties hereto as follows:

The Agreement

At a minimum, a contract should contain statements whereby the seller agrees to sell and the buyer agrees to buy the property. Typically, the contract also contains other agreements between the parties, but without an agreement to buy and sell, a sales contract is not valid.
The Property

A contract should adequately describe the real property being bought and sold. A true and correct description of the real property prepared from a survey is preferable, but the minimum requirement in most states is that the real property be clearly and distinctively identified (Example 7–3). Does the description of the property point to a particular parcel of identifiable property? If so, the description is adequate. If anything other than unimproved real property is the subject matter of a contract, it should so indicate. Any personal property to be included with the purchase should be accurately described. Although fixtures are included as part of the realty by operation of law, if there is any question as to whether an item is a fixture, the contract should cover the questioned item with certainty. It is better practice to clearly list all items included in the sale than to rely on items being included as fixtures by the operation of law. Likewise, if some items are to be excluded from the contract, they should be expressly excluded rather than relying on the operation of law to exclude them. If personal property items are to be excluded from the sale, the contract should discuss the method and time of removal and the means for repair to the real property if such repairs are required as a result of the removal of the excluded.

Example 7–3

Property. Seller hereby agrees to sell and convey to Purchaser and Purchaser hereby agrees to purchase from Seller, subject to the terms and conditions hereinafter set forth, the property located in Land Lot 99, 17th District, Colorado Springs, Elk County, Colorado, described on Exhibit A attached hereto and made a part hereof containing approximately 2.544 acres (the “Land”) as shown on that certain survey of the Land prepared by D. W. Transit, Colorado Registered Land Surveyor No. 1845, for JoAnne Seller et al., dated July 25, 20__, last revised December 17, 20__ (the “Existing Survey”), together with the following:

(a) Improvements. All improvements on the Land owned by Seller, including, without limitation, a two-story retail shopping center containing approximately 54,520 net rentable square feet more commonly known as the “Mountain Square,” together with drives, sidewalks, drainage, sewerage and utility facilities, and surface parking areas (collectively the “Improvements”);

(b) Tangible Personal Property. All fixtures, equipment, machinery, building supplies, tools, furniture, and other personal property, if any, and all replacements thereof, located on or about the Land and Improvements and used exclusively in the operation and maintenance thereof (the “Tangible Personal Property”), but expressly excluding any and all property owned by tenants occupying the Improvements;

(c) Intangible Property. Any and all of the Seller’s rights and interests in and to all intangible property pertaining to the Land, the Improvements or the Tangible Property or the use thereof, including without limitation, any trade names used in connection therewith, the landlord’s interest in all leases regarding the Property to the extent assignable, and all other licenses, franchises, permits, tenant security deposits (unless Purchaser receives a credit for same), contract rights, agreements, transferable business licenses, tenant lists, correspondence with tenants and suppliers, booklets, manuals, advertising materials, transferable utility contracts, and transferable telephone exchange numbers (the “Intangible Property”);

(d) Easements. Any and all of Seller’s rights in and to all easements, if any, benefiting the Land or the Improvements; and

(e) Rights and Appurtenances. All rights and appurtenances pertaining to the foregoing, including any right, title, and interest of Seller in and to adjacent streets, alleys, or rights-of-way. All of the property described in Subsections (a), (b), (c), (d), and (e) of this Section together with the Land, are hereinafter sometimes collectively referred to as the “Property.”
The Price

A contract should state the purchase price of the real property or provide for an exact method by which the purchase price can be computed (Example 7–4). The easiest approach is to always have a fixed price for the real property, but that may not always be appropriate for the transaction. In dealing with commercial real property or undeveloped acreage, the price often is expressed in terms of dollars per acre, square foot, or feet of road frontage. If such is the case, the contract needs to speak to the following questions: (a) What method will be used to determine the area or frontage (a survey)? (b) Does either party have the right to question the accuracy of such a method? (c) Are all areas within the boundary of the survey to be used in the computation, or are certain areas (e.g., flood plains, easements, and public or private right-of-ways) excludable? (d) Is the seller warranting a minimum area or amount of frontage that is acceptable to the purchaser?

Example 7–4

(a) Purchase Price. The Purchase Price (the “Purchase Price”) to be paid for the Property shall be Seven Million Three Hundred Thousand and No/100 Dollars ($7,300,000.00) to be paid in the following manner:

(i) Purchaser shall take subject to a first mortgage loan on the Property held by Wearever Life Assurance Company in the original Principal amount of Five Million Five Hundred Thousand Dollars ($5,500,000.00), which mortgage loan currently bears interest at the rate of ten percent per annum (10%) and is due and payable in full on January 1, 20__. Seller agrees to pay one-half of any and all transfer, assumption, or other fees assessed by the holder of the mortgage loan in connection with the transfer of the Property subject to the mortgage loan; and

(ii) Purchaser shall deliver to Seller a purchase money note (“Note”) in the amount of Six Hundred Fifty-Four Thousand Dollars ($654,000.00). Said Note shall bear interest at ten percent per annum (10%) and shall be payable interest-only quarterly with a final payment of all unpaid principal and accrued and unpaid interest being due and payable two years from the Closing Date (hereinafter defined). The Note shall provide that it can be prepaid in whole or in part at any time without premium or penalty. The Note shall provide that the holder of the Note shall give the Maker of the Note at least twenty (20) days written notice of default prior to any acceleration of the Note for default or exercise of any other remedies that the holder may have to collect the indebtedness evidenced by the Note; provided, however, the Note shall be cross-defaulted with the Wearever Life Assurance Company loan (“Wearever Loan”) and defaults under the Wearever Loan are to be governed by the notice and cure periods provided for in the Wearever Loan. The Note shall be secured by a second priority Deed of Trust (“Deed”) on the Property. The Deed shall provide that insurance and condemnation proceeds shall be used for restoration of the Property; shall provide for twenty (20) days written notice of default prior to any exercise of remedies thereunder; shall not provide for any tax or insurance escrows; shall not have any restrictions on the transfer of the Property or upon any further financing or encumbrancing of the Property. The Note and Deed shall be nonrecourse to Purchaser and shall contain no personal guaranty whatsoever. The Note shall be in the form of the Note attached hereto as Exhibit ___ and the Deed shall be in the form of the Deed of Trust attached hereto as Exhibit ___.

(iii) The balance of the Purchase Price in the approximate amount of One Million One Hundred Forty-Six Thousand Dollars ($1,146,000.00) shall be payable in cash or by bank check drawn on the Federal Reserve Bank of Denver or by wire transfer or good funds on the Closing Date (hereinafter defined). Upon request by Purchaser prior to closing, Seller shall designate the account of Seller into which the net proceeds of the sale are to be deposited.
The Method of Payment

Closely related to the price is the way in which the price will be paid and received. A contract should provide for an exact method of payment and the medium of payment (e.g., cash, certified funds, notes, or personal checks). The most common methods of payment are (a) cash; (b) the seller accepting a note, usually secured by the real property; (c) the purchaser assuming preexisting encumbrances or debts against the real property or taking title subject thereto; and (d) the seller accepting other property, either real or personal, in exchange for the real property that is the subject matter of the contract. Many transactions involve a combination of these methods (Example 7–4).

Cash

The simplest situation is one in which the purchaser is paying all cash for the real property. Although drafting and reviewing an all-cash contract requires less attention to the method of payment, there are some points that require thought. Do the parties in fact mean cash, or do they mean cash or its equivalent? It is unusual for purchasers to bring $100 bills to a closing. Cash equivalents often are the method of payment. Cash equivalents can be certified funds, a cashier’s or treasurer’s check, or a bank wire transfer. A **certified check** is a personal check in which the bank certifies that the funds are in the account and that the check will be honored upon presentment for payment. A **cashier’s check**, or treasurer’s check, is a check issued by a bank. A **bank wire transfer** is when one bank electronically transfers funds from its account to another bank account.

Seller Financing

The seller financing method of payment requires a great deal of skill and thought on the part of the paralegal in drafting or reviewing the contract. It involves a continuation of rights and obligations between the parties subsequent to the closing of the purchase and sale. The contract should carefully detail each aspect of the financing instruments that will be executed at closing and, if possible, attach copies of these instruments as exhibits to the contract. At a minimum, a contract should touch on the following aspects of seller financing: (a) the security for the note (usually this is the real property being sold); (b) the priority of the lien created (is it a first mortgage lien or a junior lien?); (c) when installment payments are due under the note; (d) late penalties for payments not timely made; (e) prepayment penalties or privileges; (f) will the obligation be due on the subsequent sale by the purchaser of the property? (g) interest rates payable; (h) if the transaction so dictates, release provisions if the purchaser should desire to have a portion of the real property released from the lien before payment of the full loan; (i) maintenance of insurance on the real property for benefit of the seller; (j) personal liability to purchaser under the note and security instrument; and (k) the amount of the note and the exact method by which the amount of the note will be determined at closing.

Preexisting Obligations

The term *loan assumption* often is used to cover both the situation in which the purchaser is in fact assuming liability under some preexisting debt and the situation in which a purchaser is taking title to the property subject to a preexisting debt. The difference is one of liability for the purchaser. A purchaser who “assumes” a preexisting debt is personally obligated to pay the debt. A purchaser who takes “subject to” a preexisting debt is not personally responsible for payment. The maximum risk to a purchaser who takes “subject to” a preexisting obligation is the loss of the real property through foreclosure in the event the obligation is not paid. A thorough discussion of the differences between “assumption” and...
“subject to” appears in Chapter 10. A contract should clearly identify the preexisting obligation by giving the name of the holder thereof, the amounts and due dates of payments, the interest rates, the account or loan number (if any), and the loan balances as of a given date. In addition, information concerning the assumability of the loan should be included in the contract. Certain representations concerning the preexisting obligation should be required from the seller, such as representations that the loan is not in default, that the seller will comply with all the terms and conditions of the financing documents in the normal course before closing, and of the existence or lack of any condition that the holder of such loan may impose on the purchaser.

Exchanges

An exchange of one parcel of real property for another parcel of real property is done for tax purposes to postpone the occurrence of a taxable event (e.g., the recognition of gain on the sale of appreciated real property). Contracts that contemplate a tax-free exchange should be carefully drafted and reviewed from both a tax and a real property law perspective. Paralegals seldom are involved in the drafting or negotiation of tax-free exchange contracts.

Quality of Title

A contract should contain a description of the quality of title the seller is obligated to convey and the purchaser is obligated to accept at the time of closing (Example 7–5). The terms usually used in contracts are “marketable title” and “insurable title.” A purchaser can agree to accept some lesser quality of title. In drafting or reviewing a contract, the inclusion of catchwords such as marketable title and insurable title without a clear definition can create problems. Marketable title usually means title that a prudent purchaser with full knowledge of all the facts would accept. Insurable title means title that is insurable by a title insurance company as being marketable. Real property may be “marketable” for a particular purpose even though numerous liens and encumbrances exist against the title, and title to any property is insurable, provided the owner is willing to pay a sufficient premium or accept insurance that excepts to any and every defect in title. A complete discussion of title insurance is set forth in Chapter 13.

Example 7–5

(a) Seller shall sell, convey, and assign to Purchaser at Closing good and marketable fee simple title to the Property subject only to the Permitted Title Exceptions as defined and set forth on Exhibit B attached hereto.

(b) Within thirty (30) days after the effective date of this contract, Purchaser shall cause title to the Property to be examined and shall furnish Seller with a written statement of any and all title matters, other than the Permitted Title Exceptions to which Purchaser objects. Purchaser shall also have the right to examine, or cause to be examined, title to the Property at any time or times after such initial title examination and prior to Closing and to furnish Seller with a written statement or statements of any and all additional matters, other than the Permitted Title Exceptions that affect the title to the Property or the use thereof and that arise, or first appear on record from and after the date of the initial title examination hereunder and to which Purchaser objects. Seller shall cooperate with Purchaser after receipt of any such written statement to correct, cure, or remove all matters described in such statement, and covenants to exercise diligent and good faith efforts to do so. Notwithstanding the above or the terms of this Section, in the event that any such matter results from any affirmative action taken by Seller subsequent to the date hereof, Seller covenants to expend such money and to take such other actions as may be necessary to correct, cure, or remove same. The Closing Date shall be postponed automatically for thirty (30) days, if necessary, to permit Seller to
Preparation and Review of a Real Estate Contract

The contract should clearly set forth exceptions to title that the purchaser is willing to accept. All permitted exceptions should be specifically stated in the contract. Most purchasers are unwilling to accept title "subject to utility easements and other restrictions of record." Such a broad statement could include many title exceptions that are unacceptable or that would be detrimental to the real property. Be especially careful of standard permitted title exceptions, which often appear in preprinted forms. These preprinted form exceptions include (a) utility easements of record serving the real property, (b) zoning ordinances that affect the property, (c) subdivision restrictions of record, and (d) leases. The real property may be so heavily burdened by utility easements as to prevent any improvements from being constructed on it. Zoning ordinances may preclude a purchaser from using the real property in the way he or she desires. Subdivision restrictions may place financial burdens on the purchaser or may require approval of owners’ associations before the consummation of the transaction. Finally, agreeing to accept title subject to leases without first reviewing the leases can create serious problems.

A contract should require the purchaser to notify the seller of any unacceptable title exceptions disclosed as a result of an examination of the public records and afford the seller the opportunity to cure these defects. A contract should provide either a reasonable time to
search title and reasonable time to cure defects or a stated period of time for the purchaser to examine title and a stated period of time required for curative action by the seller. The contract should contain provisions dealing with the failure of the parties to meet their obligations with reference to the title.

A contract should provide that the seller shall not alter or encumber the title to the property after the date of the contract without the written consent of the purchaser.

**Possession of the Property**

A definite date and time for the purchaser to take possession of the property should be included in every contract. Ideally, the time of possession should follow immediately after the closing. In many situations, however, sellers may have legitimate business or personal reasons for remaining in possession for a few days after closing. For example, in a home sale, it is not unusual for the seller to remain in possession for a few days after the sale to remove his or her personal effects from the property. If possession is delayed until after closing, the contract should address the issues of maintenance, insurance, loss through fire or other casualty, and rent for the period of the seller’s possession after closing.

**Closing or Settlement**

The closing of a contract is the date on which the parties agree to perform all their promises under the contract. In some states, this date is referred to as settlement. It is the time when the purchaser is required to pay the purchase price and the seller is required to transfer title and ownership to the purchaser. The date, time, and, if possible, the place for the closing should be established in the contract (Example 7–6). If the closing date is omitted from the contract, the courts will impose on the parties a reasonable time and place to close the transaction.

**Example 7–6**

Closing Date. Unless this Agreement is terminated by Purchaser pursuant to the terms of this Agreement, the Closing shall take place at the offices of Purchaser’s attorneys, or such location as is mutually agreeable to Purchaser and Seller, beginning at 10:00 A.M. on a business day (in Colorado Springs, Colorado) selected by Purchaser on or before November 11, 20__. The date of Closing shall hereinafter be referred to as the ‘Closing Date.’ Purchaser shall give Seller notice of the Closing Date at least five (5) business days prior thereto; provided, however, if Purchaser gives Seller no such notice of the Closing Date, then the Closing Date shall be November 11, 20__.

**Closing or Settlement Documents**

A contract should list the documents that the parties will be expected to sign at closing (Example 7–7). Because, in most cases, a comprehensive list is not available before the closing itself, the parties should be obligated to execute such other documents as are reasonably necessary to carry out the purpose and intent of the contract. Closing documents usually include affidavits of title, settlement statements, deeds of conveyance, and bills of sale, and assignments of warranty; notes, security instruments, and assignments of leases also may be included. Ideally, all closing forms are identified in and attached as exhibits to the contract; however, time and cost requirements and the fact that most of these documents have taken on a relatively standard format have made that somewhat unnecessary. The contract should, however, identify the type of deed that will be executed at closing to convey title to the real property. The deed usually is a general warranty deed, wherein the seller warrants...
to the purchaser that the title to the real property is free from liens and claims by any parties other than those listed therein and the seller covenants to defend the title represented against any claims. If a contract is silent regarding the form of deed, a general warranty deed will be required. A lesser type of deed, however, can be contracted for. Deeds are discussed fully in Chapter 8.

Example 7–7

Seller’s Obligations. At Closing, Seller shall:

(a) Execute, acknowledge, and deliver to Purchaser a general warranty deed in recordable form, the form of which is attached hereto as Exhibit ______, conveying the Property to Purchaser subject only to (i) taxes for the years subsequent to the year of Closing; (ii) the zoning classification as of the Effective Date; and (iii) the Permitted Exceptions;

(b) Execute and deliver to Purchaser the following additional conveyance documents: (A) an Affidavit reciting Seller’s non-foreign status within the meaning of Section 1445(f) (3) of the Internal Revenue Code of 1986; (B) an Assignment and Assumption of Leases assigning to Purchaser Seller’s interest in the Leases, a form of which is attached hereto as Exhibit ______; and (C) an Assignment of Contracts, Other Rights, and Intangible Property assigning to Purchaser the Intangible Property, the form of which is attached hereto as Exhibit ______; and (D) a Lender Estoppel Letter from the holder of the Mortgage Loan, a proposed form of which is attached hereto as Exhibit ______; (E) Subordination, Attornment, and Non-Disturbance Agreements satisfactory to Lender, signed by tenants leasing at least eighty-five percent (85%) of the net rentable square footage of the Property, a proposed form of which is attached hereto as Exhibit ______;

(c) Execute and deliver to Purchaser a Closing Statement setting forth the adjustments and prorations to the Purchase Price as well as the costs pursuant to this Agreement as elsewhere specifically provided herein (the “Closing Statement”);

(d) Deliver to Purchaser a certified and updated rent roll reflecting all the tenants under Leases to the Property as of the Closing Date and indicating thereon any delinquencies with respect to rent due;

(e) Deliver to Purchaser all permits, certificates of occupancy, and licenses issued by Governmental Authorities or utility companies in connection with the occupancy and use of such of the Improvements as are in the possession of Seller;

(f) Deliver to Purchaser a form letter to all tenants under Leases stating that Purchaser has acquired the Property from Seller, that future rents should be paid as specified by Purchaser, and that Purchaser will be responsible for all tenants’ security deposits, if any;

(g) A certificate of Seller stating (A) that Seller has no knowledge of any pending or threatened condemnation proceedings or any taking by any Governmental Authority that in any way affects the Property, (B) that there are no Leases (other than Leases approved by Purchaser), no Service Contracts (whether written or oral), no employees, no insurance policy endorsements or claims, no other notices from any Governmental Authority regarding any violations of any Requirements of Law affecting the Property except as heretofore provided to Purchaser as required elsewhere in this Agreement;

(h) The plans and specifications for such of the Improvements, including all amendments thereto, as are in the possession of Seller;

(i) The originals of all Leases, including all amendments thereto;

(j) All information and materials required for full compliance under the Foreign Investors in Real Property Tax Act;

(k) All keys to the Improvements in Seller’s possession and a list of all other persons who, to the best of Seller’s knowledge, are in possession of keys to the Improvements, other than keys to tenant space in the possession of tenants;

(l) Such other documents, instruments, and agreements as Purchaser may reasonably require to effect and complete the transactions contemplated herein and to obtain an owner’s title insurance policy insuring the interest of Purchaser, as owner, in the amount of $7,300,000.00, free and clear of all exceptions except the Permitted Exceptions, for a premium calculated at standard rates, including, without limitation, a Seller’s Affidavit of Title in the
Practical Real Estate Law

Example 7–8

Closing Costs. In connection with Closing, Seller shall pay the Colorado real estate transfer tax and all costs relating to the satisfaction, cure, and removal of all title defects (except the Permitted Exceptions) undertaken by Seller as herein required and the payment of one-half (1/2) of all transfer, assumption, or other fees due the holder of the Mortgage Loan to obtain the consent to the transfer of the Property to the Purchaser and the consent to the Note and Deed of Trust. Purchaser shall pay the costs of the premiums payable or costs incurred in connection with the issuance of the owner’s title insurance commitment and the owner’s title insurance policy in favor of Purchaser and all costs of recording the general warranty deed. The Purchaser shall be solely responsible for the new survey costs. Each party shall pay its own attorney’s fees.

Proration, Closing Costs, and Financial Adjustments

Any item that will be prorated between the parties at the time of sale should be listed in the contract, along with the date of such proration (Example 7–8). These items usually include insurance premiums; property taxes for the current year; rents; interest on any loans against the real property that the purchaser is assuming; special assessments, such as sanitation fees, which are liens against the real property; utility charges; and mandatory owners’ association fees. The contract should provide for the handling of any items that will be credits to either party and debits to the other, such as fees for utility deposits. Furthermore, a contract should designate which party will pay the costs involved in closing the transaction. These costs include document recording, taxes on transfer, title examination charges, legal fees for each party, survey, title insurance, intangibles tax, recording fees, assumption fees, and loan costs. Closing costs usually are negotiable, and the allocation of these costs will be whatever the parties agree to.

Example 7–8

Closing Costs. In connection with Closing, Seller shall pay the Colorado real estate transfer tax and all costs relating to the satisfaction, cure, and removal of all title defects (except the Permitted Exceptions) undertaken by Seller as herein required and the payment of one-half (1/2) of all transfer, assumption, or other fees due the holder of the Mortgage Loan to obtain the consent to the transfer of the Property to the Purchaser and the consent to the Note and Deed of Trust. Purchaser shall pay the costs of the premiums payable or costs incurred in connection with the issuance of the owner’s title insurance commitment and the owner’s title insurance policy in favor of Purchaser and all costs of recording the general warranty deed. The Purchaser shall be solely responsible for the new survey costs. Each party shall pay its own attorney’s fees.

Prorations. The following items shall be apportioned and prorated (based on a 30-day month, unless otherwise indicated) between the Seller and the Purchaser as of the Closing Date so that credits and charges for all days prior to the Closing Date shall be allocated to the Seller and credits and charges for the Closing Date and for all days thereafter shall be allocated to the Purchaser:

(a) Taxes. At the Closing, all ad valorem property taxes, water and sewer charges, and assessments of any kind on the Property for the year of the Closing shall be prorated between Purchaser and Seller as of 12:01 a.m. on the Closing Date. Such proration shall be based upon the latest ad valorem property tax, water, sewer charge, and assessment bills available. If, upon
receipt of the actual ad valorem property tax, water, sewer, and assessment bills for the Property, such proration is incorrect, then either Purchaser or Seller shall be entitled, upon demand, to receive such amounts from the other as may be necessary to correct such malapportionment. This obligation so to correct such malapportionment shall survive the Closing and not be merged into any documents delivered pursuant to the Closing.

(b) Rents. Purchaser shall receive a credit for all amounts due under the Leases in effect at Closing, hereinafter referred to as the "Rents," collected by Seller prior to Closing and allocable in whole or in part to any period following the Closing Date. Seller shall deliver to Purchaser any Rents received after Closing. Purchaser shall deliver to Seller any Rents received after Closing that relate to periods prior to and through the Closing Date; provided, however, that any such Rents collected by Purchaser after the Closing shall be applied first toward Rents due which shall have accrued after the Closing Date and then toward Rents that accrued prior to the Closing Date. Purchaser shall use its best efforts (short of incurring legal fees and expenses or taking other action that would not be in its best interest as owner of the Property) to collect all such delinquent Rents.

In the event that Purchaser is unable to collect delinquent Rents due Seller within thirty (30) days after the Closing Date, then Seller may pursue collection of such delinquent Rents from the respective Tenants in accordance with its rights under Colorado law; provided, however, Seller shall have no right to collect Rents in any manner that would result in an interference with the Tenant's rights of possession under its lease or in any way interfere with the landlord/tenant relationship between Purchaser and the Tenant. (For example, Seller shall have no rights to dispossess Tenant in an effort to collect delinquent Rents.)

(c) Other Expense Prorations. All other reasonable expenses normal to the operation and maintenance of the Property that require payments either in advance or in arrears for periods that begin prior to the Closing Date and end thereafter. Without limiting the generality of the foregoing, such expenses shall include water; electric; telephone and all other utility and fuel charges; fuel on hand (at cost plus sales tax); any deposits with utility companies; employee wages, salaries, benefits and pension, health and welfare insurance, Social Security, and such other contributions; and charges under employee contracts and/or Service Contracts.

(d) Security Deposits. Purchaser shall receive a credit for the security deposits paid under the Leases in existence and in effect on the Closing Date.

(e) Leasing Commissions. Seller warrants and represents that there are no leasing commissions due and owing or to become due and owing under any of the Leases or any renewals and extensions thereof, as of the Closing Date. Seller agrees to hold harmless from and to indemnify and defend Purchaser from and against any and all such leasing commissions and all other fees, charges, and compensation whatsoever due any person or entity in connection with the procuring of any Lease together with all extensions and renewals thereof or otherwise relating to any Lease. This provision shall survive the Closing and the consummation of the transactions contemplated herein.

Condition of the Property and Risk of Loss

Most contracts provide that the real property will be in substantially the same condition at the time of closing as at the time of contract, natural wear and tear excepted. It is suggested this warranty be extended to the time of possession, if possession should occur after closing. In addition, contracts usually provide that heating, plumbing, and electrical systems will be in normal working order at the time of closing and further provide that the purchaser has the right and obligation to make inspection of these systems before closing. Many contracts provide the purchaser with a right of inspection or "walk-through" before closing and require the seller to repair any items found in need of repair as a result of that inspection. Sellers often put language in the contract limiting their responsibility to make repairs to the expenditure of a fixed sum of money; if the repairs exceed the fixed sum, the purchaser does not have to purchase the real property.
A contract also should indicate which party bears the risk of loss by fire or other casualty to the real property during the contract period (Example 7–9). In many states, the purchaser bears the risk of loss unless the contract provides otherwise. Most purchasers are unaware of this rule, and many do not buy insurance until the day before closing. The contract should allocate the risk of loss during the contract period to the seller. The contract should indicate whether options are available to the purchaser if the real property should be partially damaged or totally destroyed before closing. These options might include consummating the transaction and receiving the proceeds of any insurance settlement resulting from the loss or requiring the seller to restore the real property with insurance proceeds or termination of the contract.

