DOCUMENTATION OF REAL ESTATE TRANSACTIONS

2008 Revision
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INTRODUCTORY COMMENT

The following form addresses many of the common issues that arise in an agreement for the purchase and sale of commercial real property in Oregon. It includes comments to certain provisions and, in some instances, alternative provisions, which are set forth in brackets. Obviously, this form does not cover all possible variations of these provisions, nor does it cover all potential issues that may be relevant in such a transaction. Like all forms, this one is only a starting point and must be adapted and revised to reflect the terms and requirements of the specific transaction, characteristics of the subject property, and then-current law.

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT is entered into on __________, 20__, by and between ____________ (“Seller”), and ______________ (“Purchaser”).

RECITALS

A. Seller owns certain real, personal, and intangible property commonly known as the “________________________,” located at __________________________ in ______________, ______________ County, Oregon, as more particularly described in Section 1 below (collectively, the “Property”).

B. Purchaser desires to acquire all the Property from Seller, and Seller is willing to sell and convey all the Property to Purchaser, on and subject to the terms of this agreement (the “Agreement”).

AGREEMENT

1. Purchase and Sale of the Property. Seller agrees to sell the Property to Purchaser, and Purchaser agrees to purchase the Property from Seller, on the terms and conditions set forth in this Agreement. The Property consists of:

   (a) The land described in Exhibit A attached hereto (the “Land”) and all easements, rights, strips, gores, rights-of-way, and any other rights or interests appurtenant thereto;
(b) All the improvements currently situated on the Land (the “Improvements”);

(c) All Seller’s rights (if any) in all tangible personal property located on the Land or in the Improvements and described in Exhibit B attached hereto (the “Personal Property”); and

(d) All Seller’s rights (if any) in all the following intangible property now or hereafter existing with respect to the Property (the “Intangible Property”):

(1) All leases, licenses, and other agreements to occupy all or any part of the Land or Improvements together with, and subject to the manner in which the same are to be prorated under this Agreement, all rents, charges, deposits, and other sums due, accrued, or to become due thereunder, and all guaranties by third parties of any tenant’s obligations under the leases, licenses, and other agreements;

(2) All plans and specifications, all building permits and other permits pertaining to the construction of the Improvements, and all warranties, guaranties, and sureties now or hereafter received in connection with the construction of or equipment on the Improvements;

(3) All licenses, permits, approvals, certificates of occupancy, and franchises relating to the zoning, land use, ownership, operation, occupancy, construction, or maintenance of the Improvements;

(4) All service and maintenance contracts and equipment leases in connection with or used by Seller in the operation of the Improvements; and

(5) All Seller’s rights, if any, to use the name “_____________” with respect to the Property.

2. **Purchase Price.** The total purchase price for the Property is ________________ dollars ($__________). The parties agree that ________________ dollars ($__________) of the purchase price is being paid for the Personal Property and Intangible Property, and the remainder is being paid for the Land and Improvements.

3. **Earnest Money Deposit.** On or before the date this Agreement is executed and delivered by both parties to the Agreement (the later of those dates of execution and delivery being herein referred to as the “Effective Date”), Purchaser will deliver to ________________ Title Insurance Company (the “Escrow Agent”) in ________________, Oregon, a promissory note in the form attached hereto as Exhibit C in the amount of ________________ dollars ($_______) made payable to the
Escrow Agent. At the end of the Review Period, as that term is defined in Section 5.1 hereof, Purchaser will redeem the note by depositing $_______ in cash with the Escrow Agent, which sum will constitute Purchaser’s earnest money deposit under this Agreement (the “Deposit”). The Deposit will be placed in an interest-bearing account, and all interest thereon will be added to and become part of the Deposit. The Deposit will be applied in accordance with the terms of this Agreement. Purchaser hereby acknowledges and agrees that the Deposit held by the Escrow Agent does not and will not constitute property of the estate of Purchaser within the meaning of Title 11 of the United States Code or substantially similar provisions of state law (the “Bankruptcy Code”), including §541 of the Bankruptcy Code, and Purchaser’s interest in the Deposit is limited to the right to have the Deposit returned if and when the conditions for the return of the Deposit to Purchaser are satisfied as set forth herein. Purchaser hereby acknowledges and agrees that (a) the proper giving of notice by Seller to release the Deposit as provided hereunder and/or (b) the proper release of the Deposit to Seller will not be a violation of any provision of the Bankruptcy Code, including, without limitation, §362 of the Bankruptcy Code, or require the approval of any court with jurisdiction over any case in which Purchaser or any affiliate of Purchaser is a debtor. Purchaser hereby waives any provision of the Bankruptcy Code necessary to invoke the foregoing, including, without limitation, §105 and §362 of the Bankruptcy Code, and waives any right to defend against any motion for relief from the automatic stay that may be filed by Seller.