Example 7–9

Risk of Loss. Risk of loss or damage to the Property or any part thereof by condemnation, eminent domain, or similar proceedings, or by deed in lieu or under threat thereof (collectively, a “Taking”), or by fire, flood, or other casualty from the effective date of the contract until delivery of the limited warranty deed will be on Seller and after the delivery of the limited warranty deed will be on Purchaser. In the event of any such loss or damage to all or to a material part of the Property or any part of the Improvements prior to the delivery of the general warranty deed, this Agreement may, at the option of Purchaser to be exercised by written notice to Seller, be declared null and void and Purchaser shall be returned the Deposit and both parties hereto shall be released from any further rights and duties hereunder, or this Agreement shall remain in full force and effect and Seller shall transfer to Purchaser on the Closing Date all insurance proceeds or condemnation awards received by Seller because of such casualty or Taking and all of Seller’s right, title, and interest in and to any recovery or claims under any insurance policies or condemnation awards relating to the Property.

Upon the happening of one of the events in the preceding paragraph, subsequent to the Inspection Deadline and prior to delivery of the general warranty deed, if the cost of repair or replacement or, in the event of a Taking, if the reduction in the value of the project is TWENTY-FIVE THOUSAND DOLLARS ($25,000.00) or less, Purchaser shall close and take the Property as diminished by such events and Seller shall transfer to Purchaser on the Closing Date all insurance proceeds or condemnation awards received by Seller because of such casualty or Taking and all of Seller’s right, title, and interest in and to any recovery or claim under any insurance policies or condemnation awards relating to the Property together with a credit to Purchaser for the amount of any deductibles contained in any insurance policy.

Earnest Money

Earnest money is money paid by the purchaser at the time the contract is signed. It is not easy to describe what role in the contract the earnest money plays. Earnest money is not consideration for the contract unless the contract specifically provides so. Earnest money is not a partial payment of the purchase price unless so designated and delivered to the seller. Earnest money seems to be a token deposit made to evidence the purchaser’s intent to be bound by the terms of the contract (i.e., a showing of good faith). The contract should provide for the disposition of the earnest money in every possible situation (e.g., consummation of the transaction, default by seller, default by purchaser, failure of a contingency, exercise of an election to void the contract granted to either party, mutual termination of the contract) and for what purpose the earnest money deposit is to be used (Example 7–10). In addition, if real estate brokers are involved, a contract should take into account what claims, if any, the brokers may have on the earnest money deposit in all such events. Earnest money often is placed in a trust or an escrow interest-bearing account. Contracts should provide...
what quality of account it is to be invested in, for example, FDIC (Federal Deposit Insurance Corporation)-insured deposits. In addition, the contract should make it clear who is to get the interest. The party who is entitled to the interest should provide the holder of the escrow deposit with their federal tax identification number.

**Example 7–10**

**Earnest Money Deposits.** Purchaser shall deliver its earnest money deposit to Colorado Title Company (the "Escrowee") upon Purchaser's execution of this Agreement in the form of a cashier's check (drawn on a Colorado financial institution) in the sum of SEVENTY-FIVE THOUSAND DOLLARS ($75,000.00) (the "Earnest Money"), made payable to Escrowee in trust said Earnest Money together with any interest earned thereon shall hereinafter be referred to as (the "Deposit"). The Deposit shall be held and disbursed by Escrowee as provided in this Agreement.

The Escrowee is directed to hold the Deposit as escrowed funds in an FDIC-insured, interest-bearing account at The Second National Bank in Colorado Springs, Colorado. Purchaser represents that its U.S. federal tax identification number is 86-11314. Purchaser's tax identification number shall be credited with any interest earned on the Earnest Money prior to its being disbursed by Escrowee. Purchaser shall complete and execute a Payer's Request for Taxpayer Identification Number (Form W-9). Seller and Purchaser hereby agree to hold Escrowee harmless from any loss of escrowed funds, including the Deposit, for any reason whatsoever except for Escrowee's fraud or gross negligence or for loss of interest caused by any delay in the deposit or early withdrawal of the Deposit from the interest-bearing account. This Agreement shall serve as escrow instructions and an executed copy of this Agreement shall be deposited by Purchaser with Escrowee. At Closing, the Deposit shall be delivered to Seller and applied against the Purchase Price. In the event of a termination of this Agreement or a default under this Agreement, the Deposit shall be delivered or disbursed by the Escrowee as provided in this Agreement. If any dispute or difference arises between the Purchaser and Seller or if any conflicting demands are made upon the Escrowee, the Escrowee shall not be required to determine the same or to take any action thereon. Rather, the Escrowee may await settlement of the controversy or deposit the Deposit into the Registry of the Superior Court of Elk County, Colorado, in an interpleader action or otherwise for the purpose of having the respective rights of the parties adjudicated. Upon making such deposit or upon institution of such interpleader action or other actions, the Escrowee shall be fully relieved and discharged from all further obligations hereunder with respect to the sums so deposited.

Should any party terminate this Agreement, as permitted herein, or declare the other party in default of its obligations hereunder, and demand payment of the Deposit to it, then Escrowee shall pay to it the Deposit, provided that declaring party provides evidence of the other party's receiving its demand notice, and within seven (7) business days following the other party's receipt of same, the nondeclaring party has not delivered written objection to Escrowee's disbursing the Deposit. If any dispute arises that is not resolved within thirty (30) days after such written objection, Escrowee shall deposit the Deposit into the Registry of the Superior Court of Elk County, Colorado, whereupon Escrowee's obligations and liabilities hereunder shall cease and terminate.

**Brokers**

If a real estate broker is involved, the contract should provide for the rights of the broker to a commission and the obligations incumbent on the broker under the contract (Example 7–11). It is not unusual for contracts to provide that the commission will be payable only on the closing of the transaction and in accordance with the terms of the contract. In addition, if the seller should not receive full proceeds at closing, the payment of the commission might be tied to the subsequent receipt of such proceeds. This usually is done by requiring the broker to accept a note from the seller as part payment of the commission.
The note requires a payment in the same ratio and at the same time that the seller receives payment from the purchaser and conditions the seller’s obligations to pay on purchaser's receipt of buyer’s payments. For example, if the sales price is being paid in four equal annual installments, the contract may provide that the real estate commission will be paid by the seller to the broker in four equal annual installment payments at the same time the seller receives payment from the purchaser.

### Example 7–11

**Brokerage Commissions.** Each party further represents to the other that except for American Realty Company (“Broker”), no broker has been involved in this transaction. Seller shall be solely responsible for paying any commission due to the Broker in connection with this transaction. Seller shall pay in cash or good funds at Closing brokerage commissions of one percent (1%) to Broker. No commission shall be due and owing Broker should the sale and purchase of the Property fail to close for any reason whatsoever, including, without limitation, the breach of this Agreement by Seller or Purchaser. Under no circumstances whatsoever shall Broker be entitled to retain any portion of the Deposit. In the event any other claims for brokerage commissions or fees are ever made against the Seller or the Purchaser in connection with this transaction, all such claims shall be handled and paid by the party whose actions or alleged commitments form the basis of such claim. Seller further agrees to indemnify and hold harmless the Purchaser from and against any and all such claims or demands with respect to any brokerage fees or agent’s commissions or other compensation asserted by any person, firm, or corporation in connection with this Agreement or the transactions contemplated hereby arising from actions or alleged commitments of the Seller. Purchaser further agrees to indemnify and hold harmless the Seller from and against any and all such claims or demands with respect to any brokerage fees or agent’s commission or other compensation asserted by any person, firm, or corporation in connection with this Agreement or the transaction contemplated hereby arising from actions or alleged commitments of the Purchaser. This provision shall survive Closing and the conveyance of the Property by Seller to Purchaser.

Many preprinted contract forms used by realty or broker associations provide that the commission will be payable to the broker in full at closing. They also provide that a default of either purchaser or seller will enable the broker to enforce commission rights against the defaulting party, usually by application of the earnest money. In addition, the contract may include statements to the effect that neither party has relied on warranties or representations made by the broker, but rather only those made by the other parties; that the broker is acting for the accommodation of the parties in holding earnest money and is therefore indemnified by each against any claims in connection therewith; and that the broker is the procuring cause of the contract. A broker should be made a party of the contract to enforce commission rights.

If no broker is involved in the transaction, a contract should so indicate and have the parties mutually indemnify each other against the possible claims of brokers resulting from the actions of each.

### Merger

The law in many states provides that all the promises, conditions, and covenants contained in a contract are merged into the deed of conveyance at the time of closing and do not survive the closing of the sale. This rule can be circumvented by providing in the contract that all provisions shall survive closing or by having the parties sign at closing an agreement for the survival of warranties, representations, and obligations of the parties contained in the contract (Example 7–12).
**Example 7–12**

*Survival.* The provisions of this Agreement shall survive Closing and the execution and delivery of the deed and instruments conveying the Property.

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**Assignment of Contract**

The general rule is that contracts are freely assignable by the purchaser and seller unless assignment is prohibited in the contract. Most sellers do not agree to the unlimited assignability of the contract by the purchaser. This is particularly true when a unique relationship exists between the parties that is, at least in part, the reason the seller has entered into the contract (e.g., when the seller is extending credit for a portion of the price and is relying on the financial strength of the purchaser or when the seller is giving preferential price or terms to a friend or relative). It is, therefore, not uncommon for a contract to contain a provision requiring the seller’s written consent before the assignment of the purchaser’s interest. The giving of consent to assignment can be conditioned on, among other things, the proposed assignees’ agreeing to assume all obligations binding on the assignor under the contract and being bound by all terms of the contract as if an original party. In addition, a seller may require the original purchaser to agree to remain liable for damages if the assignee should default under the contract. If, at the time of contracting, there exists a possibility that the purchaser may desire to close the sale in some name other than that in which the contract is executed, for example, a general or limited partnership or a corporation or limited liability company not yet in existence, the contract also should provide for the seller’s consent (Example 7–13).

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**Example 7–13**

*Assignability.* Purchaser shall not have the right to assign this Agreement to any person(s), partnership, or corporation, including a partnership or corporation to be formed hereafter, without the consent of Seller. In the event of such assignment, the assignee shall assume the obligations of Purchaser under this Agreement, and Purchaser shall have no further obligation or liability under this Agreement. Seller may assign its rights but shall remain bound under the terms of this Agreement and the representations, warranties, and covenants contained herein.

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**Time Is of the Essence**

The general rule is that time limits set forth in a contract are not strictly enforceable unless **time is of the essence.** If time is not of the essence, then a date for performance is not an exact critical date. The courts will permit performance to take place within a reasonable period of time after the date specified in the contract. For example, if the closing date is August 15 and time is not of the essence, the courts will permit the parties to close within a reasonable period of time after August 15. Most sellers and purchasers do not want to operate within the nebulous realm of reasonable time and so desire that dates set forth in a contract be critical and strictly enforceable. Therefore, every contract should contain a provision that time is of the essence for the contract and for each and every obligation of the purchaser and seller (Example 7–14). The phrase most often used is simply “time is of the essence.”

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**Example 7–14**

*Time.* Time is of the essence of this Agreement and of each of its provisions.
Warranties of the Parties

Any warranty, statements, or representations made by either the seller or the purchaser that were relied on by the other in deciding to enter the contract for purchase and sale of the property should be affirmatively set out in the contract (Example 7–15). Warranties commonly required of a seller include the following: (a) that the seller holds title to the real property of equal quality to that which the seller is required to convey; (b) that the seller will perform all duties and obligations of the contract; (c) that the seller has the right and full authority to enter into the contract; (d) that no other party is expressing any claim to any portion of the real property and the seller will take no action before closing that would diminish the quality of title; (e) that the seller will make no change in the zoning of the real property; (f) that the seller is aware of no pending governmental action that will affect the real property or burden it with additional assessments; (g) that utilities are available to the real property; (h) that the real property is accessible by way of public roads; and (i) that the real property contains a minimum number of acres or square feet or has a minimum amount of frontage on a public street.

Warranties commonly asked for from a purchaser are (a) that the purchaser has the right and authority to enter into the agreement; (b) that the purchaser has financial resources to meet the financial obligations required under the contract; (c) that the purchaser will perform his or her duties in accordance with the agreement; (d) that no parties have initiated or threatened any action that might affect the purchaser’s ability to perform; and (e) that the purchaser will take no action that would diminish the quality of the seller’s title before closing.

It is a good idea to have the parties reaffirm the warranties and representations at closing by separate instrument. The contract should provide that the parties will sign such a separate instrument at closing. Contracts also usually provide for the rights and obligations of the parties in the event that any warranty proves untrue. Specifically, the contract will provide that in the event a warranty proves untrue, a party can either terminate the contract or treat such failure as a default under the contract and exercise all its remedies for default.

Example 7–15

(a) **Seller’s Covenants and Representations.**

(i) Seller has obtained all consents, approvals, or authorizations necessary to execute this Agreement and to consummate the transaction contemplated hereby, and all documents referred to herein will be validly executed and delivered and binding upon Seller.

(ii) Seller has no knowledge of any material defect in the Improvements or any part thereof and has no knowledge of and has received no notice from any Governmental Authority (as defined below) of any violation of any Requirement of Law (as defined below) relating to the Property or any part thereof;

(iii) Seller has no knowledge of and has received no notice from any insurance company or board of fire underwriters or similar agency that there exists any condition or circumstances on the Property or any part thereof, which must be corrected in order to maintain the effectiveness, or as a condition precedent to the issuance of, any insurance policy affecting the Property or any part thereof or which is in violation of, any applicable fire code or similar rule, regulation, or order for such board of fire underwriters or similar agency;

(iv) Seller has no knowledge of and has received no notice of any litigation, claim, or suit that is pending or threatened that could adversely affect the Property or any part thereof or title thereto (exclusive of any litigation, claim, or suit brought against a tenant of the Property after the effective date of the contract wherein Seller is not named a defendant or a third-party defendant and wherein no counterclaims are alleged against Seller, provided, however, that Seller will give Purchaser prompt notice of all such litigation, claims, and suits);
(v) Neither Seller nor, to the best of Seller’s knowledge, any previous owner of the Property or any part thereof has used, generated, stored, or disposed of any Hazardous Materials (as defined below) in or on the Property or any part thereof; or has used or disposed of any Hazardous Materials in connection with the use, operation, construction, or repair of the Property or any part thereof. Seller shall hold Purchaser harmless and shall indemnify and defend Purchaser from and against any and all losses, damages, claims, and liabilities whatsoever in any way relating to or arising out of any breach of the foregoing representation. This provision shall survive Closing and the consummation of the transactions contemplated hereby:

(vi) Seller owns good and unencumbered title to the Tangible Personal Property and Intangible Personal Property, and Seller has done nothing to encumber same during Seller’s ownership thereof other than those certain Loan Documents listed on Exhibit ___ attached hereto;

(vii) Seller has not operated the Property within the past five (5) years under any other name or trade name of which it has not notified Purchaser;

(viii) Seller shall not cause or permit to exist (A) any mortgage, deed to secure debt, security deed, security agreement, assignment, or other similar instrument or agreement or any lien or encumbrance whatsoever (other than the Permitted Exceptions or those listed on Exhibit ___) to attach to or affect title to the Property or any part thereof from and after the Effective Date except for the Leases approved by Purchaser; or (B) any matters not shown on the new survey;

(ix) Seller represents, to the best of its knowledge, that the mechanical, electrical, plumbing, heating, ventilation, and air conditioning systems (HVAC), roofing, drainage, sanitary sewerage, and utility equipment facilities and systems servicing the Property and the improvements thereon are in operational order and shall be so maintained through and including the Closing Date. Seller represents that it is aware of no defects in any of said systems;

(x) Seller covenants that it shall not enter into any leases pertaining to the Property after the Effective Date without prior written approval of Purchaser. Purchaser shall approve leases containing reasonable business terms, including base rentals of at least $16.00 per square foot and $1.75 of common area maintenance (CAM) changes. Seller covenants and represents that it shall incur no brokerage commissions pertaining to leases entered into prior to the Closing Date on any leases negotiated in any respect by Seller prior to the Closing Date;

(xi) Seller represents that it has no notice of and is not aware of any violation of the Property and improvements of any applicable zoning laws, ordinances, or regulations including, without limitation, all parking requirements and building setback requirements (except as shown on the existing survey, which Purchaser has the right to consider during the inspection period);

(xii) Seller shall continue to operate, manage, and maintain the Property in good condition and in a good businesslike manner, such operation and maintenance to include the undertaking of any reasonably necessary capital improvements or repairs, through and including the Closing Date. Such continuous operation and maintenance shall also be a condition precedent to Closing; and

(b) Purchaser’s Covenants and Representations. Purchaser hereby represents and warrants to Seller that Purchaser has obtained all consents, approvals, or authorizations necessary to execute this Agreement and to consummate the transaction contemplated hereby, and all documents referred to herein will be validly executed and delivered and binding upon Purchaser.

Contingencies

A condition precedent in a contract is a situation that must be resolved in accordance with the terms of the contract before one or both of the parties are required to perform their contractual obligations. These elements are also called conditional clauses of the contract, or contingencies. A contract can be made conditional on virtually anything. Some of the more common contingencies include financing, rezoning, sale of other property, condition precedent

Condition in a contract that must be satisfied in accordance with the terms of the contract before one or both of the parties are required to perform their contractual obligations.
inspection of property for physical defects, purchase of adjacent property, engineering reports, issuance of building or use permits, and review of documents affecting title to the property. In drafting conditional clauses, exact standards by which the parties can determine when and if the condition has been met must be provided. In addition, the contract should require the parties to use due diligence and good faith in attempting to meet the contingency. For example, a common contingency found in contracts is the financing contingency. This contingency means that the purchaser does not have an obligation to purchase the property unless the purchaser can obtain an acceptable loan for a large portion of the purchase price. Financing contingencies usually require that the contingency set forth the amount of the loan, the interest rate, and the repayment term of the loan that the purchaser is seeking to obtain. A financing contingency also requires the purchaser to make an application for a loan and to diligently try to obtain the loan. A failure to meet a condition precedent would make a contract unenforceable. Most contracts provide for repercussions in the event a contingency fails with regard not only to the contract as a whole, but also to any earnest money as well. The contract also should indicate for whose benefit the condition applies and provide if either party has a right to waive the conditions.

**Definitions**

Although most terms and phrases used in a contract take on their ordinary meanings, many contracts include a definitions section that carefully and clearly defines key words and phrases. This is particularly important when the parties are not from the same geographical area and the possibility exists for misunderstanding as to the exact meaning of certain terms.

**Default**

A contract should provide the exact rights and obligations of the parties in the event that one party fails to perform in accordance with the terms of the contract. The contract also should list the events that constitute a default. The remedies for breach of contract are discussed in Chapter 6.

**Notice**

Because most contracts provide that parties need to notify each other of different events, such as title objections, date for closing, and results of inspection reports, there should be a paragraph that outlines when and how notices are to be given (Example 7–16). Most notice provisions deal with personal delivery and certified mail, although under modern practice, contracts provide for notice to be sent by overnight express carriers, fax, and even e-mail. If one of the parties is a partnership, corporation, or limited liability company the contract should specify an individual to receive notice.

***Example 7–16***

**Notification.** Any notice or demand under which the terms of this Agreement or under any statute must or may be given or made by the parties hereto shall be made in writing and shall be deemed to have been delivered when hand delivered; as of the date sent by an overnight courier; or as of the date of postmark affixed by the U.S. Postal Service, by mailing the same
Entire Agreement

The *parol evidence rule* that is applicable in most states provides that a written agreement is the best and only evidence of the agreement between the parties and that the parties are not permitted to bring in oral testimony regarding other agreements concerning the transaction. The law in many states, however, requires that the contract contain a clause that indicates that it is the entire agreement and that no other written or oral agreements affecting the transaction exist (Example 7–17). Typically, the clause states that "the contract contains the entire agreement of the parties thereto concerning the subject matter thereof and that representations, inducements, promises, or agreements oral or otherwise not expressly set forth therein shall be of any force or effect."

In addition, the contract should provide that it cannot be amended or modified unless in writing and executed by all parties to it.

**Example 7–17**

*Entire Agreement. No agreements, representations, or warranties unless expressly incorporated or set forth in this Agreement shall be binding upon any of the parties.*

Applicable Law

The general rule in most states is that a contract for the sale and purchase of real property will be governed by the law of the state in which the real property is located. Despite this general rule, most contracts do specify the law of the state that will govern the construction and enforcement of the contract (Example 7–18).

**Example 7–18**

*This Agreement shall be construed and interpreted under the Laws of the State of Colorado.*

Additional Provisions

It is not unusual, when using a preprinted form, to find additional provisions added to the contract by way of addendum or exhibit. It is important that there be a provision in the contract that provides that if conflict between the preprinted portion of the contract and the special stipulations contained in the addendum or exhibit should arise, the special stipulations will control.
Offer and Acceptance

Because most contracts are not signed at the same time by both seller and purchaser but are prepared by the seller or the purchaser and presented to the other party for consideration, it is important that the contract contain a clause that addresses the issue of when and how the offer is to be accepted and converted into a contract. This usually is done by a provision that indicates that the contract represents an offer that must be accepted by the signature of the other party to the contract on or before a certain date (Example 7–19).

Example 7–19

This instrument shall be regarded as an offer by the Purchaser or Seller who first signs to the other and is open for acceptance by the other until ___ o’clock ___ m., on this ___ day of ___, 20 ___, by which time written acceptance of such offer must have been actually received. The above offer is hereby accepted, _____ o’clock ______m. on this _____ day of _______ 20 ______.

In addition, it is preferable to make the date of the contract a certain date, especially if other dates, such as the date for doing a title examination or inspection of the property, are calculated from the date of the contract. For example, the purchaser must examine title and present objections to the seller not later than thirty days from the date of the contract.

Execution

The seller, purchaser, and other parties to a contract should execute the contract properly and in accordance with their authority (Example 7–20). It is not necessary for real estate contracts to be witnessed and notarized, and real estate contracts usually are not recorded. From the seller’s perspective, recording of the contract is not advisable because if the contract is not closed, the record of the contract might represent a cloud on the property title, thus creating future problems for the seller.

Example 7–20

IN WITNESS WHEREOF, the parties hereto have set their hands and seals as of the Effective Date.

PURCHASER:
PURCHASER, INC., a Colorado corporation

By: (SEAL)
George W. Purchaser,
President
Date Executed: ________________________

SELLER:

____________________________________
JoAnne Seller
(SEAL)

____________________________________
Alice Seller Longworth
(SEAL)

____________________________________
Warren Seller
(SEAL)
Date Executed: ________________________
The undersigned as Escrowee hereby acknowledges receipt of a copy of this Agreement and of the initial Earnest Money deposit by check $___ drawn on ___, subject to collection, and agrees to hold said funds pursuant to the terms of this Agreement.

COLORADO TITLE COMPANY

Dated: ____________________________ By: ___________________________________

Charles B. Jares, as
Executive Vice President

The preceding list is by no means exhaustive of all possible areas of concern in preparing or reviewing a real estate sales contract. The outline does touch on the major issues that a paralegal can expect a real estate contract to address. A paralegal should remember that each contract is unique and should reflect the agreement between the parties to that particular transaction. Drafting and reviewing a comprehensive sales contract requires time and careful attention to detail but should ultimately reduce the possibility of later misunderstanding between the parties.

An example of a contract for the purchase and sale of a home is shown in Exhibit 7–1 at the end of this chapter. An example of a contract for the purchase and sale of a large tract of vacant land is shown in Exhibit 7–2 at the end of this chapter.

Caveat Emptor and the Seller Disclosure Form

Usually, real estate transactions have been governed by the common law doctrine of caveat emptor, which means “let the buyer beware.” The doctrine of caveat emptor provides that a seller, absent some express warranty, is not liable to a buyer for any conditions regarding the title to the land existing at the time of transfer or any physical conditions concerning the improvements located on the land. Caveat emptor requires that buyers bear the burden of examining and finding any defects in both the title and condition of improvements on real estate they purchase. A buyer who fails to obtain any express warranties from a seller buys the property “as is” and “at risk.”

Most states have modified the rule of caveat emptor, at least as it applies to residential property, by requiring that a seller of residential real estate complete a disclosure form to inform the buyer about the condition of the property. A sample of a seller disclosure form is shown as Exhibit 7–3 at the end of this chapter. The form requires the seller to make a good faith disclosure of all information available to the seller at the time the disclosure statement is given. Most states require that the seller disclosure statement be delivered to the buyer either prior to the seller accepting a written offer from the buyer or the buyer accepting a written offer from the seller in the sale of residential real estate. Disclosure statements require that a seller disclose all known conditions materially affecting the property and any information pertaining to basements, foundations, wells, pumps, roofs, septic tanks, sewer systems, heating systems, plumbing, electrical systems, asbestos, and structural damage, among others. Cases that have interpreted the effect of a seller disclosure statement generally hold that a seller who intentionally misrepresents the property in the seller disclosure statement may be liable in damages to the buyer. A seller who was unaware of structural damage is not usually liable for misrepresentation if the statement was given in good faith and without knowledge of the problem.

caveat emptor

A doctrine which provides that a seller, absent some express warranty, is not liable to a buyer or any conditions regarding the title or improvements to the land existing at the time of transfer.
SPECIAL COMMERCIAL CONTRACT ISSUES

The purchase and sale of a commercial investment property, such as a shopping center, office building, or apartment project, presents some special concerns for the purchaser and seller. The purpose of the following discussion is to itemize and briefly describe some of the provisions and issues that need to be addressed in the commercial real estate sale contract.

Description of the Property

The sale of a commercial real property includes more than just the real estate. Most apartment projects and office buildings contain a number of personal property items that are used in the maintenance and repair of the real property. These personal property items, such as snow removal equipment, irrigation systems, landscaping, and washing and dryer services, all need to be described and included within the description of the property being bought and sold. In addition, many times a parcel of commercial real property is being operated under a certain trade name, such as Brook Tree Apartments or Corporate Campus Office Center. The purchaser should obtain the rights to these trade names, and a provision for this assignment and transfer should be contained in the contract (see Example 7–3).

Representations, Warranties, and Covenants

In addition to the normal representations, warranties, and covenants made by a seller in a real estate contract, a number of additional representations, warranties, and covenants are normally part of a commercial contract (see Example 7–15).

Warranties Regarding Leases

Most commercial properties are income-producing, which means that the real property has been leased to tenants. There usually is a warranty on the part of the seller that all the leases, agreements, rent rolls, and income and expense statements that had been previously delivered to the purchaser are true and correct. The seller also usually agrees not to enter into any new leases during the contract period before closing without the purchaser’s consent, or in the alternative, the contract will provide certain rental guidelines, such as how much rent and how long the lease must be for the seller to follow.

Service Contracts

Many commercial properties involve contracts for such services as janitorial, landscaping, and pest control. The seller should warrant that the copies of the service contracts that have been provided to the purchaser are true and correct copies. The seller also should warrant that it will not enter into any new service contracts before closing or, in the alternative, will not enter into any service contracts that are not terminable within thirty days notice.

No Litigation Affecting Seller or Property

The owners of commercial properties are more likely to have litigation filed against them than the owners of homes. It is not unusual in large commercial projects for there to be litigation between the owner and one or more of the tenants. There also may be litigation against the seller in regard to accidents, such as a slip and fall in a supermarket. Most commercial contracts require the seller to warrant that there is no litigation either pending or threatened against the seller or the real property. If there is litigation, a full disclosure of the litigation should be made in the contract. If litigation is threatened or pending, the purchaser usually wants indemnities from the seller regarding the outcome of the litigation.
Purchaser’s Inspection or “Free Look”

Most purchasers of commercial properties require that they be given a period of time after the contract has been signed to inspect the real property. If during this inspection the property is found to be unacceptable, the purchaser can terminate the contract and receive a return of his earnest money. This inspection period is called a “free look” because the purchaser has a period of time to decide whether to buy the real property and can terminate during this period of time without any liability. Most inspections by purchasers of commercial properties go beyond just an inspection of the physical condition of the real property. During the inspection period, the purchaser requires the seller to furnish copies of all leases, service contracts, tenant correspondence files, tax notices, insurance premiums, operating and expense reports, and any other documentation that in any way has an effect on the operation or ownership of the real property.

Most contracts provide that the inspection period will not begin to run until the items have been furnished by the seller to the purchaser. The contract usually provides that because this information regarding the real property is private and of a sensitive nature that the purchaser agrees to keep such information confidential and will not disseminate the information to anyone without the seller’s permission. Practically speaking, permission to provide the financial information concerning the property to a lender usually is required because most purchasers require institutional lender financing to purchase the commercial real property.

Closing Documents

The sale of a commercial real property requires several special closing documents in addition to the normal closing documents. Most purchasers require that the seller provide at closing a certified current rent roll and expense report. Purchasers also require that all leases be assigned, together with credits for all security deposits and prepaid rents (see Example 7–7). Purchasers also may require that each tenant sign an estoppel letter (Example 7–21). The average tenant estoppel letter has the tenant certify as to the accuracy of certain things regarding a lease, such as the date of the lease, date of amendments or modifications, term of the lease, renewal options, monthly rents, and security deposits. The estoppel letter also requires the tenant to swear that there are no defaults under the lease either by tenant or landlord and that the tenant has no claims, counterclaims, defenses, or setoffs against the landlord arising from the lease. A copy of the lease with all amendments is attached to the letter, and the tenant certifies that it is a true and correct copy of the lease. If the lease is guaranteed, the guarantor joins in the tenant estoppel letter.

Example 7–21

Date: __________, 20____
Office Park Investments, Inc.
P.O. Box 510
Andersonville, Indiana

Re: Farris Center Office Park

Gentlemen:

It is our understanding that Office Park Investments, Inc. (hereinafter called “Purchaser”) intends to purchase the above-captioned premises, and as a condition precedent, such Purchaser requires that this certification be made by the undersigned (hereinafter called “Tenant”).

(continued)
As an inducement to Purchaser to purchase the premises, and knowing that Purchaser will rely upon the information and agreements contained herein in making said purchase, Tenant hereby acknowledges, certifies, warrants, and covenants that:

1. Tenant presently leases approximately ______ square feet of space located on the above-referenced premises, pursuant to the terms and provisions of that certain Lease Agreement dated ______ 20______, by and between ______, as Landlord, and Tenant, as Lessee, a copy of said Lease being attached hereto and made a part hereof as Exhibit A (the “Lease”).

2. Said Lease is in full force and effect and Tenant is primarily liable as Lessee thereunder, and the documents attached hereto as Exhibit A constitute a full, complete, and accurate copy of said Lease, and said Lease has not been modified, supplemented, or amended in any way, and there are no other promises, obligations, understandings, agreements, or commitments between Landlord and Tenant with respect to said premises other than as expressly set forth in said Lease.

3. All contingencies and conditions precedent to the commencement, effectiveness, validity, and enforceability of said Lease have been satisfied, and Tenant hereby ratifies said Lease. All duties of an inducement nature and all work required under said Lease to be performed by Landlord have been satisfactorily completed in accordance with the provisions of said Lease, and Tenant claims no offsets, rebates, concessions, abatements, recoupments, or defenses against or with respect to rent, additional rent, or other sums payable under the terms of said Lease, and there are no breaches or defaults under the terms of said Lease, and no event has occurred that, with the passage of time or the giving of notice, or both, shall constitute a default by Landlord or Tenant under the terms of said Lease.

4. The base monthly rental currently payable by Tenant under the terms of said Lease is _____________________ ($___________) Dollars per month, and no other rent has been prepaid to Landlord or any other party, and there has been no security deposit paid to or currently held by Landlord with respect to said Lease.

5. The Lease Term pursuant to said Lease commenced on ___________ 20______, and shall expire on ___________, 20______.

6. Tenant has no interest, rights, or claims with respect to said premises other than the interest, rights, or claims arising out of or with respect to said lease.

7. Tenant is a corporation and is in good standing with the State of Indiana, and has full authority to execute the within document.

8. The undersigned officers of Tenant have full authority to execute and deliver this certificate as agents for and on behalf of Tenant.

9. Tenant is currently in actual, full, and complete physical occupancy and possession of said premises, and Tenant has accepted said premises as suitable for all uses and purposes contemplated or intended under said Lease.

10. Upon acquisition of said premises by Purchaser, Tenant shall attorn to Purchaser or any successor assign of Purchaser's and recognize such party as Tenant's Lessor and Landlord pursuant to said Lease.

Very truly yours,

_____________________________________
By: __________________________________
President

Lender’s Estoppel

Many commercial real properties are sold subject to existing debt. The purchaser assumes or takes subject to the prior mortgage. Most commercial purchasers require that the prior mortgage holder sign an estoppel certificate and that the certificate be provided to the purchaser at closing (Example 7–22). A lender’s estoppel usually requires the lender to attach a copy of the note and mortgage to the certificate and to certify that the attachments are true and correct copies and that there are no amendments or modifications to the note and mortgage. The estoppel also requires a certification as to the outstanding balance of
the loan and a certification as to the balance of any escrows that may be held for taxes or insurance. The lender also certifies that the loan is not in default and that the sale of the real property to the purchaser will not constitute a default. The lender acknowledges the purchaser’s address for purposes of sending notices under the note and mortgage. An example of a lender estoppel letter is set forth as Example 7–22.

Example 7–22

STATE OF _______________
COUNTY OF _______________

ESTOPPEL CERTIFICATE

The undersigned hereby certifies as of the date of execution hereof as follows:

(a) That the undersigned (the “Holder”) is the holder of a certain Promissory Note dated May 11, 1998, from ACME DEVELOPMENT, INC., a California corporation, in the original principal amount of $3,560,000.00 (the “Note”);

(b) That the Note is secured by a Deed of Trust from ACME DEVELOPMENT, INC. to Holder (the “Lender”) dated May 11, 1998, and recorded in Deed Book 7244, Page 301, Oil County, California, records (the “Security Deed”), which encumbers certain property located in Oil County, California (the “Property”), more particularly described on Exhibit A attached hereto and made a part hereof;

(c) That true and correct copies of the Note and Security Deed are attached hereto as Exhibits B and C;

(d) That the Note and Security Deed are in full force and effect and there have been no events of default in connection therewith;

(e) That all payments of interest and principal under the Note and Security Deed are current; that as of this date the outstanding principal balance due on the Note is $____, that the last payment received on the Note was on the ____ day of ____, 20____; and that the next payment on the Note is due on ____;

(f) Holder understands that HAMMOND CENTER, INC. is purchasing the property subject to the Security Deed; the purchase of the property is hereby consented to and approved and shall not constitute an event of default in connection with the Note or Security Deed;

(g) That there is no failure of compliance, breach, default, or event of default that has occurred in the Note or Security Deed as of this date;

(h) Holder agrees to provide to HAMMOND CENTER, INC., Suite 120, 450 Glenlake Parkway, San Diego, California, notice of any default under the Note or Security Deed and permit HAMMOND CENTER, INC. fifteen (15) days to cure any default under the Note or Security Deed, prior to Holder’s acceleration of the Note. The undersigned acknowledges that Hammond Center, Inc. is relying on this Certificate in connection with its purchase of the property.

WITNESS my hand and seal this ____ day of __________, 20______.

THE SECOND NATIONAL BANK

By __________________________ (SEAL)

Signed, sealed, and delivered __________________________
in the presence of:

______________________________
Witness

Sworn to before me
this _______ day of
_______, 20__.

______________________________
Notary Public

My Commission Expires:

______________________________
Rent Prorations

The proration between purchaser and seller of rent received from tenants occupying commercial real property is always contained in a commercial contract (Examples 7–23 through 7–25). Rent proration questions can be dealt with in a number of ways. The following issues, however, should be at least considered and addressed in any commercial rent proration provision: (a) Are rents to be prorated on the basis of rent paid or rent payable; that is, is the seller to receive credit at closing for rents that are delinquent or due but unpaid? (b) If the seller does not receive credit at closing for delinquent or due but unpaid rents, is the seller to be permitted to proceed against tenants of the project after closing to collect such rents allocable to periods before the closing date? The purchaser may object to permitting the seller to do this because it can unreasonably interfere with the purchaser’s tenants at that time. (c) If the seller is not permitted to proceed against the tenants after closing to collect delinquent or due but unpaid rents, is the purchaser to have any obligation to the seller to make an effort with respect to this collection? In what order are funds received from tenants owing delinquent or due but unpaid rents to be applied?

Example 7–23

All paid rents under the existing leases and the new leases shall be prorated as of the closing date. In the event that, at the time of closing, there are any past due or delinquent rents owing by any tenants of the project, Buyer shall have the exclusive right to collect such past due or delinquent rents and shall remit to Seller its pro rata share thereof, to the extent, and only to the extent, that the aggregate rents received by Buyer from each such tenant owing past due or delinquent rents exceeds the sum of (i) the aggregate rents and other sums payable by such tenant for periods from and after the closing date, (ii) any amount expended by Buyer to collect such past due or delinquent rents. Buyer shall have no obligation to collect or enforce collection of any such past due or delinquent rents from or against a tenant.

Example 7–24

Current rent paid under the existing leases and the new leases for the month in which the closing date occurs shall be prorated as of the closing date. The proration of such current rent paid shall be affected so that Seller shall be credited with all such rent accruing prior to but not including the closing date, and Buyer shall be credited with all such rent accruing thereafter. Buyer shall receive a credit in the amount of any prepaid rents paid to Seller as of the closing date. No proration shall be made for rents delinquent or due but unpaid as of the closing date; provided, however, that Seller shall deliver to Buyer on the closing date a schedule identifying the tenants who owe delinquent rents, and Buyer shall make reasonable efforts to collect for Seller such delinquent rents, and shall remit to Seller any rents for periods prior to the closing date actually paid to Buyer. All monies collected by Buyer from tenants owing delinquent rents shall be applied first to delinquent rents owed to Seller for the month during which the closing date occurs and the one preceding month, then to rent owed to Buyer for the period from and after the closing date to the date of collection and then to any other delinquent rents owed to Seller.

Example 7–25

Rents under the existing leases and the new leases (and that of brokerage commissions) shall be prorated as of the closing date. Seller shall pay to Buyer that portion of the rent paid by the tenants under the existing leases and new leases applicable to periods subsequent to the closing date. No proration shall be made for rent delinquent or due but unpaid as of the closing date.
date. All monies collected by Buyer from tenants owing delinquent or due but unpaid rents as of the closing date shall be applied first to current rents owing to Buyer by such tenants for periods from and after the closing date. From and after the closing date, Buyer shall use its best efforts to collect any delinquent or due but unpaid rents owing to Seller for periods prior to the closing date, and shall promptly remit to Seller any amounts collected by Buyer from tenants owing delinquent or due but unpaid rents, in excess of current rents owing to Buyer. Buyer shall have no obligation to incur any expense or to institute any litigation against any tenant, to collect any such delinquent or due but unpaid rent, but Seller shall have the right to exercise such rights and remedies as may be provided for or allowed by law or in equity to collect such rents other than the right to evict or dispossess such tenant.

**Lease Commissions**

It is quite common in commercial real estate transactions for the leases to involve commissions to brokers who obtained the leases for the seller. These brokerage commissions usually are a percentage of each month's rent for the remaining term of the lease and, in some cases, extensions or renewals of the lease. Brokerage commissions can be prorated between purchaser and seller in a number of ways. The purchaser can assume and pay all lease commissions earned and due in connection with the leases after the date of closing, whereas the seller is responsible to pay all lease commissions before the date of closing. The purchaser may want the seller to “cash out,” or pay off, the lease commissions in full before the time of closing. Most brokers are quite willing to discount future lease commissions to a current value and receive a lump sum cash payment at the time of closing. If the lease commissions are to be cashed out by the seller at closing, it is prudent for the contract to provide that the seller will provide proof that such commissions have been paid. This proof can be in the form of a release from all the brokers of any claim for commissions under the leases that are assigned in connection with the sale of the property.

**Security Deposits**

Most tenants of commercial properties deliver to the landlord at the time the lease is signed a security deposit securing the tenant’s performance under the lease. On expiration of the lease, the security deposits are refundable to the tenant. Therefore, in most commercial contracts, the purchaser requires that it receive a credit for all security deposits that may be owed after the closing to the tenants (Example 7–26).

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**Example 7–26**

Buyer shall receive a credit against the purchase price in the amount of all security deposits paid by tenants, and interest accrued thereon contingently payable to the tenant for his or her account there maintained, and Seller shall retain such funds free and clear of any and all claims on the part of the tenants. Buyer shall be responsible for maintaining a security deposit in the aggregate amounts so credited to Buyer in accordance with the provisions of the existing leases and the new leases relevant thereto.

Many states require that security deposits for tenants of apartment projects be placed in a special escrow account to ensure their return on expiration of the lease. The provision shown in Example 7–27 may be found in an apartment project contract to handle the special escrow arrangement.
Example 7–27

Seller shall deliver to Buyer a certified or cashier’s check drawn upon or by a national bank having offices in the city where the property is located, payable to Buyer, in an amount equal to the total of all tenants security deposits held by Seller “as landlord” under the existing leases and the new leases, together with a schedule setting forth the name of each tenant for whose account a deposit is being held, the apartment unit with respect to which deposit is being held, and the amount of such deposit. Buyer shall promptly deposit the proceeds of such check into an escrow account, shall hold such deposits in trust for the benefit of the tenants of the project, and shall comply in all respects with the provisions of state law respecting security deposits. Buyer shall and hereby indemnify and hold Seller harmless from, against, and in respect of any and all liabilities, damages, losses, costs, expenses (including attorney’s fees and expenses), causes of action, suits, judgments, claims, demands, and liens of any nature whatsoever arising in connection with such security deposit from and after the closing date.

Seller’s Covenants Regarding Operation of Property

A critical issue regarding the operation of commercial property during the pendency of the contract is that of limitations on the seller’s ability to enter into new leases with respect to the property and the requirement of the seller to maintain the status quo regarding insurance policies. The provision shown in Example 7–28 addresses these concerns.

Example 7–28

Between the date hereof and the closing date, Seller shall operate the project in an orderly course of business; shall maintain and repair the project so that, on the closing date, the project will be in the same condition as it now exists, natural wear and tear and loss by insured casualty alone excepted; shall comply with all obligations of the lessor or landlord under the existing leases and the new leases; shall continue to carry and maintain and enforce all existing policies of casualty and public liability insurance with respect to the property; shall not make or enter into any lease or other agreement for the use, occupancy, or possession of all or any part of the land or improvements except for leases that (1) are for a term including option renewal in terms that are no longer than three years; (2) provide for a rental rate not less than the rental rate being charged for some rent spaces in the project as of the date of Seller’s execution of this agreement; and (3) are on a standard form of lease used by Seller and approved by purchaser with respect to the project.

Hazardous Materials

The presence of hazardous waste materials on real property can create serious problems for the property owner. Federal and state law imposes on the owner of real property liability for all damage caused by hazardous waste as well as the cost of hazardous waste cleanup. An owner of real property may be responsible regardless of whether the owner created the hazardous waste material. Most purchasers will not purchase real property without having a hazardous waste inspection done by a professional inspection firm. These hazardous waste inspections are typically a Phase I, which is a general inspection of land records and a site visit to the property, or a Phase II, which involves the laboratory testing of soil and water conditions at the property. In addition, most purchasers require that the contract contain certain representations, warranties, and indemnifications from the seller regarding hazardous waste materials. The provision shown as Example 7–29 addresses these concerns.
Example 7–29

Hazardous Waste Indemnity. Purchaser’s obligation to purchase the Property pursuant to this Contract is contingent upon there being no petroleum hydrocarbons or contaminants contained in the soil, surface, or subterranean water that are in violation of local, state, or federal statutes and regulations and that there be no other existence of any hazardous substances or waste located upon the Property. For purposes of this Agreement, the term “hazardous substances or wastes” shall mean petroleum, including crude oil or any fraction thereof, flammable explosives, radioactive materials, asbestos, any material containing polychlorinated biphenyls, and any of the substances defined as “hazardous substances” or “toxic substances” in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. Section 1802 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., and in the Toxic Substance Control Act of 1976, as amended, 15 U.S.C. Section 2601 et seq., or any other federal, state, local or other governmental legislation, statute, law, code, rule, regulation, or ordinance identified by its terms as pertaining to the disposal, storage, generation, or presence of hazardous substances or waste (the “Environmental Laws”). Purchaser shall at Seller’s expense have the Property inspected for purposes of discovering if hazardous substances or wastes exist. Seller’s share of the cost of the inspection shall not exceed $____ (1) ____; if the inspection cost exceeds $____ (2) ____, Seller shall pay $____ (3) ____ and Purchaser shall pay the excess cost above $____ (4) _____. If, upon inspection, hazardous wastes or substances are found to exist, Purchaser shall have the option of terminating this contract and receiving a refund of the earnest money down payment. In the alternative, Seller shall have the right at its own expense to remove all hazardous substances or wastes from the Property and to conclude the sale with Purchaser, or Seller may terminate this Contract without penalty.

Seller warrants, represents and agrees that (a) neither Seller nor any person has violated any of the applicable Environmental Laws as defined in the paragraph above relating to or affecting the Property; (b) the Property is presently in compliance with all Environmental Laws, and there are no facts or circumstances presently existing upon or under the Property or relating to the representations and warranties which violate any of the applicable Environmental Laws, and there is not now pending nor threatened any action, suit, investigation, or proceeding against Seller or the Property (or against any other party related to the Property); (c) Seller or tenant has obtained all licenses, permits or other governmental regulatory approvals necessary to comply with Environmental Laws and Seller is in full compliance with the terms and provisions of all such licenses, permits, or other governmental regulatory approvals; and (d) Seller has received no notice that any municipality or any governmental or quasi-governmental authorities are investigating or have determined that there are any violations of zoning, health, building, fire, pollution, environmental, or other statutes, ordinances, or regulations affecting the Property.

Indemnification

Most purchasers of commercial properties require indemnification from the seller with respect to liabilities pertaining to the property arising before the closing date. Most sellers likewise require an indemnification from the purchaser for such liabilities arising subsequent to the closing date. When drafting indemnification language, particular attention should be paid to the description of the liabilities covered and as to whether each party’s indemnification is to be limited to the period of that party’s actual ownership of the property or to extend to all periods before the closing date (with respect to the seller’s indemnification) and all periods subsequent to the closing date (with respect to the buyer’s indemnification). An indemnity provision is shown in Example 7–30.
Example 7–30

The Seller and Buyer shall and do each hereby indemnify, defend, and hold each other harmless from, against, and in respect to any and all liabilities, damages, losses, expenses (including counsel fees and expenses and disbursements of counsel), amounts of judgment, assessments, fines or penalties, and amounts paid in compromise or settlement, suffered, incurred, or sustained by the indemnified party on account, by reason, as a result of or in connection with any matter pertaining to the ownership, use, occupancy, management, maintenance, or operation of the property arising during the period of ownership of the property by the indemnifying party.

Seller’s Disclaimer of Warranty

Although the purchaser tries to obtain as many warranties as possible from a seller, the seller often will only make warranties set forth in the contract and disclaim any and all other warranties. The provision shown in Example 7–31 is designed to allow the seller to achieve that result.

Example 7–31

Except for the warranties of title to be included in Seller’s instruments of conveyance to the project, Seller does not, by the execution and delivery of this agreement, and Seller shall not, by the execution and delivery of any document or instrument executed and delivered in connection with the closing, make any warranty, expressed or implied, of any kind or nature whatsoever, with respect to the project and all such warranties are hereby disclaimed. Without limiting the generality of the foregoing, Seller makes, and shall make, no expressed or implied warranty of suitability or fitness of any of the property for any purpose, or as to the merchantability of title, value, quality, quantity, condition, or salability of any of the property, or that the use or sale of any of the property will not violate the copyright, trademark, or patent rights of any person. Sale of the property by Seller to Buyer hereunder shall be “as is” and “where is.”

Real property usually is sold without any warranty concerning its physical condition unless the warranties are expressed in the contract or required by state law. The law in many states does require that certain warranties regarding the fitness and suitability of the improvement on the real property be given by the seller of a new residential home.

An example of a contract for the purchase and sale of a retail shopping center is shown as Exhibit 7–4 at the end of this chapter. A checklist for the preparation of a real estate contract is found on the following pages.

OPTIONS

Buyers and sellers of real property occasionally use an option initially instead of entering into a contract for the purchase and sale of the property. An option is a contract by which an owner of property, usually called the optionor, agrees with another person, usually called the optionee, that the optionee shall have the right to buy the owner’s real property at a fixed price within a certain time on agreed terms and conditions. The effect of an option is to bind an owner of real property to an agreement to sell the property to the optionee in the event the optionee elects to purchase the property at the fixed price and on the terms set forth in the option. The decision to enter into the contract to purchase the property is entirely at the discretion of the optionee. An option usually is based on valuable consideration and is
an irrevocable offer to sell by the owner of the real property. Option agreements must be in writing and be supported by something of value, usually money paid as an option price. An option form is shown as Exhibit 7–5 at the end of this chapter.

CONTRACTS AND COMPUTERS

The preparation of contracts has been affected by the use of computers and the Internet. Most law firms and corporations have abandoned preprinted, fill-in-the-blank contracts in favor of computer-generated contracts. Standard contract provisions are stored on a computer hard drive and controlled using word processing software such as WordPerfect or Microsoft Word. This word processing technology creates flexibility in the drafting and redrafting of contracts. As contract terms are negotiated, the changes to the contract from the previous draft can be shown in some highlighted or underlined form on the current draft. Drafts can also be time- or date-stamped on each page so that parties do not become confused by multiple drafts of the agreement.

CHECKLIST

Preparation or Review of Commercial Real Estate Contract

The issues to be covered by a real estate contract are so numerous that without a checklist, it is easy to leave some issues out of the contract. A checklist for the preparation of a commercial contract follows.

☐ I. Parties to the Contract
   ☐ A. Seller should be the current owner of the property.
   ☐ B. Purchaser should sign the contract in exactly the same form as he or she wants to obtain title. If the purchaser intends to have an entity such as a limited partnership or partnership to be formed to take title to the property, the contract should provide for the transfer and assignment of the contract to the new entity.
   ☐ C. Brokers and agents usually are made a party to the contract to enforce commission rights.