4. Payment of Purchase Price. The purchase price must be paid by Purchaser in all cash on the Closing Date (as defined in Section 12.1), [minus the outstanding principal balance on the Closing Date of that certain loan (the “Assumed Loan”) from ____________________ (“Lender”) in the original principal amount of $________ evidenced by that certain promissory note dated ____________, 20___ (the “Note”) made by Seller and secured by, among other things, a deed of trust lien on the Property (the “Deed of Trust”),] subject to application of the Deposit and the adjustments and credits as provided in this Agreement. [The Note, Deed of Trust, and all other documents evidencing or securing the Assumed Loan are collectively referred to herein as the “Assumed Loan Documents.” At closing, Purchaser will assume the Assumed Loan and all obligations and liabilities under the Assumed Loan Documents.]

COMMENT: If the seller is to finance all or part of the purchase, this section must obviously be revised to reflect the amount and terms of the seller financing. To avoid potential delays
or disputes at the time of closing, it is recommended that the parties agree to the form of note, deed of trust, and all other loan documents evidencing or securing the seller financing as part of the purchase and sale agreement and attach the agreed forms to it. If the seller financing is to serve as junior financing behind a first priority loan, the purchaser must be sure that the senior lender is willing to allow the junior loan and that both the senior lender and the seller agree on the form of intercreditor agreement that may be required by the senior lender.

5. Inspection Contingency

5.1 Inspection Rights. Purchaser will have until midnight at the end of the _________________ (___) day after the Effective Date (the “Review Period”) to satisfy itself concerning all aspects of the Property, including, without limitation, the physical condition thereof; the insurance policies, contracts, leases, and all other financial aspects of the Property; the availability of any governmental permits and approvals; and the feasibility of using the Property for Purchaser’s intended use. Purchaser will have the right to perform such tests, inspections, and feasibility studies on the Property as Purchaser may deem necessary[; provided, however, that Purchaser will not conduct any environmental assessment that would require soils analysis, groundwater testing, or other studies commonly associated with a Phase II environmental site assessment without the prior written consent of Seller in each instance, which consent may be withheld or conditioned in Seller’s sole discretion]. Seller will permit and, to the extent reasonably required by Purchaser, will assist Purchaser in providing access to Seller’s architects, engineers, contractors, subcontractors, managers, analysts, and appraisers in connection with Purchaser’s review of the Property. For any portion of the Improvements that is occupied by a tenant, Purchaser will make appropriate arrangements with Seller regarding the time and duration of Purchaser’s inspections, and Purchaser will take all reasonable steps to protect the tenant’s property and to avoid disturbing the tenant. Purchaser will schedule and coordinate all inspections, including, without limitation, any environmental tests, with Seller and will give Seller at least two (2) business days’ prior written notice thereof. Seller will be entitled to have a representative present at all times during each such inspection and communication with tenants.

5.2 Inspection Expenses. All costs and expenses of all Purchaser’s tests, inspections, and studies must be paid by Purchaser when due, regardless of whether this transaction closes.