☐ II. Description of Property to Be Purchased
   ☐ A. Adequate description of real property and associated personal property
   ☐ B. Include easements appurtenant to the property
      1. Cross-easement agreements (shopping center)
      2. Off-site utility easements
      3. Access easements

☐ III. Purchase Price and Earnest Money
   ☐ A. Earnest money
      1. Specify amount and who holds the earnest money
      2. Additional earnest money payments for extensions of time to close
      3. What happens to any interest on earnest money
      4. Application of earnest money to the purchase price
      5. Application of earnest money in the event of default under contract

(continued)
B. Purchase price
   1. Calculation of purchase price
      a. Predetermined fixed amount
      b. Amount to be determined based on amount of acreage or square footage of property
         i. Establish method for determining acreage or square footage
         ii. Method of payment
            (a) All cash
            (b) Cash in excess of existing debt
               (i) Consider due on sale clause
               (ii) Which party bears expenses of transfer due holder of existing loan
            (c) Seller financing
               (i) All terms of seller financing, including amount, interest rate, and terms, should be identified.
               (ii) Terms of the note and mortgage should be negotiated and copies attached as exhibits.
            (d) New loan to be obtained by the purchaser

IV. Title Examination
   A. Which party conducts examination
   B. Quality of title to be delivered by seller
      1. Marketable
      2. Insurable
      3. Free and clear of all matters of record
   C. Obligation of seller to correct title objections
      1. Defects curable by payment of money
      2. Other defects
         a. Defects existing before execution of contract
         b. Defects created after execution of contract

V. Closing
   A. Which party establishes closing date
   B. Minimum or maximum periods to close
   C. Right to extend closing date
      1. Purchaser's right to extend closing by payment of money
      2. Seller's right to extend closing by reason of acts of purchaser
   D. Who bears closing cost
   E. Prorations
      1. Rent
         a. Fixed rent
         b. Overage or percentage rent
         c. Rent in arrears
      2. Interest on the existing debt
      3. Utilities and taxes
         a. Prorations when utilities and taxes are paid by landlord
         b. Prorations when utilities and taxes are paid by tenant
      4. Credits to purchaser for prepaid rents and security deposits
   F. Possession of property
      1. Normally delivered at closing
      2. When possession is delivered to purchaser before closing
         a. For limited purposes of installing fixtures
         b. For purpose of conducting business
            i. Specify what amounts are to be paid by purchaser for early occupancy
            ii. Specify risk of loss

(continued)
3. When possession is delivered to purchaser after closing
   a. For limited purpose of permitting seller to remove personal
      property from the premises
   b. Specify what amounts are to be paid by seller for continued
      possession
   c. Specify risks or losses due to possession by seller

G. Documents to be delivered at closing
1. Warranty deed
   a. General or limited
   b. Legal description to be based on new survey
2. Assignment of leases
3. Bill of sale to personal property
4. Owner’s affidavit
5. General assignment of warranties
6. Certified rent roll
7. Termite bond
8. Foreign person affidavit
9. Escrow agreements for tenant work and tenant allowances
10. Covenant not to compete
11. Prior lender and tenant estoppel letters
12. As-built survey
13. Notice to tenants
14. Copies of leases
15. Evidence of payment of brokerage commission
   a. Brokerage commission arising out of purchase and sale
   b. Cash out of the leasing commissions

VI. Covenants and Warranties of the Parties
A. Purpose of warranties is to ensure accuracy of information on property
B. Typical issues covered by warranties
   1. Seller’s title to property
   2. Seller’s authority to sign and carry out contract
   3. Removal of encumbrances
   4. Compliance of property with laws and ordinances
   5. No condemnation suit pending
   6. Right to possession
   7. True and correct copies of leases and agreements delivered to
      purchaser
   8. Accuracy of rent roll and expense statements
   9. Absence of mechanic’s and materialmen’s liens
   10. No litigation against seller or property
   11. Condition of property
   12. No encroachments
   13. No prior use from manufacture or storage of toxic or hazardous
       waste
C. Limitations on warranties
   1. Best of knowledge
   2. Materiality
   3. Limited period of survival after closing

VII. Conditions to Closing
A. Purpose of conditions to closing
   1. Limitation on purchaser’s obligation to close until seller completes
      certain items
   2. Substitute for complete warranties of seller
B. Which parties have right to waive conditions

(continued)
C. Typical conditions
  1. Satisfactory inspection of property
  2. Satisfactory inspection of records involving the property
  3. Ability to obtain new loan
  4. Approval of board of directors of purchaser
  5. Receipt of estoppel certificates from lenders and tenants
  6. Truth and accuracy of seller’s warranties on closing date

VIII. Inspection by Purchaser
  A. Right to inspect physical condition of the property
    1. Time in which to exercise inspection
    2. Right to terminate after inspection
  B. Right to inspect seller’s books and records related to property
    1. Place of inspection
    2. Right to copy records
    3. Permitted use of materials inspected
  C. Right to inspect property for possible environmental contamination
    1. Phase I examination
    2. Phase II examination
  D. Enforceability of free-look cancellation clauses

IX. Casualty and Condemnation
  A. Purchaser’s options on casualty or condemnation
    1. Materiality limitation on purchaser’s right to terminate
    2. Time limits on exercise of option to terminate by purchaser
  B. Seller’s obligations on casualty or condemnation
    1. Timely notice to purchaser of event of casualty or condemnation
    2. Is seller obligated to restore premises
  C. Should seller be required to carry insurance

X. Remedies on Default
  A. Default by seller or purchaser
    1. Suit for damages or specific performance
    2. Liquidated damages

XI. Brokerage
  A. Obtain warranties from each party as to brokers involved
  B. Specify which party pays brokerage commissions
  C. Cross-indemnity for brokerage claims

XII. Confidentiality
  A. No recording the contract
  B. All information delivered to purchaser shall be kept confidential or delivered to other people only with seller’s consent.

XIII. Miscellaneous Provisions
  A. Right to sign a contract
  B. Provisions for date and manner of delivering notices
  C. Time is of essence
  D. Survival of contract provisions
  E. Contract represents entire agreement between parties
  F. Severability of contract provisions
  G. Method of offer and acceptance
  H. Provide for approval and counterpart form
With the recent technology explosion, more and more people are communicating through the use of computers. Most legal documents such as contracts, leases, and mortgage documents are being sent electronically from one computer to another over the Internet. Using the Internet, paralegals can now e-mail word processing files, spreadsheets, and even computer programs to and from clients, lawyers, and other paralegals. For the paralegal, all of this means that large amounts of information can be located, reviewed, and retrieved on the computer screen, filed away, or printed. Most law firms, corporations, and other organizations connected to the Internet have obtained their own unique domain names.

Not only can drafts and correspondence be sent electronically from one computer to another, but also the legal recognition of electronic signatures now permits valid and enforceable documents to be sent electronically. Most states have passed laws that authorize electronic signatures on real estate documents such as contracts, options, leases, deeds, easements, and mortgages. An electronic signature is generally defined to mean a signature created, transmitted, received, and restored by electronic means and includes, but is not limited to, a secure electronic signature. A secure electronic signature is defined as an electronic or digital method executed or adopted by a party with the intent to be bound or to authenticate a record which is unique to the person using it that is capable of verification, is under the sole control of the person using it, and is linked to data in such a manner that if the data is changed, the electronic signature is invalid. For example, if a person signs a mortgage with a secure electronic signature and the mortgage is electronically changed after the secure signature has been affixed, the signature would be invalid, and the mortgage is likewise invalid.

Most states also recognize electronic signatures by notaries. Even if the notary notarizes a document electronically, the notary must physically witness the person’s signature being notarized.

Many states protect consumers in residential real estate transactions and provide that a consumer cannot be required to use electronic documents and signatures without the consumer’s consent.
The Internet has also changed many of the ways in which notices are to be given pursuant to a real estate contract. Although first-class mail and a more established technological method, facsimile (fax) transmission, may still be required in a real estate contract, it is not uncommon for buyers and sellers to now agree that notices can be sent via e-mail. Many contracts provide for e-mail addresses in the notice section of the contract. One risk in allowing notices to be sent by e-mail is that it is often difficult to determine if an e-mail message has in fact been received. This problem in acknowledging receipt may be satisfied by providing that notice can be sent electronically but must be followed up by a written notice sent by another means, such as mail or fax.

Another area of concern when sending e-mail or fax messages in regard to a contract is the privacy issue. Electronically sent notices are not as private as notices sent by other means. E-mails between attorneys and their clients may not be privileged communications. Many bar associations have been counseling attorneys to obtain consents from their clients before sending e-mail messages to the clients. The consent basically is an acknowledgment by the client that the e-mail may not be a privileged communication, but that the client desires e-mail communication even though the privilege may not exist.

**SUMMARY**

A purchaser and seller of real property each have a number of issues and concerns that must be addressed and agreed to in the contract for purchase and sale. A paralegal who participates in the preparation and review of a real estate contract must not only be aware of the general issues and concerns of purchasers and sellers of real property, but also must ask the client about any special issues or concerns. The contract is the agreement that outlines responsibilities and duties of the respective seller and purchaser and is the blueprint that will be followed at the time of the closing of the sale and purchase. Careful thought and attention to detail must be given to the preparation and review of real estate contracts.

The real estate contract is the mutual promise of both purchaser and seller regarding the future transfer of ownership to real property. The contract does not transfer ownership but merely promises to do so at some future date and time. At the time that ownership is to be transferred, the transfer is accomplished by a separate legal document known as a deed. Deeds are the subject of Chapter 8.

**HELPFUL WEBSITES**

**Legal Guide to Buying and Selling a Home**

An excellent legal guide to buying and selling a home can be found at the American Bar Association Web site at [http://www.abalawinfo.org](http://www.abalawinfo.org).

**Home Buying Purchase Contract Contingencies**

General information about the legal and practical aspects of buying a home can be found on the About.com Web site.

**KEY TERMS**

| bank wire transfer | condition precedent | option |
| cashier’s check | earnest money | parol evidence rule |
| caveat emptor | electronic signature | time is of the essence |
| certified check | estoppel letter | execution |
1. Why is careful attention to detail required in the preparation of a real estate contract?
2. Briefly describe the various methods of payment for real property.
3. What does the “time is of the essence” phrase mean in a real estate contract?
4. What is a “free look,” and in what circumstances would you expect to find a free-look provision in a real estate contract?
5. Explain the difference between marketable title and insurable title.
6. What items usually are prorated in a real estate contract?
7. If, under a real estate contract, the seller is to provide financing to the purchaser, what issues should be discussed concerning seller financing?
8. At what time do most real estate contracts provide that the purchaser will take possession of the property?
9. What is a closing, and why is its date important in a real estate contract?
10. What is earnest money, and what is its role in a real estate contract?
11. What is the doctrine of caveat emptor, and how does it apply to a real estate purchase and sale contract?
12. Why would a real estate broker want to be a party to a real estate contract?
13. What warranties commonly are required of a seller in a real estate contract?
14. What warranties commonly are required of a purchaser in a real estate contract?
15. What is a tenant estoppel letter, and when would one be required in a real estate contract?

1. The following is a list of contract provisions. Do these provisions favor the seller or the purchaser?
   a. Seller is to convey insurable title to the real property at closing.
   b. Seller is to convey title to the real property subject to utility easements and other restrictions of record.
   c. Seller shall not alter or encumber the title to the real property after the date of the contract without the prior written consent of purchaser.
   d. The real estate contract is freely assignable.
   e. The contract is silent as to risk of loss between date of contract and date of closing.
2. Harold and Maude entered into negotiations with Sam to purchase Sam’s home. The home was not new, and Harold and Maude had some concerns that the roof might leak. Sam verbally assured them that the roof did not leak. The written contract entered into between Sam and Harold and Maude, however, did not contain any written warranties concerning the roof. The contract also contained a provision that stated that no agreements, representations, or warranties, unless expressly incorporated or set forth in the contract, would be binding on any of the parties. After Harold and Maude purchased the home, they discovered that the roof leaked every time it rained. Harold and Maude have come to the law firm where you are a paralegal and have asked for advice concerning their rights to sue Sam for his misrepresentation concerning the condition of the roof. You have been asked to research the issue and to report to your supervising attorney your conclusions concerning Harold and Maude’s rights against Sam for the roof leak. What would be your conclusion?
1. Review the contract for purchase and sale of a retail shopping center shown as Exhibit 7–4, and answer the following questions. Answer the questions in detail, making reference to the contract paragraph number you used as authority for your answer.
   a. How much is the brokerage commission in connection with this sale, and who is responsible for paying it?
   b. Who is the holder of the real estate note and deed to secure debt that is going to be assumed by the purchaser in connection with this transaction?
   c. What is the name of the property being sold?
   d. What percentage of the tenant estoppel must the seller obtain?
   e. Under what terms is the purchaser willing to consent to new leases on the property from the date of contract to the date of closing?
   f. How many net rentable square feet are contained in the property being bought and sold?
   g. Where is the closing to take place?
   h. What amount of gross rental income from the property is guaranteed by the seller for the first year after closing date?
   i. On what basis does the seller agree to pay the purchaser any income shortfall from the actual income generated from the property and the seller’s guarantee of income?
   j. Is Saturday considered a business day under the agreement?
   k. What is the amount of the earnest money deposit?
   l. When is the effective date as that term is defined under the contract?
   m. What type of deed will be delivered to the purchaser at the time of the sale?
   n. When will possession of the property be delivered to the purchaser pursuant to the agreement?
   o. What is the seller’s remedy for the purchaser’s default?
   p. Can the purchaser assign its rights under the contract to a partnership of which the purchaser is not a general partner?
   q. If there is damage to the property before closing in the amount of $15,000, does this give the purchaser the right to terminate the agreement and not purchase the property?
   r. Is the earnest money to be held in an interest-bearing or a non-interest-bearing account?
   s. If the purchaser desires title insurance, who will pay for the title insurance?
   t. What is the earliest date that the tenant estoppel required by seller can be dated?
   u. Does the purchaser have a free look under this agreement, and when is the last date for fully exercising its free look?
   v. If the holder of the existing mortgage loan charges an assumption fee, who will pay the assumption fee?
   w. What is to happen to leasing brokerage agreements in connection with the property before closing?
   x. Who has the risk of loss and damage to the property before closing?
   y. How are security deposits paid under the leases to be prorated at time of closing?

2. Obtain a copy of a contract for sale of residential real estate from a local realtor or other source. Compare it carefully with the contract shown as Exhibit 7–1. Discuss in writing the similarities and differences between the two contracts.

3. Research your state’s law to determine what seller disclosure forms are required. Are the seller disclosure forms required only for residential transactions or commercial transactions, or both? Is the giving of a seller disclosure form voluntary or mandatory?

4. Research your state’s law to determine if it recognizes electronic signatures on real estate documents. Make a copy of your state’s statute and review it to see if there are limitations on the use of electronic signature.
ADDENDUM

Exhibit 7–1 Contract for Purchase and Sale of a Home
Exhibit 7–2 Contract for Purchase and Sale of a Large Tract of Vacant Land
Exhibit 7–3 Seller’s Property Disclosure Statement
Exhibit 7–4 Contract for Purchase and Sale of a Retail Shopping Center
Exhibit 7–5 Option to Purchase

The exhibits referred to in the contracts are not included in the materials presented.

ACKNOWLEDGMENT

Portions of this chapter have been excerpted from The Sales Contract: Real Practice and Procedures Program Materials by Donald Lee Mize “Pages 2.1–2.45; Institute of Continuing Legal Education in Georgia, 1985, Athens, Georgia.” Used by permission of the Publisher.

Student StudyWare™ CD-ROM
Interactive Student CD in the book includes additional quizzing, case studies, and key terms flashcards.

Online Companion™
For additional resources, please go to www.paralegal.delmar.cengage.com
EXHIBIT 7–1
Contract for Purchase and Sale of a Home
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PURCHASE AND SALE AGREEMENT

Offer Date: ______________________, 20______

2005 Printing

1. Purchase and Sale. The undersigned buyer ("Buyer") agrees to buy and the undersigned seller ("Seller") agrees to sell all that tract or parcel of land, with such improvements as are located thereon, described as follows: All that tract of land lying and being in Land Lot _______ of the _______ District, _______ Section of _______, City _______, County, Georgia, and being known as Address ________, according to the present system of numbering in and around this area, being more particularly described as Lot _______ Block _______ Unit _______ of Subdivision, as recorded in Plat Book _______, Page _______ of _______ County, Georgia records, together with all fixtures, landscaping, improvements, and appurtenances, all being hereinafter collectively referred to as the "Property." The full legal description of Property is the same as is recorded with the Clerk of the Superior Court of the county in which Property is located and is made a part of this Agreement by reference.

2. Purchase Price and Method of Payment. Buyer warrants that Buyer will have sufficient cash at closing, which when combined with the loan(s), if any, referenced herein, will allow Buyer to complete the purchase of Property. Buyer does not need to sell or lease other real property in order to complete the purchase of Property. The purchase price of Property to be paid by Buyer at closing is: _______ U.S. Dollars, $______ subject to the following: [Select sections A, B, C and/or D below. The sections not marked are not a part of this Agreement.]

- A. All Cash at Closing: Buyer shall pay the purchase price to Seller in cash, or its equivalent. Buyer's obligation to close shall not be subject to any financial contingency. Buyer shall pay all closing costs.

- B. Loan to be Assumed: See Exhibit "______."  

- C. New Loan to be Obtained:

  1. Type of Loan: This Agreement is conditioned upon Buyer's ability to obtain a loan to be repaid in consecutive monthly payments with the terms described below, (hereinafter "the Primary Loan") secured by a first priority security deed on Property.

     a. Loan Amount: _______ percent (%) of the purchase price of Property

     b. Term: _______ years

     c. Interest rate at par of _______ percent (%), per annum

     d. Loan Type: □ Conventional □ FHA (see exhibit) □ VA (see exhibit) □ Other (see exhibit)

     e. Rate Type: □ Fixed Rate Mortgage □ Adjustable Rate Mortgage □ Interest Only Mortgage

     *Ability to obtain as herein shall mean that Buyer, as of the closing date, is qualified to obtain the loan based upon the lender's customary and standard underwriting criteria. If the basis of the loan denial is either or both of the following, Buyer shall still be deemed to have the ability to obtain the Primary Loan: (1) Buyer lacks sufficient funds to close; or (2) Buyer is required to lease or sell other real property as a condition of obtaining the Primary Loan.

  2. Seller's Contributions at Closing: Seller shall, at the time of closing, contribute a sum not to exceed $______ to be used by Buyer to pay for:

     a. preparation of the warranty deed and owner's affidavit by the closing attorney;

     b. at Buyer's discretion any of the following (if allowed by the lender): closing costs, prepaid items, escrow establishment charges, loan discount points, survey costs, and insurance premiums (including flood insurance, if applicable) relating to Property and/or loan.

   Buyer shall pay all other costs, fees, and amounts for the above referenced items and to fulfill lender requirements to otherwise close this transaction.

  3. Closing Attorney: This transaction shall be closed by the law firm of _______. If Buyer is given the right to select a law firm from a mortgage lender's approved list of closing attorneys, Buyer agrees to select said law firm. If the law firm named above is not on the mortgage lender's approved list, and cannot be added in time to close this transaction, Buyer may select another law firm from lender's approved list to close this transaction.

  4. Loan Obligations: Buyer shall: (a) make application for the Primary Loan within _______ days from the Binding Agreement Date; (b) immediately give notice to Seller of having applied for such loan (or any subsequent loan), and provide the name and telephone number of the lender and the name and telephone number of the loan originator; and (c) pursue qualification for and approval of such loan diligently and in good faith. Buyer hereby authorizes Buyer to release information to Seller and Seller's Broker verifying the amount and terms of any loan for which Buyer has applied. Should Buyer not timely apply for the Primary Loan, Seller may terminate this Agreement if Buyer does not cure the default within five days after receiving written notice thereof by providing Seller with written evidence of having applied for such loan. Notwithstanding the above, Buyer may fulfill the obligation to apply for the Primary Loan by applying for any other available loan with terms for which Buyer may more easily qualify. Buyer shall be obligated to close this transaction if Buyer has the ability to obtain the Primary Loan or any other loan for which Buyer has applied and approved. Prior to closing, Buyer shall not intentionally make any material changes in Buyer's financial condition which would adversely affect Buyer's ability to obtain the Primary Loan or any other loan referenced herein. In the event any application of Buyer for a loan on Property is denied, Buyer shall immediately give notice of the same to the Seller and promptly thereafter provide Seller with a letter from the lender denying the loan detailing all of the reasons for the denial.

- D. Second Loan to be Obtained: see Exhibit "______."
### 3. Earnest Money

**A. Receipt:** Buyer has paid to _______ (“Holder”) earnest money of $______, in cash, which has been received by Holder. The earnest money shall be deposited in Holder’s escrow/trust account (with Holder retaining the interest if the account is interest bearing) within five banking days from the Binding Agreement Date. If Buyer writes a check for earnest money and the same is deposited into Holder’s escrow/trust account, Holder shall not be required to return the earnest money until the check has cleared the account on which the check was written. In the event any earnest money check is dishonored, for any reason, by the bank upon which it is drawn, Holder shall promptly give notice to Buyer and Seller. Buyer shall have three banking days after notice to deliver good funds to Holder. In the event Buyer does not timely deliver good funds, Seller shall have the right to terminate this Agreement upon written notice to Buyer.

**B. Entitlement to Earnest Money:** Subject to the Disbursement of Earnest Money paragraph below:

1. Buyer shall be entitled to the earnest money upon: a) failure of the parties to enter into a binding agreement; b) failure of any contingency or condition to which this Agreement is subject; c) termination of this Agreement due to the default of Seller; d) the termination of this Agreement in accordance with a specific right to terminate set forth in the Agreement; or e) upon the closing of Property; and,

2. Seller shall be entitled to the earnest money if this Agreement is terminated due to the default of Buyer. In such event, Holder may pay the earnest money to Seller by check, which if accepted and deposited by Seller, shall constitute liquidated damages in full settlement of all claims of Seller. It is agreed to by the parties that such liquidated damages are not a penalty and are a good faith estimate of Seller’s actual damages, which damages are difficult to ascertain.

**C. Disbursement of Earnest Money:** Holder shall disburse the earnest money upon: a) the closing of Property; b) a subsequent written agreement of Buyer and Seller; c) an order of a court or arbitrator having jurisdiction over any dispute involving the earnest money; or d) the failure of the parties to enter into a binding agreement (where there is no dispute over the formation or enforceability of the Agreement). In addition, Holder may disburse the earnest money upon a reasonable interpretation of the Agreement, provided that Holder first gives all parties 15 days notice stating to whom and why the disbursement will be made. Any party may object to the proposed disbursement by giving written notice of the same to Holder within the 15 day notice period. Objections not timely made in writing shall be deemed waived. If Holder receives an objection and, after considering it, decides to disburse the earnest money as originally proposed, Holder may do so and send notice to the parties of Holder’s action. If Holder decides to modify its proposed disbursement, Holder shall first send a new 15 day notice to the parties stating the rationale for the modification and to whom the disbursement will now be made.

**D. Interpleader:** If there is a dispute over the earnest money which the parties cannot resolve after a reasonable period of time, and where Holder has a bona fide question as to who is entitled to the earnest money, Broker may interplead the earnest money into a court of competent jurisdiction. Holder shall be reimbursed for and may deduct from any funds interpleaded, its costs and expenses, including reasonable attorney’s fees actually incurred. The prevailing defendant in the interpleader lawsuit shall be entitled to collect its attorney’s fees and court costs and the amount deducted by Holder from the non-prevailing defendant.

**E. Hold Harmless:** All parties hereby agree to indemnify and hold Holder harmless from and against all claims, causes of action, suits and damages arising out of or related to the performance by Holder of its duties hereunder. All parties further covenant and agree not to sue Holder for damages relating to any decision of Holder to disburse earnest money made in accordance with the requirements of this Agreement.

### 4. Closing and Possession

**A. Property Condition:** Seller warrants that at the time of closing or upon the granting of possession if at a time other than at closing, Property will be in substantially the same condition (including conditions disclosed in the Seller’s Property Disclosure Statement) as on the Binding Agreement Date, except for normal wear and tear, and changes made to the condition of Property pursuant to the written agreement of Buyer and Seller. Seller shall deliver Property clean and free of debris at time of possession. If Property is destroyed or substantially damaged prior to closing, Seller shall promptly give notice to Buyer of the same and provide Buyer with whatever information Seller has regarding the availability of insurance and the disposition of any insurance claim. Buyer or Seller may terminate this Agreement not later than fourteen days from receipt of the above notice. If Buyer or Seller do not terminate this Agreement, Seller shall cause Property to be restored to substantially the same condition as on the Binding Agreement Date. The date of closing shall be extended until the earlier of:

1. one year from the original date of closing, or
2. seven days from the date that Property has been restored to substantially the same condition as on the Binding Agreement Date and a new certificate of occupancy (if required) is issued.

**B. Taxes:** Real estate taxes on said Property for the calendar year in which the sale is closed shall be prorated as of the date of closing. Seller shall pay State of Georgia property tax transfer.

**C. Timing of Closing:** This transaction shall be closed on the ______ day of ________, 20____ or on such other date as may be agreed to in writing by the parties. In the event the loan described herein is unable to be closed on or before said date or Seller fails to satisfy valid title objections, then Buyer or Seller may, by unilateral notice to the other party (which notice must be received on or before the closing date) extend the closing date and the date for surrender of occupancy up to seven days.

**D. Possession:** Buyer agrees to allow Seller to retain possession of Property through: [Select sections 1, 2, or 3 below. The sections not marked are not a part of this Agreement.]

- 1. the closing; or
- 2. ________ hours after the closing; or
- 3. ________ days after the closing at _______ o’clock _______ m.

**E. Warranties Transfer:** Seller agrees to transfer to Buyer, at closing, subject to Buyer’s acceptance thereof, (and at Buyer’s expense, if there is any cost associated with said transfer) Seller’s interest in any existing manufacturer’s warranties, service contracts, termite bond, or treatment guarantees and/or other similar warranties which, by their terms, may be transferable to Buyer.

**F. Prorations:** Seller and Buyer agree to prorate all utility bills between themselves, as of the date of closing (or the date of possession of Property by Buyer, whichever is the later) which are issued after closing and include service for any period of time Property was owned/occupied by Seller or any other person prior to Buyer.
EXHIBIT 7–1
Contract for Purchase and Sale of a Home (continued)

G. Closing Certifications: Buyer and Seller shall execute and deliver such certifications, affidavits, and statements as are required at closing to meet the requirements of the federal and of state law.

5. Seller’s Property Disclosure. Seller’s Property Disclosure Statement is attached hereto and incorporated herein. Seller warrants that to the best of Seller’s knowledge and belief, the information contained therein is accurate and complete as of the Binding Agreement Date.

6. Title.
A. Warranty: Seller warrants that, at the time of closing, Seller will convey good and marketable title to said Property by general warranty deed subject only to: (1) zoning; (2) general utility, sewer, and drainage easements of record as of the Binding Agreement Date and upon which the improvements do not encroach; (3) subdivision and/or condominium declarations, covenants, restrictions, and easements of record on the Binding Agreement Date; and (4) leases and other encumbrances specified in this Agreement. Buyer agrees to assume Seller’s responsibilities in any leases specified in this Agreement.

B. Examination: Buyer may, prior to closing, examine title and furnish Seller with a written statement of objections affecting the marketability of said title. If Seller fails to satisfy valid title objections prior to closing or any extension thereof, then Buyer may terminate the Agreement upon written notice to Seller. Good and marketable title as used herein shall mean title which a title insurance company licensed to do business in Georgia will insure at its regular rates, subject only to standard exceptions.

C. Survey: Any survey of Property attached hereto by agreement of the parties prior to the Binding Agreement Date shall be a part of this Agreement. Buyer shall have the right to terminate this Agreement upon written notice to Seller if a new survey performed by a surveyor licensed in Georgia is obtained which is materially different from any attached survey with respect to Property. The term “materially different” shall not apply to any improvements constructed by Seller in their agreed-upon locations subsequent to Binding Agreement Date. Matters revealed in said survey shall not relieve the warranty of title obligations of Seller referenced above.

7. Termite Letter.
A. Report: An official Georgia Wood Infestation Report (the “Report”) prepared by a licensed pest control operator, covering each dwelling (including attachments thereto) and garage on Property and dated within 180 days of the Binding Agreement Date is OR, is NOT attached to this Agreement as an exhibit. If the Report is not attached, Seller shall provide such Report to Buyer within seven days from the Binding Agreement Date. Buyer shall have the right to terminate this Agreement within ten days from the Binding Agreement Date if either of the following events occur:
1. The Report is not timely provided to Buyer; or
2. The Report provided after the Binding Agreement Date indicates present infestation of, or damage to, Property from termites or other wood destroying organisms.

B. Rights: If Buyer does not timely give Seller notice of Buyer’s decision to terminate this Agreement, Buyer’s right to terminate the Agreement pursuant to this paragraph shall be waived. Notwithstanding the above, Buyer shall continue to have whatever other rights to terminate this Agreement, if any, that exist elsewhere in this Agreement. Unless otherwise noted on the Seller’s Property Disclosure Statement, to the best of Seller’s knowledge, the information contained in any attached or later provided Report is accurate and complete, and no other termite inspections have been performed or reports issued, the findings of which are inconsistent with the Report attached hereto.

C. Closing: Prior to closing, Seller shall treat active infestation of termites and other wood destroying organisms, if any. At closing, Seller shall provide Buyer with a Report prepared by a licensed pest control operator dated within 30 days of the closing, stating that each dwelling and garage has been found to be free from active infestation of termites and other wood destroying organisms.

8. Inspection.
A. Right to Inspect: Buyer and Buyer’s representatives shall have the right to enter Property at Buyer’s expense and at reasonable times (including immediately prior to closing) to thoroughly inspect, examine, test and survey Property. This shall include the right to inspect and test for lead-based paint and lead-based paint hazards for no less than ten days from the Binding Agreement Date. Seller shall cause all utility services and any pool, spa, and similar items to be operational so that Buyer may complete all inspections under this Agreement. Buyer agrees to hold Seller and all Brokers harmless from all claims, injuries, and damages arising out of or related to the exercise of these rights.

B. Rights of Buyer in Addition to Inspection: [Select Section 1, 2 or 3 below. The sections not marked are not a part of this Agreement.]

1. Property Sold with Right to Request Repairs.
   a. Buyer shall have the right to request that Seller repair and/or replace Defects, if any, in Property identified by Buyer’s Inspector(s) in a written report(s). Within __________ days from Binding Agreement Date, Buyer shall provide Seller with: (1) a signed written amendment to this Agreement requesting Defects to be repaired and/or replaced, and (2) a copy of all reports of inspectors describing those Defects. If Buyer does not timely present the written amendment and inspection report(s), Buyer shall be deemed to have accepted Property “as is.”
   b. If Buyer timely submits the written amendment and accompanying inspection reports, Buyer and Seller shall have __________ days from the Binding Agreement Date (hereinafter “Defect Resolution Period”) to attempt to negotiate the Defects to be repaired and/or replaced, sign an amendment to the Agreement regarding the same and have it delivered to Buyer and Seller. If the requirements of the preceding sentence have not occurred before the end of the Defect Resolution Period, then within one day thereafter: (1) Buyer or Seller may accept in writing the other party’s last written offer or counteroffer regarding the repair and/or replacement of Defects (regardless of whether the same has expired, or has previously been rejected, it being the express intent of the parties to override any common law to the contrary); or (2) Buyer may accept Property in “as-is” condition. A final agreement regarding the Defects to be repaired and/or replaced shall be formed by the first party to give such notice of acceptance to the other party. All parties shall then promptly execute an amendment to the Agreement reflecting the accepted offer or counteroffer. If neither party timely accepts the other party’s last offer or counteroffer or Buyer does not buy Property “as-is”, this Agreement shall terminate.
EXHIBIT 7–1
Contract for Purchase and Sale of a Home (continued)

2. Property Sold with Right to Terminate.
   a. In consideration of Ten Dollars and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller does hereby grant Buyer a ________ day right ("Termination Right") from Binding Agreement Date during which Buyer may do any or all of the following: (1) conduct at Buyer's sole expense whatever due diligence, inspections, examinations, surveys and testing, if any, Buyer deems appropriate; (2) seek to amend this Agreement to address any concerns with Property; (3) terminate this Agreement without penalty.
   b. If Buyer decides to exercise Buyer's right to terminate this Agreement, Buyer must give notice of the same to Seller prior to the expiration of the Termination Right. If Buyer fails to give such notice timely, the Termination Right shall automatically expire and shall no longer be a part of this Agreement and Buyer shall be deemed to have accepted Property "as-is". The expiration of the Termination Right shall not, however, remove or terminate any other contingencies to which this Agreement may be subject or limit any other rights which Buyer may have under this Agreement. All parties agree that the Binding Agreement Date shall not be affected by Buyer's Termination Right.
   c. Buyer warrants that Buyer is not currently under contract (including option contracts) to purchase other real property and agrees not to enter into any other such contracts during the time period that Buyer has a Termination Right. All parties agree that this Agreement shall constitute an option agreement until such time as the Termination Right has expired, lapses or has otherwise been terminated.

3. Property Sold "As Is." All parties agree that Property is being sold "as is," with all faults including but not limited to lead-based paint and lead-based paint hazards and damage from termites and other wood destroying organisms. Seller shall have no obligation to make repairs to Property.

9. Disclaimer. Buyer and Seller acknowledge that they have not relied upon any advice, representations or statements of Brokers and waive and shall not assert any claims against Brokers involving the same. Buyer and Seller agree that Brokers shall not be responsible to advise Buyer and Seller on any matter including but not limited to the following: any matter which could have been revealed through a survey, title search or inspection of Property; the condition of Property, any portion thereof, or any item therein; building products and construction techniques; the necessity or cost of any repairs to Property; mold; hazardous or toxic materials or substances; termites and other wood destroying organisms; the tax or legal consequences of this transaction; the availability and cost of utilities or community amenities; the appraisal or future value of Property; any condition(s) existing off Property which may affect Property; the terms, conditions and availability of financing; and the uses and zoning of Property whether permitted or proposed. Buyer and Seller acknowledge that Brokers are not experts with respect to the above matters and that, if any of these matters or any other matters are of concern to them, they should seek independent expert advice relative thereto. Buyer and Seller acknowledge that Brokers shall not be responsible to monitor or supervise any portion of any construction or repairs to Property and that such tasks clearly fall outside the scope of real estate brokerage services. Buyer further acknowledges that in every neighborhood there are conditions which different buyers may find objectionable. Buyer shall therefore be responsible to become fully acquainted with neighborhood and other off site conditions which could affect Property.
EXHIBIT 7–1
Contract for Purchase and Sale of a Home (continued)

10. Agency and Brokerage.
   A. Agency Disclosure: In this Agreement, the term Broker shall mean a licensed Georgia real estate broker or brokerage firm and, where the context would indicate, the broker’s affiliated licensees. No Broker in this transaction shall owe any duty to Buyer or Seller greater than what is set forth in their brokerage engagements and the Brokerage Relationships in Real Estate Transactions Act, O.C.G.A. § 10-6A-1 et. seq.;
   1. No Agency Relationship. Buyer and Seller acknowledge that, if they are not represented by a Broker, they are each solely responsible for protecting their own interests, and that Broker’s role is limited to performing ministerial acts for that party.
   2. Listing Broker. Broker working with the Seller is identified on the signature page as the "Listing Broker";
      and said Broker is ☐ OR is ☐ NOT ☐ representing Seller;
   3. Selling Broker. Broker working with Buyer is identified on the signature page as "Selling Broker";
      and said Broker is ☐ OR is ☐ NOT ☐ representing Buyer; and
   4. Dual Agency or Designated Agency. If Buyer and Seller are both being represented by the same Broker,
      a relationship of either designated agency ☐ OR dual agency ☐ shall exist.
      a. Dual Agency Disclosure. [Applicable only if dual agency has been selected above]
         Buyer and Seller are aware that Broker is acting as a dual agent in this transaction and consent to the same. Buyer and Seller have been advised that:
            (1) In serving as a dual agent, Broker is representing two clients whose interests are at or times could be different or even adverse;
            (2) Broker will disclose all adverse, material facts relevant to the transaction and actually known to the dual agent to all parties in the transaction except for information made confidential by request or instructions from each client which is not otherwise required to be disclosed by law;
            (3) Buyer and Seller do not have to consent to dual agency and, the consent of Buyer and Seller to dual agency has been given voluntarily and the parties have read and understand their brokerage engagement agreements.
            (4) Notwithstanding any provision to the contrary contained herein, Buyer and Seller each hereby direct Broker, while acting as a dual agent, to keep confidential and not reveal to the other party any information which could materially and adversely affect their negotiating position.
      b. Designated Agency Assignment. [Applicable only if the designated agency has been selected above]
         Broker has assigned _____________ to work exclusively with Buyer as Buyer's designated agent and _____________ to work exclusively with Seller as Seller's designated agent. Each designated agent shall exclusively represent the party to whom each has been assigned as a client and shall not represent in this transaction the client assigned to the other designated agent.
   B. Brokerage. Broker(s) identified herein have performed valuable brokerage services and are to be paid a commission pursuant to a separate agreement or agreements. Unless otherwise provided for herein, Listing Broker will be paid a commission by Seller, and the Selling Broker will receive a portion of the Listing Broker’s commission pursuant to a cooperative brokerage agreement. The closing attorney is directed to pay the commission of the Broker(s) at closing out of the proceeds of the sale. If the sale proceeds are insufficient to pay the full commission, the party owing the commission will pay any shortfall at closing. If more than one Broker is involved in the transaction, the closing attorney is directed to pay each Broker its respective portion of said commission. In the event the sale is not closed because of Buyer’s and/ or Seller’s failure or refusal to perform any of their obligations herein, the non-performing party shall immediately pay the Broker(s) the full commission the Broker(s) would have received had the sale closed, and the Selling Broker and Listing Broker may jointly or independently pursue the non-performing party for their portion of the commission.
   C. Disclosure of Commission, Rebate, or Direct Profit: Broker hereby discloses that Broker may receive a commission, rebate or direct profit for procuring a mortgage loan, insurance or other services on behalf of Buyer or Seller.
   D. Material Relationship Disclosure: Broker and/or affiliated licensees have no material relationship with either Buyer or Seller except as follows:

   A. Binding Effect, Entire Agreement, Modification, Assignment: This Agreement constitutes the sole and entire agreement between the parties and shall be binding upon the parties and their successors, heirs and permitted assigns. No representation, promise or inducement not included in this Agreement shall be binding upon any party hereto. This Agreement may not be amended, modified or waived except by the written agreement of Buyer and Seller. This Agreement may not be assigned by Buyer except with the written agreement of Seller. Any assignee shall fulfill all the terms and conditions of this Agreement.
   B. Survival of Agreement: All conditions and stipulations in this Agreement, which the parties agree shall be performed or fulfilled after the closing, shall survive closing until such time as said conditions or stipulations are performed or fulfilled.
   C. Governing Law: This Agreement may be signed in multiple counterparts and shall be interpreted in accordance with the laws of the State of Georgia.
   D. Time of Essence: Time is of the essence of this Agreement.
   E. Terminology: As the context may require in this Agreement: (1) the singular shall mean the plural and vice versa; and (2) all pronouns shall mean and include the person, entity, firm, or corporation to which they relate.
   F. Responsibility to Cooperate: All parties agree to take all actions and do all things reasonably necessary to fulfill in good faith and in a timely manner the terms and conditions of this Agreement.
EXHIBIT 7–1
Contract for Purchase and Sale of a Home (continued)

G. Notices:
1. All Notices Must Be In Writing. All notices, including, but not limited to, offers, counteroffers, acceptances, amendments, notices to terminate and demands, required or permitted hereunder shall be in writing, signed by the party giving the notice and delivered either: (a) in person; (b) by an overnight delivery service, prepaid; (c) by facsimile transmission (FAX); or (d) by the United States Postal Service, postage prepaid, registered or certified return receipt requested.
2. When Notice to Broker Is Notice to Client. Except in transactions where Broker is practicing designated agency, notice to Broker shall for all purposes be deemed to be notice to the party being represented by Broker as a client. In transactions where Broker is practicing designated agency, notice to the designated agent shall be deemed to be notice to the party being represented by the designated agent. Notice to Broker shall not be deemed to be notice to any party who is only a customer of Broker.
3. Faxed Notices. All FAX notices to Listing Broker or Selling Broker shall be sent to their respective FAX numbers identified on the signature page of this Agreement. FAX notices to the designated agent for Buyer shall be sent to the FAX number of Selling Broker. FAX notices to the designated agent for Seller shall be sent to the FAX number of Listing Broker. All FAX notices to an unrepresented Buyer or unrepresented Seller shall be sent to the following facsimile numbers:

Unrepresented Buyer: ___________________________; Unrepresented Seller: ___________________________.

Notice sent by FAX shall be deemed to be given and received as of the date and time it is transmitted provided that the sending FAX produces a written confirmation showing the correct date and the time of the transmission and the telephone number referenced herein to which the notice should have been sent. Any notice sent by FAX shall be sent to such other FAX number as the receiving party may from time to time specify by notice to the party sending the FAX. Any party sending notice by FAX shall send an original copy of the notice if so requested by the other party. A faxed signature of a party shall constitute an original signature binding upon that party.
4. Miscellaneous. Except as may be provided herein, notices shall be deemed to be given as of the date and time they are received. The notice requirements referenced herein shall be strictly construed.

H. Binding Agreement Date: The Binding Agreement Date shall be the date when the party making the last Offer receives notice that the Offer has been accepted. This party (or the Broker representing this party) shall fill in the Binding Agreement Date below and promptly give notice of this date to the other party.

12. Exhibits and Addenda. All exhibits and/or addenda attached hereto, listed below, or referenced herein are made a part of this Agreement. If any such exhibit or addendum conflicts with any proceeding paragraph, said exhibit or addendum shall control:

SPECIAL STIPULATIONS: The following Special Stipulations, if conflicting with any exhibit, addendum, or preceding paragraph, shall control:
EXHIBIT 7–1
Contract for Purchase and Sale of a Home (continued)

☐ Mark box if additional Special Stipulations are attached.

**Time Limit:** The terms of this Agreement shall constitute an offer ("Offer") which shall be open for acceptance until _______ o'clock _______.m. on the _______ day of ________, 20______.

**Acceptance:** This Offer is hereby accepted, without change, at _______ o'clock _______.m. on the _______ day of ________, 20______.

Selling Broker

MLS Office Code  Brokerage Firm License Number

Broker's Phone# _______ & FAX#

By: ________________

Broker or Broker's Affiliated Licensee

Print or Type Name

Selling Agent's Georgia Real Estate License Number

Multiple Listing Number ________________

Listing Broker

MLS Office Code  Brokerage Firm License Number

Broker's Phone# _______ & FAX#

By: ________________

Broker or Broker's Affiliated Licensee

Print or Type Name

Listing Agent's Georgia Real Estate License Number

**Binding Agreement Date:** The Binding Agreement Date shall be the date when the party making the last Offer receives notice that the Offer has been accepted. This party (or the Broker representing this party) shall fill in the Binding Agreement Date and promptly give notice of this date to the other party. The Binding Agreement Date in this transaction is the _______ day of ________, 20______.
STATE OF
COUNTY OF BAKER

CONTRACT FOR PURCHASE AND SALE

THIS IS A CONTRACT for the purchase and sale of certain real estate by and between JOHN J. JOHNS, a resident of Baker County (hereinafter called “Seller”), THOMAS T. TOMS, a resident of Charlie County (hereinafter called “Purchaser”), and Community & Home Properties (hereinafter called “Broker”).

In consideration of the mutual covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Agreement to Buy and Sell

Seller hereby agrees to sell and Purchaser hereby agrees to buy all that tract or parcel of land described on Exhibit A attached hereto and made a part hereof lying and being in Land Lot 172 of the 14th District of Baker County, and being the same property conveyed to Seller by warranty deed dated January 4, 2000 and recorded in Deed Book 140, Page 28, Baker County Records, which deed is incorporated herein by reference. The property which is the subject of this Contract (hereinafter called “the Property”) includes the land, all crops, plants, trees and shrubbery thereon, all buildings thereon and all fixtures therein.

2. Survey

Prior to date of closing as hereinafter provided in Paragraph 7, Purchaser shall at Purchaser’s expense cause an accurate survey to be made of the Property by a reputable surveyor registered under the laws of the State of . The plat of such survey ("the plat") shall show the boundaries of the Property and the acreage therein computed to the nearest one-hundredth of an acre. Purchaser shall promptly furnish Seller with a copy of the plat and the plat shall conclusively determine as between Purchaser and Seller the acreage in the Property. Seller’s conveyance to Purchaser shall be in accordance with said survey.*

3. Purchase Price

The purchase price for the Property shall be $5,000.00 per acre, and the total purchase price for the Property shall be determined by multiplying by said purchase price per acre the number of acres determined by the plat. Provided, however, that any portion of the Property lying within the rights-of-way of any road, street or easement, or below the high water mark of any streams and creeks, and all other areas to which Seller cannot convey title as provided herein, shall be excluded for purposes of determining the purchase price.

4. Payment

The purchase price of the Property shall be paid as follows:

(a) At the time of closing, Purchaser shall pay to Seller in cash or by Purchaser’s [certified or cashier’s] check an amount of money equal to twenty-nine percent (29%) of the purchase price, less a credit for all earnest money paid hereunder.

(b) The balance of the purchase price shall be paid by Purchaser’s Promissory Note [in the form attached hereto as Exhibit B], which Note shall provide ten equal annual installments of principal, the first of which shall be due and payable on the fifth anniversary of closing hereunder and subsequent installments shall be due on each anniversary thereafter until paid in full.

(c) The Note shall bear interest on the unpaid balance of principal at the rate of eight percent (8%) per annum, which interest shall be payable on each anniversary of the closing hereunder.

(d) The Note shall provide that, after the last day of the calendar year in which closing hereunder takes place, the principal sum of said Note may be prepaid in whole or in part without penalty

*If Purchaser or Seller have the right to review the plat of survey, see alternative provisions.
and without further interest on the amounts prepaid from the date of such prepayment. All partial prepayments shall be credited to installments of principal in the inverse order of maturity.

(e) The Note shall be secured by a Purchase Money Deed to Secure Debt conveying the Property to Seller as security. The form of said Deed to Secure Debt is attached hereto as Exhibit C and made a part hereof.

(f) The Note and Deed to Secure Debt shall provide that Seller shall not exercise any of Seller’s remedies for Purchaser’s default thereunder (including without limitation the right of acceleration of the balance of Purchaser’s indebtedness thereunder) until the tenth day after written notice of said default (which written notice shall specify the nature of all such defaults and set out the method of cure of such defaults by Purchaser) is provided by Seller to Purchaser. If Purchaser has not cured all such defaults within ten days after receipt of such notice, Seller shall then be empowered to exercise all of Seller’s remedies under the Note and Deed to Secure Debt.

(g) The Deed to Secure Debt shall provide for the release of the property described therein as set forth in Exhibit C attached hereto.

5. Warranties of Seller

Seller hereby warrants and represents that:

(a) Seller owns unencumbered fee simple title to the property, free and clear of all restrictions, liens and encumbrances except as set forth on Exhibit A hereto and herein called “the Permitted Title Exceptions,” that no assessments have been made against said property which are unpaid (except ad valorem taxes for the current year) whether or not they have become liens, that the Property is not subject to any other leases nor to the claims of any tenants in possession, and that so long as this Contract remains in force, Seller will not lease or convey any portion of the Property or any rights therein, nor enter into any agreements or amendments to agreements granting to any person or entity any rights with respect to the Property or any part thereof.

(b) The Property contains not less than 20 acres.

(c) The Property has not previously been used as a landfill or as a dump for garbage or refuse, and that no portion of the Property is subject to flood plain restrictions.

(d) Access to the streets and roads adjoining the Property is not limited or restricted except by applicable zoning laws.

(e) All utilities, including but not limited to water, gas, sewer and electricity, are located within or at the boundary lines of the Property.

(f) The Property is now zoned AG-1 under the present zoning laws of Baker County.

6. Title Objections

Purchaser shall have 30 calendar days from the date of this Agreement in which to examine Seller’s title. If Purchaser finds any legal defects to title other than the Permitted Title Exceptions, Seller shall be furnished with a written statement thereof and shall have 30 calendar days in which to correct such defects, and Seller shall take all steps, including payment of money, necessary to correct said legal defects. If Seller shall fail to correct such legal defects within 30 days, then Purchaser shall have the choice of (a) accepting the Property with such legal defects after deduction from the purchase price otherwise payable hereunder the cost of correction of such legal defects which can be corrected by the payment of money; (b) postponing closing hereunder for not more than ninety calendar days until said defects are corrected or (c) declining to accept the Property with such legal defects, such choice to be exercised by written notice to Seller mailed within 45 calendar days following the end of the period provided above for the correction by Seller of such legal defects. Should Purchaser elect to postpone closing under (b) above and should, at the end of said ninety-calendar-day postponement period, said legal defects remain uncorrected, Purchaser shall have the further choice of options (a) and (c) set forth above in this paragraph, such choice to be exercised by written notice to Seller mailed within ten calendar days following the end of such postponement period. If Purchaser shall decline to so accept the Property subject to such legal defects, then this Contract shall be terminated, Purchaser’s option, be null and void and Purchaser’s earnest money deposit shall be promptly refunded to Purchaser. Also, an amount
of money equal to Purchaser’s expenses in obtaining the title examination and the survey shall be paid by Seller to Purchaser.

7. Closing

(a) Unless extended as provided herein, Purchaser and Seller shall consummate and close the sale contemplated by this Agreement on or before the 120th calendar day following the date of this Agreement or the “final zoning” or defined in Paragraph 13 hereof, whichever is later, at such time, date and location as is designated by Purchaser in a written notice to Seller and Broker.

(b) At the closing each party shall execute and deliver all documents necessary to effect and complete the closing. The general warranty deed to be executed by Seller shall be on the form [attached hereto as Exhibit D] then generally used by Security Mortgage Company and shall convey to Buyer unencumbered fee simple title, free and clear of all liens, restrictions and encumbrances except the Permitted Title Exceptions [and insurable as such by Title Company at standard rates on American Land Title Association Owner’s Policy Standard Form B–1987]. All blanks in all of the closing documents shall be filled in at the closing, and all documents shall otherwise be conformed to meet the requirements of the parties as expressed in this Contract.

(c) Seller shall pay the tax imposed on the warranty deed and shall pay the cost of recording and the Intangibles tax on the Deed to Secure Debt from Purchaser. Purchaser shall pay the cost of recording the warranty deed, the cost of examining and insuring title to the Property, and all other closing costs incurred by Purchaser.

(d) As of the date of closing, Purchaser and Seller shall prorate ad valorem taxes on the Property for the year in which the closing occurs, premiums, for hazard insurance on the Property, utility bills, soil bank payments and rents prepaid to Seller under any leases which are assigned to Purchaser. Seller shall assign and transfer to Buyer at the closing any leases or tenant contracts specified in the Permitted Title Exceptions and Purchaser shall assume Seller’s obligations under such leases or contracts.

(e) At closing Seller shall execute a written statement of the warranties and representations contained herein.

8. Inspection

Commencing upon the date of this Agreement Purchaser shall have the right to go on the Property personally or through agents, employees and contractors for the purposes of making boundary line and topographical surveys of same, soil tests and such other tests, analyses and investigations of the Property as Purchaser deems desirable. Purchaser shall pay all costs incurred in making such surveys, tests, analyses and investigations.

9. Condition and Possession of the Property

At closing Seller shall deliver to Purchaser possession of the Property in the same condition as on the date of this Contract. If all or any material portion of the Property shall be condemned, damaged or destroyed prior to the closing, Purchaser may elect to (i) terminate this Contract, or (ii) reduce the purchase price in the amount of the condemnation award or the decrease in value caused by the damage or destruction to the property, or (iii) receive such insurance proceeds or condemnation award as may be paid or payable with respect to such damage or destruction. Purchaser’s election under this paragraph shall be exercised by written notice to Seller within 10 days after receipt of written notice from Seller of such taking, damage or destruction or of written notice of the amount of the insurance or condemnation award payable with respect to such taking, damage or destruction, whichever is later. If Purchaser elects to terminate this Contract under this paragraph, all earnest money paid hereunder shall be immediately refunded to Purchaser.

10. Default

If the sale contemplated by this Contract is not consummated through default of Seller, Purchaser’s earnest money deposit shall be promptly refunded to Purchaser. If said sale is not consummated (continued)
because of Purchaser’s default, then Seller shall be entitled to retain Purchaser’s earnest money deposit as full liquidated damages for such default of Purchaser. Nothing contained in this paragraph shall eliminate or limit Purchaser’s right to sue for, and obtain, damages caused by Seller’s default or specific performance of Seller’s obligations hereunder. If Seller fails to consummate this sale for any reason other than Seller’s inability to furnish to Purchaser marketable and insurable title to the Property as provided herein, Seller shall pay to Broker the real estate commission as provided in paragraph 11.

11. Commission

Seller shall at closing pay to Broker a real estate commission in the amount of ten percent of the purchase price. Purchaser and Seller hereby acknowledge that Broker has rendered a valuable service by negotiating this Contract, and Broker is therefore made a party to this Contract for the enforcement of Broker’s rights to such commission. Purchaser shall have no obligations to pay any commissions.

12. Assignment

Purchaser shall have the right to assign this Contract in whole or in part only with the consent of Seller, which consent shall not be unreasonably withheld, and the terms and provisions hereof shall be binding upon and shall inure to the benefit of the parties hereto, their successors, representatives, heirs and assigns. Upon the occurrence of an assignment of this entire Contract, Purchaser shall be relieved of Purchaser’s obligations hereunder.

13. Zoning

(a) Commencing on the date hereof, Seller and Purchaser shall use their best efforts to obtain rezoning for all of the Property to the zoning classification of A-1 under the applicable Zoning Ordinances of Baker County, so as to permit the development of the Property for apartment use in accordance with plans prepared by Purchaser at Purchaser’s expense and submitted for use in connection with said rezoning. Purchaser [Seller] shall on or before the 60th calendar day following the date hereof properly execute and file at [Seller’s] Purchaser’s expense an Application for Rezoning of the Property with the proper officials of said County, attached to which shall be the plans prepared by the Purchaser. [Seller] Purchaser shall diligently and vigorously pursue said Application until a final decision has been made thereon by the governing body of said County and thereafter until all appeals and suits filed in connection with said rezoning have been finally disposed of. Seller and Purchaser shall cooperate in obtaining such rezoning and shall in no event either oppose or interfere with such rezoning.

(b) Said rezoning shall become “final zoning,” as the term “final zoning” is used herein, on the date that such rezoning has been granted by the appropriate officials of said County pursuant to said Application of Purchaser [Seller], and any and all appeal periods as provided by law have expired without an appeal or suit having been filed, or, if filed, with such suit or appeal dismissed or resolved finally and conclusively in favor of such rezoning, and, at the expiration of such appeal periods, or at the conclusion of any such appeal or suit, the rezoning of the Property shall not have been further changed or withdrawn by the appropriate officials of said County.

(c) If said Application for Rezoning is not filed by Purchaser [Seller] within said 60-day period, then and in that event [Purchaser] Seller shall have the right to terminate this Contract by giving [Seller] Purchaser written notice of termination. Upon such termination, Purchaser’s earnest money shall be promptly refunded in full to Purchaser.

(d) If Purchaser [Seller] complies with all of Purchaser’s [Seller’s] obligations as to rezoning set forth in this paragraph and if nevertheless said rezoning has been denied, or has neither been denied nor has become “final zoning” on or before 180 calendar days following the date hereof, then Purchaser shall have the right by written notice to Seller or Broker (i) to terminate this Contract and receive a prompt refund of Purchaser’s earnest money or (ii) to postpone closing hereunder for not more than ninety calendar days thereafter until said “final zoning” is obtained or (iii) to terminate this Contract at the end of such postponement period if said “final zoning” remains unobtained and receive a prompt refund of Purchaser’s earnest money or (iv) to waive the provisions of this paragraph and accept the Property without the “final zoning” described hereinabove.
14. **Conditions to Closing**

Unless waived by Purchaser, obligations of Purchaser under this Contract are expressly made subject to the following conditions:

(a) The truth and accuracy as of the date of this Contract and as of the date of closing of each and every warranty or representation herein made by Seller.

(b) The final rezoning of the Property as provided in Paragraph 13 hereof within the time specified, as such time may be extended.

(c) Purchaser’s obtaining at or prior to the closing an easement for pedestrian and vehicular ingress and egress to and from the property across the adjoining property owned by Sam Smith, such easement to be in the form attached hereto as Exhibit E. Purchaser agrees to use Purchaser’s best efforts to obtain such easement, to pay the cost of same (not to exceed $2,000.00), and to accept such easement if it is available.

15. **Notice**

Any notice required or permitted to be given hereunder shall be sufficient if in writing and sent by U.S. Certified Mail, postage prepaid, to the party being given such notice at the following addresses:

Seller: ___________________________________________

___________________________________________

___________________________________________

Purchaser: ___________________________________________

___________________________________________

___________________________________________

Broker: ___________________________________________

___________________________________________

___________________________________________

Any party may change said address by giving the other parties hereto notice of such change of address. Notice given as hereinabove provided shall be deemed received by the party to whom it is addressed on the third calendar day following the date on which said notice is deposited in the mail.

16. **Survival of Contract**

All the terms and conditions of this Contract not performed at or prior to closing shall survive the closing hereunder and shall not be merged into the closing documents.

This instrument shall be regarded as an offer by the Purchaser or Seller who first signs to the other and open for acceptance by the other until 5:00 o’clock p.m. on the 13th day of November, 20____, by which time written acceptance of such offer must have been actually received by Broker, who shall promptly notify the other party in writing of such acceptance. The date of this Contract shall be the date of such acceptance.

Signed, sealed and delivered as to Purchaser this 11th day of November,

___________________________________________

Witness

___________________________________________ (SEAL)

Notary Public

Notary Public

Thomas T. Toms, Purchaser

Signed, sealed and delivered as to Seller this 12th day of November, 20____

(continued)
EXHIBIT 7–2
Contract for Purchase and Sale of a Large Tract of Vacant Land
(continued)

Witness

__________________________________________
Notary Public

_________________________________ _________________________________ (SEAL)
John J. Johns, Seller
COMMUNITY & HOME PROPERTIES

Signed, sealed and delivered as to Seller
this 12th day of November, 20________
Witness

_________________________________ By _______________________________ (SEAL)
Notary Public

Alternate Survey Provision

Prior to date of closing as hereinafter provided, Purchaser shall at Purchaser’s expense cause an accurate survey to be made of the Property by a reputable surveyor registered under the laws of the State of . The plat of such survey shall show the boundaries of the Property and the acreage contained therein, computed to the nearest one-tenth of an acre. Within five calendar days after Purchaser’s receipt of a plat of said survey, Purchaser shall mail a copy of said Plat to Seller in the manner hereinafter provided for giving notice, and, within ten calendar days after receipt of said copy, Seller shall notify Purchaser in writing if such plat is not acceptable to Seller. If Seller does not, within said ten-day period, so notify Purchaser that such plat is not acceptable, said survey shall conclusively determine as between Purchaser and Seller the final acreage to be conveyed hereunder, and Seller’s conveyance to Purchaser shall be in accordance with said survey.

If Seller does, within said ten-day period, so notify Purchaser that such plat is not acceptable, Seller shall, simultaneously with the giving of such notification, cause at Seller’s expense an accurate second survey of said Property to be made by a reputable surveyor registered under the laws of the State of . The plat of such second survey shall show the boundaries of the Property and the acreage contained therein, computed to the nearest one-tenth of an acre. Within five calendar days after Seller’s receipt of a plat of said second survey, Seller shall mail a copy thereof to Purchaser in the manner hereinafter provided for giving notice, and, within ten calendar days after receipt of such copy, Purchaser shall notify Seller in writing if such plat is not acceptable to Purchaser. If Purchaser does not, within said ten-day period, so notify Seller that such plat is not acceptable, said second survey shall conclusively determine as between Purchaser and Seller the final acreage to be conveyed hereunder, and Seller’s conveyance to Purchaser shall be in accordance with said second survey.

If Purchaser does, within said ten-day period, so notify Seller that such plat is not acceptable, and if, within fourteen calendar days after receipt by Purchaser of such survey of Seller, Seller and Purchaser are unable to agree upon a survey, then both Seller and Purchaser shall cause their respective surveyors to name a third surveyor who shall be a reputable surveyor registered under the laws of the State of . If said two surveyors have not named such third surveyor within seven calendar days following the last day of said fourteen-day period, then said third surveyor shall be a reputable surveyor, registered under the laws of the State of and named by the Superior Court Judge senior in point of service serving the county in which the Property (or the majority of said Property, if it lies in more than one county) lies.

Said third surveyor shall be promptly employed by Purchaser and Seller to make an accurate third survey of said Property, the cost of which third survey shall be borne equally by Purchaser and Seller. Said third surveyor shall furnish copies of the plat of said third survey to Purchaser and Seller upon completion of same; said plat shall show the boundaries of the Property and the acreage contained therein, computed to the nearest one-tenth of an acre. Said third survey shall conclusively determine as between Purchaser and Seller the final acreage to be conveyed hereunder, and Seller’s conveyance to Purchaser shall be in accordance with said third survey.

The survey which, in accordance with provisions of this Paragraph 2, does in fact conclusively determine the final acreage to be conveyed hereunder shall be hereinafter referred to in this Agreement as “the Survey.”
EXHIBIT 7–3
Seller’s Property Disclosure Statement
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SELLER’S PROPERTY DISCLOSURE STATEMENT
EXHIBIT "_______"

For property located at __________________________, __________________________, Georgia, __________,
together with all improvements thereon ("Property")

NOTICE TO BUYER AND SELLER: This disclosure statement is designed to assist Seller in disclosing to prospective buyers all known material adverse facts relating to the physical condition of Property that may not be readily observable, disclosing historical information and past problems with Property, and identifying those fixtures/items that are included with the sale of Property. All questions are to be answered with respect to the above referenced Property.

IF THE ANSWERS TO ANY OF THE QUESTIONS LISTED BELOW ARE "YES," PLEASE EXPLAIN IN DETAIL IN THE "ADDITIONAL EXPLANATIONS" SECTION.

1. OCCUPANCY:
   (a) Is Property vacant? __________
      If yes, how long has it been since Seller occupied Property? __________
   (b) Are there any leases, written or verbal, on Property or any part thereof? __________

2. SOIL, TREES, SHRUBS AND BOUNDARIES:
   (a) Are there any landfills (other than foundation backfill), graves,
       mine shafts, trash dumps or wells (in use or abandoned) on Property? __________
   (b) Is there any sliding, settling (other than normal settling), earth movement, sinkholes, upheaval, or earth stability/expansive soil problems? __________
   (c) Are there any diseased or dead trees on Property? __________
   (d) Are there any encroachments, leases, unrecorded easements, or boundary line disputes? __________

3. ROOF, GUTTERS AND DOWNSPOUTS:
   (a) Approximate age of roof: __________ years.
   (b) Has the roof, or any part thereof, been repaired during your ownership? __________
   (c) Are there any roof leaks or other problems with the roof, roof flashing, gutters or downspouts? __________

4. TERMITES, DRY-ROT, PESTS, AND WOOD-DESTROYING ORGANISMS:
   (a) Is there any past or present damage to Property caused by 
       infiltrating pests, termites, dry-rot, or other wood-destroying organisms? __________
   (b) Is your Property currently under a transferable bond, warranty or other coverage 
       for termites or other wood destroying organisms by a licensed pest control company? __________
       If yes, check type of coverage: ○ re-treatment and repair; or ○ re-treatment only
   (c) Is there a cost to transfer the bond, warranty or other coverage? __________
       If yes, what is the cost? $ __________
   (d) Is there a cost to maintain the bond, warranty or other coverage? If yes, what is the annual cost? $ __________
   (e) Have any termite/pest control reports or treatments for Property been done in the last five years? __________
   (f) Does any dwelling or garage on Property have any untreated wood or exterior siding/cladding, 
       such as rigid board insulation, foam plastic, synthetic stucco, hard coat stucco, wood or masonry 
       siding (excluding brick), below grade or within six inches of finished grade? __________

5. STRUCTURAL ITEMS, ADDITIONS AND ALTERATIONS:
   (a) What year was the main residential dwelling constructed? __________
   (b) Has there been any movement, shifting, settling (other than normal settling), cracking, 
       deterioration, or other structural problems with any dwelling or garage on Property? __________
   (c) Has there been any additional structural bracing, underpinning, or other 
       structural reinforcement added to any dwelling or garage on Property? __________
   (d) Are there any problems with driveways, walkways, patios, or retaining walls on Property? __________
   (e) Have there been any additions, structural changes, or any other major alterations 
       to the original improvements on the Property? __________
   (f) Has there been any work done on the Property where required permits and/or approvals 
       (public or private) were not obtained? __________
   (g) Has any work been done to Property that was not in compliance with building codes 
       or zoning regulations? __________
   (h) Does any part of the exterior siding or cladding of any dwelling or garage on Property consist of synthetic stucco? __________

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PS0, Seller’s Property Disclosure Statement Exhibit, Page 1 of 5 01/01/05
EXHIBIT 7-3
Seller's Property Disclosure Statement (continued)

6. DRAINAGE, FLOODING AND MOISTURE:
   (a) Has there been any water leakage, water accumulation, or dampness within the basement, crawl space or other parts of the main dwelling at or below grade?
   (b) Have any repairs been made to control any water or dampness problems in the basement, crawl space, or other parts of the main dwelling at or below grade?
   (c) Is the Property or any improvements thereon located in a flood zone?
   (d) Does water regularly stand on Property for more than one day after it has rained?
   (e) Has there been any past flooding on Property?
   (f) Are there any problems with siding or exterior cladding, swelling, chipping, delaminating or retaining moisture?
   (g) Does mold appear on interior heated and cooled portions of any dwelling on Property other than on the walls, floors or ceilings of showers, sinks, and bathtubs?

7. PLUMBING RELATED ITEMS:
   (a) What is your drinking water source: Public, Private, Well on Property
   (b) If your drinking water is from a well, has it been tested within the past twelve months?
   (c) Do you have a water softener, filter or purifier? If yes, leased, owned
   (d) What is the type of sewage system: Public, Private, Septic Tank
   (e) Is the main dwelling served by sewage pump or lift system?
   (f) Do you know if any septic tank or cesspool on Property has ever been professionally serviced?
   (g) Do you know of any past or present leaks, backups, or other similar problems relating to any of the plumbing, water and/or sewage-related items?
   (h) Is there any polyethylene plumbing, other than primary service line, on Property?

8. OTHER SYSTEMS AND COMPONENTS:
   (a) What type of heating system(s) serve the main dwelling? Gas, Electric, Other
   (b) What is the approximate age of heating system(s): _______ years
   (c) What type of air conditioning system(s) serve the main dwelling? Gas, Electric, Other
   (d) What is the approximate age of air conditioning system(s): _______ years
   (e) Is any portion of the main dwelling not served by a central or zoned heating and/or air conditioning system?
   (f) How is water heated in the main dwelling? Electric, Gas, Solar
   (g) What is the approximate age of water heater: _______ years
   (h) Does the main dwelling have aluminum wiring other than the primary service line?
   (i) Is there any system or appliance which is leased or for which the buyer must pay a transfer fee to continue to use? If yes, what is the transfer fee? $________
   (j) Are any fireplaces not working or in need of repair?
   (k) When was each fireplace, wood stove or chimney/flu last cleaned? Date: __________

9. TOXIC SUBSTANCES:
   (a) Are there any underground tanks, toxic or hazardous substances on Property (structure or soil) such as asbestos, urea-formaldehyde, methane gas, radioactive material, radon, mold, benzene or other environmental contaminants?
   (b) Has Property ever been tested for radon, lead, mold or any other potentially toxic substances?

10. COVENANTS, FEES AND ASSESSMENTS:
    (a) Is Property part of a condominium, community association or subject to covenants, conditions and restrictions (CC & Rs)?
    (b) Is there a mandatory community association fee or assessment?
        If yes, what is the amount? $________ per _________.
        Is there an initiation fee? If yes, what amount? $________.
    (c) Are there any recreational facilities in the community for which the obligation to pay and the right to use are optional?
        If yes, please describe the nature of the facilities and the optional fee or charge. _________.
    (d) In purchasing Property, will any initiation, transfer, or other similar fee be owed to the Association? If yes, what is the amount? $________.
    (e) Are there any special assessments approved by but yet not owing or due to a community Association that are not yet owed or due?
11. OTHER MATTERS:

<table>
<thead>
<tr>
<th>Question</th>
<th>Yes</th>
<th>No</th>
<th>Don't Know</th>
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<tbody>
<tr>
<td>(a) Have there been any inspections of Property in the past year?</td>
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<tr>
<td>If yes, by whom and of what type?</td>
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<tr>
<td>(b) Does Property contain any building products which are or have been the subject of class action lawsuits, litigation or legal claims alleging that the product is defective?</td>
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<td>If yes, please identify the product or products and the general location of each on Property:</td>
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<tr>
<td>(c) Is there or has there been in the past any litigation involving Property or any improvement therein alleging negligent or improper construction defects, termites, and/or title problems?</td>
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<tr>
<td>(d) Has there been any award or payment of money in lieu of repairs for such a defective building product?</td>
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<td>(e) Has any release been signed that would limit a future owner from making any claims in connection with Property?</td>
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<td>(f) Has there been any fire, flood or wind damage which required repairs to Property in excess of $500.00?</td>
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<td>(g) Approximately how many insurance claims have been filed on Property since you owned it?</td>
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<td>(h) Are any fixtures or appliances included in the sale in need of repair?</td>
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<tr>
<td>(i) Have any repairs been made to the electrical, plumbing, or heating and air condition systems, or any part thereof?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(j) Was any dwelling on Property or portion thereof (excluding mobile, modular and manufactured dwelling) moved to the site from another location?</td>
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</tr>
</tbody>
</table>

12. FIXTURES/ITEMS: (Check (T) only those fixtures/items below that are included in the sale of Property. Unless otherwise indicated, if there is more than one item (such as a second refrigerator or two chandeliers or three smoke detectors), all such fixtures/items checked are included in the sale of Property. Those fixtures/items listed below that are not checked shall not be included in the sale of Property.

- Air Conditioning Window Unit
- Air Purifier
- Alarm System (Burglar)
- Leased Q Owned
- Alarm System (Smoke/Fire)
- Leased Q Owned
- Arbor
- Attic Fan (Whole House Fan)
- Attic Ventilator Fan
- Awning
- Basketball Post & Goal
- Built-In Q Free Standing
- Birdhouses
- Boat Dock
- Carbon Monoxide Detector
- Ceiling Fan
- Chandelier
- Closet Shelving System
- Built-In Q Free Standing
- Dehumidifier
- Built-In Q Free Standing
- Dishwasher
- Built-In Q Free Standing
- Dog House
- Door & Window Hardware
- Dryer
- Gas Q Electric
- Fence (Invisible)
- Fence Pat Collar
- Fireplace
- Gas Logs
- Screen/Door
- Wood Burning Insert
- Flag Pole
- Garage Door Opener
- Remote Control
- Garbage Disposal
- Gas Grille
- Built-In Q Free Standing
- Gazebos
- Hot Tub
- Humidifier
- Ice Maker
- Built-In Q Free Standing
- Intercom
- Jetted Tub
- Landscaping Lights
- Light Fixtures (Except Chandeliers)
- Mailbox
- Microwave Oven
- Built-In Q Free Standing
- Mirror (Attached)
- Outbuilding
- Outdoor Bench
- Playhouse
- Porch swing
- Propane Gas Tanks
- Above ground Q Buried
- Leased Q Owned
- Radio (Built-In)
- Refrigerator
- Satellite Dish/Receiver
- Sauna
- Septic Pump
- Shelving Unit & System
- Built-In Q Free Standing
- Shower Head/Sprayer
- Smoke Detector
- Battery Operated Q Hard Wired
- Speakers (Built-In)
- Sprinkler System
- Stairway
- Stepping Stones
- Storage Building
- Stove
- Gas Q Electric
- Built-In Q Free Standing
- Sump Pump
- Surface Unit Cook Top
- Gas
- Gas
- Swimming Pool
- Above Ground
- Swimming Pool Equipment (List below)
- Swing Set
- Switch Plate Covers
- Telephone Jacks/Wires
- Television Antenna
- Television/Cable Jacks
- Thermostat (Programmable)
- Trash Compactor
- Built-In Q Free Standing
- Tree House
- Trellis
- Vacuum System (Built-In)
- Vacuum Attachments
- Vent Hood
- Washing Machine
- Water Purification System
- Water Softener System
- Weather Vane
- Well Pump
- Window Screens
- Window Treatments
- Wine Cooler

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(continued)
Other fixtures/items included in the sale of Property:

Other fixtures/items not included in the sale of Property:

The common law of fixtures shall apply to fixtures not addressed herein. Those fixtures/items that are not included in the sale of Property shall remain Property of Seller and shall be removed prior to closing or the transfer of possession of Property to Buyer, whichever is later. Seller shall lose the right to remove any such fixtures/items not timely removed. In removing all fixtures/items, Seller shall use reasonable care to prevent damage and, if necessary, to restore Property to its original condition.

13. LEAD-BASED PAINT: Was any part of the residential dwelling on Property constructed prior to 1978?

☐ Yes ☐ Don’t Know ☐ No (If no, proceed to paragraph 14.)

If you have answered "Yes" above, Seller does hereby provide the following warning and shall disclose the following information regarding lead-based paint and lead-based paint hazards.

PURCHASE AND SALE TRANSACTION LEAD WARNING STATEMENT.

Every purchaser of any interest in residential property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.

Seller's Disclosure. [Seller to mark and initial sections A and B below]

A. Presence of lead-based paint and/or lead paint hazard (check one below):

☐ Known lead-based paint and/or lead-based paint hazards are present in the housing (explain below):

☐ Seller has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.

B. Records and Reports available to the Seller (check one below):

☐ Seller has provided the Buyer with all the available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list document below):

☐ Seller has no records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

Buyer’s Acknowledgment. [Buyer to mark and initial sections C, D, and E below]

C. Buyer has received copies of all information listed above regarding lead-based paint and/or lead-based paint hazards

D. Buyer has read and understands the above lead warning statement and has received the pamphlet "Protect Your Family From Lead in Your Home."

E. Buyer has (check one below):

☐ Received a 10-day opportunity (or mutually agreed upon period) to conduct a risk assessment inspection for the presence of lead-based paint and/or lead-based paint hazards; or

☐ Waived the opportunity to conduct a risk assessment inspection for the presence of lead-based paint and/or lead-based paint hazards.

Broker Acknowledgment. [Broker to initial section F below]

F. Broker has informed the Seller of the Seller's obligations under 42 U.S.C. § 4952(d) and is aware of his/her responsibility to ensure compliance.

Broker’s (or Broker’s Affiliated Licensee’s) signature

(continued)
EXHIBIT 7–3
Seller's Property Disclosure Statement (continued)

14. AGRICULTURAL DISCLOSURE: Is Property within, partially within, or adjacent to any property zoned or identified on an approved county land use plan as agricultural or forestry use? □ Yes □ Don't Know □ No
   It is the policy of this state and this community to conserve, protect, and encourage the development and improvement of farm and forest land for the production of food, fiber, and other products, and also for its natural and environmental value. This notice is to inform prospective property owners or other persons or entities leasing or acquiring an interest in real property that property in which they are about to acquire an interest lies within, partially within, or adjacent to an area zoned, used, or identified for farm and forest activities and that farm and forest activities occur in the area. Such farm and forest activities may include intensive operations that cause discomfort and inconveniences that involve, but are not limited to, noises, odors, fumes, dust, smoke, insects, operations of machinery during any 24 hour period, storage and disposal of manure, and the application by spraying or otherwise of chemical fertilizers, soil amendments, herbicides, and pesticides. One or more of these inconveniences may occur as the result of farm or forest activities which are in conformance with existing laws and regulations and accepted customs and standards.

15. ADDITIONAL EXPLANATIONS OR DISCLOSURES:

Mark box if additional pages are attached.

16. SELLER'S REPRESENTATION:
   To the best of Seller's knowledge and belief, the information contained in this Seller's Property Disclosure Statement is accurate and complete as of the date signed by Seller. It should not be a substitute for Buyer inspecting Property or obtaining any warranties with regard to Property that Buyer may wish to obtain. Seller hereby authorizes Broker to provide this Seller's Property Disclosure Statement to prospective buyers of Property and to real estate brokers and their affiliated licensees. Seller agrees to promptly update this Seller's Property Disclosure Statement and to provide any Buyer and Broker with a revised copy of the same if there are any material changes in the answers to the questions contained herein.

   Is each individual named below a U. S. Citizen or resident alien? □ Yes □ No
   Has each individual named below been a Georgia resident for the past two years? □ Yes □ No
   Has property been Seller's primary residence for at least two of the last five years? □ Yes □ No

   Seller: ___________________________ Date: ______________ 20____
   Seller: ___________________________ Date: ______________ 20____

17. RECEIPT AND ACKNOWLEDGMENT BY BUYER:
   I acknowledge receipt of this Seller's Property Disclosure Statement. I understand that, except as stated in the Purchase and Sale Agreement, Property is being sold in its present condition, without warranties or guarantees of any kind by Seller or Brokers. No representations concerning the condition of Property are being relied upon by Buyer except as disclosed herein or stated in the Purchase and Sale Agreement.

   Buyer: ___________________________ Date: ____________, 20____
   Buyer: ___________________________ Date: ____________, 20____

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AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT OF PURCHASE AND SALE (the "Agreement" is made and entered into as of the Effective Date, as hereafter defined, by and between ___________________________ (hereinafter collectively "Seller"); and _____________________, a corporation (hereinafter "Purchaser").

WITNESSETH:

That for and in consideration of the mutual promises and covenants herein contained and the mutual advantages accruing to Seller and Purchaser hereunder and the sum of $10.00 and other good and valuable consideration paid by Purchaser to Seller, receipt of which is hereby acknowledged by Seller, it is mutually covenanted and agreed by the parties hereto as follows:

1. Property.

Seller hereby agrees to sell and convey to Purchaser and Purchaser hereby agrees to purchase from Seller, subject to the terms and conditions hereinafter set forth, the property located in Land Lot _____, _____ District, My Town, Great County, State described on Exhibit A attached hereto and made a part hereof containing approximately 2.544 acres (the "Land") as shown on that certain survey of the Land prepared by _____, Registered Land Surveyor No. 1845, for ______________, dated July 25, 20____, last revised December 17, 20____ (the "Existing Survey"), together with the following:

(a) Improvements. All improvements on the Land owned by Seller, including, without limitation, a two-story retail shopping center containing approximately 54,520 net rentable square feet, more commonly known as the "Village Square," together with drives, sidewalks, drainage, sewerage and utility facilities and surface parking areas (collectively the "Improvements");

(b) Tangible Personal Property. All fixtures, equipment, machinery, building supplies, tools, furniture and other personal property, if any, and all replacements thereof, located on or about the Land and Improvements and used exclusively in the operation and maintenance thereof (the "Tangible Personal Property"), but expressly excluding any and all property owned by tenants occupying the Improvements;

(c) Intangible Property. Any and all of the Seller’s rights and interests in and to all intangible property pertaining to the Land, the Improvements or the Tangible Property or the use thereof, including without limitation any trade names used in connection therewith, the Landlord’s interest in all leases regarding the Property to the extent assignable, and all other licenses, franchises, permits, tenant security deposits (unless Purchaser receives a credit for same), contract rights, agreements, transferable business licenses, tenant lists, correspondence with tenants and suppliers, booklets, manuals, advertising materials, transferable utility contracts, and transferable telephone exchange numbers (the "Intangible Property");

(d) Easements. Any and all of Seller’s rights in and to all easements, if any, benefiting the Land or the Improvements; and

(e) Rights and Appurtenances. All rights and appurtenances pertaining to the foregoing, including any right, title and interest of Seller in and to adjacent streets, alleys or right-of-way. All of the property described in Subsections (a), (b), (c), (d), and (e) of this Section 1 together with the Land are hereinafter sometimes collectively referred to as the "Property."

2. Purchase Price and Earnest Money Deposits.

(a) Purchase Price. The Purchase Price (the "Purchase Price") to be paid for the Property shall be Seven Million Three Hundred Thousand and No/100 Dollars ($7,300,000.00) to be paid in the following manner:

(i) Purchaser shall take subject to a first mortgage loan on the Property held by Wearever Life Assurance Company in the original principal amount of Five Million Five Hundred Thousand Dollars ($5,500,000.00), which mortgage loan currently bears interest at the rate of ten percent per annum (10%) and is due and payable in full on January 1, 20____. Seller agrees to pay one-half of any and all
transfer, assumption, or other fees assessed by the holder of the mortgage loan in connection with the 
transfer of the Property subject to the mortgage loan; and

(ii) Purchaser shall deliver to Seller a purchase money note ("Note") in the amount of Six Hundred 
Fifty-Four Thousand Dollars ($654,000.00). Said Note shall bear interest at ten percent per annum (10%) 
and shall be payable interest only quarterly with a final payment of all unpaid principal and accrued 
and unpaid interest being due and payable two years from the Closing Date (hereinafter defined). The 
Note shall provide that it can be prepaid in whole or in part at any time without premium or penalty. 
The Note shall provide that the holder of the Note shall give the Maker of the Note at least twenty (20) 
days written notice of default prior to any acceleration of the Note for default or exercise of any other 
remedies which the holder may have to collect the indebtedness evidenced by the Note; provided, 
however, the Note shall be cross-defaulted with the Wearever Life Assurance Company loan ("WLA 
Loan") and defaults under the WLA Loan are to be governed by the notice and cure periods provided 
for in the WLA Loan. The Note shall be secured by a second priority Deed to Secure Debt ("Deed") on 
the Property. The Deed shall provide that insurance and condemnation proceeds shall be used for 
restoration of the property; shall provide for twenty (20) days' written notice of default prior to any 
exercise of remedies thereunder; shall not provide for any tax or insurance escrows; and shall not have 
any restrictions on the transfer of the Property or upon any further financing or encumbrancing of the 
Property. The Note and Deed shall be nonrecourse to Purchaser and shall contain no personal guaranty 
whatsoever. The Note shall be in the form of the Note attached hereto as Exhibit L and the Deed shall 
be in the form of the Deed to Secure Debt attached hereto as Exhibit L–1.

(iii) The balance of the Purchase Price in the approximate amount of One Million One Hundred 
Forty-Six Thousand Dollars ($1,146,000.00) shall be payable in cash or by bank check drawn on a Federal 
Reserve Bank or by wire transfer or good funds on the Closing Date (hereinafter defined). Upon request 
by Purchaser prior to closing, Seller shall designate the account of Seller into which the net proceeds 
of the sale are to be deposited.

(b) Earnest Money Deposits. Purchaser shall deliver its earnest money deposit to Ajax Realty, Inc. 
(the "Escrowee") upon Purchaser's execution of this Agreement in the form of a cashier's check (drawn 
on a State financial institution) in the sum of SEVENTY FIVE THOUSAND DOLLARS ($75,000.00) (the 
"Earnest Money"), made payable to Escrowee in trust. (said Earnest Money together with any interest 
earned thereon, shall hereinafter be referred to as the "Deposit") The Deposit shall be held and dis-
bursed by the escrowee as provided in this Agreement.

The Escrowee is directed to hold the Deposit as escrowed funds in an FDIC-insured, interest-
bearing account, at The Bank in My Town, State. Purchaser represents that his U.S. federal tax iden-
tification number is _______________. Purchaser's tax identification number shall be credited with 
any interest earned on the Earnest Money prior to its being disbursed by Escrowee. Purchaser shall 
complete and execute a Payer's Request for Taxpayer Identification Number (Form W–9). Seller and 
Purchaser hereby agree to hold Escrowee harmless from any loss of escrowed funds, including the 
Deposit, for any reason whatsoever except for the Escrowee's fraud or gross negligence or for loss of 
interest caused by any delay in the deposit or early withdrawal of the Deposit, from the interest-bearing 
account. This Agreement shall serve as escrow instructions and an executed copy of this Agreement 
shall be deposited by Purchaser with the Escrowee. At Closing, the Deposit shall be delivered to Seller 
and applied against the Purchase Price. In the event of a termination of this Agreement or a default 
under this Agreement, the Deposit shall be delivered or disbursed by the Escrowee as provided in this 
Agreement. If any dispute or difference arises between the Purchaser and Seller or if any conflicting 
demands be made upon the Escrowee, the Escrowee shall not be required to determine the same or 
to take any action thereon. Rather, the Escrowee may await settlement of the controversy or deposit 
the Deposit into the Registry of the Superior Court of Great County, State, in an interpleader action 
or otherwise for the purpose of having the respective rights of the parties adjudicated. Upon making 
such deposit or upon institution of such interpleader action or other actions, the Escrowee shall be fully 
relieved and discharged from all further obligations hereunder with respect to the sums so deposited.

(c) Should any party terminate this Agreement, as permitted herein, or declare the other party in 
default of its obligations hereunder, and demand payment of the Deposit to it, then the Escrowee shall 
pay to it the Deposit, provided that the declaring party provides evidence of the other party’s receiving
its demand notice, and within seven (7) business days following the other party's receipt of same, the nondeclaring party has not delivered written objection to the Escrowee's disbursing the Deposit. If any dispute arises that is not resolved within thirty (30) days after such written objection, the Escrowee shall deposit the Deposit into the Registry of the Superior Court of Great County, State, whereupon Escrowee's obligations and liabilities hereunder shall cease and terminate.

3. Inspection Period.

Purchaser shall have until 11:59 p.m. of August 26, 20____; (the "Final Inspection Date") within which to make an inspection of: the Property, all of Seller's operating financial records of the Property for the period of Seller's ownership of the Property (including the current year) pertaining to the Property, and all items required to be delivered by Seller pursuant to this Agreement. All such records and items shall be made available to Purchaser at the office of the Seller in My Town, State. Purchaser shall have the right to enter upon the Property and make a complete inspection of the Property. Purchaser shall upon reasonable notice to Seller have the right to talk with all tenants, lenders' representatives (if any), and all service personnel involved with or connected with the Property. If for any reason the results of Purchaser's inspection are not deemed by Purchaser to be satisfactory for any reason whatsoever, in its sole discretion, then Purchaser may elect to terminate this Agreement by written notice of such election to Seller no later than the Final Inspection Date, in which event neither Purchaser nor Seller shall have any further rights or obligations hereunder, and Escrowee shall return to Purchaser the Deposit together with accrued interest and thereafter this Agreement shall be deemed terminated and of no further force or effect. If Purchaser fails to make such election to terminate this Agreement as aforesaid by the Final Inspection Date, then Purchaser shall be deemed to have waived its right to terminate this Agreement pursuant to this Section.

4. Title of the Property.

(a) Seller shall sell, convey and assign to Purchaser at Closing good and marketable fee simple title to the Property subject only to the Permitted Title Exceptions as defined and set forth on Exhibit B attached hereto.

(b) Within thirty (30) days following the Effective Date, Purchaser shall cause title to the Property to be examined and shall furnish Seller with a written statement of any and all title matters, other than the Permitted Title Exceptions to which Purchaser objects. Purchaser shall also have the right to examine, or cause to be examined, title to the Property at any time or times after such initial title examination and prior to Closing and to furnish Seller with a written statement or statements of any and all additional matters, other than the Permitted Title Exceptions which affect the title to the Property or the use thereof and which arise, or first appear of record from and after the date of the initial title examination hereunder and to which Purchaser objects. Seller shall cooperate with Purchaser after receipt of any such written statement to correct, cure, or remove all matters described in such statement, and covenants to exercise diligent and good faith efforts to do so. Notwithstanding the above or the terms of this Section 4(b), in the event that any such matter results from any affirmative action taken by Seller subsequent to the date hereof, Seller covenants to expend such money and to take such other actions as may be necessary to correct, cure, or remove same. The Closing Date shall be postponed automatically for thirty (30) days, if necessary, to permit Seller to cure. If Seller shall fail to correct, cure, or remove all such matters within the time allowed by this Section 4(b), then Purchaser, at its option exercised by written notice may:

(i) decline to purchase the Property; or

(ii) waive such matter and proceed to close the purchase and sale of the Property without a reduction in the Purchase Price and allow Seller to convey title to the Property in accordance with the terms hereof; or

(iii) in the event the matter results from affirmative action of Seller subsequent to the Effective Date, require Seller by action of specific performance or otherwise to exercise diligent and good faith efforts to correct, cure, or remove such matters and convey the Property in accordance with the terms of this Agreement in which case the Closing Date shall be postponed until such correction, cure, or
removal by Seller has been completed (provided, however, that at any time during such period Purchaser may exercise its options as set forth in Section 4(b)(i) or Section 4(b)(ii) (previous page). Should Purchaser accept, by written waiver, its interest in the Property subject to matters in addition to the Permitted Title Exceptions, such acceptable matters shall be added to the list now set forth in Exhibit B and shall thereafter be deemed to be Permitted Title Exceptions except that, in the event any of such matters results from any affirmative action taken by Seller subsequent to the date hereof, such acceptance shall be without prejudice to Purchaser's thereafter seeking monetary damages from Seller for any such matter. If Purchaser shall decline to accept the Seller's interest in the Property subject to such matters, pursuant to Section 4(b) above, then Escrowee shall refund to Purchaser the Deposit and the parties hereto shall have no further rights, obligations, duties, or liabilities hereunder whatsoever, except for those rights, obligations, duties, and liabilities which, by the express terms hereof, survive any termination hereof and except for Purchaser's right to seek monetary damages from Seller for any matter which Seller shall have failed so to correct and which shall have resulted from any affirmative action taken by Seller after the date hereof.

(c) Purchaser may, at its expense, elect to obtain a standard ALTA Form 1987–B owner's policy of title insurance pursuant to which fee simple title to the Property shall be insured. Seller covenants to Purchaser that title to the Property shall at Closing not only be good and marketable, but, in the event Purchaser elects so to purchase such an owner's policy of title insurance, shall be insurable by Ticor Title Insurance Company of California or by Chicago Title Insurance Company or other title insurance company reasonably acceptable to Purchaser at its regular rates, without exceptions or reservations to coverage of any type or kind, other than the Permitted Title Exceptions.

5. Survey.

(a) Purchaser shall have within thirty (30) days from the Effective Date the option to obtain a current accurate as-built survey of the Premises (the "New Survey") and such New Survey discloses any matter which is not set forth on the Existing Survey to which Purchaser objects (any such matter being herein referred to as "New Survey Objections"), then Purchaser shall give Seller notice of such New Survey Objections. Purchaser shall be entitled to make its best efforts to cure said New Survey Objections and Seller covenants that it shall cooperate with Purchaser to the extent necessary to effectuate said cures.

(b) If Seller shall have failed to correct, cure or remove all such New Survey Objections prior to time set for closing, then Purchaser, at its option, exercised by written notice, may:

(i) decline to purchase the Property; or

(ii) waive such matter and proceed to close the purchase and sale of the Property without a reduction in the Purchase Price and allow Seller to convey title to the Property in accordance with the terms hereof; or

(iii) if such New Survey Objection should arise by affirmative action of Seller after the Execution Date, require Seller by action of specific performance or otherwise to exercise diligent and good faith efforts to correct, cure or remove such New Survey Objections and convey the Property in accordance with the terms of this Agreement, in which case the Closing Date shall be postponed until such correction, cure or removal by Seller has been completed (provided, however, that at any time during such period Purchaser may exercise its options as set forth in Section 5(b)(i) or Section 5(b)(ii) above).

Should Purchaser accept, by written waiver, its interest in the Property subject to New Survey Objections, such acceptable matters shall be added to the list now set forth in Exhibit B and shall thereafter be deemed to be Permitted Title Exceptions except that, in the event any of such matters results from any affirmative action taken by Seller subsequent to the date hereof, such acceptance shall be without prejudice to Purchaser's thereafter seeking monetary damages from Seller for any such matter. If Purchaser shall decline to accept the Seller's interest in the Property subject to such matters, pursuant to Section 5(b)(i) above, then the Escrowee shall refund to Purchaser the Deposit and the parties hereto shall have no further rights, obligations, duties or liabilities hereunder whatsoever, except for those rights, obligations, duties and liabilities which, by the express terms hereof, survive any termination hereof, and except for Purchaser's right to seek monetary damages from Seller for any matter that Seller shall have failed so to correct and that shall have resulted from any affirmative action taken by Seller after the date hereof.

(continued)
EXHIBIT 7–4
Contract for Purchase and Sale
of a Retail Shopping Center
(continued)

(a) Seller shall deliver to Purchaser or Purchaser’s designee the following items, in possession of Seller or any entity related to Seller, as soon as reasonably possible after the Effective Date, but in any event within five (5) days after the Effective Date, unless another time period is otherwise indicated below:

(i) True, correct and complete copies of all leases of space on the Property together with any amendments thereto and all brokerage commission agreements relating thereto and together with all lease abstracts, tenant correspondence files, and other relevant information; all necessary information and documentation necessary to establish the base index, such as the consumer price index, for the base year of such lease and for any escalation clause in any lease; and copies of all written correspondence to or received from any lessee regarding such additional rental charges or rental escalation provisions. (All leases of space on the Property, together with any amendments thereto and such brokerage commission agreements and other documents described hereinafore, are hereinafter collectively referred to as the “Leases,” and each lease of space on the Property, together with any amendments thereto and such brokerage commission agreements, is hereinafter individually referred to as a “Lease”)

(ii) A true, correct and complete rent roll concerning all Leases as of the Effective Date or a more current date, indicating thereon any delinquencies with respect to rent due and owing and indicating all brokerage commissions and similar fees owing and relating to the Leases;

(iii) True, correct and complete copies of all contracts other than Leases, if any, pertaining to the Property (the “Service Contracts”) in existence as of the Effective Date or a more current date, including but not limited to all management contracts, maintenance contracts, contracts or agreements relating to any unfinished improvements to the Property, service leases, and contracts for parking on a monthly or yearly basis, together with a list of those contracts that cannot be unilaterally terminated by Purchaser as of the Closing Date without further payment;

(iv) A true, correct and complete inventory of all the Tangible Personal Property as of the Effective Date or a more current date;

(v) [INTENTIONALLY DELETED]

(vi) True, correct and complete copies of the latest personal property and real estate tax bills for the Property and all tax bills, notices, assessments and communications relating to the Property, or any part thereof, promptly upon receipt of same by Seller;

(vii) True, correct, and complete copies of the most recent title insurance policy relating to the Land, if any, in the possession of Seller; together with true, correct, and complete copies of all exceptions listed on Schedule B thereof that are not inchoate liens or survey exceptions;

(viii) True, correct, and complete copies of all matters listed on Exhibit B attached hereto that are not inchoate liens or survey exceptions (to the extent that such copies are not furnished to Purchaser pursuant to Section 6(a)(vii) above);

(ix) True, correct, and complete copies of all inspection reports and tests and studies relating to the Property, including, without limitation, engineering studies, environmental assessments or reports, and maintenance schedules;

(x) A true, correct, and complete copy of any offering circular, private placement memorandum, registration statement, or other similar information or materials relating to the Property, which is in the possession of the Seller;

(xi) True, correct, and complete copies of all existing insurance policies relating to the Property (or, if the Property is insured pursuant to a master policy, true, correct, and complete copies of all certificates issued pursuant to such master policies that evidence the insurance coverages relating to the Property), and true, correct, and complete copies of all records and communications concerning all claims, losses, and demands made under any insurance policy relating to the Property since Seller acquired the Property and otherwise in possession of Seller, together with a listing of the names, addresses, and account representatives of all insurance companies that have issued policies relating to the Property since Seller acquired the Property and otherwise in possession of Seller;

(xii) A memorandum, which Seller shall prepare if presently not in Seller’s possession, describing all oral contracts and agreements pertaining to the Property, if any, which memorandum shall include, without limitation, the names, address and telephone numbers of all persons or entities that are parties

(continued)
to such contracts or agreements, together with a detailed description of the terms, conditions, and provisions of such contracts and agreements;

(xiii) True, complete, and correct copies of all documents, including, but not limited to, plans, specifications, contracts, budgets, schedules, and certificates pertaining to the current construction, renovation, paving, and all other improvements to the Property;

(xiv) On or before November 1, 20____?, tenant estoppel letters subsequently in the form attached hereto as Exhibit C (the "Tenant Estoppel Letters"), each dated no earlier than October 1, 20____?, duly executed by all tenants of the Property or in such form as required by Lender. Seller shall use its best efforts to obtain the Tenant Estoppel Letters from all tenants. If Seller is unable to obtain Tenant Estoppel Letters from tenants occupying at least eighty-five percent (85%) of the net rented square footage of the Improvements under leases existing as of October 1, 20____?, as required above, then Purchaser may either (A) accept those Tenant Estoppel Letters obtained by Seller and close the subject transaction otherwise in accordance with the terms of the Agreement; or (B) decline to purchase the Property. If Purchaser elects to close the subject transaction pursuant to its option set forth in Section 6(a)(xiv)(A) above, then with respect to all those Leases for which a tenant estoppel letter is not obtained and delivered to Purchaser at or before Closing, Seller shall deliver to Purchaser at Closing a certificate setting forth the status of each such Lease and providing the information set forth in the Tenant Estoppel letters;

(xv) True, correct, and complete copies of all Permits (as defined below), certificates of occupancy, and licenses issued by any Governmental Authority (as defined below) or utility company in connection with the occupancy and use of such Improvements as are in the possession of Seller;

(xvi) True, correct, and complete copies, if any, of all notes and other unrecorded documents, agreements, and instruments relating to indebtedness secured by the Property or any part thereof; and

(b) In the event any event or circumstance shall occur that renders any documents, materials, or other information provided by Seller to Purchaser pursuant to Section 6(a) no longer true, correct, and complete, Seller shall immediately deliver to Purchaser all documentation, material, and information necessary to supplement the same so as to render such documents, material, and information true, correct, and complete. Purchaser shall have seven (7) business days in which to review such supplemental material and, in the event that such supplemental materials differ materially and adversely, in Purchaser's sole opinion, from the information and materials previously furnished or made available to Purchaser, and are not deemed by Purchaser to be satisfactory, then Purchaser may elect to terminate this Agreement by delivering written notice of such election to Seller no later than seven (7) business days after the receipt by Purchaser of such necessary material, to permit the running of such period of seven (7) business days. If, however, any such documents, materials, or other information provided by Seller to Purchaser pursuant to Section 6(a) are untrue, incorrect, or incomplete as of the date provided pursuant to Section 6(a), Seller shall be deemed to have breached this Agreement, and Purchaser shall be entitled to all remedies provided in Section 20 of this Agreement.

7. Legal Description.

In the event that the legal description of the Land as set forth in the New Survey differs from the legal description of the Land as set forth in the Existing Survey, Seller shall convey at Closing to Purchaser by quitclaim deed all Seller's right, title, and interest in and to the Land as described in the New Survey, together with all Property relating thereto or existing therein; provided, however, that nothing in the preceding sentence shall limit Purchaser's right to deem any such material differences a New Survey Objection, thereby entitling Purchaser to the rights and remedies set forth in Section 5 above. In any event, Seller must convey by a legal description for which Purchaser may obtain standard title insurance through Chicago Title Insurance Company, Ticor Title Insurance Company of California or Lawyers Title Insurance Company, at standard rates.


At any time prior to Closing (unless this Agreement is terminated as herein provided), the Purchaser, its agents, employees, and contractors, shall have the right to enter upon the Property after reasonable notice to Seller for purposes of surveying, inspecting, and testing the Property; provided,
EXHIBIT 7–4
Contract for Purchase and Sale of a Retail Shopping Center
(continued)

however, that in the event this Agreement fails to close for any reason, Purchaser shall (on or before the scheduled Closing Date) restore the Property to its original condition, and further provided that Purchaser shall use its best efforts not to disrupt the ordinary course of business of Seller or any of the tenants under Leases. Purchaser agrees to indemnify and hold Seller harmless against any property damage or personal injury or claim of lien against the Property resulting from the activities permitted by this Section (including, without limitation, reasonable attorney’s fees and expenses paid or incurred by the Seller during litigation and appeals thereof, if any). All inspections, tests, investigations, and other activities carried on by Purchaser pertaining to the Property shall be at Purchaser’s sole cost and expense. In addition to and not in limitation of Purchaser’s rights elsewhere set forth herein, Purchaser shall have the right upon three (3) business days’ prior written notice to Seller to inspect all property, books, leases, and records of Seller pertaining directly to the operation of the Property, for the period of Seller’s ownership of the Property, provided that the cost of copying such items shall be borne by Purchaser and such items shall be made available to Purchaser by Seller at the Office of Seller in My Town, State, or such other location in My Town, State, or such other location in My Town, State, where said items are normally stored.

9. Covenants and Representations.

(a) Seller’s Covenants and Representations.

(i) Seller has obtained all consents, approvals or authorizations necessary to execute this Agreement and to consummate the transaction contemplated hereby, and all documents referred to herein will be validly executed and delivered and binding upon Seller;

(ii) Seller has no knowledge of any material defect in the Improvements or any part thereof and has no knowledge of and has received no notice from any Governmental Authority (as defined below) of any violation of any Requirement of Law (as defined below) relating to the Property or any part thereof;

(iii) Seller has no knowledge of and has received no notice from any insurance company or board of fire underwriters or similar agency that there exists any condition or circumstances on the Property, or any part thereof, which must be corrected in order to maintain the effectiveness, or as a condition precedent to the issuance of, any insurance policy affecting the Property or any part thereof or which is in violation of any applicable fire code or similar rule, regulation, or order for such board of fire underwriters or similar agency;

(iv) Seller has no knowledge of and has received no notice of any litigation, claim or suit that is pending or threatened and that could adversely affect the Property or any part thereof or title thereto (exclusive of any litigation, claim, or suit brought against a tenant of the Property after the Effective Date wherein Seller is not named as a defendant or a third-party defendant and wherein no counterclaims are alleged against Seller, provided, however, that Seller will give Purchaser prompt notice of all such litigation, claims and suits);

(v) Neither Seller, nor, to the best of Seller’s knowledge, any previous owner of the Property or any part thereof has used, generated, stored, or disposed of any Hazardous Materials (as defined below) in or on the Property or any part thereof; or has used or disposed of any Hazardous Materials in connection with the use, operation, construction or repair of the Property or any part thereof. Seller shall hold Purchaser harmless and shall indemnify and defend Purchaser from and against any and all losses, damages, claims and liabilities whatsoever in any way relating to or arising out of any breach of the foregoing representation. This provision shall survive Closing and the consummation of the transactions contemplated hereby;

(vi) Seller owns good and unencumbered title to the Tangible Personal Property and Intangible Personal Property, and Seller has done nothing to encumber same during Seller’s ownership thereof other than those certain Loan Documents listed on Exhibit K attached hereto;

(vii) Seller has not operated the Property within the past five (5) years under any other name or trade name of which it has not notified Purchaser;

(viii) All documents, materials, and information delivered to Purchaser pursuant to Section 6(a), as supplemented by such documents, materials and information delivered to Purchaser pursuant to Section 6(b), are true, correct, and complete;

(ix) Seller shall not cause or permit to exist (A) any mortgage, deed to secure debt, security deed, security agreement, assignment, or other similar instrument or agreement or any lien or encumbrance
If the Seller has not obtained the permission from the holder of the Mortgage Loan to transfer the Property to Purchaser, the Seller represents that it has no notice of and is not aware of any violation on the Property or any part thereof from and after the Effective Date except for the Leases approved by Seller; or (B) any matters not shown on the New Survey;

(x) Seller represents, to the best of its knowledge, that the mechanical, electrical, plumbing, HVAC, roofing, drainage, sanitary sewerage, and utility equipment facilities and systems servicing the Property and the improvements thereon are in operational order and shall be so maintained through and including the Closing Date. Seller represents that it is aware of no defects in any of said systems;

(xi) Seller covenants that it shall not enter into any leases pertaining to the Property after the Effective Date without prior written approval of Purchaser. Purchaser shall approve leases containing reasonable business terms, including base rentals of at least $16.00 per square foot and $1.75 of common area maintenance charges (CAMs). Seller covenants and represents that it shall incur no brokerage commissions pertaining to leases entered into prior to the Closing Date on any leases negotiated in any respect by Seller prior to the Closing Date;

(xii) Seller represents that it has no notice of and is not aware of any violation on the Property or improvements of any applicable zoning laws, ordinances or regulations including, without limitation, all parking requirements and building setback requirements (except as shown on the Existing Survey, which Purchaser has the right to consider during the Inspection Period);

(xiii) [INTENTIONALLY DELETED]

(xiv) Seller shall continue to operate, manage, and maintain the Property in good condition and in a good businesslike manner, such operation and maintenance to include the undertaking of any reasonably necessary capital improvements or repairs, through and including the Closing Date. Such continuous operation and maintenance shall also be a condition precedent to Closing; and

(b) Purchaser's Covenants and Representations. Purchaser hereby represents and warrants to Seller that Purchaser has obtained all consents, approvals, or authorizations necessary to execute this Agreement and to consummate the transaction contemplated hereby, and all documents referred to herein will be validly executed and delivered and binding upon Purchaser.

10. Additional Conditions Precedent.

(a) This Agreement is contingent upon Purchaser being able to Purchase the Property subject to the current mortgage loan in the original principal amount of FIVE MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS ($5,500,000.00) held by Wearever Life Assurance Company (the "Mortgage Loan") being evidenced by (a) certain Real Estate Note, dated December 17, 20____, from Seller to Wearever Life Assurance Company, (b) Deed to Secure Debt and Security Agreement by and between the same parties dated December 17, 20____, recorded at Deed Book 11234, Page 137, Great County, State Records, and (c) an Assignment of Leases and Rents by and between the same parties dated December 17, 20____, recorded at Deed Book 11234, Page 162, Great County, State Records (hereinafter referred to as the "Mortgage Loan Documents"). One-half (½) of all costs, assumption fees, and transfer fees paid to the holder of the Mortgage Loan to obtain permission to transfer the Property to Purchaser shall be paid by Seller and the other one-half (½) by Purchaser. The tax and insurance provisions contained in the Mortgage Loan Documents are to be waived upon the same terms and conditions under which they are presently being waived for Seller. The terms of the Mortgage Loan, including but not limited to the rate of interest, the amount of the monthly installments, and the Maturity Date, are to remain unchanged. Seller shall provide Purchaser with an Estoppel Agreement from the holder of the Mortgage Loan in substantially the same form as that attached hereto as Exhibit "I." Purchaser agrees to provide the holder of the Mortgage Loan with any financial information necessary to enable the holder of the Mortgage Loan to approve the transfer of the Property from Seller to Purchaser. This Agreement shall remain contingent upon the ability of Purchaser to obtain the Property subject to the Mortgage Loan and the consent by the holder of the Mortgage Loan to the Note and Deed.

If the Seller has not obtained the permission from the holder of the Mortgage Loan to transfer the Property to Purchaser subject to the Mortgage Loan and upon the terms set forth therein and the consent to the Note and Deed on or before September 26, 20____, then Purchaser may by written notice to Seller notify Seller of its election to terminate this Agreement, whereupon this Agreement shall

EXHIBIT 7–4
Contract for Purchase and Sale of a Retail Shopping Center (continued)
(continued)

terminate and the Deposit together with accrued interest thereon shall be returned to Purchaser, and
thereafter the parties hereto shall have no further rights, duties, obligations, or liabilities hereunder.
(b) Seller shall continuously operate and maintain the Property in good condition and continue
businesslike management through and including the Closing Date.

11. Closing Date.

Unless this Agreement is terminated by Purchaser pursuant to the terms of this Agreement, the
Closing shall take place at the offices of Purchaser's attorneys, Winkom, Blinkholm and Nodd, 1400 Crab-
tree Place Tower, My Town, State, or such location as is mutually agreeable to Purchaser and Seller, beginning
at 10:00 A.M. on a business day (in My Town, State) selected by Purchaser on or before November 11, 20____. The date of Closing shall hereinafter be referred to as the "Closing Date." Purchaser shall give Seller
notice of the Closing Date at least five (5) business days prior thereto; provided, however, if Purchaser
gives Seller no such notice of the Closing Date, then the Closing Date shall be November 11, 20____.


At Closing, Seller shall:
(a) Execute, acknowledge and deliver to Purchaser a limited warranty deed in recordable form,
the form of which is attached hereto as Exhibit D, conveying the Property to Purchaser subject only to:
(i) taxes for the years subsequent to the year of Closing; (ii) the zoning classification as of the Effective
Date; and (iii) the Permitted Exceptions;
(b) Execute and deliver to Purchaser the following additional conveyance documents: (A) an Affi-
davit reciting Seller's non-foreign status within the meaning of Section 1445(f)(3) of the Internal Rev-
enue Code of 1986; (B) an Assignment and Assumption of Leases assigning to Purchaser Seller's interest
in the Leases, a form of which is attached hereto as Exhibit E; and (C) an Assignment of Contracts, Other
Rights and Intangible Property assigning to Purchaser the Intangible Property, the form of which is
attached hereto as Exhibit F; and (D) a Lender Estoppel Letter from the holder of the Mortgage Loan,
a proposed form of which is attached hereto as Exhibit J; and (E) Subordination, Attornment, and Non-
Disturbance Agreements satisfactory to Lender signed by tenants leasing at least eighty-five percent
(85%) of the net rentable square footage of the Property, a proposed form of which is attached hereto
as Exhibit J; and (F) a certificate that Seller knows of no defects in the system referred to in Sections 9(a)
(x) and (xi) of this Agreement as of the Closing Date;
(c) Execute and deliver to Purchaser a Closing Statement setting forth the adjustments and pro-
rations to closing as well as the costs pursuant to this Agreement as elsewhere specifically provided
herein (the "Closing Statement");
(d) Deliver to Purchaser a certified and updated rent roll reflecting all the tenants under Leases to
the Property as of the Closing Date and indicating thereon any delinquencies with respect to rent due;
(e) Deliver to Purchaser all Permits, certificates of occupancy, and licenses issued by any Govern-
mental Authorities or utility companies in connection with the occupancy and use of the Improve-
ments as are in the possession of Seller;
(f) Deliver to Purchaser a form letter to all tenants under Leases stating that Purchaser has acquired
the Property from Seller, that future rents should be paid as specified by Purchaser, and that Purchaser
will be responsible for all tenants' security deposits, if any;
(g) A certificate of Seller stating (A) that Seller has no knowledge of any pending or threatened
condemnation proceedings or any taking by any Governmental Authority which in any way affects
the Property; and (B) that there are no Leases (other than Leases approved by Purchaser), no Service
Contracts (whether written or oral), no employees, no insurance policy endorsements or claims, and no
other notices from any Governmental Authority regarding any violations of any Requirements of Law
affecting the Property except as heretofore provided to Purchaser as required under Section 6 above
and elsewhere in this Agreement;
(h) The plans and specifications for the Improvements, including all amendments thereto, as are
in the possession of Seller;
(i) The originals of all Leases, including all amendments thereto;
(j) All information and materials required for full compliance under the Foreign Investors in Real Property Tax Act;

(k) All keys to the Improvements in Seller’s possession and a list of all other persons which, to the best of Seller’s knowledge, are in possession of keys to the Improvements, other than keys to tenant space in the possession of tenants;

(l) Such other documents, instruments, and agreements as Purchaser may reasonably require to effect and complete the transactions contemplated herein and to obtain an owner’s title insurance policy insuring the interest of Purchaser, as owner, in the amount of $7,300,000.00, free and clear of all exceptions except the Permitted Exceptions, for a premium calculated at standard rates, including, without limitation, a Seller’s Affidavit of Title in the form attached hereto as Exhibit G and a Bill of Sale in the form attached hereto as Exhibit H; and

(m) Seller’s estoppel certificates to the extent required by Section 6(a)(xiv) above.

13. Purchaser’s Obligations at Closing.

On the Closing Date, subject to the terms, conditions, and provisions hereof, Purchaser shall:

(a) Execute and deliver to Seller an assumption agreement whereby Purchaser assumes all liabilities and agrees to perform all obligations of Seller under all the Leases, the form of which is contained in Exhibit E, and the Service Contracts and all employee contracts assumed by Purchaser pursuant hereto, the form of which is contained in Exhibit F. Said assumption agreements shall contain an indemnification by Purchaser of Seller and an agreement to hold Seller harmless from and against any and all claims, debts, liabilities, and the like affecting or relating to the Property, or any part thereof, and the Leases after the Closing Date. Likewise, said assumption agreements shall contain an agreement to hold Purchaser harmless from and against any and all claims, debts, liabilities, and the like affecting or relating to the Property, or any part thereof, and the Leases prior to and including the Closing Date.

(b) Execute and deliver to Seller a copy of the Closing Statement.

(c) Deliver to Seller pursuant to the terms of Section 2 herein the Note and Deed and, pursuant to Section 2 herein, the sums required to be paid hereinunder, and Purchaser shall execute such other documents, instruments, affidavits, and agreements as may be required to close the transaction contemplated herein.


In connection with Closing, Seller shall pay the State real estate transfer tax and all costs relating to the satisfaction, cure and removal of all title defects (except the Permitted Exceptions) undertaken by Seller as herein required and the payment of one-half (½) all transfer, assumption or other fees due the holder of the Mortgage Loan to obtain the consent to the transfer of the Property to the Purchaser and the consent to the Note and Deed. Purchaser shall pay the costs of the premiums payable or costs incurred in connection with the issuance of the owner’s title insurance commitment and the owner’s title insurance policy in favor of Purchaser and all costs of recording the limited warranty deed. The Purchaser shall be solely responsible for the New Survey costs. Each party shall pay its own attorney’s fees.

15. Prorations.

The following items shall be apportioned and prorated (based on a 30-day month, unless otherwise indicated) between the Seller and the Purchaser as of the Closing Date so that credits and charges for all days prior to the Closing Date shall be allocated to the Seller and credits and charges for the Closing Date and for all days thereafter shall be allocated to the Purchaser:

(a) Taxes: At the Closing, all ad valorem property taxes, water and sewer charges, and assessments of any kind on the Property for the year of the Closing shall be prorated between Purchaser and Seller as of 12:01 A.M. on the Closing Date. Such proration shall be based upon the latest ad valorem property tax, water, sewer charge, and assessment bills available. If, upon receipt of the actual ad valorem property tax, water, sewer and assessment bills for the Property, such proration is incorrect, then either Purchaser or Seller shall be entitled, upon demand, to receive such amounts from the other as may be necessary
16. Employees and Service Contracts.

Seller represents and warrants that there are no employees or employment contracts relating to the Property which cannot be terminated on or prior to Closing because of contractual terms or applicable law. From and after the Effective Date, Seller will not enter into or extend or renew any contracts relating to the Property which cannot by their express terms terminate with thirty (30) days notice, without the prior written approval of Purchaser. With respect to all other employees and contracts relating to the Property, Purchaser shall not be obligated to continue the employment of all such employees and to continue all such contracts and to assume all obligations therefor as of the Closing Date. Seller agrees to hold harmless from and to indemnify and defend Purchaser from and against any and all such contracts and all other fees, charges, and compensation whatsoever due any person or entity in connection with the procuring of any Lease, together with all extensions and renewals thereof, or otherwise relating to any Lease. This provision shall survive the Closing and the consummation of the transactions contemplated herein.

17. Brokerage Commissions.

Each party further represents to the other that except for ________________ (collectively "Brokers"), no broker has been involved in this transaction. Seller shall be solely responsible for paying
any commission due to the Brokers in connection with this transaction. Seller shall pay in cash or good funds at Closing brokerage commissions of one percent (1%) to ___________________________ (1%) of the Purchase Price to ___________________________. No commission shall be due and owing Brokers should the sale and purchase of the Property fail to close for any reason whatsoever, including, without limitation, the breach of this Agreement by Seller or Purchaser. Under no circumstances whatsoever shall Brokers be entitled to retain any portion of the Deposit. In the event any other claims for brokerage commissions or fees are ever made against the Seller or the Purchaser in connection with this transaction, all such claims shall be handled and paid by the party whose actions or alleged commitments form the basis of such claim. Seller further agrees to indemnify and hold harmless the Purchaser from and against all and any and such claims or demands with respect to any brokerage fees or agent's commissions or other compensation asserted by any person, firm, or corporation in connection with this Agreement or the transactions contemplated hereby arising from actions or alleged commitments of the Seller. Purchaser further agrees to indemnify and hold harmless the Seller from and against any and all such claims or demands with respect to any brokerage fees or agent's commissions or other compensation asserted by any person, firm, or corporation in connection with this Agreement or the transactions contemplated hereby arising from actions or alleged commitments of the Purchaser. This provision shall survive Closing and the conveyance of the Property by Seller to Purchaser.

18. Risk of Loss.

Risk of loss or damage to the Property or any part thereof by condemnation, eminent domain, or similar proceedings, or by deed in lieu or under threat thereof (collectively, a "Taking"), or by fire, flood or other casualty from the Effective Date until delivery of the limited warranty deed will be on Seller and after the delivery of the limited warranty deed will be on Purchaser. In the event of any such loss or damage to all or a material part of the Property or any part of the Improvements prior to the delivery of the limited warranty deed, this Agreement may, at the option of Purchaser to be exercised by written notice to Seller, be declared null and void and Purchaser shall be returned the Deposit and both parties hereto shall be released from any further rights and duties hereunder, or this Agreement shall remain in full force and effect and Seller shall transfer to Purchaser on the Closing Date all insurance proceeds or condemnation awards received by Seller because of such casualty or Taking and all of Seller's rights, title and interest in and to any recovery or claims under any insurance policies or condemnation awards relating to the Property.

Upon the happening of one of the events in the preceding paragraph, subsequent to the Inspection Deadline and prior to delivery of the limited warranty deed, if the cost of repair or replacement or, in the event of a Taking, if the reduction in the value of the project is TWENTY–FIVE THOUSAND DOLLARS ($25,000.00) or less, Purchaser shall close and take the Property as diminished by such events and Seller shall transfer to Purchaser on the Closing Date all insurance proceeds or condemnation awards received by Seller because of such casualty or Taking and all of Seller's rights, title and interest in and to any recovery or claims under any insurance policies or condemnation awards relating to the Property.


In the event the transaction contemplated hereby is not closed because of Purchaser's default, the Deposit shall be paid to Seller as full liquidated damages for such failure to close, the parties acknowledging the difficulty of ascertaining Seller's damages in such circumstances, whereupon neither party hereto shall have any further rights, claims, or liabilities under this Agreement except for the provisions which are made to survive the termination or cancellation of this Agreement. Said liquidated damages shall be Seller's sole and exclusive remedy, and Seller shall expressly not have the right to seek specific performance.


If the Seller fails to perform any of the covenants of this Agreement, or if Seller otherwise defaults hereunder, the Purchaser shall have the right, in addition to all rights and remedies herein provided, to

(continued)
pursue any right or remedy it may have against Seller at law or in equity for such breach and/or default, including, without limitation, the right of specific performance of all provisions of this Agreement. Purchaser’s monetary damages in the event of such breach and/or default by Seller shall be limited to $100,000.00. The parties hereto acknowledge the difficulty of ascertaining Purchaser’s monetary damages in such event.


Purchaser shall have the right to assign this Agreement to any person(s), partnership or corporation, including a partnership or corporation to be formed hereafter, with notice to but without the consent of Seller, and the transaction contemplated by this Agreement shall be consummated in the name of such assignee. In the event of such assignment, the assignee shall assume the obligations of Purchaser under this Agreement, and Purchaser shall have no further obligation or liability under this Agreement. Seller shall have the right to assign its interest in this Agreement, only with the written consent of Purchaser, except insofar as such assignment is made to effectuate a tax-free exchange. In the latter instance, Seller may assign its rights but shall remain bound under the terms of this Agreement and the representations, warranties, and covenants contained herein.

Seller is entering into this contract with the intention of disposing of the Property through a like-kind exchange of properties, pursuant to Section 1031 of the Internal Revenue Code of 1954, as amended. Purchaser agrees that, upon request of Seller, Purchaser will convey or cause to be conveyed to Seller at closing other like-kind property acceptable to Seller in lieu of paying cash to Seller, or will pay the purchase price for the property to a third party, who will convey like-kind property to Seller. At the election of Seller, Seller may convey the Property to a third party prior to closing as part of a like-kind exchange of properties with such third party, provided that such third party agrees to be bound by all of the terms and provisions of this contract, and provided further that no such conveyance to any third party shall relieve Seller of any of its obligations hereunder. Anything contained herein to the contrary notwithstanding, Purchaser shall not be obligated to incur any additional liability or expense in connection with any exchange of properties by Seller. Furthermore, Seller shall indemnify Purchaser for any liability or expense incurred in any respect in connection with its cooperation with Seller in effectuating a tax-free exchange. Subject to the foregoing, this Agreement shall inure to the benefit of and shall be binding upon Seller and Purchaser and their respective successors and assigns.

22. Entire Agreement.

No agreements, representations, or warranties unless expressly incorporated or set forth in this Agreement shall be binding upon any of the parties.

23. Notification.

Any notice or demand under which the terms of this Agreement or under any statute must or may be given or made by the parties hereto shall be made in writing and shall be deemed to have been delivered when hand delivered; as of the date sent by an overnight courier; or as of the date of postmark affixed by the U.S. Postal Service, by mailing the same by certified mail return receipt requested addressed to the respective parties at the following addresses:

To Purchaser:

With Copies to:

To Seller:

With Copy to:

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Preparation and Review of a Real Estate Contract

Such addresses may be changed by the giving of written notice as provided in this paragraph; pro-
vided, however, that any mailed notice of changed address shall be not be effective until the fifth (5th) day after the date of postmark by the U.S. Postal Service.

24. Time.

Time is of the essence of this Agreement and of each of its provisions.

25. Survival and Last Execution Date.

The provisions of this Agreement shall survive Closing and the execution and delivery of the deed and instruments conveying the Property. If this Agreement is not executed by all parties hereto on or before 5:00 p.m. on August 17, 20____, this Agreement shall be null and void.


Descriptive headings are for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement.

27. Binding Effect.

This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their successors and assigns subject to the provisions of Section 21 above.

28. Severability.

In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

29. Effective Date of this Agreement.

The Effective Date of this Agreement shall be the last date upon which either the Purchaser or Seller shall have executed this Agreement, as demonstrated by the date(s) below their respective signatures on the signature page to this Agreement.


If the Closing is to occur on a holiday or other non-business day, or if any period of time set forth in this Agreement expires on a holiday or other non-business day, then the Closing or the expiration date of such period shall be the next business day. For purposes of this Agreement, the term “business day” shall mean any day which is not a Saturday, Sunday or other day on which banks in My Town, State, are not open for business during regular business hours.


As used herein, the following terms are defined as follows:

(a) Governmental Authority means any nation or government, any state, municipal or other political subdivision thereof, and any entity exercising executive, legislative, judicial, regulatory, or administrative functions of or pertaining to government.

(b) Hazardous Materials means all hazardous wastes, polychlorinated biphenyls (commonly known as “PCBs”), toxic substances, and similar substances, including, without limitation, substances defined as “hazardous substances” or “toxic substances” in the Comprehensive Environmental Response and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq., or the Hazardous Materials Transportation Act, and Recovery Act, as amended, 42 U.S.C. § 6901 et seq.

(c) Permits means all consents, certificates, authorizations, licenses, approvals, and permits required for the removal, alteration, or demolition of any structure or improvement, or any part thereof, on the Property or for construction, completion, use, occupancy, and operation of the Improvements in accordance

EXHIBIT 7–4
Contract for Purchase and Sale of a Retail Shopping Center
(continued)
d) **Requirements of Law** means any person or entity, the certificate of incorporation and by-laws or partnership agreement or limited partnership agreement or other organizational or governing documents of such person or entity, and any law, treaty, rule or regulation, or determination, judgment, or order of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such person or entity or any of its property or to which such person or entity or any of its property is subject; and, as to the Real Property, any applicable environmental, zoning, building, or land use laws; any requirements, standards, or regulations of the fire marshal and similar agencies; any ordinances, rules or regulations of any governmental authority or agency; and any applicable covenants and restrictions.

### 32. Possession.

Seller shall deliver actual possession of the Property to Purchaser at Closing.

### 33. Seller’s Guaranty of Income.

At closing, Seller will execute and deliver to Purchaser a Guaranty ("Guaranty") that guarantees the gross rental income from the Property as hereinafter set forth. For a period commencing with the Closing Date and ending one year from the Closing Date, Seller shall guarantee that the gross rental income from the Property shall not be less than Eight Hundred Fifty Thousand and No/100 Dollars ($850,000.00). Seller agrees to pay to Purchaser a sum equal to the difference of Eight Hundred Fifty Thousand Dollars ($850,000.00) and the actual gross rental income received from the Property during the one-year period. Seller agrees to pay Purchaser the income shortfall on a quarterly basis. For example, during the first calendar quarter following the Closing Date if gross rental income from the Property does not equal $212,500.00, Seller shall pay to Purchaser on the last day of the quarter the difference between $212,500.00 and the gross rental income actually received during that period of time. The Seller’s obligation to pay Purchaser for rental income shortfall pursuant to this paragraph shall not exceed $100,000.00 during the year succeeding the Closing Date. Purchaser shall provide Seller with a written itemized statement of all rentals received certified to be true and correct by Purchaser. Seller shall further agree that in the event that Seller does not pay Purchaser any rental deficit on a quarterly basis, Purchaser shall have the right to set off said amount due from Seller against the payments under the Note.

Commencing one year from the Closing Date and ending on the same day which is two years from the Closing Date, Seller guarantees that the gross rental income from the Property shall be Eight Hundred Seventy Five Thousand and No/100 Dollars ($875,000.00). Seller agrees to pay to Purchaser a sum equal to the difference between Eight Hundred Seventy Five Thousand Dollars ($875,000.00) and the actual gross rental income received from the Property during that period. Seller agrees to pay Purchaser the income shortfall on a quarterly basis. For example, during the first calendar quarter of the second year following the Closing Date if gross rental income from the Property does not equal $218,750.00, Seller shall pay to Purchaser on the last day of said quarter the difference between $218,750.00 and the gross rental income actually received during that period of time. The Seller’s obligation to pay Purchaser for rental income shortfall pursuant to this paragraph shall not exceed $100,000.00 during the second year from Closing Date. Purchaser shall provide Seller with a written itemized statement of all rentals received certified to be true and correct by Purchaser. Seller shall further agree that in the event that Seller does not pay Purchaser any rental deficit on a quarterly basis, Purchaser shall have the right to set off said amount due from Seller against the payments under the Note.

Seller’s obligation to pay Purchaser for the rental income shortfall shall be adjusted annually and, in the event the rental income shortfall is less than the sum of the quarterly payments Purchaser has received from Seller, then Purchaser shall refund the difference between the annual rental income shortfall and the amount of rental guaranty payments received from Seller. The annual adjustment shall take place within thirty days from a date that is one year from the Closing Date, and a second annual adjustment shall take place within thirty days from a date that is two years from the Closing Date.
During the rental guaranty period as set forth herein, Purchaser shall make every effort to lease existing vacant spaces, including but not limited to, paying full commissions to outside brokers, marketing the Property in a quality manner, and maintaining the Property in a neat and professional manner. If Purchaser relocates any of the existing tenants in Village Square to another property owned by or affiliated with Purchaser, then the tenant’s rental income, based on the rental being paid by the tenant prior to relocation, which would have been received by Purchaser had tenant not been relocated shall be credited against the annual gross rental income guaranteed by Seller (i.e. against the $850,000.00 during year one or the $875,000.00 during year two).

Any new space that is leased on the Property during the two-year guaranty period will be created toward the income guaranty (i.e. toward the $850,000.00 during year one or the $875,000.00 during year two). Also, the credit will be the greater of $15.00 per square foot of annual gross rental or the actual gross rental amount received under the lease. Credit for new leases against Seller’s income guaranty will commence the earlier of when rental payments begin or six months following occupancy by the tenant.

If Purchaser elects to terminate or not to renew any of the existing leases whereby the tenant wants to stay at the Property and is willing to pay the lesser of the tenant’s present rent or fair market rent, then Seller shall receive a credit against the guaranteed income amounts of the amount of the lost rental (i.e. against the $850,000.00 during year one or the $875,000.00 during year two).

34. Additional Provisions.

(a) In the event that Lender requires a form of Tenant Estoppel letter different from the form attached hereto as Exhibit C or in the event that Lender requires a form of Subordination, Attornment, and Non-Disturbance Agreement different from the form attached hereto as Exhibit J, then Purchaser shall deliver such different form(s) to Seller on or before October 1, 20____.

(b) In the event that the sale and purchase of the Property does not close for any reason other than Seller’s default, Purchaser will provide Seller with copies of all surveys, reports, tests, and other materials relating to the Property obtained by Purchaser pursuant to the terms of this Agreement.

35. Miscellaneous.

(a) This Agreement shall be construed and interpreted under the Laws of the State.

(b) No failure of Purchaser or Seller to exercise any power given either party hereunder or to insist upon strict compliance by either party of its obligations hereunder, and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of either party’s right to demand exact compliance with the terms hereof. Any condition, contingency or right of termination or rescission granted by this Agreement to either Purchaser or Seller may be waived in writing by the party for whose benefit such condition or right was granted.

(c) This Agreement may be signed in number of counterparts. Each counterpart shall be an original but all such counterparts shall constitute one agreement. It shall be fully executed when each party whose signature is required has signed at least one counterpart, even though no one counterpart contains the signatures of all the parties.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals as of the Effective Date.

PURCHASER:
Date Executed: ____________________________

SELLER:
Date Executed: ____________________________

The undersigned as Escrowee hereby acknowledges receipt of a copy of this Agreement and of the initial Earnest Money deposit by check $________________ drawn on ______________, subject to collection, and agrees to hold said funds pursuant to the terms of this Agreement. The undersigned as Broker hereby agrees to the terms of Section 17 of this Agreement.

Dated: ____________________________
OPTION TO PURCHASE

IN CONSIDERATION OF ONE HUNDRED AND NO/100 DOLLARS ($100.00) (herein called “Option Consideration”) in hand paid, the receipt and sufficiency of which are hereby acknowledged, the undersigned FARRIS DEVELOPMENT CORPORATION, a ________________ corporation (hereinafter referred to as “Optionor”) hereby grants, conveys and extends to JAMES B. MILLER and ALICE C. MILLER (hereinafter collectively called “Optionee”), the exclusive right and option to purchase upon the terms and conditions set forth herein all that tract or parcel of land lying and being in Land Lots 31 and 32 of the 13th District, ________________ County, ________________ (state) ________________, and being known as the Birch Hill Apartments, a 284 unit apartment complex, and being more particularly described on Exhibit A attached hereto and made a part hereof, together with all improvements situated thereon and appurtenances thereto (hereinafter called “Property”).

1. Option Term. This Option shall begin on September 1, 20____ and terminate at 11:30 P.M. on December 15, 20____.

2. Exercise of Option. This Option may be exercised by Optionee any time prior to the expiration of the Option, by the execution and delivery to Optionor of that certain Real Estate Contract attached hereto as Exhibit B and made a part hereof. Upon the exercise of the Real Estate Contract by Optionee and submission to Optionor, Optionor shall sign the Agreement and it shall become a binding Agreement between the parties hereto. The executed Real Estate Contract is to be sent to Optionor at the following address:

604 Clairemont Avenue
______________ (city) ________________, ________________ (state) ________________ 30060

3. Purchase Price. The Purchase Price for the sale of the Property shall be ONE MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS ($1,500,000.00) and shall be paid pursuant to the terms set forth in the Real Estate Contract attached hereto as Exhibit B and made a part hereof.

4. No Assignment. This Option is personal to the Optionee and is not assignable.

5. Miscellaneous. This agreement constitutes the entire agreement between the parties hereto and it is understood and agreed that all undertakings and agreements heretofore had between the parties have merged herein. No representation, promise, or inducement not included herein shall be binding upon any party hereto.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals this _____ day of ________________, 20____.

OPTIONOR:
FARRIS DEVELOPMENT CORPORATION
By: _____________________________________
    David H. Farris, President

OPTIONEE:

______________________________ (SEAL)
JAMES B. MILLER

______________________________ (SEAL)
ALICE C. MILLER